

(AFR)

Reserved on : 29.04.2019

Delivered on : 20.09.2019

Court No. - 34

Case :- JAIL APPEAL No. - 2935 of 2013

Appellant :- Rajesh

Respondent :- State of U.P.

Counsel for Appellant :- From Jail, Mamta Maurya A.C, Saurabh Sachan (A.C.), Surendra Bir Maurya, Surendra Bir Maurya (A.C.)

Counsel for Respondent :- P.C. Joshi (A.G.A.)

Hon'ble Sudhir Agarwal, J.

Hon'ble Rajendra Kumar-IV, J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. This jail appeal under section 383 Cr.P.C. has been filed by accused-appellant, Rajesh through Senior Superintendent of Police, Meerut against judgement and order dated 31.05.2013 passed by Sri Ajay Kumar, Additional District and Sessions Judge, Court No. 16, Meerut. By the impugned judgement, Rajesh has been convicted under Section 302 I.P.C. and sentenced to life imprisonment along with fine of Rs. 10,000/-. In case of default in payment of fine, he has to further undergo one year additional imprisonment.

2. The prosecution case in short may be stated as under:-

3. On 28.01.2002, a written report (Exhibit Ka-1) was presented by Informant PW-1, Laxmi, at Police Station Nauchandi, District-Meerut, stating that she along with her husband, Dinesh were residing in Sector-4, Shastri Nagar, Meerut, in a rented house of Sharda Sharma. Informant's husband used to pull rickshaw. Smt. Manglo i.e. Dayawati, Bua of Informant's husband resided in House No.114, Sector-3, Shastri Nagar, Meerut. She was ailing. Informant had gone to see her in Sector-3, Shastri Nagar. In the night at about 10:15 PM, her husband Dinesh went to Sector-3 to take her (Informant) back to home. When they reached near Water Tank (Pani ki tanki) situated in Sector-3, accused Rajesh, brother in distant relation, who was hidden in bushes near the corner house situated on road leading to Sector-4,

suddenly came out and inflicted knife blow on the neck of Informant's husband by a knife held in his hand. Resultantly, Dinesh fell on the ground. Rajesh again assaulted him with knife. Rajesh had murdered Informant's husband by knife. When she raised alarm, accused threatened and chased her. She ran and reached back to house of her husband's Bua and apprised her of incident. F.I.R. further says that Rajesh and his elder brother, Natthi used to reside with Informant about 9-10 months prior to lodging of F.I.R. Rajesh and Natthi after consuming liquor used to quarrel with Informant's husband. For that reason, Informant's husband evicted both of them from his house. Since then, Rajesh bore enmity and while leaving the house, he also held threat to Informant's husband Dinesh that he would settle the score. Rajesh committed murder of informant's husband in her presence. She had seen and recognised Rajesh very well in the electric light. F.I.R. further states that her husband's dead body was lying at the spot.

4. On the basis of written report (Exhibit Ka-1), chik report (Exhibit Ka-2) was prepared by Head Muharrir, Ram Bahadur on 28.01.2002 at 23:45 P.M. He also made an entry of incident in General Diary at Report no. 32, a copy of which is Exhibit Ka-13 on record. After registration of F.I.R, initially case was investigated by PW-6 S.I., Arun Kumar Chauhan, who was then S.O. of Police Station Nauchandi. After obtaining necessary documents, he recorded statement of PW-1, Informant and witnesses. He visited spot and on pointing out of PW-1, prepared site plan (Exhibit Ka-5). He got inquest (Exhibit Ka-2) prepared by S.I. Manish Kumar Sharma, who also took blood stained and simple soil from place of occurrence and prepared recovery memo in respect thereof as well as other relevant documents for sending dead body to post mortem, marked as Exhibit Ka-6 to Ka-11.

5. Autopsy on dead body of deceased Dinesh was conducted by

PW-5, Dr. R.K. Gupta, on 29.01.2002 at 4:00 PM. According to him deceased was aged about 35 years and duration of death at the time of post-mortem, was about one day. Deceased was of average body built and rigor mortis found present all over the body. There was no decomposition. He found following ante-mortem injuries on the body of deceased:-

“i. Incised wound 13 cm x 4 cm x bone cut on outer and joint of right side neck, 4th cervical vertebra cut, blood vessels, trachea and oesophagus cut, incised wound 5.5. cm below the chin.

ii. Stab wound 3 cm x 1 cm x chest cavity deep on front of chest (left side), 5 cm medial to left nipple at 11 O' clock positive.

iii. Incised wound 2 cm x 1 cm x muscle deep on outer side of just upper arm upper part, 8 cm below left shoulder.”

(emphasis added)

6. On internal examination, membranes of head and neck were found pale; pleura was lacerated on left side; both lungs were pale and upper lobe of left lung was lacerated; right side heart contained blood weighing 250 gm; left thoracic cavity contained 700 ml blood. In the opinion of Doctor, death had occurred due to shock and haemorrhage as a result of ante-mortem injuries. Doctor prepared post mortem report (Exhibit Ka-4).

7. Despite search, accused could not be arrested and thereafter PW-3 second Investigating Officer was transferred. It appears from the statement of PW-4 S.I. Mahipal Singh, the second Investigating Officer that since accused could not be arrested, earlier S.O. Shiv Pooran Singh had submitted final report in Court. On 30.11.2011 PW-1 Informant had made an application (Exhibit Ka-3) to Police Station, Nauchandi, that accused Rajesh was residing near Maliyana Phatak,

Meerut and pulling on rickshaw. On the said application of PW-1, investigation was undertaken by PW-4 Sri Mahipal Singh after obtaining requisite permission from Court. On 05.12.2011 accused was arrested. Thereafter investigation was undertaken by Smt. Alka Singh, PW-7. After concluding investigation, she submitted charge sheet (Exhibit Ka-14). On charge sheet, cognizance was taken by Chief Judicial Magistrate, Meerut against accused-appellant under Section 302 I.P.C. on 27.01.2012.

8. As the case was exclusively triable by Court of Sessions, learned C.J.M. committed matter to Court of Sessions which was registered as Sessions Trial No. 350 of 2012. Sessions Trial was transferred to Additional District & Sessions Judge, Court No.16, Meerut, who framed charge against accused-appellant on 14.08.2012, which reads as under:-

“मैं अजय कुमार, अपर जिला एवं सत्र न्यायाधीश, कक्ष सं० 16, आप अभियुक्त राजेश को निम्नलिखित आरोपों से आरोपित करता हूँ:-

यह कि दिनांक – 28.01.2002 समय रात्रि के 11 बजे स्थान सैक्टर 3 पानी की टंकी के पास सैक्टर 4 को जानेवाली सड़क पर शास्त्री नगर थाना क्षेत्र नौचन्दी जिला मेरठ में आपने वादनी श्रीमती लक्ष्मी के पति दिनेश को चाकुओं से घायल करके जानबूझकर स्वेच्छया उसकी हत्या कर दी थी। इस प्रकार आपने ऐसा अपराध कारित किया जो धारा 302 भा. द.सं. के अधीन दंडनीय है और इस न्यायालय के संज्ञान में है।

और मैं एतद्द्वारा आपको निर्देशित करता हूँ कि उपरोक्त आरोप के लिये आपका विचारण इस न्यायालय द्वारा किया जायेगा।”

“I Ajay Kumar District & Sessions Judge, Court No. 16 Meerut charge you accused Rajesh as under:-

That on 28.01.2002 at about 11:00 PM in the night on the road heading towards Sector-4 near Water Tank (Pani ki Tanki) in Sector-3 Shastri Nagar, Police Station Nauchandi, District Meerut, you intentionally and voluntarily by causing injuries to deceased with knife, killed Dinesh, husband of informant, Smt. Laxmi. Thereby you committed such an offence which is punishable under Section 302 I.P.C.

and within the cognizance of this Court.

*I had directed you that will be tried for the aforesaid charge
by this Court.”* (emphasis added)

(English translation by Court)

9. Accused-appellant pleaded not guilty and asked for trial.
10. In support of prosecution, as many as seven witnesses were produced, out of whom, PW-1 Laxmi and PW-2 Ram Pal are witnesses of fact. Rest are formal witnesses of Police and Department of Health.
11. PW-6 S.I. Arun Kumar Chauhan was the first Investigating Officer who initiated investigation after lodging of F.I.R. and has proved site plan (Exhibit Ka-5). He has also proved inquest (Exhibit Ka-2) and other documents Exhibit Ka-6 to Ka-11 pertaining to sending of dead body to hospital for post-mortem. Thereafter investigation was undertaken by PW-3, S.I. Pooran Singh on 27.05.2002, who tried to arrest accused but could not succeed and accordingly submitted final report in the matter. Thereafter investigation was resumed by PW-4 S.I. Mahipal Singh, who has proved application filed by Informant (Exhibit Ka-3) to the effect that accused-appellant was residing in Meerut and pulling on rickshaw. PW-7, Smt. Alka Singh, is the third Investigating Officer, who has proved charge sheet (Exhibit Ka-14).
12. After closure of prosecution evidence, accused-appellant was examined under Section 313 Cr.P.C, who has denied the charge and claimed that he has been falsely implicated and witnesses are deposing against him on account of enmity. He said that he is innocent and had been pulling rickshaw and had not committed any crime.
13. On appreciation of evidence on record and hearing counsel for both the parties, Trial Court convicted and sentenced accused-appellant as mentioned above. Trial Court has convicted the accused-appellant by recording its findings that:

I- There is no delay in lodging FIR inasmuch as incident is

said to have taken place at 11:00 PM on 28.01.2002 and report was lodged at 23:45 on the same date, i.e., within 45 minutes.

II- The Informant is eye witness and mere fact that she is wife of deceased would not be sufficient to discard her otherwise trustworthy ocular evidence.

III- There was no difficulty in identification of accused appellant by Informant since she knew her from earlier time.

IV- Production of no independent witness by prosecution was duly explained by Informant that the place at which incident occurred, at relevant time, there was none present and her submission looking to the time and place was natural and trustworthy.

V- PW-2, Ram Pal Saini, another witness of fact, has stated that on the date of incident, deceased and his wife had gone to his residence to meet his ailing wife. Deceased went for his work of Rickshaw pulling after leaving Informant at the residence of PW-2 at around 4-4:30 PM and came back at around 9-10 PM. They left his residence at around 10:45 PM and after 15-20 minutes, Informant came back in a frightened condition and narrated entire incident. Thereafter, PW-2 and other family members went to the spot where they found Dinesh lying dead and accused-appellant had run away. Police prepared Panchayatnama after seizing dead body of Dinesh at the place of incident. Post-mortem report proves that injuries may have been sustained by a sharp edged weapon which supports the manner of death of deceased as explained by PW-1.

VI- Formal witnesses proved documents and no adverse

factor could be extracted from their cross examination by defence.

VII- Though, the motive was not relevant in a case where there is ocular evidence but motive was explained by the Informant and nothing otherwise could be extracted in her cross examination by the defence.

VIII- Though investigation has not been properly conducted in the case but for that reason no benefit can be taken by the accused.

14. Feeling dissatisfied with the judgment of conviction and sentence, accused-appellant has preferred this Jail Appeal through Senior Superintendent of Jail, Meerut.

15. We have heard Sri Saurabh Sachan, learned Amicus Curiae, Sri P.C. Joshi, learned A.G.A. and perused record carefully with valuable assistance of learned counsel for parties.

16. Learned counsel for the appellant has challenged conviction and sentence by Trial Court, raising following issues:-

I- The entire prosecution against appellant is founded on the statement of Informant, PW-1, who is the wife of deceased. She had illicit relation with the younger brother of deceased and this fact came to be detected by deceased whereupon they both murdered deceased and have falsely implicated appellant. This aspect has not been properly examined by Court below.

II- Informant had motive to commit murder of deceased and, therefore, her conduct ought to have been properly examined in the matter but that has not been done by Court below.

III- The sole ocular evidence of Informant could not have been relied to convict appellant since she was close relative of deceased and had reason to falsely implicate

appellant.

IV- Appellant never resided at the residence of deceased and Informant, hence there was no occasion of his eviction by deceased for the alleged reason that he quarreled with deceased in drunken condition and for that reason, accused-appellant in revenge, committed murder.

V- Even, PW-2 is relative of deceased and was not present at his house on the date and time of incident. He was a tubewell operator and had gone to attend his duty in the night, but falsely stated in his statement that on the date of incident, he had not gone to attend his duty and was present at his residence. In this regard, no evidence could be adduced by him to prove that he had not gone to attend his duty on that date. The statement of PW 2 that he had not gone on duty is false for the reason that in cross-examination, he could not tell as to what was the time of his duty to attend tubewell which is unbelievable.

VI- Incident took place on 28.01.2002 while appellant was arrested by police on 05.11.2012 alleging that during checking at Shashtri Nagar Crossing he was arrested as stated by PW 4, S.I. Mahipal Singh. The story of arrest given by PW-4 that on the information of Informant, appellant was arrested is concocted.

VII- Post-mortem report does not support the manner in which deceased has been murdered. No weapon of crime has been recovered from appellant.

VIII- Prosecution has failed to prove its case beyond reasonable doubt.

17. Per contra, learned A.G.A. contended that it is a simple case of hit and run. Informant and her husband, while returning from the residence of PW-2, where they had gone to see his ailing wife, when

reached the place of incident, accused-appellant, who was well known to Informant and her husband, and was hiding thereat, appeared and attacked Informant's husband with knife on his neck and thereafter on his body and when she raised alarm, he pushed her. She turned to go towards residence of PW-2. Thereupon accused-appellant ran after her also for some time but could not catch her. She reached residence of PW-2 and narrated the entire incident. Therefrom PW-2, his two sons and younger brother of deceased alongwith Informant came back to the place of incident and found deceased, dead. Appellant thereafter ran away and could be arrested after a long time, i.e., in 2011. Only thereafter, Police could submit charge-sheet and therefore, statements of witnesses have been recorded after more than a decade which may have shown some inconsistencies or contradictions but the same are minor and do not impact the otherwise trustworthy ocular evidence of PW-1, Informant. Further the manner in which appellant attacked and committed murder and various injuries found on the dead body as reported in post-mortem report fortify statement of PW-1. Hence appellant has been rightly convicted and awarded adequate sentence by Court below. The judgment is based on evidence and prosecution succeeded in proving guilt of appellant beyond doubt, therefore, no interference is called for in this appeal and it deserves to be dismissed.

18. We have heard arguments of learned counsel for both parties and relevant authorities relied by both the side.

19. As per F.I.R., as also the statement of PW-1, Informant, the incident had taken place near water tank in Sector 3 on road coming towards Sector 4. Panchayatnama (Ex.Ka-2) also shows the place of incident as mentioned in F.I.R. lodged by Informant, PW-1. Time of recording of F.I.R. mentioned in Panchayatnama is 23:45, i.e. 11:45 PM, in the night on 28.01.2002. Panchayatnama was prepared at 02:05 AM on 29.01.2002 i.e. within two hours twenty minutes of recording of F.I.R. The statements of PW-1 and PW-2 also mention

the same place, date and time of incident and this is fortified by statement of PW-5, Dr. R.K. Gupta who conducted post-mortem and stated that the time of death could have been 11:00 PM on 28.01.2002. PW-6, S.I., Arun Kumar Chauhan, is Investigating Officer who initially commenced investigation in this case after recording of F.I.R. He has also supported the date, time and place of the incident. He has also proved site plan which supports place of incident as well as date and time. In these facts and circumstances, date, time and place of occurrence and death of deceased is duly proved by evidence available on record. In facts it is also not seriously disputed by learned counsel for appellant. He, however, submitted that he has been falsely implicated in the case inasmuch as murder has been committed by Informant herself in conspiracy with one Lokesh with whom, she had illicit relations and appellant has been implicated falsely.

20. Now, the question for consideration is “whether prosecution has proved guilt of accused-appellant beyond reasonable doubt by adducing adequate and trustworthy evidence and he (appellant) has rightly been convicted by Court below or not?”

21. In order to examine the aforesaid issue, it would be appropriate to go through the evidence on record.

22. As we have already said, in this case, star witness is Informant herself, who is eye witness of the incident. It is her statement which is foundation of findings of guilt against appellant. PW-1, wife of deceased, Dinesh, has stated that she and her husband were residing in Sector 4, Shashtri Nagar, Meerut. Her husband's Bua, Smt. Manglo (wife of PW-2, Rampal Saini) was residing in Sector 3. She was calling husband and wife for last few days since she was unwell. On the date of incident, around 10:45 or 11:00 PM, Informant and her husband Dinesh both were returning from the house of husband's Bua. When they reached near Water Tank in Sector 3, from the bushes standing on side of road, Rajesh, accused-appellant, came out and

attacked her husband with knife on chest and neck. At that time, road light was glowing in which she could see Rajesh, accused-appellant, clearly. She knew Rajesh since earlier. She tried to protect her husband but Rajesh, accused-appellant pushed her away. When she raised alarm, none came. She started to move towards house of Bua, Smt. Manglo, whereupon Rajesh, accused-appellant ran after her with knife upto some distance but she did not look back and came running to the residence of husband's Bua and narrated entire incident. Thereupon, Fufa of Informant's husband, i.e., Ram Pal Saini, his two sons and younger brother of deceased alongwith Informant came to the place of incident and found Dinesh, husband of Informant, dead. Rajesh came alongwith Informant's husband from Kanpur about 9-10 months back and stayed in Informant's house for about two months. He was accompanied by his brother. Informant's husband told her that Rajesh was son of his uncle. On one day, Rajesh and his brother came after taking liquor and quarreled with her husband whereupon they were thrown away from house. While going, Rajesh threatened P.W.-1's husband that he will see him. For this reason, Rajesh committed murder of her husband. Report was lodged by Informant through younger brother of deceased, i.e., Lokesh. At the time when incident took place, none else was present. She identified Rajesh in Court and stated that he had committed murder of her husband and he is the same person who stayed in her house for about two months. She categorically stated that she was residing in Sector-4, Shastri Nagar while her husband's Bua was residing in Sector-3, Shastri Nagar and the incident took place near Water Tank of Sector- 3, Shashtri Nagar. In cross-examination, she stated that she married Dinesh about seven years prior to the incident. Her husband were five brothers and two sisters. Dinesh was eldest and thereafter Jitendra, Brijendra, Rajendra and youngest one Lokesh. At the time of incident, Lokesh was working as a doctor. Her father-in-law and mother in law both died

earlier. Brothers of her husband used to visit residence of Informant. At the time of incident, Lokesh was unmarried. Rajesh was son of uncle of deceased but not real uncle. She was not aware whether Rajesh and his brother were residing at Kanpur or not. When they came, her husband told that they were residing at Kanpur. Her husband was a rickshaw puller. On the date of incident also, he had gone to do his work of rickshaw pulling and came to residence of his Bua in Sector 3 in the night around 10:00 or 10:30 PM. Distance from house of Bua to PW-1's house was not known in kilometers but she said that it is 15 minutes' walk. Her husband when came to take her, had not brought rickshaw since it was parked at the residence. Rickshaw was on hire and in the night, it used to be parked at her residence. She had gone to residence of Bua on the date of incident at around 3:45-4:00 PM. Her husband had gone for Rickshaw pulling the in morning at 10:00 AM and came in the night at around 10:00-10:30 PM to take her from the residence of Bua, Smt. Mango, i.e., wife of PW-2, Rampal Saini. Lokesh had not visited Informant's house but had come to residence of Bua. Incident took place on main road and on both sides, there were houses and shops. People were residing in the houses. She was not able to tell as to how much time she took to reach from the place of incident to residence of Bua. At that time, Fufa, i.e., PW-2, Ram Pal Saini, his two sons and younger brother of deceased were present and Bua was sleeping on upper storey. When Informant and other people reached Police Station, there was none present and they waited. Thereafter Inspector came. Report was scribed by Lokesh in the Police Station itself. She had no issue from Dinesh. Her parents were residing at Khurja. After cremation and other rituals, she went to stay at her parents' residence. After one year, she solemnized another marriage with a person residing near Kanpur, and from said wedlock, she has a son. Her second husband also died in an accident. At the time of statement recorded in Trial Court, i.e.,

September, 2012, she was residing with her father. Younger brothers of her husband, Dinesh, after his death, never came to meet her at Khurja. When accused-appellant was arrested, Police visited residence of Informant alongwith younger brother of her husband and then she came from Khurja to Meerut Police Station. She specifically denied suggestion of illicit relations with Lokesh, youngest brother of her husband and further suggestion of herself committing murder of Dinesh in conspiracy with Lokesh.

23. Thus, PW-1 in her examination-in-chief, very categorically stated about manner of death, time and place of incident. She has stated that it is accused-appellant who has committed murder of her husband, Dinesh, by inflicting injuries with knife on chest and neck. F.I.R. was scribed by Lokesh on being told by her and she signed the same and proved said F.I.R. marked as Exhibit Ka-1.

24. There is long cross-examination of PW-1 but we do not find any substantial material which could have been extracted by defence to discredit ocular version of PW-1. Hence, we find no reason to disbelieve her. In our view, statement of PW-1 is natural, pure and trustworthy. The fact that she is directly a close relative of deceased and therefore her statement should not be relied to hold accused-appellant guilty, has no substance inasmuch as law is now well settled that statement of relatives merely on the ground that he or she is relative, cannot be discredited or rejected.

25. Normally, when incident takes place in presence of relatives, it is only they who come forward to depose against accused since they are the persons who would like to see that person who has committed crime, is given due punishment in a Court of law. Such witnesses would not like to give a wrong statement against a person who has not committed crime, and, try to save actual accused. Mere relationship, therefore, is no ground to reject an otherwise trustworthy deposition of such witnesses unless there are other factors to taint such

statements providing some reason to doubt the witness.

26. In a catena of judgments Supreme Court has repeatedly held that a close relative would be the last to screen the real culprit and falsely implicate an innocent person.

27. In **Rameshwar Vs. The State of Rajasthan, AIR 1952 SC 54 at page 59**, Court held as under:

"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 such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person."

(emphasis added)

28. In **Masalti Vs. State of U.P., AIR 1965 SC 202**, Court said:

"Normally close relatives of the deceased would not be considered to be interested witnesses."

29. In **Hari Obula Reddi and others v. The State of Andhra Pradesh, AIR 1981 SC 82**, a three-Judge Bench of Supreme Court has held:

"Evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. 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 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."

(emphasis added)

30. In **Kartik Malhar Vs. State of Bihar, (1996) 1 SCC 614** Court has opined as under:-

"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."

(emphasis added)

31. In **Pulicherla Nagaraju alias Nagraja Reddy Vs. State of**

Andhra Pradesh, AIR 2006 SC 3010, Court has observed as follows:

"It is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to the deceased, if it is otherwise found to be trustworthy and credible. The said evidence only requires scrutiny with more care and caution, so that neither the guilty escapes nor the innocent is wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, then it can be acted upon."

(emphasis added)

32. In **Harivadan Babubhai Patel vs. State of Gujarat (2013) 7 SCC 45**, Court observed as under:-

"In view of our aforesaid analysis, we are unable to accept the submission of the learned counsel for the appellant that the evidence of the eye witnesses should be rejected solely on the ground that they are close relatives and interested witnesses."

33. Oral and ocular testimony of PW-1 is supported by PW-2, who is not an eye witness to the incident himself but he corroborates other facts that PW-1 after attack upon her husband (Dinesh) by Rajesh, came back to residence of Bua and Fufa and told them about incident and thereafter Fufa of deceased alongwith his two sons and younger brother of deceased, went to the place of incident and found Dinesh, dead. His dead body was lying at site of incident. Statement of PW-2, therefore, is corroborating statement in respect of other facts i.e. first narration of incident by Informant to PW-2 and other persons at his residence and thereafter their visit to place of incident and finding dead body of Dinesh.

34. PW-2 has said that not real but in relation, he is Fufa of deceased Dinesh. One Manglu, who, in relation, is brother-in-law of PW-2, was married in family of Dinesh and from that relation, he became Fufa of Dinesh. At the time when incident took place, his wife Dayawati was ill. Deceased and his wife came to see her around 4-4:30 PM, in evening, whereafter deceased left his wife at residence of PW-2 and himself went to do his work of rickshaw pulling. He came back in the night around 9:30-10:00 PM to take his wife and at around

10:45 PM, they both walked towards their house. After 15 to 20 minutes, PW-1, Laxmi came back. She was frightened. She told that Rajesh has murdered Dinesh by knife near Water Tank. Thereupon, PW-2 and other family members went to the place of incident and found Dinesh lying dead and Rajesh was not present on the spot. Thereafter, PW-1, Laxmi, wife of deceased, lodged report in Police Station and Police came and prepared Panchayatnama in presence of PW-2. He also signed Panchayatnama and proved said document which was marked as Exhibit Ka-2. In cross-examination, PW-2 stated that he was residing in House No.114, Sector 3, Shashtri Nagar, Meerut. At the time of incident also, he was residing at the same address. His wife was ill at that time. His family comprised of his sons, namely, Subhas and Kiran Pal, their wives and wife of PW-2. All were residing with PW-2 in the said house. His wife remained ill for about 5 years and more but exact disease could not be diagnosed. Dinesh, at the time of incident, was residing in Sector 4, Shashtri Nagar. He was 5 brothers. Dinesh used to reside alone and his other brothers were residing at some other places, not known to him. Dinesh never took wife of PW-2 to any doctor for treatment. Dinesh was earning livelihood by pulling rickshaw. On the date of incident, Dinesh and his wife had come to see wife of PW-2 and no other relative of PW-2 had come on that date. Laxmi, PW-1 came to the house of PW-2 on date of incident at around 4:00 PM and went in night. PW-2 was working as Tubewell Operator in Nagar Nigam. Tubewell was in Sector 2, Shashtri Nagar. On the date of incident, PW-2 had not gone on duty and was present at his residence. In the night, Dinesh alone came to take his wife and stayed for about half an hour. He came about 10-10:15 PM, in night. He came on foot. After Dinesh and his wife left residence of PW-2, he ,i.e., PW-2 and his family had not gone to sleep. Question of sleeping does not arise since Laxmi came with information of incident just within 15 to 20 minutes.

She came alone. When she came, both sons and their wives, PW-2 and Lokesh were present. Lokesh had come to house of PW-2 in the night at around 9:30 PM. On the date of incident, Lokesh and Dinesh had met at residence of PW-2. After information given by PW-1 about incident, PW-2, his two sons and Lokesh, all went to the place of incident and saw dead body of Dinesh. He has also proved Panchayatnama and in cross-examination, has clarified that Police came to place of incident during his presence and prepared Panchayatnama whereupon he had also signed. He has also stated that street light was present at the place of incident and light was glowing. This part also fortifies statement of PW-1 regarding presence of light in the manner stated by PW-1. Suggestion made on behalf of defence that Laxmi, PW-1 and Lokesh were having illicit relations and therefore, may have caused murder of Dinesh has been specifically denied by him. In fact in long cross-examination, defence has completely failed to make out any material contradiction or inconsistencies or otherwise fact to discredit statement of PW-2 which supports that part of deposition of PW-1 that she had gone to residence of PW-2 to see his ailing wife, came back around 10:45 or 11:00 PM from his house and within 15 to 20 minutes, entire incident took place and she went back, gave information to PW-2 and then PW-2 and other family members came to place of incident and found dead body of deceased lying on place of incident in respect where to Panchayatnama was also prepared. Therefore, we find that statement of PW-2 in this regard, is also clear and trustworthy.

35. Amongst the remaining witness, who are formal, we find that witnesses, who themselves had some information in connection with incident, are PW-3, PW-4, PW-5, PW-6 and PW-7. Reason being that incident took place on 28.01.2002 but accused was arrested on 05.12.2011, charge was framed on 18.08.2012 and trial commenced thereafter. There was a gap of about 10 to 12 years from date of

incident and time when witnesses were examined. On account of this lapse of long time, some dates have been given wrongly by some witnesses.

36. PW-3, S.I. Pooran Singh was posted as Station House Officer in Police Station Nauchandi on 07.05.2002. He took over investigation of case from earlier Investigating Officer, Ajay Kumar, Sub-Inspector. He deposed that he tried to find out accused on various dates but when failed, submitted final report. In cross-examination, he admitted of having not visited spot and said that it must have been done by earlier investigating officer. He has also not taken any statement. He said that he only made investigation by searching out accused but when failed to do so, submitted final report. He did not make any investigation with respect to said incident.

37. PW-4, S.I. Mahipal Singh, Police Officer, who alongwith Investigating Officer, Alka Singh and other Police Officers arrested accused on 05.12.2011, has proved this fact. He was posted as Sub-Inspector in Police Station Nauchandi on 30.11.2011. Due to non arrest of accused, earlier Investigating Officer, Pooran Singh Chauhan had submitted final report. But, on 30.11.2011 Informant gave a tehrir that accused Rajesh was residing near Maliyana Gate, Meerut and pulling rickshaw. Thereafter, PW-4 took permission from Court to proceed with investigation and on 05.12.2011, arrested accused-appellant near Shashtri Nagar Crossing. Accused was identified by Jitendra Saini, brother of deceased. Information given by Informant regarding presence of accused at Meerut, was proved by PW-4 and it was marked as Exhibit Ka-3. In cross-examination, he has also said that after arrest, accused told that knife by which he committed murder of Dinesh, was thrown by him in Sector 3 near Tubewell whereupon PW-4 alongwith accused came to the said place and made attempt to find out weapon of murder but since it was 10 years old incident, there was no chance of recovery and it could not be

recovered. On the aspect of arrest though lot of cross-examination has been made but we do not find any substantial material extracted by defence to discredit this part of statement of PW-4.

38. PW-5, Dr. R.K. Gupta, posted as Medical Officer in mortuary of Medical College, conducted post-mortem on 29.01.2002 at 4:00 PM. He has noted injuries on dead body as we have already noticed. He said that all the three injuries could have been possibly caused due to a sharp edged weapon like knife and death could have taken place at around 11:00 in the night on 28.01.2002. In a short cross-examination, he said that his duty commenced at 8:00 AM in the morning on 28.01.2002 and injury also could have been possibly sustained in the morning at 7:00 AM on 29.01.2002. He also said that Investigating Officer did not record his statement.

39. PW-6, S.I. Arun Kumar Chauhan is the Officer who was posted as Police Station (Incharge) of Police Station, Nauchandi, on 29.01.2002 and commenced investigation himself. He has proved site plan which is marked as Exhibit Ka-5 and also Panchayatnama which was prepared under his direction by S.I. Manish Kumar Sharma and marked as Exhibit Ka-2. He has also proved other documents which were marked as Exhibit Ka-6 to Ka-11. He was transferred subsequently and therefore could not continue with investigation. F.I.R. was registered by Constable Ram Bahadur Singh but he had died and since he was posted with PW-6, he identified his signatures on documents i.e. Chik and Carban G.D. which are marked as Exhibit Ka-12 and Ka-13. In the cross-examination, he admitted that in site plan, he has not mentioned name of accused. When he reached the spot of incident, Informant and Rampal were present thereat. Other persons were also present. He did not enquire about their details. Informant did not tell about knife attack on the chest of deceased but told that road side electric pole was glowing. He recorded statement of Informant and her relative during investigation but made no inquiry

from residents of houses, near the place of incident.

40. Thus Investigating Officer proved place of incident and other documents and no material fact otherwise could have been extracted in cross-examination. Mere fact that some other persons were not enquired or investigated may show some laxity in investigation but would not discredit the witness concerned in respect of documents he has proved and in particular, the manner in which he conducted investigation.

41. PW-7, Smt. Alka Singh, was a Police Officer posted at Nauchandi Police Station. On 05.12.2011, she took over investigation of matter from earlier Investigating Officer, Mahipal Singh. During checking, she arrested accused. She also submitted charge-sheet and proved it which is marked as Exhibit Ka-14. Accused was arrested at 10:30 in the morning at a public place but she did not record statement of any member of public. She is the witness in respect of arrest of accused and submission of charge-sheet on the basis of material collected by earlier Investigating Officer. On this aspect, we find nothing material which could be extracted by defence in cross-examination.

42. Above discussion of evidence on record, in our view, proves following facts:

(1) Deceased and Informant, PW-1 were residing in Sector 4, Shashtri Nagar while Fufa and Bua (in relation, not real) of deceased, were residing in House No.114, Sector 3, Shashtri Nagar, Meerut.

(2) Husband of Informant as also accused-appellant were rickshaw pullers.

(3) Accused-appellant alongwith his brother had stayed for about 2 months at the residence of deceased and Informant. They were turned out by deceased when some altercation took place between accused and his brother

with deceased and thereupon, accused had threatened deceased that he will see him later.

(4) On 28.01.2002 around 4-4:30 PM, Informant came to residence of Bua and Fufa in Sector 3 to see ailing Bua i.e. wife of PW-2.

(5) In the night, around 9-9:30, Lokesh, youngest brother of deceased also came to residence of PW-2. Two sons of PW-2 and their wives were also present in his house.

(6) Deceased came to house of PW-2 at around 10:00-10.30, in the night, to take Informant to their residence and stayed for about half an hour and at around 10:45-11:00 PM, left residence of PW-2 and proceeded towards their own residence. Distance between houses of deceased and PW-2 was just 15 minutes by walk.

(7) When couple i.e. deceased and Informant reached near Water Tank in Sector 3, from behind bushes standing on road side, Rajesh came out and attacked upon neck and chest of Informant's husband who fell on the ground.

(8) Informant tried to save her husband but accused pushed her away. Then she raised alarm whereupon accused run towards her alongwith knife. Informant running came back to residence of PW-2. Accused chased her for a short while and thereafter left.

(9) On information given by Informant to PW-2, he, his two sons and Lokesh alongwith Informant reached place of incident and found dead body of deceased lying on spot.

(10) Manner of injuries caused by accused-appellant upon person of Dinesh by knife on chest and neck, is duly fortified by injuries reported in post-mortem report.

(11) Dead body of deceased was recovered by police from the place of incident and Panchayatnama was also

prepared within about two and half hours from the time of incident. This has been proved by PW-2 and PW-6.

(12) Though, a suggestion was made by defence that there was illicit relations between Informant- (PW-1) and youngest brother of deceased i.e. Lokesh but it has been denied by PW-1 and PW-2 both, who are witnesses of fact and in defence, no evidence has been adduced by appellant to prove the said defence. Therefore, the defence has no substance. It has rightly been rejected by Court below as is evident from the findings recorded in paragraph 20 of judgment under appeal.

43. These facts collectively show and leave no manner of doubt that it is only appellant, who has committed murder of deceased in the manner as stated in F.I.R. and oral and ocular testimony of PW-1 which is duly fortified by PW-2 and PW-5. The submission that only witness of crime is PW-1 and her statement is not corroborated by anyone and therefore only on her statement, conviction of appellant is not justified has no legs to stand for the reason that in criminal trial, it is not the a number which counts but the quality of evidence which is material. Even solitary witness, if otherwise trustworthy, is sufficient and can be relied for conviction.

44. It is now well settled that it is quality and not the quantity of witnesses, which is important. Time honoured principle is that the evidence has to be weighed and not to be counted. The test is whether evidence has a ring of truth, cogent, credible and trustworthy or otherwise.

45. In **Namdev Vs. State of Maharashtra (2007) 14 SCC 150**, Court has said:

"Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in

spite of testimony of several witnesses if it is not satisfied about the quality of evidence."

46. Further in **Veer Singh & Ors. Vs. State of U.P.; 2014 (84) ACC 681**, Court said:

"legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity, or plurality of witnesses. It is not the number of witnesses, but quality of their evidence, which is important. As there is no requirement under the law of evidence that particular number of witness is to be examined to prove / disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity, which determines. The adequacy of evidence as has been propounded under Section 134 of Evidence Act. As a general rule, Court can and may act on the testimony of a single witness, provided he is wholly reliable. Testimony of witness, cogent, credible and trustworthy having ring of truth, deserves its acceptance."

47. Therefore, the submission that on solitary statement of PW-1 who is only witness of incident and that too relative of deceased, accused-appellant should not have been convicted, has no force and is rejected.

48. Further submission that investigation has not been done carefully inasmuch as persons residing in houses near place of incident, have not been examined; Police made no sincere effort to find out weapon of murder; PW-2 could not prove his presence at his residence on the date of incident and therefore, investigation is faulty, also have no force. It is true that investigation has not been conducted in a more systematic and planned manner but these aspects are not material when there is an ocular testimony to prove crime committed by appellant and it is duly proved by other evidences i.e. post-mortem report and another witnesses of fact. Any minor lapse in investigation will not help accused.

49. As regards omissions, contradictions and laches on the part of Investigating Officer, it has been repeatedly held by Apex Court that a defective investigation cannot be fatal to prosecution where ocular testimony is found credible and cogent. In **State of Karnataka Vs.**

Suvarnamma, (2015) 1 SCC 323, Apex Court in para 11 held as under:

“It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence.”

50. Similar view has also been taken by Apex Court in **Hema Vs. State, 2013 (81) ACC 1 (SC)** (Three Judge Bench) and **C. Muniappan Vs. State of TN, 2010 (6) SCJ 822**.

51. The above authorities makes it very clear that any lapse on the part of Investigating Agency per se cannot be a ground to throw prosecution case ignoring overwhelming credible and trustworthy evidence sufficient to prove the guilt of accused. Thus the above argument is rejected.

52. The last submission is that there are contradictions in the statement of witnesses.

53. We have gone through the entire evidence very carefully, as have also discussed above, and find no material contradiction, so as to disbelieve the prosecution case or the individual witness. Minor contradictions are bound to occur but the same will not be fatal to prosecution who has otherwise produced trustworthy witness to prove the guilt of accused.

54. 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.

55. In **Sachin Kumar Singhraha v. State of Madhya Pradesh in Criminal Appeal Nos. 473-474 of 2019** decided on 12.3.2019, Supreme Court has observed that Court will have to evaluate evidence before it keeping in mind the rustic nature of depositions of the villagers, who may not depose about exact geographical locations with mathematical precision. Discrepancies of this nature which do not go to the root of the matter do not obliterate otherwise acceptable

evidence. It need not be stated that it is by now well settled that minor variations should not be taken into consideration while assessing the reliability of witness testimony and the consistency of the prosecution version as a whole.

56. Lest we forget that no prosecution case is foolproof and the same is bound to suffer from some lacuna or the other. It is only when such lacunae are on material aspects going to the root of the matter, it may have bearing on the outcome of the case, else such shortcomings are to be ignored. Reference may be made to a recent decision in **Smt. Shamim v. State of (GNCT of Delhi), 2018(10) SCC 509.**

57. When such incident takes place, one cannot expect a scripted version from witnesses to show as to what actually happened and in what manner it had happened. Such minor details normally are neither noticed nor remembered by people since they are in fury of incident and apprehensive of what may happen in future. A witness is not expected to recreate a scene as if it was shot after with a scripted version but what material thing has happened that is only noticed or remembered by people and that is stated in evidence. Court has to see whether in broad narration given by witnesses, if there is any material contradiction so as to render evidence so self contradictory as to make it untrustworthy. Minor variation or such omissions which do not otherwise affect trustworthiness of evidence, which is broadly consistent in statement of witnesses, is of no legal consequence and cannot defeat prosecution.

58. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observations, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about truthfulness of the witness and other witnesses also make

material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. Court has to form its opinion about the credibility of witness and record a finding, whether his deposition inspires confidence. Exaggerations per se do not render the evidence brittle, but can be one of the factors to test credibility of the prosecution version, when entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statement of a witnesses cannot be dubbed as improvements as the same may be elaborations of the statements made by the witnesses earlier. Only such omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide: **State Represented by Inspector of Police v. Saravanan & Anr.**, AIR 2009 SC 152; **Arumugam v. State**, AIR 2009 SC 331; **Mahendra Pratap Singh v. State of Uttar Pradesh**, (2009) 11 SCC 334; and **Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra**, JT 2010 (12) SC 287].

59. Thus after analysing entire evidence with the settled principle of law as discussed above, we are of the view that contradiction pointed out are not fatal to prosecution case and do not affect the veracity of prosecution witnesses therefore, above arguments also have no substance.

60. In view of above discussion, we are satisfied that prosecution has succeeded to prove that accused-appellant has committed murder of Dinesh on the date, time and place and the manner, as stated in F.I.R. as also oral deposition of PW-1, and the guilt having been proved beyond reasonable doubt, appellant has rightly been convicted

for offence under Section 302 I.P.C.

61. So far as sentence 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.

62. It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation of court to constantly remind itself that right of victim, and be it said, on certain occasions person aggrieved as well as society at large can be victims, never be marginalized. 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**].

63. In view of above propositions of law, the paramount principle that should be the guiding laser beam is that punishment should be

proportionate to gravity of offence.

64. Hence, applying the principles laid down by Supreme Court in the aforesaid judgments and having regard to the totality of facts and circumstances of case, nature of offence and the manner in which it was executed or committed in the case in hand, we are clearly of the view that punishment imposed upon accused-appellants is proportionate to gravity of offence and, therefore, impugned judgment of Court below does not deserve to be interfered on this score also.

65. In the result, appeal is **dismissed**. Impugned judgment and order dated 31.05.2013 passed by Sri Ajay Kumar, Additional District and Sessions Judge, Court No. 16, Meerut convicting Appellant-Rajesh, under Sections 302 IPC is hereby confirmed/affirmed.

66. Copy of this order along with lower Court record be sent to Court concerned forthwith.

67. A copy of this order be also sent to Appellant through concerned Jail Superintendent.

68. Sri Saurabh Sachan, learned Amicus Curiae has assisted the Court very diligently. We provide that he shall be paid counsel's fee as Rs.11,000/-. State Government is directed to ensure payment of aforesaid fee through Additional Legal Remembrancer posted in the office of Advocate General at Allahabad to Sri Saurabh Sachan, Amicus Curiae, without any delay and, in any case, within 15 days from the date of receipt of copy of this judgment.

Order Date :20.09.2019

Vivek Kr.