

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.130 of 2013

Arising Out of PS. Case No.-210 Year-1997 Thana- SHEKHPURA District- Sheikhpura

Amir Singh S/O Late Munna Singh Resident Of Village- Mehush, P.S.-
Mehush, District- Sheikhpura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 617 of 2008

1. Munna Singh, son of Late Ragho Singh
2. Arun Singh, son of Munna Singh.

Both are residents of village-Mehush, P.S.-Mehush, District-Sheikhpura.

... .. Appellant/s

Versus

The State of Bihar

.. ... Respondent/s

with

CRIMINAL APPEAL (DB) No. 647 of 2008

Ranjeet Singh, son of Munna Singh, resident of village-Mehush, P.S.-Mehush,
District-Sheikhpura.

... .. Appellant/s

Versus

The State Of Bihar

.. ... Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 130 of 2013)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Swati Sinha, Advocate

For the Respondent/s : Mr.S.C.Mishra, APP

(In CRIMINAL APPEAL (DB) No. 617 of 2008)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Swati Sinha, Advocate

For the Respondent/s : Mr.D.K.Sinha, APP

(In CRIMINAL APPEAL (DB) No. 647 of 2008)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Swati Sinha, Advocate

For the Respondent/s : Mr.A.K.Sinha, APP

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)



Date : 29-05-2020

We have heard the parties and perused the records of these cases.

Since all the appeals arise out of Sheikhpura (Mehus) P.S. Case No.210 of 1997, as such, all these appeals have been heard together and are being disposed of by this common judgment.

The appellant, namely, Amir Singh of Cr. Appeal (DB) No.130 of 2013 has preferred this appeal assailing the judgment of conviction dated 21.01.2013 and order of sentence dated 22.01.2013 passed by the Ad-hoc Additional District & Sessions Judge-II, Sheikhpura in Sessions Trial No.273 of 2000/ Trial No. 11 of 2013 arising out of Sheikhpura (Mehus) P.S. Case No.210 of 1997 by which he has been convicted for the offences punishable under Section 302 of the Indian Penal Code and Section 27 (1) of the Arms Act and he has been sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code with a fine of Rs. 10,000/-, in default of payment of fine, he has to further undergo rigorous imprisonment for one year. He has further been sentenced to undergo rigorous imprisonment for three years with a fine of Rs. 5,000/- under Section 27 (1) of the Arms Act,



in default of payment of fine, he has to undergo further imprisonment for six months. However, both the sentences were directed to run concurrently.

The appellants, namely, Munna Singh and Arun Singh of Cr. Appeal (DB) No.617 of 2008 and Ranjeet Singh of Cr. Appeal (DB) No.647 of 2008 have preferred their respective appeal assailing the judgment of conviction dated 20.05.2008 and order of sentence dated 22.05.2008 passed by the Additional Sessions Judge, FTC-V, Sheikhpura in Sessions Case No.685 of 1998/ Trial No. 17 of 2008 arising out of Sheikhpura (Mehus) P.S. Case No.210 of 1997 by which appellants of both the appeals have been convicted for the offences punishable under Sections 302/34 of the Indian Penal Code and the appellant, namely, Ranjeet Singh has further been convicted under Section 27 of the Arms Act and they have been sentenced to undergo rigorous imprisonment for life under Section 302/34 of the Indian Penal Code. The appellant, namely, Ranjeet Singh has further been sentenced to undergo rigorous imprisonment for three years under Section 27 (1) of the Arms Act. However, both the sentences were directed to run concurrently.

The informant, namely, Santosh Kumar, gave his *fardbeyan* at the place of occurrence before the Officer-in-



charge of Mehus Police Station on 29.08.1997 at about 7.45 A.M. stating therein that on the same day at about 7.15 A.M., when his cousin Dharmendra Kumar (since deceased) was preparing tobacco at 'Shivala' near his house, he was present there, in the meantime, the appellants, namely, Ranjeet Singh and Amir Singh, both were armed with rifle and Munna Singh armed with piece of brick, came there from east direction started using filthy words. The appellant Arun Singh armed with country made pistol after a while also came there. Thereafter, Dharmendra Singh asked them not to hurl abuses, upon which, the appellant Arun Singh gave order to shoot him, whereupon, the appellant Munna Singh threw bricks up on Dharmendra Singh and appellant Ranjeet Singh fired from his rifle. The deceased Dharmendra Singh in order to save himself tried to hide behind the electric pole, but the appellant Ranjeet Singh fired upon him which hit his right elbow. Thereafter, the appellant Amir Singh also resorted two round of firings from his rifle, out of which, one hit on his '*Panjara*', as a result of which, he fell down on the ground and subsequently, he died. Thereafter, all the accused persons fled away towards eastern side. The cause of occurrence was that about three years ago on account of uprooting 'Khesari' crops, some altercation took



place in between the deceased Dharmendra Singh and accused Munna Singh, besides that, about eight days earlier, on the occasion of auction of 'Ahra' in the village, the deceased Dharmendra Singh had shown his willingness to participate in the auction of 'Ahra', upon which, accused Amir Singh had challenged him to participate in the auction saying that he would not be allowed to take even singly scale of fish, thereafter, ill feeling increased and, due to this reason, all the accused persons killed the deceased. The occurrence was witnessed by father of informant Raja Ram Singh, brother Pankaj Singh, Gore Lal Singh and also Manoj Singh, who came after hearing 'Hulla' and witnessed the occurrence. The *fardbeyan* of informant was written down in presence of the witnesses Parsidh Narayan Singh and Ram Sevak Singh.

On the basis of aforesaid *fardbeyan*, the FIR was registered under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms vide Sheikhpura (Mehus) P.S. Case No.210 of 1997. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the appellants, namely, Amir Singh and Ranjit Singh and accordingly, cognizance was taken, thereafter, the case was committed to the court of sessions. In course of trial, rest two



accused, namely, Arun Singh and Munna Singh were also summoned to face trial vide order dated 6.09.2000 under Section 319 of the Code of Criminal Procedure. Due to non-appearance of accused Amir Singh, the case against him was split up from the original Sessions Case No.685 of 1998 wherein only three accused persons were tried, resulted into conviction of all three accused persons. The case against Amir Singh was registered as Sessions Trial No.273 of 2000 and, due to non-appearance of accused Amir Singh, he was declared absconder vide order dated 30.05.2005. Later on, the accused Amir Singh had surrendered in Sessions Trial No. 91 of 2011 on 27.07.2011 and, thereafter, on information by the police, production warrant was issued. The accused Amir Singh was produced on 15.12.2011 and he was taken into custody. Thereafter, he was charged for the offences under Section 302 of the Indian Penal Code and Section 27 (1) of the Arms Act, to which, he pleaded not guilty. Thereafter, trial started against him.

The defence of the accused is complete denial of the prosecution case as well as false implication due to enmity. From the trend of cross-examination, it appears that the defence has taken the specific plea that the instant case has been lodged



at the instance of Raja Ram Singh with ulterior motive.

During trial of Sessions Case No.685 of 1998/Trial No. 17 of 2008, the prosecution has examined altogether thirteen witnesses in support of its case. P.W. 1 is Raja Ram Singh, P.W. 2 is Pankaj Kumar, P.W. 3 is Ram Ballabh Sharma, P.W. 4 is Bijay Kumar, P.W. 5 is Arvind Kumar, P.W. 6 is Mritunjay Kumar Singh, P.W. 7 is Manoj Singh, P.W. 8 is Gorelal Singh, P.W. 9 is Santosh Kumar Singh, P.W. 10 is Karyanand Singh, P.W. 11 is Sheelam Devi, P.W. 12 is Surendra Rai and P.W. 13 is Dr. Krishna Mohan Purvey.

During trial of Sessions Trial No. 273 of 2000/11 of 2013, the prosecution has examined altogether nine witnesses in support of its case. P.W. 1 is Ram Ballabh Sharma, P.W. 2 is Gorelal Singh, P.W. 3 is Manoj Kumar, P.W. 4 is Raja Ram Singh, P.W. 5 is Sheelam Devi, P.W. 6 is Pankaj Kumar, P.W. 7 is Santosh Kumar, P.W. 8 is Dr. Krishna Mohan Purvey and P.W. 9 is Surendra Rai.

The defence has also examined two witnesses, namely, Bipin Kumar (D.W.1) and Krishna Murari Jha (D.W. 2) in support of defence taken by them.

Following documents have been exhibited in Sessions Case No.685 of 1998 :-

(i) Exhibit-1 :- Signature of Pankaj



Singh on statement under Section 164 Cr. P.C.

(ii) Exhibit-2 :- Signature of Manoj Singh on the statement under Section 164 Cr.P.C.

(iii) Exhibit-3 :- Signature of Gorelal Singh on the statement under Section 164 Cr.P.C.

(iv) Exhibit-4 :- Signature of informant Santosh Singh and Prashid Nath Singh identified by S.I. Surendra Rai.

(v) Exhibit-5 :-Signature on Post mortem examination report identified by Dr. K.M. Purbey.

Following documents have been exhibited in Sessions
Case No.273 of 2000 :-

(i) Exhibit-1 :- Post Mortem report of Dharmendra Singh.

(ii) Exhibit-2 :- Signature of Santosh Kumar on the fardbeyan.

(iii) Exhibit-2/A :- Signature of Prashidhya Narayan Singh on the fardbeyan.

(iv) Exhibit-3 :- Signature and writing of S.I. Surendra Rai on the fardbeyan.

The trial court after hearing the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the



respective appellants and, as such, the judgment of conviction and order of sentence have been passed, as stated above.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond the shadow of all reasonable doubts or not?

It appears from the records that in Sessions Case No.685 of 1998/ Trial No. 17 of 2008, out of thirteen witnesses, P.Ws. 3, 4, 5, 6, 7, 8 and 10 have been declared hostile as they have not supported the prosecution case in course of trial, whereas in Sessions Trial No. 273 of 2000/ 11 of 2013, out of nine witnesses, P.W. 1 and P.W.3 have completely denied to have any knowledge about the alleged occurrence and they have stated that the police had never recorded their statement during investigation of the case. P.W. 2 has been declared hostile as he has not supported his statement recorded under Section 161 Cr.P.C. and has stated that fact stated by him to the police during investigation of the case was not in his memory.

It will be in the interest of justice that we will discuss the evidence of those witnesses who have been examined in both the sessions trials side by side to understand and examine their statements with respect to the submission of improvement



made by the witnesses at the subsequent stage of the trial as in Sessions Trial No.273 of 2000 and Sessions Trial No.685 of 1998, following are the common witnesses :

(I) P.W. 1 Raja Ram Singh in Sessions Trial No. 685 of 1998 is P.W. 4 in Sessions Trial No. 273 of 2000.

(II) P.W. 2 Pankaj Kumar in Sessions Trial No. 685 of 1998 is P.W. 6 in Sessions Trial No. 273 of 2000.

(III) P.W. 3 Ram Ballabh Sharma in Sessions Trial No. 685 of 1998 is P.W. 1 in Sessions Trial No. 273 of 2000, who has been declared hostile in both the sessions trials.

(IV) P.W. 4 Bijay Kumar in Sessions Trial No. 685 of 1998 has been declared hostile and he has not been examined in Sessions Trial No. 273 of 2000.

(V) P.W. 5 Arvind Kumar in Sessions Trial No. 685 of 1998 has been declared hostile and he has not been examined in Sessions Trial No. 273 of 2000.

(VI) P.W. 6 Mritunjay Kumar Singh in Sessions Trial No. 685 of 1998 has been declared hostile and he has not been examined in Sessions Trial No. 273 of 2000.

(VII) P.W. 7 Manoj Singh in Sessions Trial No. 685 of 1998 is P.W. 3 in Sessions Trial No. 273 of 2000, who has been declared hostile in both the sessions trials.

(VIII) P.W. 8 Gorelal Singh in Sessions Trial No. 685 of 1998 is P.W. 2 in



Sessions Trial No. 273 of 2000, who has been declared hostile in both the sessions trials.

(IX) P.W. 9 Santosh Kumar Singh in Sessions Trial No. 685 of 1998 is P.W. 7 in Sessions Trial No. 273 of 2000.

(X) P.W. 10 Karyanand Singh in Sessions Trial No. 685 of 1998 has not been examined in Sessions Trial No. 273 of 2000, who has been declared hostile.

(XI) P.W. 11 Sheelam Devi in Sessions Trial No. 685 of 1998 is P.W. 5 in Sessions Trial No. 273 of 2000.

(XII) P.W. 12 Surendra Rai in Sessions Trial No. 685 of 1998 is P.W. 9 in Sessions Trial No. 273 of 2000, who has investigated the case.

(XIII) P.W. 8 Dr. Krishna Mohan Purvey in Sessions Trial No. 685 of 1998 is P.W. 8 in Sessions Trial No. 273 of 2000, who conducted the post mortem examination on the dead body of the deceased.

Now let us examine the evidence of both sets of common witnesses side by side to understand the different facets of point that has been raised in the present appeals.

P.W.1, Raja Ram Singh, in Sessions Trial No. 685 of 1998, has stated that on 29.08.1997 at about 7.15 A.M. while he was going to open his shop, near Shivala heard 'Hulla'. He went there on running where he saw that Amir Singh, Ranjit Singh, Munna Singh, Manoj Kumar were present. Arun Singh was



carrying pistol and using filthy language against Dharmendra. Amir Singh and Ranjit were carrying the rifle and Munna Singh was holding piece of brick. Manoj Kumar was also there. The accused persons were engaged in discussion with victim Dharmendra. Arun Singh exhorted to kill the victim, whereupon Ranjit Singh fired from his licencee rifle, which hit the elbow of the victim. Amir Singh fired two rounds, one firing missed and other firing hit the left side of abdomen, whereupon Dharmendra had fallen down and ultimately, he died. Thereafter, the accused persons fled away towards east. The cause of incident was in connection with uprooting '*Khesari*' and also hot discussion during auction for the fisheries relating to water channel. Ranjit Singh was carrying his licencee rifle and other rifle was of Nawal Kishore Singh. He has identified the accused persons. Accused Ranjit was in dock.

In his cross-examination, he has stated genealogical table of his family. Dharmendra was his nephew. He has stated that he has four brothers. Suresh Singh, Santosh Singh and Devendra Singh are his brothers. Santosh Singh, who is the informant in the present case, is his son. The deceased Dharmendra was son of Surendra Singh. Sheelam Devi is the wife of Santosh. Sujit Kumar is the brother of deceased,



Dharmendra, who lives in the village. Sheelam Devi is one side of 'Aangan' and Dharmendra and Sujit are in another side. The house of this witness was hardly 200 yards in between the, house of Brijnandan Singh and Kanti Devi falls. Shivala is hardly 150 yards from the house of Dharmendra towards east and southern side and his house is hardly 350 yards from the Shivala and near Shivala, Dalan of the accused persons is there where he opened the poultry farm. Shivala is at present deserted, there is no idol for last 20 years. The idol of the Shivala had been kept in Devi Asthan. Earlier the land where the poultry farm has been opened was a part of Shivala. The house of the accused person is hardly 200-250 yards east from Shivala. Near Shivala, the house of Hardev Narayan is existing, whereas house of Damodar Upadhaya is adjacent to Shivala. The house of Prahlad Singh is just south of Chandra Prabha. The two houses were there within the radius of 100 yards of Shivala. Within 200 yards of radius, house of Navin Upadhaya and Shiv Shankar Singh were existing. The village is densely populated having several houses. His shop is 700-800 yards from his house. There are two ways to go to the shop, the short cut is through 'Bhith' as it is 50 yards less and his shop is hardly 700-800 yards from his house. He has denied the suggestion that



from the side of Shivala, the distance of the shop is one kilometer, whereas through '*Bhith*' is hardly 200 yards. Dharmendra and his brother Sujit were married. There is no dues of any money against Dharmendra and Sujit nor he has ever made any claim. He has stated that he has not seen the licence nor he does not know the bore of the rifle. He has denied the suggestion that rifle of Ranjit Singh had been deposited in Biharsharif on 20.02.1996.

In his further cross-examination, he has said that Dharmendra was carrying three criminal cases, one litigation was with Munna Singh, another was with Damodar Singh and third one was connected with the college. The case related to the college, this witness and his two brothers were the accused whose number was 614 and though he is remembering the name of parties but not the case number. It is not a fact that Dharmendra was in the gang of Chutkul Pandey. He was not remembering as to whether Dharmendra was an accused in Sheikhpura (Mehus) 291/94 and 149/95. He was not remembering the alleged date of occurrence relating to Munna Singh in which he is not a witness. He has not remembered as to whether the occurrence was of the year 1994, both sides had lodged the case against each other. The case lodged by



Dharmendra in which final form was submitted by the police. With respect to the case lodged by Munna Singh was still going on. Amir Singh was the Mukhiya of the Panchayat, not a Sarpanch nor a Panch. Beating of drum was organized on the direction of the Mukhiya. He has stated that he has not seen the document of the Panchayat. Rest portion is not relevant as he was not remembering who was the person beating drum. Dharmendra had said that he would participate in the auction. The police station is hardly 600 yards from Shivala. After the incident, his son Santosh had informed the police with respect to the occurrence, whereafter 20-25 minutes, the Officer-in-charge came and on the date of occurrence his evidence was not taken by the police, but he had given his statement before the police on next date, further said that he had not given the statement to the Dy.S.P. and he denied the suggestion that before Dy.S.P. he had made statement that he had reached to the place of occurrence after the occurrence was complete. The firing was made from the distance of 5-6 yards hardly. Amir Singh made firing from 8 yards. No one had made firing from the close range and from the place of occurrence, empty bullet was not found nor brass side of the bullet was found. He was hardly 15-16 yards away from Dharmendra. The accused persons



surrounded Dharmendra. He does not know on which direction respective accused persons were there. They surrounded the victim within the radius of 4-5 yards and no one has caught the leg of the victim. The people of village were hardly 15-16 yards away and he has denied the suggestion that no such occurrence had taken place and he also denied that he was director of the case and also denied that the victim was a criminal and the person named in the FIR has wrongly been dragged in the present case.

P.W.4 Raja Ram Singh in Sessions Trial No. 273 of 2000 has stated that the occurrence took place on 29.08.1997 at about 7.15 and it was Friday. He was going to his shop from his house. When he reached to Shiwala, he saw Dharmendra Singh and Amir Singh and Ranjit Singh armed with rifle and Munna Singh was holding the piece of brick and all were abusing Dharmendra. Dharmendra asked them not to abuse, by that time, Arun Singh armed with pistol came and exhorted to kill him, whereupon, Ranjit Singh pointed his rifle towards Dharmendra. Dharmendra tried to save but he made firing, first did not hit him and second hit the right hand elbow and just thereafter, Amir Singh resorted firing which caused the injury to the (abdominal party) lower part of chest (*Panjara*), as a result of



which, Dharmendra fell down, whereupon Arun Singh stated to flee saying that he had died, whereafter, all accused persons fled away. Thereafter, persons present rushed to Dharmendra, by that time, Dharmendra died. On alarm, several persons came where Pankaj, Santosh and Manoj were present from before. Rifle was licensee. The cause of occurrence was uprooting the *Khesari* which resulted in scuffle added the allegation of auction for fisheries in which Amir Singh had a dispute with Dharmendra. He identified Amir Singh, who was present in the court.

In his cross-examination, he has stated that when this case was instituted, he engaged his lawyer and got his 164 Cr.P.C. statement recorded along with his sons and relative. He was not remembering whether the police had got the statement recorded. He has said that it is not a fact that the police after investigation did not find the case to be false, whereafter said that Munna Singh and Amir Singh were not sent up to face trial, but later on, the court has issued summon as *prima facie* the case was found true, further stated that earlier also he has deposed in the court with respect to the present case and it was the second time, he deposed. He said that it might be possible on earlier occasion, he had stated that there was hue and cry in the Shivala, whereupon he had rushed to reach there. In the present



matter, wife of the deceased, brother, sister, father and mother are not the witnesses, later on, his son filed a petition in the court for issuing summon to Arun Singh and Munna Singh. Pankaj Kumar is the son of this witness. The occurrence took place at a distance of about 150 yards from the house of Dharmendra on northern direction near the Siwala. His house is situated at a distance of 200 yards from that place. He has stated that his house is 300-350 yards from the place of occurrence. The incident took place in his presence. He did not get a chance to pacify the situation and he did not take any effort. At the time of occurrence, the police station was at Mehus. He does not know in what manner the police had received the information, but Officer-in-charge had reached the place of occurrence before 7.45 A.M. About 2-3 years earlier, there was scuffle between Munna Singh and Dharmendra with respect to plucking of *Khesari* and both sides had lodged case against each other. Dharmendra carried 3-4 cases over his head.

In his further cross-examination, he has stated that he cannot say by which time Dharmendra was standing at the place of occurrence. Before he reached to the place of occurrence, the accused persons, namely, Amir Singh, Ranjit Singh and Munna Singh were present, but he could not say by which time before



they were present. Ranjit and Amir were holding the licensee rifle and he was not knowing that uncle of Ranjit was possessing licensee rifle, but he does not know in whose name the licence has been issued and further said that he cannot say who was the licence holder of the second rifle. He cannot say that the rifle, which was used by Amir Singh, was sent for forensic examination as the rifle was not impounded. 1-2 round of firing was made from both the rifle, from one rifle, only one firing was made. At the time of post mortem examination of Dharmendra, he was present. One bullet was recovered from right hand side of the elbow. When Dharmendra received the gun shot injury, he was near to cement pole, which width is 1 feet. On receiving the gun shot injury, he fell down. The firing was made from the distance of 7-8 yards and he had seen the mark of burn surrounding the injury. He does not remember that on which side of the body received injury; right side or left side and he has denied the suggestion that the firing made by Ranjit hit the elbow and later on *Panjara* and also denied the second round of firing. Munna Singh has three sons, namely, Amir, Ranjit and Arun Singh. At the relevant time, Munna Singh was alive. He has also denied that on account of firing of Ranjit, all four persons have been implicated in the said case. This was the



time for going to his shop and used to go to the shop. It is wrong to say that family of Munna Singh was waiting as to when he would reach there, then only he would resort firing. At the time of incident, no family members of Dharmendra was present, but were available in the house, later on, they came. After the death, his wife caught hold the dead body and started weeping, bloodstained was also in her cloth and her statement was not recorded by the police nor made statement in the court. After the death, his brother also came and his statement was also not recorded. No *panchayati* was held with respect to the present case as at the relevant time, Suprabha Devi, wife of Jai Ram Singh was the Mukhiya. It is wrong to say that in the Panchayati, he and husband of Mukhiya was present. Dharmendra has a daughter, who came with mother, who was entered into the second marriage and he has no concerned with her relatives. Apart from his family members, Rajballabh Sharma, Gore Lal Singh, Ram Sagar Singh, Prasadhya Narayan Singh etc. were present. He said that he does not know whether they would support his stand or not and he has also denied that he has stated a framed story. He also denied that except Ranjit no family member was present. He also denied that the story of occurrence is not correct and that is why only his family



member did not the witness of the case and further said that for his own benefit, he has kept the family members of Dharmendra away from the case. He also denied that he has given wrong statement.

P.W. 2 Pankaj Kumar has been examined on 29.08.2000 in Sessions Trial No. 685 of 1998 and has stated that on 29.08.1997 at about 7.15 A.M., the incident took place. It was Friday. At that time, he was sitting at Shivala. Dharmendra Kumar, Santosh Kumar, Gorelal Singh and Manoj Kumar were gossiping and Dharmendra was preparing Tobacco. In the meantime, from eastern direction, Amir Singh and Ranjit Singh armed with rifle and Munna Singh holding a piece of brick came there and started hurling abuses, by that time, Arun Singh jointed also started abusing Dharmendra. Dharmendra requested not to abuse him, whereupon Arun Singh exhorted for killing Dharmendra, in turn, Munna Singh threw a piece of brick, after that, Ranjit Singh pointed gun towards him, whereupon, Dharmendra tried to hide himself behind the electric pole, whereupon he resorted firing, which hit the right hand elbow. Amir Singh had made two firings, one firing was missed and in another firing, Dharmendra received the bullet injury in the right side of *Punjara*. Dharmendra fell down there at once and,



ultimately, he died. Thereafter, all accused persons fled away from there. The cause of dispute was plucking of *Khesari* generated to lodging the criminal case preceded by scuffle. Before incident, there was hot discussion with respect to auction of fisheries. He said that he has given the statement before the police as well as before the Magistrate under Section 164, bears his signature which was marked as Exhibit 1.

In his cross-examination, he has stated that Dharmendra was his cousin. They have separated five years ago in all manner. There is hardly 100 yard distance between the two houses. He used to live with his father and his father has also deposed in the matter. The police has not got his statement recorded under Section 164 statement, rather on his own appeared before the Magistrate and made his statement under Section 164 Cr.P.C. He did not remember the date of application, but within two months from the date of occurrence. His father, Santosh Kumar and Gore Lal Singh also made 164 statement. They had also made the statement before the police. On the date of occurrence, statement was recorded by the police. On receipt of the copy, he read the contents made in the case diary, but he does not remember after how many days he read. He said that he has not put his signature in the court about the



occurrence of his statement. At the time of occurrence, Dharmendra was preparing tobacco and did not consume at the relevant time. He was not remembering whether tobacco remained in the hand of the deceased or it had fallen down. Tobacco was preparing using lime and consumed after borrowing the same, but not remembering who had demanded.

In his further cross-examination, he has stated that Dharmendra was one and half bigha land and his father has also the same land. The accused persons have 15-20 bigha of land and they are at the same family. He cannot say the exact age of Munna Singh probably 65 years. On the date of occurrence, Dy.S.P. came, but his statement was not recorded before him. Arun Singh armed with pistol came there started hurling abuses. Dharmendra objected, whereupon he exhorted to kill Dharmendra. Munna Singh had thrown a piece of brick, he has stated before the police. They resorted firing one by one not at the same time. Amir Singh had made two firings, one by one. He had not seen the empty cartridge on the ground. No other person was injured. He had not seen the gun powder on the ground. Firing was made from a distance of 8 yards. It was not a close range firing. He did not flee away looking to the accused persons. He was 25 yards away. They were not afraid to see the



accused persons holding the firearms. They were not knowing that this incident would take place. He has no grudge or animosity with the accused persons. Dharmendra was also an accused in 3-4 cases. He had gone to jail twice. Munna Singh had also lodged a case against the deceased and the deceased had also lodged a case against Munna Singh with respect to plucking of *Khesari*. Both sides had filed criminal cases against each other. The case filed by Dharmendra was made final. The case lodged by Munna Singh was still alive. He had no knowledge about the bank account nor he had knowledge about his solvency. He had never given money to him. The mother of Dharmendra was in Vidyapeeth where she used to look after the students. He did not know the income of the family. The dispute of the fisheries was not occurred before him, Santosh had told him. The auction of fisheries used to be held every year. On previous year, Amir Singh had taken auction and that year also, auction was given in favour of Amir Singh, only 10 days before the auction was completed. Auction was conducted by Mukhiya and he could not give the details of auction. He has denied the suggestion that he was not the eye witness to the occurrence.

P.W. 2 Pankaj Kumar has further been examined on 23.08.2003 in Sessions Trial No. 685 of 1998 and has stated that



on 29.08.1997 at 7.15 A.M, the incident took place. At that time, he was near the Shivala. He saw that Santosh Kumar, Manoj Kumar, Gorelal Singh and Dharmendra Singh were gossiping. During gossiping, Dharmendra Singh was preparing tobacco. In the meantime, from the eastern direction, Amir Singh, Ranjit Singh and Munna Singh came. Amir Singh and Ranjit Singh were holding licencee rifle. Munna Singh was holding piece of brick. All three persons were hurling abuses. Arun Singh came with pistol and started abusing him and whereupon Dharmendra had obstructed for hurling abuses, whereupon Arun Singh exhorted to kill him, thereafter, Munna Singh had thrown piece of brick towards Dharmendra. In the meantime, Ranjit Singh had pointed gun towards Dharmendra. Looking this, Dharmendra tried to hide himself behind electric pole, by that time, Ranjit Singh fired, which caused injury in the right elbow and just thereafter, Amir resorted firing upon Dharmendra, one bullet caused the injury on the right side of *Panjara* and bullet went outside the body. On receipt of gunshot injury, Dharmendra fell down and, ultimately, he died. Looking to this, Arun Singh told all accused persons to flee away from there, whereafter, all the persons fled away towards eastern direction. The incident took place on account of the fact that about 2-3



years earlier, there was scuffle between both sides with Dharmendra as Munna Singh had plucked *Khesari* and about 8-10 days earlier, there was auction of the fisheries in which hot discussion with Dharmendra took place. He identified Ranjit Singh.

In his cross-examination, he has stated that Shivala is situated north of his '*Tola*'. Shivala is situated in north east corner at a distance of about 200-250 meters. Dharmendra was his cousin. At the time of occurrence, he was present there. On death of Dharmendra, he did not touch the body. He remained one feet away from the dead body. Dharmendra had fallen down and died. There was no question of giving water to his mouth. The accused persons surrounded Dharmendra. He did not weep catching the body of Dharmendra. He did not receive blood mark on his body nor in his leg. Where Dharmendra had fallen, he saw bloodstained on the body of witness. He saw bloodstained on the body of Santosh and one woman, but he did not remember the name of that lady, but certainly she was his aunt. They had touched the body of the deceased, on that account, sustained the blood mark in their body. He had given his statement to the Officer-in-charge and, had also taken the name of Arun. He does not remember that any dispute took



place in between the parties with respect to plucking of *Khesari* and auction of fisheries. He was not frightened looking to the accused persons armed with rifle. When the accused persons came, he did not try to flee away from there and none had fled away from there. The accused persons were hurling abuses, which was being objected by Dharmendra, wrangling took place for ½ minute, from that period, he did not try to flee away. At the time of occurrence, he was at a distance of 10 yard from Dharmendra and accused persons were hardly 6-8 yards from the Dharmendra. The accused persons were in south eastern direction. The accused persons were at distance of 6-8 yards from Dharmendra. He told the Officer-in-charge that later on Arun had come armed with pistol and said before the Officer-in-charge that Arun had said to kill Dharmendra and further stated that he made statement before the Officer-in-charge that on the instruction of Arun, Munna had thrown the brick. At the beginning of the incident, Dharmendra was 6-7 yards from the pole. Dharmendra received the injury before reaching to the electric pole. Dharmendra received injury hardly away one yard from the electric pole. He had stated before the police that Ranjit and Amir had resorted firing from their rifle upon Dharmendra and one bullet hit the right side of the body which



crossed his body. He denied the suggestion that he had not seen the incident and also denied that no one had seen the occurrence and further denied that on account of old enmity, he made a wrong statement.

P.W. 6 Pankaj Kumar has been examined in Sessions Trial No. 273 of 2000 and has stated that the incident took place on 29.08.1997 at about 7.15 A.M. He was sitting near Shivala along with Santosh Kumar, Gore Lal Singh, Manoj Singh, Dharmendra Kumar and other two to four persons. They were gossiping each other. Dharmendra was preparing tobacco. In the meantime, from eastern side, Amir Singh, Ranjit Singh armed with rifle, Munna Singh having piece of brick in both hands came there and started abusing Dharmendra. Arun Singh followed him with pistol was hurling abuses, which was objected by Dharmendra and asked that why they were doing so, whereupon, Arun Singh told to shoot him down, thereafter, Munna Singh threw the brick and just, thereafter, Ranjit Singh had pointed out gun. Looking to this, Dharmendra tried to save, hide himself behind the electric pole, but by that time, Ranjit Singh had fired from his rifle, which caused injury to the right elbow and just thereafter, Amir Singh resorted two firings, one firing caused injury to the right side of *Punjara*, whereupon, he



fell down and, ultimately, he died, whereupon Arun Singh told that Dharmendra had died and now to flee. Thereafter, all the accused persons fled away towards eastern direction. The cause of dispute had taken place on account of plucking of *Khesari*, which led to scuffle between them and case and counter cases were lodged. 7-8 days before, there was auction with respect to water body for fishing in which both sides were exchanged abuses. Amir Singh was identified. Earlier he has given his statement under Section 164 Cr.P.C. and further said that in another case he had also deposed. The inquest report of the deceased was prepared in his presence.

In his cross-examination, he has stated that the informant is his brother. When the police recorded the statement of Santosh, he was present and he heard his statement. He has stated that it is correct to say that in his earlier deposition, he has stated that, at that time, he was near the place of occurrence at Shivala. The statement, which his brother has given in the case, is correct, but he does not remember each line of his statement. It is not correct that on hearing '*Hulla*', he along with others came there and saw the occurrence. His brother and father were there together. They have four bighas of land. After the occurrence, thousands of people came there. At the time of



incident, 2-4 persons were also there. The house of the deceased is situated at some distance from the place of occurrence i.e. about 50 yards. There is house of Sheelam Devi. Just after the house of deceased, there is house of Deo Narain and side by side the house of Prahlad Singh is there. In the present case, Bhurelal is also one of the witnesses. He has also been residing in the old house. Near to Shivala, the house of Damodar Upadhyay is standing, but his house is locked and none of his family members are residing. No worship is being observed in the Shivala. The dead body of Dharmendra fell down at a distance of 2-2.1/2 feet south from the electric pole where there is drainage on the south and eastern side and one who crossed the drainage requires some support. The house of this witness is not situated near Sivala. It is just a chance that he was present there and his father was also present there, who came at the time of incident. He has given his statement to the police on 29.08 near the Shivala. He has not stated that after meeting he had left. Three firings were made upon Dharmendra and one bullet crossed the body and second bullet also crossed the body, but could not be traced. He had not attended the post mortem. At the place of occurrence, abuses were not going from before, but the accused persons came started abusing and incident started, there



was no chance of intervention. All the accused persons are father and three sons. After the incident, no one came from own family of Dharmendra and he is not remembering how many women were present from before the incident. Sujit Kumar is own brother of Dharmendra. He was also present in the court. When firing was made by rifle, he and others did not try to flee away as they were not frightened. The occurrence took place in the duration of 2-3 minutes and, thereafter, the accused persons fled away. When Dharmendra received injury, he was at a distance of 10-20 feet from him. From a distance of 6-7-8 yards firing was made and the bullet, which hit the deceased, was bit away. The bullet was received by the victim on the right side of *Punjara* and made an exit from the left side, but he had not seen from which direction the bullet entered and also made an exit. He was present at the place of occurrence from before. Raja Ram Singh came there after 20 minutes of their sitting at the place of occurrence. He cannot say the name of villagers except five who were present at the time of occurrence. It is not a fact that father and his brother had not seen the incident nor he has given a correct statement and supported the wrong stand.

P.W.9 Santosh Kumar Singh has been examined in Sessions Trial No. 685 of 1998 and has stated that he is the



informant of this case. On 29.08.1997 (Friday) at about 7.15 A.M, the occurrence took place. The informant, Dharmendra, Gorelal Singh, Manoj Singh, Pankaj Singh were sitting in village near Shivala. Ranjit Singh, Amir Singh, both holding the rifle and Munna Singh holding the brick came from eastern direction and started hurling abuses. Arun Singh came there with pistol. Dharmendra Singh objected of hurling the abuses, whereupon Arun Singh exhorted to kill Dharmendra, whereafter Munna Singh pelted the piece of brick over Dharmendra, whereupon Dharmendra Singh tried to hide himself behind the electric pole, whereupon Ranjit Singh fired which hit the elbow of Dharmendra Singh and just thereafter, Amir Singh made two rounds of firing, one hit the lower side of the chest (*Panjara*), thereafter, Dharmendra fell down and died. Arun Singh asked to flee as he had died, whereupon, all the four accused persons fled away. The cause of incident was that earlier there was a dispute with respect to plucking of *Khesari* and since then they were not in a good terms. About 8-10 days before, in auction of '*Aahar*', Amir Singh made statement that no person would enter into in auction, but Dharmendra wanted to participate, on that account, dispute arose. This time, they killed Dharmendra. He recognized Amir Singh and Ranjit Singh. He told that when he was going



towards the police station, the Officer-in-charge met him in the midway. He came to the place of occurrence, recorded his statement, read the same and, thereafter, he put his signature and in his presence, Prishidhya Narayan also put his signature, which have been marked as Exhibits 4 and 4/1.

In his cross-examination, he has stated that dispute of plucking '*Khesari*' was not taken in his presence. He was present at the time of auction of '*Aahar*' as he was interested for the same. He has stated that name of his grandfather is Anandi Singh. He has four sons, namely, Surendra Singh, Rajaram (his father), Satish and Devendra. Surendra had two sons, namely, Dharmendra and Sujit, both lived in village. Devendra Singh was a deed writer in court and mother used to stay in house. Mother of Dharmendra is working at Balika Vidyapeeth, Lakhisarai. On the date of incident, she was not in the village. The wives of Dharmendra and Sujit are own sisters. Dharmendra has one daughter. The wives of Dharmendra and Sujit and mother of Sujit are not the witnesses in this case. He does not know their whereabouts, wife of Satish, namely, Sheelam Devi is a witness. There is none in the family of Dharmendra. He has denied the suggestion that he has made a wrong statement that wives of Sujit and Dharmendra and



mother were present on the date of incident, at present the wife of Dharmendra was living at Belhar and she has entered into the second marriage. It is not a fact that they have persecuted and expelled her from the village. Mukhiya had gone to take her back, after the incident, the wife of Dharmendra and wife of Sujit have entered into the second marriage, whereafter he has partially retracted that wife of Sujit is staying in the village. Already a separation in the family of his father has taken effect 2-3 years earlier. The alleged place of occurrence is 100 yards from the house of Dharmendra and the same is not directly visible from his house as houses of other persons fall, but from the roof, place of occurrence would be visible. The house of the informant is hardly 250 yards from south west from the place of occurrence. At the time of occurrence, for 2-3 minutes hot discussion took place between them. In the meantime, apart from the informant, father and others remained standing. He failed to give the name of all persons, but it is said that he had seen Gorelal Singh, Manoj Singh, Rajaram. Amir Singh remained absconded. When he remained in jail then only the witnesses would give their evidence. He himself said that due to terror, he remained in Sheikhpura and in any way he is giving evidence. It is not a fact that for compromise, his father namely



Rajaram Singh claimed Rs. 2 lacs and the money was deposited to Mukhiya Jai Ram Singh that he would not support the case. When the mother of Dharmendra had demanded the money from Mukhiya then Raja Ram said that he has filed the case, hence, he would take the money. He said that he is unemployed matric pass and his brother is also unemployed. Father is staying in the village. There is no idol in the Shivala, which turned to ruins. The houses of Damodar Upadhaya, Jahar Singh and Hardev Narayan are adjacent to Shivala. There are no fighting. Their family members would have seen the occurrence. He said that he does not know as to whether Dharmendra was an accused of kidnapping, murder, extortion case. He does not know that any case of dacoity is pending against Dharmendra. The electric pole is hardly 3-4 feet away from the house of Chandra Prabha Devi. He was hardly 10 yards away from the place of occurrence. No missed firing was made before the bullet hit the deceased. He has seen about the hitting the bullet to Dharmendra. Dharmendra received the bullet hardly 2-3 feet away from the electric pole. He fell down and died. The police has seen the dead body of Dharmendra and he had not touched the body, though he was willing, but not touched the dead body. The dead body was not shifted. At that time, Dharmendra was



wearing '*Ganji*' and trouser and he was also wearing black colour '*Badhi*' in his neck. There was two holes in the '*Ganji*' stained with blood and he cannot say the size of hole in '*Ganji*', but from both sides of '*Ganji*', there was hole. The bullet received in the elbow remained inside. The second bullet hit the below chest (*Panjara*) and the bullet has entered into the body and came out from the back side. He was not present at the time of post mortem. Both the shots were made in difference of a minute. When he received the bullet injury in the hand, he did not bow down and not moved. He is not remembering that the police has seized the smeared '*Ganji*', but the police has collected the bloodstained soil. The road is made of stone and soil, but it was not carpeted. In his presence, the police has seized. Ranjit had fired one bullet which caused injury in the hand. Amir Singh fired two shots, first bullet missed and he does not know where it has gone and another shot hit the body of Dharmendra. Firing was made from a distance of 7-8 yards. Before that from 15-20 yards they came started hurling abuses. After abusing, Dharmendra had not tried to go away from there. Dharmendra was not carrying the good relationship with the accused persons. It is not a fact that in order to extort the money, father and two brothers have filed a false case against them



which has been endorsed by the police. When the mother of the deceased said that she will take the money, whereupon this false evidence has been given, hence, no family member came out to support the criminal case nor came to the court. It is not a fact, as Damodar has not supported, then this witness and his family members have assaulted resulted into lodging of Sheikhpura P.S. Case No. 113/05.

P.W. 7, Santosh Kumar, who is the informant of this case, has been examined in Sessions Trial No. 273 of 2000 and has stated that the incident took place on 29.08.1997 at about 7.15 A.M at Shivala where the people used to sit in the morning and evening. When, Dharmendra was preparing tobacco, at that time, from eastern side, Ranjit Singh, Amir Singh, both armed with rifle, Munna Singh holding with piece of bricks, came and started hurling abuses, which was objected by Dharmendra, thereafter, Arun Singh came from behind armed with pistol, and exhorted to kill him, whereupon, Munna Singh threw the brick upon the deceased. Ranjit Singh pointed his rifle towards Dharmendra. When Dharmendra started fleeing, he fired which caused injury on the elbow of right hand and to save himself, he moved towards the electric pole, by that time, Amir Singh made two firings and one of the firing caused injury at the right



Panjara, as a result of which, he fell down and died, whereupon, Arun Singh said that Dharmendra has died, to flee away from there, thereafter, all the accused persons fled away. The cause of dispute was of plucking of *Khesari* for that a case is running. About 8-10 days before, there was a dispute with respect to auction of fisheries and he has made correct statement to the police and had put his signature. Prasad Narayan Singh and Ram Sevak Singh have also put their respective signatures as witness. It is the photocopy of his fardbeyan, which was marked as Exhibit as the original copy has been lying with the High Court. He identified Amir Singh, who was present in the court.

In his cross-examination, he has stated that his house is not at the place of occurrence. Dharmendra was his cousin. Both were not living together. First firing was made by Ranjit which hit right side elbow and the said injury was caused from inside portion of elbow and the bullet remained inside. Firing was made by licensee rifle at a distance of 8-10 yards. Ranjit Singh had not made second firing. Amir Singh fired twice; first shot was missed and he cannot say where the bullet had gone and the second bullet caused injury which pierced the body of Dharmendra. As per his observation, only one bullet remained



in the body. He has observed three injuries and he had not seen the black mark in the body. When he received the injury, the deceased shout why are doing so. By that time, second shot was made, which hit abdominal portion of the body. He was not wearing any garment in the hand, only he was wearing the '*Ganji*' and there was hole on both side of '*Ganji*' stained with blood. He had not participated in the ritual of Dharmendra. He did not show the '*Ganji*' to the police which Dharmendra was wearing. He cannot say as to whether the police saw the said '*Ganji*' by taking out the same or not. After the dead body was taken on the police station, his clothes were changed and he cannot say what happened to the said '*Ganji*'. The younger brother of Dharmendra is Sujit. The wife of Sujit is own sister of the wife of Dharmendra. At present, wife of Sujit is residing in the house. Dharmendra has one daughter. He cannot say the age of daughter of Dharmendra at the time of occurrence. He had deposed earlier also. He has not deposed that the wife of Sujit had left him and entered into the second marriage with another person. In his earlier deposition what he has stated about the wife of Sujit, he did not remember. The mother of Dharmendra is still alive. No family member of Dharmendra is a witness in the present case, but he and others also are his own person. His



father has four brothers, out of them, the family members of two brothers are the witness in the present case. The father of the deceased died much earlier. The house of this witness is situated at a distance of about 200 yards from Shivala. At the relevant time, as per usual routine, he was sitting there with '*Datoon*'. At the relevant time, he was wearing watch. Now he is keeping mobile and left keeping watch, but he has not got recorded the same. He said that he is not remembering that he had said that at 7.15 he was sitting along with Dharmendra at Shivala and was chewing tobacco. At the place of occurrence, Munna Singh along with three sons came there and no other persons came from his family. Arun Singh had not resorted firing from his pistol. Munna Singh threw piece of brick and entire occurrence took place within 4-5 minutes.

In his further cross-examination, he has stated that much earlier one case was lodged against him, his father and Dharmendra. He cannot say who lodged the said case. Dharmendra might be an accused in a case of kidnapping and extortion. Dharmendra used to chew tobacco. The police has not seized the box of tobacco nor this witness had shown the same to the police. He cannot say that the police has recorded in the inquest report about the tobacco in the mouth. He is not



remembering as to whether the police had firstly prepared the inquest report or firstly recorded the statement. The piece of bricks thrown by Munna Singh was not seized by the police. Before taking shelter of electric pole, Ranjit fired at Dharmendra. Arun Singh came there after one or two minutes. He cannot say at which time the dead body of Dharmendra was sent from Mehus to Munger. He could not get time to intervene in the matter of dispute. When Dharmendra received the bullet injury, he was at a distance of 10-15 yards in the western direction from Shivala, where there is electric pole and there is circle. One road goes towards southern side. It is wrong to say that the police has found the case to be false. In the present case, from the beginning, they are the accused persons. First he had given the statement under Section 164 Cr.P.C. keeping his own advocate before the CJM. He had given the statement at the time when the case was lodged. He had not given any evidence at Munger and he was not remembering in which case he made deposition and if he has said in the statement that at the time of occurrence, on 'hulla', Rajaram and Pankaj came, the same is not fully correct. Pankaj was present from before. About 3-4 years earlier, a dispute with respect to plucking of '*Khesari*' had taken place with Munna Singh for which a case was lodged. The



auction of fish was conducted near the Shivala under the supervision of Mukhiya. Dharmendra was not allowed to participate in the auction. He does not know whether he had deposited the reserved money for participating in the auction. He has no documentary evidence to participate in the auction. Apart from the said dispute, there was no other dispute to his knowledge. The wife of Dharmendra is own sister of first wife of Sujit. After the death of Dharmendra, Sujit has entered into the second marriage. The house of Dharmendra is about 100 yards south from Sivala and house of accused is 150-200 yards towards east and Manoj was witness nonelse, but Manoj did not depose in the court. He cannot say that at the time of incident, it was raining. Before auction, dispute arose which was known to him. He has denied the suggestion that the incident had not taken place at 7.15 in the morning. He has also denied the suggestion that he was not present at the time of occurrence. He has also denied the suggestion that for extracting money, his father had lodged false case and gave a false statement and also rejected the suggestion that the deceased had died before the incident.

In his further cross-examination, he has recognized his signature on the *fardbeyan* and in his presence Prasadh



Narayan Singh had also put his signature, which was marked as Exhibits 2 and 2/1. The Police took half an hour for recording his statement. He was not remembering the time when he was put his signature. Before that, the Inspector of police had read over the contents to him and himself read the same, which took three to four minutes. He put his signature by the side of road taking pen from one constable and Officer-in-charge also put his signature. At that time, he was at a distance of 10 'deg' from the dead body. At the time of his signature, the younger brother of the deceased Sujit Kumar was present there. He is 4-5 years elder to Sujit. When he put his signature, his father Rajaram was also present there. It is not a fact that he himself volunteer to get his statement recorded and to take his signature. It is wrong to say that after due consideration, he put his signature at Mehus police station.

P.W. 11 Sheelam Devi has been examined in Sessions Trial No.685 of 1998 and has stated that on 29.08.1989 at about 7.00 O' clock, the occurrence took place, she was in the house. She heard noise in loud at Shivala. She went there and saw Arun Singh, Munna Singh, Ranjit Singh and Amir Singh were wrangling with Dharmendra. Munna Singh threw the piece of brick upon Dharmendra. Ranjit Singh fired at him, whereupon



Arun Singh and Munna Singh said to kill him. Amir Singh fired two round which hit Dharmendra and died there and they fled away. She identified accused Arun Singh and she claimed that she could identify rest accused.

In her cross-examination, she has stated that she heard quarreling and she did not hear at the house about the killing of Dharmendra. She was hardly 20-25 hands away from the place of occurrence. On that day, mother of Dharmendra, his wife and sister-in-law of Dharmendra were not present in the house. If they would have been available then she would not have been there. Both sisters were in '*Naihar*' and mother of Dharmendra had gone to working place at Vidyapeeth. At present, wife of Dharmendra and her sister-in-law are in '*Naihar*'. The wife of Dharmendra has entered into the second marriage, but she used to come Mehus. The younger brother of Dharmendra was in the house on the date of incident. At present, he lives in alone. At that time, Dharmendra had a daughter. Her name was Anshu aged about 1-2 years. Sujit did not have any issue. It is not a fact that on the date of occurrence, both brothers and their respective wives including mother were present there. Today, Rajaram Singh has not come to court for his evidence. Amir Singh has only one son, who had died. It is



not a fact that Raja Ram had killed him. The house in which she lives, Raja Ram does not stay rather he has '*Pucca*' house where he lives. She had not only heard the sound of three round firings but saw firings. Raja Ram Singh, Pankaj Kumar, Santosh Kumar, Gorelal Singh, Manoj Kumar were present at the place of occurrence, whereafter she started weeping, who had arrived there, she could not say. Visitors were the family members. No firing was made upon them. Looking to the weapon, all the persons tried to save their respective lives and how this woman could do anything. At the time of shot, she was present as no family member was there. She gave her statement to the police where she has stated that Amir Singh had resorted firing upon Dharmendra. Dharmendra had enmity with Munna Singh, Amir Singh, Ranjit Singh on account of uprooting the '*Khesari*'. She does not know about the case. Dharmendra was living in the village home. He was not doing anything. Other agnates are living there in vicinity. Her husband has four brothers, are living separately. She volunteered that 1-2 persons used to give their evidence not the entire village. It is not a fact that the incident had not taken place and on that ground no one has come forward to give evidence. She does not know that Raja Ram had participated in the '*Panchayati*' and according to the agreement



Rs. 2 lacs was to be deposited with Raja Ram, Mukhiya. It is not a fact that stand of Raja Ram was that all the money would be paid to him, whereas mother of Dharmendra and Mukhiya wanted that the money would go to her. It is not a fact that the money was not paid, on that account, she has given a false evidence.

P.W. 5 Sheelam Devi has also been examined in Sessions Trial No.273 of 2000 and he has stated that the occurrence took place on 29.08.1997 at about 7.00 A.M. in the morning. At that time, she was present in the house. She heard the '*hulla*' of quarrel, whereupon, she went near Sivala and saw Munna Singh, Amir Singh and Ranjit Singh were abusing and Munna Singh threw brick upon Dharmendra, which hit Dharmendra. Both started quarreling. Munna Singh told to kill him, whereupon, Ranjit Singh fired one shot from his rifle and Dharmendra tried to save himself hide behind the electric pole, whereupon, Amir Singh fired, as a result of which, Dharmendra died. The reason of this incident was of earlier dispute. Today Amir Singh is present and she identified him.

In her cross-examination, she has stated that she has studied up to class 10. Apart from the present case, she has not deposed in any case earlier. She is not remembering the date of



her evidence. She had given the statement before the police on the date of incident and after a while of the occurrence, her statement was recorded by the police, but she is not remembering the time. She has denied that she is making false statement that she has given the statement to the police on the same day as she was present at Shivala. Just after her arrival, the incident took place, but she did not reply after what time her arrival the incident took place. Before her arrival, Santosh and Rajaram were present there. Rajaram is her elder brother-in-law (*Bhaisur*). She did not know Damodar Singh. She did not know about any case lodged against her husband or Dharmendra and also was not knowing criminal history of Santosh. Before the police, she has stated that she was present in the house and at the time of dispute, she was present at Shivala. On hearing '*Hulla*', she reached to Shivala. Neither her father-in-law nor her any member of family intervened to resolve the dispute, but were controlling Dharmendra, but the accused persons were holding weapon. Near Shivala, there is big mound of soil and after the said mound of soil, a road lies. Road is wider on the southern side of Shivala, on the southern side of road, electric pole is standing and the said road turns towards south side near Shivala. Road is east-west and there is drain by the side of pole.



Her house is situated after one house. She cannot describe the distance in yard. When she reached, she found Dharmendra was standing at electric pole and they were entering into the oral dispute. Dharmendra was her nephew (*Jaut*). She touched the dead body of Dharmendra and she received bloodstain on her cloth. At the time of occurrence, the wife of Dharmendra was not there. Blood had splattered at the place of occurrence and she was not remembering, blood was there at the electric pole. The police had come in her presence. The police had prepared papers at the place of occurrence. At that time, there was complete sunrise. She could not say with whom the police had made enquiry firstly and she could not say as to who had prepared the document and she had not given attention as to who had put the signature on the paper. She had not given the bloodstained *Saree*. Dharmendra received one injury in the stomach and she is not remembering which side. Her husband has four brothers. Apart from her husband, name of other brothers are Rajaram Singh, Surendra Prasad Singh and Devendra Singh. Her husband lives separately. Her house is separate. From the house of Satish Singh, only she is a witness. Rest witness are from the house of Rajaram Singh. No one from the family of the rest brother namely Devendra and Surendra



was present there. The house of Devendra Singh is at some distance from the said place, but is situated in village Mehus. It is wrong to say that near the house of Devendra Singh, there is house of Rajaram Singh. In between house of Devendra Singh and Rajaram, there is distance of 10 'Bans'. Her house and house of Surendra is at the same place and in between there is partition wall. It is wrong to say that she has not seen any occurrence herself. It is wrong to say that no occurrence had taken place as disclosed by her.

P.W. 12 Surendra Rai, who is Investigating Officer of this case, has been examined in Sessions Trial No.685 of 1998 and has stated that on 29.08.1997, he was Officer-in-charge of Mehus police station. He had received the information that Dharmendra Singh of village Mehus had been killed, whereafter, he along with A.S.I. Ram Pravesh Paswan proceeded for place of occurrence where he saw that the dead body of Dharmendra was lying, where he recorded the *fardbeyan* of Santosh Kumar, proved the fardbeyan which was read over to him and finding it to be correct, Santosh and Prishidh put their signature and Ram Pravesh had put his thumb impression, which has been marked as Exhibit 2/1. For registering the case, the same was sent to Officer-in-charge,



Sheikhpura. This was the forwarding letter, on that basis, Sheikhpura P.S. Case No. 210/97 has been registered against the accused persons and, later on, he took over the charge of investigation himself. At first he prepared the inquest report and, thereafter, the dead body was sent to Munger Hospital for post mortem. He had taken the restatement of the informant and inspected the place of occurrence. The incident took place Dakshin Tola of Mehus near the house of Late Hardev Narayan Singh in the eastern corner. The road, which is going in front of house of Hardev Singh, intersect at the road, which goes towards south and at the triangular circle, the electric pole is standing and he was informed the place of occurrence. The dead body of deceased was lying hardly two feet away towards south from pole, where a lot of blood was found. After 16 feet of the road, there is Shivala made of mound of soil. The house of Damodar Upadhaya was standing by the side of mound. In between the dead body of Dharmendra and house of Hardev Narayan, there is one drainage. The place of occurrence is 200 yards from the house of the accused persons. He had seized the bloodstained soil and prepared the seizure list, whereafter, he has taken statement of Santosh, Pankaj, Gorelal Singh and took restatement of the informant. Gorelal in his statement fully



supported the incident and took the name of the accused persons. On the next day, he took the statement of Raja Ram Singh, Manoj Singh, Sheelam Devi, Prashidh Narayan Singh and Ram Ballabh and all supported the incident. Sheelam Devi had stated about the arrival of Munna Singh and Arun Singh later on. He took the statement of independent witnesses, namely, Arvind Kumar @ Tuntun, Vijay Kumar on 02.09.1997 and they all supported the incident. He took the statement of Mritunjay Singh and Karyanand Singh and they partly supported and said that Munna Singh and Arun Singh came at the place of occurrence later on. He received the post mortem examination report on 12.09.1997 and recorded the same in the case diary. He received the supervision note of S.D.P.O. in which direction was given to arrest Amir and Ranjit and for rest of accused person directed for continuance of investigation. After completion of investigation, charge sheet was submitted against Ranjit and Amir under Section 302 IPC and 27 of the Arms Act and continued the investigation against rest accused person. As he was transferred, rest investigation was done by Md. Sakir Khan, who filed the supplementary final report in which rest accused persons were not sent up.

In his cross-examination, he has denied the fact that



under the influence of Raja Ram Singh, he has submitted the charge sheet. During investigation, he has not taken the statement of mother, brother, wife and wife of brother of the deceased. He had not taken any steps for examination under Section 164 Cr.P.C. of the witnesses and he had prepared the sketch map in the case diary, not in the separate page. The place of occurrence is hardly 500 meter away from the Mehus police station. He reached to the place of occurrence on 29.08.1997 at about 7.45 in the morning. He has not shown '*Dalan*' in the case diary as no one had given such information. He had not sent the bloodstained soil for its forensic examination. He had not sent the inquest report or carbon copy of the seizure list along with the charge sheet. It is not a fact that Munna Singh, Gorelal Singh, Ram Ballabh and Prashidh did not get the statement recorded rather Raja Ram taking their name recorded their respective statement. Munna Singh had sent a letter through postal department about his wrong implication along with his both sons and he had not held the enquiry with respect to the said letter. Volunteer he has said that report with respect to licence of rifle of accused was sought, but he did not receive the same. The accused person had produced the receipt of deposition of rifle in Bihar Sharif before the incident and



submitted the photocopy of the same which has been mentioned in paragraph 105 of the case diary. The father of the informant Rajaram Singh is present in the court today. He has not recorded the statement of Mukhiya. He had arrested Ranjit Singh and Amir Singh during investigation. In terms of direction of SDPO, he has not filed final form in connection of Munna Singh and Arun Singh as Superintendent of Police instructed in doing so. He has not recorded in the case diary that he came to court and made inspection of the record, but he said that he used to be vigilant with respect to the case. It is not a fact that under the influence of Raja Ram, he has prepared the case diary and done the investigation and it is also not a fact that at the instance of Raja Ram Singh, he has not recorded the statement of family member of the deceased. It is not a fact that his investigation is faulty.

P.W. 9 Surendra Rai has also been examined in Sessions Trial No. 273 of 2000 and has stated that on 29.08.1997, he was posted as Officer-in-charge of Mehus Police Station. On that day, he got information that one Dharmendra Kumar Singh was shot dead. For verification of the same, he along with Ram Pravesh Paswan, ASI had gone there and found that Dharmendra was lying dead. He recorded the *fardbeyan* of



Santosh Kumar, cousin of the deceased, which was read over to him. The *fardbeyan* was written by him and Santosh Kumar has put his signature followed by Prashidh Narayan Singh and Ram Sevak Singh has also put his thumb impression, which has been marked as Exhibit 3. After recording the *fardbeyan*, he forwarded the same to Sheikhpura police station for registering the case. He himself took up the charge of investigation and prepared the inquest report, sent the dead body for post mortem to Munger. He recorded the further statement of the informant, inspected the place of occurrence. The place of occurrence is situated at eastern northern corner of the house of Hardev Narain Singh. The village road is in the direction of east-west and there is terminal, one road goes towards south. The dead body was lying near the electric pole fixed near triangle. Huge quantity of blood was lying there. From the place of occurrence, 16 feet away, there is mound of soil, which is liked by the people as Shivala i.e. a place of worship. The house of Damodar Upadhaya built of bricks and tiles, which is situated adjacent north of that Shivala. The drain was separating the dead body and the house of Hardev Narayan Singh. The house of the accused is situated at a distance of about 200 yards east from the place of occurrence. On the same day, he also recorded the



statement of the witness Pankaj Kumar and also seized the bloodstained soil from the place of occurrence. On the same day, he raided the house of accused persons, but all of them were found absconding. On the same day, he also recorded the statement of Gorelal Singh, who had supported the occurrence. After returning to the police station, on the same day, he made search of previous history in between the parties. Sheikhpura P.S. Case No. 291/94 dated 20.12.1994 under Sections 341, 323, 307 IPC and Section 27 of the Arms Act and another Sheikhpura (Mehus) P.S. Case No. 292/94 dated 21.12.1994 under Sections 447, 307, 341, 323, 427/34 IPC were found registered. Both these case were registered by the deceased and the accused side against each other, in which the case lodged against the accused of the present case was found false, whereas the case lodged against the deceased was found true. On the next day of occurrence i.e. on 30.08.1997, he recorded the statements of the witnesses Rajaram Singh, Manoj Singh, Sheelam Devi, Prasidh Narain Singh, Ram Ballabh Sharma and all have supported the incident. The accused persons have got licensed firearm and he gave application for its cancellation. On 2.09.1997, he recorded the statement of the independent witnesses, namely, Arvind Kumar @ Tuntun, Vijay Kumar, Mritunjay Singh, Karyanand



Singh and all have supported the incident and said that Munna Singh and Arun Singh came there later on after the dispute arose. The post mortem report was received on 12.09.1997, whereafter, he arrested Amir Singh with firearm and forwarded him under the Arms Act and got remanded him in this case. The accused persons told that licensee rifle had already been deposited at Bihar Sharif from before. He had recommended for the verification of the same as the gun was deposited with the dealer and sent a letter through constable not to release the firearm, but he came to know that the Superintendent of Police, Nalanda had raided the place/shop of the said dealer on getting information or irregularities and had seized his record. After having found the occurrence true, he submitted the charge sheet against Amir Singh and Ranjit Singh and continued the investigation against the others and, by that time, he was transferred. He had prepared the inquest report at the place of occurrence and at present, the copy of that inquest report is not available in the case diary. Munna Singh has three sons, who are accused persons in this case. He had recorded the statement of all the witnesses including Rajaram Singh, Pankaj and Sheelam Devi. Their evidence reflected that all the four persons have committed the offence. It is not a fact that the police has



submitted final form with respect to Munna Singh and Arun Singh. During investigation, no one among the mother, brother and wife of Dharmendra has been made witness. It is not a fact that he had not prepared the sketch map of the incident. In column 5 page 2 of the case diary, he has mentioned about the firearm injuries near elbow of right hand, on right and left side of abdomen. He has not clearly mentioned as to which side, the injury was on the elbow of right hand. In the inquest report, he has not mentioned about tobacco in the mouth of the deceased. He inspected the place of occurrence at about 8.40 hours. He already reached at the place of occurrence at 7.45 A.M. In the case diary, he has not mentioned about recovery of any tobacco box there. He did not remember as to whether such type of article was there or not. He has mentioned in the case diary that so long he was present at the place of occurrence, he has mentioned about the presence of Rajaram Singh till transportation of the dead body for post mortem. He sent the dead body for post mortem at 8.20 hours. Again he had taken the statement of the informant He did not know Rajaram Singh from before, but as per the case diary, he was present and he did not record his statement. He has submitted the charge sheet against two persons. He did not record the statement of any of



the family members of Hardev Narayan, Damodar Upadhaya. There was huge crowd. He did not find the aforesaid persons. On the issue of giving statement, the people began to disperse from there. He has not mentioned the said fact in the case diary. He has mentioned in the case diary that '*Ganji*' and '*Lungi*' were completely soaked with blood, but it has not been mentioned as to whether there was any mark of firing on it or not. That '*Ganji*' and '*Lungi*' were not seized. The place where the dead body was lying other side road on the muddy place separated by the drain. The bloodstained soil was not sent for forensic examination. He has already deposed in this case on earlier occasion. He did not get the statement recorded of any witness under Section 164 Cr.P.C. He has not mentioned the distance of the houses of witness Rajaram, Santosh, Pankaj and Sheelam from the place of occurrence. He had not investigated that as to whether the families of Dharmendra, Sheelam Devi and Rajaram reside under the same roof. It is fact that he has stated in his earlier evidence that he has not sent the copy of inquest report and the seizure list along with the charge sheet. It is wrong to say that he had not recorded the statement of Manoj, Gorelal and Prasidh. It is true that the firearm used in the incident was neither seized nor it could be examined. He has



mentioned the place where Dharmendra Singh was sitting prior to occurrence and was taking tobacco at Shivala. He has mentioned the distance of the place where he was sitting and the Shivala. It is wrong to say that he has investigated the case in connivance with Rajaram Singh and recorded the statement of the witnesses as per his dictate. He has not recorded the statement of Mukhiya Jairam Singh. It is wrong to say that apart from the family of Rajaram Singh, no other witness supported the incident. It is wrong to say that his investigation is faulty.

P.W. 13 Sri Krishna Mohan Purvey has been examined in Sessions Trial No. 685 of 1998 and has stated that on 29-08-97, he was posted as Civil Assistant Surgeon in Sadar Hospital, Munger. On that day, he performed post mortem of Dharmender Singh, S/o Late Surender Singh of Village and P.S Mehus of District- Sheikhpura and found following ante mortem injury of the body of deceased :-

(i) One lacerated circular wound 1/2" in diameter with charring around the wound on medial side of right elbow.

On dissection extra vasion of blood was present. There was fracture of right lower end of right humerus. Two pieces of distorted bullet recovered in the fractured portion of bone which was seized signed and handed over to police.

(ii) Wound of entry, one lacerated circular wound 1/2" in diameter into abdominal cavity deep with



inverted margin on right side of flank at abdomen two inch above anterior superior iliac spine edge blacken.

(iii) Wound of exit, one lacerated oval wound 3/4" x 1/2" x abdominal cavity deep with inverted margin with protrusion of gut through the wound in left side of abdominal flank, 1/2" above anterior superior iliac spine.

On dissection- abdominal cavity was filled with blood and blood clot. Both of the kidney multiple perforation of small gut, at two places at large gut including mesentery lacerated and perforated through and through.

Cause of death, in the opinion of doctor, was due to shock and haemorrhage, as a result of above injuries caused by firearm. Time elapse since death was within 24 hours.

This post mortem report is the carbon copy of original which was prepared by him in same process which is in his pen and signature which is marked as Ext. 3.

In his cross-examination, he has stated that the deceased was not previously known to him. He did not receive FIR of this case prior to the post mortem. On the basis of inquest report, he has mentioned the Case No. Nil/29-08-97 in post mortem report. Bullets were recovered from only injury no.1 but not from injury no.2 or 3. If shot was hit on upper arm and arm is adducted with the abdominal flank. Bullet may pass through the portion of arm and effect the



abdomen on condition that velocity is high. Circular wound is possible from any firearm. Recovered bullet is not before him. Bullet was pointed or blunt, he can not say at present. Blacken or charring can be found if hit is caused within four feet. Rigor mortis will start from 6 hours of the death and will decline after 27 hours in the month of August. He has no knowledge above the original copy of post mortem report. He has not mentioned the bullet recovered were present closed to each other or there was same distance in between two. It is not possible to cause all the three injuries by one shot. He has not prepared the post mortem report on spot. It is not a fact that his post mortem report is collusive and in favour of interment.

P.W. 8 Sri Krishna Mohan Purvey has also been examined in Sessions Trial No. 273 of 2000 and has stated that on 29.08.1997, he was posted as Sadar Hospital, Munger and he had conducted the post mortem on the dead body of Dharmendra Singh, aged about 23 years, son of Late Surendra Singh, resident of village and P.S.-Mehus, District- Sheikhpura and found the following antemortem injury on the dead body :

***(i) One lacerated circular wound 1/2”
in diameter with charring around the wound on
medial side of right elbow.***

***On dissection extra vasion of blood
was present. There was fracture of lower end of***



right humerus, two pieces of distorted bullet recovered in the fractured portion of bone which was sealed signed and handed over to the police.

(ii) Wound of entry one lacerated circular wound 1/2" in diameter x abdominal cavity deep with inverted margin on right side of flank of abdomen 2" above to interior superior iliac spine edge blacken.

(iii) Wound of exit, one lacerated oval wound 3/4" x 1/2" x abdominal cavity deep with inverted margin with protrusion of gut through the wound left side of abdominal flank 1.1/2" above entries superior iliac spine.

On dissection abdominal cavity was filled with blood and blood clot. Both kidney, multiple perforation of small gut, at two places of large gut including mesentery lacerated and perforated through and through.

Death, in his opinion, was due to shock and haemorrhage as a result of above injuries caused by firearm. Time elapsed since death within 24 hours.

This is carbon copy of original post mortem report prepared by him with original copy. It is his writing and signature, which has been marked as Exhibit-1.

In his cross-examination, he has stated that he has given his evidence in this case before the evidence of today. Medial side means minor side of elbow. Distorted means bond



size of bullet. There are two bullet and both were distorted. Charring mark was also on minor part of elbow. He cannot say the description of bullet but bullet and pillets are two different things. He had found two injuries. Injury no. (ii) and (iii) had been caused by one bullet. Charring and blackening spots of injury no. (i) and (ii) are possible when the injury would be caused from about 1 meter distance. If two bullets hit on the same part, there is possibility of one injury. On 29.08.1997 at 4.40 P.M., he had found that rigor mortis was present. It is not necessary that rigor mortis disappears in the month of August after 6 hours. It depends on temperature and humidity. It is not the fact that rigor mortis disappears after 6 hours in the month of August. He cannot say that he was conducting post mortem within 10 hours of death because he has mentioned in his report that he was conducting post mortem within 24 hours since death. At several occasions, he has mentioned in his report that injury is within 10 hours. When he become confirmed that injury is more than 12 hours old then he mentions within 24 hours. He has mentioned stomach empty in his report. He had found three bullet injuries. Three bullets were found for causing injuries. Injury no. (ii) was just above the waist. Exit of this injury was left side of abdominal flank. Such through and



through injuries is not possible from fire from front side. It is not the fact that such injury is not possible in standing position. Such injury is possible if victim had fallen on the ground also. But in both the cases, it is must that firing may be done from right side. It is not the fact that circular injury is possible only from fire of bullet from rifle. It is not fact that he has prepared P.M. report in influence of any Rajaram.

Counsel for the appellants has placed reliance on several judgments on different points, such as, contradiction in evidence, material witnesses have not been brought, medical evidence does not support the prosecution case, the evidence of chance witness cannot be a basis for recording conviction against the appellants and the prosecution has not been able to prove the place of occurrence either at Shivala or at the electric pole. The judgments, which have been placed reliance, are as follows :-

1. (1994) 5 SCC 188 (Meheraj Singh Vs. State of U.P.).

2. 2006 Cri.L.J. 4087 (Syed Ibrahim Vs. State of Andhra Pradesh).

3. AIR 2001 SC 1113 (Kanhai Mishra @ Kanhaiya Misar Vs. State of Bihar).

4. 2000 Cri.L.J.2983 (Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and another).



5. (2014) 12 SCC 261 (*Nallabothu Ramulu @ Seetharamaiah and others. Vs. State of Andhra Pradesh*).

6. (2016) 16 SCC 418 (*Harbeer Singh Vs. Sheeshpal and Ors.*).

7. AIR 2005 SC 1132 (*Thangaiya Vs. State of Tamilnadu*).

8. 2004 Cri.L.J. 3854 (*Harijinder Singh @ Bhola Vs. State of Punjab*).

09. AIR 1983 SC 680 (*Rana Pratap and others Vs. State of Haryana*).

10. (2013) 14 SCC 266 (*R. Shaji Vs. State of Kerala*).

11. (2016) 10 SCC 537 (*Bhagwan Jagannath Markad and others Vs. State of Maharashtra*).

And on the point of non-examination of material witness, reliance has been placed on the judgment rendered in *Masalti and Ors. Vs. the State of Uttar Pradesh (AIR 1965 SC 20)* and on the incompatibility of prosecution witness and post mortem report, reliance has been placed on certain paragraphs of Modi Jurisprudence 27th Edition page 354, further has placed reliance that no value can be attached to 164 Cr.P.C. statement of the prosecution witness as such statement would be recorded through the Investigating Officer under the aforesaid section and any person of his own volition goes to get his examination appears before the Magistrate makes statement is not



conceivable in the eye of law does not carry any weight in the eye of law. In support of his such submission, he has placed reliance on the judgments rendered in ***Jogendra Nahak and others Vs. State of Orissa and others (AIR 1999 SC 2565) and Shyamal Ghosh Vs. State of West Bengal [(2012) 7 SCC 646]***.

Before critical analysis of the evidence of the witnesses, it will be proper to deal with the judgments and find out the principle adumbrated by the Hon'ble Supreme Court on the above principles, but before going to the analysis of the judgments, the basic principle of criminal jurisprudence that the prosecution has to prove the case beyond all reasonable doubt. The incriminating material and circumstances for being used against the person must be such as to lead only hypothesis of the guilt and every possibility of innocence of the accused is ruled out. This is the basic principle of criminal jurisprudence and the different theories are in the shape of holding the court to arrive at a clear and distinct finding with regard to culpability of the accused in connection with offence alleged and degree of proof to arrive a finding of beyond reasonable doubt will be discussed at the later stage.

First this Court will examine the principle with respect to appreciation of evidence, affect of contradiction and



omission which depends upon magnitude of incompatibility and the minor contradiction will not create suspicion or will affect the prosecution case unless the contradiction of evidence is major that would affect the version of the prosecution. In the case of *Narayan Chetanram Chaudhary and another Vs. State of Maharashtra reported in (2000) 8 Supreme Court Cases 457 in paragraph 42*, the Hon'ble Supreme Court has considered the effect of contradiction and held that only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, the same would not cause prejudice to any testimony. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony. Mere



congruity or consistency is not the sole test of truth in the depositions. The depositions of witnesses are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence. Material discrepancies are those which are not normal and not expected of a normal person. While deciding the issue, the Court has to keep in mind that different witnesses react differently under different situations, some become speechless, some start wailing, some others run away from the scene and some may come forward with courage, conviction and belief that the wrong should be remedied. It will be better to quote paragraph 42 of the said judgment :-

“42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses



as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness. In this regard this Court in State of H.P. v. Lekh Raj [(2000) 1 SCC 247 : 2000 SCC (Cri) 147 : (1999) 9 ST 155] (in which one of us was a party), dealing with discrepancies, contradictions and omissions held: (SCC pp. 258-59, paras 7-8)

“Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such



witness was making the statement. This Court in Ousu Varghese v. State of Kerala [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish v. State of M.P. [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

Referring to and relying upon the earlier judgments of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] , Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012 : 1959 Cri LJ 1231] , Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : JT (1988) 1 SC 249] and Rammi v. State



of M.P. [(1999) 8 SCC 649 : JT (1999) 7 SC 247] this court in a recent case Leela Ram v. State of Haryana [(1999) 9 SCC 525 : JT (1999) 8 SC 274] held:

‘There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason thereof should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence....

The court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.’ ”



In the case of *State of H.P. Vs. Lekh Raj and another reported in (2000)1 SCC 247*, in paragraph 7, the Hon'ble Supreme Court has distinguished the discrepancy and contradiction which is important element in appreciation of evidence in criminal cases as the contradiction in the statement of the witness is fatal for the case, whereas, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The discrepancies are comparatively of a minor character and does not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency would not be touchstone to test of truth in depositions. Only the Court has said that the criminal trial is not like a fairy tale wherein one is free to give flight to his one's imagination and fantasy. It will be better to quote paragraphs 7 and 8 of the said judgment :-

“7. In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human



conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese v. State of Kerala [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish v. State of M.P. [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material



discrepancies are those which are not normal and not expected of a normal person.

8. Referring to and relying upon the earlier judgments of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] , Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012 : 1959 Supp (2) SCR 875] , Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : JT (1988) 1 SC 249] and Rammi v. State of M.P. [(1999) 8 SCC 649 : JT (1999) 7 SC 247] , this Court in a recent case Leela Ram v. State of Haryana [(1999) 9 SCC 525 : JT (1999) 8 SC 274] held:

“There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason thereof should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence....

The court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some



who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.”

The identical issue came for consideration in the case of *Sunil Kumar Sambhudayal Gupta (Dr.) Vs. State of Maharashtra reported in (2010) 13 SCC 657* wherein it has been held that while appreciating the evidence, the court has to take into consideration whether the contradictions and omissions has been of such magnitude that may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial nature without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and the other witness also makes material improvements before the court in order to make the evidence acceptable, it cannot be safe



to rely upon such evidence. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited. It will be better to quote paragraphs 30 to 37 of the said judgment :-

“Material contradictions

30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152].)

31. Where the omission(s) amount



to a contradiction, creating a serious doubt about the truthfulness of a witness and the other witness also makes material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide State of Rajasthan v. Rajendra Singh [(2009) 11 SCC 106 : 1998 SCC (Cri) 1605].)

32. The discrepancies in the evidence of eyewitnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt. (Vide Mahendra Pratap Singh v. State of U.P. [(2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352].)

33. In case, the complainant in the FIR or the witness in his statement under Section 161 CrPC, has not disclosed certain facts but meets the prosecution case first time before the court, such version lacks credence and is liable to be discarded. (Vide State v. Sait [(2008) 15 SCC 440 : (2009) 3 SCC (Cri) 1037].)

34. In State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593 :



AIR 1981 SC 1390] , while dealing with this issue, this Court observed as under: (SCC p. 754, para 8)

“8. ... In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.”

35. The courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. (See Syed Ibrahim v. State of A.P. [(2006) 10 SCC 601 : (2007) 1 SCC (Cri) 34 : AIR 2006 SC 2908] and Arumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130 : AIR 2009 SC 331].)

36. In Bihari Nath Goswami v. Shiv Kumar Singh [(2004) 9 SCC 186 : 2004 SCC (Cri) 1435] this Court examined the issue and held: (SCC p. 192, para 9)

“9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the



prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.”

37. While deciding such a case, the court has to apply the aforesaid tests. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited”.

In the case of *Mahavir Singh Vs. State of Madhya Pradesh reported in (2016) 10 SCC 220*, in paragraph 22, the Court has said that where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value *vis-à-vis* medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence.

“22. The position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical



evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. (See Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262], SCC p. 274, para 39.)”.

The judgment rendered in the case of ***Baso Prasad and Ors. Vs. State of Bihar reported in (2006) 13 SCC 65*** deals with the situation in which the ocular evidence is not compatible with the medical evidence rather in congruent. It has been held that if the statement of eye witnesses is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses are the eyes and ears of justice. Hence, the importance and primacy of the orality of the trial process. Eyewitnesses’ account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be



creditworthy; consistency with the undisputed facts; the credit of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation. The reflection is that the whole evidence will be tested on the touchstone of the credibility and if some incongruity with the medical evidence is found, the ocular evidence is to be the basis for deciding the prosecution case. It is better to quote paragraphs 28, 29, 30, 38, 39 and 40 of the said judgment :-

“27. In some cases, medical evidence may corroborate the prosecution witnesses; in some it may not. The court, however, cannot apply any universal rule whether ocular evidence would be relied upon the medical evidence, as the same will depend upon the facts and circumstances of each case. No hard-and-fast rule can be laid down therefor.

28. It is axiomatic, however, that when some discrepancies are found in the ocular evidence vis-à-vis medical evidence, the defence should seek for an explanation from the doctor. He should be confronted with the charge that he has committed a mistake. Instances are not unknown where the doctor has rectified the mistake committed by him while writing the post-mortem report.

29. In Surinder Singh v. State of U.P.



[(2003) 10 SCC 26 : 2004 SCC (Cri) 717] , it was held: (SCC p. 35, para 17)

“17. One of the pleas raised by the learned counsel for the appellants was that the injuries as noticed by the doctor are at variance with the ocular evidence. On a close reading of the evidence of the eyewitnesses and the doctor's report, there is no noticeable variance. The mere fact that the doctor said that injuries appeared to be on one side of the body and the witnesses said that attacks were from different sides, is too trifling an aspect. When three persons are attacking a person, the witnesses naturally get shocked. This is normal human conduct and the immediate reaction is to save the victim and to stop the assailants from further attacks. That is precisely what has been done by the eyewitnesses. It is only when the medical evidence totally improbabilises the ocular evidence, that the court starts suspecting the veracity of the evidence and not otherwise.”

30. In Anwar v. State of Haryana [(1997) 9 SCC 766 : 1997 SCC (Cri) 762] this Court observed: (SCC pp. 772-73, para 10)

“It is true that Dr. Jai Kishan (PW 9) who conducted the autopsy in his post-mortem examination report described Injury 1 as being incised wound 20 cms × 2 cms causing fracture of the underlying bone. He further noticed lacerated wounds on the neck of the right ear of the size 1 cm × 1/2 cm causing fracture of the underlying bone. While giving evidence in the



court, he described an incised wound as Injury 1 and lacerated wounds as Injury 1-A. He further testified that it was a bona fide mistake in not describing these two injuries separately. Mr Sushil Kumar urged that Dr. Jai Kishan (PW 9) has made material improvement in his evidence before the court to suit the prosecution and to lend support to the evidence of eyewitnesses and, therefore, such an improved version which demolishes the evidence of eyewitnesses be not accepted. This submission, is an attractive one but having regard to the facts and circumstances of this case, it is not possible to accept the same. The consistent evidence of both these eyewitnesses was that A-2 had fired from his pistol on Baddal causing firearm injuries on his head and this evidence, in our opinion, is quite a credible one. Both these witnesses have referred to the firearm injury on Baddal on his head whereas lacerated wounds were found behind the right ear. In an assault of this nature, the exact description as regard to location of the firearm injury might be not accurate but that by itself would not render their evidence untrustworthy. It needs to be mentioned that the medical evidence is an opinion evidence which is used to lend corroboration to the evidence of eyewitnesses. If the medical evidence is found to be totally inconsistent with the ocular evidence on a given set of facts, it would be permissible for the court to reject the ocular evidence. As far as the facts of the present case are concerned as pointed out



earlier, the inconsistency between the ocular evidence and the medical evidence is of a very minor nature and we do not think it proper to reject the evidence of these two eyewitnesses on that score.”

38. It is, thus, for the court to arrive at an opinion as to which part of contradictory expert opinion should be accepted or whether in a given situation ocular evidence should be believed in preference to medical evidence or vice versa.

39. In State of U.P. v. Krishna Gopal [(1988) 4 SCC 302 : 1988 SCC (Cri) 928] , this Court has observed: (SCC p. 313, para 24)

“24. It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the orality of the trial process. Eyewitnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the ‘credit’ of the witnesses; their



performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”]

40. Yet again in Dhirajbhai Gorakhbhai Nayak v. State of Gujarat [(2003) 9 SCC 322 : 2003 SCC (Cri) 1809] this Court held: (SCC pp. 326-27, para 8)

“As regards the alleged discrepancy between the medical evidence and ocular evidence, it is to be noted that a combined reading of the evidence of PW 9 who examined the deceased after he was brought to the hospital and PW 7 who conducted the post-mortem, it is clear that there is no discrepancy in the medical evidence vis-à-vis ocular evidence. Only in respect of Injury 1, there appears to be some confusion but that does not dilute the prosecution evidence. It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which has to be tested independently and not treated as ‘variable’ keeping in view the medical evidence as ‘constant’. (See State of U.P. v. Krishna Gopal)”

The identical issue has been decided in the case of *Mangu Khan and Ors. Vs. State of Rajasthan reported in (2005) 10 SC 374*. This aspect has been dealt with in paragraph 8 of the judgment and the same is not required to be quoted.



In the case of *Nallabothu Ramulu @ Seetharamaiah and others. Vs. State of Andhra Pradesh reported in (2014) 12 SCC 261*, in paragraph **24**, the Hon'ble Supreme Court has said that it is true that due to passage of time, witnesses may deviate from their police statements as their memory fades to some extent. Reasonable allowance can be made for such discrepancies, but when such discrepancies make the foundation of the prosecution case shaky, the court has to take strict note thereof.

In the case of *Bhagwan Jagannath Markad and others Vs. State of Maharashtra reported in (2016) 10 SCC 537*, the Hon'ble Supreme Court in paragraph **19** has held that while appreciating the evidence of a witness, the court has to assess the entire evidence as a whole to find out the truthfulness of the witness. While assessing the evidence, it has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. It is not every



discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted. The discrepancies of trivial nature can not be the basis of rejecting the evidence nor non-examination of some of the witnesses be a ground to reject the prosecution case. It is the duty of the court that innocent should not be punished, but at the same time, it is required to see that guilty should not escape. It will be proper to quote paragraphs 19, 20 and 31 of the said judgment :-

“19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent



statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [*Leela Ram v. State of Haryana*, (1999) 9 SCC 525, pp. 532-35, paras 9-13 : 2000 SCC (Cri) 222] . Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a “partisan” or “interested” witness may lead to failure of justice. It is well known that principle “*falsus in uno, falsus in omnibus*” has no general acceptability [*Gangadhar*



Behera v. State of Orissa, (2002) 8 SCC 381, pp. 392-93, para 15 : 2003 SCC (Cri) 32] . On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.

20. Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. [*Gangadhar Behera case*, (2002) 8 SCC 381, p. 394, para 17].

31. As already observed, the discrepancies of trivial nature could not be the basis of rejecting the evidence of injured eyewitnesses nor non-examination of some of the witnesses be a ground to reject the prosecution case when injured eyewitnesses were examined”.



The judgment rendered in the case of ***Syed Ibrahim Vs. State of Andhra Pradesh reported in 2006 Cri.L.J. 4087*** has discussed the application of the principle of '*falsus in uno falsus in omnibus*' (false is one, false in every thing) and this plea has clearly been untenable and it has been held that the duty of the court is to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be note wholly credible. Falsity of material particular would not ruin it from the beginning to end. The maxim "*falsus in uno falsus in omnibus*" has no application in India and the witness or witnesses cannot be branded as liar(s). The maxim "*falsus in uno falsus in omnibus*" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution and the Court has dealt with issue of inconsistency in evidence and has also dealt with difference in between the discrepancy and inconsistency in the evidence. Normal discrepancies in evidence are those which are due to normal errors of observation, normal errors would occur due to loss of memory on account of lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always



there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to appreciate the evidence carefully and decide the nature of evidence and give category to which a discrepancy would be labelled. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. It will be proper to quote paragraph 10 of the said judgment :-

“10. Stress was laid by the accused-appellants on the non- acceptance of evidence tendered by PW1 to a large extent to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be not wholly credible. Falsity of material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witness or witnesses cannot be branded as liar(s). The maxim "falsus in uno falsus in



omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence. (See Nisar Alli v. The State of Uttar Pradesh [AIR 1957 SC 366]. In a given case, it is always open to a Court to differentiate accused who had been acquitted from those who were convicted where there are a number of accused persons. (See [Gurucharan Singh and Anr. v. State of Punjab](#) [AIR 1956 SC 460]. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the



reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh [1972 (3) SCC 751] and [Ugar Ahir and Ors. v. The State of Bihar](#) [AIR 1965 SC 277]. An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See [Zwinglee Ariel v. State of Madhya Pradesh](#) [AIR 1954 SC 15] and [Balaka Singh and Ors. v. The State of Punjab](#) [1975 (4) SCC 511]. As observed by this Court in [State of Rajasthan v. Smt Kalki and Anr.](#) [1981 (2) SCC 752], normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category



to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in [Krishna Mochi and Ors. v. State of Bihar](#) etc. [2002 (6) SCC 81] and in [Sucha Singh v. State of Punjab](#) [2003 (7) SCC 643]. It was further illuminated in the [Zahira H. Sheikh v. State of Gujarat](#) [2004 (4) SCC 158], [Ram Udgar Singh v. State of Bihar](#) [2004(10) SCC 443], [Gorle S. Naidu v. State of Andhra Pradesh](#) [2003 (12) SCC 449] and in [Gubbala Venugopalswamy v. State of Andhra Pradesh](#) [2004 (10) SCC 120].

The judgment rendered in the case of *Harbeer Singh Vs. Sheeshpal and Ors. reported in (2016) 16 SCC 418* has dealt with the appreciation of evidence with respect to near relative of the victim and also dealt with the issue of material witness as well as value of evidence of chance witness. In this connection, the Hon'ble Supreme Court has held that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully. In a murder case, when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim very



carefully, but where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinize all the infirmities in that evidence before deciding to act upon it. However, we do not wish to emphasize that the corroboration by independent witnesses is an indispensable rule in cases where the prosecution is primarily based on the evidence of seemingly interested witnesses. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement. It is also important to see that if the witness is a related witness, after proper scrutiny is found to be chance witness, it is to be ascertained as to whether that witness was present at the scene or not. It will be proper to quote paragraphs 15, 19 to 24 of the said judgment :-

15. We have given careful consideration to the submissions made by the parties and we are inclined to agree with the observations of the High Court that PW 3 and PW 9 were not witnesses to the alleged conspiracy between the accused persons since not only the details of the conversation given by these two prosecution witnesses were different but also their presence at the alleged spot at the



*relevant time seems unnatural in view of the physical condition of PW 9 and the distance of Sheeshpal's Dhani from Sikar Road. Besides, it appears that there have been improvements in the statements of PW 3. The Explanation to Section 162 CrPC provides that an omission to state a fact or circumstance in the statement recorded by a police officer under Section 161 CrPC, may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. Thus, while it is true that every improvement is not fatal to the prosecution case, in cases where an improvement creates a serious doubt about the truthfulness or credibility of a witness, the defence may take advantage of the same. (See *Ashok Vishnu Davare v. State of Maharashtra* [*Ashok Vishnu Davare v. State of Maharashtra*, (2004) 9 SCC 431 : 2004 SCC (Cri) 1468] ; *Radha Kumar v. State of Bihar* [*Radha Kumar v. State of Bihar*, (2005) 10 SCC 216 : 2005 SCC (Cri) 1507] ; *Sunil Kumar Sambhudayal Gupta v. State of Maharashtra* [*Sunil Kumar Sambhudayal Gupta v. State of Maharashtra*, (2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375] and *Baldev Singh v. State of Punjab* [*Baldev Singh v. State of Punjab*, (2014) 12 SCC 473 : (2014) 6 SCC (Cri) 810] .) In our view, the High Court had rightly considered these omissions as*



material omissions amounting to contradictions covered by the Explanation to Section 162 CrPC. Moreover, it has also come in evidence that there was a delay of 15-16 days from the date of the incident in recording the statements of PW 3 and PW 9 and the same was sought to be unconvincingly explained by reference to the fact that the family had to sit for condolence (शोक) meetings for 12 to 13 days. Needless to say, we are not impressed by this explanation and feel that the High Court was right in entertaining doubt in this regard.

19. In Darya Singh v. State of Punjab [Darya Singh v. State of Punjab, AIR 1965 SC 328 : (1964) 3 SCR 397 : (1965) 1 Cri LJ 350] , this Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities must be taken into account. This is what this Court said: (AIR p. 331, para 6)

“6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. ... But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine



the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. ... If the criminal court is satisfied that the witness who is related to the victim was not a chance witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised.”

20. However, we do not wish to emphasise that the corroboration by independent witnesses is an indispensable rule in cases where the prosecution is primarily based on the evidence of seemingly interested witnesses. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement.

21. Further, in Raghbir Singh v. State of U.P. [Raghbir Singh v. State of U.P., (1972) 3 SCC 79 : 1972 SCC (Cri) 399] , it has been held that: (SCC p. 84, para 10)

“10. ... the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need to be produced



without unnecessary and redundant multiplication of witnesses. ... In this connection general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when spirits on both sides are running high has to be borne in mind.”

22. The High Court has further noted that there were chance witnesses whose statements should not have been relied upon. The learned counsel for the respondents has specifically submitted that PW 5 and PW 6 are chance witnesses whose presence at the place of occurrence was not natural.

23. The defining attributes of a “chance witness” were explained by Mahajan, J., in Puran v. State of Punjab [Puran v. State of Punjab, AIR 1953 SC 459 : 1953 Cri LJ 1925]. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

24. In Mousam Singha Roy v. State of W.B. [Mousam Singha Roy v. State of W.B., (2003) 12 SCC 377 : 2004 SCC (Cri) Supp 429] , this Court discarded the evidence of chance witnesses while observing that certain glaring contradictions/omissions in the evidence of PW 2 and PW 3 and the absence of their names in the FIR has been very lightly



discarded by the courts below. Similarly, Shankarlal v. State of Rajasthan [Shankarlal v. State of Rajasthan, (2004) 10 SCC 632 : 2005 SCC (Cri) 579] and Jarnail Singh v. State of Punjab [Jarnail Singh v. State of Punjab, (2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] are authorities for the proposition that deposition of a chance witness, whose presence at the place of incident remains doubtful, ought to be discarded. Therefore, for the reasons recorded by the High Court we hold that PW 5 and PW 6 were chance witnesses and their statements have been rightly discarded.

In the case of *R. Shaji Vs. State of Kerala reported in (2013) 14 SCC 266*, the Hon'ble Supreme Court has considered the relevance of statement made under Section 161 Cr.P.C. and 164 Cr.P.C., held that the statement under Section 161 Cr.P.C. can be utilized for the purpose of contradiction whereas statement made under Section 164 Cr.P.C. can be used for contradiction and corroboration and further said that withholding of important and material witness may affect the prosecution case, but the Court has said that conviction of accused committed the offence is dependent on quality of evidence and not quantity. The evidence must be weighted and not the counted. The test is whether the evidence has a ring of truth is cogent, credible and trustworthy or otherwise. In



deciding the criminal case, it has to be seen the material value provided by the witness as opposed to multiplicity or plurality of witnesses. It is also considered the value of the statement recorded under Section 164 of Cr.P.C. for the purpose of corroborating statements made by witnesses in the committal court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence, which has been dealt with in paragraph 26 to 29 of the said judgment. It will be proper to quote paragraph 39 of the said judgment :-

“39. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses, but the quality of their evidence which is important, as there is no requirement in the law of evidence stating that a particular number of witnesses must be examined in order to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise. The legal system has laid emphasis on the value provided by each witness, as opposed to the multiplicity or plurality of witnesses. It is thus the quality and not quantity, which determines the adequacy of evidence, as has been provided by Section 134



of the Evidence Act. Where the law requires the examination of at least one attesting witness, it has been held that the number of witnesses produced over and above this does not carry any weight. [Vide Vadivelu Thevar v. State of Madras [AIR 1957 SC 614 : 1957 Cri LJ 1000] , Jagdish Prasad v. State of M.P. [1995 SCC (Cri) 160 : AIR 1994 SC 1251] , Sunil Kumar v. State (Govt. of NCT of Delhi) [(2003) 11 SCC 367 : 2004 SCC (Cri) 1055 : AIR 2004 SC 552] , Namdeo v. State of Maharashtra [(2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773 : AIR 2007 SC Supp 100] , Kunju v. State of T.N. [(2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331 : AIR 2008 SC 1381] , Bipin Kumar Mondal v. State of W.B. [(2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150 : AIR 2010 SC 3638] , Mahesh v. State of M.P. [(2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783] and Kishan Chand v. State of Haryana [(2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807 : JT (2013) 1 SC 222]”.

The issue of value of 164 Cr.P.C. has been again came for consideration in the case of *Jogendra Nahak and others Vs. State of Orissa and others reported in AIR 1999 SC 2565* wherein the Court has said that the Magistrate is not required to record the evidence under Section 164 Cr.P.C. of the witness having not been sponsored by the Investigating Agency. It will be relevant to quote paragraphs 22 & 23 of the said judgment :-



“22. If a Magistrate has power to record the statement of any person under Section 164 of the Code, even without the investigating officer moving for it, then there is no good reason to limit the power to exceptional cases. We are unable to draw up a dividing line between witnesses whose statements are liable to be recorded by the Magistrate on being approached for that purpose and those not to be recorded. The contention that there may be instances when the investigating officer would be disinclined to record the statements of willing witnesses and therefore such witnesses must have a remedy to have their version regarding a case put on record, is no answer to the question whether any intending witness can straight away approach a Magistrate for recording his statement under Section 164 of the Code. Even for such witnesses provisions are available in law e.g. the accused can cite them as defence witnesses during trial or the court can be requested to summon them under Section 311 of the Code. When such remedies are available to witnesses (who may be sidelined by the investigating officers) we do not find any special reason why the Magistrate should be burdened with the additional task of recording the statements of all and sundry who may knock at the door of the court with a request to record their statements under Section 164 of the Code.

23. On the other hand, if the door is opened to such persons to get in and if the Magistrates are



put under the obligation to record their statements, then too many persons sponsored by culprits might throng before the portals of the Magistrates' Courts for the purpose of creating record in advance for the purpose of helping the culprits. In the present case, one of the arguments advanced by the accused for grant of bail to them was based on the statements of the four appellants recorded by the Magistrate under Section 164 of the Code. It is not part of the investigation to open up such a vista nor can such step be deemed necessary for the administration of justice”.

The judgment rendered in the case of *Ajay Kumar Parmar Vs. State of Rajasthan* reported in (2012) 12 SCC 406 deals with the issue of recording of evidence before the Magistrate under Section 164 Cr.P.C. by an individual person of his own volition without being sponsored by the investigating agency. Such a statement of individual witness can only be recorded, if the person is produced by the police before the Magistrate. The statements if recorded of its on own volition and it will be always possible that the accused person for their own benefit would sponsored the witnesses and record the same before the Magistrate and can be used at the later stage, specially placed reliance on the earlier judgment particularly in the case of *Jogendra Nahak Vs. State of Orissa* reported in



AIR 1999 SC 2565 followed the same principle. It will be proper to quote paragraphs 11, 12 and 13 of the said judgment :

“11 A three-Judge Bench of this Court in Jogendra Nahak v. State of Orissa, held that sub-section (5) of Section 164, deals with the statement of a person, other than the statement of an accused i.e. a confession. Such a statement can be recorded, only and only when, the person making such statement is produced before the Magistrate by the police. This Court held that, in case such a course of action, wherein such person is allowed to appear before the Magistrate of his own volition, is made permissible, and the doors of court are opened to them to come as they please, and if the Magistrate starts recording all their statements, then too many persons sponsored by culprits might throng before the portals of the Magistrate's Courts, for the purpose of creating record in advance to aid the said culprits. Such statements would be very helpful to the accused to get bail and discharge orders.

12. The said judgment in Jogendra Nahak case was distinguished by this Court in Mahabir Singh v. State of Haryana, on facts, but the Court expressed its anguish at the fact that the statement of a person in the said case was recorded under Section 164 CrPC by the Magistrate, without knowing him personally or without any attempt of identification of the



said person, by any other person.

13. In view of the above, it is evident that this case is squarely covered by the aforesaid judgment of the three-Judge Bench in Jogendra Nahak , which held that a person should be produced before a Magistrate, by the police for recording his statement under Section 164 CrPC. The Chief Judicial Magistrate, Sirohi, who entertained the application and further directed the Judicial Magistrate, Sheoganj, to record the statement of the prosecutrix, was not known to the prosecutrix in the case and the latter also recorded her statement, without any attempt at identification, by any court officer/lawyer/police or anybody else”.

In the case of *Yoginder Singh Vs. State of Haryana reported in (2014) 11 SCC 335*, the Court has said that non-examination of the material witness is not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the backdrop of the facts and circumstances of each and to find out whether the witnesses are available for being examined in the court and were yet withheld by the prosecution. The Court has held that it is not the number and quantity but the quality that is



material. It is the duty of the Court to consider the trustworthiness of evidence on record which inspires confidence and the same has to be accepted and acted upon and in such a situation no adverse inference should be drawn from the fact of non-examination of other witnesses. It has to be seen whether such non-examination of a witness would carry the matter further so as to affect the evidence of other witnesses and if the evidence of a witness is really not essential to the unfolding of the prosecution case, it cannot be considered a material witness. It will be proper to quote paragraphs 37 to 39 of the said judgment :-

“37. At this juncture, we may note with profit another aspect that has been highlighted by the learned counsel for the respondent. The prosecution has not examined Chander, husband of the deceased, a relevant eyewitness, Bala, Murti and Bimla, three other injured witnesses. No explanation has been given by the prosecution. Though there have been certain suggestions to PW 16 in the cross-examination, but his answer is evasive. It is well settled in law that non-examination of the material witness is not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from



the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution. (See State of H.P. v. Gian Chand [(2001) 6 SCC 71 : 2001 SCC (Cri) 980] .).

38. In this context, we may also note with profit a passage from Takhaji Hiraji v. Thakore Kubersing Chamansing [(2001) 6 SCC 145 : 2001 SCC (Cri) 1070] : (SCC p. 155, para 19)

“19. ... 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. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such



other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself—whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses.”

39. Recently in Manjit Singh v. State of Punjab [(2013) 12 SCC 746 : (2014) 4 SCC (Cri) 531] , this Court, after referring to earlier decisions, has opined thus: (SCC p. 757, para 24)

“24. ... it is quite clear that it is not the number and quantity but the quality that is material. It is the duty of the Court to consider the trustworthiness of evidence on record which inspires confidence and the same has to be accepted and acted upon and in such a situation no adverse inference should be drawn from the fact of non-examination of other witnesses. That apart, it is also to be seen whether such non-examination of a witness would carry the matter further so as to affect the evidence of other witnesses and if the



evidence of a witness is really not essential to the unfolding of the prosecution case, it cannot be considered a material witness (see State of U.P. v. Iftikhar Khan [(1973) 1 SCC 512 : 1973 SCC (Cri) 384]).”

In the case of *Shyamal Ghosh Vs. State of West Bengal reported in (2012) 7 SCC 646*, the Court has considered the different facets of appreciation of evidence. In paragraph 45.3, the Court has considered that the statement of hostile witness can be relied upon by the court to the extent it supports the case of the prosecution and the Court has further held that no doubt when the Court has to appreciate the evidence given by the witnesses who are closely related to the deceased, it has to be very careful in evaluating such evidence but the mechanical rejection of the evidence on the sole ground that it is that of any interested witness would inevitably relate to failure of justice. Where it is a genuine attempt on the part of a witness to bring correct facts by clarification on record, such statement must be seen in a different light to a situation where the contradiction is of such a nature that it impairs his evidence in its entirety. The Court has further held that every omission cannot take shape of a contradiction in law and, therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial



nature which do not affect the core of the prosecution case and have serious consequence should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradistinction to mere marginal variations in the statement of the witnesses. It will be proper to quote relevant part from paragraphs 45.3 and 52 as well as entire paragraphs 68 and 69 of the said judgment :-

“45.3. It is a settled principle of law that statement of a hostile witness can also be relied upon by the court to the extent it supports the case of the prosecution. Reference in this regard can be made to Govindaraju v. State.

52. This Court has also taken the view that no doubt when the Court has to appreciate the evidence given by the witnesses who are closely related to the deceased, it has to be very careful in evaluating such evidence but the mechanical rejection of the evidence on



the sole ground that it is that of an interested witness would inevitably relate to failure of justice (Brathi).

68. From the above discussion, it precipitates that the discrepancies or the omissions have to be material ones and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradistinction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the



prosecution.

69. Another settled rule of appreciation of evidence as already indicated is that the court should not draw any conclusion by picking up an isolated portion from the testimony of a witness without adverting to the statement as a whole. Sometimes it may be feasible that admission of a fact or circumstance by the witness is only to clarify his statement or what has been placed on record. Where it is a genuine attempt on the part of a witness to bring correct facts by clarification on record, such statement must be seen in a different light to a situation where the contradiction is of such a nature that it impairs his evidence in its entirety”.

In the case of *Govindaraju @ Govinda Vs. State by Sriramapuram Police Station and another reported in (2012) 4 SCC 722*, it has been held that the hostile witness can also be relied upon by the court to the extent it supports the prosecution case. The presumption of adverse inference can be drawn in the event of non-production of material witness like the doctor, who performed the post mortem and examined the victim who was declared dead as well as Head Constable and Constable, who reached the site immediately upon the occurrence. The Court has said that it is not necessary to examine the large number of witnesses if the prosecution can bring home the guilt of the



accused even with a limited number of witnesses. It is not the quantity of witness but quality of witness as witness must be clear in statement and must be trustworthy. Even the large number of witnesses will be of no value if it not material and trustworthy. It is not the principle when the witnesses have turned hostile the prosecution case would fail, but the statement of hostile witness partly supports would be taken into consideration. Single eye witness gives graphic details of incident corroborated other material evidence suffice to record conviction. It will be proper to quote paragraphs 24, 25, 36, 63, 64 and 65 of the said judgment :-

“24. It is a settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses. In Lallu Manjhi v. State of Jharkhand [(2003) 2 SCC 401 : 2003 SCC (Cri) 544] (SCC p. 405, para 10), this Court had classified the oral testimony of the witnesses into three categories:

- (a) wholly reliable;***
- (b) wholly unreliable; and***
- (c) neither wholly reliable nor wholly unreliable.***

In the third category of witnesses,



the court has to be cautious and see if the statement of such witness is corroborated, either by the other witnesses or by other documentary or expert evidence.

25. Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eyewitness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty.

36. It is also not always necessary that wherever the witness turned hostile, the prosecution case must fail. Firstly, the part of the statement of such hostile witnesses that supports the case of the prosecution can always be taken into consideration. Secondly, where the sole witness is an eyewitness who can give a graphic account of the events which he had



witnessed, with some precision cogently and if such a statement is corroborated by other evidence, documentary or otherwise, then such statement in face of the hostile witness can still be a ground for holding the accused guilty of the crime that was committed. The court has to act with greater caution and accept such evidence with greater degree of care in order to ensure that justice alone is done. The evidence so considered should unequivocally point towards the guilt of the accused.

63. There is certainly some content in the submissions made before us that non-production of material witnesses like the doctor, who performed the post-mortem and examined the victim before he was declared dead as well as of the Head Constable and the constable who reached the site immediately upon the occurrence and the other two witnesses turning hostile, creates a reasonable doubt in the case of the prosecution and the court should also draw adverse inference against the prosecution for not examining the material witnesses. We have already dwelled upon appreciation of evidence at some length in the facts and circumstances of the present case. There is deficiency in the case of the prosecution as it should have proved its case beyond reasonable doubt with the help of these witnesses, which it chose not to produce before the court, despite their availability.

64. In this regard, we may refer to



the judgment of this Court in Takhaji Hiraji v. Thakore Kubersing Chamansing [(2001) 6 SCC 145 : 2001 SCC (Cri) 1070] wherein this Court held as under: (SCC p. 155, para 19)

“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. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself—whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether



such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the present case we find that there are at least 5 witnesses whose presence at the place of the incident and whose having seen the incident cannot be doubted at all. It is not even suggested by the defence that they were not present at the place of the incident and did not participate therein. The injuries sustained by these witnesses are not just minor and certainly not self-inflicted. None of the witnesses had a previous enmity with any of the accused persons and there is apparently no reason why they would tell a lie. The genesis of the incident is brought out by these witnesses. In fact, the presence of the prosecution party and the accused persons in the chowk of the village is not disputed.”

65. The applicability of the principle of “adverse inference” presupposes that withholding was of such material witnesses who could have stated precisely and cogently the events as they occurred. Without their examination, there would remain a vacuum in the case of the prosecution. The doctor was a cited witness but was still not examined. The



name of the Head Constable and the constable appears in the police investigation but still they were not examined. It is true that in their absence the post-mortem report and the FSL report were exhibited and could be read in evidence. But still the lacuna in the case of the prosecution remains unexplained and the chain of events unconnected. For instance, the Head Constable could have described the events that occurred right from the place of occurrence to the death of the deceased. They could have well explained as to why it was not possible for one police officer, one Head Constable and one constable to apprehend all the accused or any of them immediately after the occurrence or even make enquiry about their names. Similarly, the doctor could have explained whether inflicting of such injuries with the knife recovered was even possible or not. The expert from the FSL could have explained whether or not the weapons of offence contained human blood and, if so, of what blood group and whether the clothes of the deceased contained the same blood group as was on the weapons used in the commission of the crime. The uncertainties and unexplained matters of the FSL report could have been explained by the expert. There is no justification on record as to why these witnesses were not examined despite their availability”.

In the case of *Rana Pratap and others Vs. State of*



Haryana reported in AIR 1983 SC 680, the question of value of the evidence given by the chance witness came for consideration before the Hon'ble Supreme Court, deliberated in the manner that murders are not committed with previous notice to witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passerby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere chance witnesses. It has been held that expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is proper to quote paragraph 3 of the said judgment :-

“3. There were three eyewitnesses. One was the brother of the deceased and the other two were a milk vendor of a neighbouring village, who was carrying milk to the dairy and a vegetable and fruit hawker, who was pushing his laden cart along the road. The learned Sessions Judge and the learned counsel described both the independent witnesses as “chance witnesses” implying thereby that their evidence was suspicious and their presence at the scene doubtful. We do not understand the expression



“chance witnesses”. Murders are not committed with previous notice to witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed on a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere “chance witnesses”. The expression “chance witnesses” is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are “chance witnesses”, even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence”.

The same issue again came for consideration in the case of *Thangaiya Vs. State of Tamilnadu* reported in *AIR 2005 SC 1132* reiterating the same principle on chance witness in paragraph 8. So it has been consistently held that branding a witness as a chance witness cannot be looked into by any suspicion, if the person was there at the time of commission of crime, he cannot be viewed suspiciously and it will have the



same value as that of natural witnesses and will carry the same weight like other witnesses.

The judgment cited by counsel for the appellants in the case of ***Harijinder Singh @ Bhola Vs. State of Punjab reported in 2004 Cri.L.J. 3854*** is not applicable in the facts of this case as this judgment has not explained cardinal principle to be applied while making assessment of the evidence which has been labeled as a chance witness.

The judgment in the case of ***Masalti and Ors. Vs. the State of Uttar Pradesh reported in AIR 1965 SC 202*** deals with the issue in what manner the evidence of the partisan witnesses is to be scrutinized and to be dealt with as well as number of witnesses to be examined. While assessing the evidence of partisan and interested witnesses, the court should be very careful in weighing such evidence, whether or not there are discrepancies in the evidence; whether or not evidence strikes the Court as genuine, whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account, but it would be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it



is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated and on the point of number of witnesses to be examined, it has been held that where the criminal court has to deal with the evidence pertaining to commission of the offence involving large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. It is proper to quote entire paragraph of 13 and relevant portion of paragraph of 16 of the said judgment :-

“14. Mr Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prove to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine whether or not the story



disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

“16. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one



which the High Court has adopted in dealing with the present case”.

The appellants have cited the judgment in the case of *Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and another reported in 2000 Cri.L.J.2983*. The issue dealt with in that judgment is not involved for consideration in this case and, as such, this judgment does not apply in the present case.

The judgment rendered in the case of *Meharaj Singh Vs. State of U.P. reported in (1994) 5 SCC 188* deals with the issue of withholding the material witnesses in which it has been held that if the material witness has not been examined, adverse inference could be drawn. It will be proper to quote paragraph 14 of the said judgment :-

“14. It is interesting in this connection also to note that Satkari PW 5 named Resham also as an eyewitness. The High Court rightly held Satkari to be a chance witness also but the prosecution has not explained as to why Resham who was alleged to be an eyewitness has not been examined. According to Balbir PW 2, Jog Raj was also an eyewitness. He too has not been examined. Shiv Charan PW 4, also named Resham and Jog Raj as eyewitnesses. Thus, it appears to us that a concerted effort was made by the prosecution witnesses to introduce Resham and Jog Raj as false eyewitnesses in the case but since they have not been examined, it



would be fair to draw a presumption, that they perhaps were not prepared to support the false case. The High Court while setting aside the order of acquittal did not deal with these various infirmities”.

In the case of *Juman and another Vs. State of Bihar reported in (2017) 11 SCC 85*, in paragraph 21, the Hon’ble Supreme Court has said that the non-examination of the witnesses, who might have been there when deceased narrated the incident, would not make the prosecution case unacceptable. Evidence of any witness cannot be rejected merely on the ground that interested witnesses admittedly had enmity with the persons implicated in the case. The purpose of recording of the evidence, in any case, shall always be to unearth the truth of the case. Conviction can even be based on the testimony of a sole eyewitness, if the same inspires confidence.

“21. We have seen in the instant case that the witnesses have vividly deposed about the genesis of the occurrence, the participation and involvement of the accused persons in the crime. The non-examination of the witnesses, who might have been there on the way to hospital or the hospital itself when deceased narrated the incident, would not make the prosecution case unacceptable. Similarly, evidence of any witness cannot be rejected merely on the ground that interested witnesses



admittedly had enmity with the persons implicated in the case. The purpose of recording of the evidence, in any case, shall always be to unearth the truth of the case. Conviction can even be based on the testimony of a sole eyewitness, if the same inspires confidence. Moreover, prosecution case has been proved by the testimony of the eyewitness, since corroborated by the other witnesses of the occurrence. We are constrained to reject the submissions made on behalf of the appellants”.

The judgment rendered in the case of *Vijendra Singh Vs. State of Uttar Pradesh reported in (2017) 11 SCC 129* (same volume) has dealt with the issue of non-examination of material witness, which creates doubt in the prosecution case. In that case, the Court has said that non-examination of material witness is not mathematical formula for discarding the weight of the testimony available on the record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses were available for being examined in the court and were yet withheld by the prosecution. It is to be calibrated in the sense that if the witness would be examined it will dilute and



make unreliable and untrustworthy to those who have deposed, in such circumstances, it will affect the prosecution story. It will be proper to quote paragraphs 35, 36 and 37 of the said judgment :-

35. The next plank of argument of Mr Giri is that since Nepal Singh who had been stated to have accompanied PW 2 and PW 3 has not been examined and similarly, Ram Kala and Bansa who had been stated to have arrived at the tubewell as per the testimony of PW 2, have not been examined, the prosecution's version has to be discarded, for it has deliberately not cited the independent material witnesses. It is noticeable from the decision of the trial court and the High Court, that reliance has been placed on the testimony of PWs 1 to 3 and their version has been accepted. They have treated PW 2 and PW 3 as natural witnesses who have testified that the accused persons were leaving the place after commission of the offence and they had seen them quite closely. The contention that they were interested witnesses and their implication is due to inimical disposition towards accused persons has not been accepted and we have concurred with the said finding. It has come out in evidence that witnesses and the accused persons belong to the same village. The submission of Mr Giri is that non-examination of Nepal Singh, Ramlal and Kalsa is quite



critical for the case of the prosecution and as put forth by him, their non-examination crucially affects the prosecution version and creates a sense of doubt. According to Mr Giri, Nepal Singh is a material witness. In this regard we may refer to the authority in State of H.P. v. Gian Chand [State of H.P. v. Gian Chand, (2001) 6 SCC 71 : 2001 SCC (Cri) 980] wherein it has been held that: (SCC p. 81, para 14)

“14. Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses were available for being examined in the court and were yet withheld by the prosecution.”

The Court after so holding further ruled that it is the duty of the court to first assess the trustworthiness of the evidence available on record and if the court finds the evidence adduced worthy of being relied on and deserves acceptance, then non-examination of any other witnesses available who could also have been examined but were not examined, does not affect the case of the prosecution.



36. In Takhaji Hiraji v. Thakore Kubersing Chamansing [Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145 : 2001 SCC (Cri) 1070] , it has been held that: (SCC p. 155, para 19)

“19. ... 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. On the other hand, if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. ... If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable, the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses.”

37. In Dahari v. State of U.P. [Dahari v. State of U.P., (2012) 10 SCC 256 :



(2013) 1 SCC (Cri) 22] , while discussing about the non-examination of material witness, the Court expressed the view that when he was not the only competent witness who would have been fully capable of explaining the factual situation correctly and the prosecution case stood fully corroborated by the medical evidence and the testimony of other reliable witnesses, no adverse inference could be drawn against the prosecution. Similar view has been expressed in Manjit Singh v. State of Punjab [Manjit Singh v. State of Punjab, (2013) 12 SCC 746 : (2014) 4 SCC (Cri) 531] and Joginder Singh v. State of Haryana [Joginder Singh v. State of Haryana, (2014) 11 SCC 335 : (2014) 3 SCC (Cri) 366]”.

Counsel for the appellants has submitted that the charges have not been proved beyond all reasonable doubts. It is to be examined the nature of degree of proof required to be treated to have been proved beyond reasonable doubt, the thought of absolute certainty in human affair is myth as absolute proof being unattainable but law accepts for its probability as working substitute.

In the case of *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid Vs. State of Maharashtra* reported in *(2012) 9 SCC 1, in paragraph 602*, the Court has considered what will be the parameters for proving the charge beyond all



reasonable doubt. It has been said that in all human affairs absolute certainty is myth. Ordinarily, El Dorado theory of ‘absolute proof’ being unattainable, the law accepts for its probability as a working substitute. Hardly one comes across a case, where the court does not resort to ‘certain probability’ as working substitute for proof beyond all reasonable doubt. It will be proper to quote paragraphs 602 and 603 of the said judgment :-

“602. In all human affairs absolute certainty is myth. Prof. Brett puts it, “all exactness is fake”. Ordinarily, El Dorado theory of “absolute proof” being unattainable, the law accepts for it probability as a working substitute.

603. Hardly one comes across a case, where the court does not resort to “certain probability” as working substitute for proof beyond all reasonable doubt. However, in the case in hand, from the evidence, oral and documentary, reference of which have copiously been made in the judgment by my noble and learned Brother Aftab Alam, J. make me believe that “absolute certainty” may not necessarily be a myth or fake in all cases and can be a reality”.

In the case of *Chaman and another Vs. State of Uttarakhand reported in (2016) 12 SCC 76*, what are the attributes for proving the charge beyond all reasonable doubts has been considered in paragraph 31 of the said judgment as has



been held that proof of reasonable doubt is only guideline and not a fetish and that someone, who is guilty, cannot get away with impunity only because truth may suffer some infirmity when projected through human processes as has been observed in *Inder Singh Vs. State of Delhi reported in (1978) 4 SCC 161*. It has been held that reasonable doubt is simply that degree of doubt which would permit a reasonable and a just man to come to a conclusion. Reasonableness of doubt must be commensurate to the nature of the offence to be investigated. It will be proper to quote paragraph 31 of the said judgment :-

“31. Proof beyond reasonable doubt, as has been held in a plethora of decisions of this Court, is only a guideline and not a fetish and that someone, who is guilty, cannot get away with impunity only because truth may suffer some infirmity when projected through human processes as has been observed in Inder Singh v. State (Delhi Admn.) [Inder Singh v. State (Delhi Admn.), (1978) 4 SCC 161 : 1978 SCC (Cri) 564] . A caveat against exaggerated devotion to the rule of benefit of doubt to nurture fanciful doubts or lingering suspicion so as to destroy social defence has been sounded by this Court in Gurbachan Singh v. Satpal Singh [Gurbachan Singh v. Satpal Singh, (1990) 1 SCC 445 : 1990 SCC (Cri) 151] . It has been propounded that reasonable doubt is simply that degree of doubt which would permit a reasonable and a just man to come to a conclusion. It has been



underlined therein that reasonableness of doubt must be commensurate to the nature of the offence to be investigated”.

Counsel for the appellants has taken a plea that the prosecution could not prove the place of occurrence where offence was committed either at Shivala or the electric pole. This issue is very important issue in the sense that if the prosecution has failed to prove the place of occurrence then the entire edifice of the prosecution would collapse under its own weight.

In order to decide this issue, it will be appropriate to consider the earliest version i.e. the statement made in the FIR as well as the statements made by Santosh Kumar Singh (P.W.7) and Pankaj Kumar (P.W.6), who have claimed that they were sitting near the Shivala and Dharmendra Singh (deceased) was preparing and chewing tobacco and, in the meantime, the accused persons came and finally Dharmendra was killed. In the FIR, the statement has been made that the informant, his cousin brother Dharmendra Kumar Singh along with others were sitting near to the Shivala. So the statement has been made that they were sitting near the Shivala. The Investigating Officer, namely, Surendra Rai (P.W.9 in Sessions Trial No. 273 of 2000) has stated that the place of occurrence is 16 feet away from the



place of Shivala, which is considered to be Shivala and the dead body of the deceased was found near triangle as well as to the electric pole where he found large quantity of blood and as per assessment of Investigating Officer, the place of occurrence is 16 feet away from the Shivala and the witnesses have not stated that all were sitting at the top portion of Shivala, but they have said near the Shivala, meaning thereby that, they were sitting near Shivala and the distance of base of Shivala has not come before this Court because 16 feet is not very much wide from the Shivala, the place of occurrence is not 16 feet away from the base of Shivala.

Let us examine the evidence of Pankaj Kumar, who has been examined as P.W.2 in Sessions Trial No. 685 of 1998 and P.W. 6 in Sessions Trial No. 273 of 2000 about the place where they were sitting and in what manner the offence has been committed. He has stated in his examination-in-chief that the deceased and other persons were sitting near the Shivala and in his cross-examination, no specific question has been asked about the distance of place of occurrence from the place of Shivala, but the question has been put about the distance of the deceased vis-a-vis this witness. Santosh Kumar Singh, who is the informant of this case and has been examined as P.W. 7 in



Sessions Trial No. 273 of 2000 has stated that at about 7.15 A.M. they were sitting near the Shivala and has not stated the exact distance from the Shivala and he has stated in paragraph 26 that the deceased, who was caused firearm injury, is 10-15 yards west of Shivala. So they have given the distance as per their own rough estimate. The other two witnesses, namely, Rajaram Singh as well as Sheelam Devi, who came later on has stated that the occurrence has taken place near Shivala and the deceased had received bullet injury. He tried to hide himself behind the electric pole, but was caught in gunshot firing. So on forensic examination of evidences, it may be a slight minor discrepancy but not a major, any difference or inconsistency or discrepancy in the statement of witnesses eroding the credibiility of the statement, who have claimed to be the eye witnesses of the occurrence, of causing injury and dying of the deceased. So counsel for the appellants has failed to show that the prosecution has failed to show the exact place of occurrence either at Shivala or at the electric pole as both are adjacent to each other, i.e., near to each other. Santosh Kumar Singh and Pankaj Kumar both have said, as explained hereinabove, were sitting near the Shivala, where these accused persons came there hurling abuses, when Dharmendra (deceased) asked them as to



why they were hurling abuses, whereupon the incident took place. It has also been stated that Dharmendra, in order to save himself, moved towards electric pole which was not very far where he was found dead by the Investigating officer, which is apparently clear from the FIR as well as deposition of the Investigating officer.

In such view of the matter, we are of the view that the prosecution fairly has proved the place of occurrence.

The second point that has been taken that all the witnesses, who have been examined, are interested witnesses to settle the score with appellants. It has been submitted that it is peculiar that none of the family member having been examined as witness, so the material witnesses have been withheld by the prosecution. If they would have examined they could have explained the person/persons behind the scene in commission of murder.

While dealing with this issue, the material witnesses would be those who were present at the place of occurrence and have seen the incident by their own respective eyes. Any other persons as proposed witnesses by the appellants, their status will only be hearsay witness. In the present case, from the statement of Rajaram Sharma (P.W.1 in Sessions Trial No. 685/98),



Sheelam Devi (P.W. 11 in Sessions Trial No. 685/98), Pankaj Kumar (P.W. 2 in Sessions Trial No. 685/98) and Santosh Kumar Singh (P.W. 9 in Sessions Trial No. 685/98), they in one tone have stated that at the place of occurrence the family members were not present, calling them material witness cannot be accepted as their status would be hearsay witness, so the allegation of withholding the material witnesses is misconceived and misdirected. Those, who were present, have narrated the incident would be proper witness. It has been stated by all witnesses that when Arun Kumar Singh exhorted to kill the deceased, whereupon Ranjit Singh had made firing which hit the elbow and second and third firing was made by Amir Singh, out of which one of the bullet hit the abdominal portion of the body and one bullet missed. So, in our view, it is discretion of the prosecution in terms of Section 134 of the Evidence Act to decide who will be the best witness to prove the charge. It is also settled law that it is not the number of witnesses but quality of witnesses inspiring credibility in their statement is required. Of course, some doubt is created as to why family members have not been examined either by the police or in the court. From the evidence of Rajaram (P.W.1), Sheelam Devi (P.W.11), Santosh Kumar Singh (P.W.(9) and Pankaj Kumar (P.W.2), it



appears that all have stated that the mother of the victim was working in Vidyapeeth and she was not present on the date of occurrence. The brother Sujit Kumar of the deceased was present as well as the female member, wife of deceased and Sujit Kumar were in the house, so they were not the eye witness to the incident inasmuch as wife of Dharmendra (deceased) had gone for second marriage after his death. It is also apparently clear from the evidence that the question has been put to Sheelam Devi (P.W.11), Santosh Kumar (P.W.9) and Rajaram (P.W.1) that to settle the score, a Panchayati was organized in which the accused persons have deposited Rs. 2 lacs to Mukhiya to make payment to settle score and suggestion was given that such money was not paid to Rajaram (P.W.1) as the Mukhiya and mother of the victim have taken a plea that the money should be paid to her, whereas Rajaram (P.W.1) has taken a plea that he was taking care of the case and it was initiated by his son, payment should be made to him. In such view of the matter, on account of social engineering, in order to hush up, the family members even of their own did not come forward to support the prosecution as, it appears, they have thought, it better to keep away, from the scene. So it is very much clear that they are not the material witnesses as well as in order to settle the score,



some Panchayati was organized, money was deposited to Mukhiya in order to hash up the matter. It also appears that they are the very powerful person of the village, the auction was always taken by Amir Singh for fishing. So the claim made by the appellants that purposely the prosecution has not produced the family members as witness, only examined interested witnesses, having no substance. Apart from aforesaid fact, no question or suggestion was put to prosecution witness of inimical term with with present appellants, but only suggestion has been given with regard to the money. In the FIR itself the name of Rajaram Singh (P.W.1) and Pankaj Kumar (P.W. 2) has been mentioned in the body of the FIR. So, in our view, merely because the family members have not been examined by the police or before the court below has not caused any fatal blow to the prosecution case and, as such, we find that there is no substance in such submission.

The plea has been taken that the prosecution has examined Rajaram Singh, who is a chance witness is of no substance as the incident had taken place in broad day light in public view. Even presuming Rajaram Singh (P.W.1) is a chance witness, his statement cannot be disbelieved as his statement has been corroborated by other witness.



In the case of *Rana Pratap and others Vs. State of Haryana reported in AIR 1983 SC 680 (Supra)*, the question of value of the evidence given by the chance witness came for consideration before the Hon'ble Supreme Court and the Hon'ble Supreme Court has said that murders are not committed with previous notice to witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passerby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere chance witnesses. In the present case, Rajaram Singh has stated that he used to go to the shop in morning and when he heard he rushed there and found Ranjit Kumar Singh and Amir Singh have resorted firing, gunshot of Ranjit Singh hit the elbow and Amir Singh resorted two firings, one firing missed and second firing hit the abdominal portion of the body. So evidence of Rajaram Singh (P.W.1) supported by others are sufficient to prove that the injuries have been caused by two persons and Munna Kumar had thrown piece of brick and Arun Singh did not fire, but came with pistol. So evidence of all witnesses are corroborative to each other and to say that



Rajaram Singh is a chance witness and does not have the evidentiary value having no substance in the submission.

Fourth point, which has been taken with regard to incongruity and inconsistency in the ocular evidence of four witnesses, which are material in nature, creates serious doubt in the authenticity of their version. To examine this aspect of the matter, we will have to make critical analysis of evidences of witnesses, who are eye witnesses, namely, Rajaram Singh, Sheelam Devi, Pankaj Kumar and Santosh Kumar Singh and all witnesses have stated in the following term.

Rajaram Singh who is P.W. 1 in Sessions Trial No. 685 of 1998 has stated that the bullet was fired from 5-6 yards and it was not that firing was made from blank distance. He in his statement as P.W. 4 in Sessions Trial No. 273 has given the distance about 7-8 yards.

Pankaj Kumar, who is P.W. 2 in Sessions Trial No. 685 of 1998, has stated in paragraph 27 that firing was made at a distance of 6-8 yards. He has been examined as P.W. 7 in Sessions Trial No. 273 of 2000 and has stated that firing was made from a distance of 6-7-8 yards and first firing might be from more distance.

Santosh Kumar Singh, who has been examined as



P.W.9 in Sessions Trial No. 685 of 1998, has stated that firing upon the deceased was made from the distance of 7-8 yards and this witness has again been examined as P.W. 7 in Sessions Trial No. 273 of 2000 and has stated that the firing was made from the distance of 8-10 yards.

It appears that all the aforesaid three witnesses have given their own estimation of the distance, it cannot be said to be some exactly, but was rough estimation as well as they are semi literate person, they have only given the rough distance from where the firing was made. Some witnesses has stated 6-8 yards and in one place Santosh Kumar Singh has stated from 6-8 yards, but some only stated 7-8 yards.

Now let us examine the evidence of doctor, who has stated that he has found the injury which was caused in the elbow and the bullet was recovered in tracular portion of the bone, whereas in abdominal portion of the body the entry wound has been given 1/2" whereas exist wound has been shown 3/4" x 1/2". The suggestion was given that singly blow has caused three injury, which has been denied by the doctor and said that it has been caused by the bullet injury and the doctor has stated that circular wound with the charring around and it has been said in his cross-examination that blackening



and charring around is caused if the firing is made within four feet. So medical evidence and the ocular evidence are little incompatible to each other rather discrepancy is not at large, gives blow to the prosecution story. They are the semi literate person, their estimation is only rough estimation inasmuch as even presuming that there is inconsistency when all the witnesses have stated about the incident in what manner it has been acted upon, in such circumstances, if the witness is trustworthy, it will prevail over the medical evidence. In our view, the opinion of the doctor would hardly erode credibility or doubt about the incident which took place and the evidence of prosecution witness. The evidences of four persons corroborated each other to indicate that the accused persons came there at about 7.00 O' clock and whereafter the some hot discussion in the term of hurling abuses took place, when Dharmendra interjected, whereafter at the behest of Arun Kumar Singh, at first Ranjit Singh fired, causing injury in elbow and Amir Singh caused injury upon abdominal portion of the body, as a result of which, Dharmendra died near electric pole and the electric pole is hardly 10-15 yards from the Shivala and the prosecution has proved the place of occurrence and manner of occurrence. All accused persons in furtherance of common intention came at the



place of occurrence and committed crime causing death of the deceased.

In view of the aforesaid discussions, it appears that the prosecution has succeeded in proving its case beyond all reasonable doubts and the trial court has rightly convicted and sentenced the appellants. Thus, no interference is required by this Court in the impugned judgment of conviction and order of sentence.

Since the appellants, namely, Munna Singh and Arun Singh of Cr. Appeal (DB) No. 617 of 2008 and appellant, namely, Ranjeet Singh of Cr. Appeal (DB) No. 647 of 2008, are on bail, their bail bonds are cancelled and they would be required to surrender before the court below forthwith to serve out the remaining period of sentence as imposed by the trial court.

As a result, these appeals are dismissed.

(Shivaji Pandey, J)

Anjani Kumar Saran, J. I agree.

(Anjani Kumar Sharan, J)

V.K.Pandey/-

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