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Ankit ... Appellant

State of Haryana ... Respondent

Mukesh ... Appellant

State of Haryana and others ... Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Mr. Pardeep Singh Poonia, Advocate and
Mr. Pulkit Dhanda, Advocate,
for the appellant in CRA-AD-89-2017.
for the complainant in Crl. Appeal No.D-222-DB of 2017.

1. This order shall dispose of aforementioned two appeals which have been preferred against the common judgment dated 31.01.2017 and order dated 02.02.2017 passed in Sessions Case No.SC/1164 of 2014 titled as State vs. Ranbir and others whereby the

accused Ankit was held guilty for commission of offences punishable under Section 302 of IPC and Section 25 of Arms Act and was sentenced to undergo life imprisonment for commission of offence punishable under Section 302 of IPC and undergo rigorous imprisonment for two years for commission of offence punishable under Section 25 of Arms Act. He was also sentenced to pay fine and to undergo further imprisonment in default thereof whereas remaining accused namely Ranbir, Amit, Satbir, Dharambir and Babli were acquitted of the charges as framed against them. The appeal mentioned at Sr. No.1 has been preferred by the accused-convict Ankit whereas the appeal mentioned at Sr. No.2 has been filed by the complainant Mukesh.

2. For the sake of convenience, the parties shall be referred to as per their original nomenclature as given at the time of trial.

3. The case as set up by the prosecution is that on 27.06.2014, on receipt of a telephonic information regarding death of one Jatin son of Mukesh resident of Village Sohti due to sustaining some firearm injury, a police party headed by ASI Raj Kumar rushed towards Shivam Hospital, Bahadurgarh wherein the dead body of the victim Jatin was found to be lying. Sh. Mukesh, father of the victim submitted a written complaint Ex.PW2/A alleging therein that on the same day, he along with his son Jatin and co-villager Sumit had been going towards Village Mageshpur in his Santro car bearing registration No.HR-10Q-1938 (for short "the car"). While on the way, Sumit received a call on his mobile phone from accused Ankit and told the complainant and his son that accused Ankit was calling them. On hearing so, Jatin who was driving the car, turned the car towards

Kutubpur road. When they were about to reach cardboard factory of Jagbir situated at Kutubpur road, accused Ankit was found standing under a neem tree. On seeing him, Jatin stopped the car. Accused Ankit came towards the car and opened the rear window of the same. The complainant presumed that he would have some conversation with Jatin but the accused Ankit at once took out a countrymade pistol from his pocket and fired a shot towards Jatin which hit the back side of his left shoulder. The accused Ankit thereafter started re-loading the pistol. The complainant and Sumit tried to apprehend him but he fled towards the fields along with his pistol. The complainant then rushed towards Bahadurgarh to take his injured son to some hospital but on reaching there, the victim was declared to be dead. The complainant alleged that Jagbir Singh, son of his uncle Hoshiar Singh had some property dispute with his other four brothers namely, co-accused Satbir, Dharambir, Raj Singh and Leelu and since they suspected that the complainant and his family members used to instigate Jagbir, hence with this motive, the accused Ankit who was son of Satbir and the other accused had hatched a conspiracy and had killed his son in pursuance thereof. He prayed for taking penal action against the culprits.

4. On this complaint, a case under Section 302 read with Section 120-B of IPC and Section 25 of Arms Act was registered. Investigation proceedings were initiated. Inquest proceedings and postmortem examination of the dead body was conducted. The empty of cartridge and one pallet were recovered from the car which along with the car were taken into possession. On 29.06.2014, the accused Ranbir, Satbir and Amit were arrested. Offence under Section 120-B of IPC was added. The accused

Ankit was arrested on 10.07.2014. He too was interrogated and suffered disclosure statement on 12.07.2014 and got recovered the weapon of offence along with one live cartridge and demarcated the place of occurrence. The accused Dharambir was arrested on 30.07.2014. During investigation, accused Dharambir and Babli Devi were found to be innocent and their names were kept in column No.2 of the challan report. Accused Dharambir was discharged from custody. After completion of necessary investigation, challan under Section 173 Cr.P.C. was presented in the Court against accused Satbir, Ranbir, Ankit and Amit. During trial, an application under Section 319 of Cr.P.C. was filed by the complainant which was allowed by order dated 24.05.2016 and accused Dharambir and Babli were summoned as additional accused.

5. On finding a prima facie case, accused were charge-sheeted for commission of offences punishable under Sections 120-B and 302 read with Section 34 of IPC whereas accused Ankit was also separately charge-sheeted for commission of offence punishable under Section 25 of Arms Act. They pleaded not guilty to the charges and claimed trial.

6. To substantiate its case, the prosecution examined as many as 21 witnesses. In order to properly appreciate the evidence and the circumstances which were arrayed against the accused, it may be apposite to have a brief resume of the evidence led by the prosecution. **PW-1** Sumit and **PW-2** Mukesh, complainant were eye-witnesses to the factum of murder of the victim. **PW-3** Punit Rana was witness of overhearing conversation of hatching a conspiracy to kill the victim, between the accused. **PW-4** Ramesh Kumar, **PW-16** ASI Sunil Kumar and **PW-18** EASI Narender

deposed about eye-witnessing the factum of recovery of weapon of offence and a live cartridge at the instance of the accused. **PW-5** Vijay Kumar, Halqa Patwari had prepared ask-sijra of the place of occurrence. **PW-6** Ashok Kumar proved order sanctioning prosecution of accused Ankit under Arms Act. **PW-7** Dr. Salender Rana was the witness who along with other doctors had conducted postmortem examination on the dead body of the victim. **PW-8** Constable Deepak, **PW-9** Constable Parveen, **PW-11** SI Devender Kumar, **PW-12** Kartar Singh, **PW-14** HC Jitender Kumar, **PW-17** SI Savit Kumar and **PW-19** ASI Sukhbir Singh were formal witnesses. **PW-10** Constable Amit was an attesting witness who had joined investigation on 29.06.2014. **PW-13** HC Ram Dutt had conducted mechanical examination of the car bearing registration No.HR-10Q-1938. **PW-15** ASI Raj Kumar had conducted initial investigation in the matter. **PW-20** Dr. Neelesh Dange had prepared medico legal report of the victim. **PW-21** Inspector Sombir was the investigating officer who deposed about conducting investigation from the stage of receipt of information about the incident till culmination of entire investigation proceedings and proved the steps taken by him during the course of the investigation leading to collection of entire incriminating evidence justifying the prosecution of the accused for hatching conspiracy and causing death of the victim.

7. The statements of accused were recorded under Section 313 of Cr.P.C. They pleaded false implication and claimed themselves to be innocent. In defence evidence, the accused examined 7 witnesses namely, **DW-1** Narender, **DW-2** Rinku, **DW-3** Deepak Kumar, Draftsman, **DW-4** Ranbir Singh, SDE (CMO) BSNL, Sonapat, **DW-5** Surender Kumar, Nodal

Officer Bharti Airtel Limited, **DW-6** Vinod Kumar Nodal Officer, MTNL and **DW-7** Hawa Singh, Statistical Assistant, Office of Civil Surgeon, Sonapat.

8. After considering the contentions raised by both the sides and appreciating the evidence produced on record, the learned trial Court acquitted the accused Ranbir, Amit, Satbir, Dharambir and Babli of the charges as framed against them and convicted the accused Ankit in the manner as indicated above.

9. Feeling dissatisfied from the order of acquittal of accused Ranbir, Amit, Satbir, Dharambir and Babli, the complainant preferred the appeal mentioned at Sr. No.2 whereas feeling aggrieved from the judgment of conviction, the accused Ankit preferred the appeal mentioned at Sr. No.1.

10. Firstly, let us consider the question as to the cause of death of the victim Jatin. The testimony of PW-7 Dr. Salender Rana coupled with the postmortem examination report proves that the victim had sustained a bullet injury. One entry wound and one exit wound of nature of lacerated wounds were found on the dead body of the victim. The cause of death as given by PW-7 was haemorrhage and shock due to sustaining bullet injury which was ante mortem in nature and was sufficient to cause death in the ordinary course of nature. These injuries lead to no other inference than that of homicidal death. The testimony of PW-7 with regard to these injuries had also remained unshattered and, therefore, the fact that the victim had died a homicidal death due to sustaining bullet injury stood proved.

11. The next question that crops up for consideration is as to whether the accused persons had hatched any conspiracy to kill the victim

and in the pursuance thereof, it was the accused Ankit who had actually eliminated the victim by firing a shot with pistol upon the victim or not? Learned counsel for the complainant strenuously argued that the learned trial Court had rightly recorded the findings as to the guilt of accused Ankit but had committed a grave error in acquitting the accused Dharambir, Satbir, Ranbir, Amit and Babli. He submitted that it was well proved on record that all the accused had hatched a conspiracy to eliminate the victim on the night of 26.06.2014. The conversation between them was overheard by PW-3 Punit Rana who had given a categoric version of the same but his testimony had not been properly appreciated by learned trial Court. He further argued that the accused were also proved to have suffered disclosure statements admitting their involvement in the offence of hatching conspiracy for murder of the victim. Their disclosure statements were admissible in evidence and could be acted and relied upon. With these broad arguments, it was submitted by him that the appeal filed by the complainant deserved to be allowed and the accused Dharambir, Satbir, Ranbir, Amit and Babli were liable to be held guilty and convicted whereas the appeal filed by the accused Ankit being devoid of any merits was liable to be dismissed.

12. The respondents-accused Ranbir, Amit, Satbir, Dharambir and Babli had appeared in response to the notice of the appeal filed by the appellant-complainant. However, none appeared on their behalf today. Learned counsel for the accused Ankit strenuously argued that the findings as given by learned trial Court did not warrant any interference so far as the acquittal of the above named accused was concerned but were not

sustainable to the extent to which the accused Ankit had been held guilty and convicted. The learned trial Court had not appreciated the evidence produced on record in a proper manner and did not apply its judicious mind. The evidence produced on record by the prosecution fully proved that the complainant Mukesh was not present at the place of occurrence at the time of murder of the victim and was planted as an eye-witness later on to implicate the accused falsely in this case. The call detail record of mobile phones of the complainant i.e. PW-2 Mukesh and of PW-1 Sumit who was alleged to be accompanying him at that time showed that they had made calls to each other and this could not have happened if they were present together at that time. He further argued that the investigating officer committed a serious lapse in not conducting investigation on the point that the accused Ankit had infact made any telephonic call to PW-1 Sumit or not? The call detail record of mobile phone of PW-1 Sumit which was rather produced in evidence by the accused, proved that no such call had been made by the accused Ankit. Rather PW-1 was proved to have made three calls to him on the day of occurrence but this important point had not been taken into consideration by the learned trial Court though a serious doubt had been created in the veracity of the version of PW-1 and PW-2 due to that reason.

13. It was further argued that the statements of PW-1 and PW-2 were contradictory and belied the factum of presence of PW-2 at the spot and about the manner in which the incident had taken place. The disclosure statement allegedly suffered by the accused was not admissible in evidence.

The place of occurrence was already known to the police and no new or

distinct fact was proved to have been discovered by demarcation of the same allegedly at the instance of accused. The evidence as to recovery of the weapon of offence was also highly unreliable as the case rested upon the statements of police official witnesses and of testimony of PW-4 Ramesh Kumar who being uncle of the deceased was obviously an interested witness. With these broad submissions, it was urged that the impugned judgment and order on quantum of sentence were liable to be set aside and it was urged that the appeal be accepted and the accused be acquitted of the charges for which he had been held guilty and convicted.

14. We will firstly restrict ourselves to the contentions raised by learned counsel for the complainant as against the findings of acquittal of the accused Dharambir, Satbir, Ranbir, Amit and Babli as recorded by learned trial Court and would discuss the question of involvement of accused Ankit in the subsequent paras of this judgment. These five accused were undisputedly not the persons who were present at the time of murder of the victim and as per the prosecution case, they along with accused Ankit had hatched a conspiracy on the previous night for causing death of the victim Jatin. The version of the prosecution on this point mainly rested upon the testimony of PW-3 Punit Rana which was not relied upon by learned trial Court. He deposed that on the night of 26.06.2014, he was taking a walk outside his house situated at Village Sohti at about 10 PM and while crossing the house of Satbir he had peeped inside through the window and had seen the accused sitting in a room and making conversation to the effect that since there was dispute between their family and the family of Jagbir (brother of accused Dharambir, Satbir and Ranbir) due to instigation of

victim Jatin and his father Mukesh, therefore, Jatin should be murdered. The testimony of this witness is very flimsy piece of evidence. It is proved from his statement that though he claimed that he had heard the alleged conversation at about 10 PM on the night of 26.06.2014, but had not given information about this fact to either of his family members including Mukesh and Jatin. In his statement recorded before learned trial Court on 30.08.2016, it was stated by him that Jatin and Mukesh were not present in their house (which was obviously the house of this witness also) till 11:30 PM and while waiting for them, he had slept but in his previous statement recorded on 15.03.2016 before summoning of accused Dharambir and Babli as additional accused, he had deposed that he had waited for the victim and Mukesh to come home till 2 AM and had slept thereafter. In his previous statement, he had stated that he had woken up the next day at about 7 AM and after making inquiries about Jatin and Mukesh from his aunt, he had left for his duty at about 9 AM but in his previous statement, he had stated that he had woken up at 9 AM and had left for his duty. Then, in his previous statement, he had stated that he was on leave from 26.06.2014 till 11.07.2014 but he contradicted himself by saying in his subsequently recorded statement that he had gone for his duty at about 9 AM on 27.06.2014. It was not at all explained by him as to where his uncle Mukesh and victim had gone on the night of 26.06.2014, if they were not present at home. It was also not his version that Mukesh and Jatin had not come home at all on the previous night. If he had actually heard some conversation between the accused for hatching conspiracy to kill the victim, then he would have not sat quiet and it would have been his natural act and conduct

to immediately rush to inform his family members about the plans of accused to kill the victim but strangely he did not do so. His act and conduct as such appears to be highly unnatural and revolts against common sense and prudence.

15. Not even this, the statement of PW-3 is unworthy of reliance also due to the reason that during the course of conducting inquest proceedings on 27.06.2014, he had identified the dead body of the victim and had made statement before the investigating officer but did not make any mention about overhearing conversation of hatching conspiracy between the accused. Rather it is only on 28.06.2014 i.e. the next day that his statement with regard to allegations of hatching conspiracy by the accused was recorded before the police under Section 161 of Cr.P.C. The evidence led by the prosecution in the form of testimony of this witness is usual kind of puerile evidence. There is no explanation as to why the alleged conversation between the accused as perceived by this witness had been kept to himself till 28.06.2014 and in our considered opinion, it was highly unsafe to infer the factum of agreement between the accused to eliminate the victim on the basis of testimony of this witness especially in view of the well settled proposition of law that evidence of a person overhearing conversation is too weak evidence to prove conspiracy. Reference in this regard can be made to **Darshan Singh and others v. State of Punjab**, AIR 1983 SC 554 and **Manoj @ Manoj Gujjar v. State of U.P.**, (2014) 8 RCR Criminal 1576 wherein similar observations were made.

16. It is also important to mention in this context that the accused had examined DW-3 Deepak Kumar, Draftsman who had prepared

Ex.DW3/A rough site plan of house of the accused Satbir. Ex.DW3/A to Ex.DW3/D photographs of house of accused Satbir were shown to PW-3. During cross-examination, he admitted that the window of house of accused Satbir was three layered i.e. glass doors, iron grills and mosquito net window and he had heard the conversation between the accused and had seen them from this window. He stated that the window was lying opened at that time and he had stayed there for about 10 minutes. A perusal of site plan Ex.DW3/A shows that the window of house of accused was at a distance of about 35 feet from the main road. Therefore, it does not appear to reason that this witness would have crossed that much area to peep inside the window and hear the conversation. It is also not believable that any conversation could be heard from the said window. Even otherwise he did not say as to which particular accused had uttered what particular words at that time. All this goes to show that the testimony of this witness had rightly not been relied upon by learned trial Court and hence the same could not be considered to be relevant and sufficient for the purpose of holding that the accused persons had hatched any conspiracy to kill the victim.

17. Another circumstance which was pressed into service by the prosecution to connect the accused Amit, Ranbir and Satbir, with the subject crime was the disclosure statements stated to have been suffered by them vide memos Ex.PW10/A to Ex.PW10/C respectively. PW-10 Constable Amit, PW-18 EASI Narender and PW-21 Inspector Sombir deposed that these accused had suffered disclosure statements in their presence. The inculpatory part of the disclosure statements allegedly suffered by these accused vide memos Ex.PW10/A to Ex.PW10/C cannot be stated to be

admissible in evidence being suffered in the custody of the police and being confessional in nature. No new or distinct fact was proved to have been discovered in pursuance of these disclosure statements. Hence, the same did not serve any purpose and could not be considered to be admissible in evidence. As such, it emerges that the prosecution had failed to produce any evidence of such nature which could be acted and relied upon beyond probabilities of all reasonable doubt to prove that the accused Amit, Ranbir, Satbir, Dharambir and Babli along with accused Ankit had hatched any conspiracy and in pursuance thereof the death of the victim had been caused. The learned trial Court after due appreciation of evidence produced on record had rightly recorded the findings as to acquittal of these accused. It is well settled proposition of law that while speaking in a judgment of acquittal, the Appellate Court is required to seek an answer to the question whether the findings of trial Court are culpably wrong, manifestly erroneous and demonstrably unsustainable. If answers to these questions are in negative, the order of acquittal should not be disturbed. There are no substantial and compelling reasons in this case for holding that the trial Court was wrong while acquitting the above named accused and the findings given by it were perverse. As such, the order of acquittal of these accused does not warrant any interference and is upheld. Consequently, the appeal as filed by the complainant Mukesh challenging the acquittal of these accused has become liable to be dismissed.

18. Let us now discuss the question as to complicity of **accused Ankit** in the subject crime. As mentioned above, learned counsel for accused Ankit had argued that presence of PW-2 Mukesh at the time of

occurrence had not been proved and he was a planted witness. In this regard, he had heavily relied upon call detail record of mobile phone No.9729341391. Ex.DW5/E is copy of consumer application form shown to be submitted by PW-1 Sumit with Airtel and which shows that the mobile No. 9729341391 had been issued in his name. Even PW-1 Sumit admitted during his cross-examination that as on the date of occurrence, this very cell phone number was used by him. Ex.DW5/J is copy of call detail record of this very phone number during the period from 16.06.2014 to 31.07.2014. Though no certificate under Section 65-B of Indian Evidence Act (for short “Act”) was produced in evidence by DW-5 who proved Ex.DW5/E and Ex.DW5/J, however, since the prosecution did not challenge the authenticity of these documents, therefore, in our opinion, these documents cannot be considered to be inadmissible in evidence. On a perusal of Ex.DW5/J, it is clear that no phone call had either been made or received at the phone of PW-1 during the period from 11:15 AM till 1:07 PM as on 27.06.2014 i.e. on the date of occurrence. From 01:07 PM till 1:28 PM as many as three calls are shown to have been made from the phone of PW-1 Sumit to one phone bearing No.'9996707758'. Learned counsel for the accused submitted that the mobile phone No.9996707758 was infact used by the accused Ankit and this call detail record rather proved that it was PW-1 Sumit who had made call to the accused and not the accused himself. No doubt, the call detail record Ex.DW5/J shows three calls made by PW-1 Sumit from his mobile phone to the mobile phone No. 9996707758 from 1:07 PM till 1:28 PM. However, no evidence whatsoever had been produced by the accused to prove that the cell phone bearing No.9996707758 was

used by him at the relevant time and it was PW-1 Sumit who had made call on his phone and not he who had called PW-1 at any point of time. Neither any suggestion is shown to have been given to PW-1 by the defence side that it was PW-1 Sumit who had called the accused at the spot or anywhere else. Nor it was suggested to PW-1 that the accused was using mobile phone No.9996707758. Hence, the argument so raised by learned counsel for the accused at this stage that the mobile phone No. 9996707758 belonged to the accused and it was PW-1 who had infact called the accused, has no substance and is liable to be rejected.

19. Further, it is also to be considered that there was ample opportunity for the accused to produce the consumer application form of mobile phone No.9996707758 to prove that it was issued in his name or to bring some other evidence to prove that he was the user of that mobile phone number but he did not do so. Therefore, it is held that from the call detail record Ex.DW5/J, no conclusion can be drawn that PW-1 had made calls to the accused at the time of murder of the victim. At the same time, a question reasonably arises as to whether the prosecution could prove that the accused Ankit had called PW-1 Sumit just prior to the occurrence as deposed to by eye-witnesses PW-1 and PW-2. No doubt, the prosecution also failed to produce any evidence in the form of call detail records to prove that the accused had made any call to PW-1 Sumit just before the occurrence which was took place at about 12:30 PM. The investigating officer was required to conduct investigation as to which particular mobile phone number was used by the accused at the relevant time and further that the accused had infact made a call to PW-1 calling him at the spot of

occurrence or not? However, the benefit of that lapse on the part of investigating officer cannot be given to the accused. The prosecution might have remained unable to prove that the accused had made a call to PW-1 before the occurrence and PW-1 might have concealed the truth about the fact as to on whose call, he along with the victim and PW-2 had reached at the spot of occurrence and about the manner in which the occurrence had taken place but that fact does not come to the rescue of the accused, due to the reason that it was not only PW-1 but PW-2 Mukesh also who deposed about eye-witnessing the occurrence.

20. At this juncture, the argument that the presence of PW-2 Mukesh was not established at the time of occurrence at the spot, is to be taken into consideration. For that also, the accused had heavily relied upon the entries made in the call detail record Ex.DW5/J, Ex.DW5/A copy of consumer application form of mobile phone No.9996609184 and Ex.DW5/B copy of call detail record of this phone number, as DW5/C is copy of consumer application form of mobile phone No.9871931419 and Ex.DW5/D is copy of call detail record of this phone number. These phone numbers are shown to be issued in the name of Jagbir Singh son of Prem Singh and Ram Chander son of Wazir Singh respectively. PW-2 Mukesh stated during cross-examination that both these phone numbers were used by him as on the date of occurrence. Reverting to Ex.DW5/J, it shows that as on 27.06.2014 between 1:53 PM to 1:58 PM, four calls were exchanged between phone Nos.9729341391 and 9871931419 and between 2:18 PM to 3:05 PM, as many as four calls were exchanged between phone Nos.9729341391 and 9996609184. Meaning thereby that several calls were

exchanged between PW-1 and PW-2 from 1:53 PM to 3:05 PM. The question that arises is as to whether from the exchange of calls so made between the cell phones of PW-1 and PW-2, any inference could be drawn that PW-2 Mukesh was not present along with PW-1 Sumit and the victim at the time of occurrence. In our opinion, the answer should be in the negative. Both PW-1 and PW-2 had deposed that occurrence had taken place at 12:30 PM and that they had reached in the hospital at 1 PM. They were not controverted by the accused on that point and hence it has to be considered that at 1:07 PM, both these witnesses were in Shivam Hospital, Bahadurgarh. Even if calls were shown to have been exchanged between them after reaching in the hospital, no presumption can be drawn that PW-2 was not present in the hospital and was making call to PW-1 from some other place. As such, this argument as raised by learned counsel for the accused being not tenable is also liable to be rejected.

21. The next argument as raised by learned counsel for the accused was that the testimony of PW-1 Sumit could not be relied upon as he had made self contradictory statements at two different points of time when his statements were recorded in the Court and hence his testimony was not reliable. The only contradiction which could, however, be pointed out by learned counsel was that in his statement recorded by PW-1 before the learned trial Court before summoning of additional accused in pursuance of application moved under Section 319 of Cr.P.C., this witness had stated that at the time of occurrence, he was sitting on the back seat of the car whereas in his statement recorded in the Court on 17.08.2016, he had deposed that he was sitting in the front seat along with the victim. The testimony of PW-1

as recorded on 17.08.2016 to the effect that he was sitting on the front seat was corroborated by testimony of PW-2 Mukesh. No other inconsistency could be pointed out in their statements by the accused. In our opinion, such like contradiction was not material. It is well settled proposition of law that omissions and discrepancies are bound to occur in the statements of witnesses, howsoever, honest and truthful that may be. Discrepancies occur due to lapse of time, error of memory and observation, due to mental disposition, shock and horror at the time of occurrence. The normal course of human conduct is that while narrating a particular incident, minor discrepancies may occur. Some congruity or consistency is not the sole test of truth in the disposition. Corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishments, there may be but variation by reason, therefore, should not render the evidence of eye-witnesses unbelievable. After exercising care, caution and sifting the evidence to separate truth and untruth, exaggeration and improvements, the Court has to come to the conclusion as to whether the residuary evidence is sufficient to convict the accused. Undue importance cannot be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the witnesses of the prosecution. Trivial discrepancies are not to obliterate an otherwise credible version. (Vide **State of U.P. v. M.K. Anthony**, (1985) 1 SCC 505; **State of Rajasthan v. Om Parkash**, AIR 2007 SC 2257; **State of U.P. v. Santosh Kumar and others**, (2009) 9 SCC 626; **State of Uttar Pradesh v. Naresh and others**, (2011) 4 SCC 324 and **State represented by Inspector of Police v. Saravanan and another**, (2008) 17 SCC 587).

22. On examining the sworn depositions made by PW-1 and PW-2, we have tried to ascribe whether the truth is veritable on the basis of which depositions of these witnesses can be relied upon to sustain the conviction of the accused. In our opinion, on separating truth from untruth, exaggeration, improvement and sifting the chaff from the grain from the statement of PW-1 and PW-2, their statements are worthy of full reliance. Both these witnesses were subjected to pertinent questions of cross-examination. Nothing could be extracted from the same to prove that they were making false depositions and that PW-2 Mukesh was not present at the place of occurrence at the relevant time. As such, there can be no reason to disbelieve their statements. PW-1 and PW-2 are proved to be natural witnesses to the occurrence. It was argued by learned counsel for the accused that statement of PW-2 could not be relied upon as he was an interested witness being father of the deceased. This argument cannot be accepted in view of the well settled proposition of law to the effect that the testimony of a relative witness who was also natural witness cannot be discarded. The relative witnesses are not necessarily an interested witness. On the other hand, being a close relative of the deceased, such witness would try to implicate the real culprit by stating the truth. There is nothing on record to suggest as to why PW-2 Mukesh who was father of the deceased would implicate and depose falsely against the accused and screen the real culprit to escape unpunished (**State of A.P. v. S.Rayappa**, (2006) 4 SCC 512). As learned counsel for the accused Ankit failed to point out any such material inconsistency, improbability, contradiction or improvement in the statements of PW-1 and PW-2 on the basis of which it could be stated

that they were deposing falsely, hence, it is observed that there was no reason to disbelieve their statements and the same had been rightly acted and relied upon by the learned trial Court to record finding of guilt of the accused Ankit.

23. Learned counsel for the accused had argued with vehemence that the evidence as to demarcation of place of occurrence at the instance of the accused in pursuance of his disclosure statement was not admissible in evidence, the place of occurrence already being known to the police and further that the recovery evidence was also highly unreliable and unworthy of any credit as the case of prosecution on this point rested upon statements of police official witnesses interested in the success of case and on testimony of PW-4 Ramesh Kumar another interested witness. The prosecution case is that the accused had suffered disclosure statement vide memo Ex.PW16/A in the presence of PW-16 ASI Sunil Kumar and PW-21 Inspector Sombir and PW-4 Ramesh Kumar and had demarcated the place of occurrence vide memo Ex.PW4/C on 12.07.2014. These three witnesses had deposed that the accused had identified the place of occurrence in their presence on 12.07.2014. Their statements on this point could not be controverted. However, it may be mentioned that it stands proved from the testimony of PW-15 ASI Raj Kumar that the place of occurrence was already known to the police and the rough site plan Ex.PW15/C of the same already been prepared by PW-15 as per the demarcation of complainant Mukesh. It will be relevant to mention here that Section 25 of the Act mandates that no confession made to a police officer, shall be proved as against a person accused of an offence. Similarly, Section 26 of the Act

provides that confession made by the accused while in custody of the police cannot be proved against him. However, to the aforesaid rule of Sections 25 & 26 of the Act, there is an exception carved out by Section 27 of the Act based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information is true and accordingly it would safely allowed to be given in evidence. Since no new or distinct fact can be stated to have been discovered at the instance of accused by demarcation of place of occurrence, therefore, in our opinion, on the basis of this piece of evidence, the accused could not be connected with the crime of murder of the victim but at the same time, it is important to note that the statements of PW-4, PW-16 and PW-21 with regard to recovery of pistol Ex.P-5 and a live cartridge at the instance of the accused cannot be ignored. All these three witnesses deposed in unison about the manner in which the recovery of the pistol Ex.P5 and one live cartridge was got effected by the accused. Their statements remained consistent on the point of recovery. It is well settled proposition of law that prima facie, public servant must be presumed to act conscientiously and honestly and their evidence has to be assessed on intrinsic worth and cannot be discarded merely on the ground of their status and on the ground that they were interested in the success of the case. The statements of PW-16 and PW-21 are proved to have been corroborated from the testimony of PW-4 Ramesh Kumar. Undoubtedly, he was uncle of the deceased and was his near relative. But merely due to that reason, it cannot be stated that he was an interested witness. There is no reason as to why the close relative would implicate and depose falsely against somebody and screen the real culprit to

escape unpunished. Rather such a witness would try to prosecute the real culprit by stating the truth. The statements of PW-16 and PW-21 duly corroborated from the testimony of PW-4 in our opinion, inspired full confidence to note that pistol Ex.P5 was got recovered at the instance of the accused and this fact certainly amounted to discovery of a new or distinct fact and was admissible in evidence. In our opinion, the learned trial Court rightly considered the circumstance in connecting the accused with the crime.

24. Further, as per the FSL report, Ex.PX the fired cartridge case and fired bullet collected from the vehicle bearing registration No.HR-10Q-1938 had been fired from the countrymade pistol Ex.P5 and not from any other firearm even of the same make and bore/caliber because every firearm has its own individual characteristic marks. The empty case of cartridge and one pallet which were recovered from the car in which the incident of the murder of the victim had taken place on the day of occurrence itself in the presence of PW-2 Mukesh by PW-21. In his sworn deposition, PW-2 had deposed that the fired cartridge Ex.P1 and fired bullet Ex.P2 were recovered in his presence and he had signed memo Ex.PW2/B in this regard. He was not at all controverted on the point. The statements of both these witnesses coupled with FSL Ex.PX proved that the bullet and the spent cartridge which was recovered from the car wherein the murder of the victim had taken place were connected with the firearm Ex.P5. It is well settled proposition of law that a firearm which gets connected to a bullet recovered from the body of the deceased is extremely incriminating qua the person from whom such firearm is recovered unless he is able to satisfactorily

explain that he was not being connected with the firearm when the crime took place. A firearm used as a weapon of offence establishes conclusively its presence at the scene of crime and since a firearm cannot move by itself, the owner or the possessor thereof must explain the circumstance under which the firearm reached the place of occurrence and it is in the absence of any explanation, that it would be permissible for the Court to presume that owner/possessor of the firearm was the offender. The accused failed to render any explanation for his not being connected with this firearm and hence there is no hesitation in holding that it was the firearm Ex.P5 which was used for committing the murder of the victim and it was the accused who had used the same and further that the same was proved to be kept by him in his unauthorised possession. As such, the position which emerges is that the evidence which had been produced on record by the prosecution is sufficient, cogent, convincing and reliable enough to prove that it was the appellant-accused and none else who had committed the murder of the victim by using pistol Ex.P5 and, therefore, the findings as given by learned trial Court as to holding the accused Ankit guilty for commission of offences punishable under Section 302 of IPC and under Section 25 of Arms Act do not warrant any interference and deserve to be upheld. Accordingly, while upholding the findings as given by learned trial Court, the appeal filed by the accused Ankit is dismissed. Since it has already been discussed above that the findings of acquittal of the accused Ranbir, Amit, Satbir, Dharambir and Babli as recorded by learned trial Court do not warrant any interference and deserve to be upheld, therefore, the appeal filed by the complainant Mukesh is also ordered to be dismissed.

25. All the pending criminal miscellaneous application(s), if any,
automatically stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

02.02.2023
manju

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No