

AFR

Court No:- 52

Reserved on:- 31.3.2022

Delivered on:- 29.9.2022

CRIMINAL APPEAL No. - 487/2020

Appellant :-

Krishna Veer @ Pinkoo

Respondent :-

State of U.P. and Anr.

Counsel for Appellant :-

Durgesh Kumar Singh, Anshu
Chaudhary

Counsel for Respondent :- A.N. Mulla, G.P. Singh, Sri Narain
Mishra, A.G.A.'s

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Chandra Kumar Rai,J.

(Delivered by Chandra Kumar Rai, J.)

1. Heard Sri Durgesh Kumar Singh and Sri Anshu Chaudhary for the appellant and Sri A.N. Mulla / Sri G.P. Singh / Sri Shri Narain Mishra, learned A.G.A's for the State.
2. This appeal has been preferred against the judgment and order dated 17.12.2019 passed by the Special Judge (S.C./S.T.) Act, Mathura in Sessions Trial No.239/2003 (State vs. Krishna Veer and Others), arising out of Case Crime No.130/2001, under Section 302 I.P.C. and 3(2)(v) of the S.C./S.T. Act, Police Station-Baldev, District Mathura, convicting and sentencing the accused-appellant under Section 302 IPC for life imprisonment and fine of Rs.30,000/-, in default of payment of fine, they have to further undergo imprisonment of one year and under Section 3(2)(v) of S.C./S.T. Act, rigorous life imprisonment and fine of Rs.30,000/-, in default of payment of fine, they have to further undergo imprisonment of one year, both the sentences will run concurrently.
3. The prosecution case as per the First Information Report lodged by Ram Khilari (P.W.-1) is that applicant is resident of Laxmi Nagar, Police Station Jamunapar, District Mathura. On 5.6.2001, applicant had come to his brother's village –

Darghata, Police Station Baldeo, District Mathura who lives in his in-law's house. On 5.6.2001, applicant's brother and sister-in-law Smt. Sukhdevi were sitting on the platform outside the house after taking food. One Krishna Veer @ Pinkoo son of Maharaj Singh Jaat, resident of village Darghata, Police Station Baldeo, District Mathura came to the house of Vimla Devi, wife of late Devjeet who is neighbour of applicant's brother Mohan Lal, at about 9.30 P.M., with a bad intention, then Vimla Devi raised a noise, the applicant's brother Mohan Lal saw Krishna Veer is coming out from her house, he interrupted him then Krishna Veer told to applicant's brother "*sale dhar*", you sit silent otherwise I will kill you. There was exchange of talk between them then Maharaj Singh, son of Deep Chandra Jatt who is father of Krishna Veer came running with country-made pistol in his hand and started abusing him and commented on his caste then applicant's brother told that why you are abusing me, in between Maharaj Singh fired shot upon applicant's brother Mohan Lal from country-made pistol which passed from his side then Maharaj Singh told his son Krishna Veer @ Pinkoo to fire shot upon him then Krishna Veer took out his country-made pistol from his side and fired shot upon applicant's brother which hit his chest and Mohan Lal died on spot. Bengali son of Katila and Atar Singh son of Shiv Lal witnessed the incident. Dead body of applicant's brother is lying on the spot. Legal action be taken by writing a report.

4. On the basis of written report, Case Crime No. 130/2001 under Sections 302 IPC and section 3(2)(v) SC/ST Act was registered against accused Krishnaveer Singh and Maharaj

Singh on 5.06.2001 at 10:45 PM and investigation of the case was handed over to station Officer who went to the place of incident. Panchnama of the dead body was conducted and after completing the formalities, dead body was sent for postmortem, the spot map of the place of incident was prepared, one empty cartridge was recovered by the police from the place of incident, the memo was accordingly prepared. Investigation Officer submitted charge-sheet against accused Krishanveer Singh under section-320 IPC and section 3(2)(v) SC/ST Act. No charge-sheet has been sent against Maharaj Singh. Charges were framed against accused Krishanveer Singh under section-320 IPC and section 3(2)(v) SC/ST Act to which he denied and claimed trial.

5. The prosecution in order to prove its case, produced as many as 9 witnesses whose particulars are as follows:

P.W.1 Ram Khilari son of Shri Ram (First informant and alleged eye- witness)

P.W.2 Atar Singh son of Shiv Lal (alleged eye-witness)

P.W.3 Dr. Subhash Chandra Chief Medical Officer

P.W.4 Sukh Devi wife of late Mohanlal (allege eye-witness)

P.W.5 Veer Singh son of Khazan singh (I.O. of Case Crime No.130/2001)

P.W.6 Gauri Shankar son of Hari Singh (witness of inquest)

P.W.7 Jhinguria son of Puran Singh (witness of inquest)

P.W.8 S.I. Mahendra Giri

P.W.9 C.I.S. Jagmohan Shukla son of late Awadh Narain Shukla (IO of Case Crime No- 130/01)

6. In support of the ocular testimony of the witnesses, prosecution filed following documentary evidence:

1. FIR dated 5.6.2001 (Ex Ka-1)
2. Chik (Ex Ka-4)
3. Site plan (Ex Ka-3)
4. Panchnama dated 5.6.2001 (Ex Ka-6)
5. Postmortem report dated 6.6.2001 (Ex Ka-2)
6. G.D.No. 35 (Ex Ka)
7. Recovery Memo of Empty Cartridge (Ex Ka-7)
8. Photo Lash (Ex Ka-9)
9. Letter to CMO (Ex Ka -11)
10. Charge-sheet dated 15.4.2021 (Ex Ka-8)

7. The accused - appellants in their statements recorded under Section 313 Cr.P.C denied the prosecution case and disputed the veracity of the evidence adduced by the prosecution.

8. P.W.1 Ram Khilari has stated in his examination-in-chief took place on 12.05.2008 as follows:-

Accused persons Krishnaveer and Maharaj Singh belong to Jaat caste and they are residents of Dagheta Police station Baldev. His brother Mohanlal's in-laws home is situated at Dagheta. He has been visiting there before the occurrence of this incident that is why he was acquainted with the accused persons. His brother was residing at village Dagheta. He had gone to his brother's in-laws home at Dagheta on 05/06/01.

His brother Mohanlal, sister-in-law Sukhdevi and he were sitting on the raised platform after taking food. His brother's in-laws' neighbour Vimla came in the house of Late Devjeet at 9.30 pm and Krishnaveer had also come with her and entered in the house of Vimla with malafide intention. Vimla shouted. His brother Mohanlal saw Krishnaveer coming out of Vimla's house. His brother objected Krishnaveer, then Krishnaveer said, "Saale, shut your mouth otherwise I will kill you." Verbal fight occurred between them. Krishnaveer's father Maharaj Singh came carrying country-made pistol uttering caste based word to Mohanlal, Maharaj Singh opened fire at him with intent to kill him. But this fire passed by the side of Mohanlal. Then Maharaj Singh asked his son Krishnaveer to kill him. Then Krishnaveer took out country-made pistol from his side and opened fire at Mohanlal with intent to kill him which hit on his chest due to which he succumbed on the spot. Atar Singh Bangali belongs to that village came on the spot and saw the incident. It was moonlight in which he had seen the incident. He got the report of this case written by Atar Singh. Atar Singh read over to him and he heard the report.

In the cross examination P.W.1 has stated as follows:- There was no enmity between his brother Mohanlal and accused Krishnaveer and there was no friendship between them. Krishnaveer belongs to Jaat caste and he belong to Jatav caste. Colony of Jatav is separate and colony of Jaat is also separate. He and his brother Mohan Lal had taken meal containing a dish of potato and brinjal, and chapatis at around 8:00 o' clock. The platform (*chabutra*), where they were sitting, is adjacent to the home in the east. He further stated that he is

acquainted with Vimla for many years. Vimla's house is 8-10 steps away from his brother's house to the west. No house falls in-between them, rather there is a vacant land which belongs to them. When Vimla raised alarm, Atar Singh Bengali and his sister-in-law (elder brother's wife) Sukhdevi had also arrived there. He further stated that Vimla must be around 35-40 years old.

In the examination in chief took place on 15.04.20017
P.W.1 has stated as follows:-

He lives in Lakshmi Nagar, PS Jamuna Nagar, Mathura. His elder brother Mohan Lal would reside with his in-laws at Village Dagheta, PS Baldev where Mohan Lal was shot dead on the night of 05.06.2001. He had got the report/complaint of this incident being ext. ka-1 written through Atar Singh, a resident of Dagheta against the accused persons Krishnaveer and Maharaj Singh and had submitted the same at PS Baldev. He got to know about the said incident on an information sent by his sister-in-law (*bhabhi*) in Lakshmi Nagar. He immediately left the village. He reached PS Baldev where many persons from the village were present. Atar Singh was also there. Atar Singh had prepared this report/complaint as stated by the villagers. He had made his signature on the report/complaint. He had directly reached to his brother's in-laws' place Dagheta after making his signature on the report/complaint. The situation there was sorrowful. He found his sister-in-law disturbed there. They could not speak with each other. He had heard from the villagers that it was a murder case and there was a rumour in the village that the

accused persons Krishnaveer and Maharaj Singh were involved in this incident. He was not present in Village Dagheta at the time of the incident. He was in Lakshmi Nagar. Earlier he had given his statement on the basis of that very information. Consequent to this, the witness was declared hostile on request by ADGC and opportunity was granted for cross-examination.

In the cross examination P.W.1 has stated as follows:-

In connection with this incident, his statement had been recorded in the court earlier as well. It is correct that in the said statement, he had stated that Krishnaveer and Maharaj Singh had shot Mohan Lal due to which Mohan Lal had died. Volunteered to state today that he had given his statement in line with the case diary at the instance of the police. It is wrong to say that on 05.06.2001 at 9:30 pm, he had witnessed the murder of Mohan Lal by the aforesaid Krishnaveer and Maharaj Singh of Dagheta by way of shooting him with a country made pistol while his brother Mohan Lal was sitting on a platform in the village within PS Baldev. It is also wrong to suggest that he was present in village Dagheta at the time of the incident and had given his previous statement on the basis of witnessing the entire incident. He is Jatav by caste. Accused persons are Jat by caste. It is also wrong to say that he has, in collusion with the accused persons or out of fear, today retracted his earlier statement to save them in this case. No police officer had recorded his statement in connection with this incident. The witness, on hearing his statement u/s 161 Cr.P.C., stated, "I did not give such a statement to the

police. I cannot tell any reason as to how they recorded my statement.”

9. P.W.2 Atar Singh has stated in his examination in chief took place on 11.01.2011 as follows:-

That on 05.06.2001, he drafted the complaint in this case at the instance of Ram Khiladi, s/o Shri Shriram Jatav, r/o Lakshmi Nagar Bagheecha, Jamunapar, which is available on the record and is before him. It is in his handwriting bearing his signature and marked as ext. ka-1. He further submitted that he has made his signature on the Panchnama 'Paper No. 04 Aa/10'. The Panchnama is related to the deceased Mohan Lal. The deceased Mohan Lal died from bullet injury, but who fired the bullet, it was not seen. On being shown the affidavit (Paper No. 4A/50) submitted by him, the witness said that the photograph affixed on it was his, but whose signature it was, he could not recognise.

In the cross Examination P.W.2 has stated as follows:-

That he did not give any affidavit to CBCID on his own free will. He cannot state if he had given his photos for the card or any other purpose. He can't state who has signed the affidavit. He hasn't seen any occurrence.

10. P.W.3 Dr. Subhash Chandra in his examination-in-chief took place on 02.05.2012 has stated as follows:-

That on 6.6.2001, he was posted as Orthopaedist in the District Hospital, Mathura. On the said date, at 3:40 p.m., He had conducted the post-mortem on the body of Mohan Lal s/o Shri

Ram, aged about 50 years, resident of Village - Dagheta, PS - Baldev, District - Mathura. The dead body was brought by Constable - 1090 Vimlesh and Constable - 1174 Munesh, PS - Baldev in a sealed condition along with 08 police papers. He had perused the police papers. The deceased was average build. The effect of rigor mortis from the neck of the deceased had passed after death, but its effect was present in the hands and feet.

He had found the following ante-mortem injury on the body -

The firearm wound of entry, 2 cm x 1.5 cm x chest cavity deep, 100 cm below the nipple at 6 O'clock position. There was blackening, tattooing and scorching on the wound.

The direction of the wound was from left to right and upwards.

On internal examination, the ninth rib bone on the left side of the chest was found to be broken. The right lung and its membrane were found to be ruptured. A metal bullet was recovered from the right chest cavity. The heart and its membranes were ruptured. There was about two litres of blood in the chest cavity. There was about 100 grams of fluid inside the stomach. Fluid and gas were present in the small intestine. Faecal matter and gas were present in the large intestine. The deceased died due to haemorrhage and shock. The death of the deceased occurred about 3/4 (18 hours) - 1 day before the post-mortem examination. He had prepared post-mortem report at the time of post-mortem of the deceased 'Paper No. 4A/20', which is in his writing and signature.

In the cross examination P.W.3 has stated as follows:-

That it is possible that the deceased might have been hit with firing from a distance of 01 to 03 feet. The barrel of the firearm was to the left of the deceased at the time of the occurrence. He was saying this on the basis of the direction of injury. The barrel of the firearm must have been slightly upward at the time of the occurrence. There was no solid food in the stomach of the deceased. 100 grams of fluid was present in the stomach. It usually takes about 04 hours for the solids to pass from the stomach to the small intestine. The deceased must have eaten something about 04 hours before the occurrence. For this reason, some digested fluid was found in the small intestine. The said liquid cannot be alcohol. It can be water, tea, cold drink.

11. P.W. 4 Sukh Devi wife of Late Mohan Lal in her examination-in-chief took place on 21.03.2013 has stated as follows:-

That the incident took place on 05.06.2001 around 9.30 p.m. She was sitting on the raised-platform of her house with her husband Mohan Lal and her brother-in-law Ram Khiladi and were talking. Just then they heard some hue and cry from the house of her maternal aunt Vimla Devi. Krishna Veer @ Pinku S/o Maharaj Singh, Caste: Jat came outside. Her husband tried to stop Krishnaveer, Krishnaveer shouted, "You bastard, sit quietly or else I will kill you." During this hot exchange, Krishnaveer's father Maharaj came running, holding a *katta* country made pistol in his hand and started abusing. When her husband forbade Maharaj from abusing, he with the country

made pistol in his hand, shot at her husband which narrowly passes beside his hand. Then Maharaj Singh exhorted his son Krishnaveer, “.the bastard *Chamra*, or else he will create problem again.” Then Krishna Veer took out the country made pistol from his pocket and shot at her husband. Immediately after receiving the gunshot, her husband fell down on the raised-platform and died. The gunshot hit her husband in his chest. My brother-in-law Ram Khiladi and others reached the spot. She did not reach the spot (then stated that) she was present at the spot. She further stated that it is around 16 years back. It was 9-10 pm. Her husband Mohan Lal had been murdered by firing bullet shots. Her brother-in-law had lodged the report against Krishnaveer and Maharaj of her village. A woman namely Vimla of her locality had altercation against Krishnaveer. When she returned from Nauhare after giving fodder to her cattle, her husband was lying dead on the chabutara. She had not seen Krishnaveer and Maharaj present in the court firing bullet shots to her husband.

In her cross examination P.W.4 stated as follows:-

That no Police Officer had recorded her statement in regard to this incident. When the witness was read over her statement u/s 161 Cr.P.C., she stated that she can't tell the reason how the S.I. had recorded it. She had given her statement in this court earlier too. She stated that earlier too, she had given the same statement that she was not present at the spot. It is wrong to state that she had seen accused persons Krishnaveer and Maharaj present in the court firing bullet shots at her husband at the spot. The accused persons are the native of her village.

They are Jat by caste, she is Jatav. It is wrong to state that today she is giving false statement in collusion with or under pressure or fear of the accused persons. Her brother-in-law is working in post office. His posting is at Sahawan. After the death of her husband, someone from the village had called her brother-in-law Ram Khiladi for lodging the report. Mostly there are persons of Jat caste. When her brother-in-law came, then he would have lodged the report. She had been unconscious since evening. Earlier, the statements she had given was given on behest of the people of the village.

12. P.W.5 Veer Singh C.O. in his examination-in-chief took place on 28.03.2018 has stated as follows:-

That on 6.6.01 he was posted as C.O. at PS Baldev Circle Jamunapar. On the aforesaid date on being commanded by the then Senior Superintendent of Police, the investigation of C.No. 130/01 was handed over to him. After taking over the investigation, firstly the copy (parcha no. 1) of written report was prepared by him. Thereafter the statement of HM 74CP Mahendra Giri was recorded by him. Further the statement of informant Ram Khiladi s/o Shri Ram Jatav r/o Lakshminagar PS Jamunapar was recorded. After recording the aforesaid statements, the scene of occurrence was inspected at the instance of informant. The site map was prepared on the spot. In the original file of site map, paper number 4A/3 is enclosed marked as Ex Ka-3. After the inspection of scene of occurrence, the statements of witnesses Horilal s/o Kashiram, Kishan Swaroop s/o Nekram were recorded as hearsay evidence in C.D. (parcha 1). On 6.6.01 as he was transferred

from the aforesaid circle, the investigation of the said case was conducted by the then S.P. Dwivedi.

In his cross examination P.W.5 stated as follows:-

That he went on the spot during daytime. He do not remember time. He did not see the house of Vimla, nor did he record her statement. He did not arrest any accused. He did not raid. He issued parcha 1 during investigation. Thereafter he was transferred. It is right that there was no electricity pole or bulb on the spot, thus there was no source of light. Therefore he did not get it written. He cannot tell according to map whether there was any source of light. He did not see (sic) on the spot. Many people were visiting the place. When he went on the spot, nobody told because there was no eye witness. He is not acquainted with Maharaj Singh and Krishnaveer. Ram Khiladi gave statement with reference to report. He did not make any other statement. He did inquire Ram Khiladi about Ram Khiladi's report. He did not inquire anyone. It is wrong to state that he recorded the statements at the police station on the basis of FIR. It is also wrong to state that he did not meet Ram Khiladi. It is also wrong to state that harm was caused during raid at house. It is also wrong that inquiry was made in that regard.

13. P.W.6 Gain Shanker in his examination-in-chief took place on 12.07.2018 has stated as follows:-

That the relative of Jagna belonging to their village died. The police initiated proceeding in this regard. The police conducted inquest of deceased Mohan Lal in village 16-17

years before. Mohan Lal died at night. Next day the police carried away the dead body for inquest. His signature was obtained. The police asked five elderly people to make signatures on inquest report. He does not know that what proceedings were conducted by the police. Inquest report is paper number 4A/9 to 11 on file. It bears his signature. He does not know that how Mohan Lal was killed.

14. P.W.7 Jheeguria in his examination-in-chief took place on 12.07.2018 has stated as follows:-

That Around 17-18 years before Mohan Lal, the son-in-law of Jagna belonging to his village died during night. Next day the police came on information. He came after the police. The police conducted inquest of the dead body. The police asked him to make his signature on document and he did it in accordance with the instructions of the police. The inquest report is paper number 4A/9 to 11 in file. It bears his signature. He does not know that how Mohan Lal died. He does not know that who is being prosecuted for killing Mohan Lal. When he came, the police had sealed(sic). He did not see the dead body of Mohan Lal.

15. P.W.8 Mahendra Giri S.I. in his examination-in-chief took place on 04.10.2018 has stated as follows:-

That On 5.6.2001 he was posted as HM at PS Baldev. On the said date at 10.45 pm informant Ram Khiladi s/o Shri Ram Jatav r/o Lakshminagar PS- Jamunapar District- Mathura came with a report. Informant's report was registered by him as C.C.No. 130/2001 under Section 302 IPC and 3(1) X and

3(2)5 SC/ST Act and investigation was handed over to CO Refinery. Paper number 3A/1 is there on file marked as Ex Ka-4. It is in his handwriting and signature. He entered it in GD number 35 at 22.45 hours. The carbon copy (paper 4A/5) of original GD is present on file. The original is destroyed. He has brought a certificate in this regard. It bears his signature. He certifies it. It was marked as Ex Ka-5. The inquest of deceased Mohan Lal was conducted by Shri Ram Pal Singh after appointing Pyare Lal, Atar Singh, Gauri Shankar, Bhagwan Singh, Jheeguriya as panchas. Ram Pal Singh was posted with him at police station Baldev. He identifies Ram Pal Singh's signature. Inquest report is 4A/9 and 4A/10. It was marked as Ex Ka-6.

In his cross examination P.W.8 has stated as follows:-

That after receiving the information of receiving the SR, C.O. refinery, S.O. Baldev and others had come, but he does not remember as to when the above officers had come on 06.06.2001, nor does he know when the dead body was picked up from the spot in order to seal and stamp it on the next day. He did not go to the place of occurrence. He does not have any information as to the spot. He knows that the murder-case of Maharaj Singh's brother and Krishnaveer's uncle pre-dates his tenure; whose case was pending.

16. P.W.9 Jag Mohan Shukla in his examination-in-chief took place on 03.07.2019 has stated as follows:-

Parcha no.-IX was prepared by him. On that day, He was posted as CIS 1st at Criminal Investigation Branch, Lucknow.

On that day, he received investigation of C.No.-130/01, u/s-302IPC & 3 (2) V SC/ST, Act from previous investigating officer namely Shri Sanjay Kumar Yadav wherein receiving the concerned documents related to the investigation, investigation was initiated. Having prepared C.D. No.-X on 05.09.2002, statements of complainant Ram Khilari, Smt. Shukhadevi w/o Mohan Lal, Atar Singh, Bengali and Smt. Vimla Devi were recorded and after verifying the affidavits given by previous investigating officer, made it the part of his investigating and inspected the place of occurrence at the instance of complainant which has been marked as Ext. ka-03. Parcha no.-XI was prepared on 06.09.2002 wherein statements of witnesses of the inquest report namely Pyare Lal, Gauri Shanker, Jhingariya, Bhagwan Singh and statements of witnesses namely Girij Singh, Ramveer Singh, Vijendra Singh, Karan Singh, Chote Lal, Ajay Pal, Ramji Lal were recorded and other persons of the village were interrogated and statements of witness Ram Khilari and Shukha Devi were again recorded and statements of Smt. Shakunkala, Pipendra, Ramveer Singh and Deep Chand, Maharaj Singh and Smt. Sheela Devi and Krishnaveer Singh, who were present on the spot, were recorded. Statements of Dr. Shubash Chand, Medical Officer, who conducted the postmortem of deceased Mohan Lal, was recorded in which Medical Officer stated that no injury was found on deceased except a bullet injury on deceased chest. C.D. No.-XII was prepared on 07.09.02 wherein preparing the aforesaid parcha and perusing the parchas of the proceeding done by the previous investigator, investigator of the local police Shri Veer

Singh and SP Dwivedi, C.O., prepared parch-1 & parch no.-II 06.06.01 respectively which were inspected. The proceeding done by previous investigator, which includes site-plan, etc., and recovery memo of one empty cartridge which is paper no.4A/06 was prepared by S.I. Rampal in S.I. Rampal's handwriting and signature and the same is before him.

In his cross examination P.W.9 has stated as follows:-

That No lamp-post or light has been mentioned in the site-plan Ext. ka-03 enclosed with the file. It is correct that the incident took place at 9:30 pm. Only one empty cartridge was found on the spot and no mark of any other fire was found. It is correct that Maharaj Singh and Krishna Singh are father and son. It is that during his inquiry the witnesses namely Atar Singh, Bengali and Smt. Vimla mentioned in the FIR did not support the occurrence of the incident, nor did they claim to be eye-witnesses. It has also been stated that prior to him, no investigating officer has recorded any statement regarding this incident. He recorded the statement of witness Atar Singh, who stated in his statement "Jaswant Singh repeatedly gave advise to Ram Khilari that if Maharaj Singh is named then he will not be able to follow the case and this case will be strong. On being asked, he stated that Jaswant Singh and others are accused of the murder-case of Maharaj Singh's brother namely Sultan Singh, at this time (he) is on bail". It is correct that Jaswant Singh is of criminal-nature. Smt. Vimla stated in her statement to him that Krishnaveer Singh did not come to her home on the fateful day, nor did she raise any noise.

17. The learned Sessions Judge SC/ST Act Mathura after hearing the parties and perusal of the record, acquitted accused Maharaj Singh under Sections 302 IPC and section 3(2)(v) SC/ST Act but convicted accused Krishanveer Singh under section-302 IPC and section 3(2)(v) SC/ST Act, hence this appeal.

18. Learned counsel for the appellant submits as follows:-

- (i) The first argument is that all the three alleged eye-witnesses (P.W.'s 1, 2 & 4) have become hostile. He further submitted that P.W.-2 has become hostile on first instance while P.W.'s 1 & 4 have become hostile subsequently at the stage of 319 Cr.P.C., as such, it cannot be said that prosecution has proved his case beyond reasonable doubt.
- (ii) The second argument is that on the similar set of evidence, appellant has been convicted and another accused Maharaj Singh has been acquitted which is illegal.
- (iii) The third argument is that court below has failed to give an opportunity to offer an explanation of subsequent statement of P.W.'s 1 & 4 which were recorded on 15.4.2017 and 4.2.2017 which is violation of Section 313 Cr.P.C.
- (iv) The fourth argument is that appellant cannot be convicted under Section 3(2)(v) of the S.C./S.T. Act as there was no evidence regarding intentional insult to the deceased.

(v) The fifth argument is that Smt. Vimla Devi who was the cause of the alleged incident, has not been examined and the statement of P.W.-9 S.I. Jagmohan Shukla in his cross-examination stated that Smt. Vimla Devi in her statement stated before him that Krishna Veer has not come to her house on the date of incident and she has not made any noise on that day, accordingly, motive was not proved.

(vi) The sixth argument is that two shots were fired as per prosecution case but only one empty cartridge was recovered as per recovery memo.

(vii) The seventh argument is that prosecution version appears to be false as according to prosecution version, deceased and first informant were sitting on Chabutra outside the house of deceased after taking dinner at 8 P.M. but in postmortem report, no solid food was found inside the intestine rather 100 mt. Liquid was found inside the body of the deceased.

(viii) The last argument is that D.W.-1 has stated about false implication of accused-appellant at the suggestion of Jaswant Singh who was involved in the murder of brother of Maharaj Singh but courts below has not considered the same while passing impugned judgment.

19. Learned counsel for the appellant placed reliance upon the following judgments:

(i) Notes published in Indian Law Institute on inseparable and indivisible evidence against all accused (on the point of argument no.ii)

(ii) **Veer Singh Verma vs. State of Uttar Pradesh, Criminal Appeal No.(s) 154 of 2019**, judgment dated 28.1.2019 (on the point of argument no.ii)

(iii) (2015) 1 SCC 496, **Nar Singh vs. State of Haryana** (on the point of argument no.iii).

(iv) (2018) 1 SCC 742, **Asharfi vs. State of Uttar Pradesh** (on the point of argument no.iv).

20. Learned A.G.A. on the other hand supported the impugned judgment and order of conviction by contending that prosecution case is fully proved from the evidence of P.W.'s- 1 to 9 in spite of the fact that eye-witnesses, P.W.-1, P.W.-2 & P.W.-4 have been declared hostile. He placed reliance upon 2006 (2) SCC 450, **Radha Mohan Singh @ Lal Saheb and Others vs. State of U.P.**, on the point of hostility of witnesses and submitted that appeal filed by appellant is liable to be dismissed.

21. With respect to the 1st and 2nd argument of appellant, it is relevant to mention here that P.W.-1, first informant is the real younger brother of deceased and P.W.-4 is the wife of deceased who had supported the prosecution case in their examination-in-chief and cross-examination took place in the year 2008 to 2014 but in their subsequent statement, took place in the year 2017, due to application filed by prosecution under Section 319 Cr.P.C., P.W.-1 and P.W.-4 had clearly denied their

presence on spot, as such, they have been declared hostile. So far as P.W.-2 is concerned, he was declared hostile at the first instance as he has stated that he had not seen who fired shot, as such, eye-witness account failed to prove the prosecution case. The argument of the learned A.G.A on this point on the basis of judgment of the Apex Court in **Radha Mohan Singh** (supra) to the effect that since P.W.-1 & P.W.-4 had supported the prosecution case in their examination-in-chief as well as in cross-examination took place at earlier occasion, as such, entire statement of P.W.'s- 1 & 4 will be seen in spite of the fact that P.W.'s 1 & 4 have been declared hostile.

22. Since P.W.'s- 1 & 4 have been examined in the year 2017 on the basis of the application of the prosecution itself to summon Maharai Singh under Section 319 Cr.P.C. and P.W.'s- 1 & 4 have denied their presence on spot, accordingly, Maharaj Singh was acquitted on the basis of entire evidence, as such, the conviction of appellant on the same evidence will be illegal.

23. The Apex Court in the case of **Krishna Govind Patil vs. State of Maharashtra, AIR 1963 Supreme Court 1413** has held that where, 3 out of the 4 accused charged for an offence under Section 302 IPC read with Section 34, giving them the benefit of doubt in view of the fact that their identity was not established but convicting the 4th accused under Section 302 read with Section 34 IPC on the ground that he had committed the offence along with one or other of the acquitted accused, the conviction of the 4th accused clearly wrong.

Notes of Indian Law Institute as well as the judgment of the Apex Court in **Veer Singh Verma** (supra) as cited by counsel for the appellant at Sl. No. (i) & (iii) are on the same points.

24. Accordingly, the argument nos. 1 & 2 advanced by counsel for the appellant is accepted and it is held that prosecution has failed to prove his case beyond reasonable doubt.

25. The 3rd argument of appellant and case law cited by him in the case of **Nar Singh** (supra) that courts below has failed to give an opportunity to offer an explanation of the subsequent statement of prosecution witnesses has also got substance, paragraph nos. 9, 10, 11 & 34 of **Nar Singh** (supra) are as follows:

9. The power to examine the accused is provided in Section 313 Cr.P.C. which reads as under:-

“313. Power to examine the accused.- (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2). No oath shall be administered to the accused when he is examined under sub- section (1).

(3). The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4). The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5). The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”

10. There are two kinds of examination under Section 313 Cr.P.C. The first under Section 313 (1) (a) Cr.P.C. relates to any stage of the inquiry or trial; while the second under Section 313 (1) (b) Cr.P.C. takes place after the prosecution witnesses are examined and before the accused is called upon to enter upon his defence. The former is particular and optional; but the latter is general and mandatory. In Usha K. Pillai v. Raj K. Srinivas & Ors., (1993) 3 SCC 208, this Court held that the Court is empowered by

Section 313 (1) clause (a) to question the accused at any stage of the inquiry or trial; while Section 313(1) clause (b) obligates the Court to question the accused before he enters his defence on any circumstance appearing in prosecution evidence against him.

11. The object of Section 313 (1)(b) **Cr.P.C.** is to bring the substance of accusation to the accused to enable the accused to explain each and every circumstance appearing in the evidence against him. The provisions of this section are mandatory and cast a duty on the court to afford an opportunity to the accused to explain each and every circumstance and incriminating evidence against him. The examination of accused under Section 313 (1)(b) **Cr.P.C.** is not a mere formality. Section 313 Cr.P.C. prescribes a procedural safeguard for an accused, giving him an opportunity to explain the facts and circumstances appearing against him in the evidence and this opportunity is valuable from the standpoint of the accused. The real importance of Section 313 Cr.P.C. lies in that, it imposes a duty on the Court to question the accused properly and fairly so as to bring home to him the exact case he will have to meet and thereby, an opportunity is given to him to explain any such point.

34. In our view, accused is not entitled for acquittal on the ground of non-compliance of mandatory provisions of **Section 313** Cr.P.C. We agree to some extent that the appellant is prejudiced on account of omission to put the question as to the opinion of Ballistic Expert (Ex- P12)

which was relied upon by the trial court as well as by the High Court. Trial court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. However, omission on the part of the Court to put questions under Section 313 Cr.P.C. cannot enure to the benefit of the accused.

In the present case, non-compliance of the mandatory provisions of Section 313 Cr.P.C. is not the only ground for acquittal rather it is coupled with other grounds also.

26. The 4th argument of appellant that there was no evidence of intentional insult to the deceased, as such, no offence is made out under Section 3(2)(v) of the S.C./S.T. Act is made out, the case law cited by learned counsel for appellant in the case of **Asharfi** (supra) will fully applicable, paragraph nos. 8, 9 & 10 are as follows:

8. In the present case, unamended Section 3(2)(v) of the SC/ST Prevention of Atrocities Act is applicable as the occurrence was on the night of 8/9.12.1995. From the unamended provisions of Section 3(2)(v) of the SC/ST Prevention of Atrocities Act, it is clear that the statute laid stress on the intention of the accused in committing such offence in order to belittle the person as he/she belongs to Scheduled Caste or Scheduled Tribe community.

9. The evidence and materials on record do not show that the appellant had committed rape on the victim on the ground that she belonged to Scheduled Caste. Section 3(2)

(v) of the SC/ST Prevention of Atrocities Act can be pressed into service only if it is proved that the rape has been committed on the ground that PW-3 Phoola Devi belonged to Scheduled Caste community. In the absence of evidence proving intention of the appellant in committing the offence upon PW-3-Phoola Devi only because she belongs to Scheduled Caste community, the conviction of the appellant under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act cannot be sustained.

10. In the result, the conviction of the appellant under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the sentence of life imprisonment imposed upon him are set aside and the appeal is partly allowed.

27. In the present case also incident is of 9.30 P.M. i.e. of night and took place in the year 2001 i.e. before Amendment Act 1 of 2016 in respect to Section 3(2)(v) of the S.C./S.T. Act and there is no evidence on record that accused – appellant has committed offence as accused belong to scheduled caste. Accordingly, on the basis of 4th argument, it is held that no offence is made out under Section 3(2)(v) of the S.C./S.T. Act against the appellant.

28. The 5th argument is concerned, the statement of P.W-9, Jag Mohan Shukla, Sub-Inspector will be relevant, the cross examination of P.W.-9 is as follows:

पत्रावली पर संलग्न नक्शा नजरी प्रदर्श क-3 में कोई लैन्पोस्ट या लाईट का जरिया नहीं दिखाया है। यह सही है

कि घटना रातिर के साढे नौ बजे बताई है। मौके वारदात पर केवल एक खोखा मिला और कोई निशानात किसी अन्य फायर के नहीं मिले। यह सही है कि महाराज सिंह व कृष्णवीर सिंह पिता, पुत्र है। यह कि मेरी जांच में fir में लिखे गवाहान अतर सिंह, बंगाली व smt. विमला ने घटना का कथित होना समर्थित नहीं किया और न अपने आप को चश्मदीद गवाह होना बताया। यह भी बताया कि मुझसे पूर्व किसी जांच अधिकारी ने इस घटना के सम्बन्ध में कोई बयान नहीं लिये। मैंने गवाह अतर सिंह के बयान दर्ज किये हैं। अतर सिंह ने मुझे अपने बयान में यह बयान दिया था कि " जसवंत सिंह, वादी मुकदमा राम सिलाडी को बार बार राय मशविरा देते थे कि यदि महाराज सिंह का भी नाम लिखवा दोगे तो यह मुकदमे की पैरवी नहीं कर पायेगा और यह केस पक्का हो जायेगा। पूछने पर यह भी बताया कि जसवन्त सिंह आदि ने महाराज सिंह के भाई सुल्तान सिंह के मर्डर के अभियुक्त है, इस समय जमानत पर आये हुए है। " यह सही है कि जसवन्त सिंह अपराधिक किस्म का है। smt. विमला ने अपने बयान में मुझे यह बताया था कि कृष्णवीर सिंह घटना वाले दिन मेरे घर नहीं आया था और न मैंने कोई शोर मचाया था।

29. Perusal of the cross-examination of P.W.-9, it is established that Smt. Vimla Devi has denied that Krishna Veer has not come to her house on the date of incident and she had not made any noise on that day. The further circumstance that Smt. Vimla Devi was not produced in the Court by the prosecution will also go against the prosecution. Accordingly, prosecution case that accused Krishnaveer entered into the house of Smt. Vimla Devi with malafide intention at 9.30 P.M. on 5.6.2001 and Smt. Vimla Devi made noise is false and prosecution case cannot be believed.

30. The 6th argument of learned counsel for the appellant that according to prosecution, two shots were fired on spot, one by Maharaj Singh and other by Krishnaveer but according to recovery memo, only one empty cartridge was recovered from the spot, this also makes the prosecution case doubtful.

31. The 7th argument advanced by counsel for the appellant that according to prosecution case, deceased was sitting on *Chabutara* in front of his house along with first informant after taking dinner at 8 P.M. while in the postmortem report, no solid material found inside the intestine rather 150 ml. liquid was found inside the body, the cross-examination of P.W.-3, Dr. Subhash Chandra was as follows:-

मृतक के आमाशय में कोई ठोस पदार्थ नहीं था। 100 ग्राम तरल पदार्थ अमाशय में था। ठोस पदार्थ को आमाशय से छोटी आंत में जाने में सामान्यतया 04 घण्टे का समय लगता है। मृतक ने घटना से करीब 04 घण्टे पहले कुछ साया होगा इसी कारण से छोटी आंत में पचा हुआ कुछ तरल पदार्थ मिला था। उक्त तरल पदार्थ शराब नहीं हो सकता है। वह पानी, चाय, कोल्ड डिरंक हो सकता है।

32. From the perusal of cross-examination of P.W.-3 as well as from the postmortem report, the prosecution version that deceased was sitting after taking dinner at 8 P.M. and was murdered at 9.30 P.M. appears to be false.

33. In view of the facts and circumstances of the case and evidence available on record as discussed above, we find that the evidence of the alleged eye-witnesses produced by prosecution does not inspire confidence. There exist a doubt whether they are witnesses of the incident, on the same set of

evidence, the courts below has acquitted one accused (Maharaj Singh) and convicted another accused (Krishna Veer-appellant) which is wholly illegal. There can be no conviction under Section 3(2)(v) of S.C./S.T. Act as there is no evidence for the intentional insult to the deceased. There is non-compliance of Section 313 Cr.P.C. on the subsequent statement of P.W.'s- 1 & 4 recorded in 2017. The non-examination of Smt. Vimla Devi by prosecution, statement of P.W.-9 that Vimla denied the fact that Krishna Veer came to her house on the date of incident as well as postmortem report and statement of P.W.-3 (doctor) also demonstrate that the incident has not taken place at 9.30 P.M. after taking dinner, which proves that the prosecution case is doubtful and prosecution has failed to prove the charges against the appellant – accused beyond reasonable doubt.

34. Accordingly, **the appeal is allowed.** The impugned judgment / order of conviction and sentence dated 17.12.2019 passed by the Special Judge, S.C./S.T. Act, Mathura is set aside. The accused-appellant Krishna Veer @ Pinkoo in Criminal Appeal No.487/2020 in in jail. He shall be released from the jail forthwith, if not wanted in any other case.

35. Let a copy of the judgment along with the original record be sent to the court below for compliance.

Order Date :- 29.9.2022

C.Prakash

(Chandra Kumar Rai, J.) (Mahesh Chandra Tripathi,J.)