

AFR
Reserved on : 22.04.2019
Delivered on : 21.10.2019

Court No. - 34

Case :- JAIL APPEAL No. - 2372 of 2013

Appellant :- Anil Kumar @ Dhulliya

Respondent :- State Of U.P.

Counsel for Appellant :- From Jail, Atul Kumar Singh, Archana Singh (Amicus Curiae)

Counsel for Respondent :- Ratan Singh (A.G.A.)

Hon'ble Sudhir Agarwal, J.

Hon'ble Rajendra Kumar-IV, J.

(Delivered by Hon'ble Rajendra Kumar-IV)

1. Present jail appeal has been directed by accused-appellant Anil Kumar @ Duhlliya against the judgement and order dated 07.10.2010 passed by Additional District & Sessions Judge, Fast Track Court No.1, Mainpuri in Session Trial No.127 of 2007 (State Vs. Anil Kumar @ Dhulliya) under Section 302 IPC, P.S. Kurra, District Mainpuri whereby Trial Court has convicted accused Anil Kumar @ Dhulliya under Section 302 I.P.C. and sentenced him to imprisonment for life with a fine of Rs.50,000/- under Section 302 IPC; and in default of payment of fine, five years additional simple imprisonment.

2. Brief facts of the case emerging in First Information Report (hereinafter referred to as "FIR") is that on the fateful day i.e. 30.01.2003 at about 5:00 PM, accused-appellant Anil Kumar @ Dhullia came to the house of Informant, PW-1 Ram Das with licensed gun of his maternal uncle Dafedar Singh of village Baghuia, Safai, District Etawah who was also with him. Anil Kumar @ Dhullia asked about Rajuwa son of Informant, whereupon, victim, Informant's wife Smt. Premwati standing nearby, questioned him as to why they wanted to kill his son. She said that Rajuwa is not in the house. Accused Dafedar Singh told that she was talking

much and Anil Kumar @ Dhullia opened fire at her with the licensed gun which hit on her chest. As a result of gunshot she fell down on earth and died instantaneously. The incident was witnessed by Shiv Shanker and Jaipal also. Motive of the incident was said to be a quarrel between Informant and accused that took place over the matter of children prior to one year of the incident.

3. PW-1 Ram Das presented a written Tehrir of incident, Ex.Ka-1 in the Police Station Kurra, District Mainpuri. On the basis of written Tehrir Ex.Ka-1, Chick F.I.R., Ex.Ka-12 was registered by PW-5 Constable Ganga Ram as Case Crime No. 19 of 2003, under Section 302 I.P.C. against accused-appellant and one Dafedar Singh (died during trial). Entry of case was made by him in General Diary, copy whereof is Ex.Ka-13.

4. S.I. Jagat Singh (not examined) held inquest over the dead body of Smt. Premwati and prepared inquest report Ex.Ka-8 and other papers relating thereto. Body was sealed properly and sent for post mortem.

5. PW-3 Dr. P.K. Pathak, conducted autopsy over the dead body of Smt. Premwati on 31.01.2003 and prepared post mortem report Ex.Ka-2, expressing his opinion that death of victim was possible one day before the post mortem due to haemorrhage and coma on account of *ante mortem* firearm injuries. Doctor found four *ante mortem* injuries on the person of the deceased which read as under :-

(i) **Fire arm wound of entry** size 3 cm x 2 cm x chest cavity deep on left upper chest. 8 cm below tip of shoulder.

(ii) **Fire arm wound of exit** size 1.5 cm x 1 cm x chest cavity deep x communicating to injury no. 1 on right side

of chest, 9 cm below axilla in mid axillary line.

(iii) Fire arm wound of entry size 1.5 cm x 1 cm x bone deep on right upper arm lateral aspect, 9 cm above the elbow joint.

(iv) Fire arm wound of exit size 4 cm x 0.7 cm x bone deep & communicating to injury no. 3 inner aspect of right upper arm, 7 cm below axilla.

6. PW-4 S.I. Ram Pratap Singh, undertook investigation of case; recorded statement of Informant PW-1 Ram Das; PW-2 Shiv Shanker and other witnesses; got prepared panchayatnama by S.I. Jagat Singh; recorded statement of inquest witnesses and visited spot; prepared site plan Ex.Ka-3; collected empty cartridge, blood stained and simple earth from spot; prepared memos thereof Ex.Ka-4 and 5 respectively and tried to search accused persons. On 31.01.2003, he arrested accused-appellant Anil Kumar @ Dhullia in injured position from his own house, recorded his statement and after completing entire formalities of investigation, submitted charge sheet Ex.Ka-7 against accused persons in the Court of C.J.M. concerned.

7. Case, being exclusively triable by Court of Sessions, was committed by C.J.M. to Sessions Court for trial.

8. Trial Court charged accused-appellant Anil Kumar @ Dhulliya and Dafedar Singh on 11.5.2007 under Section 302/ IPC which reads as under :-

Charge

“I, Neeraj Nigam, Additional Sessions Judge Court No. 6, Mainpuri, hereby charge you :- 1. Anil Kumar @ Dhulliya and 2. Dafeydar Singh as follows :-

That you on 30.01.2003 at about 5 p.m. in the evening in front of the house of Girand Singh in village Mohanpur,

Mauja Besak, under police station Kura, district Mainpuri, committed murder of complainant's wife Premwati intentionally and knowingly by firing, and thereby committed an offence punishable under Section 302 I.P.C. And within the cognizance of this Court.

And I hereby direct that you be tried upon the said charge by this Court.”

9. Accused-appellant pleaded not guilty and claimed to be tried.
10. In order to substantiate its case, prosecution examined as many as five witnesses, out of whom PW-1 Ram Das and PW-2 Shiv Shanker are witnesses of fact whereas PW-3 Dr. P.K. Pathak, PW-4 S.I. Ram Pratap Singh and PW-5 Constable Ganga Ram are formal witnesses.
11. Subsequent to closure of prosecution evidence, statement of accused-appellant under Section 313 Cr.P.C. was recorded by Trial Court explaining entire evidence and other incriminating circumstances. In the statement under Section 313 Cr.P.C., accused-appellant denied prosecution story in toto. Entire prosecution story is said to be wrong and concocted. In response of question no. 7, he answered that victim was shot dead by Ram Das, Raju @ Ratnesh and he has been falsely implicated. Accused-appellant did not chose to lead any evidence in defence.
12. PWs-1 and 2 are the eye witnesses, who supported prosecution case deposing that they saw accused-appellant opening fire on victim Smt. Premwati due to which she fell down and died. PW-3 Dr. P.K. Pathak conducted post mortem and proved post mortem report, PW-4 S.I. Ram Pratap Singh is the Investigating Officer, who undertook investigation, collected empty cartridge, blood stained and simple earth from spot, prepared memos thereof and after completing entire formalities of investigation, submitted charge sheet against the accused. PW-5 Constable Ganga Ram registered chick F.I.R. and

prepared G.D.

13. Trial Court, after hearing learned counsel for the parties and appreciating entire evidence oral and documentary, found accused-appellant guilty and convicted and sentenced him as stated above.

14. Feeling aggrieved and dissatisfied with impugned judgement and order of conviction, accused-appellant preferred present appeal through Jail.

15. We have heard Smt. Archana Singh, learned Amicus Curiae appearing for appellant and Sri Ratan Singh, learned A.G.A for State-respondent at length and have gone through the record carefully.

16. Learned counsel for appellant assailing impugned judgement and order of conviction of accused-appellant, advanced his general submissions in following manner in the :-

- (i) PW-1 happens to be husband of victim Smt. Premwati and interested witness.
- (ii) Presence of PW-2, alleged eye witness, on spot is not natural.
- (iii) Medical evidence does not conform with the ocular evidence, hence, accused-appellant is entitled to benefit of doubt.
- (iv) There are major contradiction and omission in the statement of prosecution witnesses rendering prosecution case doubtful.
- (v) There is no motive to accused to commit murder of Smt. Premwati because there was no enmity between accused and victim.
- (vi) Entire witnesses of prosecution have not been

produced in evidence from the side of prosecution, hence presumption under Section 114 (g) Indian Evidence Act goes against it.

(vii) Trial Court has not appreciated the prosecution evidence in right perspective. Prosecution could not succeed to prove its case beyond reasonable doubt and Trial Court erred in passing the impugned judgement.

17. Learned AGA vehemently opposed the arguments advanced by learned counsel for appellant and submitted that accused-appellant is named in F.I.R. He has sufficient motive to commit murder of victim. PW-2 is neighbour and his presence on spot at the time of incident is quite natural. There was no reason or occasion to PW-2 to give false evidence against accused. Accused-appellant put a different story that victim was murdered by Informant and his son but he gave no evidence in this regard. Prosecution succeeded to prove its case beyond reasonable doubt and Trial Court rightly convicted the accused-appellant.

18. Although, time, date, place of incident and murder of victim Smt. Premwati could not be denied from the side of defence but according to his Advocate, accused-appellant is not responsible to commit murder of Smt. Premwati. Even otherwise, from the evidence of PW-1, 2, 3 and 4, time, date and place of incident and murder of victim Smt. Premwati stand established.

19. Thus, only question remains for consideration of this Court is, “whether accused-appellant caused death of Smt. Premwati by fire arm injury and Trial Court has rightly convicted him?”

20. Now we may proceed to consider rival submissions of learned counsel for parties and evidence of prosecution as well as some

important decisions.

21. PW-1 Ram Das deposed that his wife Smt. Premwati was murdered on 30.01.2003 at about 5:00 PM. At the time of incident, he was standing in front of a house towards north near the temple. His wife, victim Smt. Premwati, and his daughters-in-law were also standing there at that time. Accused-appellant Anil Kumar @ Dhullia having licensed gun of his maternal uncle Dafedar Singh and his maternal uncle (other accused) - Dafedar Singh came there abused and asked about his (Informant's) son Rajuwa, saying that they would eliminate him, whereupon victim inquired, what his son had done to them that they would eliminate him. On the provocation of co-accused Dafedar Singh, accused-appellant Anil Kumar @ Dhullia opened fire with the gun putting the same on the left side of chest of victim, due to which she fell down on earth and died. Incident was witnessed by PW-2 Shiv Shanker and Jaipal and his daughters-in-law also. He further deposed that there was a dispute between accused-appellant Anil Kumar @ Dhullia and his son Ratnesh @ Raju one year prior to incident and since then accused-appellant Anil Kumar @ Dhullia bore internal grudge with the family of Informant and for that reason, he murdered the victim. The witness proved written report as Ex.Ka-1.

22. PW-2 Shiv Shanker deposed that on 30.1.2003 at about 5:00 PM, he was standing on the Chabutara of his house and saw that accused-appellant Anil Kumar @ Dhullia having single barrel licensed gun of his maternal uncle Dafedar in his hand, came there along with his said maternal uncle. Both accused persons started abusing PW-1 Ram Das and his son. Victim, Smt. Premwati, was also standing near Ram Das. Both accused persons asked where Rajuwa son of Informant was and they would eliminate him. There-

upon victim Smt. Premwati asked them what her son had done and why they wanted to kill him and that he was not in the house. On this, accused-appellant got annoyed and on the provocation made by Dafedar Singh, accused-appellant Anil Kumar @ Dhullia opened fire on victim (wife of PW-1) with gun as a result of which victim fell down and died on spot. Accused-appellant Anil Kumar @ Dhullia ran away towards his house firing in air.

23. Both witnesses PWs-1 and 2 have withstood lengthy cross-examination but nothing material could be extracted in cross-examination so as to disbelieve their testimony. Certainly some minor contradictions occurred but they are not of such nature which may affect the root of prosecution story or render prosecution case doubtful.

24. PW-1 Ram Das is husband of victim and eye witness of case. Incident took place at about 5:00 PM on 30.01.2003 at the door of Informant where PW-1 and victim were standing. PW-2 is neighbour and he was also standing on Chabutara of his house at the time of incident. Presence of both the witnesses appears natural at the time of incident. PW-2 is independent eye witness. Accused-appellant suggested nothing as to why PW-2 deposed against him. Only suggestion was put before the witness from the side of accused that he was deposing falsely against him due to meeting with Ram Das and this suggestion was denied by the witness.

25. PW-4 S.I. Ram Pratap Singh recovered empty cartridge from the spot. Thus, from the evidence of PWs-1, 2 and 4, it is established that accused-appellant Anil Kumar @ Dhullia, on the provocation made by other co-accused Dafedar Singh (Now dead), opened fire on the victim which hit in her chest due to which she fell down and died on spot.

26. So far as other argument of learned counsel for the accused-appellant is that PW-1 is not an eye witness and being husband of victim, he is interested, is concerned, we are not convinced with the same for the reason that argument is totally and thoroughly misconceived. It is well-settled preposition of law that evidence of interested witness cannot be out rightly discarded on the ground that he is an interested witness. Mere relationship is not sufficient to discard otherwise trustworthy ocular testimony.

27. In **Dalip Singh v. State of Punjab, AIR,1953, SC 364**. Court held as under :-

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

28. In **Dharnidhar v. State of UP (2010) 7 SCC 759**, Court has observed as follows :-

*“There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of **Jayabalan v. U.T. of Pondicherry (2010) 1 SCC 199**, this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The*

Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim”

29. In **Ganga Bhawani v. Rayapati Venkat Reddy and Others, 2013(15) SCC 298**, Court has held as under :-

“11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.

(Vide: Bhagalool Lodh & Anr. v. State of UP, AIR 2011 SC 2292; and Dhari & Ors. v. State of U. P., AIR 2013 SC 308).”

30. It is settled that merely because witnesses are close relatives of victim, their testimonies cannot be discarded. Relationship with one of the parties is not a factor that affects credibility of witness, more so, a relative would not conceal actual culprit and make allegation against an innocent person. However, in such a case Court has to adopt a careful approach and analyse the evidence to find out that whether it is cogent and credible evidence.

31. Next argument of learned counsel for the accused-appellant is that medical evidence is not compatible with the oral version and accused-appellant is entitled to benefit of doubt.

32. We have scrutinised oral evidence and medical evidence in this regard. PWs-1 and 2 are eye witnesses of incident, who supported prosecution case stating that they saw accused-appellant opening fire on victim who sustained serious fire arm injuries due to which she

fell down and died on spot. There is no contradictions in the statement of PWs-1 and 2 which may dent their ocular version. Apart from this, PW-3, conducted post mortem of victim and deposed that he found four ante-mortem fire arm injuries on the person of deceased, expressing his opinion that death was possible one day prior to the post mortem due to haemorrhage and coma on account of ante-mortem fire arm injuries. Thus, medical report is compatible with ocular version and we are not impressed with the argument advanced by learned counsel for the accused-appellant and reject the same.

33. In so far as discrepancies, variations and contradictions in prosecution case are concerned, we have analysed entire evidence in consonance with submissions raised by learned counsel's and find that the same do not go to the root of case and accused-appellant are not entitled to benefit of the same.

34. In **Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) 4 SCC 124**, Court has held that minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and sense of observation differs from person to person.

35. In **Sachin Kumar Singhraha v. State of Madhya Pradesh** in Criminal Appeal Nos. 473-474 of 2019 decided on 12.3.2019, Supreme Court has observed that Court will have to evaluate evidence before it keeping in mind the rustic nature of depositions of the villagers, who may not depose about exact geographical locations with mathematical precision. Discrepancies of this nature which do not go to the root of the matter do not obliterate otherwise acceptable evidence. It need not be stated that it is by now well settled that minor variations should not be taken into consideration while

assessing the reliability of witness testimony and the consistency of the prosecution version as a whole.

36. We lest not forget that no prosecution case is foolproof and the same is bound to suffer from some lacuna or the other. It is only when such lacunae are on material aspects going to the root of the matter, it may have bearing on the outcome of the case, else such shortcomings are to be ignored. Reference may be made to a recent decision in Criminal Appeal No. 56 of 2018, **Smt. Shamim v. State of (NCT of Delhi)**, decided on 19.09.2018.

37. When such incident takes place, one cannot expect a scripted version from witnesses to show as to what actually happened and in what manner it had happened. Such minor details normally are neither noticed nor remembered by people since they are in fury of incident and apprehensive of what may happen in future. A witness is not expected to recreate a scene as if it was shot after with a scripted version but what material thing has happened that is only noticed or remembered by people and that is stated in evidence. Court has to see whether in broad narration given by witnesses, if there is any material contradiction so as to render evidence so self contradictory as to make it untrustworthy. Minor variation or such omissions which do not otherwise affect trustworthiness of evidence, which is broadly consistent in statement of witnesses, is of no legal consequence and cannot defeat prosecution.

38. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observations, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about truthfulness of the witness and other witnesses also

make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. Court has to form its opinion about the credibility of witness and record a finding, whether his deposition inspires confidence. Exaggerations per se do not render the evidence brittle, but can be one of the factors to test credibility of the prosecution version, when entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statement of witnesses cannot be dubbed as improvements as the same may be elaborations of the statements made by the witnesses earlier. Only such 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's case, render the testimony of the witness liable to be discredited. [**Vide: State Represented by Inspector of Police v. Saravanan & Anr., AIR 2009 SC 152; Arumugam v. State, AIR 2009 SC 331; Mahendra Pratap Singh v. State of Uttar Pradesh, (2009) 11 SCC 334; and Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra, JT 2010 (12) SC 287**].

39. So far as motive is concerned, it is well settled that where direct evidence is worthy, it can be believed, then motive does not carry much weight. It is also notable that mind set of accused persons differs from each other. Thus merely because that there was no strong motive to commit the present offence, prosecution case cannot be disbelieved.

40. In **Lokesh Shivakumar v. State of Karnataka, (2012) 3 SCC**

196, Court has held as under :-

“As regards motive, it is well established that if the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue of motive loses practically all relevance. In this case, we find the ocular evidence led in support of the prosecution case wholly reliable and see no reason to discard it.”

41. So far as non-examination of witnesses is concerned, in view of Section 134 of Indian Evidence Act, 1872 (hereinafter referred to as 'Act, 1872'), we do not find any substance in the submission of learned counsel for the appellant.

42. Law is well-settled that as a general rule, Court can and may act on the testimony of a single witness provided he/she is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of Act, 1872, but if there are doubts about the testimony, Court will insist on corroboration. In fact, it is not the numbers, the quantity, but the quality that is material. Time-honoured principle is that evidence has to be weighed and not counted. Test is whether evidence has a ring of truth, cogent, credible and trustworthy or otherwise.

43. In **Namdeo v. State of Maharashtra (2007) 14 SCC 150**, Court re-iterated the view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.

44. In **Kunju @ Balachandran vs. State of Tamil Nadu, AIR**

2008 SC 1381 a similar view has been taken placing reliance on earlier judgments including **Jagdish Prasad vs. State of M.P., AIR 1994 SC 1251; and Vadivelu Thevar vs. State of Madras, AIR 1957 SC 614.**

45. In *Yakub Ismailbhai Patel Vs. State of Gunjrat reported in (2004) 12 SCC 229*, Court held that :-

"The legal position in respect of the testimony of a solitary eyewitness is well settled in a catena of judgments inasmuch as this Court has always reminded that in order to pass conviction upon it, such a testimony must be of a nature which inspires the confidence of the Court. While looking into such evidence this Court has always advocated the Rule of Caution and such corroboration from other evidence and even in the absence of corroboration if testimony of such single eye-witness inspires confidence then conviction can be based solely upon it."

46. In *State of Haryana v. Inder Singh and Ors. reported in (2002) 9 SCC 537*, Court held that it is not the quantity but the quality of the witnesses which matters for determining the guilt or innocence of the accused. The testimony of a sole witness must be confidence-inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court.

47. Considering the entire facts and circumstances of the case, evidence of prosecution in entirety, we have no hesitation to state that accused-appellant Anil Kumar @ Dhullia committed murder of victim Smt. Premwati by opening fire on her chest with licensee gun.

48. In view of facts and legal position discussed hereinabove, we find that Trial Court has rightly analyzed evidence led by prosecution and found accused guilty and convicted him for having committed murder of Smt. Premwati, an offence punishable under Section 302 IPC. Conviction and sentence awarded by Trial Court is liable to be maintained and confirmed. No interference is warranted by this

Court. Jail appeal lacks merit and liable to be dismissed.

49. So far as sentencing of accused-appellant is concerned, it is always a difficult task requiring balance of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in individual cases.

50. It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation upon court to constantly remind itself that right of victim, and be it said, on certain occasions or person aggrieved as well as society at large can be victims, never be marginalised. The measure of punishment should be proportionate to gravity of offence. Object of sentencing should be to protect society and to deter the criminal in achieving avowed object of law. Further, it is expected that courts would operate the sentencing system so as to impose such sentence which reflects conscience of society and sentencing process has to be stern where it should be. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against individual victim but also against society to which criminal and victim belong. Punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality which the crime has been perpetrated, enormity of crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. [Vide: **Sumer Singh vs. Surajbhan Singh and others**, (2014) 7 SCC 323, **Sham Sunder vs. Puran**, (1990) 4 SCC 731, **M.P. v. Saleem**, (2005) 5 SCC 554, **Ravji v. State of Rajasthan**, (1996) 2 SCC 175].

51. Hence, applying the principles laid down in the aforesaid judgments and having regard to the totality of facts and circumstances of case, nature of offence and the manner in which it was executed or committed, we find that punishment awarded to accused-appellant by Trial Court in impugned judgment and order is not excessive and it appears fit and proper and no question arises to interfere in the matter on the point of punishment imposed upon him.

52. In view of above discussion, **the appeal lacks merit and is accordingly, dismissed.** Impugned judgement and order dated 07.10.2010, is maintained and confirmed.

53. Lower Court record along with a copy of this judgment be sent back immediately to District Court and Jail concerned for compliance and apprising the accused-appellant.

54. Before parting, we provide that Smt. Archana Singh, Advocate, who assisted as Amicus Curiae, appearing for appellant in present Jail Appeal, shall be paid counsel's fee as Rs. 11,500/- for her valuable assistance. State Government is directed to ensure payment of aforesaid fee through Additional Legal Remembrancer, posted in the office of Advocate General at Allahabad, without any delay and, in any case, within one month from the date of receipt of copy of this judgment.

Order Date : 21.10.2019

Manoj