

Reserved on 5<sup>th</sup> September, 2022

Delivered on 30<sup>th</sup> September, 2022

A.F.R.

Court No. - 43

**Case :-** JAIL APPEAL No. - 147 of 2012

**Appellant :-** Sultan

**Respondent :-** State of U.P.

**Counsel for Appellant :-** From Jail, Arvind Kumar Mishra, Gaurav Kakkar

**Counsel for Respondent :-** A.G.A.

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Shiv Shanker Prasad, J.

**(Delivered by Hon. Shiv Shanker Prasad, J.)**

1. This jail appeal is by the appellant-Sultan against the judgment and order dated 5<sup>th</sup> October, 2011 passed by the First Additional Sessions Judge, Baghpat in Sessions Trial No. 132 of 2008 (State Vs. Sultan) arising out of Crime No. 304 of 2007, under Sections 302, 504 I.P.C., Police Station-Singhawali Aheer, District Baghpat and in Sessions Trial No. 133 of 2008 (State Vs. Sultan) arising out of Crime No. 317 of 2007, under Section 25 Arms Act, Police Station-Singhawali Aheer, District-Baghpat, whereby the accused-appellant has been convicted and sentenced to undergo (i) life imprisonment for the offence under Section 302 I.P.C. with a fine of Rs. 50,000/-, in default thereof, he has to further undergo one year additional simple imprisonment, (ii) six months imprisonment for the offence under Section 504 I.P.C. and (iii) one year for the offence under Section 25 of the Arms Act, that all the sentences were to run concurrently.

2. We have heard Ms. Archana Singh, learned Amicus Curiae on behalf of the appellant and Mrs. Archana Singh, learned A.G.A. for the State as also perused the entire materials available on record.

3. The prosecution story, as transpired from the records of the present appeal, is as follows:

On the written report (Exhibit-Ka-1) given by the P.W.-1/informant Aflatoon son of Bunddu Darji, a first information report (Exhibit-Ka-4) has been lodged on 3<sup>rd</sup> November, 2007 at 10:30 a.m. against the accused-appellant, which was registered as Crime No. 304 of 2007 under Sections

302 and 504 I.P.C. In the said report, it has been alleged that on 3<sup>rd</sup> November, 2007 at about 09:00 a.m. in the morning, when the brother of the informant, namely, Jamil was coming to his house from Gher, on the way the accused-appellant met Jamil and said that he has separated his wife from him and started abusing him. After explaining that he is not responsible for the same, he came to his house. After that when the accused-appellant was on the roof of his house, he asked Jamil to come to his roof stating that his behavior with him earlier was wrong for which he was apologizing. Believing the accused Sultan, the brother of the informant i.e. Jamil reached roof/terrace of one Iliyash and the accused-appellant also came to roof/terrace of Iliyash, where the accused-appellant while talking him, took out a Katta (country-made pistol) and shot Jamil in his neck and fled. The time of occurrence was 09:30 a.m. and at that time the younger sister of the informant, namely, Hazra also went behind his brother Jamil on the terrace. The said incident occurred in her presence. The younger brother of the informant, namely, Vakeel had also seen the incident. The dead body of the informant was lying on the roof covered in blood and he had come to the Police Station for lodging the first information report. On registration of the said case, P.W.-6 Sub-Inspector Rajeev Kumar Kaushik after mentioning the said report in the General Diary, reached the place of occurrence on the identification of the informant. P.W.-6 has also recorded the statement of the informant along with other witnesses and prepared site plan. P.W.-6 has also recovered blood stained and plain earth from the place of occurrence and prepared recovery memo (Exhibit-Ka-12) on the same day i.e. 3<sup>rd</sup> November, 2007.

4. The inquest of the deceased was conducted on the same day at 1330 hours in the presence of P.W.-6 and the statements of witnesses were taken on the inquest report (Exhibit-Ka-2) by P.W.-6. The inquest witnesses opined that since the cause of death of the deceased was due to gun shot, the post-mortem was necessary.

5. Thereafter the dead body of the deceased was sealed and sent to Mortuary. The autopsy of the deceased was conducted on the same day i.e. 3<sup>rd</sup> November, 2007 at 04:10 p.m. by Dr. Yatish Kumar (P.W.-3). In the

opinion of P.W.-3, the cause of death of deceased Jamil was shock and haemorrhage due to following ante-mortem injuries:

*“(1) Gun shot wound of entry of size 1.75 cm. x 1.5 cm. on right side of neck just above the clavicle right side margins everted, tattooing present on the right side of the face and neck in the area of 13 cm x 11 cm.*

*(2) Gun shot wound of exist of size 2.5 cm. x 2 cm on the back just medial to right scapula upper inner border margins everted.*

*Injury no.1 and 2 are correspond to each other by prolong on resection blood vessels of right side of the neck are damaged due to injury no.1”*

6. The investigation proceeded and on 21<sup>st</sup> November, 2007, the accused-appellant was arrested from the tube-well of one Mool Chand Sharma and from whose possession a country-made pistol 315 bore, two live cartridges 315 bore and one empty cartridge of 315 bore have been recovered by the Police and in that regard the arrest-cum-recovery memo has been prepared by P.W.-5 (Exhibit-Ka-11). After completion of statutory investigation in terms of Chapter XII Cr.P.C., the Investigating Officer submitted the charge-sheet dated 2<sup>nd</sup> January, 2008 (Exhibit-Ka-13) against the accused-appellant. The Magistrate concerned took cognizance of the offence on the charge-sheet and as the case was triable by the court of sessions, committed the case to the court of Sessions Judge resultantly, the same were registered as Sessions Trial No. 132 of 2008 (State Vs. Sultan) arising out of Crime No. 304 of 2007, under Sections 302, 504 I.P.C., Police Station-Singhawali Aheer, District Baghpat and Sessions Trial No. 133 of 2008 (State Vs. Sultan) arising out of Crime No. 317 of 2007, under Section 25 Arms Act, Police Station-Singhawali Aheer, District-Baghpat.

7. On 3<sup>rd</sup> May, 2008, the learned Trial Court framed following charges against the accused-appellant for the offence under Sections 302 and 504 I.P.C.:

"मैं, एस.के.सिंह, प्रथम, अपर सत्र न्यायाधीश, बागपत, आप सुल्तान को निम्न आरोपो से आरोपित करता हूँ:-

1. यह कि दिनांक 03.11.07 को समय 9.30 बजे सुबह, स्थान, ग्राम रामनगर, कस्बा व थाना सिंघावली अहीर, जिला बागपत के क्षेत्राधिकार में आपने वादी के भाई जमील की गोली मारकर साशय हत्या कारित की और इस प्रकार आपने ऐसा अपराध कार्य किया है, जो कि भा०द०सं० की धारा 302 के अधीन दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।

2. यह कि उपरोक्त समय, दिनांक व स्थान पर आपने वादी के भाई जमील को इस साशय से अपमानित किया कि ऐसे प्रकोपन से वह लोक शान्ति भंग करेगा। इस प्रकार आपके द्वारा ऐसा अपराध कारित किया गया है, जो कि भा०द०सं० की धारा 504 के अधीन दण्डनीय है तथा इस न्यायालय के प्रसंज्ञान में है।

एतद्वारा आपको निर्देशित किया जाता है कि आपके विरुद्ध उक्त आरोपों का विचारण इस न्यायालय द्वारा किया जायेगा।"

8. On 3<sup>rd</sup> May, 2008, the court below has framed charge against the accused-appellant for the offence under Section 25 of Arms Act. For ready reference, the same reads as under:

"यह कि दिनांक 21/11/07 को समय करीब 20.15 बजे, स्थान-ग्राम लुहारा से ग्राम रामनगर कच्चा रास्ता मूल चन्द शर्मा की ट्यूबैल के पास जंगल ग्राम रामनगर, थाना सिंघावली अहीर, जिला बागपत से थाना सिंघावली अहीर की पुलिस द्वारा आप पकड़े गये तथा आपके कब्जे से एक तमंचा 315 बोर, दो जिन्दा व एक खोखा कारतूस 315 बोर के नाजायज बरामद हुये, जिनको अपने पास रखने के लिये आपके पास कोई वैधानिक अधिकार अथवा लाईसेंस नहीं था। इस प्रकार आपके द्वारा ऐसा अपराध कारित किया गया है, जो कि आयुद्ध अधिनियम की धारा - 25/27 के अधीन दण्डनीय है तथा इस न्यायालय के प्रसंज्ञान में है।

9. In order to prove its case, the prosecution also relied upon documentary evidence, which were duly proved and consequently marked as Exhibits. The same are catalogued herein below:-

"i). Written report dated 3<sup>rd</sup> November, 2007 prepared on the dictation of the informant-P.W.1 has been marked as Exhibit Ka -1 ;

ii). The first information report dated 3<sup>rd</sup> November, 2007 has been marked as Exhibit Ka-4;

iii). The inquest report dated 3<sup>rd</sup> November, 2007 has been marked as Exhibit-Ka-2;

iv). The post-mortem/autopsy report dated 3<sup>rd</sup> November, 2007 has been marked as Exhibit-Ka-3;

- v). Recovery memo of blood stained earth and plain earth prepared on 3<sup>rd</sup> November, 2007 has been marked as Exhibit Ka-12;
- vi) Site plan with index;
- vii). Recovery memo of country-made pistol, empty cartridge and live cartridges said to have been recovered on 21<sup>st</sup> November, 2009 has been marked as Exhibit Ka-11; and
- viii). Charge-sheet dated 2<sup>nd</sup> January, 2008 has been marked as Exhibit Ka-13.”

10. The prosecution also examined total nine witnesses in the following manner:-

- “i). P.W.-1/informant, namely, Aflatoon, brother of the deceased Jamil;
- ii). P.W.-2, namely, Vakil elder brother of the deceased and informant, who is alleged to be an eye-witness; ;
- iii) P.W.-3, namely, Dr. Yatish Kumar, who conducted autopsy of the deceased;
- iv) P.W.-4, namely, Head Constable-90 Ompal Singh, who proved the chik first information;
- v). P.W.-5, namely, Smt. Hazara sister of deceased and informant, who is also alleged to be an eye witness of the incident;
- vi). P.W.-6, namely, Sub-Inspector Rajiv Kumar Kuashik, who has investigated the case;
- vii). P.W.-7, namely, Sub-Inspector Kunwar Pal Singh, who has also investigated the case after P.W.-6;
- viii). P.W.-8, namely, Sub-Inspector Kapil Kumar Bhardwaj, who has also investigated the case before P.W.-6; and
- ix). P.W.-9, namely, Constable-1048 Kishan Singh, who has proved the original copy of first information report.

11. After recording of the prosecution evidence, the incriminating evidence were put to the accused-appellant for confronting with the same under Section 313 Cr.PC. In their statement recorded U/s 313 Cr.P.C. the accused appellant denied his involvement in the commissioning of the offence under Sections 302 and 504 I.P.C. Accused appellant Sultan has specifically stated before the trial court that he has been falsely implicated

in this case. He has further stated that the statement of the informant-P.W.-1 is false. Since P.W.-2 to P.W.-3, are the family members of the deceased and due to rivalry, they have given false statements against the accused-appellant. He has further stated that since P.W.-3 to P.W.-7 are government employees, therefore, they have given false statements against the accused-appellant. Though it has been stated before the court that evidence shall be produced in support of the plea of the defence that the accused-appellant has been falsely implicated, but no such evidence has been produced before the conclusion of trial. No witness has been adduced from the defence.

12. The trial court after relying upon the evidence adduced by the prosecution and recording its finding, has come to the conclusion under the impugned judgment of conviction that the prosecution has been able to fully prove that the accused-appellant committed the murder of Jamil on the roof of Iliyash. On the cumulative strength of the aforesaid, the trial court has held that the accused-appellant is guilty of offence punishable under Sections 302 I.P.C. and 504 I.P.C. for the murder of the deceased, namely, Jamil. As such, the trial court convicted and sentenced the accused-appellant for the aforesaid offences. The trial court has also held the accused-appellant guilty of the offence punishable under Section 25 of the Arms Act. It is against this judgment and order of conviction passed by the trial court that the present jail appeal has been filed on the ground that conviction is against the weight of evidence on record and against the law and the sentence awarded to the accused-appellant is too severe.

13. Assailing the impugned judgment and order of conviction, Ms. Archana Singh, learned Amicus Curiae appearing for the accused-appellant submits that the entire prosecution version is based upon the statement of P.W.-5. Since P.W.-5 in her examination has stated that she is resident of Police Station and District Baghpat, whereas P.W.-1 who happens to be the real brother of P.W.-5 has stated in his examination that P.W.-5 is resident of District-Ghaziabad, therefore, the recognition of P.W.-5 is doubtful. Further Ms. Singh submits that Nasiruddin, who is an independent eye witness of the incident and could narrate the incident correctly, has not been adduced by the prosecution nor any explanation in that regard has been given by the prosecution. Next submission is that

only interested witnesses i.e. P.W.-1, P.W.-2 and P.W.-5, who are real brothers and sister of the deceased have been adduced by the prosecution and no independent witness has been adduced, such evidence of prosecution has no value under the Evidence Act. Argument is that though the Investigating Officer (P.W.-6) has prepared the site plan, but the trial court has not examined the same correctly so as to reach a just conclusion. Further argument is that nobody was present at the place of incident, meaning thereby that neither P.W.-2 nor P.W.5 saw the incident with their own eyes. It is also urged that since the deceased was a person with bad character, as is evident from the cross-examination of P.W.-1, P.W.2 and P.W.-5, therefore, it is possible that his murder was committed by someone else. There is no single iota of evidence available on record to prove the motive of the case.

On the cumulative strength of the aforesaid, learned counsel appearing for the accused-appellant submits that the impugned judgment and order of conviction cannot legally be sustained and is liable to be quashed.

14. On the other-hand, Mrs. Archana Singh, learned A.G.A. for the State, supporting the judgment and order of conviction, submits that the first information report has been lodged promptly naming the accused person; there is clinching evidence to support the prosecution's case; the incident in which the deceased Jamil is alleged to have been murdered by the accused-appellant, occurred at 09:30 a.m. i.e. in broad day light; there are two eye witnesses of the alleged incident; the places of occurrence has not been disputed by the defence; and the accused-appellant has strong motive and the same has also been explained by the evidence of prosecution. Therefore, the prosecution has proved the charge levelled against the accused-appellant beyond reasonable doubt.

15. To bolster the aforesaid submissions, learned A.G.A. has invited the attention of the Court to the latest judgment of the Apex Court in the case of **Mekala Sivaiah vs. State of Andhara Pradesh** reported in *2022 SCC Online SC 887*, whereby the Apex Court *in paragraph nos.25 and 26* has held as follows:

*“25. The facts and evidence in present case has been squarely abefornalyzed by both Trial Court as well the High Court and the same can be summarized as follows:*

*i. The prosecution has discharged its duties in proving the guilt of the appellant for the offence under Section 302 I.P.C. beyond reasonable doubt.*

*ii. When there is ample ocular evidence corroborated by medical evidence, mere non-recovery of weapon from the appellant would not materially affect the case of the prosecution.*

*iii. If the testimony of an eye witness is otherwise found trustworthy and reliable, the same cannot be disbelieved and rejected merely because certain insignificant, normal or natural contradictions have appeared into his testimony.*

*iv. The deceased has been attacked by the appellant in broad daylight and there is direct evidence available to prove the same and the motive behind the attack is also apparent considering there was previous enmity between the appellant and PW-1.*

*26. Having considered the aforesaid facts of the present case in juxtaposition with the judgments referred to above and upon appreciation of evidence of the eyewitnesses and other material adduced by the prosecution, the Trial Court as well as the High Court were right in convicting the appellant for the offence under Section 302 I.P.C. Therefore, we do not find any ground warranting interference with the findings of the Trial Court and the High Court.”*

*(Emphasis added)*

On the cumulative strength of the aforesaid submissions, learned A.G.A. submits that as this is a case of direct evidence, the impugned judgment and order of conviction does not suffer from any illegally and infirmity so as to warrant any interference by this Court. As such the present jail appeal filed by the accused appellants who committed heinous crime by murdering the deceased Jamil, is liable to be dismissed.

16. We have considered the submissions made by the learned counsel for the parties and have examined the original records of the court below as well as the impugned judgment and order of conviction challenged before us.

17. The only question which is required to be addressed and determined in this jail appeal is whether the conclusion of guilt arrived at by the learned trial court and the sentence awarded is legal and sustainable under law and suffers from no infirmity and perversity.



18. Before entering into the merits of the case set up by the learned counsel for the appellant and the learned A.G.A. for the State qua impugned judgment and order of conviction passed by the trial court referred to above, it is desirable for us to record statements of the prosecution witnesses in brief.

19. P.W.-1/Informant, namely, Aflatoon brother of the deceased has reiterated the same facts as have been narrated in the first information report and in the statement recorded under Section 161 Cr.P.C. In his examination he has stated that he did not see the incident, after hearing gunshots he reached the place of occurrence, where he saw that the deceased was lying dead on the roof. He has further stated that at the time of incident, P.W.-2 was standing on the ground below the roof of Iliyash and P.W.-5 was standing on the roof of her house. They saw the incident with their own eyes. He has also stated that the altercation which took place between the accused-appellant and the deceased at 09:00 a.m. on the same day was seen by him. It has also been stated that the name of the wife of the accused-appellant is Hasina. The accused-appellant has three children. The accused-appellant got divorced from his wife eight to nine months before the incident. There is no relationship with Hasina either of his family or himself nor is there any reconciliation between their family. He has also stated in his cross-examination that the Iliyash has two houses. Iliyash lives in another house and in the house of which roof the incident occurred, he keeps his buffaloes. The house of the accused is adjacent to the said house of Iliyash. The roof of Iliyash's house is below the roof of the accused's house but the roofs of porches of their houses are same in the height. In the cross-examination, P.W.-1 has stated that it is wrong to say that Jamil used to flirt with Iliyash's wife and because of that flirting, Iliyash got Jamil killed by unknown people.

20. P.W.-2 Vakil has stated that the deceased Jamil was his younger brother. Accused-appellant is his cousin brother (son of sister of his father). The accused appellant was having quarrel with his wife Haseena. There was no relation between the deceased Jamil and Haseena but the accused-appellant used to think that his wife Haseena had illegitimate relation with the deceased. On 21<sup>st</sup> October, 2007, the deceased got

married and in the said marriage Rukhsana, brother in law's wife (sarhaj) of his brother Ali Sher had come. The accused-appellant thought that she is his wife Haseena. On 02.11.07, the accused-appellant came to his house and asked his father to get his wife Haseena and in reply the father of P.W.-2 told him that when he has divorced his wife six to eight months ago, why would she come now. After that the accused-appellant went back to his house. On 03.11.07, the brother of P.W.-2, namely, Jamil was going to his house, then on the way the accused-appellant met him and asked the deceased to get his wife or else it will not be good. On the persuasion of the deceased, the accused-appellant went back. However, at 9:30 a.m. in the morning, when P.W.-2, the deceased and P.W.-5 were standing on the vacant land in front of their house the accused-appellant came on his terrace and told the deceased that as the deceased was son of his maternal uncle and he misbehaved with him, he asked the deceased to come on his terrace expressing remarks. Hearing this, the deceased went to the roof of accused-appellant. When the deceased was two steps away from accused-appellant, he took out the country made pistol (katta) while threatening. Seeing the pistol, the deceased tried to turn back and run away, then the accused-appellant shot the deceased which hit him in the back of the neck and he died on the spot. On hearing the sound of bullet, when he reached the terrace, and that he saw the accused-appellant running away after shooting him. The accused-appellant stepped out of his house and ran away. In the cross-examination, P.W.-2 has stated that about the incident, his statement has been recorded by the Investigating Officer. He has further stated that the accused-appellant thought that the deceased had illegitimate relations with his wife Haseena. P.W.-2 has also denied in his cross-examination that the deceased was murdered by unidentified persons because of his vagabondage and that the accused-appellant has been falsely implicated with the intention of grabbing money.

21. P.W.-3 who conducted the autopsy of the deceased, has stated that the injury No.2- found on the body of the deceased was gunshot wound of exit of size 2.5cm x 2cm on the back just medial to scapula upper inner border, margins everted. He has further stated that inquiry No.1 and No.2 are correspond to each other. Blood vessels of right side of the neck are

found to be damaged at the incision of the wound. Further he has submitted that on internal examination, large vessels of blood were found mutilated on the right side of the neck of the dead body. The cause of death of the dead body is likely to be about (6) six hours before the time of post-mortem due to excessive trauma and bleeding. P.W.3 has proved the autopsy report which has been marked as Exhibit-Ka-3. Lastly, P.W.-3 has stated that the deceased was hit by the bullet from the front right side.

22. P.W.-4 Head Constable-90 Ompal Singh has stated that he has written the first information report and he has also proved the chik first information report before the court below.

23. P.W.-5 Hazara has stated in her examination that on the day of the incident, at around nine o'clock in the morning, the accused-appellant had called his brother i.e. deceased from his terrace and the deceased went to Iliyas's terrace and that she also went there with him. The accused-appellant had also come from his roof to the terrace of Iliyas. After coming there, the accused-appellant said the deceased that due to his behaviour he suffered a lot earlier but will not suffer more. After saying this, the accused-appellant took out a country made pistol and shot the deceased and that the deceased had died after being shot. He was shot in the lower part of his right neck and after shooting him, Sultan fled from the spot. P.W.-5 has further stated that she used to go to her maternal home mostly for a day or two as her children were in school. She has further stated that she and the deceased were present at home for almost an hour on the day of the incident. When the accused-appellant called her brother i.e. the deceased from the terrace, she did not stop him. She was two steps away from the deceased when he was shot. The accused-appellant shot the deceased from a distance of two steps. The deceased was standing with his hands folded when the bullet was fired. The accused-appellant had shot saying that earlier he (deceased) was saved and he will not leave him today. The deceased had fallen as soon as he was shot. P.W.-5 could not save him as she was behind while shooting. The deceased died after falling. The head of the deceased was towards the west and the feet were towards the east. The deceased was wearing a grey colored pant. P.W.-5 has also stated that her brother i.e. informant went to Baghpat on the day

of the incident. She has also stated that her statement has been recorded by the Investigating Officer. P.W.-5 has again stated that the accused-appellant from a height of one yard, shot the deceased.

24. P.W.-6 Sub-Inspector Rajiv Kumar Kaushik, who has initially investigated the case, has stated that on an information of an informer, he along with other Police personnels and informant reached the Tube-well of one Mool Chand Sharma, where the accused-appellant was hiding and arrested him. P.W.-6 has further stated that one country-made pistol of 315 bore, one empty cartridge and two live cartridges of 315 bore have also been recovered from his possession. P.W.-6 has also prepared Arrest and Recovery memo which has been marked as Exhibit-Ka-11. He has further stated that the recovery memo of plain and blood stained soil collected from the spot by him has been prepared by him as Exhibit-Ka 12. P.W.-6 has also proved the site plan prepared by him. He has then stated that the roofs of the accused-appellant and the house Iliyas have been found to be adjoining.

25. P.W.-7 Sub-Inspector Kunwar Pal Singh who has investigated the case after P.W.-6, has proved the charge-sheet. P.W.-8 Sub-Inspector Kapil Kumar Bhardwaj, who has investigated the case under Section 25 Arms Act and submitted the charge-sheet before the court below and proved the same as P.W.8.

26. From the testimony of the aforesaid nine prosecution witnesses, it is apparently clear that there are two eye witnesses of murder of the deceased Jamil, namely, Vakil (P.W.-2) and Smt. Hazra (P.W.-5) and they have fully supported the prosecution version. It is no doubt true that they being brother and sister of informant and deceased, are interested witnesses but their consistent statements made under Section 161 Cr.P.C., in their examination-in-chief as well as in their cross-examination, cannot be discredited only on the ground that they are interested witnesses. The same is required to be read as a whole prosecution evidence i.e. autopsy report, police reports including recovery memo of arrest of the accused-appellant, country-made pistol of 315 bore, one empty cartridge and two live cartridges of 315 bore from his possession and the site plan of the spot etc.

27. For examining the correctness or otherwise of the judgment and order of conviction, the version of prosecution as well as defence and the submissions made by the learned counsel for the parties, it is necessary for us to refer certain case laws laid down by the Apex Court on the subject.

28. In the case of **Kartik Malhar V State of Bihar** reported in *1996 CRL. L.J. 889*, the Apex Court has held as under:-

*"We may also observe that the ground that the witness being a close relative and consequently, being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case, AIR 1953 SC 364 in which this Court expressed its surprise over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses."*

29. The Apex Court in the case of **State of U.P. Vs. Kishan Chand & Others** reported in *(2004) 7 SCC 629*, has opined that just because the witnesses are related to the deceased would be no ground to discard their testimony, if otherwise, their testimony inspire confidence. (Reference-paragraph nos. 9 and 10 of the aforesaid judgment of the Apex Court).

30. The Apex Court in the case of **State of Jammu and Kashmir vs. S. Mohan Singh & Others** reported in *(2006) 9 SCC 272*, the Apex Court has observed that it is well settled that in a murder trial, merely because a witness is interested or inimical, his evidence cannot be broadly discarded unless the same is otherwise found to be not trustworthy. In the said case, the view of the Apex Court was that the evidence of these two witnesses is credible more so when witness Ram Lal received injuries. For ready reference, relevant paragraph of the said judgment reads as follows:

*"Other two eyewitnesses are the informant Ram Lal and his brother Babu Ram. Ram Lal is father of deceased Yush Paul Singh whereas witness Babu Ram is uncle of deceased Yush Paul Singh. These two witnesses have supported the prosecution case disclosed in the first information report in all material particulars and consistently stated that respondent No. 1 caught hold of the deceased and respondent No. 2 inflicted injuries upon him with knife. We have been taken through the evidence of these two eyewitnesses in extenso. Their evidence is quite consistent, natural and both the witnesses have stood the test of lengthy*

*cross-examination broadly by the defence. Out of these two witnesses, Ram Lal was the informant and an injured witness as the doctor who examined him on the date of occurrence itself found that he received injuries by hurling of stone. Nothing could be pointed out on behalf of defence to show that the evidence of these two eyewitnesses is not credible, excepting this that they were interested witnesses. The High Court was not justified in disbelieving them on the sole ground that they were interested persons. It is well settled that in a murder trial, merely because a witness is interested or inimical, his evidence cannot be discarded unless the same is otherwise found to be not trustworthy. In the present case, we are of the view that the evidence of these two witnesses is credible more so when witness Ram Lal received injuries....."*

*(Emphasis added.)*

31. Further in **Namdeo V State of Maharashtra**, reported in (2007) 14 SCC 150, the Apex Court held as under:-

*"In the leading case of Shivaji Sahebrao vs. State of Maharashtra, (1973) 2 SCC 793, this Court held that even where a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration. "It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs." In Anil Phukan Vs. State of Assam, (1993) 3 SCC 282 : JT 1993 (2) SC 290, the Court observed; "Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect."*

32. In the case of **Shyam Babu V State of UP** reported in AIR 2012 SC 3311, The Apex Court has held as under:-

*"Where the presence of the eye-witnesses is proved to be natural and their statements are nothing but truthful disclosure of actual facts leading to the occurrence, it will not be permissible for the Court to discard the statement of such related or friendly witnesses. There is no bar in law on examining family members or any other person as witnesses. In fact, in cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. If the statement of witnesses, who are relatives or known to the parties affected is credible, reliable, trustworthy and corroborated by other*

*witnesses, there would hardly be any reason for the court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party or friend etc"*

33. It has again been observed by the Apex Court in the case of **Kuna @ Sanjaya Behera V State of Orrisa**, reported in *2017 SCC Online Supreme Court 1336* that the conviction can be based on the testimony of single eye witness if he or she passes the test of reliability and that it is not the number of witnesses but the quality of evidence that is important.

34. From the above mentioned pronouncements of the Apex Court, it is apparently clear that the evidence of interested or inimical witnesses is to be scrutinised with care but can not be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in relying on the said evidence. It is well settled that interested evidence is not necessarily unreliable evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. 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.

35. It is settled law that in case of direct evidence the motive would not be relevant and only in case of circumstantial evidence, motive assumes great significance. In a case in which the evidence is clear and unambiguous and the circumstances proved the guilt of the accused, the same would not get weakened even if the motive is not a very strong one. The motive loses all its importance in a case where direct evidence of eye witnesses is available.

36. In **Suresh Chandra Bahri Vs. State of Bihar** reported in *1995 Supp (1) SCC 80*, the Apex Court has opined that a motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with.

37. In the present case motive as well as direct evidence of two eye witnesses i.e. P.W.-2 and P.W.5 are available. From the records, it is apparent that before half an hour i.e. at about 09:00 a.m. on the date of incident, an altercation took place between the deceased Jamil and the accused-appellant in which the accused-appellant also abused Jamil on the ground that the accused-appellant suspected that his wife Haseena had love affair with the deceased and that is why she took divorce from him and the said relationship between his wife and the deceased was still continued. For the said reason the accused-appellant was angry with the deceased and wanted to take revenge from him. Therefore, it is clear that the accused-appellant had the motive to murder the deceased.

38. Before coming to the conclusion, it is necessary for us to deal with the submissions made by the learned Amicus Curiae, appearing for the accused-appellant and the learned A.G.A. for the State for litmus test. The first submission that the presence of P.W.-5 sister of deceased and informant is doubtful when as a matter of fact, the entire prosecution case is based on her statement, does not appeal to us. We may record that in the examination in chief as well as in the cross-examination, P.W.-5 has stated that she used to go to her maternal home mostly for a day or two days as her children were studying in school. The said submission has also been supported by P.W.-2. She has further stated that at the time of incident, informant was not present as he went to Baghpat and just after the incident, he reached the spot. The same version is also reiterated by P.W.-2. The other evidence also supports the presence of P.W.-5 at the time and place of incident.

39. The next submission made by the learned counsel for the appellant that one Nasiruddin who is an independent witness of incident, who could narrate the correct facts regarding incident, has not been adduced by the prosecution nor any explanation has given for the same by the prosecution, also does not appeal to us. If it is assumed as per the defence that that Nasiruddin is an independent witness of the incident but if he does not want to testify then he cannot be compelled to testify. Even if the defence believed that Nasiruddin was an independent witness who could give correct information about the incident, during the course of trial,



the defence should have adduced him as defence witness but it failed to do the same.

40 The submission of the learned Amicus Curiae that since the P.W.-1, P.W.-2 and P.W.-5, who being real brothers and sister of the deceased, are interested witnesses, therefore, their testimony has no value, does not inspire confidence. It is no doubt true that the informant-P.W.-1 and eye witnesses i.e. P.W.-2 and P.W.-5 are real brothers and sister of the deceased but where the presence of the eye-witnesses is proved to be natural and their statements are nothing but truthful disclosure of actual facts leading to the occurrence, it will not be permissible for the Court to discard the statement of such related or friendly witnesses. There is no bar in law on examining family members or any other person as witnesses.

41. The next contention advanced by the learned Amicus Curiae that neither P.W.-2 nor P.W.5 was present at the time and place of occurrence counsel, does not impress us. From the prosecution evidence, the presence of P.W.-2 and P.W.5 has been proved.

42. The last submission made by the learned Amicus Curiae is that since the deceased was a vagabond person, therefore, it was quite possible that deceased was murdered by unidentified persons because of his vagabondage and that the accused-appellant has been falsely implicated with the intention of grabbing money, does not impress us. No evidence or material has been led by the defence to prove that the deceased was a vagabond person and as to why the accused-appellant has been falsely implicated.

43. From the aforesaid facts, which have been noted herein above, we find substance in the submissions made by the learned A.G.A. that this is a case of direct and clinching evidence like two eye witnesses of the incident, namely, P.W.-2 and P.W.-5. The medical evidence fully supports the prosecution evidence. The incident occurred in broad day light i.e. at 09:30 a.m. The first information report lodged by the informant is prompt, which was lodged within a hour of the incident i.e. 3<sup>rd</sup> November, 2007. The accused-appellant had also motive to commit such offence. The incident and the place of incident were not disputed by the defence side.

44. As already discussed above, we find that both the eye-witnesses i.e. P.W.-2 and P.W.5 have satisfactorily explained about their presence at the places of occurrence. They were subjected to lengthy cross-examination but nothing could be elicited to discredit their testimony. The police documents and statements of Investigating officer including arrest of accused-appellant and recovery of country-made pistol along with cartridges from his possession as well as medical evidence fully support the prosecution version.

45. Taking cumulative effect of the evidence, we are of the view that the trial court was fully justified in convicting the appellant. Accordingly, we confirm the order of trial court.

46. The appeal has no substance and the same is **dismissed**. The appellant is reported to be on bail. His bail bonds stand cancelled and he be taken into custody for serving the remaining sentence.

47. The dismissal of this criminal appeal however shall not prejudice the rights of the accused-appellant to apply for remission, which shall be dealt with in accordance with law on merits.

48. We record our appreciation for the able assistance rendered in the case by Ms. Archana Singh, learned Amicus Curiae, who would be entitled to her fee from the High Court Legal Service Authority.

49. Let a copy of this judgment be sent to the Chief Judicial Magistrate, Baghpat, who shall transmit the same to the Jail Superintendent concerned for information of the accused-appellant henceforth.

(Shiv Shanker Prasad, J.)

(Ashwani Kumar Mishra, J.)

**Order Date :-30.9.2022**

Sushil/-