

**A.F.R.**  
**Reserved on : 29.03.2019**  
**Delivered on : 11.09.2019**

**Court No. - 34**

**Case :-** JAIL APPEAL No. - 5871 of 2003

**Appellant :-** Devendra Kumar

**Respondent :-** State Of U.P.

**Counsel for Appellant :-** From Jail, Mohd. Afzal A.C.

**Counsel for Respondent :-** A.G.A. Rishi chadha.

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**Case :-** CRIMINAL APPEAL No. - 5422 of 2003

**Appellant :-** Devendra

**Respondent :-** State Of U.P.

**Counsel for Appellant :-** Nasiruzzaman

**Counsel for Respondent :-** A.G.A., Risha Chadha.

**Hon'ble Sudhir Agarwal, J.**

**Hon'ble Rajendra Kumar-IV, J.**

*(Delivered by Rajendra Kumar-IV, J.)*

1. Both the aforesaid appeals arise out of a common judgement and order dated 01.10.2003 passed by Sri Rang Nath Pandey, Additional Sessions Judge, F.T.C. No.3, Muzaffar Nagar in Session Trial No.30 of 2003 (State versus Devendra and Rajpal), Police Station Bhaurakala, District Muzaffar Nagar convicting accused persons under Sections 364-A/34 and sentencing them to undergo rigorous imprisonment for life and also to pay a fine of Rs.1000/- each. In the event of default of payment of fine, they have to undergo three months additional rigorous imprisonment. Therefore, both these appeals are being decided by this common judgement.

2. From record, it appears that initially Jail Appeal No. 5871 of 2003 was filed through Superintendent, District Jail, Muzaffar Nagar on behalf of accused Devendra and the same was admitted on 18.11.2003. Thereafter on 29.10.2003, Criminal Appeal No.5422 of 2003 was filed by Advocate Nasiruzzaman on behalf of same accused Devendra, which was admitted by this Court on 30.10.2003 and in this criminal appeal accused-appellant Devendra has been granted bail vide order dated 18.12.2003.

3. It is also relevant to mention here that co-accused Rajpal has filed Criminal Appeal No.5057 of 2003. During pendency of appeal Rajpal died, therefore, his appeal has abated vide order dated 12.02.2019 by this Court.

4. Brief facts giving rise to the present appeal may be stated as under:-

5. A written report Ex.Ka-1 dated 02.10.2002 was presented by PW-1 Virendra Kumar Sharma at Police Station Bhaurakala, District Muzaffar Nagar, stating that his servant Devendra Kumar was living in his house for one and half months. Accused-appellant and one Rajpal son of Munshi Kumhar, at about 08:00 AM on 02.10.2002, had kidnapped his granddaughter Mini (daughter of Sanjeev Kumar), aged about one and half years for ransom. Karan Sing and Jagendra of the same village witnessed them with Mini, boarding in the bus. Thereafter at about 09:00 AM, accused-appellant Devendra made a phone to Shahdeen at his PCO Phone No.58081 and told that he was leaving service and his shirt is hung in his *Baithak*, in the pocket whereof, there is a letter. On being intimated by Shahdeen, Informant took out the letter from his shirt and read it, wherein Rs.2,00,000/- was demanded.

6. On the basis of said written report Ex.ka-1; chick FIR Ex.Ka-13 was prepared by Constable Clerk Satyaveer Tyagi and registered the case as Case Crime No.88 of 2002, under Section 364-A IPC; entry of the case was made in General Diary (hereinafter referred to as "GD") by the same Clerk, copy whereof is Ex.Ka-14.

7. Abducted victim (Mini) was recovered from the possession of accused Devendra by PW-4 Sushil Kumar at Old Delhi, Railway Station.

8. Immediately after registration of case, investigation was undertaken by PW-5 SI M.M. Chaudhary who commenced investigation, took necessary papers; recorded statements of witnesses; went to spot and

prepared site plan Ex.Ka-3; recorded statement of accused-appellant who was taken to Police Station by complainant himself; thereafter took letter written by Devendra in his custody, prepared fard thereof Ex.Ka-4; recorded statement of Sushil Sharma, Shardar Amar Jeet Singh, Chandralal, Neeraj, Shahdeen, Sanjay @ Sanjeev and Neetu @ Neeraj; sent letter written by accused Devendra, his specimen writing to FSL, Agra for examination.

9. After completing entire formalities of investigation, PW-5 SI M.M. Chaudhary submitted charge sheet, Ex.Ka-12, in the Court of Magistrate against Rajpal and accused-appellant Devendra under Section 364-A IPC.

10. Cognizance of the offence was taken by Magistrate concerned. After making compliance of Section 207 Cr.P.C., Magistrate committed the case of accused persons to Sessions Judge, Muzaffar Nagar for trial, who framed charge against the accused persons, namely, Devendra and Rjpal on 31.01.2003 as under:

*“I S.P. Verma, Sessions Judge, Muzaffar Nagar do hereby charge you 1. Devendra S/o Sohan Prasad Teli, 2. Rajpal S/o Munshi Kumhar as follows:*

*That you on 02.10.2002 at about 8.00 AM from the house of complainant Virendra Kumar S/o Hukamchand situated in Village Adampur, Police Station Bhora Kalan, District Muzaffar Nagar in furtherance of common intention kidnapped Mini (aged about one and a half years) daughter of Sanjeev Kumar in order that said Mini might be murdered or might be so disposed of as to be put in danger of being murdered for ransom and thereby committed an offence punishable under Section 364-A/34 of the IPC and within my cognizance.*

*And I hereby direct that you be tried by this Court on the said charge."*

11. The accused-appellant denied the charge levelled against him, pleaded not guilty of charge and claimed trial.

12. To substantiate its case, prosecution examined as many as five witnesses, out of whom PWs-1 to 4 are witnesses of fact and PW-5 is formal witnesses of Police i.e. Investigating Officer. PW-1 Vinok Kumar Sharma is Informant who presented Ex.Ka-1 in the Police Station concerned; PW-2 Jagendra who has seen the accused-appellant taking the victim in his lap; PW-3 Intimated Informant about the phone made by accused-appellant and PW-4 Sushil Kumar who caught hold accused-appellant at Old Delhi, Railway Station with victim and recovered her from the possession of accused-appellant.

13. Subsequent to closure of prosecution witnesses, statements of accused-appellant under Section 313 Cr.PC. was recorded by Trial Court, explaining entire evidence and incriminating circumstances. In the statement accused-appellant denied prosecution story in toto as usual. In response of question no.9, accused-appellant admitted that he was taken to Police Station and further he stated that he was falsely implicated in the present case. Accused-appellant examined DW-1, Dr. K.D. Sanwaliya, Medical Officer of District Hospital, Muzaffar Nagar who conducted medico examination of accused and found seven blunt object injuries on his person, prepared medical report Ex.Kha-1. Doctor found all the injuries of simple nature except injury no.7 which was kept under observation.

14. On appraisal of evidence on record and after hearing learned State counsel and counsel for accused, learned Trial Judge recorded verdict of conviction and sentence against the accused-appellant, as stated above.

15. Feeling aggrieved with the impugned judgment and order dated 01.10.2003, accused-appellant is before this Court through Jail appeal No. 5871 of 2003 and Criminal appeal No. 5422 of 2003, challenging his conviction and sentence.

16. We have heard Sri Mohd. Afzal, learned Amicus Curiae for appellant and Sri Rishi Chhadha, learned AGA for State at length and have gone through the record carefully with the valuable assistance of learned Counsel for parties.

17. Learned Counsel appearing for appellant has challenged conviction and sentence of accused-appellant, advancing his submissions, in the following manners :-

- i. Entire evidence has not been produced from the side of prosecution, witnesses present at the time of arrest has not been produced, therefore, presumption under Section 114(g) of the Indian Evidence Act, 1872 goes against prosecution.
- ii. Prosecution story is doubtful, not worthy to credence; Prosecution had not produced independent witness; PWs 1 to 4 are interested witnesses and they cannot be termed as independent.
- iii. There are many contradiction in the statement of witnesses rendering prosecution story doubtful.
- iv. Accused-appellant has falsely been implicated by Informant to exploit him, being resident of Jharkhand.
- v. Trial Court did not appreciate the evidence available on file in right perspective as per law. Accused-appellant is liable to be acquitted.

18. Per contra, learned AGA opposed submissions and urged that

applicant is named in FIR; FIR is prompt; accused-appellant was seen with victim by PW-2 at Bus stop of the village; he has been apprehended with victim by PW-4 and his friends at Old Delhi, Railway Station on the very same day; and accused-appellant was taken to Police Station by PWs 1 to 4; there are sufficient evidence to connect accused-appellant with present crime and hence Trial Court has rightly convicted him.

19. Although time, date and place of occurrence could not be disputed from the side of defence but according to Advocate, he is not responsible for kidnapping of victim. Even otherwise from the evidence of PWs 1 to 4 time, date and place stand established.

20. Only question remains for consideration is "whether accused-appellant kidnapped victim or not and Trial Court has rightly convicted the accused-appellant or not?"

21. We now proceed to consider rival submissions on merit. It will be appropriate to briefly consider the evidence of prosecution as well as defence available on record and some important decisions on the point.

22. PW-1 Virendra Kumar Sharma deposed that accused-appellant Devendra Kumar was his servant who came to him one and half month prior to incident and accused Rajpal was resident of Adampur, Police Station Bhaurakala, District Muzaffar Nagar. At about 08:30 AM on 02.10.2002, both the accused persons kidnapped his grand-daughter Mini, aged about one and half years for ransom. Karan Singh and Jagender, resident of same village, noticed them taking his grand-daughter to Shamli by Mini Bus. Accused-appellant Devendra made a phone to him through STD of Shahdeen that he was going, leaving animals, and told that his shirt was hung in the *Baithak* and read the letter which is in the pocket. He took out the letter from the pocket of shirt and read over, by which an amount of Rs.2,00,000/- was demanded. The said letter recited that if information was given to Police, his grand-daughter would have

been killed. He traced out his daughter every where i.e. Shamli Railway Station and Bus Stop but found no where. He phoned his son who was residing in Delhi at that time telling about the incident and submitted written report Ex.Ka-1 in Police Station Bhaurakala. That day his son Sushil Kumar and his friends apprehended accused Devendra with victim Mini on Old Delhi, Railway Station and took accused-appellant to village. He further deposed that Police got signature of accused Devendra for comparison of ransom letter before him. Later on victim was handed over to him by Police after completion of legal formalities.

23. PW-2 Jagendra deposed that on the fateful day at about 08:30 PM, he went to Bus Stop of his village for shaving, Rajpal was standing there. After 10 -15 minutes, accused Devendra reached there with a girl aged about one and half years in his lap. Both whispered and boarded the bus leading to Shamli. He came back to his house after shaving. When at about 09:30 AM there was a noise in the village that grand-daughter of Virendra has been kidnapped, he went to house of Informant and told him that accused Devendra and Rajpal proceeded towards Shamli by Bus taking child.

24. PW-3 Shahdeen deposed that on the fateful day at about 09:15 AM, he received a telephone at his PCO No.58081 by which he was told from other hand that he was the servant of Sanjay Sharma and his Kurta was hung in his *Baithak*, in pocket thereof, there was a letter which should be read by them. He further deposed that he told this fact to father of Sanjay and came back to his PCO. He did not know what was written in the letter.

25. PW-4 Sushil Kumar, uncle of victim, deposed that incident was of 02.10.2002. At the time of incident, he was in his house situated at Delhi, he received a phone of his father that Devendra had gone with Mini and tried to search him. He along-with his younger brother and his friends; first, went to Bus Stop, later on Old Delhi Railway Station. At about

01:30 PM when a train reached at Station, after some moment, he saw Devendra boarding the stairs with Mini. He apprehended him with the help of his friends. First of all, he took his niece in his lap. He informed his father that we are coming with Mini and proceeded at 05:30 PM to Village from Delhi and reached the village at about quarter to ten along-with his friends by Maruti Van of his friend Amarjeet.

26. All four witnesses PWs 1 to 4 have been examined at length by defence but nothing adverse material have come, so as to disbelieve statements of witnesses on oath, on the relevant points. Certainly some minor contradictions and infirmities occurred in their statements but they are not of such nature which could dent or render the prosecution doubtful.

27. Statement of PW-2 established that accused was seen going with victim Mini and boarding the bus leading to Shamli. PW-3 proved that accused Devendra made a call at his PCO intimating that his shirt was hung in the *Baithak* of Informant PW-1 and to see the letter written by him kept in its pocket. He informed about message to informant PW-1. On the information of Shahdeen, PW-1 lodged an FIR against the accused appellant about the kidnapping of his grand-daughter. PW-4 on receiving the information of kidnapping of his niece Mini from his father, thereafter, made a search for girl at Bus Stop and Railway Stations along-with his friends and younger brother. He further proved that he saw the accused Devendra with Mini boarding stairs and apprehended with the help of his friends and took Mini from accused Devendra. Thereafter he went to his village by Maruti Van of his friend with Mini and accused Devendra.

28. From the statements of PWs 1 to 4, it is fully established that accused-appellant Devendra kidnapped victim Mini, grand-daughter of Informant PW-1, for ransom at the relevant time and date as stated by prosecution and he was apprehended with victim at the Railway Station of Old Delhi, on the same day.

29. Learned Amicus Curiae appearing for accused-appellant, argued that it has come in the evidence of PW-4 that accused-appellant was captured by him with the help of his friends and they came to village by Maruti Van of Amarjeet Singh but non of his friends have come forward to support prosecution story, therefore, presumption under Section 114(g) of the Indian Evidence Act, 1872 goes against him.

30. So far as the argument of learned Counsel for appellant regarding non-examination of friends of PW-4 is concerned, we are of the view that this submission is thoroughly misconceived for the reasons that prosecution is not obliged to adduce witnesses as mentioned in FIR or charge-sheet, in view of Section 134 of Indian Evidence Act, 1872 (hereinafter referred to as 'Act, 1872'). Section 134 of Act, 1872, reads as under:-

*"134. Number of witnesses.—No particular number of witnesses shall in any case be required for the proof of any fact."*

31. 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.

32. 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 inspite of testimony of several witnesses if it is not satisfied about the quality of evidence.

33. 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**.

34. 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 solitay 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."*

35. 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.

36. Learned Counsel for appellant next contended that no independent witness has been produced by prosecution. PWs 1 to 4 are interested and relative to victim, therefore, there evidence could not be termed as reliable.

37. So far as the question of relative witness and non-examination of any independent witness is concerned, we are not impressed with the submissions of learned Counsel for appellant for the reasons that it is

often seen that in heinous offences like murder, dacoity, kidnapping etc., no villagers or independent witness come forward to give evidence in support of prosecution against accused-appellant due to fear of evil.

38. So far as relative witness is concerned, in **Dalip Singh v. State of Punjab, AIR,1953, SC 364**, Court has held :-

*“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.”*

39. 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”*

40. 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).”*

41. It is settled that merely because witnesses are closed 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 the 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 whether it is cogent and credible evidence.

42. Learned Counsel for appellant further contended that there are many contradictions in the statements of witnesses which rendered prosecution doubtful and accused-appellant is entitled to benefit of doubt and deserves acquittal.

43. So far as discrepancies, variation and contradiction in the prosecution case are concerned, we have analysed entire evidence in consonance with the submissions raised by learned counsel's. All the witnesses, PWs 1 to 4 have supported prosecution case. All the four witnesses withstood lengthy cross-examination but nothing adverse material could be brought on record so as to disbelieve their statements. There is nothing in cross-examination which may render their statements doubtful. Naturally some minor contradictions and discrepancies have occurred in their examination-in-chief but they do not go to the root of

case.

44. 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.

45. 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.

46. 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.

47. 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 is 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.

48. 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 a 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].**

49. In the entirety of the facts and circumstances and legal proposition discussed herein before, we are satisfied that prosecution has successfully proved its case beyond reasonable doubt against accused-appellant and Trial Court has rightly convicted him for having committed an offence under Section 364-A read with 34 IPC.

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

51. 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 of court to constantly remind itself that right of victim, and be it said, on certain occasions 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].**

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

53. In view of above discussion, **both the appeals lack merit and are dismissed.**

54. Accused-appellant is on bail, he shall be taken in custody forthwith to serve out the sentence awarded by learned Trial Court.

55. Lower Court record alongwith a copy of this judgment be sent back immediately to District Court concerned for compliance and further necessary action and to apprise the accused-appellant through Jail Authority.

56. Before parting, we provide that Mohd. Afzal, Advocate, who has appeared as Amicus Curiae for appellant in present Jail Appeal, shall be paid counsel's fee as Rs. 10,000/-. 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 :- 11.09.2019**  
I.A.Siddiqui