

Judgment reserved on 16.04.2025

Judgment delivered on 09.05.2025

Neutral Citation No. - 2025:AHC:71254-DB

Court No. - 46

Case :- CRIMINAL APPEAL No. - 2110 of 2014

Appellant :- Harvir

Respondent :- State of U.P.

Counsel for Appellant :- Amit Daga

Counsel for Respondent :- G.A., Anil Kumar Singh, Dharendra Kumar Srivastava, Hari Krishna Singh

Connected With

Case :- CRIMINAL APPEAL No. - 2111 of 2014

Appellant :- Harendra

Respondent :- State of U.P.

Counsel for Appellant :- Amit Daga, Raghuraj Kishore

Counsel for Respondent :- G.A., Anil Kumar Singh, Dharendra Kumar Srivastava, Hari Krishna Singh

Connected With

Case :- CRIMINAL APPEAL No. - 2116 of 2014

Appellant :- Mahipal

Respondent :- State of U.P.

Counsel for Appellant :- Amit Daga, Pradeep Kumar Mishra, Raghuraj Kishore

Counsel for Respondent :- G.A., Anil Kumar Singh, Dharendra Kumar Srivastava, Hari Krishna Singh, Pradeep Kumar Dwivedi

Hon'ble Rajiv Gupta, J.

Hon'ble Ms. Nand Prabha Shukla, J.

(Delivered by Hon'ble Rajiv Gupta, J.)

1. The aforesaid criminal appeals arises out the same impugned judgment and order, as such, they are being heard together and decided by a common judgment and order.

2. Heard Sri Vinay Saran, learned Senior Advocate, assisted by Sri Pradeep Kumar Mishra, learned counsel for the accused-appellant Mahipal, Sri Amit Daga, learned counsel for the accused-appellants Harvir and Harendra, Sri A.N. Mulla, learned A.G.A. for the State, Sri Dhirendra Kumar Srivastava, Advocate assisted by Sri Hari Krishna Singh, learned counsel for the first informant and perused the material available on record.

3. These criminal appeals have been filed against the judgment and order dated 09.05.2014 passed by Additional District and Sessions Judge, Court No.5, Meerut in Sessions Trial No. 575 of 2005 (State of U.P. Vs. Mahipal and Others), arising out of Case Crime No. 44 of 2005, under Sections 147, 148, 302 read with Section 149 IPC, Police Station Inchauli, District Meerut, alongwith Sessions Trial No. 627 of 2007 (State of U.P. Vs. Mahipal), arising out of Case Crime No. 54 of 2005, under Section 25(1)(a) of Arms Act, Police Station Inchauli, District Meerut, Sessions Trial No. 628 of 2005 (State of U.P. Vs. Harendra), arising out of Case Crime No. 55 of 2005, under Sections 25(1)(a) of Arms Act, Police Station Inchauli, District Meerut and Sessions Trial No. 631 of 2005 (State of U.P. Vs Harvir Singh), arising out of Case Crime No. 56 of 2005, under Section 25(1)(a) of Arms Act, Police Station Inchauli, District Meerut, by which, all the three appellants have been convicted for the offence punishable under Section 302 read with Section 34 IPC and awarded the sentence of life imprisonment and a fine of Rs.25,000/- each, further all the three appellants have been convicted for the offence punishable under Section 25(1)(a) of Arms Act and awarded the sentence of three years' rigorous imprisonment and a fine of Rs.5,000/- each, with default stipulations. Both the sentences have been directed to run concurrently.

4. By the same impugned judgment and order, co-accused Vikas has been acquitted by the trial court of all the charges framed against him, which order has become final as no appeal either by the State or by the first informant has been preferred against the impugned judgment and order.

5. As per the prosecution case, first information report in the instant case has been lodged by one Mahavir, uncle of the deceased Chandveer vide written report dated 04.03.2005 (Exhibit Ka-1), which was registered vide Case Crime No. 44 of 2005, under Sections 147, 148, 149, 302 IPC, Police Station Inchauli, District Meerut at 22:30 hours i.e. 10:30 PM in the night, G.D. Report whereof has been drawn vide G.D. Report No. 59 at 3:30 hours, which has been proved and marked as Exhibit Ka-6 by Constable Omkar Singh (PW-7) at the relevant date and time.

6. Briefly, the prosecution story as stated in the first information report is that the first informant Soran Singh alongwith his brother Amar Pal and nephew Chandveer, after attending the date fixed in the court, were heading towards Bhudpur, Bhawanpur, Meerut to visit the house of his relative Indra Raj.

7. It is further stated that all the three, by boarding a Roadways Bus, reached at the Meerut Bus Stand and thereafter, boarding an Auto Rickshaw reached Bhawana Tempo Stand and from there, boarded a Tempo and proceeded towards the house of his relative Indra Raj.

8. It is further stated that all the three alighted from the Tempo near the Buxar tri-crossing, where he alongwith his brother started purchasing fruits, however, his nephew Chandveer with an intention to purchase a cassette headed towards its shop. Meanwhile, a Maruti car coming from Meerut reached and halted there. From the said Maruti car, Mahipal son of Kaliram, Harvir son

of Kaliram, Vikas son of Mahipal, Harendra son of Kaliram, Rajeev son of Mahipal, all residents of Village Hajurabad Gadhi, Ameenagar Sarai, District Baghpat, alighted and ran towards his nephew Chandveer, who noticing them, tried to escape in the lane but he was chased by the assailants having weapons in their hands, who started making indiscriminate firing, consequent to which, his nephew Chandveer fell down in the lane and the assailants flashing their weapons, sat in the Maruti car and made their escape good. He alongwith his brother rescued themselves by hiding under the fruits kiosk. The fruit sellers alongwith their kiosk and the shop keepers, leaving their shops ran away resulting in commotion.

9. It is further stated that he alongwith his brother by placing his nephew on a fruit kiosk brought him at the Divya Jyoti Nursing Home, where he was admitted, however, during treatment, victim died at the hospital. The said incident occurred at 5:45 PM in the evening and the dead body of his nephew Chandveer is lying in the Nursing Home.

10. On the basis of the aforesaid allegations, a written report was drawn by the scribe Ashok Kumar of Village Naya Gaon, Police Station Inchauli, District Meerut and thereafter, it was lodged at Police Station Inchauli, District Meerut vide Case Crime No. 44 of 2005, under Sections 147, 148, 149, 302 IPC. The said first information report was registered in the absence of Station House Officer. The information in respect of which was transmitted to him through R.T. Set at Kaseru Buxar tri-crossing. On getting the said information, the Investigating Officer Alok Singh (PW-14) reached the place of incident, where he found police force of Police Outpost Ganga Nagar present there and he was informed that one person has been shot at by some persons and the fruit sellers by putting

the victim on their kiosk, has taken him to the Divya Jyoti Nursing Home for medical treatment.

11. The Investigating officer thereafter reached Divya Jyoti Nursing Home at about 7:00 – 7:30 PM, where the victim was declared dead by the attending doctors. The Investigating Officer thereafter prepared the inquest, the proceedings of which conducted by S.I. Satendra. After conducting the inquest on the person of the deceased and preparing the relevant documents, like letter to R.I., letter to C.M.O. etc., the dead body was sealed in a white cloth and sent for post-mortem.

12. The Investigating Officer thereafter reached the place of incident and collected the blood-stained earth and plain earth, kept it in a container and sealed it. He thereafter collected the clothes of the deceased and prepared its recovery memo, which has been proved and marked as Exhibit Ka-2 and Exhibit Ka-18 respectively. The entry in respect of which was made by G.D. Report No. 36 at 3:30 Hours on 05.03.2005, by which G.D., he had also directed the Constable to inform the relatives of the deceased.

13. During the course of investigation, the Investigating Officer has also collected the admission memo of the victim, wherein the attending Dr. Rajeev Singh (PW-9), who had medically examined the victim and had noted the injuries and medical condition of the victim, when he reached the hospital and provided him the medical treatment, which document has been proved by PW-9 and has been marked as Exhibit Ka-7 dated 04.03.2005 at 6:45 PM. It is notable that in the said admission memo, the victim is shown to have been brought by Police.

14. An autopsy was conducted on the person of the deceased Chandveer on 05.03.2005 at 3:00 PM by Medical Officer Dr. Satendra Saxena (PW-6). The Doctor has noted following anti-mortem injuries on the person of the deceased :-

(i). One surgical wound in the middle of the abdomen, measuring 25 cm and having 12 stitches.

(ii). One gun shot wound of entry over right arm, 8 cm above elbow joint size 1 cm X 1 cm X through of exit wound medial side 5 cm to wound of entry. Size of exit wound 10 cm X 1 cm X through wound of entry communication. No pellet or bullet seen.

(iii). One gun shot wound of entry over right side chest 1 cm X 1 cm X chest cavity deep 3.5 cm from right nipple at 2 O'clock position.

(iv). One stitched wound over right side chest 7 cm from right nipple at 7 O'clock position with one stitch.

(v). One stitched wound over right side abdomen 6 cm from umbilicus at 9 O'clock size 1 cm with one stitch.

(vi). One stitched wound over right side abdomen 11 cm lateral to injury no.5, size 1 cm with 1 stitch.

(vii). One stitched wound over left side abdomen 6 cm from umbilicus at 1 O'clock position with one stitch and 1 cm in size.

(viii). One stitched wound over left side abdomen size 1 cm with one stitch 9 cm from umbilicus at 4 O'clock position.

(ix). Three stitched wound over back one size 3 cm in length with 3 stitches chest right side. Two wounds on the right & left side back abdomen region 4 and 5 cm from midline, out of which, one wound size 1.5 cm X 1 cm and the other sized 1 cm X 0.5 cm.

15. In the post-mortem report, the cause of death has been noted to be shock as a result of ante-mortem injuries. No pellet or bullet was recovered from the person of the deceased. On internal examination, brain was found pale and pleura was found lacerated. Right lung was also lacerated.

16. Thereafter, on 16.03.2005, the Investigating Officer Alok Singh had shown recovery of a 315 bore country-made pistol at the pointing out of accused Mahipal alongwith cartridges, which was taken in possession and recovery memo was prepared and thereafter, on the pointing out of co-accused Harendra, another 315 bore country-made pistol is shown to have been recovered, which was also taken in possession alongwith cartridges and its *fard* recovery memo was prepared, thereafter, on the said relevant date and time, another 315 bore country-made pistol is shown to have been recovered at the pointing out of the co-accused Harvir, which was also taken in possession alongwith cartridges and joint *fard* recovery memo has been prepared bearing the signatures of the Investigating Officer and the witnesses.

17. On the basis of the said recovery, another first information report was lodged vide Case Crime Nos. 54 of 2005, 55 of 2005, 56 of 2005, 57 of 2005, under Sections 25, 27 of Arms Act. The Investigating Officer thereafter recorded the statement of the relevant witnesses, namely, first informant Soran Singh.

18. Thereafter, the investigation of the said case was handed over to PW-16 Vijay Pal, who, after concluding the investigation, submitted the charge-sheet against the accused-appellants under Sections 25, 27 of Arms Act. The Investigating Officer, after collecting the cogent and credible evidence and material against the accused-assailants, concluded the investigation and submitted the charge-sheet against all the five

accused persons. Since the co-accused Rajeev @ Seetu was held to be minor, as such, his trial was separated.

19. On the basis of the said charge-sheet submitted by the Investigating Officer, learned Magistrate had taken cognizance, however, since the case was exclusively triable by the court of Sessions, as such, it was committed to the court of Sessions, who, on its turn, made over the case to the Court of Additional Sessions Judge, Court No.5, Meerut, where it was registered vide Sessions Trial No. 575 of 2005, under Sections 147, 148, 302, 149 IPC and Sessions Trial No. 627 of 2005, Sessions Trial No. 628 of 2005 and Sessions Trial No. 631 of 2005, under Sections 25(1)(a) of Arms Act.

20. On the basis of the material collected during the course of investigation, the trial court framed the charges against the accused persons Mahipal, Vikas, Harvir and Harendra, under Sections 147, 148, 302/149 IPC and further, Mahipal, Harendra and Harvir were charged under Section 25(1)(a) of Arms Act. The said charges were read out and explained to the accused-assailants, who pleaded not guilty and claimed to be tried.

21. The prosecution in order to prove its case has produced as many as 16 prosecution witnesses and number of relevant documents have also been produced and brought on record, which has been proved and marked as Exhibit Ka-1 to Exhibit Ka-34. Their testimony, in brief, is enumerated as under :-

22. PW-1 Soran Pal, in his testimony, after stating the relevant criminal cases pending between the parties, has stated that on 04.03.2005, he alongwith his brother Amar Pal and nephew Chandveer, after attending the date fixed in the court, was heading to visit his relative Indra Raj in Village Bhudpur, Police Station Bhawanpur, District Meerut. They all three by boarding a bus from

Baghpat, reached at Meerut Bus Stand and thereafter, by an Auto Rickshaw, reached at Mawana Tempo Stand and hired a Tempo for proceeding to Bhudpur and thereafter, alighted at the Buxar tri-crossing. He alongwith his brother started purchasing fruits, whereas his nephew Chandveer with an intention to purchase a cassette proceeded to its shop. Meanwhile, a Maruti car heading from Meerut reached there and stopped near the tri-crossing, from which, Mahipal, Harendra, Harvir, Vikas and Seetu alighted and ran towards his nephew Chandveer. His nephew ran towards Parwa, however, he was chased by the assailants, who started indiscriminate firing and on receiving gun shot, Chandveer fell down there. Mahipal was having a country-made pistol and other assailants were also having country-made pistol and after firing shot, sat in the Maruti car and drove towards Meerut, however, they, by hiding themselves under the fruits kiosk, rescued their lives. Thereafter, placing his nephew on a fruit kiosk, had taken him to Divya Jyoti Nursing Home, Meerut, where he breathed his last. The said incident had occurred at 5:45 PM and his nephew died in the Nursing Home at about 11:00 AM. The written report of incident was dictated by one Ashok Kumar, scribe of the first information report, which he had signed and has been proved as Exhibit Ka-1. After one and a half month of this incident, his brother Amar Pal was done to death by Rajeev, Neetu, Sonu, Krishna Pal, Rajendra, Dharm Pal. The report of which was also lodged by him at Police Station Ameenagar and in the said case, his testimony was recorded and Dharm Pal etc. was sentenced to life imprisonment.

23. PW-1 Soran Pal, on being cross-examined, daggers drawn enmity between the parties has been admitted by the PW-1 in so many words stated in the cross-examination. He has further stated that on 04.03.2005, the date of incident, no criminal case in his name was fixed in the court of Baghpat nor any case was pending

there. He further stated that on 04.03.2005, he had not gone to Baghpat to adduce any evidence in any case, however, stated that he alongwith his nephew Chandveer had gone there on the date fixed. He further stated that he and Amar Pal are two real brothers and at the time of incident, they were living together, however now, they have separated. He has further stated that in the year 2004, in the incident of firing upon Chandveer, a case against Mahipal, Narendra, Vikas and Dharm Pal was registered, however, in the said incident, nobody had received any injury and no report was lodged by him. He further stated that their agriculture land as well as dwelling home has been separated between him and his brother and for the last two years, they also reside separately. About 9-10 years back, his father had given the house to Amar Pal in partition. He further stated that in the case of murder of Amar Pal, testimony of Suresh, wife of Amar Pal was recorded, wherein, she had categorically stated that her husband was done to death by some miscreants, however, Soran Pal, first informant of the instant case, had lodged false case against Dharm Pal etc. He further stated that it is true that Suresh, wife of Amar Pal, in her testimony, has stated that at the time of incident of causing the death of her husband Amar Pal, Soran Pal and Sohanveer were not present at the scene of incident. He further stated that Indra Raj is real maternal uncle of his father and resides in Village Bhudpur, Police Station Inchauli, District Meerut. He further stated that on the date of incident, there was no festival at the house of Indra Raj nor any marriage was fixed, however, he denied the suggestion that he had no occasion to visit Bhudpur on the relevant date and time nor he visited there. Village Bhudpur is at a distance of 60 Kms. from the District Baghpat, while his village is at a distance of 40 Kms. from Bhudpur. He further stated that from the Buxar tri-crossing, the road towards Mawana is placed north-south at the Buxar tri-crossing and there

are number of shops, which are situated on the main road. There are as many as 50-60 shops at the Buxar tri-crossing. He did not enquire the name of the shopkeepers. He further stated that he is not aware of the fact if the police had enquired the name and address of the shopkeepers nor he is aware of the fact if the police had enquired from the shopkeepers about the incident. He further denied the suggestion that prior to his reaching, the police had reached the place of incident. He further stated that he reached at the Buxar tri-crossing at about 5:00 PM, then he corrected himself and stated that he reached at 5:30 PM. He further stated that he had purchased the fruits from the fruit seller on the main road and his nephew Chandveer was purchasing cassette from cassette shop. He further stated that cassette shop was situate at a distance of 25-30 paces from the main road. He further stated that he pointed out to the Investigating Officer the cassette shop, from where, his nephew was purchasing the cassette, however, if the said place had not been shown by the Investigating Officer in the site plan, then he cannot assign any reason for the same. He had not enquired about the name of cassette shop but had seen its board. He, on further cross-examination, has corrected himself and has stated that Chandveer was not assaulted at the cassette shop but at the side of cassette shop. He further stated that when Chandveer was being assaulted, the assailants were at a distance of 4-5 paces. He further stated that he was standing at a distance of 8-10 paces from the cassette shop, where the incident had taken place. He then corrected himself and stated that he was standing near the kiosk of fruit seller, which was on the main road. The cassette shop was placed south to the main road. He further stated that he had not pointed out the place, where he was standing at the time of incident to the Investigating Officer because he was not questioned in that respect. He further stated that no shopkeeper

came from the Buxar tri-crossing, who had pulled their shutters. The Maruti car was parked at a distance of 20-25 paces from Chandveer. The assailants had not fired upon the victim Chandveer after alighting from the car but when they reached near him. The registration number of Maruti car was not noted by him. He did not enquired about the said Maruti car nor police had made any investigation in this respect. He is not aware of the fact whether such Maruti car was recovered or not. He further stated that the place, where Maruti car was parked, was pointed out by him to the Investigating Officer, however, if the said place of parking of Maruti car has not been shown, then he can not assign any reason for the same. He further stated that he had admitted the victim Chandveer in Divya Jyoti Nursing Home at 7:30 p.m. At the relevant time, he alongwith his brother Amar Pal were present there. He further stated that he had not put his signatures on the relevant documents prepared at the time of operation of the victim Chandveer, however, said papers were signed by Sukram Pal. The distance between Divya Jyoti Nursing Home and place of incident is 3 Kms. He further denied the suggestion that he had not admitted his nephew Chandveer in the hospital. He further denied the suggestion that on 04.03.2005 at about 06:45 p.m. the police had admitted the victim Chandveer at Divya Jyoti Nursing Home. He further denied the suggestion that during night hours, he alongwith his brother and other villagers had reached Divya Jyoti Nursing Home. He further stated that police had not reached Divya Jyoti Nursing Home at the relevant time. He further stated that Ashok Kumar, scribe of the FIR, had reached the hospital, who is known to his relative at Bhudpur. He further stated that apart from him and his brother, Rishi Pal, Sukram Pal, Ram Kishan (PW-4), Ved Pal (PW-5), Udham Singh and Satendra (P.W.2), were also present at the hospital. He further denied the suggestion that the

police called him from the village to Divya Jyoti Nursing Home and after due deliberations with the police, the FIR was lodged. He further stated that in the FIR, he had stated that his nephew Chandveer ran towards the lane but not that he ran towards the Parwa. He further stated that on the date and time of incident i.e. on 04.03.2005 at about 05:45 p.m., Vikas son of Mahipal was also present at the place of incident. He further denied the suggestion that accused Vikas, on the relevant date and time of incident, was present at his 9 Jaat Regiment C Company C/o 99 APO in Gurdaspur, Punjab. He further denied the suggestion that he had nominated the accused-persons in the FIR on account of village party bandi. He further denied the suggestion that deceased Chandveer was a man of criminal antecedent and he was done to death by some unknown persons and that he had not actually seen the incident of killing of Chandveer and is falsely deposing in the court.

24. PW-2 Satendra, son of Kale Singh, in his examination-in-chief, has stated that on 04.03.2005 at about 5:30 PM, he alongwith Rajbeer had gone to Buxar to purchase household goods. He further categorically stated that he has not witnessed any incident and in fact, at the time of incident, he was present in his village. He is not aware as to who killed Chandveer. On hearsay, he came to know that Chandveer has been shot dead. At this stage, the said witness has been declared hostile and has been cross-examined by the prosecution.

25. On being cross-examined, he stated that Investigating Officer has not recorded any of his statement. On his attention been drawn to his statement shown to be recorded under Section 161 CrPC, he categorically denied to have given any such statement to the police and showed his ignorance as to how it was recorded. He further denied the suggestion that on 04.03.2005 in

the evening, he alongwith Rajbeer had gone on a motorcycle to Buxar for purchasing household goods. He further denied the suggestion that accused Mahipal, Harvir, Harendra, Vikas and Rajeev had killed Chandveer by opening fire at 5:45 PM. He further denied the suggestion that at the relevant time of incident, he was present there and has been an eye-witness of the incident. He further denied the suggestion that he had colluded with the accused persons and as such, is not deposing the truth.

26. PW-3 Rajbeer is another witness, however, in his testimony, he stated that on 04.03.2005 at about 5:45 PM, he had not gone to Buxar on a motorcycle to purchase the goods. He further stated that accused Mahipal, Harvir, Harendra, Vikas and Rajeev did not cause the death of Chandveer by firing from the country-made pistol. He further denied to have seen the incident and at the relevant time, he stated himself to be present in the village and on hearsay, came to know that Chandveer has been done to death. At this stage, the said witness has also been declared hostile and has been cross-examined by A.D.G.C.

27. On being cross-examined, he denied to have given any statement to the police. On his attention been drawn to his statement shown to be recorded under Section 161 CrPC, he denied to have given any such statement to the police and showed his ignorance as to how such statement was recorded by the Investigating Officer. He further denied the suggestion that on 04.03.2005 at about 5:15 PM in the evening, he alongwith Satendra had gone on a motorcycle to Buxar to purchase the goods. He further denied the suggestion that while he was purchasing *Ghee* from *Shiva Dairy*, then he saw the assailants armed with country-made pistol firing upon the deceased causing the death of Chandveer. He further denied the suggestion that he had disclosed to the Investigating Officer that he has seen the

incident. He further denied the suggestion that he had colluded with the assailants and on account of their fear, is not deposing the truth.

28. PW-4 Ram Kishan is a witness of inquest and in his examination-in-chief, he has stated that on getting information about the murder of Chandveer, he visited the place of incident, where inquest was prepared and he was one of the witnesses of the inquest. On being shown the inquest, he reiterated that the inquest was prepared by the police, which was signed by him and thereafter, the dead body was sealed and sent for post-mortem.

29. During cross-examination, he stated that at about 10:00 PM in the night, he alongwith Soran Pal (PW-1), Amar Pal of *Doghat*, Vedpal, Satendra, Udham by boarding a tractor had reached Meerut. Soran is the uncle of the deceased and Amar Pal is his father. He further denied the suggestion that the police had already prepared the inquest and thereafter, got it signed by him. He further stated that Sukram Pal, Rishi Pal, Amar Pal, Soran Singh and he had signed the inquest together.

30. PW-5 Vedpal is another witness of recovery memo of plain earth and blood-stained earth, which were taken by the police from the place of incident. The said recovery memo was prepared by the police and signed by him. The said recovery memo has also been proved by the witness, which has been marked as Exhibit Ka-2.

31. On being cross-examined, he stated that he had reached Meerut by boarding a tractor in the night at about 9:00 PM. The said tractor belongs to Soran Singh, who is the uncle of the deceased Chandveer and had reached the place of incident at about 9:00 PM. He further stated that Soran Pal (PW-1), Amar Pal, Ram Kishan, Satendra and Udham also reached with him by

boarding a tractor and when they reached there, the police had already arrived and got their signatures on the documents. He further stated that Soran and another had brought him at the place of incident. He further denied the suggestion that the police had already completed entire formalities and subsequently, got it signed by him.

32. PW-6 Dr. Satyendra Saxena is the Medical Officer, who had conducted an autopsy on the person of the deceased and had noted the injuries, which has already been discussed above.

33. During internal examination, he found the brain to be pale and pleura was found lacerated. Right lung was also lacerated and left lung was pale. The intestine were lacerated at different places and abdomen was stitched. Liver was also lacerated and had been stitched. He noted the cause of death to be shock as a result of ante-mortem injuries. He further pointed out that during the post-mortem, no pellets were recovered and the victim died one day before the post-mortem and has proved the said post-mortem as Exhibit Ka-4. He further stated that on account of injuries, the victim could have died on 04.03.2005 at 5:45 PM and the injuries were sufficient to cause death. He further stated that death has been caused one day back. He further stated that by the nature of injuries, he can not indicate the bore of the shot, which can only be stated by the Ballistic Expert. The wounds were stitched by the Doctor.

34. PW-7 Omkar Singh is the Constable, who, on the basis of the written report, had drawn the Chik FIR No. 38, Case Crime No. 44 of 2005, under Sections 147, 148, 149, 302 IPC, lodged by one Soran Singh. The said written report was scribed by one Ashok Kumar. He proved the Chik FIR, which has been marked as Exhibit Ka-6 and also, corresponding G.D. Entry No. 15

at 23:30 hours dated 04.03.2005. The said G.D. Entry has been proved by him as Exhibit Ka-6.

35. On cross-examination, he stated that Chik FIR has been sent to the higher police officials on the next day. He further stated that signature of C.O. on the Chik FIR dated 06.03.2005 and has been signed by Chief Judicial Magistrate, Meerut on 10.03.2005. He further stated that instant case was registered in the presence of S.I. Mahesh Kumar Gautam, however, investigation of the said case was entrusted to In-charge Inspector Alok Singh, who was not present at the time of lodging the report. He further stated that on 04.03.2005 at about 06:00 p.m., police personnel were sent at Buxar tri-crossing, where the incident had taken place. If any police personnel was sent, it was sent from Ganga Nagar Police Outpost.

36. P.W.-8 Bhopal Singh is the witness of recovery. He, in his testimony, has stated that Chandveer was murdered. He further stated that on 16.03.2005, police of Police Station Inchauli alongwith accused Mahipal, Harvir, Harendra and Rajeev did not meet him nor asked him to be a witness nor in his presence, any weapon or cartridge was recovered on the pointing out of the assailants.

37. On his attention being drawn to the recovery memo, he stated that the said recovery memo was not prepared before him. On his attention being drawn to his signature on the recovery memo, he stated that said signatures were obtained subsequently by the police. At this stage, said witness has been declared hostile and has been cross-examined by A.D.G.C. He further stated that police did not interrogate him regarding the recovery of any weapon.

38. On his attention being drawn to his statement shown to be recorded under Section 161 Cr.P.C., he stated that he had not given any such statement to the police and showed his ignorance as to how such statement was recorded by the police. He further denied the recovery of any country made pistol shown to be made on 16.03.2005 from the accused Mahipal, Harendra, Harvir and Vikas. He further denied the suggestion that any *fard* recovery memo was prepared before him and he signed the recovery memo at the place of incident, further denied the sealing of weapons by the police.

39. P.W.-9 Dr. Rajeev Singh was appointed Medical Officer at Divya Jyoti Speciality Hospital at Ganga Nagar, Meerut. He stated that on 04.03.2005 at about 06:45 p.m., he had medically examined Chandveer, who was brought to his Nursing Home. He further stated that on examination, his pulse was low and blood-pressure of the lower side was also not recordable. His heart was beating slowly and there was no passage of air in his lungs and he was in semi unconscious state. On the upper side of his abdomen, there were two gun-shot injuries. One on his right chest and one on the abdomen. He proved the injury report, which has been marked as Exhibit Ka-7. He further stated that injuries on the person of the deceased could have been caused at 5:45 PM. He further stated that on 04.03.2005, victim was admitted in his hospital. The information of which was given by Subodh Singh to Police Station Inchauli and the victim died on the same day at 10:45 PM. The information of which was also sent to the Police Station Inchauli. He further stated that pulse rate and injuries, mentioned in Exhibit Ka-7, is in his own hand writing. He further stated that entries on the top of the relevant paper, which has been scribed on Exhibit Ka-7, is not in his own hand writing and the factum of victim being brought to the hospital by the police has

been written by the employee of his hospital. He further categorically stated that as per the papers submitted by him, the victim Chandveer was admitted in his hospital by police at 7:30 PM and the victim died on 04.03.2005 at 10:45 PM. He further stated that on the relevant medical papers of the deceased, signatures of the relatives of the deceased were not obtained and the dead body of the deceased Chandveer was handed over to the police and not of any of his relatives. He has further stated that the deceased Chandveer was in semi unconscious state and not in a position to speak.

40. PW-10 S.I. Rakesh Kumar is the Head Moharrir, who had prepared the relevant G.D. Entry No. 56 regarding admission of the accused persons on police remand. He further stated that on 17.03.2005, vide G.D. Report No. 2 at 12:15 AM, he had noted the presence of S.H.O. Alok Singh with the accused persons alongwith recovered weapons and cartridges from them, which have been noted in the Case Diary and prepared in the same process, which has been proved and marked as Exhibit Ka-10. He further stated that weapons, which were shown to be recovered from the accused persons at their pointing out, were not sent to any laboratory for forensic examination. He further denied the suggestion that Exhibit Ka-8, 9 and 10 have been prepared by making it ante-time.

41. PW-11 S.I. Madan Pal Singh is the formal witness and in whose presence, accused Mahipal, Harvir, Harendra and Rajeev had got recovered 315 bore country-made pistol from different places, on the basis of which, *fard* recovery memo has been prepared and after reading, it has been signed by the witnesses. The said *fard* recovery memo has been proved as Exhibit Ka-11, which has been handed over to Harvir and the requisite articles and the accused were taken to the Police Station

and a separate FIR was lodged, however, no ballistic report in respect of the said country-made pistol has been brought on record. Subsequently, the report submitted by *Vidhi Vigyan Prayogshala* was produced before the court, however, the said report was only in respect of blood-stained earth and plain earth. Subsequently, the articles i.e. country-made pistol of 315 bore of each of the four accused persons was produced before the court alongwith cartridges, which has been proved as Material Exhibit-23.

42. During the course of cross-examination, the said witness has stated that recovered country-made pistol were not tested, if they were in working condition since a cartridge was recovered from its barrel, as such, it was expected that it was in a running condition. Thereafter, relevant material exhibits were proved by the said witness. He further stated that in his presence, statements of the witnesses were not recorded. He further denied the suggestion that accused persons did not get recovered the country-made pistol and cartridges and under the influence of the first informant, false report has been lodged.

43. PW-12 S.I. Vishwajeet Singh is the 2nd Investigating Officer of the case, who after concluding the investigation, had submitted the charge-sheet against the accused-appellants under Sections 147, 148, 149, 302 IPC, which has been proved and marked as Exhibit Ka-12.

44. On being cross-examined, he stated that investigation of the said case was taken by him on 06.04.2005 but he did not examine any witness as their statements have already been recorded by earlier Investigating Officer. Since, sufficient material to file the charge-sheet had already been collected, he had filed the charge-sheet.

45. PW-13 S.I. Satendra Kumar had prepared the inquest and gave the evidence regarding inquest proceedings and also prepared the relevant documents, namely, letter to R.I., letter to C.M.O., challan lash, photo lash, sealed samples etc., which have been proved and marked as Exhibit Ka-13 to Exhibit Ka-17.

46. During the course of cross-examination, he has given evidence regarding the inquest proceedings.

47. PW-14 Inspector Alok Singh is the Investigating Officer of the said case and he, in his testimony, has stated that on 05.03.2005, he was posted at Police Station Inchauli as In-charge Inspector and on which date, Case Crime No. 44 of 2005, under Sections 147, 148, 149, 302 IPC was got registered by the first informant Soran Singh, on the basis of the written report submitted by him against the accused Mahipal, Harvir, Vikas, Harendra and Rajeev. The investigation of the said case was entrusted to him, who had made detailed investigation of the case and recorded the statement of several witnesses and had collected cogent and sufficient material including preparation of recovery memos, which have been duly proved by him.

48. On being cross-examined, he stated that report of the present incident was transmitted to him through R.T. Set near Buxar tri-crossing. On getting information, he reached the place of incident. At the place of incident, he had found police force of Police Outpost Ganga Nagar and was informed that a person has been shot dead by some persons and the people, who are selling fruits at the place of incident, had taken the victim to Divya Jyoti Nursing Home by placing him on a fruit kiosk. He further candidly stated that police personnel of the Police Outpost Ganga Nagar had taken the victim to Divya Jyoti Nursing Home and thereafter, he reached Divya Jyoti Nursing Home at about 7:00-7:30 PM, however, he did not interrogate the victim as he was already dead,

which too was informed by the doctor. Thereafter, he started the inquest proceedings, which was conducted by S.I. Satendra, who brought the chik FIR. He thereafter reached the place of incident and collected blood-stained earth and plain earth and prepared *fard* recovery memo on 05.03.2005. The factum of recovery of plain earth and blood-stained earth was noted in G.D. Report No. 36. He had then taken police custody remand of accused Mahipal, Harendra, Harvir and Rajeev, however, he had not recorded the disclosure statement of the accused in presence of the witnesses nor their separate statements leading to discovery has been recorded. He further stated that the statement of no independent witness at the time of recovery was recorded. He also did not interrogate the persons, living in the vicinity as shown in the site plan. He further stated that Maruti car said to be used in the incident, was also not recovered by him. The statement of the shopkeepers, shown in the site plan nor any fruit seller was recorded by him. He further denied the suggestion that investigation in the instant case has not been carried out in a fair and impartial manner and false document has been prepared. It is wrong to state that none of the accused persons had get recovered the country-made pistol. He further denied the suggestion that he has been falsely deposing in the court.

49. PW-15 is the Constable Indrajeet Singh, who, on the basis of recovery memo of country-made pistols recovered at the pointing out of the accused Mahipal, Harendra, Harvir and Rajeev, had drawn the FIR vide Case Crime Nos. 54 of 2005, 55 of 2005, 56 of 2005 and 58 of 2005, under Sections 25/27 of Arms Act, which has also been proved and marked as Exhibit Ka-25.

50. On cross-examination, he stated that chik report, based on the recovery, was sent by him through post. He further

stated that recovered country-made pistols were not sent to any laboratory for forensic examination.

51. S.I. Vijay Pal Singh is the Investigating Officer of the Case Crime Nos. 54 of 2005, 55 of 2005, 56 of 2005 and 58 of 2005, under Sections 25/27 of Arms Act. He, after collecting cogent and material evidence and obtaining sanction, had submitted charge-sheet and had proved the relevant documents.

52. During the course of cross-examination, he stated that investigation of all the three cases was entrusted to him on 17.03.2005 and on 18.03.2005, he concluded the investigation and submitted charge-sheet. He had also interrogated relevant witnesses and recorded the statement of one Dharm Pal, who showed his ignorance of the incident. He further denied the suggestion that he did not conduct the investigation in a fair and impartial manner and submitted charge-sheet within a day under the pressure and influence of higher officials.

53. After concluding the statement of the prosecution witnesses, statement of the accused-appellants under Section 313 CrPC has been recorded. The accused-appellants, in their statement under Section 313 CrPC, claimed the entire prosecution evidence of the witnesses to be false and fabricated and denied the prosecution story. The appellants have claimed that in criminal cases shown to be registered against the complainant party, they have adduced their evidence, on the basis of which, the complainant party has been convicted and on account of this animosity with an intention to settle the score, they have been falsely implicated in the present case. Appellant Harvir in his statement under Section 313 CrPC has further stated that since his father had deposed against the father of the deceased Chandveer in the court, consequent to which, he was convicted, as such, he is being falsely implicated.

54. The accused Vikas Kumar, in order to prove his innocence, has produced DW-1 Hawaldar Amit Kumar, Resident of 9 Jaat Regiment, to establish his plea of alibi by stating that on the relevant date and time, he was in fact present at his Regiment and has been falsely implicated in the present case and on the basis of the said defence raised by the accused Vikas Kumar, his plea of alibi has been accepted by the trial court and by extending the benefit of doubt, he has been acquitted, which order has become final as the same has not been challenged either by the State or by the first informant.

55. The trial court after, appreciating the evidence and material on record and by placing implicit reliance on the sole testimony of PW-1 Soran Singh, has held that prosecution has successfully proved the case against the accused-appellants and the explanation tendered by the appellants was found inadequate and false and as such, they are liable to be convicted for the charged offence, however, extending the benefit of doubt to the co-accused Vikas Kumar, he has been acquitted, which order has become final.

56. Being aggrieved and dissatisfied by the said judgment and order, the instant appeals have been filed by the appellants.

57. Learned counsel for the appellants has submitted that trial court in the instant case has not appreciated the evidence and material on record in right perspective and has illegally recorded the finding of conviction and sentence against the appellants.

58. Learned counsel for the appellants has next submitted that finding of conviction, based on the sole testimony of

PW-1 Soran Pal, is in fact based on surmises and conjectures, which can not be sustained being bad in law.

59. Learned counsel for the appellants has next submitted that from the entire evidence adduced during the course of trial, it is admitted fact that the accused-appellants and the complainant party were highly inimical and daggers drawn enmity was going-on between them. On the basis of the testimony adduced by the father of the accused-appellants, father of Chandveer was convicted and as such, in retaliation, the accused-appellants have been falsely implicated in the present case.

60. Learned counsel for the appellants has further submitted that on going through the entire evidence adduced during the course of trial, we find that except PW-1 Soran Pal, no other witness has supported the prosecution story. PW-2 Satendra and PW-3 Rajbeer, who are shown to be eye-witnesses, has not supported the prosecution story at all and have been declared completely hostile. Even PW-4 Ram Kishan and PW-5 Vedpal, who are the witnesses of the inquest and recovery memo of the weapons, have in their statement candidly stated that on the day of incident at about 10:00 PM, Soran Pal (PW-1), Amar Pal, Ram Kishan (PW-4), Vedpal (PW-5) and others have reached Meerut alongwith him by boarding the tractor. Even PW-5 Vedpal has categorically stated that on the day of incident at about 9:00 PM, he alongwith Soran Pal, Amar Pal, Ram Kishan and Satendra reached the place of incident boarding a tractor belonging to Soran Pal.

61. Thus, from the aforesaid testimony PW-4 Ram Kishan and PW-5 Ved Pal, it is evident that in fact, PW-1 Soran Pal was not present at the time of incident but reached the place of incident subsequently at about 9:00-10:00 PM in the night alongwith the said witnesses and thus, could not have witnessed

the actual incident of killing of the deceased in the dense market area.

62. Learned counsel for the appellants has further submitted that when we go through the testimony of PW-1 Soran Pal, we find that testimony of the said witness is riddled with inconsistencies and improvements and even the place, from where, he is alleged to have witnessed the incident, is not fixed, which further renders the prosecution story as regard to his presence at the time of incident, highly doubtful.

63. Learned counsel for the appellants has further submitted that presence of PW-1 Soran Pal at the time of incident is further doubted from the fact, as according to the prosecution case after the incident of indiscriminate firing upon the deceased Chandveer, consequent to which, he received firearm injuries and fell down, he is said to have been taken to the hospital by his father Amar Pal and the first informant Soran Pal, who admitted him in Divya Jyoti Nursing Home, however, when we carefully go through the medical papers, particularly, admission memo, proved and marked as Exhibit Ka-7, we find that as per the said document, he is shown to have been admitted at the hospital 'by the police' to be precise B/B Police. Had Soran Pal and Amar Pal been present there while admitting the victim Chandveer in the hospital, their names would have certainly find place in the admission memo. The absence of Soran Pal and Amar Pal, at the time of treatment of the victim Chandveer at Divya Jyoti Nursing Home is further doubted from the circumstance that while going through the treatment papers of the victim Chandveer, we find that in none of the medical treatment papers, name of either Soran Pal or Amar Pal finds place. Even in the consent paper for operation upon the victim Chandveer, consent of Sukram Pal is shown to have been mentioned, which further doubts the presence of PW-1 Soran Pal

at the time and place of incident as well as at the hospital at the relevant time.

64. Learned counsel for the appellants has next submitted that truthfulness of sole testimony of PW-1 Soran Pal is further doubted from the circumstance that he, in his testimony, has candidly stated that on the date and time of the offence, co-accused Vikas Kumar, son of Mahipal was also present there and actively participated in the incident by opening fire upon the deceased Chandveer, consequent to which, he died, however, during the course of trial, co-accused Vikas Kumar has taken and proved a stand that in fact at the time of incident, he was present at his 9 Jaat Regiment C Company C/o 99 APO and did not participate in the incident at all, however, he has been falsely implicated just with an intention to settle personal score and said plea of alibi taken by the co-accused Vikas Kumar, has been accepted by the trial court and by extending him benefit of doubt, he has been acquitted by the trial court, which order has not been challenged either by the first informant or by the State. Thus, this circumstance also creates a serious dent in the testimony of PW-1 Soran Pal and thus in the backdrop of the said circumstance, his testimony can not be said to be of a 'sterling quality' and makes the prosecution story doubtful.

65. Learned counsel for the appellants has further submitted that in the backdrop of the aforesaid facts and circumstances of the case, presence of PW-1 Soran Pal at the time of incident, on whose sole testimony, conviction has been recorded against the appellants, is highly doubtful and creates serious dent in the prosecution story, however, the trial court, by relying upon his sole testimony, has recorded the finding of conviction against the appellants, which is bad in law.

66. Learned counsel for the appellants has next submitted that even according to the prosecution own case, the incident is said to have taken place in the dense locality, where 50-60 shops including kiosk of fruit sellers were present, however, none of the said shopkeepers or the fruit sellers has turned up to corroborate the prosecution story, which further creates a serious dent in the prosecution story and makes the prosecution story doubtful.

67. Learned counsel for the appellants has further pointed out that in the backdrop of the aforesaid facts and circumstances, the sole testimony of PW-1 Soran Pal can not be relied upon and he is not a witness of “sterling quality” and by no stretch of imagination, his testimony can be said to be unimpeachable and unassailable.

68. Per contra, learned AGA for the State as well as learned counsel for the first informant have supported the impugned judgment and order and submitted that the accused-herein has committed the offence, which stood proved beyond reasonable doubt from the evidence adduced during the course of trial and pointed out towards guilt of the appellants in the commission of the offence and as such, impugned judgment and order passed by the trial court suffers from no illegality and is liable to be affirmed.

69. Having considered the rival submissions made by learned counsel for the parties and considering the entire evidence adduced during the course of trial, we find that present incident is said to have taken place on 04.03.2005 at about 5:45 PM, when the assailants assaulted the victim Chandveer, son of Amar Pal, by making indiscriminate firing on him. The said incident is said to have taken place in the dense locality surrounded by large number of shops and fruit sellers.

70. As per the prosecution story, the incident is said to have been witnessed by Soran Pal, Amar Pal, Satendra and Rajbeer, however, during the course of trial, Amar Pal, father of the deceased Chandveer, who was an eye-witness was killed by some other persons and as such, his testimony could not be recorded. The other two witnesses of the incident, namely, Satendra and Rajbeer, who are also said to have witnessed the incident and their statement was recorded by the Investigating Officer being the eye witnesses of the incident, however subsequently, they have denied the prosecution story in *toto* and has been declared hostile.

71. On being cross-examined, PW-2 Satendra has categorically stated that they have not seen the incident and was present in the village at the time of incident. On his attention being drawn to his statement shown to be recorded under Section 161 CrPC, he has categorically denied to have given any such statement to the police and showed his ignorance as to how his statement was recorded.

72. Similarly, Rajbeer, who has been examined as PW-3 and shown to be an eye-witness of the incident, has completely denied the prosecution story and has instead pointed out his presence in his village at the time of incident. Even, he categorically denied his statement shown to be recorded under Section 161 CrPC and showed complete ignorance as how it was recorded by the Investigating Officer.

73. Thus, from the evidence adduced, we find that out of four eye-witnesses, who are said to have been witnessed the incident, Amar Pal has died and his testimony could not be recorded, whereas other two witnesses Satendra and Rajbeer has been declared hostile and has not supported the prosecution story at all and as such, we are left with the sole testimony of PW-1 Soran Pal, who is said to be accompanying the victim at the time of

incident and witnessed the incident and on the sole testimony of which, trial court has recorded the finding of conviction against the appellants, however, when we go through the sole testimony of PW-1 Soran Pal, we find that his testimony, by no stretch of imagination, can be said to be of a sterling quality and calibre and can not be said to be unassailable.

74. The Hon'ble Apex Court, dealing with the testimony of a sterling witness in the case of **Rai Sandeep @ Deepu Vs. State (NCT of Delhi)** reported in **2012 8 SCC 21**, has held that :-

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the

test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

75. However, when we test the testimony of PW-1 Soran Pal on the anvil of above principle, we find that it is unfortunate that the said witness has failed to pass the necessary tests noted above. When, we go through the testimony of PW-1 Soran Pal, we find that there are number of loopholes in his testimony, which makes it highly doubtful and do not inspire our confidence.

76. When, we analyse the testimony of PW-1 Soran Pal on the anvil of truthfulness, we find that from his testimony, the place of his presence at the time of incident has not been fixed. He, in his testimony, has stated that he had reached Buxar tri-crossing at 5:00 PM, then corrected himself and states that he reached there at 5:30 PM and he alongwith Amar Pal started purchasing fruits from the fruit seller kiosk, which were placed on the main road, however, his nephew Chandveer (deceased) proceeded forward to purchase cassette from the cassette shop, where the incident of firing had taken place, which was at the distance of 25-

30 paces from the main road, where he was purchasing the fruits, however subsequently, he has improved his version and stated that Chandveer was not assaulted at the cassette shop but beside the cassette shop and at the time of incident, he was in front of the cassette shop at a distance of 8-10 paces, then again corrected himself and stated that he, at the relevant time, was near the fruit kiosk, which is placed on the main road shown to be at the distance of 25-30 paces.

77. Furthermore, PW-1 Soran Pal, in his testimony, has stated that he, in order to rescue himself, had hidden himself under the fruit kiosk, therefore, by no stretch of imagination, he can be said to be present at the distance of 8-10 paces from the deceased at the time of incident as stated by him.

78. Even as per the site plan prepared by the Investigating Officer, PW-1 Soran Pal is shown to be present at the Point 'W-1' and 'W-2' on the main road, which has been shown to be 40 paces from the cassette shop. The distance between the main road at the cassette shop has been noted to be 40 paces by the Investigating Officer.

79. Thus, from the testimony of PW-1 Soran Pal, we find that he has not been able to fix the place, where he was actually present at the time of incident and said to have witnessed the scene. The testimony adduced by PW-1 Soran Pal in respect of his presence at the time and place of incident is further doubted from the circumstance that as per his own statement, after victim Chandveer has received gun shot injuries and fell down, he is said to have taken the victim alongwith Amar Pal (father of the deceased) to the Divya Jyoti Nursing Home for treatment by placing him on fruit kiosk, however, when we go through the admission memo of the victim Chandveer, which has been proved and marked as Exhibit Ka-7, we find that victim Chandveer is said

to have been admitted by the police and not by PW-1 Soran Pal or Amar Pal. Had they been present at the place of incident and taken the victim to the hospital, their names would certainly been mentioned in the admission memo, who brought the victim to the hospital. Absence of their names in the admission memo creates a serious dent in the prosecution story as regards to their presence at the time and place of incident and bringing the victim to the hospital.

80. Apart from the said fact, when we go through the medical treatment of the victim Chandveer at the Divya Jyoti Nursing Home, we find none of the said papers have been signed by PW-1 Soran Pal or Amar Pal but has been signed by one Sukram Pal, one of their relatives, which further creates a serious doubt about their presence at the Divya Jyoti Nursing Home at the relevant time.

81. Furthermore, presence of PW-1 Soran Pal at the time and place of incident as claimed by himself, is further doubted from the statement of PW-4 Ram Kishan, who is the witness of inquest and PW-5 Ved Pal, one of the witnesses of recovery. Both these witnesses, in their cross-examination, has categorically stated that they at about 10:00 PM in the night had reached Meerut by boarding a Tractor alongwith Soran Pal, Amar Pal, Ved Pal and Satendra. PW-4 Ram Kishan, in his cross-examination, has categorically stated that “हम रात में लगभग 10 बजे सोरन, अमरपाल दोघट वाले, वेदपाल, सतेन्द्र, उधम के साथ ट्रैक्टर में बैठकर मेरठ आ गये थे। सोरन चांदवीर मृतक का चाचा व अमरपाल पिता है। यह कहना गलत है कि पुलिस ने पंचायतनामा हमारे आने से पहले भर रखा था और उस पर हमारे दस्तखत करा लिये थे। यह सही है कि पुलिस ने पंचायतनामे पर सुक्रमपाल, रिषीपाल, अमरपाल, सोरन सिंह व मेरे हस्ताक्षर एक साथ कराये थे।”

82. Similarly, PW-5 Ved Pal, who is the witness of recovery, in his cross-examination, has categorically stated that “हम

सब लोग रात में ट्रैक्टर से मेरठ आये थे। हम करीब 9 बजे आ गये थे। यह ट्रैक्टर सोरन सिंह का था। सोरन मृतक चांदवीर का चाचा है। ट्रैक्टर में सोरन, अमरपाल, राम किशन, सतेन्द्र, ऊधम आदि लोग थे। जब हम मौके पर आये तब वहां पुलिस आई हुई थी। पुलिस ने हमारे हस्ताक्षर कराये थे। सोरन वगैरह ही हमें हादसा होने के कारण साथ लाये थे। यह कहना गलत है कि सारी कार्यवाही पुलिस ने पहले ही कर रखी थी और बाद में मुझसे दस्तखत करा लिये हो।”

83. Thus, from the testimony of aforesaid two witnesses PW-4 Ram Kishan and PW-5 Ved Pal, we find that PW-1 Soran Pal and Amar Pal reached on a Tractor at about 9:00-10:00 PM alongwith PW-4 Ram Kishan and PW-5 Ved Pal, which clearly establishes the fact that PW-1 Soran Pal was in fact not present at the time of incident and had not taken the victim to the hospital as claimed by him but the victim Chandveer was in fact taken to the Divya Jyoti Nursing Home by the police and admitted there and on getting information, Soran Pal alongwith Amar Pal and other witnesses had reached the Divya Jyoti Nursing Home in the night hours at about 9:00 – 10:00 PM.

84. Thus, testimony of PW-1 Soran Pal also becomes highly doubtful from the testimony of PW-4 Ram Kishan and PW-5 Ved Pal and in the backdrop of the said inconsistencies and improvements in his testimony by no stretch of imagination, he can not be said to be a witness of sterling quality and his testimony, in our opinion, can not be said to be unimpeachable to be of very high quality and calibre, therefore, be unassailable.

85. It is further germane to point out here that from the evidence adduced during the course of trial, we find that there was daggers drawn enmity between the accused-appellants, on the one hand and the complainant party, on the other. The accused-appellants, in their statement recorded under Section 313 CrPC, have categorically stated that on account of inimical terms with the complainant party, they have been falsely implicated in the present

case. Accused Harvir, in his testimony recorded under Section 313 CrPC, has categorically stated that “चांदवीर के पिता के खिलाफ हमारे पिता ने गवाही दी थी। जिनमें सजा हुई थी। इस कारण झूठा फंसाया है।”

86. From the pedigree of accused-appellants, we find that they are very closely related to each other. Accused-appellants Mahipal, Harvir and Harendra are all sons of Kali Ram, who have been falsely implicated in the instant case.

87. The Hon'ble Apex Court in a recent judgment passed in ***Criminal Appeal No. 1538 of 2025 (Aslam @ Imran Vs. The State of Madhya Pradesh)*** has held that :-

“22. It is a settled law that enmity is a double-edged weapon. On one hand, it provides motive, on the other hand it also does not rule out the possibility of false implication. From the nature of the evidence placed on record by the prosecution, the possibility of the present appellant being falsely implicated on account of previous enmity cannot be ruled out. In our opinion, therefore, the appellant is entitled to benefit of doubt.”

88. As per the prosecution own case, there has been daggers drawn enmity between the appellants, on one hand and the complainant side on the other and applying the aforesaid principles of law in the instant case and nature of the evidence placed on record by the prosecution, possibility of the present appellants being falsely implicated on account of previous enmity can not be ruled out.

89. There is one more clinching circumstance, which further renders the prosecution story doubtful. During the course of trial, PW-1 Soran Pal has categorically stated that Vikas Kumar, son of Mahipal was also present at the time and place of incident and had actively participated in the incident of firing upon the deceased causing his death, however subsequently, on the basis

of evidence adduced by the co-accused Vikas Kumar during the course of trial, the trial court has come to the conclusion that in fact co-accused Vikas Kumar was not present at the time and place of incident as he is said to be present at his 9 Jaat Regiment C Company C/o 99 APO and as such, extending the benefit of doubt, he has been acquitted by the trial court, which order has become final as the same has not been challenged either by the first informant or by the State.

90. Thus, on this count also, we find that sole testimony of PW-1 Soran Pal is not free from doubt and false attempt has been made on his part to falsely implicate the accused persons in the backdrop of the daggers drawn enmity between the two parties. This circumstance further creates a serious dent in the prosecution story and thus, in the backdrop of the aforesaid discussions, we are of the opinion that the prosecution has not been able to clinchingly and cogently established the participation of the appellants in the instant case on the basis of sole testimony of PW-1 Soran Pal, which too is doubtful as discussed above.

91. In view of the said facts and circumstances, we are of the opinion that present appellants are also entitled for the benefit of doubt as the prosecution has failed to prove beyond reasonable doubt, the charges against the present appellants also. Thus, present appellants are also entitled for the benefit of doubt and therefore, in our opinion, they are liable to be acquitted by setting aside the impugned judgment and order passed by the trial court convicting for the offence under Section 302 read with Section 34 IPC.

92. Now, coming to the alleged recoveries of country-made pistol and cartridges on the pointing out of the appellants and considering the factum of their conviction and sentence under Section 25(1)(a) of Arms Act, we find that from the evidence

adduced during the course of trial, the said charges has also not been cogently and convincingly established. Even the disclosure statement leading to aforesaid recovery under Section 27 of the Evidence Act has not been recorded, in the absence of which, as per the settled principle of law laid down by the Hon'ble Apex Court, the recoveries said to be made at the pointing out of the appellants Harvir, Harendra and Mahipal can not be said to be proved. The Hon'ble Apex Court in the case of ***Babu Sahebagouda Rudragoudar and Others Vs. State of Karnataka (Criminal Appeal No. 985 of 2010)***, in Paragraph Nos. 58, 59, 60, 62, 63, 65, has held that :-

“58. We would now discuss about the requirement under law so as to prove a disclosure statement recorded under Section 27 of the Indian Evidence Act, 1872 (hereinafter being referred to as ‘Evidence Act’) and the discoveries made in furtherance thereof.

*59. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the Investigating Officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in the case of ***State of Uttar Pradesh Vs. Deoman Upadhyaya*** reported in (AIR 1960 SC 1125).*

60. Thus, when the Investigating Officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The Investigating Officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).

62. *The manner of proving the disclosure statement under Section 27 of the Evidence Act has been the subject matter of consideration by this Court in various judgments, some of which are being referred to below.*

63. *In the case of **Mohd. Abdul Hafeez Vs. State of Andhra Pradesh reported in (1983) 1 SCC 143**, it was held by this Court as follows: -*

“5. If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person.”

65. *Similar view was taken by this Court in the case of **Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh reported in (2022 SCC Online SC 1396)**, wherein this Court held that mere exhibiting of memorandum prepared by the Investigating Officer during investigation cannot tantamount to proof of its contents. While testifying on oath, the Investigating Officer would be required to narrate the sequence of events which transpired leading to the recording of the disclosure statement.”*

93. However, when we peruse the statement of the Investigating Officer in regard to the recoveries of 315 bore country-made pistol and cartridge said to be made at the pointing out of the appellants, we find that Investigating Officer Inspector Alok Singh (PW-14) gave no description at all of the conversation, which had transpired between him and the accused, which ought to have been recorded in the disclosure statement. Thus, in the absence of disclosure statement and the recoveries made in furtherance thereof are non est in the eyes of law.

94. Besides this, it is further germane to point out here that the alleged recovery of 315 bore country-made pistol and cartridges at the pointing out of the appellants has also not been cogently and clearly established. PW-8 Bhopal Singh, who is shown to be a witness of the said recovery, in his testimony, has categorically denied that no such recovery of pistol or cartridge at the pointing out of the appellants has been made in his presence. On recovery memo, been shown to him, he denied that the said recovery memo was prepared in his presence and his signature on the same was subsequently obtained by the police at the Police Station. He has been accordingly declared hostile and on being cross-examined and his attention been drawn to his statement shown to be recorded under Section 161 CrPC, he categorically stated that no such statement was given by him and showed his ignorance as to how police recorded his statement. He further denied the suggestion that the appellants got recovered any country-made pistol from different places and denied the recovery memo to be prepared in his presence. Thus, from his testimony, a big question mark is raised about the veracity of recoveries of country-made pistol and cartridge made on the pointing out of the appellants.

95. In view thereof, we are of the opinion that even the conviction of the appellants under Section 25(1)(a) of the Arms Act can not be upheld and is accordingly set aside.

96. In view of the foregoing discussions, we are of the opinion that the instant appeals are liable to be allowed and are accordingly **allowed**. The impugned judgment and order passed by the trial court is **set aside**. The appellants are already on bail. They need not to surrender. Their bail bonds are discharged subject to compliance of Section 437-A of Cr.P.C. to the satisfaction of the trial court.

97. Let a copy of this judgment and order be sent to the trial court alongwith trial court record for information and necessary compliance.

Order Date :- 09.05.2025

Nadim