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Reserved On:- 17.12.2024

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1. Case :- CRIMINAL APPEAL No. - 3720 of 2009

Appellant :- Brahm Pal

Respondent :- State of U.P.

Counsel for Appellant :- R.N. Sharma, Atul Sharma

**Counsel for Respondent :- Govt. Advocate, Arun Rana, Manoj Kumar
Srivastava**

2. Case :- CRIMINAL APPEAL No. - 3721 of 2009

Appellant :- Chandra Pal And Another

Respondent :- State of U.P.

Counsel for Appellant :- R.N. Sharma, Atul Sharma

**Counsel for Respondent :- Govt. Advocate, Arun Rana, Manoj Kumar
Srivastava**

Hon'ble Siddharth, J.

Hon'ble Subhash Chandra Sharma, J.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri Dharm Pal Singh, learned Senior Counsel assisted by Sri Atul Sharma, learned counsel for the appellants; Sri Lohit Ganguly, Advocate, holding brief of Sri Ashok Kumar Dubey, Sri Rajesh Kumar Tripathi and Sri Sandeep Lamba, learned counsel for the informant; learned A.G.A for the State and perused the material placed on record.

2. The above noted criminal appeals have been filed against the judgment and order of conviction dated 25.06.2009 passed by Sessions Judge, Baghpat in Sessions Trial No. 305 of 2002 (State vs. Chandra Pal

and others) by which the appellants have been convicted under Section 302 read with Section 149 IPC awarding life sentence and fine of Rs. 6,000/- each; conviction under Section 307 read with Section 149 IPC awarding 10 years rigorous imprisonment and fine of Rs. 4,000/- each; conviction under Section 147 I.P.C awarding one year's rigorous imprisonment and conviction under Section 148 I.P.C awarding 2 years rigorous imprisonment. In case of default in depositing fine to undergo two years further imprisonment each and all the sentences have been directed to run concurrently.

3. The prosecution case, as per F.I.R., is that on 22.12.1999 the informant along with her mother, Bisna Devi and father, Shyam Singh, had gone to tehsil in connection with a case of land dispute with her uncle, Brahm Pal. Brahm Pal wanted to kill her father for long time and had given him threats of life many times. In the tehsil informant and her parents met Kailash Singh and Shyam Singh and they were talking regarding date of case. In the tehsil informant also met her uncle, Brahm Pal, his son, Sanjeev, his brother-in-law, Sukhpal and Chandra Pal, Iqbal Singh and Daler Singh, residents of village Sinoli, Police Station- Chhaprauli and three others whom she did not know but could recognize them. Because of strike in tehsil and fixing of next date in the case they were coming out from tehsil. At 1:00 p.m when they reached the road all the aforesaid persons having country made pistols fired in the air and also fired on the informant and her parents. Due of terror created by them the vehicles on the road stopped and hotels and shops closed. People around lawyers ran helter skelter and in the meantime a bullet hit her father and he fell down. The miscreants ran inside the tehsil and informant chased them screaming. In the meantime one Inspector picked up her father and took him to government hospital. The informant and her other family members went to the hospital where they found that father of the informant had

died. On that day Brahm Pal achieved his goal and the informant and her mother became helpless. After leaving the dead body of her father in the hospital the informant went to lodge F.I.R on the same day, i.e., 22.12.1999, at 13.50 hours with regard to the incident which took place on 13 hours at police station- Baraut, District- Baghpat.

4. To prove the prosecution case, the prosecution examined P.W.-1, Kailash Chandra; P.W.-2, Subhash; P.W.-3, Km. Rita Puniya (informant); P.W.-4, Bisna Devi (wife of deceased); P.W.-5, Sub-Inspector, R.C. Verma; P.W.-6, Sub-Inspector, Sudarshan Lal; P.W.-7, Sub-Inspector, Rajpal Singh; P.W.-8, S.H.O., N.S. Negi; P.W.-9, Dr. R.G. Verma and P.W.-10, S.I. Genda Lal.

5. P.W.-1 denied seeing the incident being committed by the accused persons and was declared hostile. In cross-examination, he stated that his statement was never recorded by the investigating officer under Section 161 Cr.P.C. He denied his signatures on the inquest report of deceased, Shyam Singh and stated that he was made to sign on blank papers. He stated that he went to tehsil on 22.12.1999 for giving evidence in another case of will and he never saw P.W.-3 and P.W.-4 in tehsil Badaut on the date of incident.

6. P.W.-2 denied that any memo of inquest was made before him regarding dead body of deceased, Shyam Singh. He was also declared hostile. He further stated that his signatures were taken by the investigating officer on blank papers.

7. P.W.-3, Km. Rita Puniya, daughter of deceased and informant, proved that on 22.12.1999 she along with her father and mother (P.W.-4) went to Badaut tehsil from the place of working of her father. From tehsil they had programme of going to their village, Sinoli. Therefore, she and

her mother had accompanied her father to tehsil Baraut. In tehsil Baraut there was a case pending between her father and appellant, Brahm Pal and others. On 22.12.1999 date was fixed for recording of statement of her father in the case but because of strike it could not be recorded and next date was fixed. As soon as they came out from the tehsil gate, P.W.-1, Kailash and P.W.-2, Subhash, left them and went away. On the tehsil gate, accused present in court, namely, Brahm Pal, Iqbal, Chandra Pal and Sukhpal and Sanjeev, who is not present in court and three others, whom she did not know, came armed with country made pistols and made firing in air and thereafter made firing on them wherein one bullet hit her father. P.W.-3 and her mother (P.W.-4) did not get hurt. Incident took place at about 1:10 p.m. Her father fell on the spot and the assailants ran towards tehsil. She chased them for some distance. Her father was taken to government hospital and she along with her mother also went there. Her father was declared dead in the hospital. She herself gave the written complaint of incident at police station. She identified her signature thereon and proved the same.

8. In her cross-examination, P.W.-3 stated that she had gone to the police station alone after writing the complaint. On the fateful day, she along with her parents, had reached tehsil Baghpat at about 10:30 a.m. There was litigation between her father and uncle, Brahm Pal, in tehsil and case was pending in the court of S.D.M. She did not know in which court the case was pending. Number of persons known to her father met him in tehsil but she knows only Kailash, P.W.-1 and Subhash, P.W.-2. She does not know whether Kailash and Subhash were with her father inside the court. Her father was taken from tehsil gate to the hospital by an inspector of police in a rickshaw. They reached the hospital within 8-10 minutes. When her father was declared dead by the doctors, she went to the police station. She did not remember whether Kailash and Subhash were present

in the hospital or not. She had seen them at the time of inquest proceedings. She denied that she did not inform the investigating officer that she had not accompanied her mother and father to the hospital. She further stated that she informed the investigating officer that firing was made on them with intention to kill. Accused, Sukhpal, is resident of Baraut. He used to talk about compromise in case between her father and accused, Brahm Pal. He used to say that her father had left the property in favour of accused, Brahma Pal. Sukhpal is brother-in-law (*sala*) of Brahm Pal. She denied that her father had caused knife injury to some employee at the place of his working. She denied that some litigation took place between her father and grand-father, Dharam Singh. Her grand-father had died one year before the incident. She expressed ignorance whether Kailash had come to give statement in the case of her father. She stated that prior to 22.12.1999 also she had come to tehsil with her father in connection with the case on one or two occasions. She was not witness in the case. She had informed the investigating officer that she along with her mother were to accompany her father to the village, hence they came to the tehsil along with him. They had come to the tehsil after taking tea only and had brought food with them. Her father had not taken breakfast in tehsil. She saw the accused 20-25 steps away. Thereafter, they started firing and before they could understand anything, her father was fired upon when he was 8-10 steps away from the assailants. Where her father fell, blood had fallen on the ground and also on his clothes. After her father fell down, she ran after the assailants screaming and when she came back her father had become silent. All the assailants ran towards the back side of the tehsil. When she came back one inspector was picking up her father and took him to hospital in injured condition. Number of people had gathered there. She had no talks with the aforesaid inspector. Name of the inspector was mentioned in the papers of hospital who took her father there. She wrote the application for lodging F.I.R in a shop opposite to the

police station after taking paper from the court file of her father. After getting the report lodged, she went to the hospital where her mother was present. She denied the suggestion that the inquest report of dead body of her father does not bears her signature. She proved that P.W.-1, Kailash, made his signature on the inquest report in her presence. She knows Subhash, resident of Sinoli. She denied that Subhash made phone call to her neighbour, Bhopal Singh and called her on 22.12.1999 at 02:00 p.m and she reached at 05:30 p.m along with her mother at police station. She denied knowledge as to when the samples of soil and empty cartridges were got recovered and by whom from the place of incident. The investigating officer questioned her many times but never at police station. Prior to the incident her father had lodged report against Brahm Pal, Iqbal and Chandra Pal. She denied knowledge of any will executed by her grant-father, Dharam Pal, regarding his moveable and immovable property in favour of her grand-sons. She denied that accused, Brahm Pal was present in Police Operation Cell, P.S.- Kalyanpuri of Delhi Police at the time of incident.

9. P.W.-4, Smt. Bisna Devi, wife of deceased, stated that on 22.12.1999 at about 01:00 p.m the deceased along with her daughter were going out from the tehsil gate when the accused present in court, namely, Brahm Pal, Sukhpal, Chandra Pal and Iqbal and Sanjeev, who is not present in court, came from front and they fired upon her husband. There were three other unknown accused whom she does not know. One bullet hit her husband due to which he fell down and all the accused started running. They were chased by her daughter, P.W.-3, for some distance. She got frightened and sat on the ground. Then one inspector came and with the help of 3-4 persons present picked up her injured husband and after putting him on rickshaw took him to the government hospital where the doctor declared him dead. She proved that on the date of incident, she

along with her daughter and husband had come to tehsil Baraut, from the place of their residence near Modipuram, where a case regarding land was pending between her husband and accused, Brahm Pal and Sanjeev. After next date was fixed in the case they were coming out of tehsil when she saw country made pistols in the hands of accused who fired together on them when they were at the distance of 20-25 steps from them. She cannot tell at what distance from tehsil gate her husband fell down. She had got so frightened that she cannot tell the distance between the place of incident and the tehsil gate. There was no other person present with them at the time of incident. Her husband has three brothers, namely, appellant, Brahm Pal, Ompal and Sompal. Brahm Pal has two sons and Ompal had three sons. His father-in-law was Dharam Singh. Her father-in-law had executed will of half of his property in favour of sons of Brahm Pal and remaining half in favour of sons of Ompal. The aforesaid will of her father-in-law was concocted. She does not know who were the witnesses of the aforesaid will and who were not. She denied that Iqbal has been implicated in this case only because he is witness of the will. She further stated that she had informed the investigating officer that P.W.-3 and P.W.-4 had accompanied the deceased because they had to go to their village together from tehsil. She cannot tell why the investigating officer has not mentioned this fact in her statement. Sukhpal is resident of Wajidpur and resides in Baraut. He is brother-in-law of Brahm Pal. She stated that it is wrong to say that Sukhpal had no concern with the land dispute of her husband with Brahm Pal. Sukhpal had earlier threatened her husband to withdraw the case otherwise its consequences would be disastrous. She had seen Sukhpal along with the other accused on the date of incident. She had informed the investigating officer in this regard also at the time of recording of her statement. Why he did not mentioned the same in her statement she cannot tell. She did not saw P.W.-1, Kailash, in the court on that date. She saw him only at the time of inquest proceedings which took

place at about 3-3:15 p.m. It was made in the presence of doctor and not at the police station. P.W.-3 went to police station for lodging the report soon after the death of her husband. No person named Bhopal is her neighbour. Many bullets were fired on the place of incident but she cannot tell their exact numbers.

10. P.W.-5, Sub-Inspector, R.C. Verma, stated that on 22.12.1999 he was posted at P.S.- Baraut and had come to the bus stand Baraut due to some private work. He came to know that someone had been injured with fire arm who is resident of Sinoli. With the help of people around he picked up the aforesaid injured and took him to P.H.C., Baraut on rickshaw where he was declared dead by the doctors. Thereafter, his wife and daughter also came to the hospital and were crying. The daughter of deceased went to lodge the report when he was going back to the police station Baraut. He saw the daughter of deceased returning from the police station after lodging the report. Later he along with inspector and police force went in search of accused. In his cross-examination, P.W.-5 stated that the incident took place at about 1:15 p.m. Blood was oozing from nose, mouth and head of the deceased. He cannot tell how many gun shot injuries were suffered by him. When he reached the place of incident, neither any policemen nor any other person were present there. The deceased was not able to speak. He picked him and took him to the hospital in a rickshaw and reached the hospital within 4-5 minutes. After 1-2 minutes wife and daughter of deceased came to the hospital. He did not saw in which vehicle they came. When the daughter informed that deceased was her father, he asked her to go and lodge the report and she went to lodge the same. After injured was declared dead he went to the police station after 4-5 minutes at about 2:00 p.m. He met daughter of deceased coming back from the police station. He denied that the report was lodged in his presence and on his advice. He did not knew the deceased earlier. No

inquest proceedings took place there nor any policemen came when he was present in the hospital. He did not gave statement to the inspector that the injured had died prior to reaching hospital but it is true that the injured had died prior to reaching the hospital.

11. P.W.-6 proved that he lodged the F.I.R on the basis of application given by P.W.-3 at the police station. He also proved the G.D. entry in this regard before the court.

12. P.W.-7, Sub-Inspector, Rajpal Singh, proved that on 22.12.1999 he was posted as Sub-Inspector at P.S.- Baraut and Case Crime No. 833 of 1999 was got registered by P.W.-3 under Sections- 147, 148, 149, 307 and 302 IPC against Brahm Pal, Sanjeev, Sukhpal, Chandra Pal and Iqbal. He proved that inquest proceedings on the dead body of the deceased were conducted in his presence at P.H.C., Baraut. He denied remembering whether witness, Kailash and Sukhpal, met him at P.H.C at the time of making of inquest report. He proved the signature of P.W.-3, Km. Rita Puniya, on the inquest report.

13. P.W.-8, Mahendra Singh Negi, Incharge Inspector, proved that he was posted as such on 22.12.1999 where P.W.-3 lodged the report regarding murder of her father. He conducted the investigation of this case and proved the entire investigation record before the trial court and filing of charge sheet before the court. He proved that first of all he went to the place of incident where there was huge crowd. First informant has accompanied him to the place of incident and he prepared site plan on her pointing out. He proved particulars of the place before the court. On his direction Sub-Inspector, R.P. Singh, conducted the inquest proceedings. He was informed by the informant that there was some case regarding land in the tehsil. She had not informed about the name of the court where the case was pending. She had informed him that from tehsil they had plan of

going to village Sinoli. Therefore, informant and her mother had accompanied her father, the deceased, to the tehsil. She had informed him that she knows witness, Kailash and Sukhpal. She had further given statement that her father died and was taken to the hospital. Sub-Inspector, R.C. Verma, had informed that he had gone to bus stand due to some personal work. He admitted that he had not mentioned the time and recovery of the sample of soils and empty cartridges from the spot. He stated that he is not aware whether the Sukhpal had any concern with the land dispute of deceased or not. He admitted that Iqbal and Dharam Pal, are witness of the same will. He admitted that he has not mentioned in the site plan where P.W.-3 and P.W.-4 were standing at the place of incident and the distance to which P.W.-3 ran against the assailants. He denied that the F.I.R is ante-timed and charge sheet has been submitted on false grounds.

14. P.W.-9, Dr. R.G. Verma, who conducted the autopsy of dead body of the deceased, proved that there was head injury suffered by deceased due to firing from fire arm. His stomach was empty. He prepared the post-mortem report. He found injury no. 1 in the form of gun shot entry wound on left side nose. Tattooing in area of 10 x 8 cm was found on face of deceased corresponding exit wound was found on head.

15. P.W.-10, S.H.O., Genda Lal, proved that he completed further investigation of this case. He proved that the charge sheet was submitted by the earlier investigating officer against the accused. He arrested accused, Brahm Pal, on 08.12.2001 and submitted charge sheet against him, since charge sheet was submitted earlier against other accused. He arrested him with permission of Inspector Incharge on 24.12.1999. D.C.P., Delhi sought information from S.P., Baghpat on 20.06.2000 whether on 22.12.1999 Brahm Pal was present from 10:00 a.m to 06:00 p.m in Police Station- Kalyanpuri Delhi.

16. The statement of accused under Section 313 Cr.P.C were recorded wherein they denied the incident as alleged and their presence on the place of incident.

17. The defence examined, D.W.-1, A.S.I., Indraraj Singh of Delhi Police, who stated that he appeared before this court in response to the summons sent by the court. On the directions of higher authority he is producing the original record and letter correspondence file of accused, Head Constable Brahm Pal Singh, before this court. He filed the photocopy of the same and proved it before the court. In his cross-examination, he denied knowledge about accused, Brahm Pal, being present on duty from 10:00 a.m to 06:00 p.m on 22.12.1999. He stated that what was the duty of Brahm Pal on that day he cannot tell. He stated that he is resident of Gurgaon and has never come on Baraut-Delhi road earlier. He has no knowledge about the presence of accused, Brahm Pal, on the place of incident. He is only shown present in the papers. He further stated that he does not know whether accused, Brahm Pal, was involved in the incident or not and whether the presence of Brahm Pal at Delhi and Baraut was possible simultaneously.

18. Counsel for the appellant has made following arguments :-

(i) The very genesis of prosecution case is not proved on the basis of eye witness account of P.W.-3, Km. Rita Punia (first Informant) and P.W.-4, Smt. Bishna Devi (wife of deceased and mother of first informant), both of whom are interested witnesses.

(ii) Even if, the entire statements of P.W.-3 and P.W.-4 and their cross examinations are taken into consideration, it is apparent that none of them were present at the time and place of occurrence.

(iii) Oral evidence of eye witnesses, P.W.-3 and P.W.-4, are in direct conflict with medical evidence on record i.e., the postmortem and the statement of P.W.-9, Dr. R.G. Verma, who conducted the post-mortem and stated categorically that injury in question on deceased cannot be caused from a distance of 8-10 steps.

(iv) The distance of firing upon deceased by accused-appellant has been stated by P.W.-3 to be 8-10 steps; P.W.-4 stated that the distance was 20-25 steps and in the site plan, the distance has been shown as 11 steps.

(v) In almost all the cases decided by Apex Court and High Courts of the country they have always relied upon Modi's Medical Jurisprudence and Toxicology, previously, on first edition and subsequent editions and since after the year 2005 on 23rd Edition of Modi's Book.

(vi) According to the aforesaid book at page 726, it is categorically stated/opined that tattooing on the body of deceased by hand guns would be about 70 cm and by rifles upto 75 c.m. generally. It is further stated that for shotguns it may be upto 100-300 cm may be found after careful search at higher range.

(vii) In this connection, the clear evidence of prosecution is that all the 8 accused persons fired with *tamanchas* which may be country made or otherwise, but the tattooing cannot be found by such pistols/ *tamancha* beyond 60 cm. *Tamancha* has been held to be handgun. A shotgun is a shoulder arm gun having a barrel that is smoothly bored inside.

(viii) In view of above, it is clear, that the single shot on the body of deceased cannot be caused from a distance of 8 -10 steps (P.W.-3); 20-25 steps (P.W.-4) or 11 steps, as mentioned in site plan.

(ix) Absence of any injury on any one including PW-3 and P.W.-4, goes a long way to suggest that P.W.-3 and P.W.-4 (the only eye witnesses) were not present during firing on deceased. Thus the evidence of P.W.-3 and P.W.-4 is wholly unreliable on the given facts and circumstances of the present case.

(x) Since the prosecution has failed to prove its case against the accused appellants beyond all reasonable doubts, the evidence of *alibi* of appellant, Brahampal, would be a secondary consideration. Accused appellants have tried their best to prove the plea of *alibi* and made all possible efforts for production of the witnesses who made the entries and police record regarding presence of appellant No. 1 at Delhi during the place and time of occurrence. However, the prayer of accused-appellants was rejected by Sessions Judge and High Court on highly technical grounds.

(xi) Accused No. 2, Sanjeev, is son of accused No. 1, Brahampal. His false implication is apparent. Moreover, Sanjeev has been declared to be juvenile and is not before this court. Accused No. 3, Shukhpal is admittedly brother-in-law of accused, Brahampal. His false implication is also apparent due to false implication of accused No. 1 and accused No. 2. The accused No. 4, Chandra Pal, is real brother of accused No. 5, Iqbal.

(xii) Accused No. 5, Iqbal, has been falsely implicated for the reason that he was marginal witness of registered Will deed dated 04.04.1997 executed by Dharam Singh (common ancestor of accused No. 1 and deceased). It has also come on record that accused No. 5, Iqbal, was a witness in Suit No. 38 of 1997 [Shyam Singh (deceased) vs. Dharam Singh (father of deceased and accused No. 1) filed under Section 229-B of U.P.Z.A & L.R. Act on 28.02.1997. The statement of accused, Iqbal, was recorded before the court on 23.07.1999 i.e., prior to the present occurrence dated 22.12.1999.

(xiii) Prosecution failed to prove its case beyond all reasonable doubts and accused appellants have been falsely implicated and as such they are entitled for acquittal by this Court.

19. Counsel for the informant has made following submissions :-

(i) The prosecution case, based upon the complaint filed by the complainant, is that all the accused who were waiting outside or at the gates of the Tehsil Court building, had been carrying *tamanchas* or *desi kattas* which as is well known and is therefore judicially noticeable, has only one bullet loaded in the barrel and after it is fired requires some time for the empty shell to be taken out and replaced with another one. As per the allegations accused first fired some rounds in the air, presumably to disperse the heavy crowd present and which had the result that people rushed away and nearby shops started downing shutters and then they came closer and from about "10 *kadam*" distance fired more shots one of which only hit the deceased. The Post Mortem Report has confirmed the entry and exit of one bullet. Immediately the accused had started running away being chased for some distance by the complainant. Crowd gathered, who were already present, needless to state as it was routine busy court functioning day. The police came on the spot to recover cartridges hours later, post the registration of the FIR. Under such circumstances it is not surprising that only one shell or cartridge was recovered. It is not impossible that the other cartridges were carried away by the accused while running away to avoid leaving behind any evidence. It is important in this case that main master mind, appellant, Brahm Pal, the brother of the deceased, was/is a police officer of Delhi Police, which is admitted and has been proved from the record. He would have been aware of the evidentiary value of any evidence being left on the spot and hence may have instructed his co-accused accordingly. Indeed he used his influence and power to manage the police so well that in the initial charge sheet filed

his name was not there as an accused and only after change of investigating officer in due course and in the supplementary charge sheet filed his name was mentioned as an accused.

(ii) Testimony of P.W.3 and P.W.4 and indeed of P.W.5 makes it clear that the accused had fled from the spot. Under such circumstances and considering the power and influence of the main accused, Brahm Pal, a police officer, it is not surprising that the police did not, by interrogation or otherwise, succeeded in making recoveries.

(iii) Even if no weapon of offence is recovered, especially where the prosecution case is principally not based upon any recovery of weapon of offence or is standing upon any recoveries made, the same is not fatal or an obstruction to successful conviction. Reliance is placed in this behalf on ***MUNNA @ SURENDRA KUMAR VS. STATE OF M.P., (2003) 11 SCC 480***, para 8, where in a very similar factual matrix it was observed - *"It may or may not be true that such a gun was recovered but since the prosecution has not relied upon this piece of evidence, the fact that it was not properly recovered, would not make the prosecution case any weaker; at the most that piece of evidence would have to be rejected. Any argument that in the absence of the recovery of a gun from the appellant there could be no conviction will also have to be rejected."*

(iv) In the facts of the present case the fact that there has been recovery of only one empty cartridge and no weapon of offences was recorded used is not significant in view of the other overwhelming evidence that has come on record.

(v) On the Aspect of P.W.1 and P.W. 2 having turned hostile it has been submitted that they are real brothers and from the same village as the accused. They were won over by the accused being their co-villagers.

Even though both were declared hostile, their testimonies partially support the prosecution case. P.W.-1, Kailash, proved his presence at the Tehsil Court on the fateful day and of the case of the deceased against the accused being fixed for that day and he having come as a witness to depose, although in some other case. All he said is that the actual firing incident did not happen before his eyes. P.W.-1, Kailash Chand, has said that he had left the court building as his brother had asked him to go for "wheat sowing". It is established from the record that he had left around 1 pm but he had come for signing on the *panchnama* or on blank papers having been called by the police at around 3 pm. How could he have gone and come back so fast. Thus his testimony of not having been present is falsified and has been rightly rejected by the Sessions Court.

(vi) Thus to the extent the P.W.1 and P.W.2 have supported the prosecution case the same is relevant and can be relied upon even if the rest is irrelevant. String reliance is placed on ***RAJENDRA AND ANOTHER VS. STATE OF UTTAR PRADESH, (2009) 13 SCC 480*** where all the prosecution witnesses had turned hostile surprisingly and yet by relying on the portions of all their testimonies that supported the prosecution case conviction of accused was sustained. It was observed that it "is trite that a judgement of conviction can also be recorded on the basis of the statement made before the court by a solitary witness.." and although all the witnesses had turned hostile "a part of their statement can be taken into consideration for the purpose of finding out as to whether the appellants are guilty.... It is well settled that the evidence of a hostile witnesses may not be totally rejected ...".

(vii) Accused, Brahm Pal, who is the main beneficiary of having eliminated his deceased brother, attempted to set up an *alibi* of not being present at the place of incident as at that time he was on duty as police Head Constable at Delhi.

(viii) Given peculiar nature of such a defence, it was the duty of this accused to prove his defence, for which he summoned witness, D.W.1 and documents from the record of the Delhi Police. But this witness has not supported the defence taken in alibi and has denied any knowledge of the accused having been in Delhi at that time. Sessions Court in its judgment has analysed and rejected this defence taken at length.

(ix) Taking into consideration all the aspects of the case and after proper appreciation of all the evidence that has come on record a well reasoned order has been passed by the trial court in the interest of justice.

(x) Even on the aspect of as to how when only one bullet hit the deceased and became the cause of his death all could be convicted for murder and not merely for attempt to murder, a very well reasoned analysis has been made by trial court hence the appeals noted above may be dismissed.

20. After hearing the rival contentions, we find that the thrust of arguments of counsel for the appellant is that P.W.-3 and P.W.-4, who are the daughter and wife of deceased and witnesses of fact, were not present on the scene of incident. They have not seen the incident nor the person who caused the same. They were called upon by making a phone call to their neighbour, Bhopal Singh, from their house and thereafter the F.I.R was got registered at about 05:30 p.m and not at 13:50 hours as mentioned in the F.I.R.

21. Further contention of learned counsel for the appellant is that there is inconsistency in the statements of P.W.-3 and P.W.-4 and the site plan regarding the place from which the only fatal shot was fired upon the deceased. Reliance has been placed on Modi's Medical Jurisprudence and Toxicology to prove that tattooing on the body of deceased could not have been caused from the distance of 8-10 steps or 20-25 steps as stated by

P.W.-3 and P.W.-4. We find that there is documentary evidence in the form of F.I.R which was registered at the police station at 13:50 hours with regard to the incident which took place on 13:00 hours. The aforesaid F.I.R was lodged by P.W.-3 and she proved the same before the court. The inquest proceedings were conducted at 15:00 hours wherein the presence of P.W.-1 and P.W.-2 have been clearly mentioned, therefore, the possibility of F.I.R being ante-timed does not seem probable. Suffering of fatal gun shot injury by deceased cannot be disbelieved only because the tattooing around the wound of entry on left side of his face cannot be caused from the distance stated by P.W.-3 and P.W.-4. P.W.-3 and P.W.-4 are women. The incident took place all of sudden. There is possibility of not being able to state the correct distance between the assailants and the deceased. Only because of the fact that the tattooing around the fatal wound could not have been caused from the distance of about 8-10 steps or 20-25 steps, entire prosecution case cannot be disbelieved. Regarding the arguments of learned counsel for the appellant regarding appellants, Iqbal and Chandra Pal, being falsely implicated in this case, because of Iqbal being witness in the case of will between the deceased and appellant, Brahm Pal, we will discuss hereinafter. P.W.-1 and P.W.-2 have also testified that the incident took place and that inquest proceedings were conducted on the dead body of the deceased. Despite being declared hostile, they only denied seeing the same from their own eyes. Therefore, the finding of trial court that the incident as alleged took place cannot be found fault with.

22. We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is

made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

23. In ***Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364)*** it has been laid down as under:-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

24. The above decision has since been followed in ***Guli Chand and Ors. v. State of Rajasthan (1974 (3) SCC 698)*** in which ***Vadivelu Thevar v. State of Madras (AIR 1957 SC 614)*** was also relied upon.

25. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the

witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in [Rameshwar v. State of Rajasthan](#)' (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

26. Again in ***Masalti and Ors. v. State of U.P.*** (AIR 1965 SC 202) this Court observed:

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

27. To the same effect is the decision in ***State of Punjab v. Jagir Singh*** (AIR 1973 SC 2407) and ***Lehna v. State of Haryana*** (2002 (3) SCC 76). Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by PW3 to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence of some of the witnesses has been found to be deficient. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no

application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See [Nisar Ali v. The State of Uttar Pradesh](#) (AIR 1957 SC 366). (Also see: [Sucha Singh and Anr. v. State of Punjab](#) (2003 (6) JT SC 348).

28. Regarding the arguments of learned counsel for the appellant that the investigating officer has not shown the place of presence of P.W.-2 and P.W.-4 in the site plan we are of the view that no benefit shall accrue to the defence on account of such conduct of the investigating officer. The Apex Court in the case of ***Paras Yadav and Ors. vs. State of Bihar, 1999 (2) SCC 126*** had held in paragraph 8 regarding lapse of investigating officer as follows :-

"Para 8 - the lapse on the part of the Investigating Officer should not be taken in favour of the accused, may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from the case of Ram Bihari Yadav v. State of Bihar and others, J.T. (1998) 3 SC 290. "In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

29. Hence, the principle of law is crystal clear that on account of defective investigation the benefit will not inure to the accused persons on

that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eye-witnesses, medical report, etc. It has been a consistent stand of courts that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eye-witnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons.

30. We further find that the motive of commission of crime has been assigned to appellant, Brahm Pal. There are general allegations made against all the accused and they have been convicted and sentenced for committing the offences under Section 302 IPC read with Section 149 IPC; Section 307 read with Section 149 IPC, Sections 147 and 148 IPC. An accused is vicariously guilty of the offence committed by the other accused only if he is proved to be member of unlawful assembly sharing its common object. Once the existence of common object of assembly is proved, each member of such assembly is held liable for the main offence notwithstanding their actual participation in the commission of offence. At the same time it is not necessary that each of the accused, forming unlawful assembly, must have actually committed the offence.

31. The members of unlawful assembly can be held liable under Section 149 IPC if it is shown that they knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. It is equally true that common object does not requires prior concert and a common meeting of mind before the actual attack. It can develop even on spot but the sharing of such an object by all the accused must be shown to be in existence at any time before the actual occurrence. In the present case, prosecution did not proved the existence of common

object amongst the accused persons to attract the provisions and section 149 IPC. As the common object of the assembly is not proved, it can only be held that the appellant, Brahm Pal, intended to cause the fatal blow to the deceased and the other accused accompanied him for the purpose of removing the obstructions, if at all they were present at the scene of occurrence. There is no evidence to prove that number of rounds of firing were made in the air by all the appellants and only one bullet hit the deceased which prove fatal. Nothing was recovered from the spot which may prove that number of firings were made in the air. From the place of incident only one empty cartridge was recovered. Merely because the other accused were accompanying Brahm Pal when the deceased suffered fatal fire arm injury on his face and died, it cannot be sufficient to prove the existence of common object in the absence of any evidence of prosecution in this regard. There appears to be possibility of sudden and unanticipated occurrence resulting in single fatal injury to the deceased for which implication of five persons initially and conviction and sentence of four persons with the help of 149 IPC in commission of offence of murder does not appears to be justified.

32. Regarding the convicted accused, Sukhpal, Chandrapal, Iqbal and Sanjiv (juvenile), the prosecution has not assigned any motive to them for commission of offence. Enmity and motive of commission of crime has been assigned to appellant, Brahm Pal, only. There was dispute of the deceased, Shyam Singh, regarding land with appellant, Brahm Pal. The other accused, Sukhpal (since deceased), was brother-in-law (*sala*) of Brahm Pal and it is alleged that prior to the incident he had threatened the deceased to withdraw the case. This fact was not stated by P.W.-3 and P.W.-4 in their statements before the investigating officer. For the first time, this allegation was made against, Sukhpal, before the court which appears to be improvement. Appellant, Iqbal, is stated to be the witness of

disputed will executed by father of deceased and Brahm Pal in favour of two sons of Brahm Pal. Appellant, Chandra Pal, is only brother of appellant, Iqbal. It appears that Chandra Pal has been implicated because his brother, Iqbal, is witness of the disputed will. There is no other allegation against him and hence it does not seem probable that he was involved in the incident in dispute. Further where number of injuries on injured do not co-relate to the number of accused, attempt to rope in as many persons as possible is made by prosecution (see **2009 0 Supreme(SC) 1557**). In the present case single fatal injury was suffered by deceased and eight persons were sought to be implicated. Those having some proximity with accused, Brahm Pal were implicated generally. Therefore, it is clear that the implication of the appellants, other than Brahm Pal, have been made only because of their proximity to Brahm Pal. Their conviction and sentences under Section 147 and 148 IPC too cannot be upheld and deserve to be set aside.

33. In this case, the defence, while examining the prosecution witnesses of fact and eye-witnesses, P.W.-3 and P.W.-4, has not given any suggestion to them in cross-examination that there was no such motive of accused or any body else for that matter of committing the murder of deceased.

34. The *alibi* set up by the appellant, Brahm Pal, was not found to be proved by the trial court. The Apex Court in the case of **Krishna Kumar Sharma and Another vs. State of Bihar, reported in 1997 (1) SCC Page 284** has held that strict proof is required for proving the plea of *alibi*. The findings of trial court in this regard that the *alibi* set up by Brahm Pal that he was on police duty at the time of occurrence has not been proved, is upheld.

35. Initially total of 8 persons were implicated in this case out of which three were not named and were never traced in the investigation. Main

accused, Brahm Pal, the brother of deceased and his brother-in-law, Sukhpal and two associates have been tried and convicted. Sanjeev, son of Brahm Pal, was found to be juvenile and his case was forward to Juvenile Justice Board as considered earlier. We are not convinced about the participation of the accused other than Brahm Pal in the alleged offence. Therefore, the appellants, Chandra Pal and Iqbal, who have preferred Criminal Appeal No. 3721 of 2009 are acquitted of all charges. Their bail bonds are cancelled and sureties are discharged.

36. However, appellant, Brahm Pal in Criminal Appeal No. 3720 of 2009 is held guilty of committing the offences for which he has been convicted and his conviction and sentence awarded by the trial court is upheld. He is on bail. His bail bond is cancelled and sureties are discharged. He will surrender forthwith and carry out the remaining sentence.

37. Accordingly, Criminal Appeal No. 3721 of 2009 is allowed and Criminal Appeal No. 3720 of 2009 is dismissed.

38. Let the trial court record be returned and this judgment be notified to the trial court within two weeks.

Order Date :- 10.02.2025

Rohit

(Subhash Chandra Sharma,J.)

(Siddharth, J.)