

Neutral Citation No. - 2025:AHC:33889-DB

Court No. - 45

Case :- CRIMINAL APPEAL No. - 9480 of 2022

Appellant :- Syed Kamar Khusnoor @ Sheru

Respondent :- State of U.P.

Counsel for Appellant :- Alok Krishan Tripathi, Prashant Kumar Singh

Counsel for Respondent :- G.A., Mukesh Kumar, Swati Agrawal Srivastava

and

Case :- CRIMINAL APPEAL No. - 1164 of 2022

Appellant :- Amrita Gupta @ Lucky Gupta @ Aliya

Respondent :- State of U.P.

Counsel for Appellant :- Pulak Ganguly, Shyama Charan Tripathi, Swati Agrawal Srivastava, Sr. Advocate

Counsel for Respondent :- Anup Kumar Pandey, Arvind Prabodh Dubey, G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Sri Prashant Kumar Singh, learned counsel for the appellant (in Criminal Appeal No.9480 of 2022), Sri V.P. Srivastava, learned Senior Counsel assisted by Sri Pulak Ganguli, learned counsel for the appellant (in Criminal Appeal No.1164 of 2022), Sri Manish Goyal, learned A.A.G. assisted by Sri J.K. Upadhyay, learned A.G.A.-I for the State, Sri Uday Karan Saxena, learned Senior Counsel assisted by Sri Manu Mishra and Sri Ashish Mani Tripathi, learned counsel for the informant and perused the record.

2. The present appeal arises from the judgement and order dated 01.02.2022 passed by Mr. Satyanand Upadhyay, learned Additional Sessions Judge, Court No.1, Gorakhpur in Sessions Trial No.397 of 2015 (State of U.P. Vs. Syed Kamar Khusnoor @ Sheru), arising out of Case Crime No.331 of 2014, under Sections 302 & 120-B I.P.C., Police Station Kotwali, District Gorakhpur, Sessions Trial No.490 of 2015 (State of U.P. Vs. Amrita Gupta @ Lucky Gupta @ Aliya), arising out of Case Crime No.331 of 2014, under Section 120-B I.P.C., Police Station Kotwali,

District Gorakhpur and Sessions Trial No.499 of 2015 (State of U.P. Vs. Syed Kamar Khusnoor @ Sheru), arising out of Case Crime No.332 of 2014, under Section 3/25 Arms Act, Police Station Kotwali, District Gorakhpur whereby the accused-appellant - Syed Kamar Khusnoor @ Sheru has been convicted under Section 302 I.P.C. and sentenced to undergo life imprisonment along with fine of Rs. 10,000/- and in default in payment of fine to further undergo additional rigorous imprisonment of six months; to undergo two year's rigorous imprisonment along with fine of Rs. 2,000/-, under Section 3/25 Arms Act and in default of payment to further undergo two months rigorous imprisonment; whereas the accused appellant-Amrita Gupta @ Lucky Gupta @ Aliya has been convicted under Section 302 read with Section 120-B I.P.C. and sentenced to undergo life imprisonment along with fine of Rs. 10,000/- and in default in payment of fine to further undergo additional rigorous imprisonment of six months. All sentences run concurrently.

3. At present, the appellant - Amrita Gupta @ Lucky Gupta @ Aliya is on bail, whereas the appellant - Syed Kamar Khusnoor @ Sheru has remained confined for more than ten years. He was not granted bail upon his arrest on 14.12.2014.

4. Earlier, the bail application had been pressed on behalf of the appellant-Syed Kamar Khusnoor @ Sheru. Upon elaborate objection being offered by the State to that bail application, that would have consumed much time, it was considered judiciously expedient to hear the appeal itself, on merits. Accordingly, hearing of these appeals was prioritized. The appeals have been thus heard on merits.

5. The prosecution story emerged on what is now admitted to be photocopy of a Written Report described to be dated 13.12.2014. That photocopy of a document is **Ex. Ka-2**. On such intimation received by the police authorities, the FIR was registered at Police Station Kotwali, District Gorakhpur being Case Crime No.253 of 2014 dated 13.12.2014, at about 4.40 p.m. That FIR is **Ex. Ka-1**.

6. According to that FIR narration, at about 4:00 p.m. on 13.12.2014,

the deceased Kavita Gupta was standing at Kamla Hospital located in Mohalla - Miyan Bazaar, Police Station - Kotwali, District - Gorakhpur alongwith Yash Kumar Gupta-her son/first informant (**P.W.-2 at the trial**). At that time, Syed Qamar Khushnoor (hereinafter referred to as the 'assailant') who bore old animus arising from property disputes between the parties, shot at the deceased who fell to the ground and died in a while. The FIR also narrates that the other appellant Amrita Gupta (hereinafter referred to as the 'conspirator') was complicit in the occurrence. Thereafter, the FIR narrates, many persons were present at that time, at D.K. Tower. They had seen the occurrence but the assailant escaped. That FIR was recorded by the Head Constable Heera Lal (**P.W.-1 at the trial**).

7. A '*Panchayatnama*' was drawn between 16:40 and 17:23 hours on 13.12.2014. In that, the '*panch*' witness Rajesh Kumar Gupta (**P.W.-3**) at the trial, Sri Suresh Kumar Gupta, Sri Akshay Kumar Gupta (**P.W.-4**) at the trial, Sri Avinash Singh and Sri Anupam Kumar Gupta, were named.

8. On 13.12.2014 five recoveries were made. First, recovery of blood stained and plain tiles was made by Sri Sunil Kumar Rai (**P.W.-7 at the trial**) at the trial. That Recovery Memo (**Ex. Ka-4**) records, such recovery was made from inside the ultrasound room inside the building D.K. Tower, from below a bench in that room. Another recovery was made on that date by **P.W.-7**, of blood stained and plain Raxin on the bench placed inside that ultrasound room. Though the exact description of the place from which that recovery was made is not recorded in that Recovery Memo, that fact asserted by the prosecution is undisputed. The said Recovery Memo is **Ex. Ka-5**. A third recovery was made on 13.12.2014-of an empty of a cartridge of a 12 bore ammunition, with marking KF Special-12, written on its base. That was recovered from the gallery outside the ultrasound room of Lifeline Diagnostic Center (described as the place of occurrence). That Recovery Memo is **Ex. Ka-6**. The fourth recovery was made on 13.12.2014 by **P.W.-7**, of empty of a bullet cartridge of 32 bore with marking KF-7.65 at his base. This recovery is described to have been made from the place of occurrence, inside the room of Lifeline Diagnostic Center. That Recovery Memo is **Ex. Ka-7**. Also, a pair of slippers worn by the deceased was

recovered. That recovery is described to have been made from the place of occurrence. That Recovery Memo is **Ex. Ka-8**.

9. On 14.12.2014, the assailant was arrested. It is further disclosed that at his pointing out, one country made pistol was recovered from under a covered bucket, kept inside a generator canopy, placed in front of the building, D.K. Tower. That recovery memo is **Ex. Ka-13** at the trial. It contains disclosure statements in Part I and Part II. However, there is no independent witness. Upon recovery of such firearm, another FIR was registered against the assailant, in Case Crime No. 254 of 2014, under Sections 3/25 of the Arms Act, 1959. That FIR is **Ex. Ka-19** at the trial.

10. The autopsy on the dead body of the deceased, was performed on 14.12.2014 by Dr. Sant Lal Kannaujiya i.e. **P.W.-5 at the trial**. The autopsy was performed between 2:30 to 3:00 a.m., on 14.12.2014. In that, the following firearm injuries were noticed :

"(i) Firearm injuries entry wound of size 5 x 3 cm upper part of neck and below left ear lobula. Wound is blackened inverted margin. Brain deep with mandible (bone). Vissels lacerated. Trachea (bone) and assaulted asophagus recovered from brain base.

(ii) 39 metallic pellets and 1 plastic carbavending present with clotted blood present.

(iii) Firearm injury entry wound present on abdomen left lateral part of size 1 x 1 cm wound is blackened (15 cm) away from umbilicus circular shaped. Inverted margin on cutting muscles downward through and through, 8 cm below injuries no.2. Medially below. External wound of size 1.5 x 1.5 cm present anterior crest, margin everted, entry to exit prob through and through passing."

11. Thirty-nine pellets with pieces of plastic wad described as 'carbavending', were recovered from the body of the deceased. The issue of time of death is not a disputed fact in the present facts. The autopsy report is **Ex. Ka-9**.

12. As to the ballistic report, though it is undisputed that the recovered firearm, the pellets and two empties were sent for ballistic test at FSL, Lucknow, the report submitted by the FSL Lucknow is not relied by the prosecution. To the extent, the defence relies on the same and further to the

extent such report is of a government agency, the same is part of the record and has been made part of the Supplementary Paperbook. Such report is dated 19.03.2014. It suggests that the two empties recovered, may not be referable to the firearm recovered.

13. Suffice to note, barring Sri Rajesh Kumar Gupta (**P.W.-3 at the trial**) and Sri Achchelal Gupta (**P.W.-4 at the trial**), the other 'panch' witness including Sri Suresh Kumar Gupta (brother of **P.W.-3** and brother-in-law of the deceased), were not examined at the trial. The Investigating Officer Sri Sunil Kumar Rai (**P.W.-7**) conducted and completed the investigation. He submitted a Charge-Sheet arising from the first FIR dated 13.12.2014 on 06.02.2015. It is **Ex. Ka-26 at the trial**. The other investigation arising from the offence alleged under Sections 3/25 of the Arms Act, 1959, was investigated by the Investigating Officer Bhawani Bheekh Rajbhar. (**P.W.-11 at the trial**). He submitted the (second) charge sheet on 09.03.2015. It is **Ex. Ka-16 at the trial**.

14. In such circumstances, the learned court below framed the following charges against the assailant and the conspirator :

Against the conspirator

"प्रथम- यह कि दिनांक 13.12.2014 को समय लगभग 4.00 बजे शाम वहद स्थान मुहल्ला डी.के. टावर कमला हास्पिटल मुहल्ला मियाँ बाजार, थाना कोतवाली, जिला गोरखपुर में आपने वादी मुकदमा यश कुमार गुप्ता की माता कविता गुप्ता की हत्या कारित करने का आपराधिक षडयंत्र किया। इस प्रकार आपने भा०दं०सं० की धारा-120 बी के अन्तर्गत दण्डनीय अपराध कारित किया, जो कि इस न्यायालय के प्रसंज्ञान में है।"

Against the assailant

"प्रथम- यह कि दिनांक 13.12.2014 को समय लगभग 4.00 बजे शाम वहद स्थान मुहल्ला डी.के. टावर कमला हास्पिटल मुहल्ला मियाँ बाजार, थाना कोतवाली, जिला गोरखपुर में आपने वादी मुकदमा यश कुमार गुप्ता की माता कविता गुप्ता की असलहे से गोली मार कर मृत्यु कारित कर दी। इस प्रकार आपने भा०दं०सं० की धारा-302 के अन्तर्गत दण्डनीय अपराध कारित किया जो कि इस न्यायालय के प्रसंज्ञान में है।"

द्वितीय- यह कि उपरोक्त दिनांक, समय व स्थान पर आपने अन्य सह अभियुक्त अमृता गुप्ता उर्फ लकी उर्फ आलिया के साथ मिलकर वादी मुकदमा यश कुमार गुप्ता की माता कविता गुप्ता की हत्या कारित करने का आपराधिक षडयंत्र किया। इस प्रकार आपने भा०दं०सं० की धारा-120 बी के अन्तर्गत दण्डनीय अपराध कारित किया, जो कि इस न्यायालय के प्रसंज्ञान में है।"

यह कि दिनांक 14.12.2014 को समय 16.45 बजे वहद स्थान डी०के० टावर के सामने मियाँ बाजार, थाना कोतवाली, जिला गोरखपुर में आपके बताने पर एस.एच.ओ. सुनील कुमार राय व उनके हमराहियान आपके कब्जे से एक अदद तमन्चा 12 बोर नाजायज बरामद हुआ, जिसको रखने का आपके पास कोई अधिकार-पत्र नहीं था। इस प्रकार आपने धारा-3/25 आयुध अधिनियम के अन्तर्गत दण्डनीय अपराध कारित किया, जो कि इस न्यायालय के प्रसंज्ञान में है।"

15. Besides the above documentary evidence, at the trial, the prosecution sought to prove its story on the strength of oral evidence of 11 witness namely: -

(i) Heera Lal (Head Constable) who recorded the Fire Information Report as **P.W.-1**;

(ii) Yash Kumar Gupta (son of the deceased), the first informant who claimed to have seen the occurrence in entirety, as **P.W.-2**;

(iii) Rajesh Kumar Gupta (brother-in-law/'*devar*' of the deceased) who reached the place of occurrence soon thereafter and who sought to establish motive to the assailants and the conspirator, as **P.W.-3**;

(iv) Achchelal Gupta who was a witness to the inquest, as **P.W.-4**;

(v) Dr. Sant Lal Kannaujiya who conducted the autopsy, as **P.W.-5**.

(vi) Constable Ravi Shanker Gupta who proved the earlier F.I.R. lodged by the deceased against the assailant alleging offence under Section 376, 307, 452, 323, 504, 506, 147 & 148 I.P.C in Case Crime No. 143 of 2014, P.S. Kotwali, examined, as **P.W.-6**;

(vii) S.H.O. Sunil Kumar Rai, the Investigating Officer, in Case Crime No. 253 of 204 containing allegation of offence under Section 302 I.P.C. read with Section 120B I.P.C., as **P.W.-7**;

(viii) Constable Uma Shankar Upadhyay who proved the registration of the F.I.R. in Case Crime No. 332 of 2014, for the offence alleged under Section 3/25 Arms Act, as **P.W.-8**;

(ix) Head Constable Dev Bhaskar Tiwari, to whom the dead body had been entrusted for autopsy, as **P.W.-9**;

(x) S.I. Sheikh Bahadur Singh who conducted the inquest on the body of the deceased, as **P.W.-10** and;

(xi) Shri Bhawani Rajbhar, the Investigating Officer in the other case arising for the offence under Section 3/25 Arms Act, as **P.W.-11**.

16. Thereafter, the statements of the assailant and the conspirator i.e. the accused persons, were recorded under Section 313 Cr.P.C. Further, by way

of defence evidence, Shri Mahesh Chandra Srivastava, Advocate, who is described to be the scribe who prepared the Written Report dated 13.12.2012 (**Ex. Ka-2**) was produced as **D.W.-1**.

17. Thereafter, the learned court below has upon hearing and upon appraisal of evidence and submissions advanced reached a conclusion that the assailant had in fact shot dead the deceased inside the ultrasound room, at the place described as Lifeline Diagnostic Centre, Kamla Hospital, located inside the building described as D.K. Tower and that he fled from that place. It has also found that the conspirator was present at the relevant place and uttered words to the effect that disclosed her complicity in the murder of the deceased. It has also held the assailant guilty under Section 3/25 Arms Act. Upon such conviction, the appellants have been sentenced as noted above.

18. By way of oral evidence, **P.W.-1** deposed that he had recorded the '*chik*' F.I.R. It is **Ex. Ka-1**. He also claimed that the Written Report (**Ex. Ka-2**) recorded was an original document. He denied the suggestion that the same was a photocopied document. As a fact, learned Additional Advocate General concedes that the document **Ex. Ka.-2** is a photocopied document. However, it is his submission that would have no material bearing on the prosecution case itself inasmuch as it is not mandatory that the F.I.R. be registered only against an original Written Report. Yash Kumar Gupta, the son of the deceased (**P.W.-2**) and younger brother of the conspirator who was aged about 14 years on the date of occurrence, first stated that conspirator had married the assailant against the wishes of her family. He then stated that at the time of the occurrence, the assailant and the conspirator used to live in a house situated at the first floor of the building D.K. Tower. According to him, on 13.04.2012, at about 4.00 PM, the deceased and the witness were present at Lifeline Diagnostic Centre, located adjacent to Kamla Hospital, inside the building D.K. Tower. At that time, two ladies were also present inside that room. One was applying '*mehndi*' to the hands of the deceased. At that juncture, the assailant entered that room and shot at the deceased with a country made pistol. On being thus shot, the deceased fell over on a table. Thereafter, the assailant

fired multiple/repeated shots at the deceased, in quick succession. To that, the deceased succumbed. The conspirator is disclosed to have reached the place of occurrence at that time and uttered words to the effect that their work was accomplished. Both, the assailant and the conspirator fled, the assailant with the country made pistol ascribed to him. According to the said witness, in the commotion that arose, no one helped. The employees of the Ultrasound Centre, fled for their own safety. Shopkeepers downed the shutters.

19. Thereafter, the said witness narrated that the assailant and the witness were involved in property disputes. Cases were pending between them. The assailant is described to be a person who wanted to grab the properties of the witness (**P.W.-2**). He also narrated that prior to this occurrence, the assailant had committed rape on his mother. With respect to that, a statement of the deceased was recorded under Section 164 Cr.P.C.

20. However, of his own, **P.W.-2** added that the assailant did not say anything to him, at the time of the occurrence. He tried to prove the Written Report (**Ex. Ka-2**). In that, he stated he had signed such Written Report. However, he maintained, it was written by Shri Mahesh Chandra Srivastava (**D.W.-1**).

21. Last, he stated that the assailant and conspirator were trying to get mutated, the property of **P.W.-2**, in their names.

22. Early in his cross-examination, he claimed that the Written Report had been written by Shri Mahesh Chandra Srivastava (**D.W.-1**), a civil lawyer. Later, he stated that the original Written Report was got photocopied and that photocopy was submitted to the police. As to when his other uncle Shri Suresh Chandra Gupta reached the place of occurrence, he claimed that the latter reached about half an hour later. However, it is true that the said Suresh Chandra Gupta was not examined at the trial. Further, he claimed that his uncle namely Rakesh Chandra Gupta (**P.W.-3**) reached first. He also claimed that his uncle and Mahesh Chandra Srivastava (**D.W.-1**) reached the place of occurrence, together. Then, he answered in the affirmative that there pre-existed civil disputes between **P.W.-3** and his father late Durgesh Kumar Gupta. He specifically admitted

that his father Durgesh Kumar Gupta had instituted O.S. No. 811 of 2008 against his uncle Rakesh Chandra Gupta, on 19.12.2008. He further admitted that after the death of his father, the names of the conspirator and the said witness had been substituted - as plaintiffs, in that suit. He also admitted to proceedings in O.S No. 1131 of 2014, Rakesh Chandra Gupta vs Kavita Gupta i.e. the deceased, with respect to the property at Mia Bazar wherein the said Rakesh Chandra Gupta claimed 576.30 acres of land.

23. As to his own life and status, on 15.11.2017, he disclosed that at that time, a home tutor used to visit and take tuition classes at his residence. That tuition class lasted from 4 P.M. to 5 P.M.. As to his school activity, he disclosed, he used to leave for school at 7 A.M. and return after school gave over at 2 P.M.. He also disclosed that he used to stay at home after school, to complete his studies, etc.

24. As to the jewellery of the deceased, the said witness disclosed that the same were lying with his uncle Rakesh Chandra Gupta (P.W.-3), since the death of his mother.

25. Coming to the place of occurrence and his presence, during his cross-examination conducted on 6.4.2018, he described that the building D.K. Tower as a three storied building and that Kamla Hospital was located at the second floor of the building. Then, he further stated that he did not use to visit D. K. Tower and therefore was not aware of the particular rooms in that building.

26. That exact detail apart, on further query, he stated, he was not aware of what existed on the lower floor of D. K. Tower. As to the reason for his ignorance, he suggested that he did not know the details because he did not frequent D. K. Tower. He also feigned ignorance of the entry point of D. K. Tower, from the main road.

27. Further, he elaborated that he had not seen anybody visit Kamla Hospital. He also could not recollect if there were any partitions, inside Lifeline Diagnostic Centre, where the occurrence took place.

28. He also could not recollect the nature of goods dealt with at the shops inside the building of D. K. Tower nor he could give any description of the shop keepers of such shops, though he recalled, there were

approximately 22-23 shops in that building. Yet, he could not recollect if there was anybody present at those shops at the time of occurrence. He maintained, there were two ladies present at the time of occurrence and that '*mehndi*' was being applied to the deceased, at that time.

29. As to the time when he left for Kamla Hospital, he could not recollect but he did assert that he left for Lifeline Diagnostic Centre with his mother, directly from his home.

30. As to the activities of the deceased and his own, the witness disclosed that his mother had partnership in many activities and that she was a political leader as well. He also disclosed that she used to run a restaurant by the name - 'Mirch Masala'. As to the accounts of such business, he disclosed that the same was earlier maintained by his mother, and now by him.

31. On being confronted that the place described in the Written Report/FIR is different from that being now narrated, he stated that the description that the deceased and the witness were standing at Kamla Hospital was wrong, but that his Written Report was true.

32. As to other occurrences, on question being put as to the details of litigation evidenced between the deceased and with the assailant and the conspirator, he stated that he could not recall. He also could not disclose the property for which such litigation had arisen. However, he maintained that his mother had instituted such cases.

33. He denied a suggestion thrown at him that he was under pressure to give his statement in that manner, at the instance of Rajesh Kumar Gupta (P.W.-3).

34. Next, Sri Rajesh Kumar Gupta (P.W.-3) was examined. He disclosed that the husband of the deceased namely (Late) Durgesh Kumar Gupta, Suresh Kumar Gupta and himself, were three brothers. He disclosed that the building D. K. Tower was owned by his brother (Late) Durgesh Kumar Gupta. He also disclosed that the Kamla Hospital was situated on the upper floor of the said building. According to him, the deceased was worried about the assailant and the conspirator grabbing her properties. He further claimed that the assailants and the conspirators used to collect rent of the

shops etc. located in the building D. K. Tower. As to the occurrence, he disclosed, on 13.12.2014 at about 4:00 P.M., he was present at his shop on Revti Road about 50 to 60 paces from Kamla Hospital. He learnt of the gunfire. That led a commotion. He then moved towards Kamla Hospital on foot. At that time, he claims to have seen the assailant flee, looking nervous.

35. Upon reaching Kamla Hospital, he found the deceased lying dead and her son Yash Kumar Gupta (**P.W.-2**) crying that the assailant had shot at the deceased and that his sister was also present, at that time. He also claimed that **P.W.-2** told him, at that time itself that the conspirator was talking to the assailant and saying words to the effect that he had done the right thing, by killing the old lady. Thereafter, the said witness claimed, inquest was performed in his presence and that recoveries of blood-stained tile etc., were made by the Police, in his presence. To that, there may exist no doubt.

36. He further stated that one empty cartridge was found and recovered outside the ultrasound room where the occurrence took place. He also stated that in his presence, the Investigating Officer recovered the empty of a pistol from inside the room at Life Line Diagnostic Centre, where the occurrence took place.

37. He further stated, Acche Lal (**P.W.-4**) had also seen the assailant flee after the occurrence.

38. During his cross-examination, he further admitted, on 25.07.2006 he had instituted Original Suit No.397 of 2006 against his deceased brother (Late) Durgesh Kumar Gupta and the deceased Kavita Gupta, to restrain those defendants from transferring the suit properties described as 1700 ft. land near Arogya Temple Basaratpur, agriculture land 32 decimal, 30 decimal, 60 decimal, 3597 sq. ft. at village Harsevakpur, 21 decimal in village Gulhariya, 40 decimal at Mirzapur, 5 decimal at Jangal Chatrachadhari, 74 area in Siswa, 83 area and 219 area in village Senga, 19 decimal, 167 decimal and 24.5 decimal in village Umarpur, 7.25 decimal in Sahara Estate and other properties. He admitted existence of long litigation

pending between him and his brother (Late) Durgesh Kumar Gupta. He stated though properties had been purchased in the name of his elder brother (Late) Durgesh Kumar Gupta, but other family members had shares in that.

39. On specific cross-examination, he admitted that in paragraph 13 of the pleadings made in the above described suit, he has specifically stated that the conspirator had managed to sell the property in Semra and that in paragraph 14 he had further stated that the conspirator was involved with anti-social elements and was threatening to sell the suit properties. He also admitted, upon parties not pursuing the suit proceeding the same came to be dismissed for want of prosecution. He also admitted land had been purchased by him along with his elder brother (Late) Durgesh Kumar Gupta on which at present he was running the shop in the name of R.K. Electricals.

40. During his further cross-examination, the said witness also admitted that during his life time, (Late) Durgesh Kumar Gupta had instituted Original Suit No.811 of 2008 against the said witness. After the death of that plaintiff, the deceased along with his daughter i.e. the conspirator and her son Yash Kumar Gupta (**P.W.-2**) were impleaded as plaintiffs. He admitted that in such proceedings he had pleaded that the deceased along with the conspirator and the assailant were trying to sell the suit properties.

41. He also admitted that the House No.173 belonged to his mother. At present, that property has been mutated in his name to the exclusion of his late brother Durgesh Kumar Gupta and his other brother Suresh Kumar Gupta.

42. Though, he first attempted to deny any litigation between him and the deceased, but at the same time during his cross-examination he admitted that prior to the death of the deceased he had instituted Original Suit No.1131 of 2014 against the deceased. He tried to avoid the answer by saying he could not recollect any fact with respect to such suit proceedings. He also could not recall that after the death of the deceased, the said suit proceedings came to be dismissed for want of prosecution. He again

admitted that the deceased had filed a substitution application in Original Suit No.811 of 2008 to substitute the conspirator and her son Yash Kumar Gupta (**P.W.-2**) as legal representatives of the (late) Durgesh Kumar Gupta.

43. As to criminal case being Case Crime No. 851 of 2009 lodged against the said witness under Section 419, 420, 467, 468 and 471 I.P.C., he stated that case though disclosed to have been instituted by the deceased brother Durgesh Kumar Gupta i.e. husband of the deceased and the father of the conspirator, it was not lodged by his brother but by someone else. He also tried to claim ignorance that any charge has been framed against him with respect to the fabricated entry dated 20.11.2008, in the records of the Nagar Nigam, Gorakhpur - against Charge-sheet No.851 of 2009 on which cognizance was taken by the C.J.M., Gorakhpur or that any interim order had been obtained by him from the High Court in those proceedings. Specific doubt was expressed by the defence that the said witness was making deposition against the assailant and the conspirator in greed of the properties of his deceased brother, the deceased, the conspirator and her brother (**P.W.-2**).

44. Then, he was confronted with the registration of a Criminal Case No. 4989 of 2011 by the assailant against the said witness under Section 138 N.I. Act, making allegation of dishonour of cheque for shortage of funds. He admitted that that case had been instituted on an allegation of dishonour of cheque for Rs.32 lacs. Yet, he tried to explain the same by stating that he had never issued such cheque and the signature thereon was forged. He also claimed ignorance of another criminal case lodged by the assailant under Section 500 I.P.C. against the said witness, pending in the Court of Judicial Magistrate-III. In that case, deceased had recorded her statement under Section 202 Cr.P.C., in favour of the assailant and against **P.W.-3**.

45. Coming back to the occurrence, during his further cross-examination, he now described that the occurrence took place in the vacant ultrasound room and there was no employee present, at that time. He further submitted that he was told by **P.W.-2** that at the time of occurrence, two ladies were applying '*Mehndi*' to her.

46. He further claimed, he knew that the assailant had shot the deceased and therefore, he was fleeing from the place of occurrence, nervously. As to time when he reached the place of occurrence, he heard about the occurrence after about 2/3 minutes when unnamed persons informed him that his sister-in-law had been shot dead. He claimed to have been told of such occurrence (by unknown persons), with reference to his relationship to the deceased. He claimed that he did not remember who told him about the same. Having heard such occurrence, he went to the place of occurrence and reached there in a very short span of time.

47. As to the structure, D. K. Tower, he described the same in detail with number of rooms etc. Yet, he is not an eye-witness of the occurrence.

48. Next, Acche Lal Gupta (**P.W.-4**) was examined. During his cross-examination, he stated that he had not seen the occurrence but heard that the assailant had shot the deceased and fled from the spot. He also claimed that P.W.-2 had also informed him about the occurrence. He also admitted that his statement was recorded by the I.O., after the assailants had been arrested.

49. Next, Dr. Sant Lal Kanaujiya was examined as **P.W.-5**. He clearly proved, two fire-arm injuries were received by the deceased. The seat of the first injury was in her neck region-below her left ear lobe. There was blackness at the entry wound and its margins were inverted. That injury was brain deep. The mandible bone was fractured. The arteries of brain were lacerated. The trachea and the esophagus were also fractured. 39 metallic pellets and pieces of plastic wad were recovered from that injury wound. Clots of blood were also noticed. With respect to the second injury, the same was noted to have been suffered by the deceased, in the abdominal region, about 1 cm x 2 cm with blackness. The seat of that injury was 15 cm below the navel with inverted margins. The injury went through and through, with the exit wound 1.5 cm x 1.5 cm, with ovulate margins.

50. Next, Constable Ravi Shanker was examined as **P.W.-6**. He proved the lodging of the earlier FIR by the deceased against the assailant and her

statement recorded under Section 164 Cr.P.C., in that proceedings.

51. Thereafter, Sunil Kumar Rai, the Investigating Officer was examined as **P.W.-7**. He proved the investigation.

52. In such evidence Sri Prashant Kumar Singh, learned counsel for the appellants submits that the prosecution story is a bundle of lies, besides being self contradicted and not proven. Undeniably, the conspirator (as described) is the daughter and one of the two children born to the deceased. She was already married to the assailant on the date of the occurrence. The motive for the occurrence is described to be property disputes between the deceased and her son (**P.W.-2**) on one side with the assailant and the conspirator i.e. the accused persons on the other. At the same time, it is duly proven at the trial that there existed other property disputes between the deceased and her brother-in-law (*'devar'*). In those disputes, the assailant and the conspirator remained on the side of the deceased. There is a third nature of dispute that existed between the assailant and the brother-in-law (*'devar'*) of the deceased, namely **P.W.-3**, wherein allegations emerged against the said **P.W.-3**, at the instance of the appellants. Relying on the principle that motive is a double edged weapon, here, it has been submitted, clearly there existed motive with Sri Rajesh Kumar Gupta (**P.W.-3**) to make false accusation against the appellants as would ever disentitle the conspirator of her share in the estate of the deceased and her father, (Lste) Durgesh Kumar Gupta. The son of the deceased namely Yash Kumar Gupta (**P.W.-2**) was only 14 years of age on the date of occurrence. In view of the unfair advantage of the occurrence taken by **P.W.-3**, **P.W.-2**, he stood completely exposed and vulnerable, on the murder of the deceased. By making false accusation against the assailant and the conspirator who were already involved in multiple litigations with **P.W.-3**, deliberate attempt has been made by **P.W.-3** to take advantage of the occurrence, in such other proceedings, by isolating Yash Kumar Gupta (**P.W.-2**) from his sister, the alleged conspirator and by thus making him dependent on **P.W.-3**.

53. The occurrence was caused wholly otherwise. Yash Kumar Gupta (**P.W.-2**) being young and tender in age and also in view of some litigation

pre-existing involving the appellants on one side and the deceased on the other, the entire prosecution story was orchestrated and trumpeted by Rajesh Kumar Gupta (P.W.-3), making false accusation against the appellants only to isolate Yash Kumar Gupta (P.W.-2), who was otherwise vulnerable, being under age. The evidence of advantage taken by Rajesh Kumar Gupta (P.W.-3) exists upon admission made by Yash Kumar Gupta (P.W.-2) that after the death of the deceased, the jewellery of the deceased had been taken away by Rajesh Kumar Gupta (P.W.-3). Thus, it has been submitted, motive of false accusation made (by P.W.-3) in the prosecution story, is stronger than that proven against the appellants.

54. On the other hand, the motive attributed to the appellants is non-existent and in any case wholly doubtful-in face of pre-existing civil and other litigation not witnessed by any threat ever held out to the deceased and/or P.W.-2 and it not preceded by any occurrence of any type as may have escalated into the present occurrence.

55. Here, during his examination-in-chief, the said witness clearly stated that the appellant and the conspirator did not say a word to him and did not seek to harm him in any way even though he had seen the occurrence and therefore they would have known that he would testify against them as may result in conviction and therefore ineligibility to succeed to the estate of the deceased and (Late) Durgesh Kumar Gupta. Next, it has been emphasised that the appellants have no criminal history. The only case reported against the appellants is of false accusation of rape made by the deceased against the assailant for reason of other civil disputes between the parties.

56. As to facts, it has been submitted, according to the prosecution story to the extent it is wholly consistent, the occurrence took place inside the ultrasound room of Lifeline Diagnostic Center, depicted on the first floor of the building D. K. Tower in front of Kailash Hospital-the two facilities being separated by a gallery. The solitary eye-witness namely P.W.-2 described having seen the occurrence while standing outside that room in that gallery. He described in the FIR that he saw the assailant shoot at the deceased. Though the FIR is not an encyclopedia as to any occurrence, at the trial he described that the assailant shot at the deceased with a country

made pistol. The deceased fell over. Thereafter, the appellant fired many rounds in quick succession. Thereafter, the assailant fled from the spot with that country made weapon.

57. Yet, it is undeniable, only two empties were recovered from the place of occurrence. The first was an empty of a 12 bore/caliber cartridge, recovered from the gallery-outside the ultrasound room and the second was an empty of 32 bore firearm, recovered from inside the ultrasound room. It is admitted to the prosecution that the two empties thus recovered relate to the firearm injuries suffered by the deceased. While one empty recovered outside the ultrasound room is of 12 bore clearly referable to the injuries suffered in the neck region of the deceased, with respect to which 39 pellets and pieces of plastic wad (*'carbaveding'*), were recovered from inside the dead body of the deceased, the other is a bullet injury of 32 bore, with respect to which recovery was made from inside the ultrasound room.

58. That injury is through and through in the abdominal region of the deceased. In absence of any other recovery proven and in absence of any other firearm injury suffered by the deceased, it has been strenuously urged, there is no case made out of multiple shots, fired in quick succession.

59. Second, it has been submitted, undeniably, two weapons have been used in the assault, one of 12 bore and the other 32 bore. Recovery of pellets from one injury and the through and through other injury, clearly indicate that the first was caused by a 12 bore firearm, which may include a country made firearm and the other with a pistol or revolver (of whatever description), that caused a bullet injury. The said weapon of assault has not been described in the entire prosecution story. Since both injuries could not be caused by one weapon, the prosecution story is false, to begin with.

60. Third, it has been submitted, it is not the case of the prosecution that the assailant used two weapons. Yash Kumar Gupta (**P.W.-2**) only stated that the assailant used one country made firearm to shoot at the deceased and thereafter to fire multiple shots, in quick succession. He never described any other weapon held by the assailant. For that reason, the

prosecution story is false.

61. Fourth, it has been submitted, Yash Kumar Gupta (**P.W.-2**), the solitary eye-witness further stated that he saw the appellant flee with a country made fire-arm. Thus, no description whatsoever exists of how the deceased came to suffer two different nature of firearm injuries, with a single firearm described by the prosecution.

62. Fifth, it has been asserted, there is no evidence of multiple shots fired in quick succession inasmuch other than two empteys referable to the two injuries suffered by the deceased, that part of the prosecution story is completely false.

63. Next, it has been submitted, the ballistic report on record disproves the recovery of firearm-described to have been recovered at the pointing out by the assailant. Existence of the ballistic report is not denied to the prosecution. It has been prepared by the Forensic Science Laboratory, Lucknow. It clearly contradicts the prosecution story of recovery of that firearm. In any case, that recovery claimed is only of a country made pistol but not of the revolver or the pistol or other weapon as may have caused the second injury in the abdominal region of the deceased. For that flaw in the prosecution narration (to prove that injury beyond reasonable doubt), the prosecution story must fail. Here, it has been emphasized, blackening around the entry wound and through & through nature of the second injury suggest, both injuries were caused to the deceased from close quarters.

64. Further, it is the prosecution story that the deceased was present at the place of occurrence with two other ladies, one of whom was applying '*Mehndi*' to her. Neither of the two ladies was named in the F.I.R. nor any evidence arose at their instance. Even the story of '*Mehndi*' being applied to the deceased at the time of occurrence, has been doubted from the '*Panchayatnama*' and the autopsy report inasmuch as there is absolutely no description of such fact noted in those documents. The prosecution story has also been doubted on the strength of the alleged discrepancy in the F.I.R. narration and the statement of **P.W.-2** as to the place of occurrence- from Kamla Hospital to Lifeline Diagnostic Centre. That transition in the prosecution story was made from the F.I.R. narration, to the evidence led at

the trial.

65. Thus, the entire prosecution story is described to be unreliable and false. It has emerged at the hands of Rakesh Chandra Gupta (**P.W.-3**) who is also the paternal uncle of the conspirator with whom the deceased was involved in several civil litigation (involving ancestral properties inherited by the said witness along with his two brothers, one of them being the (late) father of the conspirator) with that witness. Also, the said Rakesh Chandra Gupta (**P.W.-3**) was involved in litigation with the alleged assailant. For that reason, he propounded and supported the false prosecution story that the occurrence was caused by the appellants. By doing that, he has isolated the first informant (**P.W.-2**)/minor brother of the conspirator who was 14 years of age on the date of occurrence and who admitted that the jewellery of the deceased/his mother has been taken away by the said witness (**P.W.-3**), after the death of the deceased.

66. Shri V.P. Srivastava, Senior Advocate, assisted by Shri Pulak Ganguly, learned counsel for the conspirator has laid emphasis on the fact that there were two weapons used to cause the occurrence. The prosecution story with respect to the second weapon is completely and unacceptably silent. Not only the prosecution has failed to explain but it has chosen not mention that two weapons were used, to cause the occurrence. That defeats the prosecution case. Second, it has been submitted, a photocopy of the Written Report may never be entertained. More substantially, it has been submitted, in any case, according to the prosecution story, the original Written Report was written by Shri Mahesh Chandra Srivastava (**D.W.-1**) yet, the prosecution failed to examine him as a prosecution witness - a practicing lawyer at Gorakhpur. He appeared in court as a defence witness and clearly stated that he had not written any report of which photocopy may exist, by way of **Ex. Ka.-2**. He further stated that he is suffering from Parkinson's disease and was therefore unable to write any matter with his hand. No doubt emerged during his cross-examination. His hand-writing was not tested. Therefore, the prosecution story that the prompt F.I.R. was lodged by **P.W.-2**, written by Shri Mahesh Chandra Srivastava, is entirely false.

67. As to the injuries suffered by the deceased, it has been emphasized, they leave no doubt that two firearm injuries were caused by two different weapons – one a 12 bore firearm, possibly a country made weapon from which a cartridge based projectile was fired. That injury was caused from a close range as allowed for blackening and pieces of wad getting lodged inside the body of the deceased, along with 39 metallic pellets. The other injury did not result in recovery of any metallic pellets rather, in that was caused by a bullet that passed through and through the abdominal region of the deceased. That injury was caused by a bullet based projectile and not a cartridge. Looking at the size of the injury, it may have been caused by a 32 bore firearm that too from close range. Recovery of two different empties corroborate that nature of the occurrence and injuries as noted above.

68. As to conspiracy, it has been submitted, no evidence exists in support of any conspiracy hatched by the conspirator and the assailant. He has relied on the following decisions of the Supreme Court to submit that the offence of criminal conspiracy was not made out/proven against the conspirator. In **V.C. Shukla Vs. State (Delhi Administration)**, (1980) 2 SCC 665; **State of Kerala Vs. P. Sugathan & Anr.**, 2000 SCC (Cri.) 1474; **Mohd. Khalid Vs. State of West Bengal**, 2002 SCC (Cri.) 1734; **Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao**, (2012) 9 SCC 512; **R. Shaji Vs. State of Kerala**, AIR 2013 SC 651 and **Desh Deepak Kumar Vihangam @ Deepak Kumar Vs. State of Bihar**, (2022) 7 SCC 721.

69. Sri Manish Goyal, learned Additional Advocate General would submit that Lifeline Diagnostic Center is part of Kamla Hospital. In any case, both are situated on the first floor of the building described as D.K. Tower. Only a gallery separates the two i.e. Lifeline Diagnostic Center and the Kamla Hospital. Referring to the site plan, he would suggest that the gallery is closed with a channel gate on the west side just after the room where the occurrence took place. There are four other rooms to the east, all in one row - adjacent to the room where the occurrence took place, along the same gallery, from east to west. Whether the diagnostic center was part of the hospital and if it came to be described differently by different prosecution witness, may only lead to inconsequential discrepancy

inasmuch as it was not a fact in issue. What is material is that the prosecution asserted from beginning to end that the occurrence took place in the room described as "V", in the site plan. That is the room described as the ultrasound room. Clearly, it is across a gallery, on the other side of that existed Kamla Hospital. Both premises thus described being located on the same floor, separated by a gallery, different description given to that room - either as part of Lifeline Diagnostic Center or Kamla Hospital, is of no relevance. In either consequence, the room location where the occurrence took place would be the same. No benefit may be drawn by the defence, on that count.

70. Next, it has been asserted, it was the prosecution story that the deceased was shot at by the assailant who fired repeated shots, in quick succession. Therefore, use of the Hindi word '*tabadtod*' does not indicate that more than two bullets had been fired. Insofar as the prosecution has been able to successfully prove that two firearm injuries had been suffered by the deceased and both injuries were caused by the assailant, no further burden may be placed on the prosecution, to establish that more than two firearm shots were fired in the occurrence.

71. The FIR itself was lodged promptly, at 4:40 p.m. Since the Police Station barely 500 mts. from the place of occurrence and the FIR was lodged by the minor son of the deceased, no doubt may arise as to the occurrence and its prompt reporting. The first informant clearly disclosed from beginning and successfully proved at the trial that he was present at the time and place of occurrence. He had seen the assailant shoot the deceased and flee from the place of occurrence. He also saw and proved that the conspirator reached the place of occurrence and collaborated with the assailant, to cause the occurrence. He also disclosed and proved the motive for the occurrence-being long standing property disputes between the deceased (on one hand) and the assailant and conspirator (on the other hand).

72. As to the defence submission that the FIR was inherently flawed and could not be acted upon, for reason of the original Written Report not proved, it has been submitted, in the nature of occurrence and its prompt

reporting, it was not necessary for the prosecution to prove the Written Report, in original. To the extent, Yash Kumar Gupta (**P.W.-2**), the first informant stood by the fact that he had lodged the F.I.R. on the strength of the document **Ex. Ka-2** and further insofar as the Head Constable Heera Lal (**P.W.-1**) proved that the F.I.R. was registered on the strength of that information received from **P.W.-2** through the same document, no inherent or fundamental defect exists in the prosecution case as may lead to any benefit of doubt or relief of acquittal. What emerged at the trial by way of oral and documentary evidence-to prove the occurrence is enough to sustain the conviction. Whether the F.I.R. was registered on the strength of a photocopied document or the original, in face of that prompt F.I.R. being lodged with respect to the occurrence (that is not in doubt), the existence of a photo copied document does not weaken the prosecution story.

73. Insofar as the defence has been unable to bring out any reasonable doubt in the substantive evidence led by the prosecution - to prove that the occurrence was caused by the assailant and a criminal conspiracy was hatched by the assailant and the conspirator, to cause that occurrence, the submission based on photocopied Written Report, must fade into insignificance.

74. On the issue of the recovery of firearm, it has been submitted, merely because the ballistic report does not corroborate that the occurrence was caused by the weapon thus recovered, it may not lead to an inference that the occurrence was not caused by the assailant. The ballistic report remains an expert opinion. It may not not be given undue emphasis, to override ocular evidence that remained unimpeached substantive evidence, at the trial.

75. As to the autopsy report and the statement of Dr. Sant Lal Kannaujiya (**P.W.-3**), he would submit that the same has not been doubted by the defence, to any extent. Thus, the occurrence is shown to have been caused by the assailant, in the manner described.

76. Heavy reliance has been placed on the element of motive proven at the trial. Learned A.G.A. has also referred to the prior occurrence reported by the deceased against the appellant alleging commission of heinous

offence under Section 376 I.P.C. Therein, her statement was also recorded under Section 164 Cr.P.C. Largely for that and also for reason of property disputes, the assailant had motive, duly proven at the trial, to cause the occurrence. Alternatively, it has been submitted, in face of unimpeachable ocular evidence, the issue of motive may remain secondary and non-decisive.

77. In support of his submissions, reliance has been placed on three decisions of the Supreme Court in **Sunil Kumar vs State Govt. of NCT of Delhi**, (2003) 11 SCC 367; **State of Rajasthan vs Arjun Singh & Ors.**, (2011) 9 SCC 115 and, **Goverdhan & Anr. vs State of Chhattisgarh**, (2025) SCC OnLine SC 69. He would submit, to sustain the conviction, evidence of a single eye-witness is enough. The weight of evidence arises not by the quantity but by the quantity of evidence led. Here, the prosecution story has been proved on the strength of Yash Kumar Gupta (P.W.-2) who is the son of the deceased and younger brother of the conspirator and brother-in-law of the assailant. No doubt, less so reasonable doubt emerged during his extensive cross-examination, that lasted over months. Merely because he may have spoken a word here or a word there, may not be torn out of context and in any case it may not be forgotten that his age was about 14 years on the date of occurrence and 17 years on the date of statement being recorded. Despite that trauma suffered, he truthfully established the occurrence.

78. Next, reliance has been placed on **Manjit Singh & Anr. vs State of Punjab & Anr.**, (2013) 12 SCC 746 and **Pruthiviraj Jayantibhai Vanol vs Dinesh Dayabhai Vala & Ors.**, (2022) 18 SCC 683 to submit once ocular evidence is wholly corroborated by medical evidence, other discrepancy if any, may remain insignificant and not relevant. The prosecution may only be burdened to prove the occurrence beyond reasonable doubt but not with empirical correctness. Next, reliance has been placed on **Baban Shankar Daphal & Ors. vs State of Maharashtra**, (2025) SCC OnLine SC 137, to submit minor discrepancies in the testimony of different witnesses must be ignored and may remain immaterial. Insofar as the testimony of the star witness produced by the prosecution, namely, Yash Kumar Gupta (P.W.-2)

remained unimpeached, no interference may be warranted in the order of conviction.

79. Last, reliance has been placed on **Rama Devi vs State of Bihar & Ors.**, (2024) 10 SCC 462; **State of Rajasthan vs Arjun Singh (supra)** and **Manjit Singh & Anr. vs State of Punjab (supra)**, to further submit, mere non-recovery of all projectiles and failure of ballistic report may not be a ground for acquittal when through other credible evidence, it has been duly proven that the occurrence had taken place. Here again, relying on the testimony of Yash Kumar Gupta (P.W.-2), it has been asserted, ocular evidence is unequivocally clear and free of doubt, as to its truthfulness and completeness of the basic occurrence. Therefore, the order of the conviction does not call for any interference.

80. Having heard learned counsel for the parties and having perused the record, first it may be noted that there is no doubt that the occurrence took place inside the building D. K. Tower, in a room described as 'ultrasound room', on the first floor of that building. That room is situated on the western end of the gallery (running East-West). It is located on the north side of that gallery. That much is not disputed to the defence. Thereafter, the fact whether the said room was part of the Lifeline Diagnostic Centre or Kamla Hospital or whether Lifeline Diagnostic Centre itself was part of Kamla Hospital shown towards the south side of the gallery that separates the two (as marked on the site-plan and as relied by the prosecution), is found to be a non-relevant fact, for this trial/appeal.

81. As to the place of occurrence, it has been proven that the same is inside that room - where the deceased was present, when she was shot. Also, as to the injuries received by the deceased, there is no doubt. She received two firearm injuries one on her neck region and the other in her abdominal region. Again, it is not disputed to either party that the first injury was caused by a 12 bore firearm using a pellet-filled cartridge projectile. According to the prosecution case, not only 39 pellets were recovered from inside the dead body of the deceased-caused by that firearm injury, but also pieces of plastic wad described as 'carbavending' were discovered. Also, there was blackening around the entry wound. The other

firearm injury was received by the deceased of which the entry wound was around her navel and the exit wound, on her back. That is not disputed to have been caused by use of a weapon of 32 bore. Also, it is not disputed to either party that that wound was clearly caused by a bullet projectile. No pellet recovery whatsoever and no other evidence exists, of that injury caused in any other manner. That injury caused is a through and through wound. In those admitted facts, we have to test the prosecution story of the occurrence caused, in the manner described.

82. We are also inclined to accept the submission advanced by the State, in the facts and circumstances of the present case, that the existence of photocopy Written Report is of no consequence. There is no doubt that the FIR was lodged on 13.12.2014 itself and also there is no doubt that the occurrence itself had taken place at about 04.00 pm. Therefore, we accept – on whatever strength, the FIR came to be registered. Undoubtedly, the Written Report appears to be a photocopy of an original that may have existed. Though that original was never produced, it may be of less significance since there is nothing to doubt the occurrence of gunshots suffered by the deceased. In such facts, the prosecution story has to be tested on the quality of evidence led at the trial, to prove that the occurrence was caused by the appellants.

83. In that we find that prosecution story arises and rests, totally on the solitary testimony of Yash Kumar Gupta (**P.W.-2**) who was aged about 14 years on the date of occurrence. Therefore, he has to be described as a ‘child witness’. The only other fact witness of substance produced by the prosecution, is PW-3 Rajesh Kumar Gupta, the brother-in-law (*dewar*) of the deceased. However, he did not see the occurrence.

84. According to Yash Kumar Gupta (**P.W.-2**), he was present at the time and place of occurrence, with the deceased. In such circumstances, he disclosed in the FIR that the assailant reached the place of occurrence and shot at the deceased many times. She died. He first disclosed that the occurrence took place on the first-floor of the building, D. K. Tower, inside the ultrasound room. At the same time, he disclosed that two other persons

described only as ladies were present inside that room. They were applying '*Mehandi*' to the hands of the deceased, when the assailant (who also resides on the first-floor of the D. K. Tower), entered that room and shot at the deceased with a country made pistol. On receiving that/first firearm injury, the deceased fell on the table. Thereafter, the assailant caused many firearm injuries to the deceased, in quick succession. That he described in Hindi as - "*tabadtod kai fire kiya*". As to the role of the conspirator, he stated that she arrived at the place of occurrence thereafter, and spoke words to the effect that they (i.e. the assailant and herself), should leave as the old lady had been done away. He further disclosed, he saw the assailant flee from the place of occurrence with a single country made firearm, described as '*tamancha*'. He also stated, many persons saw that occurrence. It had caused commotion. However, none came forward to help him and that all employees in the ultrasound centre also fled from that place. The shopkeepers also downed their shutters.

85. As to motive, he disclosed pre-existing property disputes between the deceased and the appellants. In that the assailant was trying to grab the ancestral properties of the said witness and that the assailant wanted to kill him (PW-2) also. At the same time, he disclosed that, no word was spoken to him by the assailant at the time and place of occurrence and no harm came to him. He also stated that earlier the deceased had lodged a case against the assailant alleging rape, wherein her statement had been recorded under Section 164 Cr.P.C. As to the scribe of such FIR, he disclosed that it was written by Mahesh Chandra Srivastava, an Advocate.

86. During his cross examination, the witness began wavering and made further disclosures. First as to his presence, during his cross examination on 15.11.2017, **P.W.-2** admitted that he used to go to school and also receive tuition classes at home. As to timings, he disclosed that he used to leave for school at 07.00 in morning and returned after 02.00 pm. As to his activities at home, he stated that he used to change his clothes after returning from school and then have his lunch and do his homework. As to home tuition classes, he disclosed that timing as 4 p.m. to 5 p.m. As to D. K. Tower,

which incidentally is a property of his late father, he stated (during his cross examination on 04.06.2018), that he did not frequent that building. He again clarified that he did not use to go there. That statement appears to be correct to the extent he could not make any disclosure as to the number of shops or other details of point of entry into the hospital located inside the building. However, he described, Kamla Hospital and Lifeline Diagnostic Centre are located near each other. On being questioned as to the floor on which such premises are located, he now stated that they were located on the second floor of the building D. K. Tower. He could not offer any description of the Diagnostic Centre and its structures and, he could not provide any details of the shops in that building. He did not have knowledge of the directions with respect of place of occurrence and though he disclosed, there existed shops on the floor where the occurrence took place, he could offer no disclosure of the nature of shops or the nature of goods dealt by them, or the name of any person who may have been running such shop. Yet, he confirmed that two other ladies were present at the time of occurrence. However, it is relevant that no details of those persons have ever been disclosed by the prosecution less so, they were never produced as witnesses. He also could not describe the time when he left for Kamla Hospital, on the fateful day. Further, he also stated that other than the appellants he had not seen other persons at the time of occurrence. Clearly, the said witness was not conversant with the basic facts whether with respect to the place of occurrence as may interest a young child such as nature of goods sold at various shops in a market that he may have visited earlier as also at the time of occurrence.

87. While such unexplained discrepancies exist, we may not have disregarded that testimony in entirety only for that reason alone. It is undoubted that **P.W.-2** is a child witness, therefore, he falls in the category of vulnerable witness. It does call upon the court to do a careful examination of his statement before we may trust and proceed further to confirm the conviction on that evidence. In **Dattu Ramrao Sakhare vs State of Maharashtra, (1997) 5 SCC 341**, it was clearly observed that though a child witness is a competent witness and their statement may be relied even

in absence of oath administered yet, the credibility of such evidence would depend upon circumstances of each case. The Court should watch out for element of tutoring that may always arise in the case of a child witness. The Supreme Court further recognized that there may exist no rule or practice requiring corroboration of the statement made by a child witness. Yet, rule of prudence may always be enforced by Courts - to seek corroboration, where required. Pertinent to our discussion, it was observed as below:

"The entire prosecution case rested upon the evidence of Sarubai (PW 2) a child witness aged about 10 years. It is, therefore, necessary to find out as to whether her evidence is corroborated from other evidence on record. A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record. In the light of this well-settled principle we may proceed to consider the evidence of Sarubai (PW 2)."

88. Then, again in **Ratansinh Dalsukhbhai Nayak vs State of Gujarat, (2004) 1 SCC 64**, after relying on **Dattu Ramrao Sakhare (supra)**, the Supreme Court further elaborated on the vulnerability of a child witness and observed that a child witness may remain amenable to tutoring. Therefore, a more careful scrutiny is required - of such evidence. In that regard, it was observed as below:

"The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-

believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

89. Then, in **Golla Yelugu Govindu Vs. State of A.P.**, (2008) 16 SCC 769, again, reliance was placed on **Dattu Ramrao Sakhare (supra)**. Thereafter, principle laid in **Dattu Ramrao Sakhare (supra)** and **Ratansinh Dalsukhbhai Nayak (supra)** was reiterated. Last, in **Alagupandi vs State of T.N.**, (2012) 10 SCC 451, again the principal laid down in **Dattu Ramrao Sakhare (supra)** and **Ratansinh Dalsukhbhai Nayak (supra)** was reiterated.

90. Therefore, in face of such statements made by **P.W.-2**, we are not in a position to trust his statement as true. Strong doubts arise for the reasons noted above, chiefly, his admission that he did not frequent D. K. Tower which is consistent to his further statement that he did not know either the directions to its entry point, the shopkeepers or the nature of shops and goods dealt by them or the name of any person working there. Then as per his daily schedule, he used to attend home tuition classes from 4 p.m. to 5 p.m. The occurrence being of 4 p.m., it lends further doubt as to the presence of **P.W.-2**.

91. As to the backdrop in which the occurrence emerged, on the strength of the statements of **P.W.-2** as also **P.W.-3**, it is also not in dispute that the parties, i.e. the deceased, her husband on one side, **P.W.-3** Rajesh Kumar Gupta who is the brother in law- (*dewar*) of the deceased and the appellant, were involved in multi-pronged, multiple litigation wherein in the first place, civil litigation as was witnessed between Durgesh Kumar Gupta (per-deceased husband of the deceased) and **P.W.-3** being (Case no. 811 of 2008). The second nature of litigation experienced was between the deceased, the assailant, the conspirator and **P.W.-2** on one side, either as legal representatives of the deceased Durgesh Kumar Gupta or on their own, and **P.W.-3** on the other. Those are O.S. Nos. 397 of 2006, 1131 of 2014 and Case No. 851 of 2009. The third variety of litigation being Case

Crime No. 143 of 2014, under Sections 376, 307, 452, 323, 504, 506, 147, 148 I.P.C. lodged by the deceased against the appellant. A fourth variety of criminal cases exist being lodged by the assailant against **P.W.-3** exists, one being Criminal Case No. 4989 of 2011 alleging offence under Section 138 of the N.I. Act and another alleging offence under Section 500 IPC.

92. The above facts are clearly proven not by way of defence evidence but by way of reluctant admissions made both by Yash Kumar Gupta (**P.W.-2**) and Rajesh Kumar Gupta (**P.W.-3**), during their elaborate cross-examination.

93. Thus, it is noted, while the occurrence took place later, preceding that, the parties had consistently and over a long period experienced turbulent relations. In that, one thing has remained certain and consistent that late Durgesh Kumar Gupta (the husband of the deceased) and the deceased along with her two children were always in civil litigation with Rajesh Kumar Gupta (**P.W.-3**), with respect to various properties. That litigation spilled over to the next generation, inasmuch as, on the death of Durgesh Kumar Gupta, the deceased, the conspirator, Yash Kumar Gupta (**P.W.-2**) and some times even the assailant were impleaded as parties (either plaintiff or respondent) in proceedings instituted by or against Rajesh Kumar Gupta (**P.W.-3**).

94. It is equally true that during his cross-examination, Rajesh Kumar Gupta (**P.W.-3**) categorically admitted existence of pleadings made by him making allegation against the deceased, the assailant and the conspirator, with respect to his civil rights over certain properties. Thus, he admitted during his cross-examination that he had filed O.S. No. 397 of 2006 against his brother (Late) Durgesh Kumar Gupta and that in those proceedings, he filed an application seeking to restrain the conspirator from selling any of the suit properties.

95. It equally could not be denied by Rajesh Kumar Gupta (**P.W.-3**) that the assailant had earlier instituted a proceeding under Section 138 of the NI

Act with respect to dishonour of a cheque of Rs.32 lakhs. He also could not deny another proceedings instituted by the assailant under Section 500 IPC.

96. Thus, only in the context of such disputes, we record, Rajesh Kumar Gupta (**P.W.-3**) was always inimical to the civil rights of Durgesh Kumar Gupta and his family including the present appellants and vice versa. On proven facts, it is seen, disputes always existed between them as to their rights. Wherever any ancestral property existed, Rajesh Kumar Gupta (**P.W.-3**) claimed interest and he opposed the claim of the Durgesh Kumar Gupta and his family including the present appellants. To that extent, he never made any distinction between the present appellants and the deceased and her son Yash Kumar Gupta (**P.W.-2**). He had specific grievance against the assailant with respect to two criminal cases lodged by the assailant against **P.W.-3**.

97. In the above context, no evidence was produced by the prosecution of any normal social relationship existing between Rajesh Kumar Gupta (**P.W.-3**) and the deceased and Yash Kumar Gupta (**P.W.-2**), preceding the occurrence. They remained inimical to each other (in the civil sense) and were thus distanced in law and in life, on the date of the occurrence. Hence, it has to be recognized that normal relationship did not exist between the deceased and **P.W.-3**. Yash Kumar Gupta (**P.W.-2**) clearly stated, and it appears true that in such circumstances, he had never visited the home of his uncle. Yet, all the jewellery of the deceased was lying with Rajesh Kumar Gupta (**P.W.-3**), after the death of the deceased.

98. Thus, we also find that Yash Kumar Gupta (**P.W.-2**) first stated that there existed a family business by the name Mirch Masala Restaurant. Extensive cross-examination was made. He stood by his stand consistently that that business was conducted first by his mother (deceased) and now by him. During that extensive cross-examination, he never ever took the name of **P.W.-3** Rajesh Kumar Gupta, his paternal uncle, with respect to any help offered by him, in the running of that business. Correspondingly, the testimony of Rajesh Kumar Gupta (**P.W.-3**), corroborates that he

maintained his separate business throughout. No activity or business was shown to exist, either with his pre-deceased brother Durgesh Kumar Gupta or with the deceased or with **P.W.-2**, that may have been common to the two branches of the same family, namely the branch represented by (Late) Durgesh Kumar Gupta and the branch represented by Rajesh Kumar Gupta (**P.W.-3**). Therefore, we have no hesitation to record that the parties had nothing in common, except numerous litigation both civil and criminal. It is in such circumstance, Yash Kumar Gupta (**P.W.-2**) gave in on 04.01.2018 and admitted that after the death of his mother, her entire jewellery was with Rajesh Kumar Gupta (**P.W.-3**).

99. In that context, though we are not disputing that the FIR was lodged by Yash Kumar Gupta (**P.W.-2**), yet, he never claimed and he never proved that the said FIR was lodged on his own. He consistently maintained that the same was written by another person who he chose to describe as Mahesh Chandra Srivastava (a practicing lawyer of civil court). Extensive cross-examination was offered to question that line. **P.W.-2** maintained that the Written Report was written by the scribe Mahesh Chandra Srivastava. In that view, the statement of **D.W.-1** Mahesh Chandra Srivastava is relevant. He denied that he wrote that report. Since, it remains admitted to the prosecution that the Written Report (original) was not written by Yash Kumar Gupta **P.W.-2** on his own, rather, it was submitted through a third person and Mahesh Chandra Srivastava denied his working on the Written Report, it is questionable how the presence of Mahesh Chandra Srivastava, emerged. The authorship of Mahesh Chandra Srivastava was described by **P.W.-2** to have arisen as the scribe, having reached along with his two uncles namely Rajesh Kumar Gupta (**P.W.-3**) and Suresh Chandra Gupta (not examined at the trial). Also, the prosecution never cross-examined that defence witness **D.W.-1** and it never doubted the fact that original Written Report was not written by **D.W.-1**, though it was upon the prosecution to doubt his oral testimony on whatever line of reasoning that may have been open, such cross-examination never arose. Also, **P.W.-2** did not offer a consistent account of the place where and the time when he met **D.W.-1**. He stated all i.e. **P.W.-3** reached the place of occurrence and met him there.

Both his uncles i.e. **P.W.-3** and Suresh Kumar Gupta reached his residence with **D.W.-1** and that such persons reached his restaurant '*Mirch Masala*'. In any case, he consistently stated that he met those parties first and lodged the FIR, later.

100. Therefore, we reach a further conclusion that the writing of the Written Report was of a third person and not of the informant. That writing was never proven at the trial. In the context of his statements noted just above, the time gap between the occurrence at 04.00 pm and the FIR being written at 04.40 pm the presence **P.W.-3** is not believable. He may have reached the place sometimes after the occurrence had been caused. It cannot be ruled out that **P.W.-3** caused the FIR narration to arise as his presence after the occurrence and before the FIR was lodged is admitted. Here, according to **P.W.-2** himself, the scribe (whoever it be) was accompanied by Rajesh Kumar Gupta (**P.W.-3**) and his other uncle (not examined at the trial). As noted above, **P.W.-3** had a pre-existing grouse against the deceased, the appellant and the vulnerable boy (**P.W.-2**). Therefore, we are unable to accept that the FIR arose at the instance of **P.W.-2** or that it contains his ocular version of the occurrence. It also doubtful, that the FIR would have been lodged at 4:40 p.m. as disclosed. After the occurrence, **P.W.-2** is disclosed to have been traumatised. He met his uncles and their lawyer and thereafter lodged the FIR. In the meanwhile he also travelled to his home and restaurant. That would have taken time.

101. As to the testimony of **P.W.-3** Rajesh Kumar Gupta, we find, besides the admission of cases lodged by and against him, by his pre-deceased brother Durgesh Kumar Gupta, the deceased, the appellants and the cases lodged by him against those parties, as to the occurrence and further criminal cases lodged by the assailant, his conduct in that regard was not forthcoming. Rather, his statements were forcibly extracted. He first claimed ignorance of existence of civil dispute but admitted to those only when confronted with specific case particulars or orders or pleadings. Those have already been referred to above, while referring to his testimony.

102. Keeping that in mind, more than reasonable doubt arises as to the truthfulness of the statement made by **P.W.-2** and **P.W.-3**. In any case, in view of the per-existing disputes, we are inclined to label the status of **P.W.-3** as an inimical interested witness, having motive against the appellants and therefore not willing to speak the truth to the Court. He had motive and every reason to not speak such truth for reason of various civil litigation involving the family of late Durgesh Kumar Gupta and the deceased. He stood to gain by making such false accusation against the appellants, as Yash Kumar Gupta (PW-2) was barely 14 years of age. Both his parents being dead, he was at risk of falling upon whatever family he was left with, once his brother-in-law and sister were thus implicated in a heinous crime of murder of the deceased.

103. As to his presence, in view of what has been noted above, his testimony does not inspire confidence. He claims to have been present at his shop located at some distance from the place of occurrence. He further claims to have been told about the occurrence by unknown persons who though unknown to him, were able to tell him that his sister-in-law had been shot dead. In that he further claims to have walked to the place at a quick pace when, according to him, he saw the assailant flee in a nervous state. In the entirety of facts already noted above, we are unable to believe any part of his testimony to be true or reliable as may ever result in conviction for a heinous offence of murder.

104. In view of what we have noted above, we are also not in a position to place reliance on the statement of Yash Kumar Gupta (**P.W.-2**). Besides what has been noted above, in cases based on single eye-witness account, though he may not be disbelieved and rather some margin may always exist to overlook some inaccuracies and inconsistencies in the statement of such witness, however, here the facts are completely different.

105. As to conviction on the testimony of a single eye-witness, the rule is clear. In **Vadivelu Thevar Vs State of Madras, AIR 1957 SC 614**, the Supreme Court observed as below.

"The matter thus must depend upon the circumstances of each case and

the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the Innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.*
- (2) Wholly unreliable.*
- (3) Neither wholly reliable nor wholly unreliable.*

In the first category of proof, the court should have no difficulty in coming to its conclusion either way it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

106. Then, in **Joseph vs State of Kerala, (2003) 1 SCC 465**, with respect to testimony of single eye-witness, the Supreme Court further observed:

"To our mind, it appears that the High Court did not follow the aforesaid standard but went on to analyse evidence as if the material before them was given for the first time and not in appeal. Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a court to record and sustain a conviction on the evidence of a solitary eye witness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is

cogent, reliable and in tune with probabilities and inspires implicit confidence. By this standard, when the prosecution case rests mainly on the sole testimony of an eyewitness, it should be wholly reliable. Even though such witness is an injured witness and his presence may not be seriously doubted, when his evidence is in conflict with other evidence, the view taken by the trial court that it would be unsafe to convict the accused on his sole testimony cannot be stated to be unreasonable."

107. Again, in **Bhimapa Chandappa Hosamani vs State of Karnataka, (2006) 11 SCC 323**, word of caution was added by the Supreme Court, a Court may pass the order of conviction, solely on that testimony. It observed as below:

"We have undertaken a very close and critical scrutiny of the evidence of PW 1 and the other evidence on record only with a view to assess whether the evidence of PW 1 is of such quality that a conviction for the offence of murder can be safely rested on her sole testimony. This Court has repeatedly observed that on the basis of the testimony of a single eyewitness a conviction may be recorded, but it has also cautioned that while doing so the court must be satisfied that the testimony of the solitary eyewitness is of such sterling quality that the court finds it safe to base a conviction solely on the testimony of that witness. In doing so the court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the court as wholly truthful, must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness."

108. Most crucially, he consistently described one firearm borne by the assailant. Yet, he described multiple firearm injuries caused to the deceased after the first shot had been fired and the deceased fell over. Even if we overlook the word "*tabadtod*" used by him and read it to be only two shots fired, the prosecution has failed to establish either - which of the two injuries was caused first and it has failed to prove use of two different types of firearm in the occurrence. In the admitted facts as noted above, two firearm injuries were caused by two different firearms, of two different caliber, with use of two completely different projectiles-one a cartridge and another a bullet. No whisper of evidence arose, of use of two weapons. Though the prosecution described one weapon to the assailant, in absence of any prosecution case/evidence that the assailant was carrying two firearms (of the nature as may have corroborated the injuries), in entirety, we are left with no option but to conclude that Yash Kumar Gupta (P.W.-2) was not present at the time and place of occurrence. Therefore, he had not

seen the occurrence that was parroted by him, in the manner told to him, at that traumatic time, by someone else, probably (P.W.-3).

109. There is another strong reason to doubt the presence of P.W.-2 and the motive assigned by him to the appellants. The entire prosecution story rests on the motive assigned to the appellants to kill the deceased only to grab all properties of the deceased and P.W.-2. P.W.-2 also stated that the appellants wanted to kill him. Yet, during his cross examination, he maintained that no word was spoken to him and no harm was caused to him in the occurrence.

110. Unfortunately, the child witness appears to have described what he was told. It was for the prosecution to prove its case. It never led any evidence of two weapons used by the assailant. Also, the ballistic report clearly suggests that the firearm allegedly recovered was not one that he caused the occurrence. In the present case it is not the flawed recovery but the falsity of the prosecution allegation, that persuades us to interfere.

111. As to the motive, as noted and discussed above, it is fundamental to criminal jurisprudence that the same is a double-edged sword. Just as motive has been described by the prosecution for reason of civil and criminal case proceedings between the appellant and the deceased, as noted above there are multi directional litigation between the parties. Therefore, the motive cited is of less significance especially in absence of any disclosure made or proven fact that the assailant was in any fear of any punishment arising in near future or otherwise with respect to criminal prosecution described to have been lodged by the deceased.

112. In **Ruli Ram vs State of Haryana, (2002) 7 SCC 691**, it was observed as below:

"7. So far as the acceptability of evidence is concerned, the trial court and the High Court analysed the evidence in detail and have held it to be plausible and acceptable, and that it suffers from no infirmity. It has been noted that in a faction-ridden village, independent witnesses, as submitted by the learned counsel for the accused-appellant, are difficult to get. Enmity is a double-edged sword. While it can be a basis for false implication, it can also be a basis for the crime. The court has to weigh the evidence carefully and if after doing so, holds the evidence to be acceptable, the accused cannot take the plea that it should not be acted upon. When a plea of false implication is advanced by the accused,

foundation for the same has to be established. We do not find any reason to differ from the courts below on the factual aspects."

(emphasis supplied)

113. Once the basic foundation of the prosecution case falls, motive may remain inconsequential. That observation exists in **State of Punjab vs Sucha Singh & Ors., (2003) 3 SCC 153** wherein it has been observed as below:

"11. Mr Walia, learned counsel, lastly contended that there is a strong motive connecting the accused with the crime for the reason that Kuldip Singh, nephew of accused Sucha Singh was murdered by the complainant party and the accused had nursed a grudge against the complainant party for revenge. This plea is of no help to the prosecution case. When the basic foundation of the prosecution case crumbled down, the motive becomes inconsequential. At the same time, animosity is a double-edged sword. It could be a ground for false implication, it could also be a ground for assault. In the instant case, in view of the facts and circumstances as discussed above, the motive, however strong, merely creates a suspicion. Suspicion cannot take the place of proof of guilt."

(emphasis supplied)

114. In **Ramashish Rai vs Jagdish Singh, (2005) 10 SCC 498**, enmity was described as double-edged sword. It was recognized that there can be ground for false implication as well. The Court must examine the testimony of inimical witnesses with due caution and diligence. In that regard, it was observed as below:

"7. We are clearly of the view that the findings of the High Court were erroneous, resulting in grave miscarriage of justice. The eyewitnesses — PWs 1, 2, 3, 5, 8 and 10 consistently supported the case of the prosecution throughout. They were subjected to lengthy cross-examination but nothing could be elicited from their mouth so as to discard the creditworthiness of their statements. The ocular evidence of the eyewitnesses was corroborated in material particulars by the medical evidence. In our view, therefore, the acquittal recorded by the High Court on the aforesaid reasoning is perverse. The High Court discarded the eyewitness account, branded them as inimical witnesses. This is not the requirement of law. The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence. In the present case the High Court has rejected the otherwise creditworthy testimony of eyewitness account merely on the ground that there was enmity between the prosecution party and the accused party."

(emphasis supplied)

115. In **State of U.P. vs Madan Mohan & Ors.**, (1989) 3 SCC 390, the inference of suppression of the genesis of the crime was inferred, amongst others, for reason of non-examination of witnesses from the locality whose presence would be natural. In that regard, it was observed as below:

"9. There can be no doubt that PW 1 and PW 2 can be said to be chance witnesses. Their residences are a furlong or two away from the scene of occurrence. The story of PW 1 that he closed the shop earlier than usual is difficult to believe because he does not assign any reason for so doing. The allegation that respondent Chander Mohan's complaint was first in point of time but was registered later cannot be lightly brushed aside. It is also surprising that PW 1 preferred to write down the complaint on the spot rather than run down 100 paces to the police station to inform the police. PW 1 was asked to explain this conduct and he stated that he preferred to write down the complaint "as I had doubt that the police will not pay any heed and will not take down the report correctly". There was no reason for PW 1 to entertain such a doubt. He does not say that he had any such experience in the past. Both the deceased had a criminal record and were history sheeters. Several complaints were pending against Ram Shanker. He must be having many enemies. The defence case is that some of their common enemies got together and killed them and PW 1 was not present but came later and filed the report on the basis of the morning incident. Be that as it may, the fact remains that the genesis of the crime is suppressed and no witness from the locality whose presence would be natural is examined which creates a doubt regarding the truth of the prosecution version."

(emphasis supplied)

116. Similarly, in **Takhaji Hiraji vs Thakore Kubersing Chamansing & Ors.**, (2001) 6 SCC 145, not bringing forth the material witnesses was termed as a deficiency in the prosecution as may lead to an adverse inference. In that regard, it was observed as below:

"19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case....."

(emphasis supplied)

117. Here, though the prosecution claims that two ladies who were applying 'Mehndi' to the deceased fled and their details were not known, no explanation exists why no employee of the Kailash Hospital or Lifeline Diagnostic Centre and other shopkeepers or neighbour or person who may

have been naturally present at the building D. K. Tower, was examined.

118. As to conspiracy, there is absolutely no material to reach a conclusion that there existed any agreement between the assailants and the conspirators, to commit an illegal act that too murder of the deceased. Only evidence led by the prosecution to that effect is of words allegedly heard by **P.W.-2** described to have been spoken by the conspirator to the assailant. Those words are only to the effect that the deceased has been done to death. In face of what we have observed with respect to credibility, truthfulness and reliability of the evidence of P.W.-2, his testimony has also to be disregarded as he was not present at the time and place of occurrence as may have ever allowed him to have witnessed such an occurrence. Also, **P.W.-3** saw nothing. The prosecution has wrongly proved the occurrence as one caused by the appellants. The most natural witness namely two ladies who were allegedly applying '*Mehndi*' to the deceased and/or the staff of Life Line Diagnostic Centre and the shopkeepers of D. K. Tower, were never examined at the trial.

119. The prosecution chose to base its story solely on two witnesses. Both have been disbelieved for reasons noted above. There is no other account existing. We therefore find, the charge of murder was not proven on the assailant, to any extent. Less so, there exists any evidence of criminal conspiracy to cause that occurrence. The appellants are entitled to and are granted a clean acquittal, on all charges levelled.

120. The appeal is **allowed**. The impugned judgement and order is set aside. Appellant - **Amrita Gupta @ Lucky Gupta @ Aliya** is on bail. She need not surrender. Her bail bonds are cancelled and sureties are discharged whereas the appellant - **Syed Kamar Khusnoor @ Sheru** has remained confined for more than ten years. He shall be released forthwith, if he is not wanted in any other case. However, both the appellants shall comply with the mandatory requirements of Section 437-A Cr.P.C. within one month.

Order Date :- 7.3.2025

Anurag/Abhilash/Prakhar/Prachi

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