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Reserved on : 24.09.2019
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CRIMINAL APPEAL No. 1796 of 1987

1. Harendera
2. Manvendra
3. Devendra --------Appellants

Vs

State of Uttar Pradesh ---------Respondent

For Appellants : Sri Adesh Kumar, Advocate
For Respondent/State : Sri Ankit Prakash, AGA

Hon'ble Pritinker Diwaker, J.
Hon'ble Raj Beer Singh, J.

Per: Raj Beer Singh, J.

1. This appeal has been preferred against the judgment and order dated 15.7.1987 passed by learned 3rd Additional Sessions Judge, Meerut in Sessions Trial No. 240 of 1985 (State vs. Harendra & Ors), under Sections 302, 307/34 of IPC, P.S. Mawana, District Meerut, whereby, accused appellant Harendra has been convicted under Sections 302 and 307/34 of IPC and the accused appellants Manvendra and Devendra have been convicted under Sections 302/34 and 307/34 of IPC. Accused-appellant Harendra has been sentenced to undergo imprisonment for life under Section 302 of IPC and rigorous imprisonment for five years under Section 307/34 of IPC along with fine of Rs. 500/-. Similarly, accused appellants Manvendra and Devendra have been sentenced to undergo life imprisonment under Section 302/34 and rigorous imprisonment for five years, under Section 307/34 of IPC with fine of Rs. 500/-. In

default of payment of fine, accused-appellants have to undergo additional imprisonment for six months.

2. All the three accused-appellants are brothers and deceased Karan Pal is their cousin. It is alleged that on 09.04.1985, some hot talk took place between complainant's uncle Chandra Bhan and the accused-appellants, namely, Harendra, Manvendra and Devendra. However, after intervention of PW-5 Vedpal (father of complainant), the matter came to an end. Thereafter, on 13.04.1985 at about 9:00 a.m. when complainant Ravindra Pal and his brother Jitendra, after loading sugarcane in their trolley, started taking away trolley, all the three accused-appellants Harendra, Manvendra and Devendra started abusing PW-5 Vedpal / father of complainant. Accused-appellant Devendra was having country made pistol, while Harendra and Manvendra were having club and stick. They started assaulting PW-5 Vedpal and due to injuries, PW-5 Vedpal fell down in the field of Karan Pal. Complainant/ PW 3 Ravindra Pal and his brother Jitendra ran to the spot and challenged the accused persons, but accused Manvendra and Devendra started assaulting PW-3 Ravendra Pal with lathi and stick. Karan Pal (deceased), who was working in nearby field, came and tried to intervene, but accused appellant Harendra fired a bullet at Karan Pal from behind, causing fire-arm injuries to him and thereafter, all the three accused persons ran away from the spot. Injured PW-5 Vedpal, complainant PW-3 Ravindra Pal and deceased Karan Pal were taken to Mawana Hospital, but in the way, Karan Pal succumbed to fire-arm injuries.

3. Complainant / PW-3 Ravindra Pal reported the matter to police by submitting written complainant Ex. Ka-7 and on that basis, case was registered on 13.04.1985 at 11:45 AM against all the three accused persons, namely, Harendra, Manvendra and Devendra, under Sections 302 and 307 of IPC vide FIR Ex. Ka-8.

4. Inquest proceedings on the dead body of deceased Karan Pal were conducted, vide Inquest report Ex. Ka-1 by PW-1 S.I. Narendra Singh and dead body of deceased was sent for postmortem which was conducted by PW-7 Dr. N.S. Pal on 14.4.1985, vide postmortem report Ex. Ka.10 and following injuries were found on the person of the deceased:

> *"(i) Gun shot wound of entry 3 cm x 2 cm x chest cavity deep on left scapular region 9 cm below the top of shoulder, underneath bones fractured.*
>
> *(ii) Abraided contusion 2.5 cm x 1 cm on middle of pinna (left) anterior aspect.*
>
> *(iii) Lacerated wound 2.5 x 0.5 cm x bone deep 8 cm above left ear.*
>
> *(iv) Lacerated wound 5 cm x 1 cm x bone deep on left side of head 3 cm infront of injury no.3.*
>
> As per Autopsy Surgeon, cause of death of the deceased was due to syncope as a result of gunshot injury.

5. Injured PW-3 Ravindra Pal was medically examined on 13.04.1985 by PW-2 Dr. S.K. Raghuvanshi and following injuries were found on his person:

> *(i) Lacerated wound on forehead right to middle size 4.5 cm x 1.2 cm x bone deep, 4 cm above medial end of right eyebrow. Bleeding present.*
>
> *(ii) Lacerated wound 3 cm x 1.2 cm x scalp deep on forehead left to middle 5.1/2 cm above medial end of left eyebrow bleeding while cleaning.*
>
> *(iii) Lacerated wound 6.1/2 cm x ¾ cm x bone deep on left side head middle 13.1/2 cm above the right ear, bleeding. Advised x-ray.*
>
> *(iv) Lacerated wound 4.5 cm x ¾ cm x bone deep on the back of head 13 cm above left ear. bleeding. Advised x-ray.*
>
> *(v) Lacerated wound 2.3 cm x ½ cm x scalp deep on the back of head centre 14.1/2 cm from left ear, bleeding.*
>
> *(vi) Lacerated wound 1.8 cm x 1.3 cm x scalp deep on the back of head below no.5 about 8 cm from left ear.*
>
> *(vii) Lacerated wound 6 cm x ½ cm x bone deep on back of head above neck 10 cm from left ear, bleeding. Advised x-ray.*
>
> *(viii) Multiple contusion (Multiple Redish colour) on area of 13 cm x 6 cm on the back chest scapular bone middle right side with traumatic swelling.*
>
> *(ix) Contusion redish 12 cm x 3 cm on the back chest left side above the upper border of scapula.*

(x) Abrased contusion redish 3 cm x 1.1/4 cm on the top of right shoulder.

(xi) Contusion 10 cm x 3 cm oblique on the back of lion and hip left side just above the scrocliae joint.

(xii) Traumatic swelling over dorsam of middle index and ring finger left hand with difficulty on movement. Kept under observation.

(xiii) Traumatic swelling over dorsam of right hand and index finger 5 x 5 cm or 6 cm x 4.9 cm extending upto index finger.

6. On the same day injured PW-5 Ved Pal was also medically examined by PW-2, vide MLC Ex. Ka-6 and following injuries were found on his person:

(i) Lacerated wound 5 cm x 1 cm x bone deep left side head 7.3 cm above left ear, bleeding present.

(ii) Lacerated wound 4 cm x ½ cm x bone deep on forehead 3 cm above the eyebrow middle, bleeding.

(iii) Lacerated wound 1.1/2 cm x 1/3 cm x muscle deep on the back of left forearm 4 cm below elbow, bleeding.

(iv) Four abrased contusion each size 1 cm x 2 cm on the middle back of left forearm on area of 5 cm round 8 cm above wrist, redish colour.

(v) Contusion 13 cm x 2.3 cm on front of chest ½ to left ½ to right of sternum upper end, redish colour.

7. After completion of investigation, all the three accused persons were charge-sheeted under Sections 302 and 307 of IPC.

8. Learned trial court framed charge against accused-appellant Harendra under Sections 302 and 307/34 of IPC, while accused-appellants Manvendra and Devendra were charged under Sections 302/34 and 307/34 of IPC.

9. In order to bring home the guilt of accused-appellants, prosecution has examined seven witnesses. After prosecution evidence, accused persons were examined under Section 313 of Cr.P.C., wherein, they have denied the prosecution evidence and claimed false implication. However, no other evidence was adduced in defence.

10. After hearing and analyzing the evidence on record, learned trial court has convicted accused-appellant Harendra under Sections 302 and 307/34 of IPC, while accused-appellants Manvendra and Devendra have been convicted under Section 302/34 and 307/34 of IPC vide

impugned order dated 15.7.1987 and sentenced, as stated in paragraph no.1 of this judgment.

11. Being aggrieved by the impugned judgment, accused-appellants have preferred the present appeal.

12. Heard Sri Adesh Kumar, learned counsel for the appellants and Sri Ankit Prakash, learned A.G.A. for the State.

13. Learned counsel for the appellants has submitted:

(i) that there was no motive, at all, on the part of the accused-appellants to cause injury to PW-3 Ravindra Pal and PW-5 Ved Pal or to murder the deceased Karan Pal. Before the incident in question, in an earlier incident on 09.04.1985, only some hot talk took place and no beating was done and the matter was subsidized and therefore, the incident of 9.4.1985 cannot give rise to any such motive to assault PW-3 Ravindra Pal and PW-5 Ved Pal. Further, accused-appellants have no enmity, at all, with deceased Karan Pal and thus, there are no reasons that why the accused-appellants would commit the murder of deceased Karan Pal.

(ii) that PW-3 Ravindra Pal and PW-5 Ved Pal are interested witnesses as they are son and father and their testimony is not reliable. It was stated that a scuffle took place between PW-3 Ravindra Pal and deceased Karan Pal and that when Karan Pal could not be overpowered, he was murdered by firing. Learned counsel further pointed out that PW-3 Ravindra Pal and PW-5 Ved Pal have admitted that wife of deceased Karan Pal was present at the spot, but she was not examined by the prosecution.

(iii) that there are contradictions and inconsistencies in the testimony of PW-3 Ravindra Pal and PW-5 Ved Pal, which render their testimony unreliable.

(iv) that so far as the conviction of accused-appellants under Section 302 of IPC is concerned, there is nothing to indicate that accused-appellants have common intention to cause murder of deceased Karan Pal. Even as per prosecution version, Karan Pal has suddenly appeared at the spot and tried to intervene and thus, it cannot be said that accused-appellants have any pre-arranged plan to commit murder of deceased.

14. Per contra, it has been submitted by learned State counsel that all the three accused-appellants have been named in the First Information Report, which was lodged without any undue delay. Both injured witnesses, namely PW-3 Ravindra Pal and PW-5 Ved Pal have made statements against the accused appellants. These witnesses have been subjected to cross-examination but they remained firm and no such adverse fact came out so as to affect the credibility of these witnesses. So far as non examination of wife of deceased is concerned, prosecution is not bound to examine each and every witness of the incident. In this case, two eye-witnesses, PW-3 Ravindra Pal and PW-5 Ved Pal, were examined by the prosecution and presence of these witnesses at the scene of offence is established by the fact that they have sustained injuries in the same incident. So as far as the question of common intention is concerned, it was submitted by learned State Counsel that when the accused-appellants were assaulting PW-3 Ravindra Pal and PW-5 Ved Pal, deceased Karan Pal came and intervened and thus, he was murdered. These facts indicate that all the three accused persons have common intention to commit the murder of deceased Karan Pal.

15. We have considered the rival submissions and perused the record.

16. In evidence PW-3 Ravindra Pal has stated that on 09.04.1985, over an issue of turn of irrigating drain, some hot talk took place between Chandra Bhan and accused persons however, on intervention of PW-5 Ved Pal, matter was subsidized. On 13.4.1985 at 9:00 a.m., PW-3 Ravindra Pal, his brother Jitendra and their father Ved Pal were taking away their sugarcane after loading the same in a tractor trolley and Ved Pal was around 15 steps behind trolley. All the three accused persons, who were present at their tube-well, started beating PW-5 Ved Pal. Raising an alarm, PW-5 ran towards the field of Karan Pal and PW-3 Ravindra Pal and his brother also ran to spot, but accused-appellant Manvendra and Devendra started attacking PW-3 Ravindra Pal with club and stick. Accused-appellant Devendra was having a club (lathi) and Manvendra was having a stick (Khalwa). Hearing noise, deceased Karan Pal also came there from his field and tried to save PW-5 Ved Pal but accused appellant Harendra fired a bullet at the back of Karan Pal from behind. Karan Pal was taken to Mawana hospital, where he was declared dead. PW-3 Ravindra Pal reported the matter to police by submitting a complaint Ex. Ka-7.

17. PW-5 Ved Pal, has also made a similar statement and stated that on 09.04.1985, an altercation took place between his younger brother Chandra Bhan and the accused persons, however, he has intervened and the matter was subsidized. Thereafter, on 13.04.1985 at 9:00 a.m., he and his sons Ravindra and Jitendra, after loading sugarcane in trolley, came towards western side, while he was at some distance behind the trolley to repair drainage and was coming behind trolley, all the three accused-appellants encircled him. PW-5 Ved Pal ran towards the field of Karan Pal but accused-appellant Manvendra has given a stick (khalwa) blow on his head and thereafter accused-appellant Devendra assaulted him with club and with barrel of country made

pistol. Hearing noise, his son Ranvidra and nephew Karan Pal also came there but accused-appellants also assaulted Ravindra and as Karan Pal tried to intervene, the accused appellant Harendra fired a bullet on him from behind. After the incident, all the three accused persons ran away. PW-5 Ved Pal, PW-3 Ravindra Pal and deceased Karan Pal were taken to Mawana Hospital but Karan Pal was declared dead, and PW-5 Ved Pal and PW-3 Ravindra Pal were medically examined.

18. PW-1 S.I. Narendra Singh has conducted inquest proceedings, while PW-2 Dr. S.K. Raghuvanshi has medically examined the injured witnesses PW-3 Ravindra Pal and PW-5 Ved Pal.

19. PW-4 Constable Kushal Pal Singh has recorded the FIR and G.D. entry and PW-6 Constable Balraj Singh has assisted during investigation.

20. PW-7 Dr. S.N. Pal has conducted postmortem.

21. Learned counsel for the accused-appellants vehemently argued that there was no motive, at all, on the part of the accused-appellants to cause injuries to P-W-3 Ravindra Pal and PW-5 Ved Pal or to cause murder of deceased Karan Pal. It was stated that there was no enmity between the parties and that the alleged incident of 09.04.1985 was an small issue and no beating etc took place in the said incident and thus, that incident would not give rise to any motive to commit the incident of 13.04.1985.

22. So far as the question of motive is concerned, it is well settled that if a case is based on direct evidence, motive has no much significance. Clear proof of motive lends additional assurance to other evidence, but the absence of motive does not lead to contrary conclusion, however in that case, other evidence has to be closely scrutinized. If positive evidence is clear and cogent, the question of motive is not important. Evidence of motive may be relevant to lend

assurance to the other evidence, but motive is not a sine qua non for the commission of a crime. Moreover, failure to prove motive or absence of evidence on the point of motive would not be fatal to the prosecution case when the other reliable evidence available on record unerringly establishes the guilt of the accused. Failure to prove motive or absence of evidence on the point of motive would not be fatal to the prosecution case when the other reliable evidence available on record unerringly establishes the guilt of the accused. Reference may be made to the case law pronounced in case of **State of U.P. V Nawab Singh, 2005 SCC (Criminal) 33**.

Dealing with similar issue the Apex Court in **State of U.P. Vs. Kishanpal & Ors., (2008) 16 SCC 73** held as under:

> *"The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."*

In the instant case, though it appears that alleged incident of hot talk, which took place on 09.04.1985, was not a big one but motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited them to commit a particular crime. As regards to the importance of existence of motive in a criminal case, it is worthwhile to look at the ratio laid down by this Court in **Shivaji Genu Mohite v. State of Maharashtra, AIR 1973 SC 55:**

> *"In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such*

proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy".

Reverting to the facts of present case, it would be pertinent to mention that it is the consistent case of prosecution that 09.04.1985, an altercation took place between younger brother of PW-5 Ved Pal, namely Chandra Bhan and accused-appellants Harendra, Manvendra and Devendra over an issue of irrigating nali. However, PW-5 Ved Pal has intervened and the matter was subsidized. Thereafter, on 13.04.1985, all the accused-appellants have assaulted PW 5 Ved Pal and the incident in question, has taken place. Though, as stated earlier, this case is based on testimony of two eye witnesses, and thus, the absence of motive does not lead to contrary conclusion, however considering the evidence regarding alleged incident of 09.04.1985, wherein altercation took place between younger brother of PW-5, namely, Chandra Bhan and accused persons over the dispute of irrigating nali and PW-5 Ved Pal has intervened and scolded the accused persons, it cannot be said that there was no motive at all on the part of the accused persons to cause injury to PW-5 Ved Pal. As per prosecution version, initially accused persons have assaulted PW-5 Ved Pal and after his noise, when PW-3 Ravindra Pal reached there, he was also assaulted by the accused persons. Similarly, when deceased came and intervened, accused appellant Harendra fired a bullet at deceased Karan Pal causing his death. Thus, the contention raised by learned counsel has no substance.

23. So far the contention, that PW-3 Ravindra Pal and PW-5 Ved Pal are interested witnesses and that their testimony is not reliable, is concerned, the version of prosecution is that on 09.04.1985, some hot talk took place between complainant's uncle Chandra Bhan and the accused-appellants, wherein PW 5 Vedpal has intervened and scolded them and matter has ended, but thereafter, on 13.04.1985, when PW-5 Ved Pal and his sons were taking away their sugarcane in trolley, all

the three accused persons abused and assaulted PW-5 Vedpal. When PW 3 Ravinder tried to save him, he was also attacked and when deceased Karan Pal tried to intervene, accused appellant Harendra fired a bullet on him causing his death. No doubt, PW-3 Ravinder and PW-5 Vedpal are son and father, but mere relationship cannot be a factor to doubt their testimony. On the issue of appreciation of evidence of interested witnesses, **Dalip Singh Vs. State of Punjab, AIR 1953 SC 364, 1954 SCR 145,** is one of the earliest cases on the point. In that case, it was 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."*

Similarly, in **Piara Singh and Ors. Vs. State of Punjab, AIR 1977 SC 2274 (1977) 4 SCC 452,** the Apex Court held:

> *"It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence."*

In **Hari Obula Reddy and Ors. Vs. The State of Andhra Pradesh, (1981) 3 SCC 675,** a three-judge Bench of this Court observed:

> *".. it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."*

In **Jayabalan V UT of Pondicherry (2010) 1 SCC 199**, the Supreme Court held as under:

> *"23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency."*

Again, in **Ramashish Rai Vs. Jagdish Singh, (2005) 10 SCC 498,** the following observations were made by the Apex Court:

> *"The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double- edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence."*

A survey of the judicial pronouncements of the Hon'ble Apex Court on this point leads to the inescapable conclusion that the evidence of a closely related witness 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. (See Anil Rai Vs. State of Bihar, (2001) 7 SCC 318; State of U.P. Vs. Jagdeo Singh, (2003) 1 SCC 456; Bhagalool Lodh & Anr. Vs. State of U.P., (2011) 13 SCC 206; Dahari & Ors. Vs. State of U. P., (2012) 10 SCC 256; Raju @ Balachandran & Ors. Vs. State of Tamil Nadu, (2012) 12 SCC 701; Gangabhavani Vs. Rayapati Venkat Reddy & Ors., (2013) 15 SCC 298; Jodhan Vs. State of M.P., (2015) 11 SCC 52).

In the instant case, PW-5 Vedpal, complainant PW-3 Ravindra Pal are father and son, but the fact that they themselves received

injuries in the same incident establishes their presence at the spot. Further, it is important to note that the deceased as well as the accused-appellants were equally related them. It is not in dispute that accused-appellants, deceased as well as these witnesses all belong to the family of same ancestors. They all were related to each other through distant relationship in extended family. In view of these facts, by no stretch of imagination, PW 3 Ravinder and PW 5 Ved Pal can be treated as interested witnesses. Mere fact that in an earlier incident, hot talk between Chandrabhan and accused-appellants, PW 5 Vedpal has scolded them, would not make him interested or inimical witness, particularly when PW 5 himself has sustained injuries. Both PW-3 Ravindra Pal and PW-5 Ved Pal have made clear and cogent statements regarding the incident. PW-3 Ravindra Pal has lodged prompt report, naming all the three accused persons. Both these witnesses have been subjected to cross-examination, but no such fact could be elicited in their cross-examination, so as to affect their testimony or otherwise to draw any adverse inference against these witnesses. The version of these witnesses is supported by medical evidence. There is absolutely no material to indicate that any scuffle has taken place between PW-3 Ravindra Pal and deceased Karan Pal or that deceased was murdered by PW-3, as suggested by learned counsel for the appellants. This argument is purely hypothetical and has no basis at all. Thus, we do not find any force in the contention raised by learned counsel for appellants.

24. It is correct that PW-3 Ravindra Pal has accepted in their cross-examination that wife of deceased Karan Pal has also reached at the spot but she was not examined, however, it is well settled position of law that prosecution is not required to examine each and every witness of incident. In **Raghubir Singh Vs. State of U.P., (1972) 3 SCC 79**, it was held that the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered

necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. In fact, it is not the quantity but quality of evidence which matters. In the instant case, prosecution has examined it's star witnesses, namely PW-3 Ravindra Pal and PW-5 Ved Pal, who sustained injuries in the very same incident. As prosecution has examined two eye-witnesses of the alleged incident, no adverse inference can be drawn against prosecution case on the ground that wife of deceased Karan Pal was not examined or that any other eye-witnesses, who reached at the spot, was not examined. The contention of the learned counsel has no force.

25. Learned counsel for the appellants could not point out any major contradiction or inconsistency in the statements of eye witnesses. Both the witnesses have been subjected to cross-examination, but nothing adverse could be elicited from them. The testimony of PW 3 Ravindra Pal has been corroborated by PW-5 Ved Pal. Their version is supported by medical evidence. It is a well settled law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies, however in the instant case, no such discrepancy has been shown. Minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. In the instant case, no such contradiction, inconsistency or omission could be shown, which could create a serious doubt about the truthfulness or creditworthiness of eye witnesses PW 3 Ravindra Pal and PW-5 Ved Pal.

26. One of the important aspect of the case is that PW-3 Ravindra Pal and PW-5 Ved Pal have sustained injuries in the same incident. PW 3 Ravinder has sustained as many as 13 injuries, while PW-5 Ved Pal sustained 5 injuries in the alleged incident. This fact establishes their presence at the spot beyond any reasonable doubt. The testimony of a witness, who is himself an injured in the same incident, is considered of utmost importance. In **Jarnail Singh Vs. State of Punjab (2009) 9SCC 719**, the Hon'ble Supreme Court reiterated the special evidentiary status accorded to the testimony of an injured accused. It was held that the fact that witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross- examination and nothing could be elicited to discard his testimony, it should be relied upon. Similar view was expressed in the case of **Krishan v State of Haryana, (2006) 12 SCC 459.** With respect to the evidence of victim, in Criminal Appeal Nos. 513-514 of 2014 **Baleshwar Mahto & Anr. v. State of Bihar & Anr.,** decided on 09.01.2017, Hon'ble Apex Court reiterating the law laid down in case of Abdul Sayeed v. State of Madhya Pradesh, (2010) 10 SCC 259, held as under :

> “28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.
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> "Convincing evidence is required to discredit an injured witness." [Vide Ramlagan Singh v. State of Bihar [(1973) 3 SCC 881:1973 SCC (Cri) 563:AIR 1972 SC 2593],

Malkhan Singh v. State of U.P. [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12], Machhi Singh v. State of Punjab [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696], Bonkya v. State of Maharashtra [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113], Bhag Singh [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163], Mohar v. State of U.P. [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472], Vishnu v. State of Rajasthan [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], Annareddy Sambasiva Reddy v. State of A.P. [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] 29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28. …...In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to

> discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."
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> 30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

Applying the above principles of law to the facts of the present case, we find that testimony of injured witnesses PW -3 Ravinder and PW -5 Ved Pal is consistent and cogent. They have stood the test of cross-examination and their version is supported by medical evidence. PW-3 Ravinder has lodged report without any undue delay naming all the accused-appellants. No such reasons could be shown to suggest that why they would name accused-appellants falsely sparing actual assailants. Considering all aspects of the case, testimony of PW 3 Ravinder and PW-5 Vedpal, is credible and inspires confidence of the Court. On the basis of evidence on record, prosecution has established involvement of all the accused-appellants.

27. It was next argued that there is no evidence that all the three accused persons have common intention to commit the incident. It was pointed out that even as per prosecution version, deceased Karan Pal has appeared at the spot suddenly and thus, there is no question of common intention amongst all the accused persons to commit his murder. It was further submitted that as per prosecution version,

accused-appellant Manvender and Devender have not caused any injury to the deceased, nor they have been attributed to any exhortation to commit murder of deceased. Learned counsel argued that there is absolutely no evidence that accused-appellant Manvender and Devender have any pre-arranged plan to commit murder of deceased and thus, they cannot be attributed to common intention for murder of deceased.

28. Perusal of evidence on record shows that initially all the three accused persons have assaulted PW-5 Ved Pal with club and stick and when PW-3 Ravindra Pal reached there to save his father, he was also assaulted by the accused persons. Thus, so far as conviction of all three accused-appellant under Section 307/34 of IPC is concerned, the common intention of accused persons to cause injuries to PW-5 Ved Pal and PW-3 Ravindra Pal is established. The facts and evidence on record clearly show that so far as the charge under section 307/34 of IPC is concerned, all the three accused-appellants have common intention to assault them.

29. However, so far as the murder of deceased Karan Pal is concerned, it appears from evidence that deceased Karan Pal, who was working in nearby field, has reached at the spot after hearing cries of PW-5 Ved Pal and when he tried to intervene, accused-appellant Harendra has fired a bullet on his back, resulting his death. It is not the case of prosecution that accused persons were having any enmity with deceased Karan Pal. Deceased was also not shown involved in the alleged earlier incident of 09.04.1985. There is no evidence, at all, that accused appellants Manvendra and Devendra have caused any injury to deceased Karan Pal or that they made any exhortation to kill deceased Karan Pal. There is no evidence to indicate that all the three accused persons have any pre-arranged plan to commit murder of deceased. The essential constituent of the vicarious criminal liability prescribed by Section 34 is the existence of common intention. If the

common intention in question, animates the accused persons and, if the said common intention leads to the commission of the criminal offence charged, each of the persons sharing the common intention is constructively liable for the criminal act done by one of them. Common intention denotes action in concert and necessarily postulates the existence of a prearranged plan and that must mean a prior meeting of minds. It would be noticed that cases to which Section 34 can be applied disclose an element of participation in action on the part of all the accused persons. The acts may be different; may vary in their character, but they are all actuated by the same common intention. Common intention essentially being a state of mind and can only be gathered by inference drawn from facts and circumstances established in a given case. In the case of **Hira Lal Malik v. State, 1977 CriLJ 1921,** the Supreme Court observed that :

> *"38.Common intention is a state of mind of an accused which can be inferred objectively from his conduct displayed in the course of commission of crime as also prior and subsequent attendant circumstances. Mere participation in the crime with others is not sufficient to attribute common intention to one of others involved in the crime. The subjective element in common intention therefore should be proved by objective test. It is only then one accused can be made vicariously liable for the acts and deeds of the other co-accused." (emphasis supplied)..*

The Hon'ble Supreme Court in the case of **Ramesh Singh @ Photti v. State of A.P., (2004) 11 SCC 305**, has extensively dealt with the scope of Section 34 of the IPC. It was observed that :

> *"To appreciate the arguments advanced on behalf of the appellants it is necessary to understand the object of incorporating Section 34 in the Indian Penal Code. As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held to guilty. By introducing Section 34 in the penal code the Legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 IPC embodies the principles of joint liability in doing the criminal act based*

on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered by the manner in which the accused arrived at the scene, mounted the attack, determination and concert with which the attack was made, from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal omission on the part of such accused can indicate the sharing of common intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted. (See Noor Mohammad Yusuf Momin AIR 1971 SC 855)".

In case **Nand Kishore v. State of Madhya Pradesh, (2011) 12 SCC 120**, the Apex Court discussed the ambit and scope of Section 34 IPC as well as its applicability to a given case, as under:

..."20. A bare reading of this section shows that the section could be dissected as follows:

(a) Criminal act is done by several persons;

(b) Such act is done in furtherance of the common intention of all; and

(c) Each of such persons is liable for that act in the same manner as if it were done by him alone.

It was held that these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of Section 34. While first two are the acts, which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the criminal act and common intention are proved, then by fiction of law, criminal liability of having done that act by each person individually would arise. The criminal act, according to Section 34 of IPC must be done by several persons. The emphasis in this part of the Section is on the word "done". It only flows from this that before a person can be convicted by following the provisions of Section 34 of IPC, that person must have done something along with other persons. Some individual participation in the commission of the criminal act

would be the requirement. Every individual member of the entire group charged with the aid of Section 34 of IPC must, therefore, be a participant in the joint act which is the result of their combined activity.

In fact law journals are replete with cases, wherein it has been consistently laid down by the Apex Court that common intention implies acting in concert and existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts. It requires a prearranged plan and it presupposes prior concert. Therefore, there must be prior meeting of minds.

In view of the above discussion, it is manifest that to establish a case under section 34 of IPC, prosecution has to prove beyond all reasonable doubt that the appellant had the knowledge of the intention of his co accused, and they voluntarily shared the said intention. The prosecution has to establish that in furtherance of the said intention, the appellant committed certain overt act which was responsible for the murder of the deceased. It is not that each and every act done during the course of attack on the deceased would indicate that the appellant shared the common intention, and only such overt act may be relevant which indicate that the appellant also shared the intention to cause the death of the deceased.

It would also be pertinent to observe that common intention required by Section 34 of IPC is different from the same intention or similar intention. As observed by the Privy Council in Mahbub Shah v. King Emperor I.L.R. (1945) IndAp 148 common intention within the meaning of Section 34 of IPC implies a prearranged plan, and to convict the accused of an offence applying the Section, it should be proved that the criminal act was done in concert pursuant to the prearranged plan and that the inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. Section 34 of IPC lays down a principle of

joint liability in the doing of a criminal act. The essence of that liability is to be found in the existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. The distinct feature of Section 34 of IPC is the element of participation in action.

Keeping the aforesaid legal position in mind, when we revert to the facts of the present case, it is clear that accused-appellants have common intention to cause injuries to PW-3 Ravindra Pal and PW-5 Ved Pal. Both these witnesses were attacked by all the accused-appellants with club and stick (khalwa). There is consistent evidence that all the three accused-appellants have caused injuries to PW-3 Ravindra Pal and PW-5 Ved Pal. However, it appears that deceased Karan Pal was murdered only because he has appeared at the scene of offence in order to intervene and to save PW 5 Ved Pal. As deceased tried to intervene, accused-appellant Harender fired a bullet on him from behind. There is no evidence that accused-appellants Manvendra and Devendra have caused any injury to deceased Karan Pal or that they made any exhortation to kill him. There is absolutely no evidence of any prior concert or existence of a pre-arranged plan among all three accused persons to commit murder of deceased. So far as murder of deceased Karan Pal is concerned, accused-appellants Manvendra and Devendra have not been attributed any role whatsoever.

Considering the entire evidence carefully, it appears that act of causing murder of deceased Karan Pal was individual act of accused-appellant Harendra. There is absolutely nothing to indicate that accused-appellant Manvendra and Devendra have common intention with accused Harendra to commit murder of deceased Karan Pal. This position finds further support from the fact that even the learned trial court has framed charge against accused Harendra under Section 302 of IPC simplicitor and in the same way, accused-appellant Harendra was convicted under Section 302 of IPC simplicitor, while accused

appellants Manvendra and Devendra have been charged and convicted under Section 302/34 of IPC. Thus, even as per prosecution case, accused appellant Manvendra and Devendra were not having common intention with accused Harendra to commit murder of deceased Karan Pal. Had it been so, all the three accused persons must have been charged under Section 302/34 of IPC. In view of these facts and evidence, conviction of accused-appellant Manvender and Devender under section 302/34 IPC does not appear in accordance with law.

30. Having considered the entire evidence on record, it is manifest that conviction of all the three accused-appellants under Section 307/34 of IPC is based on evidence and it does not call for any interference. However, so far as the conviction of accused appellants Manvendra and Devendra under Section 302/34 of IPC is concerned, prosecution has failed to prove that these two accused appellants were having common intention with accused Harendra, who has caused death of deceased by firing a single bullet on him and thus, accused-appellants Manvendra and Devendra are entitled for acquittal under Section 302/34 of IPC. However, so far conviction and sentence of accused-appellant Harendra under Section 302 of IPC is concerned, it is based on evidence and he has rightly been convicted.

31. In view of aforesaid, conviction and sentence of accused appellant Harendra under Section 302 is affirmed. Similarly, conviction and sentence of all the three accused appellants, namely, Harendra, Manvendra and Devendra under Section 307/34 of IPC is also affirmed. Conviction and sentence of accused appellants Manvendra and Devendra under Section 302/34 of IPC is set aside. All the three accused appellants are stated to be on bail, their bails are cancelled and they be taken into custody forthwith for serving remaining sentence.

32. The appeal is partly allowed in above terms.

33. Copy of this judgment and order be sent to Court concerned forthwith for necessary compliance.

Date: 22.10.2019

A. Tripathi

(Raj Beer Singh, J) (Pritinker Diwaker, J)