

AFR

Reserved on : 14.03.2019

Delivered on : 12.09.2019

**Court No. - 34**

Case :- JAIL APPEAL No. - 6034 of 2017

**Appellant :-** Mumtaz**Respondent :-** State Of U.P.**Counsel for Appellant :-** From Jail, ,Vimlendu Tripathi (A.C.)**Counsel for Respondent :-** A.G.A.**Hon'ble Sudhir Agarwal,J.****Hon'ble Rajendra Kumar-IV,J.***(Delivered by Hon'ble Rajendra Kumar-IV,J.)*

1. Accused-appellant stood for trial in Sessions Trial No. 54 of 2010 (State v. Mumtaz, Case Crime No. 24 of 2010), under Sections 302, 376 and 201 IPC, Police Station Mugalsarain, District Chandauli, pending in the Court of Additional District and Sessions Judge, FTC, Court No.1, Chandauli and came to be convicted by said Court, vide judgment and order dated 31.08.2016, sentencing him under Section 302 IPC to undergo imprisonment for life and fine of Rs. 5,000/-, Section 201 IPC to undergo five years' imprisonment and fine of Rs. 1000/-. Sentence under Sections 302 and 201 shall run concurrently. In default of payment of fine, he shall further undergo three months additional imprisonment, Trial Court has acquitted accused-appellant under Section 376 IPC. Appellant sought interference of this Court by filing this Jail Appeal from Jail through Jail Superintendent concerned.

2. Prosecution story, in brief, as borne out from First Information Report (hereinafter referred to as 'FIR') and factual matrix of the case is that PW-1, Alimuddin, submitted a written report, Ex. Ka-1, in the Police Mugalsarain, District Chandauli, stating that his daughter (victim name withheld by us), used to go to read Arbi language and learn Power-loom work in the house of Mumtaz, who is neighbour of victim. On the fateful day i.e. 19.01.2010, at about 3:00 pm, victim had gone to house of

accused-appellant to read Arabi language and to learn Power-loom work, as usual. When she did not return back from the house of accused-appellant, PW-1 went to house of accused-appellant to search his daughter. He found that house of accused-appellant was locked. Then he made a drastic search of his daughter in the village but found no where. In the next morning, he again went to the house of accused-appellant and saw that dead body of his daughter was lying on the earth in the north street adjacent to the door and window of Mumtaj's house. Dead body bore sign of injuries around the face and her both hands were tied with her Scarf in front. He suspected that his daughter has been murdered after committing rape by accused-appellant. He informed the Policed Station concerned and submitted an application requesting to register an FIR against accused-appellant.

3. On the basis of written report Ex.Ka-1, chick FIR, Ex.Ka-17 was registered by PW-8, Kanhaiya Lal Pathak, as Case Crime No. 24 of 2010 under Sections 376, 302 and 201 IPC against accused-appellant. Entry of case was made by him in General Diary. Copy whereof is Ex. Ka-18.

4. Immediately after registration of case, PW-7, Ratan Singh Yadav commenced investigation, proceeded to spot, visited the place of incident, prepared site plant Ex.Ka-12, recorded statement of witnesses, took Scarf (Dupatta) in his possession, prepared memo thereof Ex.Ka-3, took blood stained and simple earth, pieces of brick in his possession and got prepared memo by PW-6.

5. PW-6, SI Sobha Pandey, on the direction of the then SHO Ratan Singh Yadav PW-7, held inquest over the dead body of victim and prepared inquest report Ex.Ka-2 and other papers relating thereto, sealed the dead body and sent to mortuary for postmortem.

6. PW-5, Dr. Vinod Kumar Singh conducted autopsy over dead body of victim, aged about 14 years, daughter of Allimuddin, resident of Muhammadpur Malokhar, Police Station Mugalsarain, District Chanduali

and prepared postmortem report Ex. Ka-4, expressing his opinion that death was possible about one day prior to postmortem due to hemorrhage on account of ante-mortem injuries. Doctor found following ante-mortem injuries on the body of deceased, which read as under :-

- i. *No blood from nose, ear and urethra.*
- ii. *No bleeding from vaginal orifice*
- iii. *Lacerated wound 7cm x 6cm right corner of mouth including upper half lip and lower half lip with cheek exposing teeth.*
- iv. *Abrasion on right side of neck with left eyebrow. Contusion 4cm x 2cm on forehead.*

7. PW-7 after receiving the postmortem report of victim, tried to apprehend the accused but could not succeed. Later, on 02.02.2010 Police arrested accused-appellant at Railway Station, Mugalsarain, at about 8:15 pm, recorded his statement. After completing all formalities of investigation, submitted charge-sheet Ex.Ka-13 against accused-appellant.

8. Case, being exclusively triable by Court of Sessions, was committed to Sessions Judge, wherefrom, it was transferred to Additional District and Sessions Judge, FTC, Court No.1, Chandauli for disposal in accordance with law.

9. Trial Court framed charges on 23.08.2010 against accused-appellant under Sections 302, 376 and 201 IPC, which reads as under :-

**“आरोप**

मैं, दिलीप कुमार, सत्र न्यायाधीश, चन्दौली आप अभियुक्त मुमताज को निम्नलिखित रूप से आरोपित करता हूँ:-

**प्रथमत् :-** यह कि दिनांक 19.01.2010 को दोपहर में किसी समय बहद् ग्राम मुहम्मदपुर- मलाखर, थाना- मुगलसराय, जनपद- चन्दौली में आप यह जानते हुये कि वादी अलीमुद्दीन की पुत्री गुलक्सा कुमारी उम्र 14 वर्ष का गला दबाने से उसकी मृत्यु हो सकती है, आपने गुलक्सा कुमारी का गला दबा कर व चोटे पहुंचा कर उसकी हत्या कारित कर दी और इस प्रकार आपने भा. द. सं. की धारा -302 के अन्तर्गत दण्डनीय अपराध किया जो इस न्यायालय के प्रसंज्ञान में है।

**द्वितीयत्:-** यह कि उपरोक्त तिथि, समय व स्थान पर आपने वादी अलीमुद्दीन की पुत्री गुलक्सा कुमारी उम्र 14 वर्ष के साथ जबरदस्ती उसकी इच्छा के विरुद्ध बलात्कार किया। इस प्रकार आपने भा. द. सं. की

धारा – 376 के अन्तर्गत दण्डनीय अपराध किया जो इस न्यायालय के प्रसंज्ञान में है।

**तृतीयत्:-** यह कि उपरोक्त तिथि, समय व रात्रि करीब 10.00 बजे गुलक्सा कुमारी की हत्या करके साक्ष्य को विलोपित करने के उद्देश्य से उसके शव को गली में फेंक दिया और इस प्रकार आपने भा. दं. सं. की धारा – 201 के अन्तर्गत दण्डनीय अपराध किया जो इस न्यायालय के प्रसंज्ञान में है।

और मैं, एतद्वारा आप को निर्देश देता हूँ कि उपरोक्त आरोप को आप का परीक्षण इस न्यायालय द्वारा किया जाय।  
दिनांक अगस्त 23, 2010 ई०

उपरोक्त आरोप अभियुक्त को पढ़कर सुनाया व समझाया गया। अभियुक्त ने उक्त आरोपो को अस्वीकार किया तथा परीक्षण की याचना किया।

“I, Dilip Kumar, Sessions Judge, Chandauli, charge you, Mumtaz, with the following:-

**First:** That at any time on the noon of 19.01.2010 within the limits of village - Muhammadpur - Malakhar, PS - Mughalsarai, District – Chandauli, you, while knowing that constricting the throat of the complainant Alimuddin's daughter Gulaxa Kumari, aged 14 years, may cause her death, strangled her and inflicted injuries, causing her death; thereby you committed an offence punishable under Section 302 IPC, which is in the cognizance of this court.

**Second:** That on the aforesaid date, time and place, you against her consent forcibly committed rape on the complainant Alimuddin's daughter Gulaxa Kumari, aged 14 years, thereby you committed an offence punishable under Section 376 IPC, which is in the cognizance of this court.

**Third:** That on the aforesaid date and place, you, having committed the murder of Gulaxa Kumari, disposed of the body at round 10:00 p.m. in a street with the intention to destroy the evidence, thereby you committed an offence punishable u/s 201 IPC, which is in the cognizance of this court.

I, hereby, direct you that for the aforesaid charges, you be tried by this court.

The aforesaid charges were read over and explained to the witnesses. The accused persons denied the said

*charges and sought trial. ”*

*(English Translation by Court)*

10. Accused-appellant pleaded not guilty and claimed trial.

11. In order to substantiate its case, prosecution examined as many as eight witnesses in the following manner :-

Sr. No.	Name of PWs	Nature of witness	Paper proved
1	Alimuddin	Facts	Ex. Ka-1 and 2
2	Rukaina Bibi	Facts	Nil
3	Noor Ali	Facts	Nil
4	Julfekar Ansari	Formal	Ex.Ka-3
5	Dr. Vinod Kumar Singh	Formal	Ex.Ka-5
6	Shobha Pandey	Formal	Ex.Ka-2, 3, 9, 10 and 11.
7	Ratan Singh Yadav	Formal	Ex.Ka-3, 9, 10, 11, 12, 13, 16, 17 and 18.
8	K.L. Pathak	Formal	Ex.Ka-17 and 18.

12. On closure of prosecution evidence, statement under Section 313 of accused-appellant was recorded. In his statement, accused-appellant denied prosecution story in toto. Entire story is said to be wrong, he claimed false implication but did not choose to lead any defence evidence.

13. Ultimately, case came to be heard and decided by Additional District and Sessions Judge, FTC, Court No.1, Chandauli, who after hearing learned counsel for parties and analysing entire evidence (oral and documentary) led by prosecution, found accused-appellant guilty, convicted and sentenced, as stated above.

14. Sri Vimlendu Tripathi, learned Amicus Curiae assailed order of conviction and sentence advancing following submissions :-

- i. There is no eye witness of murder of victim. Case of prosecution rests upon circumstantial evidence.
- ii. PW-1, 2 and 3 are not independent witness. They are relatives of deceased, therefore, their evidence cannot be termed as

independent witness.

- iii. There is no strong motive to accused-appellant to commit murder of victim.
- iv. There is no complete chain in the circumstantial evidence leading the guilt of the accused-appellant.
- v. There are material contradictions in the statements of witnesses rendering prosecution doubtful.
- vi. Prosecution failed to prove its case beyond reasonable doubt. All link of circumstantial is not proved.
- vii. Trial Court has not appreciated the evidence in right perspective and has drawn a wrong conclusion regarding the guilt of the accused-appellant.

15. Learned AGA opposed submissions and submitted that accused-appellant is named in FIR; and sufficient motive has been shown in FIR as well as statements against accused-appellant. It was further submitted that dead body of victim was recovered in the street adjacent to the house of accused-appellant. Immediate after incident, accused-appellant was found absent in the house. He was arrested at Railway Station by Police. Fleeing away of accused-appellant from his own house immediately after the incident is an important circumstance against him. Prosecution has proved complete chain of circumstances leading to the guilt of accused-appellant. Trial Court rightly convicted accused-appellant and sought dismissal of appeal.

16. Dead body of victim was found in the street adjacent to the house of accused-appellant in the next morning of her disappearance; hands of victim were tied with her own scarf could not be disputed by the accused-appellant but according to learned counsel for accused-appellant, he is not responsible for committing murder of victim. Even otherwise from the statement of PW-1, 2, 3, 5 and 6, recovery of dead body adjacent to house

of accused-appellant and assassination of victim stands proved.

17. Only two questions remain for consideration; (i) "Whether accused-appellant committed murder of victim or not?; and (ii) "Trial Court rightly convicted him under Sections 302 and 201 IPC or not?"

18. Now, we may proceed to consider rival submissions of learned counsel for parties and evidence, in brief, available on record as well as some important decisions on this point.

19. Only evidence against the accused-appellant to connect him with present case is that (i) the last seen theory as set forth by PW-1, 2 and 3 of victim in association of accused-appellant one day prior to detection of dead body; (ii) disappearance of accused-appellant from his house immediately after the incident; (iii) detection of dead body of the victim in street adjacent to his house; (iv) recovery of Lungi with blood and semens allegedly belong to accused-appellant from the place of occurrence.

20. Argument Nos. 1 and 3 of learned counsel for accused-appellant are being discussed altogether. Now, we would like to proceed to consider the statements of witnesses. PW-1 deposed that his daughter (name withheld), aged about 14 years used to go to learn the work of Powerloom and study of Arabi language to the house of accused-appellant-Mumtaz, where Smt. Jaida (mother of accused-appellant) taught her Arabi language and accused-appellant, in his own house, taught her Power-loom work. On the fateful day, as usual, his daughter (victim) went to learn Arabi language in the house of accused-appellant and came back by 12 O'clock in the noon. Mother of accused-appellant and his wife went their maternal home in afternoon same day. On 19.01.2010, accused-appellant came to his house and took victim with him on the pretext of study. When she did not come back late in the evening, he along with his other family members tried to search her but despite drastic search, she was found no where. House of accused-appellant was locked from outside and there was nobody in the

house. Next morning, they again went to the house of accused-appellant-Mumtaz and found a dead body of his daughter in the street adjacent to north door of accused-appellant's house. It appeared that she was raped by accused-appellant-Mumtaz and on being opposed by her, murdered by accused-appellant, who ran away from the spot after throwing dead body in the street. He got scribed report of incident by one Anil Kumar Pandey and presented it to Police Station concerned.

21. In his cross examination, he deposed that when accused-appellant came to his house to take his daughter, he was present in the house with his other family members.

22. PW-2, Rukaina Bibi (mother of victim) deposed that her daughter used to go to house of accused-appellant for learning Power-loom work. On the fateful day, his daughter, aged about 14 years, went to house of accused-appellant to learn Arabi language from Smt. Jaida (mother of accused-appellant), which one day prior to detection of dead body of victim. Accused-appellant-Mumtaz came to her house to call victim and took her, on the pretext of learning Arbi language, to his house. When victim did not return back to her house by late evening, they went to house of accused-appellant-Mumtaz, where door was locked outside and there was nobody in the house. Despite drastic search, she was found nowhere. In the next morning, at about 7:00 Am, corpse of victim was found in the street adjacent to the house of accused-appellant. It was further deposed that she was raped. Her Pajama bore semen and there was injury on her face. Her hands were tied with her own scarf. She was assassinated in cruel manner.

23. PW-3, Noor Ali (brother of victim) deposed that. as usual, at about 9:00 am, victim used to go to learn Arabi language to the house of accused-appellant and come back at about 12:00 O'clock in the noon and again she had to go at 1:00 pm and come back at 5:00 pm. This was her usual time. On the fateful day i.e. 19.01.2010, at about 9:00 am, her sister (victim) went to house of accused-appellant to learn Arabi language and

came back at 12 O'clock in the noon. At about 2:00 pm, accused-appellant came to his house and took victim to his house on pretext of learning Arabi language. When victim did not come back to house by late evening. They went to house of the accused-appellant-Mumtaz and found his house locked outside. Next morning, on 20.01.2010, dead body of victim was found lying in street adjacent to accused-appellant's house. He came to know that mother of accused-appellant had gone in relation when accused took victim. He further deposed that victim was cruelly assassinated after rape.

24. PW-1, 2 and 3 withstood lengthy cross-examination by learned counsel for accused-appellant but nothing adverse material could be brought so as to discredit their statements. PW-1, 2 and 3 are natural witness. They must be present at the time, when accused-appellant took victim from her house on the pretext of learning Arabi language. PW-1, 2 and 3 saw victim in association of accused-appellant last. Later on, she did not come back and nobody has seen him alive till detection of dead body. Accused-appellant offered a routine answer in his statement under Section 313 Cr.P.C., although he did not admit fact of taking victim with him. PW-1, 2 and 3 established that accused took with him and they saw victim last, in the company of accused-appellant. He did not offer any proper explanation. On the other hand, PW-1, 2 and 3 established that victim was taken by accused-appellant from the house. at 12:00 O'clock in the noon. Accused-appellant was under obligation to offer a proper explanation, what had happened with victim and who murdered her. It is also relevant to mention here that accused-appellant disappeared from his house till his arrest and his house remain locked. This fact also finds support from statement of PW-1, 2 and 3. Conduct of accused-appellant fleeing away from his house becomes relevant and is an additional link evidence against him. Dead body of victim and one Lungi, allegedly belonged to accused-appellant, have been recovered from street adjacent to house of accused-appellant and accused-appellant was not present in

the house, if the victim was murdered by someone else, accused-appellant could have informed first, but he did not do so. Accused-appellant has also not offered any explanation how his Lungi was found there. All the circumstances indicate, guilt of accused-appellant and proved that accused-appellant is only and only person who committed murder of victim and threw the body in the street adjacent to his house.

25. In case, in hand, there is no eye witness of occurrence and case of prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of accused-appellant; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused-appellant and he should be incapable of explanation on any hypothesis other than that of the guilt of the accused-appellant and inconsistent with his innocence.

26. *Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343*, is the basic judgment of the Supreme Court on appreciation of evidence, when the case depends only on circumstantial evidence, which has been consistently relied in later judgments. In this case as long back as in 1952, Hon'ble Mahajan, J expounded various concomitant of proof of a case based purely on circumstantial evidence and said:

***"... circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved..... it must be such as to show that within all human probability the act must have been done by the accused."***

27. In *Hukam Singh v. State of Rajasthan, AIR 1977 SC 1063*, Court said, where a case rests clearly on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and

circumstances are found to be incompatible with innocence of accused-appellant or guilt of any other person.

28. In ***Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622***, Court while dealing with a case based on circumstantial evidence, held, that onus is on prosecution to prove that chain is complete. Infirmity or lacuna, in prosecution, cannot be cured by false defence or plea. Conditions precedent before conviction, based on circumstantial evidence, must be fully established. Court described following condition precedent :-

*(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established.*

*(2) the facts so established should be consistent only with the **hypothesis of the guilt of the accused**, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*

*(3) the circumstances should be of a conclusive nature and tendency.*

*(4) they should exclude every possible hypothesis except the one to be proved, and*

*(5) there must be a **chain of evidence so complete as not to leave any reasonable ground** for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

*(emphasis added)*

29. In ***Ashok Kumar Chatterjee v. State of Madhya Pradesh, AIR 1989 SC 1890***, Court said:

*"...when a case rests upon circumstantial evidence such evidence must satisfy the following tests :-*

*(1) the **circumstances** from which an inference of guilt is sought to be drawn, **must be cogently and firmly established;***

*(2) those circumstances should be of a **definite***

**tendency unerringly pointing towards guilt of the accused;**

(3) the circumstances, taken cumulatively; should form a **chain so complete that there is no escape from the conclusion that within all human probability** the crime was committed by the accused and none else; and,

(4) the **circumstantial evidence** in order to sustain conviction must be **complete and incapable of explanation** of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

(emphasis added)

30. In **C. Chenga Reddy and Others v. State of Andhra Pradesh, 1996(10) SCC 193**, Court said:

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the **conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature**. Moreover, all the **circumstances should be complete** and there should be **no gap left** in the chain of evidence. Further, the proved **circumstances must be consistent only with the hypothesis of the guilt of the accused** and totally inconsistent with his innocence. "

(emphasis added)

31. In **Bodh Raj @ Bodha and Ors. v. State of Jammu and Kashmir, 2002(8) SCC 45** Court quoted from Sir Alfred Wills, "Wills' Circumstantial Evidence" (Chapter VI) and in para 15 of judgement said:

"(1) the **facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt** connected with the *factum probandum*;

(2) the **burden of proof is always on the party who asserts** the existence of any fact, which infers legal accountability;

(3) in all cases, whether of direct or circumstantial evidence the **best evidence must be adduced** which the nature of the case admits;

*(4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt,*

*(5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."*

*(emphasis added)*

32. The above principle in respect of circumstantial evidence has been reiterated in subsequent authorities also in ***Shivu and Another v. Registrar General High Court of Karnataka and Another, 2007(4) SCC 713*** and ***Tomaso Bruno v. State of U.P., 2015(7) SCC 178***.

33. Learned counsel for accused-appellant argued that all the three witness PW-1, 2 and 3 are relative of deceased, therefore, they cannot be termed as independent witness and they are not worthy to credence. We are not impressed with the argument of learned counsel for accused-appellant and reject the same. Argument made by learned counsel for accused-appellant is thoroughly misconceived for the reasons that PW-1, 2 and 3 being father, mother and brother of deceased are natural witness. Their presence must have been in the house, when accused-appellant took victim from house on the pretext of learning Arabi language

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

*“There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of ***Jayabalan v. U.T. of Pondicherry (2010) 1 SCC 199***, this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim”*

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

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

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

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

37. In so far as motive is concerned, it is also notable that mind set of accused persons differs from each other. Thus, merely because that there was no strong motive to commit the present offence, prosecution case cannot be disbelieved. We do not find any substance in the argument advanced by learned counsel for appellant.

38. Next argument advanced by learned counsel for accused-appellant, in so far as discrepancies, variation and contradiction in the prosecution case is concerned, we have analysed entire evidence in consonance with the submissions raised by learned counsel for the accused-appellant and find that the same do not go to the root of case and accused-appellant is not getting its benefits.

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

40. We lest not forget that no prosecution case is foolproof and the same is bound to suffer from some lacuna or the other. It is only when such lacunae are on material aspects going to the root of the matter, it may have bearing on the outcome of the case, else such shortcomings are to be ignored. Reference may be made to a recent decision of the Apex Court (3 Judges) in Criminal Appeal No. 56 of 2018, **Smt. Shamim v. State of (NCT of Delhi)**, decided on 19.09.2018.

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

42. In the entirety of the facts and circumstances and legal proposition discussed herein before, we are satisfied that prosecution has successfully proved its case beyond reasonable doubt against accused-appellant and Trial Court has rightly convicted him for having committed an offence under Sections 302 and 201 IPC. Appeal is devoid of merit and liable to be dismissed.

43. So far as sentence of accused-appellant is concerned, it is always a

difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases.

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

45. Hence, applying the principles laid down in the aforesaid judgments and having regard to the totality of facts and circumstances of case, motive, nature of offence and the manner in which it was executed or committed, we find that punishment imposed upon accused-appellant by

Trial Court in impugned judgment and order is not excessive and it appears fit and proper and no ground appears to interfere in the matter on the point of punishment imposed upon him.

46. We, therefore, find no merit in appeal. **Present Jail Appeal lacks merit and is, accordingly, dismissed.** Judgement and order dated 31.08.2016 passed by Additional Sessions Judge, FTC Court No.1, Chandauli in Session Trial No. 54 of 2010, (State v. Mumtaz), arising out of Case Crime No. 24 of 2010, Police Station Mugalsarain, under Sections 302 and 201 IPC, is maintained and confirmed.

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

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

**Order Date :- 12.09.2019**

KA/Akram