

A.F.R.

Reserved

Court No. - 46

Case :- CRIMINAL APPEAL No. - 2959 of 1984

Appellant :- Karan Singh

Respondent :- State of U.P.

Counsel for Appellant :- N.K. Saxena,A.N. Misra,G.S.Haela,Zafar Abbas

Counsel for Respondent :- A.G.A.

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Vikas Kunvar Srivastav,J.

(As per Hon'ble Vikas Kunvar Srivastav,J.)

1. The instant criminal appeal is directed against the judgment of conviction and order of sentence dated 27.09.1984 passed by the Additional District and Sessions Judge, Lalitpur in Session Trial No.47 of 1983 (State Vs. Karan Singh), convicting and sentencing the appellant under Section 302, 148, 149 of the Indian Penal Code, 1860 to undergo life imprisonment and rigorous imprisonment for one year respectively (Life imprisonment under Section 302/149 I.P.C. and rigorous imprisonment under Section 148 I.P.C.). From the same Case Crime No.53 of 1979, under Section 396 I.P.C., Police Station Saujana, District Lalitpur, three sessions trial were instituted i.e. Sessions Trial No.15 of 1980 (State Vs. Aman Singh & Others), Sessions Trial No.23 of 1980 (State Vs. Kishora) and Sessions Trial No.47 of 1983 (State Vs. Karan Singh)

Factual Matrix

2. The prosecution case as emerged from the written information given by the first informant, Kashiram on 22.11.1979 in the Police Station- Saujana, District Lalitpur, the evidence on record both the documentary and oral, are stated briefly as follows:-

The first informant Kashiram alongwith his real brother Ramphal both S/o Motilal R/o Village Agodi, Police Station Saujana, District Lalitpur went to their agricultural field of 'jowar' to take care and

protection of the crops. The first informant (Kashiram) handed over his licensed gun no.1516 of 12 bore with 25 cartridges to his brother 'Ramphal' and went himself into the field to cut grass. After cutting the grass at about 5:00 p.m. in the evening, when the day light was still existing, the first informant lift the bundle of grass and moved on the way to his house with his brother 'Ramphal' ahead of him. About ten paces away from their field on the way to their home, when they reached near the agricultural field of Baldu Lodhi, the accused persons Karan Singh S/o Majboot Singh Thakur armed with axe (kulhari), Aman Singh S/o Majboot Singh Thakur armed with sickle (hasiya), Kishora S/o Kamatua Nai armed with axe (Kulhari), Hallu S/o Kamatua Nai armed with axe, all residents of Agodi Police Station Saujana, District Lalitpur with brother-in-law of Kishora namely 'Bhaiyan Nai' R/o Village Rangaon, Police Station Mandwara, District Lalitpur, came out from the crops of 'jowar' in aforesaid field of Baldu Lodhi. They caught hold the informant's brother Ramphal and tossed him on the earth. They inflicted blows of axe (Kulhari) and sickle (Hasiya) on him. Informant's brother Ramphal began to scream and the informant was also raising alarm for help, upon which Pooran, Pragi, Jagan, Sunnu, all residents of Village Agodi rushed to the spot, but after killing Ramphal, all the five assailants fled from the spot snatching the licensed gun, cartridges and the wrist watch from the hands of the deceased. When the witnesses began to gather near the spot of the incident, Kishora Nai made a fire from the licensed gun of the informant. It was stated that the dead body of Ramphal (deceased) i.e. the informant's brother was lying in the agricultural field of Baldu Lodhi and some of the villagers stayed near the dead body.

This written information dated 22.11.1979 was given by the informant in the police station Saujana at about 8:00 a.m. The first information report was lodged accordingly, on the basis of written information under Section 396 I.P.C. The distance of the spot of the incident from the Police Station Saujana is shown as about 13 k.m. in the F.I.R. towards South-West from the police station.

After registering the F.I.R., police reached at the spot of the incident and started the proceeding of inquest, prepared site map on the orientation of witnesses, collected the blood stained soil and plain earth soil from the spot of the incident, prepared memo thereof and sent the body for post-mortem. After getting the post mortem report, charge sheet was submitted before the court.

3. All the five accused were charged with the offence under Section 147 I.P.C. for having formed an unlawful assembly alongwith another

associates on 21.11.1979 at about 5:00 p.m. near the agricultural field of one Baldu Lodhi having crops of 'jowar', situated in village Agodi, Police Station- Saujana, District Lalitpur, with a common object whereof to commit the murder of Ramphal (brother of the first informant Kashiram) and in furtherance of their common object of that unlawful assembly, the accused persons allegedly had committed the offence of rioting. They were further charged under Section 302/149 I.P.C. as they committed the murder of Ramphal intentionally causing his death on the relevant date and time of the incident on the spot of the incident in furtherance of the common object of their unlawful assembly. The accused persons were also charged under Section 307/149 I.P.C. for having attempted to commit the murder of Kashiram by firing at him in pursuance of their common object on the relevant date and time on the spot of incident. They were also charged under Section 396 I.P.C. for having committed dacoity as they allegedly snatched the licensed gun alongwith 25 cartridges and automatic wrist watch and in the course of commission of the dacoity, murder of 'Ramphal' was committed by one or some of them. Further, three accused Aman Singh, Hallu and Kishora were charged under Section 148 I.P.C. also for being armed with deadly weapons namely axes and sickle at the time of committing the offence of rioting.

4. Kishora, the accused in Sessions Trial No.23 of 1980 was charged under Section 379 I.P.C. for having committed theft of the gun bearing no. 1516 alongwith 25 cartridges and automatic wrist watch by taking out from the hands of the deceased Ramphal on the relevant date and time at the spot of incident.

5. The prosecution proposed the following witnesses for oral examination and documents to prove the case before the trial court and documents given herein below in a table for the purpose of easy reference:-

| | |
|------------------------------|--|
| P.W.-1, Chutti | |
| P.W.-2, Pooran | Ex. Ka-12- Statement of Pooran |
| P.W.-3, Sunu | Ex. Ka-11- Statement of Sunu |
| P.W.-4, Bichitra Kumar Gupta | Proved Ex. Ka-23- Extract Statement of Jagan Proved Ex. Ka-24- Extract Statement of Puran Proved Ex. Ka-25- Extract Statement of |

| | |
|----------------------------|--|
| | Pragi Proved Ex. Ka-26- Extract Statement of Sunnu |
| P.W.-5, Kashiram | Proved the written report Ex. Ka.-1 Ex. Ka.-30, Statement of Kashiram |
| P.W.-6, Surjan Singh | Proved Ex. Ka-14/8- Panchayatnama Proved Ex. Ka-20- Site plan |
| P.W.-7, Lal Singh | |
| P.W.-8, Devi Charan Shukla | |
| P.W.-9, Jai Narain Dubey | |
| P.W.-10, Jagram Singh | |
| P.W.-11, P.L. Vishwakarma | |
| P.W.-12, Suresh Sakalya | Proved the post mortem report, Ex. Ka-25/3 Ex. Ka-8- Recovery memo of blood stained and plain earth. Ex. Ka-9- Recovery memo of plastic shoes. Ex. Ka-10- Recovery memo of 'Kanthi-Mala' & Pen Ex. Ka-13- Statement of Pragi Ex. Ka-21- Search memo of house Ex. Ka-22- Search memo of house Ex. Ka-28/20- Charge Sheet 'Mool' Ex. Ka-29/19- Charge Sheet 'Mool' Ex. Ka-31- Statement of Jagan Ex. Ka-32/26-Report of Chemical Examiner Ex. Ka-33/27 – Report of Chemical Examiner and Serologist |

6. As per the report of the Chief Judicial Magistrate, Lalitpur dated 28.03.2022, the sole appellant Karan Singh is absconding.

7. Learned counsel Sri Satyendra Kumar Mishra holding brief of Sri A.N. Misra Advocate appeared on behalf of the appellant. Sri Patanjali Mishra learned A.G.A. for the State respondents argued the prosecution case.

Arguments of the learned counsels.

8. Learned counsel for the appellant contended that the incident as stated by the prosecution witnesses is not as such and the deceased was killed somewhere else by some anonymous enemies earlier to the alleged date of incident i.e. 21.11.1979. He further submitted that even the presence of P.W.-5 (first informant, Kashiram) is doubtful because the first information report had been lodged with extraordinary delay without any plausible explanation. He contended that as alleged in the First Information Report, the incident of killing the deceased 'Ramphal' occurred at 5:00 p.m. on 21.11.1979, the spot of incident was 13 k.m. far away from the Police Station but the First Information Report was lodged at 8:00 a.m. on the next day i.e. 22.11.1979.

9. The next argument of the learned counsel for the appellant is with regard to impossibility of hiding of accused-appellant allegedly in the field of "jowar", the crops whereof were more or less two feet in height. He further drew the attention towards the statement of P.W.-5 who stated that the accused appeared out from the field when the deceased reached near the '*med*' (boundary) of that field of "jowar", and submits that the informant could see them pouncing on the deceased. According to the learned counsel for the appellant, hiding of the accused between the crops of approximately 2 feet in height was quite impossible.

10. Learned counsel for the appellant further contended that evidence on record reveals that the deceased 'Ramphal' was member of a gang of dacoits and he might have been killed in a bit to commit dacoity at some other place or by some other rival gangs or by the villagers. For the reason of enmity, the first informant has taken undue advantage to make false implication against the accused-appellant. It is further argued that when the deceased was having gun with 25 cartridges, no one could muster courage to attack him in the manner as alleged in the F.I.R.

11. The motive is stated by the informant himself in the written information and the First Information Report establishes the enmity between the parties to the incident. Learned counsel for the appellant emphasises that the conviction is only based on suspicion, raised by the informant against the accused-appellant that the accused were suspecting the hands of the deceased in the killing of their family members in an earlier incident. It is argued that the suspicion, however, strong it may be can not take place of the facts established on the evidences.

12. Learned counsel for the appellant lastly argued that the prosecution evidence itself raised doubt as to the killing of deceased on some earlier

date from the alleged date of incident 21.11.1979, somewhere else and, thereafter, the dead body was planted on the alleged spot of the incident. The medical evidence (post-mortem report) also corroborates the oldness of the dead body of the deceased alleged to have been killed on 21.11.1979 at about 5:00 p.m. Learned counsel submitted that since the prosecution remained unsuccessful in proving its case beyond all reasonable doubts, therefore, the conviction recorded by the trial judge and the sentence awarded can not be sustained in the eye of law.

13. Learned counsel for the appellant added that the eye witnesses were planted in the case falsely and for this reason which they had turned hostile and did not support the case of the prosecution. As such, the evidence on record was not sufficient and material for recording the conviction of the the present accused-appellant.

14. In rebuttal, it is argued by the learned A.G.A. that the contention of learned counsel for the appellant as to the doubt about the presence of P.W.-5 (first informant) is not correct because his presence is admitted by all other prosecution witnesses consistently and without any contradiction. The prosecution case which finds support from the oral evidences of P.W.-5 which is un-haken. Further, he argued that the arguments of the learned counsel with regard to the false implication and concocting a case by the prosecution, is baseless. P.W.-5 in his statement has explained satisfactorily about the delay in lodging the F.I.R. He further argued that the entire prosecution case is well supported with the direct evidences of eye witnesses and also the motive set forth in the written information and the prompt F.I.R. is well established.

15. Learned A.G.A. lastly drew the attention towards the statement of the prosecution witnesses who turned hostile and contended that they were not under any coercion, fear or terror while their statement under Section 164 Cr.P.C. was recorded, as such, the statement of such witnesses in the course of their examination in the Court shall not be read as wholly unworthy. The statement of such witnesses to the extent of lagging support to the prosecution shall be read being reliable as corroboratory evidence. He further submits that the principle of "*falsus in uno falsus in omnibus*" does not apply in India. He referred on the case laws ***Prabhash Kumar Vs. State of Haryana***¹, ***Iyappa & Ors. Vs. State of Tamil Nadu***² and ***Zahira Habibullah Sheikh & Anr. Vs. state of Gujarat***³.

¹ (2013) 82 ACC (SC) 401

² (2011) 72 ACC (SC) 988

³ (2006) 3 SCC 374

On the basis of above arguments, learned A.G.A. submitted that the impugned judgment of conviction and order of sentence is good in law and deserves to be confirmed, no interference is required in the impugned judgment under appeal, as such, the appeal is liable to be dismissed.

Discussion

Motive

16. In ***Sheo Shankar Singh Vs. State of Jharkhand and Anr.***⁴, the principles for the proof and relevance of motive in establishing the guilt of the accused and its varying importance in cases based on circumstantial evidence and in those which are based on the testimony of eye witnesses has been discussed. Para '15' of the said judgment is being quoted hereunder:-

"15. The legal position regarding proof of motive as an essential requirement for bringing home the guilt of the accused is fairly well settled by a long line of decisions of this Court. These decisions have made a clear distinction between cases where prosecution relies upon circumstantial evidence on the one hand and those where it relies upon the testimony of eye witnesses on the other. In the former category of cases proof of motive is given the importance it deserves, for proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eye-witness account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eye-witnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely even if prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eye-witnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an eye-witness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eye- witnesses."

17. The suspicion of the accused persons over Ramphal (deceased) of having killed their family members is, however, proved by the witness P.W.-5. In his cross-examination by the defence, he stated that the criminal case with regard to the incident of killing of the family members of the accused appellant instituted against the brother of the informant (Ramphal), the deceased and his father. Police was searching his brother (Ramphal) but he could not be traced by them. Ramphal ultimately

surrendered alongwith other ‘baghis’ (dacoits) in District Chatarpur. He also stated that he does not know about the gang of dacoits to which the deceased Ramphal belonged, however, in the murder case, he was acquitted by the court concerned.

Witness Jagan has also stated in the cross examination that the parents of the accused appellant Karan Singh were murdered and father of the accused Hallu and Kishora was also murdered. He further stated that deceased Ramphal was prosecuted for the above three murders wherein he was acquitted. He further stated that the said criminal case was running in District Sagar.

Witness Pooran has also stated in the cross-examination about the murder of parents of accused Karan Singh, Aman Singh and father of Kishora and Hallu in village. He admitted that the accused persons had a strong suspicion over the deceased ‘Ramphal’ of having committed their murder. This witness then stated that he heard that the Ramphal (deceased) had joined the gang of dacoit of ‘Moni Ram Sahai’ and the people from the village were witnesses in the murder case against deceased Ramphal.

Pragi stated that when the murder of the parents of the accused appellants had occurred, they were very young. He himself also young age. As such, all witnesses Kashiram (P.W.5) Sunnu (P.W.3), Jagan, Pooran (P.W.2) and Pragi, even those who did not support the case of the prosecution in toto and had supported the fact constituting the motive behind the killing of Ramphal. The motive has set forth in the written information and thus first information report, is, thus, proved and is a relevant fact under Section 8 of the Indian Evidence Act, 1872.

Relevant date and time of the incident.

18. Though it is argued by the learned counsel for the appellant that the evidence on record shows that the deceased might have been killed somewhere else prior to the alleged date of incident dated 21.11.1979 and the dead body was planted maliciously by the first informant by reason of enmity with the accused appellant. We have gone through the evidences of P.W.-5 and as discussed above, it may be recorded that there was no enmity between the first informant Kashiram (P.W.-5) and the accused appellant. Kashiram (P.W.-5), the first informant himself stated that being the villager of the same village, the accused appellant and he were on normal terms of visiting each other houses and talking to each other. None of the witnesses of the prosecution stated about the ‘enmity’, if any, of Kashiram with the accused appellant nor any suggestion of enmity had

been given to the first informant. So far as enmity of the accused appellant with deceased Ramphal is concerned, it is established by evidence of prosecution witnesses that the same was because of the deceased being the accused in the murder case of parents of the accused, who had been acquitted. The arguments of the learned counsel for the appellant of planting of the dead body on the spot of the incident by the first informant (P.W.-5) is not acceptable. Particularly, when the spot of the incident is proved satisfactorily by all the witnesses of fact as well as the formal witnesses also.

19. The doctor P.W.-12, Dr. Suresh Sakalya had also not been confronted to impeach him about his assessment that the deceased might have died on 21.11.1979 at about 5:00 p.m. in the evening. No questions were put to him by the defence about the condition of the dead body on the date of the post-mortem examination so as to relate the same to the oldness of the dead body and to reach at the proximate time of death prior to the established date and time of the incident, i.e. on 21.11.1979 at about 5:00 P.M. It is, therefore, needless to discuss on this point.

20. The accused persons, as the written information itself reveals, are related to each other. The accused Karan Singh and Aman Singh are real brothers, sons of 'Majboot Singh Thakur', accused Kishora and Hallu are real brothers, sons of 'Kamatua Nai', all residents of Village Agodi where the incident had occurred and first informant P.W.-5 resides. The accused Bhaiyan Nai is related to Kishora and Hallu being their brother-in-law (sister's husband) who is resident of Village Rangaon, Police Station Mandwara, District Lalitpur. P.W.-5 in his examination-in-chief stated that the father of accused Kishora and Hallu was murdered and parents of Karan Singh and Aman Singh were also murdered. They all were suspecting 'Ramphal' to be the perpetrator of the crime and, therefore, hatched enmity with the deceased 'Ramphal'. Due to the suspicion, out of vengeance, the accused had killed the deceased Ramphal. In cross examination, this witness stated at the very inception that he is residing in village Agodi and during his lifetime the parents of the accused persons were killed. He further stated that being local resident of same village, he had conversation eventually with the accused persons also. Accused persons also used to visit the first informant P.W.-5, if need be in connection with some work. As such, P.W.-5 established that the accused-appellant had no enmity with him (P.W.-5).

About witnesses

21. Kashiram, P.W.5 is brother of the deceased, Pooran (P.W.-2) and Sunnu (P.W.3) are the eye witnesses. The first informant 'Kashiram' who reported the incident dated 21.11.1979 to the Police on 22.11.1979 at about 08:00 A.M. had been examined by the prosecution as witness of fact and eye witness of the incident. Pooran (P.W.-2) and Sunnu (P.W.-3) were also examined as eye witnesses by the prosecution. These three witnesses were examined in Sessions Trial No.15 of 1980 (State Vs. Aman Singh & Others) and Sessions Trial No.23 of 1980 (State Vs. Kishora). A new witness namely Chutti was also examined as prosecution witness P.W.-1 in the case. P.W.-5 is real brother of the deceased 'Ramphal' and, as such, related witness. P.W.-2 and P.W.-3 are the native villagers, owners of the agriculture fields situated near and abutting the field of Baldu, which is the place of the incident dated 21.11.1979 occurred at about 05:00 P.M. in the evening. They were agriculturist having their field in the near vicinity of the spot of the incident (the field of Baldu).

22. We have gone through the statement of P.W.-5 'Kashiram' and do not find any prior enmity of Kashiram himself with any of the accused persons. Even Kashiram stated that the accused persons were on the normal terms of visiting and conversing with him, if needed, in connection with any work, as they were residing since a long time in the same village.

23. Learned counsel for the defence has could not carve out any fact of complaint of enmity of Kashiram with any of the accused persons prior to the date of the incident or any civil or criminal litigation pending between them. No question was put to the witness 'Kashiram' so as to elicit his interestedness in falsely implicating the accused persons for putting them behind the bars.

24. Witness P.W.-1, P.W.-2, P.W.-3 and P.W.-5 undoubtedly, as evidence came out from the record, are rustic villager and living in a milieu of a remote village namely Agodi in District Lalitpur. They are not highly educated, simply literate or even illiterate.

25. So far as the delay of more than 12 hours in lodging the F.I.R. is concerned, it is reasonably explained by the P.W.-5, Kashiram that he did not go in the night to lodge the report because of the fear of the accused persons. The evidence of his fear can be gathered from the evidence on record.

26. The milieu of the village Agodi and the life of the villagers there, may be gathered from the evidences coming out from the record. We can carved out the same as below.

- (i) the spot of the incident in the village Agodi was within the territorial limit of District Lalitpur which was declared and notified as a dacoit affected area by the Government,
- (ii) carrying a licensed gun even during the agricultural work in the evening in itself is an indication of fear of life to the brother namely Kashiram and Ramphal (deceased),
- (iii) in cross examination of the witnesses, it has come that the deceased 'Ramphal' was arraigned with the charge of murders of parents of accused persons. A criminal case was also lodged.
- (iv) the deceased 'Ramphal' alongwith some other 'baghis' (dacoits) surrendered in District Chhatarpur. He was known to be an active member of the gang of the dacoits, identified as 'Moniram Sahai Gang',
- (v) One of the accused 'Karan Singh' was himself suspected to be an active member of dacoits gang identified as 'Gabbar Singh's Gang',
- (vi) The way to the police station from the spot of the incident is shown to be about 13 k.m. which was in the outskirts of area not urbanized and populated, it was not easy to travel in the night,
- (vii) the mode and manner adopted by the accused persons was not only violent but also brutal and gruesome,
- (viii) The assailants after killing the deceased 'Ramphal', fled away from the spot of the incident and were roaming free.

27. Before going through the statements of aforesaid witnesses of fact we would like to refer para '5' of the judgment of Apex Court in the case of *Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat*⁵ where Apex Court observed that:-

- (1) *By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.*
- (2) *ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.*
- (3) *The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its*

image on one person's mind whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment 1.1 at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time- sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him- Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

28. In view of the aforesaid circumstances and the witnesses, status, milieu and their normal prudence, we think it proper to observe on the basis of evidences that the prosecution witnesses of fact are rustic villagers, not highly educated, even illiterate or simply literate.

29. In the context of the aforesaid observation, we further refer to the judgment of the Apex Court in ***Shivaji Sahab Rao Bobade Vs. State of Maharashtra***⁶ which deals with an incident of murder in a rural area where the witnesses to the case were rustic and so it was observed that their behavioural pattern perceptive and un-perceptive habits have to be judged as such. The relevant para from the aforesaid judgment is reproduced hereunder:-

"8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform

⁶ (1973) 2 Supreme Court Cases 793 (801)

ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge has at some length dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the post-mortem certificate. Certainly, the court which has seen the witnesses depose, has a great advantage over the appellate Judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial Judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naivete and clever equivocation, manipulated conformity and ingenious unveracity of persons who swear to the facts before him. Nevertheless, where a Judge draws his conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the Court of first instance. Nor can we make a fetish of the trial Judge's psychic insight."

30. We think it pertinent to mention here that the witness P.W.-1 'Chutti' did not support the case of prosecution and declared hostile. The witness P.W.-5 remained intact on his stand and supported the case of prosecution. The prosecution has produced on record, two certified copies of the extracts of the statement of witnesses Jagan, Pooran, Pragi and Sunnu recorded by the Investigating Officer under Section 161 Cr.P.C. and that recorded by the Judicial Magistrate under Section 164 Cr.P.C. also. All these witnesses were examined by the trial judge in the Sessions Trial No.15 of 1980 (State Vs. Aman Singh & Others) and Sessions Trial No.23 of 1980 (State Vs. Kishora). The aforesaid two Sessions Trials as well as the present Sessions Trial No.47 of 1983 (State Vs. Karan Singh) have their origin from the same Case Crime No.53 of 1979, under Section 396 I.P.C.

31. In the trial of Sessions Trial No.15 of 1980 (State Vs. Aman Singh & Others) and Sessions Trial No.23 of 1980 (State Vs. Kishora), the witness did not support as to the mode and manner adopted, complicity and identification of the accused persons in commission of the incident dated 21.11.1979 but so far as the incident of killing of deceased 'Ramphal' on 21.11.1979 at about 05:00 P.M. at the spot of the incident in the field of Baldu and their presence near the spot of the incident, was admitted by them.

32. They had retracted from their statement made under Section 161 Cr.P.C. before the Investigating Officer with regard to the mode and

manner adopted by them and complicity and identity of the accused persons in commission of the offence dated 21.11.1979 before the Court. However, the same statement was given before the Magistrate under Section 164 Cr.P.C. which they admitted and proved before the Court. They also proved before the Court, identifying and verifying their signature on the statement under Section 164 Cr.P.C. The Magistrate, Sri Bichitra Kumar Gupta was also examined before the Court in those sessions trials and he proved the statement recorded by him under Section 164 Cr.P.C. of the accused, as such, the statement of the accused to the same effect under Section 164 Cr.P.C. is proved before the Court and is a proved document. The Magistrate, Sri Bichitra Kumar Gupta is also witnessed in the present sessions trial as P.W.-4. The extracts of the witness under Section 161 Cr.P.C and 164 Cr.P.C. cumulatively will be taken as the narration of the incident by the witness coupled with their statement in the present trial.

Evidence as to the status, character and profession of the deceased, Ramphal.

33. In the case before us there are five witnesses of fact. They are first informant Kashiram (P.W.5), Sunnu (P.W.3), Jagan, Pooran (P.W.2), Pragi. Along with P.W.5 (brother of the deceased), the rest of the witnesses namely Sunnu, Jagan, Pooran and Pragi were all examined as eye witnesses of the incident whose names have been given in the written information also. It is stated in the written report by the first informant that at the time of the incident, hearing the screams of the deceased and alarm raised by the first informant P.W.5, the other witnesses came running on the spot as they were working in the nearby agricultural fields. On being challenged by them, the accused Kishora made a fire towards them and they succeeded in fleeing away from the spot. P.W.-5 being the brother of the deceased is a related witness. Learned counsel for the appellant has raised objection as to his credibility and reliability for the reason of his interestedness. Except P.W.5, rest of the witnesses turned hostile as they denied having seen the accused appellant committing the offence. The question, thus, would be as to the evidentiary value of the statement of the hostile witnesses, with regard to the facts deposed by them and the effect of the portion of their statement not supporting the prosecution case.

34. It is well settled that in a criminal trial, evidence of a hostile witnesses can form the basis of conviction. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence matters.

Reliance on the statement of hostile witnesses

35. In the case before us we have already noticed that prosecution witnesses Sunnu (P.W.3) and Pooran (P.W.2) were examined as the prosecution witnesses to prove the fact in issue as to whether the accused persons committed the killing of the deceased 'Ramphal' on the relevant date and time on the spot of the incident alleged in the written information by inflicting blows of lethal weapons like axe, sickle, etc.

36. The Apex Court in the case of *Mrinal Das Vs. State of Tripura*⁷ in para '67' has held as under:-

*67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as *prima facie*, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.*

37. In view of the aforesaid guidelines laid down by the Apex Court whereupon the evidence of the prosecution witnesses (declared hostile) is required to be evaluated. In the present case in our hand, since the learned counsel has raised objection as to the credibility and reliability of P.W.5, Kashiram (first informant) also and blamed him to concoct the case for false implication of the accused appellant, we would discuss the evidence of P.W.-5 later after evaluating the evidence of hostile witnesses and finding out which part of their testimony is to be taken into reliance and is corroborating the prosecution case.

38. In *Siddharth Vashisth @ Manu Sharma Vs. State of N.C.T., Delhi*⁸, it is held that if the prosecution witnesses turned hostile the court

7 (2011) 9 SCC 479

8 (2010) 69 SCC 833

may rely upon so much of his testimony which supports the case of prosecution and is corroborated by other evidences.

39. The doctrine of “*falsus in uno falsus in omnibus*” is not applicable in Indian Judicial System, the court has to separate grain from chaff and apprise in each case as to what extent the evidence is acceptable. If separation cannot be done, the evidence has to be rejected. The witnesses may be speaking untruth in some respect and it has to be apprised in each case as to what extent the evidence is worthy of acceptance. Merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. It is held in number of cases of Apex Court, one of such judgment is ***Babu @ Balasubramaniam & Arn. Vs. State of Tamil Nadu***⁹.

40. In ***Ashok Kumar Chaudhary Vs. State of Bihar***¹⁰ and ***Sucha Singh Vs. State of Punjab***¹¹, it was held that, if the testimony of a witness is otherwise found trustworthy and reliable, the same cannot be disbelieved and rejected merely because certain insignificant, normal and natural contradictions have appeared in his testimony. If the inconsistencies, contradictions, exaggerations, embellishments and discrepancies in the testimony are normal and not material in nature, then the testimony of an eye witness has to be accepted and acted upon. The distinction between normal discrepancies and material discrepancies are that while normal discrepancies do not corrode the credibility of a parties case, material discrepancies do so.

41. In view of the above legal position, we first of all would like to remind that the spot of the incident alleged, is the field of “jowar” in village Agodi, belonging to Baldu Lodhi on which boundary (med), the deceased Ramphal was about to reach when the accused appellant alleged to have pounced on him coming out from his hiding in the crops of “jowar”. The time of the incident was about 5:00 p.m. in the evening of 21.11.1979. The field of witnesses Sunnu (P.W.3), Jagan, Pooran and Pragi were situated nearby the spot of the incident, hearing the noise of screaming of the deceased and alarm raised by the first informant, the witnesses reached there. A fire from the gun was also made after killing the deceased by the accused Kishora towards the witnesses so as to ward off them.

9 (2013) 8 SCC 60

10 (2008) 12 SCC 173

11 (2003) 7 SCC 643

42. In the context of the aforesaid fact stated in the written information, we would go through the statements of witnesses one by one.

Witness P.W.-5

43. Since the presence of P.W.-5, Kashiram is admitted by other witness of fact though they turned hostile and his presence is also found to be quite natural and probable in his agricultural field, his evidence now has to be evaluated keeping in mind that this witness was present on the spot of the incident and had seen the entire incident as stated in the written report filed by him.

Objection as to P.W.-5 being relative witness

44. Merely being relative of the deceased he can not be said to be interested for any otherwise reason to get the accused persons falsely implicated.

45. In *Vijendra Singh Vs. State of Uttar Pradesh with Mahendra Singh Vs. State of Uttar Pradesh*¹², the Apex Court has held in para 31 as under:-

“31. In this regard reference to a passage from Hari Obula Reddy v. State of A.P. [Hari Obula Reddy v. State of A.P., (1981) 3 SCC 675 : 1981 SCC (Cri) 795] would be fruitful. In the said case, a three-Judge Bench has ruled that : (SCC pp. 683-84, para 13)

“[it cannot] 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 the 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.”

*It is worthy to note that there is a distinction between a witness who is related and an interested witness. A relative is a natural witness. The Court in *Kartik Malhar v. State of Bihar* [*Kartik Malhar v. State of Bihar, (1996) 1 SCC 614 : 1996 SCC (Cri) 188*] has opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term “interested” postulates that the witness must have some interest*

in having the accused, somehow or the other, convicted for some animus or for some other reason."

46. In ***Sucha Singh and Another Vs. State of Punjab (Supra)***, it is held that relationship is not a factor to effect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. Para 13 of the said judgment is quoted under:-

13. We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

47. In the context of evidences on record, we are of considered opinion that the argument of the learned counsel for the appellant about the witness (P.W.-5) being a close relative a partisan witness and his evidence should not be relied upon, has no substance. This impression in the mind of any person that relatives are not independent is not correct. In para '14' of the ***Sucha Singh and Another Vs. State of Punjab (Supra)***, the Apex Court has considered it as under:-

"14. In Dalip Singh v. State of Punjab [AIR 1953 SC 364 : 1953 Cri LJ 1465] it has been laid down as under : (AIR p. 366, para 26)

"26. 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 relation 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 generalization. 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.”

48. In this regard, para ‘22’ from the judgment of the Apex Court in the case of *Shyam Babu Vs. State of U.P.*¹³, is reproduced hereunder:-

*“This Court has repeatedly held that the version of an eye-witness cannot be discarded by the Court merely on the ground that such eye-witness happened to be a relative or friend of the deceased. It is also stated that where the presence of the eye-witnesses is proved to be natural and their statements are nothing but truthful disclosure of actual facts leading to the occurrence, it will not be permissible for the Court to discard the statement of such related or friendly witnesses. To put it clear, there is no bar in law on examining family members or any other person as witnesses. In fact, in cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. If the statement of witnesses, who are relatives or known to the parties affected is credible, reliable, trustworthy and corroborated by other witnesses, there would hardly be any reason for the court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party or friend etc. These principles have been reiterated in *Mano Dutt and Another vs. State of Uttar Pradesh*, (2012) 4 SCC 79 and *Dayal Singh and Others vs. State of Uttaranchal*, 2012 (7) Scale 165.”*

Enmity

49. We have gone through the statement of P.W.-5 ‘Kashiram’ and do not find any prior enmity of Kashiram himself with any of the accused persons. Even Kashiram stated that the accused persons were on the normal terms of visiting and conversing with him, if needed in connection with any work, as they were residing since a long time in the same village.

50. Learned counsel for the defence could not carve out any fact of complaint of any enmity of Kashiram with any of the accused persons prior to the date of the incident or any civil or criminal litigation pending between them. No question was put to the witness (P.W.-5) ‘Kashiram’ so as to elicit his interestedness in falsely implicating the accused persons for putting them being the bars.

Witness P.W.-3

51. P.W.-3, Sunnu –S/o Sultan resident of village Agodi, who by profession is an agriculturist, when produced before the court on 16.7.1982 [in Sessions Trial No.15 of 1980 (State Vs. Aman Singh & Others)], this witness [Sunnu (P.W.-3)] in unequivocal, explicit and assertively admitted in his examination-in-chief his presence near the spot of the incident at the relevant date and time of incident and that he went to his field for cutting grass. He also affirmed the presence of other witnesses Jagan, Pooran and Pragi who alongwith him ran towards the spot of incident in the field of Baldu hearing the screaming of Ramphal and alarm raised by the Kashiram. He had further admitted that accused Karan Singh was armed with axe (kulhadi), Hallu alongwith sickle and Kishora with kulhadi, accused Bhaiyan caught hold the deceased ‘Ramphal’. All the five accused named by him intended to kill the deceased ‘Ramphal’, were inflicting blows of their arms on him, when the accused Kishora made a fire from the gun on the deceased ‘Ramphal’, all the witnesses fled from the spot being under fear.

52. This witness has further explained in his cross-examination, the reason and the circumstance under which he turned hostile while produced before the Court in Sessions Trial No.15 of 1980 (State Vs. Aman Singh & Others). He stated that the statement given by him in the present Sessions Trial No.47 of 1983 (State Vs. Karan Singh) is correct. When he was read over the earlier statement given by him in the Sessions Trial No.15 of 1980 (State Vs. Aman Singh & Others), wherein he did not support the prosecution case about the role, mode and manner adopted by the five accused persons. On both the occasions, he stated on his own that he was scared of the Investigating Officer (Daroga Ji) and was given two suggestions by the the defence:-

- (i) He was not making correct statement under the pressure of the police, which was denied by him saying it was incorrect.
- (ii) P.W.-3 was given suggestion that he did not see anything on the spot of the incident. He further denied and stated that it was incorrect that he did not see anything.

53. This witness, during his cross-examination, has further confirmed the location of the spot of the incident being the field of Baldu, the occurrence of violent fracas running about 4-6 minutes before him. He also stated firmly about the injuries on the person of the deceased. He further stated that the blows of the arms (axes and sickles) were made on the neck, shoulder and abdomen of the deceased ‘Ramphal’. He lastly

stated that when the fire from the gun was made on them, they all fled from the spot and that the gun was fired for the purpose of warding them off from the dead body of the deceased. As such, the witness P.W-3 remained versatile in his statement but it could not be said that he did not see the incident on the spot as his presence on the spot of the incident constantly remained same in both the cases un-retracted, un-contradicted and consistent, as such, the statement of this witness as to the presence of the accused persons on the spot of the incident, their role, the mode and manner adopted by them in committing the offence with the help of the arms held by them is to be taken into account in favour of the prosecution.

Witness P.W.-1

54. P.W.-1 Chutti – This witness was not named in the written information and the first information report. His name was not given by other witnesses namely Pooran, Jagan, Pragi, Kashiram and etc. of being present near or on the spot and that might have seen the incident. He claimed himself the witness of the inquest and, therefore, he proved his signature over the inquest report. In his cross-examination, Chutti (P.W.-1) stated about the location, dimension and position of the dead body lying on the earth of the spot of the incident near the boundary (med) in the field of Baldu. He stated about the injuries on the dead body only on the leg and near the eyes of the deceased and denied other injuries. The statement of this witness is irrelevant as to the role of the accused persons, mode and manner adopted by them in killing of the deceased and arms used by them in the course of incident because he has not claimed him being present on the spot at the time of the incident.

55. However, the witness P.W.-1 has proved the relevant date of the incident as he stated without any contradiction that the dead body was lying on the earth of the spot of the incident on the relevant date and time of the incident.

Witness P.W.-2

56. P.W.2 Pooran by profession is an agriculturist resident of village Agodi who was earlier been examined in the Sessions Trial No.15 of 1980 (State Vs. Aman Singh & Others) on 04.08.1982 and did not support the case of prosecution about the role of, mode and manner adopted, the arms held by the accused persons and killing of the deceased 'Ramphal'. He denied seeing the accused appellant committing the murder of the deceased 'Ramphal' on 21.11.1979 and also seeing the accused Kishora taking away the licensed gun and cartridges of the informant Kashiram and wrist watch of the deceased. In cross examination, he admitted that

the investigating officer had interrogated him but denied from giving any such statement with regard to seeing the accused persons committing the offence. He admitted, however, that Ramphal was killed in the field of Baldu Lodhi abutting to the field of informant Kashiram but when like the other witness P.W. 3, he was asked about his statement made to the Magistrate under Section 164 Cr.P.C. and read over the statement dated 15.12.1979, he admitted the same having been given by him recorded by the Magistrate and his thumb impression thereon. This witness also has not been confronted by the defence in the cross examination about the presence of this witness alongwith other witnesses on the spot of the incident particularly the statement of the witness P.W.-3 in this regard, therefore, the presence of this witness with P.W.-3 on the spot on the relevant date at the relvant time of the commission of offence, his conduct of retracting from his statement under Section 161 Cr.P.C. and that recorded by the Magistrate under Section 164 Cr.P.C. will be treated as an afterthought by reason of some vested interest and, therefore, a false statement before the court which cannot be read in favour of the defence. However, this witness has proved the motive set up by the prosecution by saying that the parents of accused Karan and Aman Singh (real brothers) as well as parents of Kishora and Hallu (real brothers) were murdered in the village and the deceased Ramphal was a suspect for committing murder and a criminal case was also lodged against him wherein he was acquitted.

57. In the present matter (in Sessions Trial No.47 of 1983; *State Vs. Karan Singh*), when he was produced before the Court for examination-in-chief on 14.06.1984, P.W.-2 in explicit and unequivocal words, supported the case of prosecution on above aspects. In his cross-examination, P.W.-2 explained about his earlier statement in Sessions Trial No.15 of 1980 (State Vs. Aman Singh & Others). He said his statement in the present matter true and denied the suggestion that he was making a false statement under the pressure of the police. He also denied the suggestion that nothing was seen by him.

Witness P.W.-4

58. P.W.-4, Bichitra Kumar Gupta- the then Munsif Magistrate was examined in earlier Sessions Trial No.15 of 1980 (State Vs. Aman Singh & Others) where the witnesses turned hostile and proved the statements of the witnesses recorded under Section 164 Cr.P.C. which the hostile witnesses also admitted to have been recorded. Sri Bichitra Kumar Gupta in the present case also proved recording of the statement of witnesses under Section 164 Cr.P.C. on 15.12.1979. He stated that the statements of

witnesses Kashiram and Pooran were recorded by him under Section 164 Cr.P.C. on 15.12.1979. Whatever they said, was recorded and after having the same reduced into writing by him, it was read over to them and they put their thumb impression proved as Ex. Ka-12 and Ex.Ka-30. He further stated that on 17.12.1979 and 15.12.1979, he recorded the statements of witnesses Pragi, Sunnu and Jagan under Section 164 Cr.P.C., proved as Ex.Ka-31 and Ex.Ka-11. As such the prosecution has successfully established that the witnesses turned hostile retracting their statement made before the investigating officer purposely and falsely, their statement as to the involvement of the accused persons, their mode and manner adopted in killing the deceased Ramphal and weapons used by them, all were supporting the case of prosecution and they could not deny their statement made before the Magistrate under Section 164 Cr.P.C.

In view of the above discussion, the statement of the witnesses, who were declared hostile in earlier Sessions Trial No.15 of 1980 (State Vs. Aman Singh), instituted on the same case crime number relating to the same incident, are held in the present sessions trial, correctly stating about the identity of accused appellant and his complicity in the offence, killing the deceased 'Ramphal' in the mode and manner and with the help of weapons assigned to them in the written information, the prosecution in this case has been successful in establishing the case against the accused appellant.

Spot of the incident

59. As already discussed above, from the evidence of prosecution witnesses Sunnu (P.W.3) and Pooran (P.W.2) that they admitted the place of the incident near the agricultural field of Baldu Lodhi and that their own fields were situated nearby. They have consistently and without any contradiction proved that the dead body was lying on the spot of the incident when they reached there hearing the gunshot. The blood stained soil and plain earth soil were collected by the Investigating Officer from the spot and was proved in the court. The prosecution witnesses had also admitted the collection of aforesaid samples from the spot of the incident by the Investigating Officer. The inquest proceeding was done and proved by the witnesses which also establishes the spot of the incident being the same place. The Investigating Officer, P.W.6, Sub Inspector, Surjan Singh in his examination-in-chief before the trial court proved that the dead body of the deceased 'Ramphal' was lying on the spot of incident, where he made the inquest proceeding. He also proved preparation of site plan on the orientation of witnesses Kashiram (P.W.5) and Jagan. The site plan, Ex. Ka.20, shows the place where the dead body of the deceased was

lying as 'D'. There is a remark that "at its South nearby the vicinity, the crops of 'jowar' was found broken and the dead body of the deceased was lying". It also shows that the blood stained soil and plain earth soil was collected from the same place. The agriculture field of informant Kashiram has been shown by letter 'C' at about ten paces away from the boundary (med) of the field of Baldu Lodhi where the incident occurred. In the vicinity, the witnesses Jagan and Pooran are shown near the place "C". As such, the spot of the incident as stated by the first informant, Kashiram in the written report submitted to the police, was proved to be the boundary (med) of the 'jowar' field of Baldu Lodhi.

Written information and delayed First Information Report

60. The witness P.W.-5 (first informant, Kashiram) submitted the information in writing to the police on 22.11.1979 stating the date of incident 21.11.1979 and time at about 5:00 P.M. and also his presence in connection with the agricultural work of removing grass from his field of 'jowar' situated near the spot of the incident in village Agodi. He further stated the presence of deceased 'Ramphal' with him at the time of the incident, who was carrying the bundle of grass also carrying licensed gun of the informant and that he was leading to the way to their home. The name of the accused-appellants are, respectively Aman Singh, Kishora and Hallu, all residents of village Agodi and accused Bhaiyan, the brother-in-law of the Kishora and Hallu resident of village Rangao Police Station Mandwara, District Lalitpur. P.W.-5 has also stated that the aforesaid accused persons were hidden in the field of Baldu Lodhi in the crops of 'jowar', which were about two feet in height and they became visible when they suddenly came out on the spot of the incident and pounced with their respective arms like axe and sickle, the deceased was caught hold by them and the accused persons injured him seriously by inflicting the blows of their lethal weapons and done him to death on the spot. In the course of the incident, the accused Kishora snatched the licensed gun of Kashiram from the hands of deceased 'Ramphal' and Kishora, made a fire on the witnesses who came running towards the spot of the incident on hearing the scream of deceased and alarm raised by the first informant Kashiram (P.W.5) so as to ward off them. The motive is also stated by the first informant that the accused persons were suspecting that the deceased 'Ramphal' had killed their parents much earlier to the present incident.

61. The incident as stated in the written information occurred on 21.11.1979 at about 5:00 P.M. before the sunset, but the first information report was lodged on 22.11.1979 at about 8:00 A.M., on the next morning

of the incident. The distance of the spot of the incident from the police station is shown in the F.I.R. 13 Km.

62. Learned counsel for the appellant vehemently argued that the first information report was lodged with an unreasonable delay which is sufficient to cast a doubt as to the genuineness of the F.I.R. To deal with this objection, we have gone through the evidence of P.W.5 (the first informant) and the Investigating Officer (P.W.6). The first informant (P.W.-5) stated the time of the incident about 4:45 P.M. in the evening before sunset on 21.11.1979. He further stated in the examination-in-chief that on the very evening of the day of incident he did not go to the police station for lodging the F.I.R. due to the falling of the night and fear of accused persons, he went in the morning on the next day i.e. 22.11.1979 to the police station for lodging the report. He further stated that the written report of the incident was given in the police station who reduced the same into writing and gave him a copy, getting his signature for receiving. The written report given by him in the police station was proved as Ex. Ka.1.

63. In the cross examination, this witness stated about the proximate period of the violent fracas committed by the accused persons from 15-20 minutes to half an hour and that after the incident he stayed along with the native villagers near the dead body of his brother throughout the night. He further stated that he left the spot of the incident to go to the police station when dawn fell and came back with the Investigating Officer to the village at about 11 A.M. He clarified that for the whole day just from the dawn upto the sunset, the dead body was lying on the spot. He further stated that the inquest proceeding was started at about 11:00 a.m. on the date of the information of the incident.

64. P.W.-6, the Investigating Officer Surjan Singh, Sub Inspector stated that on 22.11.1979 he was present in the police station when P.W.5, Kashiram came to him. No question was put to this witness with regard to information of incident, if any, is received by him on the same evening nor any wilful delay on his part. Even question is not put nor suggestion given to him as to his interestedness or consultation prior to the lodging of F.I.R. on the basis of the written report submitted by P.W.-5 to alter the contents of the same. In cross examination, in answer to the question put by the defence, this witness (P.W.-6) assertingly stated that the first informant came to him at about 8:00 a.m. in the morning of 22.11.1979 to lodge the report. The report was lodged in the presence of P.W.-6 (Investigating Officer) in the police station and he proceeded for the spot of the incident.

65. So far as the delay of more than 12 hours in lodging the F.I.R. is concerned, it is reasonably explained by the P.W.-5, Kashiram that he did not go in the night to lodge the report because of the fear of the accused persons. The evidence of his fear, which has already been discussed, are arrayed again on the cost of the repetition herein below;

- (i) the spot of incident in the village Agodi was within the territorial limit of District Lalitpur which was declared and notified as a dacoit affected area by the government,
- (ii) carrying a licensed gun even during the agricultural work in the evening in itself is indication of fear of life to the brothers namely Kashiram and Ramphal (deceased),
- (iii) in cross examination of the witnesses, it has come that the deceased 'Ramphal' was arraigned with the charge of murders of parents of the accused persons, a criminal case was also lodged.
- (iv) the deceased 'Ramphal' alongwith the some other 'baghis' (dacoits) surrendered in district Chhatarpur. He was known to be an active member of the gang of the dacoits, identified as 'Moniram Sahai Gang',
- (v) One of the accused Karan Singh was himself suspected to be an active member of dacoits gang identified as 'Gabbar Singh's Gang',
- (vi) The way to the police station from the spot of the incident is shown to be about 13 k.m. which in the outskirts of the area not urbanized and populated, it was not easy to travel in the night,
- (vii) the brutal mode and manner adopted by the accused persons was not only violent but also brutal and gruesome,
- (viii) The assailants after killing the deceased fled away from the spot of the incident and were roaming free.

66. In view of the above, the fear of the first informant (P.W.-5) was quite natural and probable and not adverse influence can be drawn of his act of not moving instantly after the incident to the police station by travelling 13 km on rough and unpopulated way. This witness P.W.-5, Kashiram was also not confronted about availability of the means of transport, the nature and condition of the way causing obstruction, the risks in the night, the presence of the villagers and company of the Chaukidar or anyone else to go to the police station in the night for lodging the F.I.R. The witness P.W.5 himself has stated that before the sunrise, he left the village for going to the police station, he travelled about 13 Km. on foot, the statement of P.W.-6, Investigating Officer

proves arrival of the P.W.5 in the police station at about 8:00 a.m. As such, the reason for not lodging the F.I.R. instantly in the evening and reaching the police station on the next morning stood explained and is believable. The arguments of the learned counsel as to the ingenuity of the written information and the F.I.R. have no logical footing and, thus, liable to be rejected. The written information of the incident is given to the police station with reasonable promptness and there is no extraordinary delay so as to raise any doubt as to the genuineness of the F.I.R.

Mode and manner of the commission of offence

67. The fact of killing of the deceased 'Ramphal' on 21.11.1979 at about 5:00 p.m. before sunset is proved by the witnesses Kashiram (P.W.5), Sunnu (P.W.3), Jagan, Pooran (P.W.2) and Pragi inconsistently without any contradiction. The spot of the incident is also proved on the evidences of the witnesses consistent with the testimony of P.W.-5 and the corroborative evidence of the inquest proceedings, the collection of the blood stained soil and plain earth soil, the recovery of the shoes of the deceased near the spot of the incident. It is noteworthy here that none of the witnesses amongst Sunnu (P.W.3), Jagan, Pooran (P.W.2) and Pragi contradicted the statement of P.W.-5, the first informant as to the involvement of the accused-appellant in the offence. The mode and manner adopted by the accused appellant, his involvement in the commission of offence and the weapon used by him though stated by the aforesaid witnesses Sunnu (P.W.3), Jagan, Pooran (P.W.2) and Pragi to the Investigating Officer in the course of the investigation and, thereafter, before the Magistrate under Section 164 Cr.P.C. but they did not stand on their aforesaid pre-trial statements when produced before the trial court. As discussed at length the fear under which the aforesaid witnesses turned hostile, as it is held, they have retracted and not truthful. As such, the only witness (P.W.5) as eye witness of the incident remains before us as to the mode and manner of the commission of the offence.

68. It is well known principle of law that reliance can be based on the solitary statement of a witness, if the court comes to the conclusion that his statement is the true and correct version of the case of the prosecution.

69. Section 134 of the Indian Evidence Act, 1872 for ready reference is quoted hereunder:-

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

70. It is settled that the courts are concerned with the merit of the statement of a particular witness and they are not concerned with the

number of witnesses examined by the prosecution. The time honored rule of appreciation of evidence is that it has to be weighed and not counted; the law of evidence does not require any particular number of witness to be examined to prove any fact. As a rule of caution, based on the testimony of a single witness, the court may classify the oral testimony of a single witness, into three categories namely (i) wholly reliable, (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. In the third category of cases, the court has to be circumscribed and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness; *Lallu Manjhi Vs. State of Jharkhand*¹⁴.

71. In **Veer Singh Vs. State of U.P.**¹⁵, it is held that conviction can be based on the evidence of sole witness in a criminal trial as quality of evidence matters not the quantity.

72. Keeping in mind the above, we proceed with the P.W.-5, Kashiram, it is stated by him that on 21.11.1979 at about 4:45 P.M. in the evening when there was enough day light, he alongwith his brother 'Ramphal' was returning to home. Deceased 'Ramphal' was carrying his licensed gun and 25 cartridges of the informant, Kashiram and Kashiram was about 20 paces behind him carrying the bundle of grass, accused Kishora, Karan Singh, Hallu and Bhaiyan pouncing out from the fields of 'jowar' of Baldu Lodhi with axe (Kulhari), sickle (hasiya), they embraced the deceased from his behind, tossed him on the ground and began inflicting the blows of sickle and axe and, thus, the deceased died of the injuries.

Medical Evidence of the mode and manner adopted by the accused

73. The post-mortem report of the body is evidence of the aforesaid injuries which are noted as under:-

Ante mortem injuries:-

- (i) *Incised wound 14 c.m x 4 c.m. brain deep on left side face and forehead with under ear of temporal parital and frontal bone of skull and the brain meetter is came at left eye is displaced in socket.*
- (ii) *Incised wound 7 cm. X 2 c.m. bone deep on left side of head with under left ear of parital bone.*
- (iii) *Incised wound 10 cm x 2 cm bone deep on right side of the face from the root of nose to right angle of mouth.*
- (iv) *Incised wound 12 cm x 5 cm vertebral column deep under byers of 3, 4 and 5.*

(v) *Multiple incised wound (five in number) ranging for 2 c.m. x 0.5 cm to 2 cm x 1 cm muscle deep in the area of 15 cm x 16 cm on the front of chest.*

(vi) *Incised wound 2 cm x 1 cm skin deep on the middle of abdon 8 cm above the umbila*

(vii) *Incised wound 3 cm x 2 cm muscle deep the left infernal region.*

(viii) *Incised wound of 3.5 cm x 2 cm muscle deep on lateral side of left thigh on upper 1/3.*

(ix) *Incised wound on 3 cm x 2 cm muscle deep 1.5 cm late to no.8.*

(x) *Incised wound of 6 cm x 2 cm middle deep on right anterol as per upper 1/9 of right thigh.*

(xi) *Incised wound 3 cm x 28 muscle on anten aipet right thigh 8 cm below of no.10.*

74. P.W.12, Dr. Suresh Sakalya the doctor posted in Lalitpur District Hospital who conducted the autopsy of the body proved his report that the deceased died of the Ante mortem injuries. He assessed the approximate time of death being 21.11.1979 at 5:00 p.m. No question was put to him as to the timing of the death. Thus, the death was proved by the ante mortem injuries, the nature of the injuries undoubtedly show that they are caused by some sharp edged and pointed weapons, most of the injuries are incised wounds except injury no.1 i.e. lacerated over the head bone deep. The depth of the injuries upto muscle deep or bone deep confirms the weapon assigned to the accused namely axe (Kulhari) and sickle (hasiya).

75. In this way, in the absence of any contradiction in the statement of the sole witness as to the mode and manner adopted by the accused with the weapons used by them which stood proved with further corroboration from the post-mortem report and the evidence of the medical witness P.W.12, Dr. Suresh Sakalya it has to be accepted. Nothing carved out from both the witnesses against this proved state of things in the cross examination. It is further reinforced by circumstances coupled with the motive of the accused persons to commit the crime which is indicative of conclusions that the accused persons are the real offenders who had committed the alleged crime, however, such occurrence had taken place in broad day light and Kashiram (the first informant) had witnessed the entire occurrence from a short distance of about 15-20 paces. There is no possibility of committing any mistake by him, moreover, it will be indeed perverse against the ordinary course of human nature and conduct for Kashiram to permit the real assailants of deceased 'Ramphal' to go unpunished and instead of implicating the accused persons just with a view to satisfy his own ego.

76. In the present case, the evidence as to the presence on the spot of incident at the relevant time and date of the incident proved to be probable and natural, free from contradictions, exaggeration or embellishment. Some minor contradictions or inconsistency are immaterial, irrelevant details which are not in the capacity in anyway corrode the credibility of witness cannot be labelled as omission or contradictions. This settled legal principle is reiterated in various decision of the Apex Court. It is held by the Apex Court in ***Brahm Swaroop and Another Vs. State of Uttar Pradesh***¹⁶ as under :-

"It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution case, may not prompt the court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and shifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basis version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses."

77. On the basis of above discussion and perusal of the impugned judgement in the appeal, we do not find any error in the judgment of conviction and order of sentence passed by the trial Court. No interference is required. The appeal deserves to be dismissed.

78. Consequently, the appeal against the judgment of conviction and order of sentence dated 27.09.1984 passed by the Additional District and Sessions Judge, Lalitpur in Session Trial No.47 of 1983 (State Vs. Karan Singh), convicting and sentencing the appellant under Section 302, 148 and 149 of the Indian Penal Code, 1860 is hereby ***dismissed***.

79. Certify this judgment to the court below for further necessary action and compliance. The lower court record be sent back to the District Judgeship, Lalitpur immediately for further action.

Order Date :- 25.05.2022

Saurabh

(Vikas Kunvar Srivastav,J.) (Mrs. Sunita Agarwal,J.)