

Neutral Citation No. - 2023:AHC:116734-DB
A.F.R.
RESERVED

Court No.3

Case :- CRIMINAL APPEAL No. - 4774 of 2016

Appellant :- Veerpal And 2 Others

Respondent :- State of U.P.

Counsel for Appellant :- Rajiv Lochan Shukla, Ankur Singh
Kushwaha, Bhishm Pal Singh, J.B. Singh, Jai Prakash Singh, Rudra Pratap
Mishra

Counsel for Respondent :- G.A., Pradeep Kumar Bhardwaj

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Jayant Banerji, J.

1. This criminal appeal arises against the judgment of conviction and sentence dated 31.08.2016 passed by the First Additional Sessions Judge, Gautam Budh Nagar in Sessions Trial No. 248 of 2013 (State of U.P. Vs. Veerpal and three others) arising out of Case Crime No.1007 of 2012 under Sections 147, 302/149 IPC, P.S. Kasna, District Gautam Budh Nagar, whereby, all the appellants have been convicted for offences under Sections 147, 302/149 IPC and sentenced to go one year rigorous imprisonment under Section 147 IPC and to undergo life imprisonment and fine of Rs. 10,000/- each under Section 302/149 IPC and in default of payment of fine one year of additional imprisonment has been awarded. All the above mentioned sentences have been directed to run concurrently.

2. An FIR (**Exhibit Ka-2**) was lodged on 16.11.2012 on the basis of information (**Exhibit Ka-1**) received on that day at 22:30 hours bearing FIR No.786 under Sections 147/302, 34 I.P.C., Police Station-Kasna, District Gautam Budh Nagar. The informant, Vedpal s/o Shobha Ram r/o Village-Chuhadpur, Police Station-Kasna, District Gautam Budh Nagar, stated that on the previous day, that is 15.11.2012, there was an altercation between Ved Prakash @ Kalu with Pammi @ Ram Autar s/o

Veerpal and they had a fight, and with that ill feeling, on 16.11.2012 at 8:30 p.m. in the night, Veerpal and his brother Kalu @ Balraj and his sons namely Pammi @ Ram Autar and Bhura and two other people came in their Swift car and one Pulsar motorcycle to the shop of his brother Ved Prakash @ Kalu when his brother was sitting in his shop. Immediately on coming, Veerpal hurled abuses and said kill Ved Prakash and he should not escape. To save his life, his brother ran towards the highway and Veer Pal and his brother Kalu @ Balraj, Pammi @ Ram Autar and Bhura, chased him to the open space near his shop and caught him and, they assaulted him with knives and belt, due to which his brother fell on the spot. On hearing shouts, the complainant and his brother Chetram, Devendra, Mahendra, Sahamal ran to save him, but seeing them approach, those people fled away on their Swift car and motorcycle. It was stated that his brother's corpse was lying at the site.

3. An inquest report (**Exhibit Ka-3**) was prepared on 17.11.2012 and a postmortem examination was conducted and a report (**Exhibit Ka-4**) was also prepared on the same day. The complainant P.W.- 1 proved his written complaint (**Exhibit Ka-1**). The FIR (**Exhibit Ka-2**) was proved by the P.W.-2, Balraj Singh, the FIR writer. The inquest report (**Exhibit Ka-4**) was proved by P.W.-6, Anand Pal Singh, the Inspector who conducted the inquest. The postmortem report was proved by P.W.-4, Dr. Sant Ram Verma, who had conducted the postmortem examination. The inquest was concluded on 17.11.2012 at 2:00 a.m. in the presence of five witnesses. The inquest report reflects that on receiving the information regarding the incident and that the corpse of Ved Prakash was lying on the road, the officer who conducted the inquest noted that for want of light at the site and in order to maintain law and order, as per directions of the Station House Officer, the corpse of the deceased was sent by a police vehicle to Kailash Hospital for the inquest. The opinion of the witnesses to the inquest was that the deceased-Ved Prakash was murdered by causing knives wounds and that a postmortem examination be conducted.

The postmortem examination was conducted on 17.11.2012 at 2:00 p.m. by the P.W.-4 and the following injuries were noted :-

- i. Incised wound size 3 X 2 cm cavity deep present on right axilla.
- ii. Incised wound size 3 X 3 cm bone deep present on right upper arm medially and situated 2 cm below right axilla.
- iii. Incised wound size 6 X 4 cm X bone deep present on right upper arm situated 12 cm below right shoulder acromion joint.
- iv. Incised wound size 14 X 4 cm X muscle deep present on right elbow joint medially.
- v. Incised wound size 6 X 4 cm X bone deep present on right elbow joint laterally.
- vi. Incised wound size 3 X 1 cm X cavity deep present on back of left lower abdomen situated 2 cm above the iliac crest.

4. It was noted in the postmortem report that brain was congested and the right lung was lacerated on three sides. There was blood in the right lung and the left lung was congested. Right chamber of the heart was filled with blood and the left chamber was empty. There was 100 ml. Liquid in the stomach. The time since death was noted to be about $\frac{3}{4}$ days. The cause of death was mentioned as hemorrhage and shock as a result of the wounds.

5. A recovery memo dated 19.12.2012 (**Exhibit Ka-8**) reflects recovery of two weapons on the pointing of each of the two accused, namely Veerpal and Kalu @ Balraj. Another recovery/arrest memo dated 20.11.2014 (**Exhibit Ka-9**) reflects that Pammi @ Ram Autar s/o Veerpal was arrested on whose pointing out a knife was recovered. Another recovery-cum-arrest memo dated 02.12.2012 (**Exhibit Ka-10**) reflects the arrest of one Om Kumar @ Omi, on whose pointing out a knife was

recovered. Yet, another recovery memo dated 23.12.2012 (**Exhibit Ka-15**) reflects that on the pointing out of accused-Sumit @ Bhura, a knife was recovered. On 17.11.2012 from the site of the incident, bloodstained soil was taken and sealed. Normal soil of a nearby area was also taken in a different box and sealed. This recovery memo is **Exhibit Ka-17**. The aforesaid Exhibit Ka-8, Exhibit Ka-9 and Exhibit Ka-10 were proved by P.W.-6, Anang Pal Singh, Inspector, and Exhibit Ka-15 and Exhibit Ka-17 were proved by P.W.-9, Shyama Kant Tripathi, the Investigating Officer. A site plan dated 17.11.2012 (**Exhibit Ka-11**) was prepared by Shyama Kant Tripathi, Inspector-in-Charge, Kotwali, Kasna, District Gautam Budh Nagar who also prepared the site plans of the recovery of weapons used for murder bearing **Exhibit Ka-12, Exhibit Ka-13, and Exhibit Ka-14**, which were proved by him. On record is a report of the Forensic Science Laboratory, U.P., Agra dated 21.06.2014 (**Exhibit Ka-19**). After conducting the investigation, the Investigating Officer filed a charge-sheet dated 30.12.2012 (**Exhibit Ka-18**), which was proved by the P.W.-9, under Sections 147, 302 and 34 I.P.C, implicating the five accused, namely Veerpal, Kalu @ Balraj, Pammi @ Ram Autar, Bhura @ Sumit and Om Kumar @ Omi.

6. On 06.09.2013, the First Additional Sessions Judge, Gautam Budh Nagar charged four of the accused namely, (1) Veerpal, (2) Kalu @ Balraj, (3) Pammi @ Ram Autar, and (4) Om Kumar @ Omi under the provisions of Section 147 and 302/149 I.P.C. It appears that one of the accused namely, Bhura @ Sumit was tried by a Juvenile Court in separate proceedings.

7. The complainant/ eye-witness, Ved Pal (**P.W.-1**), testified on 20.11.2013 and again, pursuant to a recall application filed by the defense, on 17.01.2014. He supported the case of the prosecution as an eye-witness of the incident. **P.W.-3**, Mahendra, deposed on 09.01.2014 and on that day, he supported the case of the prosecution. However, when he again testified on 15.10.2015, he turned hostile and whereafter, he was

cross-examined by the Additional District Government Counsel (Criminal).

8. On 24.02.2015, Chetram (**P.W.-5**), the brother of the deceased, gave his deposition and denied having witnessed the incident. Since he turned hostile, he was cross-examined by the ADGC (Criminal).

9. Another witness, Devendra (**P.W.-7**), deposed on 10.03.2015, turned hostile and was cross-examined by the ADGC (Criminal)

10. Another eye-witness, Shahmal, (**P.W.-8**), who deposed on 14.12.2015, also turned hostile and was cross-examined by the ADGC (Criminal).

11. Statements under Section 313 of the Code of Criminal Procedure, 1973¹ of all the four accused were recorded on 20.05.2016 wherein they denied their culpability and said that a false case was set up against them due to factions in the village and for exacting revenge.

12. After hearing the learned counsel for the prosecution and the defence, the assailed judgment dated 31.08.2016 was passed whereby the accused Omi @ Om Kumar was given the benefit of doubt and was acquitted. As far as the accused Veerpal, Kalu @ Balraj and Pammi @ Ram Autar are concerned, the charges against them were found to be proved beyond any doubt and they were sentenced to imprisonment and fine.

13. Shri V.P. Srivastava, learned Senior Advocate assisted by Shri J.P. Singh, learned counsel for the appellants, submitted that the prosecution has placed reliance on the testimonies of P.W.-1 and P.W.-3. It is submitted that all the accused were allegedly armed with knives who had given knife blows to the deceased. It is submitted that the P.W.-1 and P.W.-3 were not present at the time of incident and in any view of the matter, they were chance and partisan witnesses being relatives of the deceased and, therefore, their testimonies have to be seen very cautiously

¹ Cr.P.C.

by the court. It is urged that as per the FIR, the deceased took his last breath at the site of the incident which is corroborated by the FIR, but the inquest was admittedly done at Kailash Hospital, Gautam Budh Nagar and the inquest memo was proved by the P.W.-6. It is submitted that in the inquest report, there is overwriting on the date of inquest and it is reflected therein that there was insufficient light on the spot and also to maintain law and order, under orders of the SHO, the P.W.-6 carried the dead body in a police vehicle to Kailash Hospital where the inquest was conducted. It is contended that there is no valid reason for conducting the inquest at a place other than the site of the incident. It is urged that as per the prosecution case itself, there was ample light at the site and as per Regulation 132 of Chapter-XII of the U.P. Police Regulations read with Section 174 Cr.P.C., the police was required to conduct the inquest at the site. The learned counsel has stated that the P.W.-6 has failed to specify the time of commencement of the inquest. It is stated that the only plausible reason for transfer of the deceased to Kailash Hospital was that the deceased was alive when the P.W.-6 visited the site and he rushed to him to the Hospital accordingly.

14. It is further urged by the learned counsel for the appellants that as revealed in the FIR, the deceased was also assaulted with a belt, but there is no allegation that belt was tied on the neck of the deceased. It is submitted that in the entire postmortem report, there is no injury that can be said to be caused by a belt. It is stated that Pammi @ Ram Autar was arrested on 20.11.2012 and a knife was recovered on his pointing out that was hidden underground. Om Kumar @ Omi was arrested on 02.12.2012 and a knife was recovered on his pointing out from a bush near the underpass. Bhura @ Sumit (who was a juvenile) was arrested on 20.03.2012 and on his pointing out, the knife was recovered from Zero Point from a bush. All these recovered knives were blood stained and blood on them was found disintegrated as reflected in the report of the Forensic Science Laboratory. The two other accused Veerpal and Kalu were arrested on 19.12.2012 and one knife each was recovered from near

a shop and from a bush on which no bloodstains were found. These recoveries, it is submitted, have been made purportedly under Section 27 of the Indian Evidence Act, 1872.

15. The learned counsel for the appellants has referred to the site plan (Exhibit Ka-11) and submitted that the Investigating Officer has not shown where the P.W.-1 and P.W.-3 and other witnesses were present at or during the incident. He states that even the FIR is silent as to where the witnesses were present. The postmortem report reflects six injuries of which, five wounds were found on the right side and one wound is on the left side of the deceased. While referring to the report of Serologist (Exhibit Ka-19), the learned counsel for the appellant has stated that the bloodstains that were found on the exhibit reflect that other than the item nos.1, 2, 3 and 4 (which are pant, shirt, underwear and handband [kalava]), none of the bloodstains found on the other item have been identified as human blood. It is contended that the consequence of this is in favour of the defence.

16. Learned counsel for the appellants has referred to the provisions of Sections 25, 26 and 27 of the Indian Evidence Act, 1872 to contend that the word 'deposed' appearing in Section 27 denotes words "taken down in writing" which are the actual words spoken by accused in the presence of the two independent respectable witnesses who would sign on that deposition. It is stated that it is evident from the recovery memos of each of the alleged weapons of murder, namely knives, that it is not in accordance with the procedure prescribed for taking the deposition of the accused persons. Therefore, in the absence of such a deposition appearing in the recovery memos, no proof of the alleged confession is permissible. In support of his contentions, the learned counsel for the appellants has referred to the judgments of the Supreme Court in the case of **Subramanya vs. State of Karnataka²; Ramanand @ Nandlal Bharti**

2 2022 SCC Online SC 1400; AIR 2022 SC 5110

vs. State of U.P.³ and the judgment of the Privy Council in the case of **Pulukuri Kottaya & Ors. vs. The King Emperor**⁴.

17. On the issue of testing the veracity of the evidence of the P.W.-1 and P.W.-3, it is submitted by the learned counsel for the appellants that they are partisan and chance witnesses and their testimonies have to be strictly and carefully considered in view of the judgments of the Supreme Court in the case of **Harjinder Singh @ Bholu vs. State of Punjab**⁵ (Paras 6 and 14) and in the case of **Ganapathi & Anr. vs. State of Tamil Nadu**⁶. It is contended that in view of the facts and circumstances, the accused deserve to be acquitted.

18. On behalf of the State, it has been urged by Shri Rupak Chaubey, learned Additional Government Advocate that for proving the offence, the prosecution has to prove (i) the place of occurrence; (ii) time of incident; and (iii) the participation of the accused. It is submitted that subsequent events that do not directly affect the outcome of the investigation, may not be looked into by the courts.

19. It is submitted by the learned AGA that the General Diary entry and FIR were duly proved by the P.W.-2. With regard to the inquest report, it is submitted that the purpose of inquest is only to assess the apparent cause of death and for no other reason. Certain minor irregularities appearing in the inquest report would have no affect on the merit, where other aspects are proved. It is contended that the witnesses turned hostile for the first time only in the year 2015 whereas the deposition of the witnesses had started in the year 2013. It is urged that the P.W.-1 is not a partisan witness but he is a related witness. P.W.-1 is not a chance witness inasmuch as the usage of the road and time is regular for the P.W.-1. The village of the P.W.-1 is near the site of the incident and, therefore, it was natural for him to visit. It is contended that no adverse suggestion/leading question was put to the P.W.-1 by the defence. Learned AGA has referred

3 2022 SCC Online SC 1396; AIR 2022 SC 5273

4 AIR (34) 1947 Privy Council 67

5 (2004) 11 SCC 253

6 (2018) 5 SCC 549

to the testimony of P.W.-7 who was examined as a prosecution eyewitness who turned hostile later, to contend that this witness has testified having seen the dead body of the deceased at the site. It is contended that the postmortem report corroborates the testimony of the P.W.-1. It is submitted by the learned AGA that the FIR was promptly lodged and the accused persons were named. It is submitted that the time of incident took place in the winter season and, therefore, it is quite unlikely that belt injury marks would appear due to clothes worn by the deceased. It is urged that in any view of the matter, it is a minor contradiction which would have no bearing on the case of the prosecution. It is stated that there is no material discrepancy in the testimony of the P.W.-1. It is further stated that suggestion put to the witness regarding his presence would have no bearing as it does not affect the merit of the case.

20. It is further urged by the learned AGA that P.W.-3 is also a natural witness as he regularly passed that way. Two of the witnesses went to lodge the FIR. It is submitted that the benefit of Section 27 of the Indian Evidence Act may not be available to the prosecution but other facts that are material to ensure conviction of the accused have been duly proved. While referring to the provisions of Section 134 of the Evidence Act, the learned AGA has submitted that even one witness is sufficient to prove the case of the prosecution and the P.W.-1 has proved the case of the prosecution.

21. The point that arises for consideration is that whether the prosecution has been able to prove the guilt of the accused beyond reasonable doubt.

22. The prosecution case is primarily based on eye witnesses account. The FIR dated 16.11.2012 was lodged by the PW-1 as eye witness.

23. In his testimony (examination-in-chief) on 20.11.2013, the PW1-Vedpal supported the case of the prosecution. He has stated that near about the time of the crime, he had gone to the office of the under-construction building (Durga Green), for his business of supply of

building materials. When he suddenly heard shouts, he came out of the building and he saw five people whom he could identify as Veerpal, Kalu, Pammi, Bhura and Om Prakash, who had caught hold of his brother, Ved Prakash, and were stabbing him with knives. During his testimony, the PW1 identified Veerpal, Kalu and Pammi who were present in Court and said that they were present at the time of incident. He further stated that two persons were not present in Court, one of whom Omi @ Omkar had his presence exempted and another Bhura @ Sumit was declared a juvenile. He stated that all five of them were stabbing his brother with knives and had held his neck with belt. He saw all of them in the light of electricity as at the site the work of building construction were going on and lights were on. He has stated that on hearing the shouts, his two brothers Chet Ram and Mahendra (Mahendra stated to be not his real brother but a family relation) came to the site and saw the incident as they were returning after selling bricks in Greater Noida. When the PW1 shouted in order to save his brother, the accused persons threatened him. Thereafter they ran away from the site in their Swift car and one Pulsar motor bike and thereafter his brother died at the spot after much agony. Thereafter PW1 came to the police station and lodged the report. He identified his report Exhibit Ka-1. The PW1 further stated that the police came along with him and took the corpse to Kailash Hospital in order to maintain law and order. The inquest report was prepared at the hospital in the presence of five witnesses. After seeing the record of the inquest, the PW1 said that it is the same inquest report which was prepared in the presence of five witnesses and the PW1 identified his signature thereon. Thereafter the police sealed the corpse and took it for post-mortem. The PW1 further stated that he had shown the site of incident to the police officer who had questioned him and he had told them the truth.

24. In his cross-examination, the PW-1 stated that he was sitting at a distance of 60 to 70 steps away from the site of incident in the office regarding supply of building material. In that office the door is situated outside and contains glass and the door was open at the time of incident.

On the query made to him regarding non-mentioning of existence of light in the FIR, the PW1 stated that at the time of lodging of the FIR he was consumed with grief. He denied the suggestion that on the basis of legal advice he stated in his testimony regarding presence of electric light. With regard to non-mentioning in the FIR about the belt being used on the neck of the deceased, the PW-1 stated that at that point of time he was consumed with grief. He has stated that each of the five accused had knives. He stated that Pammi had stabbed his brother twice and others had stabbed his brother once each. He stated that other than his four brothers there were some other people also. The PW-1 denied the suggestion that he was not present at the site of the incident and that therefore he could not save his brother. He stated that at the time of making of the site plan by the Investigating Officer, he had pointed out the electricity lights that were lit at the time of the incident. The PW-1 has stated that there were three shops at a little distance from his brother's shop and people from Bihar and Bengal who were mostly labourers used to come and purchase items from his brother's shop.

He stated that he did not take his brother to the hospital because he had already died. He further stated that he had no hope and, therefore, he had not taken him to the hospital. He also stated that neither he nor any of his other brothers touched or held the deceased. However, later he stated that he had touched his brother to see whether he was breathing but his brother was not breathing.

He denied the suggestion that due to dispute regarding money transactions, people from Bihar and Bengal had murdered his brother. He further denied the suggestion that he had falsely implicated the accused on the basis of village partisan politics and enmity. The PW-1 stated that the belt was held by two persons namely Om Pal and Bhura in one hand each and in the other hand they held knives. He has stated that six injuries were inflicted on his brother. He stated that perhaps one knife injury was on the elbow, one on the upper arm, one of the abdomen and three to four

knife wounds on the right side of his chest. He further stated that he could not see who stabbed his brother on the elbow as he was at a little distance. The PW1 has further stated that in his presence one knife was recovered from the site which had fallen as the accused were running away and one belt was also recovered. He identified Om Pal and Bhura as the accused who fled on the motor bike and the rest of the accused had fled by car.

25. On 17.1.2014, the PW1 was recalled as witness on an application made by the defense. The PW1 stated that he had two other brothers, Ved Prakash and Chet Ram. Chet Ram was a witness in the case. It was stated that the other witnesses of the case namely Devendra and Shahmal were the cousins of the PW1. The PW1 and the aforesaid two other witnesses stay in separate houses in the village and they work in different places. They do agricultural work. The PW1 works in the field of supply of building material. His father does agriculture work and dairy farming. The PW1 denied having any license for his work for supply of building material. The PW1 stated that his shop of building material is outside the village and is situated on his farm. The name of his shop is Jai Durga Material which is not registered. People engaged in construction used to purchase material from his shop. He denied the suggestion that at the time of the incident the PW1 had no work for supply of building material. He has stated that his shop is situated towards the highway at a distance of half to 3/4th kilometer. The PW1 further stated that from the site of the incident his brother's shop was about 20 to 30 steps away in which he used to run a grocery store. The shop was temporary, made from tin sheets. He further stated that the shop of the deceased would be about 40 to 50 steps away from the building of Durga Green and that building was on the same road on which the shop existed. The PW1 further stated that when he heard shouts, he was in the office. The office is along side the road in which there were one or two people. It was night time and other people had gone away. He stated that the person of the office with whom he had gone to meet was not present in the office but had gone to the work site. He stated that around 8 p.m. he had gone to that office in his

vehicle A-Star which was parked outside the office. He had gone to the police station in that vehicle. He stated that when he had gone to the office he had seen his brother Ved Prakash in his shop, no conversation took place between them. One or two customers were standing in his shop. The PW1 admitted that in the FIR he had not mentioned that he had gone to the office of Green Durga to speak to the clerk. He stated that on 15.11.2023 there was an altercation between the accused Pammi and his brother Ved Prakash at the shop of Ved Prakash and the PW1 was not present at the spot when the altercation took place. He stated that Pammi had a business of illicit liquor at that place which was being objected to by his brother Ved Prakash. The PW1 had come to know about the altercation about one or two hours after the altercation. He stated that he did not mention about the altercation that occurred on 15.11.2012 because the matter was settled in the village. The PW1 stated that after hearing the shouts he had come out of the office and other people present in the office also came out. When he came out of the office, his brother was at the same spot where he was found dead. His brother was stabbed when he was standing and even after he fell down he was stabbed. His brother was being stabbed from the side and while standing he was being held from all four sides. After he fell down he was stabbed twice or thrice with knives. When his brother was being stabbed, the PW1 was standing outside the office of the Durga Green about 30 to 40 steps away. When the accused was stabbing his brother the Swift car and the Pulsar motorbike were parked near the shop. The PW1 stated that he tried to save his brother but the accused persons threatened him with knives. He stated that he had shown the spot to the Investigating Officer where the Pulsar motorbike and the Swift car were parked. The PW1 had showed the Investigating Officer the site after preparation of the inquest report and the Investigating Officer had gone to see the site after the postmortem report. He stated that his mobile phone was discharged and therefore he did not attempt to dial no. 100 for informing the police. He stated that his servant was there at the site and he was sent home to inform about the

incident and he alongwith his other brothers went to the police station to lodge a report. He stated that they had reached the police station around 9:30 to 10:00 at night and the report was written at the police station. He spent nearly one hour in the Police Station in writing the report. After lodging the report, the PW1 went in the police vehicle to the spot of the incident and thereafter were present along with the Investigating Officer for one to one and half hours. Thereafter, along with the Investigating Officer they took the corpse of the deceased to the hospital where they reached about 12:30 at night. The PW1 stated that the Investigation Officer had collected the soil etc. in the night itself after preparing the inquest report which inquest report bears the signatures of the PW1. The PW1 denied the suggestion that his brother (deceased) used to sell liquor. He further denied the suggestion that his brother was killed by unknown persons and he has filed a false report against the accused. He further denied the suggestion that he was not present at the spot.

26. The testimony of the PW2, Balraj Singh who was posted as a clerk on 16.11.2012 at the police station was recorded on 9.1.2014. He proved the FIR Exhibit Ka-2. He proved the entries made in the general diary. He denied the suggestion that the report was ante-time.

27. The testimony of Mahendra, PW3, an eye witness, was first recorded on 9.1.2014. He stated that his occupation is dairy milk business. He stated that on 6.11.2012 at 8:30 PM when he was returning with Chet Ram then when they went towards their village from Chuhadpur underpass at that time the accused were stabbing the deceased with knives. He identified Veerpal, Kalu, Pammi, Bhura and Om Pal @ Om Kumar as the accused. He stated that he knew them as they belong to his village and in the village Kalu is known as Balraj and the Pammi is also known as Ram Avatar. He stated that all the accused were stabbing the deceased with knives and the time of the incident was 8:30 PM. The PW3 stated that he saw the incident as there were electricity lights on the highway. He stated that in view of the shouting Ved Pal, Devendra and

Shahmal had come to the spot and he saw the accused stabbing Ved Prakash with knives and thereafter they went to lodge the report. He stated that they shouted at the accused then the accused threatened them that whatever had happened to the deceased would happen to them and threatened them with knives and thereafter, all the accused fled away in motor bike and car. The PW3 stated that he along with Ved Pal, Shah Mal and Chet Ram gone to the police station where they had lodged the report.

28. In his cross-examination, the PW3 stated that his occupation is selling dairy milk. He collects the milk from his village and sells them in Noida and Greater Noida. He named the places where he distributes milk. He stated that he leaves his house at 5:30 in the evening to distribute the milk. His village is one kilometer away from the underpass and from this underpass the site of the incident would be about 20 to 30 steps away. He stated that after distributing the milk he returned via the underpass and not over it. He stated that he had seen the incident after crossing the underpass. He stated that his statement was recorded by the Investigating Officer on 15.12.2012. He stated that the deceased Ved Prakash as well as Ved Pal were like brothers to him. At the time of writing the report he came to know that he would be called as witness. He stated that he had gone on his motor bike to the police station and Ved Pal has gone to the police station on his car along with Devendra, Shah Mal and Chet Ram. He stated that the site of the incident was four to five Kilometers away from the police station and the report had been written sitting outside the police station. To write the complaint, paper from the car was taken. He further stated that the complaint was written in the park within the boundary of the police station. He stated that he had first seen the accused from a distance of 10 to 15 steps and at that time he had crossed the underpass. The accused had surrounded the deceased. The PW3 stated that after the accused had left, he did not go to see the deceased that whether he had died or alive, it was Ved Pal who had gone to see the deceased who had shaken the body of the deceased. He denied

the suggestion that the deceased was taken to the hospital in an injured state. He stated that it was he who had first seen the accused stabbing the deceased and Ved Pal and others had come later. He stated that Ved Pal and others had come from the side of the village. He stated that the Ved Pal and others were standing on the side of the village around 20 to 25 steps away. He stated that when he and Ved Pal and others tried to save the deceased, the accused threatened them with knives. He stated that the electric lights were on the highway. The weather was cold but there was no fog. He denied the suggestion that the incident had not taken place in front of him and he also denied that he was giving a false statement.

29. When the cross-examination of the PW3 was again held on 15.10.2015, that is, after more than one year and nine months from the date of his first initial testimony, he turned hostile. He stated that dispute between the deceased and the accused was not so big due to which someone could murder somebody else. He stated that near the grocery shop of the Ved Prakash, Bengalis, Biharis and Nigerians used to stay. These people used to purchase items from the shop of the deceased. He stated that the deceased used to sell country liquor from his shop which used to be purchased by the aforesaid people. This shop used to remain open till 11 PM at night. People used to drink liquor at the shop itself. He stated that near the shop there is a small boundary wall having iron grille which look like knives. There used to be fights at the shop on drinking liquor. People used to drink liquor in the open space which was objected by the deceased and then they used to fight with him. The PW3 along with Chet Ram and Shahmal used to come after selling milk and stop for sometime at the shop and the deceased had informed them that there used to be fights between him and Bengalis and Biharis over drinking and information was given to the police on several occasions. The police used to catch them and take them to the police station. He stated that near the shop of the deceased, mostly Nigerians used to stay in apartments. He stated on the basis of hearsay that the Nigerian people had earlier taken away an auto driver and stabbed him to death. He further stated that there

was a Government liquor shop in his village but these people did not purchase liquor from there as it was expensive and therefore they used to purchase liquor from the shop of Ved Prakash. He stated that there was once a fight and many people including the PW3 were called to the place by Ved Prakash, the deceased, and they had beaten the people who were creating nuisance. This incident had taken place about 8 to 10 days prior to 16.11.2012. The PW3 stated that the deceased had told him that the people with whom they had fought, used to move around his shop. He stated that when he reached the site of the incident, Ved Prakash was lying dead. He stated that this testimony is correct and the testimony that he has given earlier was under pressure. He stated that his first testimony was dictated to him by Advocate and thereafter he had given testimony. He stated that he had not seen the accused stabbing the deceased. In the cross-examination of PW3 done by the ADGC (Criminal), the PW3 admitted that his testimony was recorded on 9.1.2014 in which he had also been cross-examined by the accused. He denied the suggestion that he was giving his testimony in view of the settlement before the Panchayat only in order to save the accused who were of the same caste. He also denied any pressure or threat or any inducement.

30. The PW4 was Dr. Sant Ram Verma, Senior Physician, District Hospital Gautam Budh Nagar who had performed the postmortem examination of the deceased. He proved the postmortem report and stated that during the postmortem examination six incised wounds were found on the deceased. He stated that the injuries was possibly caused by a sharp weapon which could also be a knife.

In his cross examination, he denied suggestion that as far as wound no.1 is concerned, he had not written lacerated wound. He further stated that he had not mentioned the state of the edges of any of the wounds. On the suggestion being put to him, he admitted that the deceased did not have any injuries caused by stab wounds.

31. The testimony of another eye witness Chet Ram, who was the PW5 was recorded on 24.2.2015 who turned hostile. He stated that on the date of the incident he and Mahendra had returned after distributing milk. He had not seen the accused at the site nor he had heard the shouts or seen anything. He stated that he had not seen accused running away on a Swift car or on motor bike. In his cross-examination by ADGC, the PW5 stated that he returned by 7 to 7:30 PM after supplying milk. He admitted Ved Pal's brother Ved Prakash was murdered. However, he denied having seen the accused beating or stabbing the deceased and that he had heard the shouts. He further admitted that the accused Veerpal is referred by him as uncle, being resident of the same village.

32. The PW6, Anang Pal Singh, was Sub-Inspector of police who proved, inter alia, the inquest report and the recovery memo. He stated that after the written complaint of Ved Pal (complainant) was registered, he visited the spot of the incident along with the SHO, Shyam Kant Tripathi. The SHO had sent the corpse of the deceased to Kailash Hospital and had directed him to prepare the inquest. The proceedings for inquest was started at Kailash Hospital. He stated that the inquest proceedings started at 11:30 at night and concluded at 2 AM on 17.12.2012. He also proved the letter sent to the Chief Medical Officer in Form No. 13, the photographs of the corpse and sample seal. He stated that on 19.12.2012, the accused Veerpal and Kalu were arrested by the SHO who questioned them. After questioning, the two accused were taken to Chuhadpur underpass on the official vehicle and Veerpal pointed out the knife which was recovered from behind the shop. Another knife was recovered on the pointing out by Kalu from the bushes on the other side of the shop. The accused admitted that they had murdered the deceased Ved Prakash using those knives. Both the knives were taken in possession and sealed. The memo was written by the PW6 on the dictation by the SHO. The police team and the accused were read out the

memo and they were asked to sign on that. The accused were also given a copy of the same.

It was further stated that on 20.11.2012, the PW6 along with the SHO had arrested the accused Pammi from Kasna Bus Stand. On questioning he informed that the deceased Ved Prakash used to tease girls and he was warned many times. Pammi stated that on 16.11.2012 after it was dark, he and his cousin Om along with his father Veerpal and others went to a building under construction near Chuhadpur and there we murdered Ved Prakash by stabbing him with knives and escaped on vehicles. He said that he buried his knife near a tube-well room. Witness from the public was sought but was not found. Thereafter, Pammi asked the vehicle to be stopped at the location and walked to the rear side of the room of the tube-well and dug the soil with his hands and took out a knife which was stained with blood. The recovered knife was taken in possession and duly sealed. On the dictation of the SHO, the memo was prepared by the PW6 and thereafter it was read out to the accused Pammi and police personnel signed it. This recovery memo Ka-9 was proved by him. A copy of the recovery memo was given to the accused Pammi and he signed on it.

The PW6 further stated that on 2.12.2012 he and the SHO got information about a murder accused being near a temple in Kasna and around 10:15 AM, he was surrounded and apprehended. The accused identified himself as Om Kumar @ Omi. The accused admitted that he along with Pammi, Bhura, Veerpal and Kalu murdered Ved Prakash with knives and after murdering him they ran away. On his pointing out a knife was recovered from bushes in the underpass towards Chuhadpur ATS. The knife was caked with soil and blood and on the dictation of the SHO, the PW6 wrote the memo. The PW6 proved the recovery memo and it was exhibited as Ka-10. The accused was given a copy of the recovery memo and he signed on it.

During testimony of PW-6, one sealed package bearing stamp containing the recovered items was opened with the permission of the court, on which a slip of the Legal Forensic Laboratory, Uttar Pradesh was affixed. The PW6 identified the five knives which were recovered on the pointing out of the accused. All the recovered items were proved and exhibited.

In his cross examination, the PW6 stated that the investigation was given to Shri Shyama Kant Tripathi (SHO). The PW6 was called shortly after lodging of the FIR. They left the police station after 10 to 11 minutes alongwith Vedpal, brother of the deceased. He could not remember whether there were other persons alongwith Vedpal. When they reached the site of incident by 11-11:15 P.M., there was a crowd of people at the site, whom he could not name. The items recovered from the body of the deceased was sealed by him. The places from where the weapons of murder were recovered were thoroughfares. He had asked persons who were passing that place to bear witness but they declined and did not give their names and addresses. He did not recollect whether before recovery of murder weapons they had frisked each other or not. He thereafter said that frisking was done. The weapons were sealed at the spot itself. He denied that the recovery memo and inquest report were not prepared at the spot but were prepared at the Police Station. He denied that the weapons of murder were not recovered from the accused and were from the Police Station, and that he had not prepared the memo at the site. Due to a crowd of people and being dark and for want of adequate light, the SHO got the corpse of the deceased sent from the site to Kailash Hospital Greater Noida where the inquest was prepared. He admitted that due to crowd and less light (darkness) the inquest proceedings could not be done at the site. The witnesses of the inquest reached the hospital directly from the village. Several people from the village had reached Kailash Hospital. He denied that the recovery of murder weapons and the inquest report and other proceedings were not done at the site but at the Police Station, and

that they were wrongly done. He denied the suggestion that the recovery memos were not made by SHO but made by him.

33. On 10.3.2015, the testimony of PW7 Devendra s/o Buddhan Singh (eye witness) was also recorded who turned hostile. He identified the accused who were stated to be residents of his village. The complainant Vedpal was stated to be resident of same village. Deceased Ved Prakash was his cousin. He admitted having reached near Chuhadpur underpass on the date and time of the incident. He denied hearing Kalu's (alias of the deceased) shouts for help. Many people had congregated there. He denied having seen Veerpal, Kalu, Pammi alias Ram Autar, Bhura alias Sumit, or any other persons murder Ved Prakash with knives and belt on the vacant land near the shop.

He denied that there was any altercation in the village between the accused and the deceased. He, however, admitted having seen the dead body of the Ved Prakash covered in blood lying on the open land near Chuhadpur underpass.

In his cross-examination by the ADGC, the PW7 admitted that the deceased Ved Prakash is the son of his uncle (Chacha). He stated that the Veerpal and others (the accused) being members of the village were like brothers to him but they were separate from his family. He denied that while returning from his office he had stopped near Chuhadpur underpass on hearing shouts for help from Ved Prakash, and that the accused were stabbing Ved Prakash and beating him with belt. He denied that they killed Ved Prakash and ran away. He admitted having seen Ved Prakash covered with blood. He denied that on 15.11.2012 there was an altercation in the village between Ved Prakash and the sons of Veerpal. He stated that Mahendra (brother of complainant) is the son of his uncle. He denied having seen and recognized the accused persons in electric light. He admitted that the police personal had questioned him regarding the incident. With respect to the statement made under Section 161 Cr.P.C. before the police, the PW7 stated that he had not told the

Investigating Officer that on the date of the incident he had seen accused assaulting the deceased Ved Prakash with knives and belt. He denied the suggestion of any covert agreement with the family members of the accused Veerpal and others. He further denied that he was afraid of Veerpal and others and therefore, he is not telling the truth. In his cross-examination by counsel for the accused, the PW7 stated that when he reached the site many people were present over there. He stated that he did not know the names of the other persons. He admitted that when he reached the site, it was quite dark.

34. On 14.12.2015, the PW8, Shahmal son of Bachan Singh, whose occupation was stated to be welding material work, testified that he knew Ved Prakash. He was murdered on 16.11.2012. He knew the accused who were residents of Chuhadpur. On 15.11.2012 there was no altercation between the deceased and the accused. On 16.11.2012 at night around 8:30 he had not heard the shouts of Ved Prakash. He denied having seen the accused assaulting the deceased with knives and belt and running away from the vacant land near the shop.

He was cross-examined by ADGC (Criminal). The statement under Section 161 Cr.P.C. was read out to the witness. He said that neither police took his statement nor did he give it. He denied the suggestion that on 16.11.2012 at 8:30 at night when Ved Prakash was murdered, he was present there. It is denied that he reached the site on hearing the cries for help from Ved Prakash. He denied having seen the accused assaulting Ved Prakash with knives and belt. He denied that at the site of the incident there were electricity lights and that in that light he had seen the accused present in court assault the deceased Ved Prakash with knives and belt and they ran away after committing the crime. He admitted having gone with Vedpal to the police station to lodge a report and the report was lodged in his presence. He admitted that the accused and he are of the same caste and village. He denied that the accused are of the same brotherhood, neighbours and under pressure of the panchayat held in the

village, he was defending the accused. He admitted that the accused Veerpal and others were like brothers to him, being of the same village. It was denied that due to fear, pressure and allurements by the accused he was not telling the true facts.

In cross-examination by counsel of the accused, the PW8 stated that he has work of 'building material', his office is near Amrapali building from where he carries on business. His office is around 300 meters away from the incident site. The deceased Ved Prakash had a grocery shop where he sold country made liquor of Haryana. He also used to sell eggs, etc. Some Nigerians, Biharis and Bengalis used to live near the shop of the deceased Ved Prakash, and used to drink liquor at his shop which used to remain open till 11-12 at night. Ved Prakash used to have fights with them over liquor etc. About 4-5 days prior to the incident, there was a fight with Nigerians, Biharis and Bengalis in which 15-20 persons were called from the village of Ved Prakash to beat them up. At the time of that incident, the police had come to the shop. In that fight there was a lot of altercation between the police and Veerpal, Pammi and Balraj, who prevented Ved Prakash (the deceased) from being taken away by the police to the police station. 2-3 days after that incident Ved Prakash had told him that ever since the day of the fight, the Nigerians, Bengalis and Biharis were on the look-out to kill him and used to keep standing near to his shop till late. He stated that at the time of the incident, he reached the spot first. The deceased Ved Prakash was hanging from the top of the 2-3 feet high knife-like grille that was fixed in the open land near his shop and the knife-like grille was embedded in his side and arms. Then with the help of the people there, he had taken down the deceased from the railing and laid him down. By then Ved Prakash had died and there was no light at the spot. He stated that he had given information of the incident to Chetram, Mahendra, Devendra and Ved Pal. They reached the spot half an hour after the information. Thereafter, they informed the police. He stated that they had asked that the FIR be written against unknown persons but the police forced them to name Veerpal and

others in the report because 2-3 days prior to the incident there was a lot of altercation between Veerpal and the police. They had told the police about the fight incident 3-4 days ago with Nigerians and others. However, they were told that these people are foreigners from outside so the case would be spoiled and therefore their names were not written and names of the villagers were written. He said that they were so horrified by the incident that they did not have mental balance. He stated that he had spoken to Ved Pal who had given the first testimony and had asked him how had he given such a testimony. Ved Pal said that under pressure from the police, he had given false testimony and if the court calls him again, he would tell the truth.

35. On 11.2.2016 the testimony of PW9, Shyama Kant Tripathi (Investigating Officer), took place who testified that on 16.11.2012 he was posted as Inspector Incharge P.S. Kasna.

An FIR was registered on that very night at 10:30 p.m. and after recording the statement of Vedpal, he reached the site of the murder alongwith police force. On 17.11.2012, the S.I. Anang Pal Singh was sent to Kailash Hospital for carrying out inquest of the body of the deceased. The statement of the eye-witnesses Devendra and Shahmal were recorded and thereafter a copy of the inquest report and the incident site were inspected. After copying the memo of recovery of blood-stained soil and plain soil, the accused were searched for and on 20.11.2012, the accused Pammi @ Ram Autar was arrested from near the bus stand Kasna. He was questioned and his statement was recorded in which he voluntarily confessed to the crime and, on whose pointing out, a murder weapon was recovered behind a water tank which was blood stained and which was taken in possession and a plan was prepared at the site. The recovery memo of the murder weapon was prepared at the site which is Exhibit Ka-9. He also proved the site plan of the murder which was in his own hand and signature and on which Exhibit Ka-11 was put. He also proved the site plan of the recovery of the murder weapon on the pointing out of

Pammi as Exhibit Ka-12. He stated that the statement of the witness Chetram was recorded on 26.11.2012. On 02.12.2012, on information received from an informant, the accused Omi was arrested around 10:15 a.m. from near Kasna Bridge, who confessed his crime and also pointed out the murder weapon which was recovered from bushes in the green belt adjoining ATS near Chuhadpur underpass. The recovery memo was dictated to S.I. Anang Pal Singh. The murder weapon was sealed and the memo was proved as Exhibit Ka-10. The site plan of the recovery was proved as Exhibit Ka-13. The P.W.-9 further stated that the statement of another eye-witness Mahendra Singh was recorded on 05.12.2012 whereafter the statements of the witnesses to the inquest report were recorded alongwith the statement of witnesses to the memo. On 07.12.2012, surrender of accused Veerpal, Kalu @ Balraj took place. On 12.12.2012, the accused Bhura @ Sumit was arrested. The statements of the accused Veerpal, Kalu @ Balraj and Bhura @ Sumit were recorded in the District Jail, Ghazipur on 13.12.2012 after obtaining the permission of the court. On 19.12.2012, a murder weapon was recovered on the pointing out of the accused Veerpal from near a tyre puncture shop which was taken possession of and sealed. On the pointing out of the accused Kalu @ Balraj, another murder weapon was recovered. Both weapons of murder were taken possession of and the memo was dictated to the S.I. Anang Pal Singh. The accompanying police personnel signed on the memo as witnesses whereafter the accused were given a copy thereof and made to sign. The P.W.-9 also proved the recovery of knife on the pointing out of the accused Sumit @ Bhura on 23.12.2012 and the memo of recovery was dictated to the S.I. Anang Pal, a copy of which was given to the accused Sumit after obtaining his signature. The site plan of the recovery was also prepared which was proved and marked as Exhibit Ka-16. The statements of the witnesses and the recovery memo were also taken and a charge-sheet was filed against the accused on 30.12.2012. He stated that the recovered murder weapons and blood stained soil and ordinary soil were sent through a constable to the Forensic Laboratory,

Agra which, as per the report dated 30.01.2014 made on the back side of the document 30Kha/2, was not received till then.

In his cross-examination, he denied having knowledge of the persons who had gone alongwith Vedpal to the police station to give information on 16.11.2012. The report was written in police station at 10:30 p.m. He stated that with regard to the incident on 15.11.2012 regarding an altercation, no complaint or information was given. From the police station, he left for the incident site at 11:00 p.m. and reached there at 11:30 p.m. which site was at a distance of 4 to 5 kms. from the police station. He had gone to the site in the government vehicle alongwith 4 to 5 people including the Sub-Inspector Anang Pal and Sub-Inspector Veer Singh. He stated that Vedpal and others had gone alongwith him in their own vehicle. He stated that when he reached the incident site, Ved Prakash had already died. He could not remember what all things were present at the site. He admitted that at the site of the incident, several people were present. He could not name any person present. He stated that at that point of time, there was a light from high-mast of the expressway and when he reached the site none of the shops nearby were open. He could not recollect in which direction the corpse of the deceased was aligned. He could not recollect that at the time of the incident, whether the dead body was lying facing up or down. He stated that at the site he met Shahmal and others. He had sent the dead body from the site to Kailash Hospital. Alongwith the corpse, the other police personnel had also gone. He further stated that when he reached the site of the incident, the shop of Ved Prakash was closed. The inquest was not done at the site but at the Hospital. The memo was prepared at the Hospital and not at the site. He stated that to maintain law and order, the corpse of the deceased was sent to the Hospital. Therefore, the inquest was prepared in the Hospital. He further stated that the eye-witnesses of the incident namely Vedpal, Devendra, Mahendra and others were also present. He denied having knowledge of names of people residing near the site of the incident. He admitted that many people stayed there.

During the period of his posting in the area of Police Station, there were many incidents of murder. He denied having memory of any incident prior to the incident in question involving Nigerians, Bengalis, Biharis and others. When questioned about the motorcycle and the Swift car mentioned in the FIR, the P.W.-9 stated that he would have to look into the Case Diary in respect of their registration numbers. He denied the suggestion that the recovery made by him from the accused was made in a wrong manner and in the police station. He also denied the suggestion that the death of the deceased Ved Prakash occurred in the fight with Nigerians and others and that since they were foreigners, the P.W.-9 had set up a false case. He further denied the suggestion that the deceased Ved Prakash had a fight with Nigerians, Biharis and Bengalis 2-3 days prior to the incident and that he had knowledge of the incident. He also denied the suggestion that he did not take information at the site or from the people nearby. He further denied the suggestion that the wounds on the body of the deceased Ved Prakash occurred from the knifed shaped grille at the site.

36. In the statement made by the accused Veerpal under Section 313 Cr.P.C. on 20.05.2016, he denied having murdered the deceased and alleged that a false FIR was lodged against him and that a false testimony has given against him due to party politics and enmity in the village. The statement under Section 313 Cr.P.C. was also given by Pammi @ Ram Autar on 20.05.2015 on the same lines, and also by Om Kumar @ Omi and Kalu @ Balraj.

37. The P.W.-1, the brother of the deceased, testified on 20.11.2013 and again on 17.01.2014, when he was recalled on an application filed by the defence. He has stated that all the people and his brothers had gone to the police station to lodge the FIR which took about one hour. The P.W.-1, who is the complainant and eye-witness of the alleged incident, has remained largely consistent in his testimony regarding the place and time of the incident and the participation of the accused. His presence near the

site of the incident at the stated time, at first blush, appears to be natural as he states himself to be engaged in the business of supply of building material and he had gone to the office concerned in his car 'A-Star' to talk to the person in the office of the building under construction. However, the P.W.-3, Mahendra, in his testimony, held on 09.01.2014, though has supported the prosecution, but in his cross-examination, he states that it was he who had first seen the accused attacking the deceased and the complainant Vedpal and others had come later and he further states that Vedpal and others had come from the side of the village and that they were standing at a distance of 20-25 steps towards the village of the deceased. Thus, there is glaring inconsistency in the statement made by the P.W.-1 and P.W.-3 regarding who witnessed the incident first and the location of the P.W.-1 at the time of the incident.

On 15.10.2015 the P.W.-3 turned hostile and said that there were serious altercations and fights between the deceased and Bengalis, Biharis and Nigerians.

There is another aspect of the matter. The conduct of the PW 1 does not seem to be natural, but rather, awkward. In that FIR lodged by him, he states that the accused persons came and attacked his brother with knives and belts because of which his brother fell at the site. However, in his testimony before the court, he states that his brother died at the site in agony and thereafter he had gone to the police station to lodge a report. He further stated that he did not take his brother to the hospital because he was already dead and that he had no hopes left for his survival but neither he nor his brothers touched or held him thereafter. Subsequently, the PW-1 states that he touched his brother to see whether he was breathing but he was not breathing. He further states that there was a servant with him whom he sent home to inform about the incident then he and his brothers and others went to the police station to lodge a report. He states that nearly one hour was spent in the police station in writing the

report. Under the circumstances, the unnatural conduct of the P.W.-1 is reflected in the fact that:

(a) In the FIR, he does not mention about the death of his brother despite the fact that quite some time was spent by him at the site of the incident and he gave orders to the servant to go home and inform the others and thereafter he went alongwith the brothers and others to the police station where he waited for an hour to lodge the report.

(b) Further, the fact that he left no one at the site, that is not even his servant, when evidently there were several people around that place is unnatural.

(c) The fact that he did not think of taking his brother to the hospital with the help of others despite having a car at his disposal is unnatural.

Recently, a three Judge Bench of the Supreme Court in the case of **Narendrasinh Keshubhai Zala vs. State of Gujarat**⁷ on the issue of unnatural conduct and unexplained circumstances being a ground for disbelieving the witness, observed as follows:-

'8. It is a settled principle of law that doubt cannot replace proof. Suspicion, howsoever great it may be, is no substitute of proof in criminal jurisprudence [Jagga Singh v. State of Punjab, 1994 Supp (3) SCC 463]. Only such evidence is admissible and acceptable as is permissible in accordance with law. In the case of a sole eye witness, the witness has to be reliable, trustworthy, his testimony worthy of credence and the case proven beyond reasonable doubt. Unnatural conduct and unexplained circumstances can be a ground for disbelieving the witness. This Court in the case of Anil Phukan v. State of Assam, (1993) 3 SCC 282 has held that:

“3. ... 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 eyewitness 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 eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect...”

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In that case, the Supreme Court further observed as follows:-

“11. Further, his credit stands impeached in the cross- examination part of his testimony. The witness is an adult, mature and worldly wise. He is aged 24 years and runs a grocery shop. He is not illiterate, yet he chose to not take any action, even to save the life of his friend. His explanation that he went home and slept is uninspiring in confidence for the incident took place in his presence and in close proximity of habitation, more specifically at a short distance i.e. just 3-4 minutes of walking distance from the Police Headquarters where constables are posted around the clock. He left his friend profusely bleeding on the spot but did not seek any help and immediately did not report the incident to the family members of the deceased whose house he visited only the following day at around 8:00 – 9:00AM. His conduct of going off to sleep, having seen his friend being murdered right before his eyes and then not visiting the hospital forthwith is quite unnatural. Also he did not inform the incident to his parents. It was only when the police interrogated him that he named the accused. His testimony is not free from embellishments, nor is not corroborated by any other evidence. Also, he admits not to have any information of any monetary transactions between the accused and the deceased.

12. This Court on multiple occasions has held that it is not the quantity but the quality of witnesses and evidence that can either make or break the case of the prosecution. It is the duty of the prosecution to prove that the testimonies of the witnesses that it seeks to rely upon are of sterling quality, i.e. fully trustworthy and absolutely free from any kind of blemish. [Prahlad v. State of M.P. (supra); Amrik Singh v. State of Punjab, (2022) 9 SCC 402; Pramila v. State of U.P., (2021) 12 SCC 550; Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130]”

38. On 25.02.2015, Chetram, the brother of the P.W.-1, who testified as P.W.-5 turned hostile. However, he admits that Ved Prakash was murdered. No other details regarding any altercations with Nigerians, etc. have been disclosed by him.

39. In his testimony on 10.03.2015, the eye-witness, Devendra (P.W.-7) turned hostile but he admits that the deceased Ved Prakash was seen by him lying in the open land near Chuhadpur underpass covered with blood. He denied the suggestion in his cross-examination by the ADGC (Criminal) that he is not stating the correct facts, and that he was persuaded by some incentive offered on behalf of the accused. The P.W.-7 also did not disclose any previous altercation of the deceased with Nigerians and others.

40. As far as P.W.-8, Shahmal, is concerned, in his testimony on 14.12.2015, he turned hostile. In the cross-examination by the ADGC (Criminal), he however admitted that when he reached near the deceased, the deceased had already died and was covered with blood. He denied the suggestion that the accused being of the same village and brotherhood and neighbours, he is defending them due to pressure exerted by the Panchayat held in the village. He further denied the suggestion that he was giving his testimony out of fear, pressure or some incentive.

In his cross-examination on behalf of the defence, he refers to Bengalis, Biharis and Nigerians drinking liquor at the shop of the deceased Ved Prakash and the occasional altercation with the deceased. He stated that 4-5 days earlier, there was a serious fight in which several persons from his village were called, and that police had come and they had prevented the police from taking Ved Prakash (the deceased) to the police station and since then the Nigerians, Bengalis and Biharis were on the lookout for murdering the deceased. He claims to have reached the site of the incident first and that he had found the deceased hanging from the railing (grille) that was 2-3 feet high on which the knife-like railings had pierced a side of his body. He further states that with the help of others, he had removed the body of the deceased Ved Prakash from the railing and laid him down but till then Ved Prakash had died and thereafter he informed the complainant and Chetram, Mahendra and Devendra who reached the site after half an hour of the incident. He blamed the police for not naming the foreigners in the FIR.

41. It is important to note here that in his cross examination, the PW-4, who was the doctor who conducted the postmortem, denied the suggestion that he had not mentioned lacerated wound as far as the injury no.1 is concerned. He further admitted that the injuries of the deceased were not stab wounds. Therefore, this testimony of PW-4 in conjunction with the testimony of PW-8, who had stated that he had found the deceased hanging from the railing (grille), on which knife shape railing

pierced a side of his body, does create a doubt as to the cause of injuries/wounds on the deceased.

42. It is pertinent to note that in the cross examination of the PW-1 on his recall, he stated that when he had gone to the office of Durga Green, he had seen his brother in his shop and one or two customers were standing in his shop. However, in his cross examination, the PW-9 who was the I.O. has stated that when he reached the site of the incident after lodging of the FIR, the shop of the deceased was closed. The time of the incident is 8.30 pm and the shop of the deceased was stated to remain open till 11 pm. Therefore, it cannot be denied that after the alleged time of the incident, the place around the site was apparently not untouched till the police arrived.

43. It is important to mention here that the Investigating Officer PW-9, Shyama Kant Tripathi testified that when he reached the site of incident after the FIR was lodged, the deceased Ved Prakash had already died. He admits that at the site of incident, there was a crowd of people present and there was some light from the high-mast on the expressway. He stated that keeping in view the law and order situation, the body of the deceased was sent to the Hospital where inquest report was made. As far as the alleged vehicle used by the accused, PW-9 stated that he could inform their registration numbers after seeing the case diary. However, there is no recovery memo of the two vehicles, that is a Swift car and a motor cycle, allegedly used by the accused for reaching and leaving the site of the crime. Further, there is no recovery shown of the belt and knife allegedly used for murder of the deceased near the site of the incident, which as stated by the PW-1, had fallen at the site of the incident as the accused were running away. Thus there is glaring inconsistency in the testimonies in this regard made by the PW-1 and the PW-9. PW-9 denied the suggestion that death of the deceased took place as a result of fight with Bengalis, Nigerians or Beharis and that they being foreigners, he had written a false case. He further denied the suggestion that 2-3 days prior

to the incident, the deceased Ved Prakash had fight with the Nigerians, Bengalis or Beharis and that he had knowledge of the incident. He denied the suggestion that he did not make inquiry from the people nearby the incident. He further denied that the deceased died due to injuries caused as a result of knife shape grille present at the site.

44. With regard to the judgement cited by the learned counsel for the appellants regarding recovery of alleged weapons of murder on the pointing out of the accused are concerned, Section 27 of the Indian Evidence Act has been considered at length by the Supreme Court in the case of **Ramanand @ Nandlal Bharti (supra)**, in which the Supreme Court observed as follows:

“53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead t the place where he had hidden the weapon of offence along with his blood stained clothes **then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is complected thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama.** This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

.....

56. The requirement of law that needs to be fulfilled before accepting

the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW-7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating office and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery of panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. **In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him be brought on record and for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.”**

(emphasis supplied)

45. A perusal of the testimony of PW-9 and Anang Pal Singh PW-6 reveal that mandate of the Supreme Court in the aforesaid case of **Ramanand alias Nandlal Bharti** has not been complied with. No independent witnesses were called to the police station by the Investigating Officer prior to setting out of recovery of alleged weapons of murder. Moreover, in the testimony of PW-9, the words spoken by the accused leading to the recovery of weapon of murder have not been stated.

46. There are four recovery memos pertaining to alleged recovery of knives allegedly used for murder of the deceased. They are Exhibits Ka-8, Ka-9, Ka-10 and Ka-15. The Exhibit Ka-8 is the recovery memo dated 19.12.2012, which narrates that the SHO alongwith a Sub-Inspector, a Head Constable and three other Constables, went on the government vehicle to recover two murder weapons on the pointing out of the accused

Veerpal and Kalu @ Balraj. The recovered knives were stated to be taken possession at 6:25 a.m. and 6:30 a.m. which were sealed separately.

Exhibit Ka-9 is the recovery memo dated 20.11.2012, which reflects that the SHO alongwith a Sub-Inspector and three Constables, departed the police station at 5:45 a.m. for investigation during which they received information that one accused, namely, Pammi was preparing to leave and was standing in Kasna Bus Stand. On pointing out of the police informant, Pammi was arrested at 11:30 a.m.. On being questioned, he allegedly admitted his crime and said that he can recover the knife used for the murder. The memo records that members of the public were asked to witness the recovery but no one was prepared and thereafter on the pointing out of the accused the police went to the spot and the accused removed the soil with his hands at the spot and recovered a knife which was covered with blood and soil and the accused told that this was the knife used to kill Ved Prakash.

Exhibit Ka-10 is the recovery memo dated 02.12.2012 which reflects that the SHO alongwith a Senior Sub-Inspector of Police and a Sub-Inspector and two other Constables with a driver, departed on the police vehicle from the Police Station at 7:25 a.m. and they received information from a police informant that the accused Omi is standing near a temple near a small bridge in Kasna, who was arrested at 10:15 a.m. The accused Omi allegedly admitted his crime and stated that he could point out the place where the murder weapon had been thrown. It is recorded that the police asked the members of the public to witness the recovery but no one was prepared and, therefore, they went with the accused to the place pointed out. The accused went ahead and allegedly recovered a knife which was taken possession of at 12:10 p.m.

Exhibit Ka-15 is the recovery memo dated 23.12.2012 which reflects that the SHO alongwith a Sub-Inspector and three other Constables, went in the police vehicle alongwith the accused Sumit @ Bhura from the police station at 13:05 hours. The accused got the vehicle stopped near Chuhadpur underpass and went ahead and allegedly

recovered a knife from behind the bushes and said that this was the murder weapon. The knife was stated to be taken possession of at 13:30 hours and sealed.

Thus, it is evident that no independent witnesses accompanied the police and the accused for recovery of the alleged murder weapons.

47. It is pertinent to note that Exhibit Ka-11 is the site plan with Index prepared by the P.W.-9, the SHO, on 17.11.2012 which reflects the site of the incident and the alleged location of the eye witnesses as well as the site of murder and the direction in which the accused had fled after committing the crime. Exhibit Ka-12 is the site plan regarding the alleged recovery of the murder weapon on the pointing out of the accused Pammi that corresponds to Exhibit Ka-9, recovery memo.

Exhibit Ka-13 is the site plan of the recovery of the murder weapon on the pointing out of the accused Om Kumar @ Omi that corresponds to recovery memo, Exhibit Ka-10.

The site plan, Exhibit Ka-14, corresponds to the recovery memo, Exhibit Ka-8, which reflects the site of recovery of the alleged murder weapons on the pointing out of the accused Veerpal and Kalu @ Balraj.

Exhibit Ka-16, which is the site plan prepared by the P.W.-9, allegedly showing the site from which the murder weapon on the pointing out of the accused Sumit @ Bhura was recovered and this corresponds to Exhibit Ka-15, which is the recovery memo.

It is pertinent to mention here that Exhibits Ka-13, Ka-14 and Ka-16 reflect the sites of recovery of the alleged murder weapons from near Chuhadpur underpass.

The Chuhadpur underpass has been shown in the site plan, Exhibit Ka-11, as 72 steps south-east of the site of the murder. Thus, the recovery of knives are reflected in site plans Exhibits Ka-13, Ka-14 and Ka-16 from places near the site of murder, whereas the alleged escaped route of the accused being in the diagonally opposite direction renders the aforesaid three recoveries of weapons suspect. The above facts, coupled

with the fact that the provisions of Section 27, as interpreted by the Supreme Court in its judgment in **Ramanand** (supra) have not been complied with, the recoveries of the alleged murder weapons are not proved.

48. As already referred to above, other than the testimony of the P.W.-1, all the other witnesses have turned hostile. One of the eye witnesses who has turned hostile is the brother (Chetram) of the P.W.-1 and the deceased. In their statement made under Section 313 Cr.P.C., the accused have stated that they have been falsely implicated due to village enmity. Therefore, the P.W.-1 could also be an interested witness.

49. At the site of the incident, even the Investigating Officer has admitted, there was a crowd of people. Yet, surprisingly, no independent witness has been examined. The P.W.-6, who is the Sub-Inspector of Police and the Investigating Officer, P.W.-9, have both testified that for conducting the inquest, the corpse of the deceased was taken to a hospital in order to maintain law and order. The PW-6 has stated that there was lack of adequate light at the site of the incident. The mandate of Section 174 Cr.P.C. read with Rule 132 of Chapter XII of the Police Regulation, is that the police is to conduct the inquest at the site. This is not supported by the site plan. However, the fact that there was inadequate light at the site of the incident is proved.

50. The place from where the P.W.-1 is stated to have witnessed the murder is shown in the site plan Ka-11 as 67 steps away to the south-west of the site of the incident. The accused persons are shown in that site plan to have fled north-west from the site of murder on foot to their parked vehicles and then northwards in their vehicles. The Investigating Officer, who went about proving the recovery of the murder weapons and other items and the entire investigation conducted by him with arrests, has failed to conduct any investigation with regard to the alleged vehicles used by the accused for reaching and leaving the site of the crime. In their entire testimony, neither the P.W.-6 nor the P.W.-9 have mentioned about

the recovery of the vehicles used by the accused to reach and leave the site of the alleged incident. The P.W.-9 in his cross-examination could not recall that in which direction was the corpse of the deceased lying. He could not say whether the corpse was lying face up or face down.

51. Though, it may not have any bearing on the present case, it may be mentioned that in respect of one accused, namely Sunny @ Bhura, his trial was conducted separately by the juvenile court where the Case No. 6 of 2013 was registered. The P.W.-1 had also appeared in Case No. 6 of 2013 as P.W.-1 and his testimony was recorded on 10.6.2015 in which he turned hostile. (Paper No.55Kha/26)

52. Be that as it may, the law with regard to the hostile witnesses is that it is for the Court of fact to consider in each case whether as a result of such cross-examination and contradiction the witness stands discredited or can still be believed in regard to any part of his testimony. It is well within the powers of the court to make an assessment in respect of the testimony of a hostile witness and come to the correct conclusion. The evidence of a hostile witness cannot be discredited as whole and the relevant part thereof which are admissible in law can be used by the prosecution or by the defence⁸.

53. Under the circumstances, the testimony of P.W.-1 has to be viewed in light of the testimony of the other eyewitness, P.W.-3 as well as all the other eyewitnesses, including the brother of the P.W.-1 (that is, the P.W.-5) who all negated the case of the prosecution regarding the guilt of the accused. Though leading questions were put to the hostile witnesses regarding their testimony against the prosecution to the effect that due to threat or a compromise they were giving such a testimony, the witnesses denied the same. Chetram (P.W.-5), the witness who turned hostile, was the real brother of the deceased and no such circumstance or motive has been demonstrated as proved by the prosecution that would lead to a finding that his testimony is unbelievable. The testimony made by the

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P.W.-3 and P.W.-8 as hostile witnesses that the deceased was found impaled on the knife like grille behind the shape of the deceased has not been explored by the trial court. The admission made by the doctor conducting the postmortem examination (PW-4) that the injuries of the deceased were not stab wounds do create a doubt as to the cause of the injuries on the deceased that are reflected in the postmortem report. Given, on one hand, the nature of the wounds primarily on one side of the body, while on the other hand, the fact that the P.W.-1 had testified that the deceased was being choked by a belt and held by two of the accused while the others were stabbing the deceased, creates a doubt as to the manner in which the wounds came to be inflicted on the deceased. Evidently, neither the P.W.-1 nor the P.W.-3 nor the P.W.-8 were present at the site when the accused allegedly reached the site of the incident on their vehicles. It were only the independent witnesses who could have testified the factum of the accused reaching the site and advancing towards the deceased. The location of the P.W.-1 at the time of the incident is itself under cloud in view of the testimonies of P.W.-3 and P.W.-8. The P.W.-8 has testified the reason for the police directing their investigation against the accused that the police were angered by the behaviour of the accused towards them during an incident some days prior to the death of the deceased. It was also mentioned that the police had stated that since foreigners were involved, the case would be difficult to be proved. In this regard, a suggestion was also made to the P.W.-9 who denied the same. There is an important element with regard to lack of adequate lighting at the site and so it is doubtful that the P.W.-1 could have actually seen the faces of the accused from a distance of 67 steps on a winter night. As narrated above, the conduct of the PW-1, after the incident, is itself unnatural. Given the entire facts the circumstances, as narrated above, the accused persons are entitled to benefit of doubt. The case of the prosecution has not been proved beyond reasonable doubt.

54. Under the circumstances, the present criminal appeal is **allowed** and the accused are acquitted giving them the benefit of doubt. The

accused shall be released from jail as per law if their incarceration is not required in any other case after compliance of Section 437-A of the Cr.P.C.. Let a copy of this judgment be sent to the trial court forthwith.

Date :25.05.2023
SK/A.V. Singh