



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 09 May 2025**  
**Judgment pronounced on: 27 May 2025**

+ **CRL.A. 434/2024 & CRL.M.(BAIL) 2171/2024**

ANIL KUMAR VATS ...Appellant

Through: Mr. Abhishek Varma and Ms.  
Deepika Jahu, Advs.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Ritesh Kumar Bahri, APP  
Mr. Lalit Luthra and Ms. Divya  
Yadav, Advs. with Inspector  
Ramesh Chand, PS Dwarka  
South and Inspector A.K. Singh,  
PCR.

**AND**

+ **CRL.A. 720/2024**

SATYA PRAKASH ...Appellant

Through: Mr. Kushal Kumar and Mr.  
Suryansh Gaur, Advs.  
(M: 9166644457)

versus

THE STATE OF NCT OF DELHI & ORS. ....Respondents

Through: Mr. Ritesh Kumar Bahri, APP,  
Mr. Lalit Luthra and Ms. Divya  
Yadav, Advs. with Inspector  
Ramesh Chand, PS Dwarka  
South and Inspector A.K. Singh,  
PCR .

Mr. Sameer Chandra, Mr.  
Shubham Parashar, Mr. Aryan  
Tomar, Advs. for R-3.



Mr. Pradeep Yadav, Adv. for R-2 and R-4.

**CORAM:**

**MS. JUSTICE PRATHIBA M. SINGH**

**MR. JUSTICE DHARMESH SHARMA**

**J U D G E M E N T**

**DHARMESH SHARMA, J.**

1. This common judgment shall decide the aforementioned two Criminal Appeals, which have been preferred by the appellant/convict, namely Anil Kumar Vats assailing the impugned Judgment dated 28.02.2024 followed by the order on sentence dated 08.04.2024 passed by the learned Additional Sessions Judge (South-West)-05, Dwarka Courts, Delhi [**“Trial Court”**] in case bearing Sessions Case No. 441199/2016 [*CNR No. DLSW01-003174-2016*] titled ‘*State v. Joginder Solanki @ Ravi & Ors.*’ arising out of FIR<sup>1</sup> No. 64/2016 PS<sup>2</sup> Dwarka South, whereby the appellant has been convicted and sentenced to undergo life imprisonment for committing offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 [**“IPC”**].

2. The second appeal has been preferred by the complainant, namely Satya Prakash bearing CRL. A. 420/2024<sup>3</sup>, emanating from the same impugned judgment whereby the other three accused persons who faced trial in respect of charges under sections 302/506/120B/34 of the IPC read with Sections 25/27/54/59 of the Arms Act, 1959 have been

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<sup>1</sup> First Information Report

<sup>2</sup> Police Station

<sup>3</sup> Section 374 & 378 of the Cr.P.C corresponding to section 419(1) & (3) read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023



acquitted. Both the appeals raise common questions of law and facts and can be conveniently disposed of together.

**THE CHARGE:**

3. In the instant matter, the following accused persons have been arraigned for trial:

A-1 Joginder Solanki @ Ravi

A-2 Dheeraj Vats @ Rinku

A-3 Amit @ Rocky

A-4 Anil Kumar Vats @ Choti

A-5 Manish Solanki @ Chola

It is relevant to point out here that each of the accused persons have been herein referred by their nick names as also through numbering viz., A-1 to A-5 respectively.

4. In a nutshell, A-1/Ravi; A-2/Rinku; A-3/Rocky; and A-4/Choti i.e. the appellant before this Court were charged on the allegations that on 01.02.2016 at about 01:45 p.m.<sup>4</sup>, behind Maxfort School, Sector-7, Dwarka, New Delhi within the jurisdiction of PS Dwarka South, they along with the co-accused A-5/Chola [*died on 21.01.2019 and trial abated qua him*] entered into a criminal conspiracy to commit murder of the deceased Nikhil S/o Mr. Satya Prakash and in pursuance of the said criminal conspiracy, co-accused A-5/Chola inflicted two gunshots with an improvised Pistol upon the deceased Nikhil, who died

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<sup>4</sup> Post Meridiem



instantaneously and in pursuance of the criminal conspiracy PW<sup>5</sup>-1/Gaurav Bhardwaj was also threatened with death, and thereby the accused persons, committed offences punishable under Sections 302 and 506 read with Section 120-B of the IPC besides Sections 25/27/54/59 of the Arms Act.

**FACTUAL MATRIX:**

5. The prosecution's case is that on 01.02.2016 at about 02:00 p.m. a call was received by PW-7/ASI<sup>6</sup> Geeta Devi, PS Dwarka South from the Control Room that one boy has been fired at two rounds near Maxfort School, Sector-7, who has gotten injured, which information was sent by Ct<sup>7</sup>. Chetan No. 1972/PCR from his mobile No. 9599056100, which was recorded *vide* DD<sup>8</sup> No. 24A (Ex.PW-7/A). The investigation was immediately marked to PW-32/SI<sup>9</sup> Anil Kumar, who along with PW-29/Ct. Rajesh reached the place of occurrence where they found empty cartridges and some blood. In the meanwhile, they were joined by PW-43 IO<sup>10</sup>/SHO<sup>11</sup> Inspector A.K. Singh along with PW-35/HC<sup>12</sup> Shammi Kapoor and other staff and an information was received from the Control Room, which was recorded *vide* Ex.PW-7/B at 03:05 p.m. to the effect that the injured boy who was brought to

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<sup>5</sup> Prosecution Witness

<sup>6</sup> Assistant Sub-Inspector

<sup>7</sup> Constable

<sup>8</sup> Daily Diary

<sup>9</sup> Sub Inspector

<sup>10</sup> Investigating Officer

<sup>11</sup> Station House Officer

<sup>12</sup> Head Constable



the Ayushman Hospital was declared dead. PW-32/SI Anil Kumar along with PW-43/Inspector A.K. Singh with the police team reached the Hospital where, on collection of MLC<sup>13</sup> (Ex.PW-13/A), they were handed over certain articles found the body of the deceased i.e. Rs.200/-, one white handkerchief, one mobile phone containing two SIM, one small knife and one live cartridge having KF 7.65 engraved on its base, which were sealed with seal of 'AKS' vide seizure memo Ex.PW-26/B.

6. In the meanwhile, PW-1/Gaurav Bhardwaj, who claimed himself to be an eye witness met the police at the Hospital, whose statement was recorded to the following effect:

“ब्यान किया कि मैं पता उपरोक्त पर सहपरिवार रहता हूँ अपनी वकालत से पढ़ाई पूरी करके Patiala House से Internship कर रहा हूँ। आज समय करीब 1 बजे दोपहर मैं अपने दोस्त निखिल कुमार S/o सत्यप्रकाश R/o H-2/77, बंगाली कालोनी थाना डाबडी के साथ महाबीर इन्कलेव में मौजूद था कि निखिल के फोन पर अनिल कुमार वत्स S/o ईश्वर चन्द R/o पालम गांव नई दिल्ली को फोन आया और बात करने के बाद निखिल ने मुझे बताया की अनिल को फोन आया था उसने अपने घर बुलाया है। मैं और निखिल मेरी Scooty से अनिल के घर पालम गाँव पहुंचे जहाँ पर अनिल नहीं मिला। उसेक घर से पता चला कि अनिल दुकान पर मिलेगा। इस पर मैं और निखिल Max Fort School के Backside में अनिल की दुकान के सामने पहुँचे जहाँ पर एक i-10 White Colour car में मनीष@ छोला, धीरज के साथ बैठा था और अनिल व Rocky और 4/5 अन्य लड़कों ने हमें बातों में लगा लिया और कुछ देर तक इधर उधर की बातें करते रहे और इसी दौरान मनीष@छोला गाड़ी के अन्दर धीरज से साथ बैठा रहा। कुछ देर बाद अनिल, राकी और 4/5 लड़कों ने निखिल के बातों में लगा लिया और गाड़ी से कुछ दूर पर जाकर खड़े हो गये। इसके बाद मनीष@छोला गाड़ी से निकलकर आया और निखिल को धमकाने लगा। मनीष निखिल को कह रहा था कि तू मुझे माँ बहन की गालियां

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<sup>13</sup> Medico Legal Case



दे रहा था, अब मुझे गालियां देकर दिखा। फिर मनीष अनिल से बोला की इसे पिस्टल दे दे यह मुझे मारेगा जिस पर निखिल ने कहा भाई पुरानी बातों को भूल जाओ और मुझे माफ करो। इस पर मनीष ने कहा कि मैं तुझे दिखाता हूँ गाली कैसे देते हैं यह कहते हुए उसने अनिल की पैंट में लगी पिस्तौल निकाली और निखिल के सीने पर गोली मार दी। निखिल वहीं एक रेहड़ी को पकड़कर बैठ गया। इसके बाद मनीष ने दोबारा निखिल के पास जाकर उसके सिर में गोली मारी और निखिल के सिर पर लात मारकर Maxfort School की तरफ चला गया। कुछ देर बाद मनीष एक नीली Scooty पर दोबारा वहां से गुजरा और मुझे धमकाता हुआ गया कि अगर इसे बचाया तो तुम्हें भी गोली मार दूंगा। मैंने निखिल को उठाने का कोशिश की लेकिन वह निढाल पड़ा था जिस पर मैंने 100 नम्बर पर काल कर दिया मनीष@ छोला ने अनिल कुमार वत्स, राकी धीरज और अपने 4-5 अन्य साथियों के साथ एकमत होकर योजना बनाकर निखिल को गोली मारकर उसका कत्ल किया है। इन सभी के खिलाफ कानूनी कार्यवाही की जाए। ब्यान सुन लिया ठीक है।”

7. On the basis of the said statement, *rukka* endorsement Ex.PW-43/A was made and same was sent to PS Dwarka South and the present FIR (Ex.PW-8/A) came to be recorded at 18.45 hours on 01.02.2016. During the course of investigation, the IO prepared the rough site plan of the place of occurrence (Ex.PW-11/A) and later on a scaled site plan (Ex.PW-12/A) was prepared on 13.04.2016. The body of deceased was sent for *post mortem* which was conducted by PW-2/Dr. V.K. Ranga on 02.02.2016. During the course of investigation, the accused persons were arrested at different point of time, pointing out memos were prepared besides recording the disclosure statements of the accused persons. It is significant to note that A-5/Chola was apprehended on 07.02.2016 and he was allegedly found in possession of the weapon of offence i.e., the improvised pistol with three live cartridges.



8. Apart from recording the statement of witnesses, CCTV<sup>14</sup> footage of the cameras, which were installed and focused towards the place of occurrence from house No. A-4, Sector-7, Dwarka, New Delhi belonging to PW-14/Ramesh Chand, in the nature of DVR<sup>15</sup> were obtained and seized *vide* seizure memo (Ex.PW-32/B). The recovered DVR came to be examined by the FSL<sup>16</sup> expert, namely PW-23/Mr. Vivek Kumar, Junior Forensic/Assistant Chemical Examiner (Doc) and report Ex.PW-23/A was obtained and the CCTV footage were contained in the DVDs Ex.PW-23/1 to PW-23/3. Later on, PW-44, namely Mr. Rohan Sharma, Jr. F/ACE (CFD), FSL, Rohini was also examined who produced the DVDs of the CCTVs, which were marked as PW-43/PX1 and Ex.PW-44/PX1.

9. On completion of investigation, charge sheet under Section 173 of the Cr.P.C<sup>17</sup> was prepared and filed against the accused persons. As stated hereinabove, the charges were framed against the accused persons on 26.10.2016, to which they pleaded not guilty and claimed trial.

#### **PROSECUTION WITNESSES:**

10. The prosecution, in order to prove its case, examined as many as 44 witnesses:

The main witnesses for the prosecution were **PW-1**

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<sup>14</sup> Closed Circuit Television

<sup>15</sup> Digital Video Recorder

<sup>16</sup> Forensic Science Laboratory

<sup>17</sup> Code of Criminal Procedure, 1973



**Gaurav Bhardwaj, PW-3 Prashant Yadav and PW-4 Rahul Rajput. PW-5 Satya Prakash and PW-6 Nishant** were father and brother of the deceased Nikhil, who merely identified the dead body of the deceased; **PW-9 Sunil Kumar** was the younger brother of PW-5 Ram Kumar, who was informed about the murder of boy Nikhil on the date of incident.

Insofar as the expert witnesses are concerned, apart from **PW-2 Dr. V.K. Ranga**, who conducted *post mortem* on the dead body of the deceased and proved the report as Ex.PW-2/A, were examined **PW-13 Dr. Sudhanshu Shekhar** from Ayushman Hospital who deposed about medically examining the injured and declaring him dead vide the MLC Ex.PW-13/A; **PW-15 Mr. Puneet Puri**, Assistant Director, Ballistics, FSL, Rohini, who deposed about the examination of the Pistol and the cartridges recovered including the empty cartridges and proved his report Ex.PW-15/A; **PW-21 Mr. Prashant Kumar** and **PW-25 Mr. Surender Kumar** were the Nodal Officers from Vodafone Idea Ltd. and Bharti Airtel Ltd. respectively, who produced the Call Data Records<sup>18</sup> in respect of the deceased as well as the accused persons and

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<sup>18</sup> CDR





testified about the same. At the cost of repetition, **PW-23 Mr. Vivek Kumar** and **PW-44 Mr. Rohan Sharma** were the forensic experts who were examined in relation to the CCTV footage covering the place of occurrence. Rest of the witnesses were police officials including the IO /SHO Inspector A.K. Singh.

11. On the close of prosecution evidence, each of the accused persons were individually examined in terms of Section 313 Cr.P.C. Each of the four accused persons were confronted with the incriminating oral and documentary evidence brought on the record by the prosecution, to which they either showed their ignorance or made bald denial, each claiming that he has been falsely implicated in the present matter.

12. It is further pertinent to mention that each of the accused persons have been additionally examined under Section 313 of the Cr.P.C. with respect to the recording of incident in the CCTV footage brought on the record *vide* DVRs Ex.PW-43/PX-1 and PW-44/PX-1. Each of the accused persons again claimed innocence and disputed the veracity and genuineness of the CCTV footage.

13. Except for A-2/Rinku, none of the remaining accused examined any defence witnesses. A-2/Rinku examined **DW-1 ASI Nirbhay Singh** with regard to calls to the Police dated 02.02.2016 so as to buttress the plea that A-2/Rinku was forcibly picked up from his house on 02.02.2016. However, no record could be produced. **DW-2 Manoj**



**Kumar** was Statistical Assistant from Rao Tula Ram Memorial Hospital, Jaffarpur, Delhi. He produced the MLC of his brother Rohit S/o Shri Subhash Chand Ex.DW-2/A and **DW-3 Rohit Kumar**, the brother of A-2/Rinku testified that the police came to their house on 02.02.2016 and his brother i.e. A-2/Rinku was forcibly taken away, alleging that he was assaulted in the process. **DW-4 Subhash Chand** was examined so as to prove the defence of A-2/Rinku to the effect that he had taken a property on rent at A-24, Chander Vihar, Palam Extension, New Delhi-45 and was engaged in his business and had no criminal antecedents.

**IMPUGNED JUDGMENT:**

14. In summary, learned Trial Court on appreciation of oral and documentary evidence on the record found that although PW-1/Gaurav Bhardwaj had attempted to conceal certain material aspects of the case, more or less he was able to support the prosecution case whose evidence was also corroborated by PW-3/Prashant Yadav. Learned Trial Court found that the versions of PW-1/Gaurav Bhardwaj and PW-3/Prashant Yadav also got substantiated by the CCTV footage proven on the record by the IO/PW-43 Inspector A.K. Singh, which brought out the presence of each of the accused persons on the spot besides the witnesses including the deceased, and the CCTV footage exemplifying the manner in which the victim came to be killed. On finding that the *post mortem* report i.e., Ex.PW-2/A conclusively brought about that the two bullets injuries individually or collectively were sufficient to cause



death in the ordinary course of nature, learned Trial Court concluded that although evidence as to the criminal conspiracy amongst the accused persons as a whole was lacking, however, the shooting incident appeared to have been done at the instance of A-5/Chola, the main culprit Manish Solanki @ Chola, in common intention with A-4/ Choti, who fired twice at the victim and then went away from the spot. It may be stated here that this Court shall delve into the entire evidence in detail in the later part of this judgment.

15. Resultantly, the learned Trial Court found that the A-4/Choti was guilty of committing murder of the deceased Nikhil in pursuance of common intention with the co-accused A-5/Chola. Holding that the act of the convict could not termed as extremely brutal, grotesque, diabolical, revolting or dastardly so as to arouse intense and extreme indignation of the community, he was spared of death sentence and instead was awarded substantive punishment in the nature of imprisonment for life with fine of Rs. 20,000/-. However, insofar as the other accused persons are concerned, viz., A-1/Ravi, A-2/Rinku and A-3/Rocky, it was held that none of the public witness examined by the prosecution deposed anything incriminating *qua* them and though they were present at the spot but even as per CCTV footage, there was no overt act seen on their part so as to invite inference of their guilt in the present case and accordingly A-1/Ravi, A-2/Rinku and A-3/Rocky were acquitted of all the charges.

**GROUND OF APPEAL:**

16. The appellant/convict in CRL. A. 434/2024 has assailed the impugned judgment *inter alia* on the grounds that the testimony of PW-1/Gaurav Bhardwaj has numerous contradictions, which go to the root of the matter and that the testimony of the said witness is not reliable; and the CCTV footages marked as Ex.PW-43/PX-1 and PW-44/PX-1 were not even shown to PW-1 in his cross-examination and in the absence thereof, the role of the present appellant could not be prodded about in the cross-examination of PW-1/Gaurav Bhardwaj; and that both PW-1/Gaurav Bhardwaj and PW-3/Prashant Yadav did not testify about any animosity between the present appellant and the deceased and thus the prosecution has failed to prove any motive behind the commission of alleged crime; and that the CCTV footage itself shows that when A-5/Chola attempted to fire at the deceased, although, A-4/Choti made unsuccessful effort to thwart A-5/Chola from firing at the victim though A-5/Chola was strongly built man but eventually A-4/Choti was too terrified and had to save his own life.

17. The impugned judgment of conviction and sentence has further been assailed by the appellant on the ground that statements of PW-3/Prashant Yadav and PW-4/Rahul Rajput were recorded after almost about 25 days of the incident whereas as per the witnesses they have been shown the CCTV just after 1-2 days of the incident. Further, the challenge is made to the authenticity and genuineness of the CCTV footage of the scene of crime on the ground that PW-14/Ramesh Chand



denied that any DVR marked as Ex.PW-23/4 was seized or handed over by him to the police; and that the prosecution miserably failed to prove that there was any overt or covert act on the part of the accused persons to entertain a common intention; and that there was inordinate delay in registration of the FIR and the investigation by the Police was tardy, lackadaisical and tainted as the names of each of the accused persons were tutored to PW-3 and PW-4 after showing the CCTV footages; and that congression of the accused persons near the shop of A-2/Rinku was a casual one and in ordinary course of events during the day and not indicative of any criminal conspiracy.

18. Insofar as the complainant Mr. Satya Prakash, the father of deceased is concerned in CRL. A. 720/2024, he has *inter alia* assailed the impugned judgment thereby acquitting A-1/Ravi, A-2/Rinku and A-3/Rocky on the ground that movements of the accused persons captured by the CCTV demonstrating the manner in which the accused persons arrived at the spot, and then having detailed discussion amongst one another before the arrival of the victim would go to suggest that all this time they were hatching a criminal conspiracy and kept close watch around so as to ensure that after committing the murder of the deceased, they could easily get away from the spot unharmed.

### **ANALYSIS & DECISION:**

19. We have given our thoughtful consideration to the submissions advanced by the learned counsel for the appellant, learned APP for the State as well as learned counsel for the complainant. We have also given



our thoughtful consideration to the oral and documentary evidence brought on the record including the digitized Trial Court Record and the case law cited at the Bar.

20. At the outset, the prosecution case against the appellant is primarily based on the testimony of PW-1/Gaurav Bhardwaj as claimed to be corroborated on some material particulars by PW-3/Prashant Yadav, and the embellishment, if any, with regard to their version gets cleared on watching the CCTV footage that captured the manner in which the entire incident unfolded leading to the killing of deceased Nikhil, proven on the record after playing of the DVR containing CCTV footage (Ex.PW-43/PX-1 and PW-44/PX-1).

21. We find that the testimony of PW-1/Gaurav Bhardwaj is categorical to the effect that on 01.02.2016 though he had met the victim Nikhil sometime in morning and parted ways but then he met and joined him at Gali No.4, Mahavir Enclave on him receiving his call at about 01:00 p.m., who told him that A-4/Choti was calling him to reach his house for some conversation. He testified that he along with the victim Nikhil went to the house of A-4/Choti riding on their Scooty and came to know from his Aunt that A-4/Choti would be available at his shop and upon that they reached the place of occurrence. PW-1/Gaurav Bhardwaj testified that on reaching the spot near shop of A-4/Choti they found parked a white colour i10 car, identifying the car in the photograph Ex.PW-1/X, without any objection, in which A-5/Chola was sitting and having drinks (sic. liquor). He categorically



testified that A-2/Rinku, A-1/Ravi and A-3/Rocky were also standing near the car and at some time victim Nikhil started talking with A-4/Choti and other boys, gossiping and joking with each other.

22. It is pertinent to mention that the examination-in-chief of PW-1/Gaurav Bhardwaj could not be concluded on 30.11.2016 due to some unsavory situation outside the Court room, he was re-called on 15.12.2016, on which date he categorically proceeded to further testify that after sometime all the persons started abusing each other and A-5/Chola asked the victim Nikhil “निकाल तेरे पास जो कुछ भी है” and upon that victim Nikhil put his hands in his both pant pockets and showed that he had nothing with him and also tendered an apology to A-5/Chola seeking his pardon but then A-5/Chola fired on his chest and head after taking pistol from the possession of A-4/Choti. He further testified that after firing at the victim Nikhil, he also kicked the victim and then went away on foot from the spot and after some time came back at the spot on a Scooty and threatened him i.e., the witness “अगर इसको उठाया तो तुझे भी मार देंगे”, and thereafter, he left the spot.

23. PW-1/Gaurav Bhardwaj acknowledged that he made a statement to the IO (Ex.PW-1/A). It appears that since PW-1/Gaurav Bhardwaj appeared to be resiling from his previous statement to the Police and alleged that he was kept in the police station for two days, he was allowed to be cross-examined by the learned APP for the State, upon which he admitted that two empty cartridges upon which was engraved KF 7.65 were seized by the IO after making their sketches from the



place of occurrence besides some blood stained earth material *vide* seizure memo Ex.PW-1/B signed by him at point 'A'. It must be emphasized that PW-1/Gaurav Bhardwaj correctly identified each of the accused persons in his examination-in-chief, which version went unchallenged in his cross-examination.

24. It was on the 3<sup>rd</sup> time of his further examination *i.e.*, on 17.12.2016 that this witness appeared to be on shaky grounds as on being cross-examined by the learned counsel for A-5/Chola he out of the blue stated that he had taken some drugs and was intoxicated at the time of incident. Further, on being suggested by the defence, he testified that he was deposing under pressure from the family of the deceased and denied any knowledge as to who committed the murder since there were so many persons.

25. On a conspectus of the entire testimony of PW-1/Gaurav Bhardwaj it is but apparent that the *volte-face* by PW-1/Gaurav Bhardwaj in his cross-examination recorded on 17.12.2016 was probably on account of either some fear in his mind at the instance of the accused persons or in all probability he had been won over by the accused persons. We have no hesitation in holding that the learned Trial Court committed no error in believing the testimony of PW-1/Gaurav Bhardwaj since it is well settled that mere fact that PW-1/Gaurav Bhardwaj was treated as a 'hostile witness' and was cross-examined by the learned APP for the State would not make his entire testimony being rendered untrustworthy.





26. Avoiding the temptation to embark on a long academic jurisprudence on the subject, suffice would be to refer to a few decisions of the Supreme Court, in the case of **Neeraj Dutta v. State (NCT of Delhi)**<sup>19</sup> wherein examining the context of Section 142<sup>20</sup> and 154<sup>21</sup> of the Indian Evidence Act, 1872 it was held as under:

“38. To steer clear of the controversy over the meaning of the terms “hostile” witness, “adverse” witness, “unfavourable” witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared “adverse” or “hostile”. Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in *Baikuntha Nath Chatteraj v. Prasannamoyi Debya* [Baikuntha Nath Chatteraj v. Prasannamoyi Debya, 1922 SCC OnLine PC 70 : AIR 1922 PC 409]). **The discretion conferred by Section 154 on the court is unqualified and untrammelled, and is apart from any question of “hostility”. It is to be liberally exercised whenever the court from the witnesses' demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice.** The grant of such permission does not amount to an adjudication by the court as to the veracity of the

<sup>19</sup> (2023) 4 SCC 731

<sup>20</sup> **142. When they must not be asked.** — Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court. The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

<sup>21</sup> **154. Question by party to his own witness.** — 1 [(1)] The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. 2 [(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.]



witness. Therefore, in the order granting such permission it is preferable to avoid the use of such expressions, such as “declared hostile”, “declared unfavourable”, the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English courts.

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52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. **It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it.** If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.” **{Bold portions emphasized}**

27. Thus, the testimony of a PW-1/Gaurav Bhardwaj, treated as hostile by the prosecution, when read as a whole, raises a strong inference that he has tried to conceal material truth from the Court with the sole purpose of shielding and protecting the accused persons for reasons best known to him, and thus, much would depend upon the incriminating evidence brought on the record by the prosecution so as to determine if any reasonable doubt is created *qua* the accused persons. That brings us to the testimony of PW-3/Prashant Yadav and the gist of his testimony is that on the day of the incident he had gone to play



Snooker along with PW-4/Rahul Rajput and on the way they met A-3/Rocky and planned to have some drinks/liquor at Vardhman Mall, Sector-7, Ramphal Chowk, Dwarka, upon which A-3/Rocky called A-1/Ravi and went to meet him at Solanki Properties, Sector-7, Dwarka where A-1/Ravi took out his i10 car bearing registration No. DL 10 CS 6505 and on the way they met A-5/Chola and they went to a liquor vend at Vardhman Mall, Sector-7, which was closed and then they headed to another one at Sector-23.

28. PW-3/Prashant Yadav testified that all of them then went together and A-5/Chola got seated on the front seat left side of the driver and the Car was being driven by A-1/Ravi and he was on the back seat along with PW-4/Rahul Rajput and A-3/Rocky; and that after some purchasing was done by A-5/Chola, they came to the area behind Maxfort School, Sector-7, Dwarka at which time the car was driven by A-5/Chola. He testified that upon reaching the place of occurrence, A-2/Rinku arrived at the scene and he was having some discussion with A-5/Chola whereas he along with PW-4/Rahul Rajput and A-1/Ravi and A-3/Rocky came out of the Car and stood outside. He testified that two persons came on Scooty and after some time A-5/Chola alighted from the Car and came outside and he saw A-5/Chola, deceased Nikhil, A-4/Choti and one other person whom he did not know talking to each other. It was at that juncture that after identifying all the accused persons in Court and through video conferencing, he appeared to be suppressing truth thereby not supporting the prosecution case but PW-



3/Prashant Yadav did say that he heard a sound of cracker and saw that A-5/Chola and A-4/Choti were grappling with each other and some people started running here and there shouting “गोली चल गई गोली चल गई”, and therefore, he ran away from the spot but he did see a pistol in the hand of A-5/Chola.

29. On being cross-examined by the learned APP for State, PW-3/Prashant Yadav acknowledged that A-5/Chola had taken out a Pistol from *dhab* of the trouser of A-4/Chola. He also deposed that police recorded his statement at his residence on 26.02.2016 and after 1-2 days of the murder, he was shown the CCTV footage in the police station by the police on mobile phone. Although PW-3 too was cross-examined by the learned APP, however, his testimony read as a whole corroborates the testimony of PW-1/Gaurav Bhardwaj as to the presence of each of the accused persons including the appellant/A-4/Choti at the place occurrence, and also with regard to identification of each one of them. There is further corroboration to the effect that A-5/Chola had taken the pistol from A-4/Choti and A-5/Chola fired the gun shots killing the victim Nikhil.

30. One aspect of this testimony that was however not challenged by the State/prosecution is that PW-3/Prashant Yadav showed his unawareness as to what talks took place between A-4/Choti and A-5/Chola on the one hand and the victim on the other hand and in the same breath testifying that he could not say if the talks were pleasant or animated. It is also pertinent to mention that as per the testimony of



PW-3/Prashant Yadav he had no prior acquaintance with A-2/Rinku, A-4/Choti and PW-1/Gaurav Bhardwaj and had met them for the first time on the day of incident.

31. In the aforesaid backdrop, we revert to the most crucial piece of evidence in the present matter, which undoubtedly is the CCTV footage from the DVR make 'QHMP L H.264' marked as Ex.PW-23/4 seized *vide* seizure memo (Ex.PW-32/B) from the residence of PW-14/Ramesh Chand Vats. Although PW-14 did not support the prosecution case so much so denying making any statement to the IO under Section 161 of the Cr.P.C. (Ex.PW-14/1), however, he did admit that he had installed CCTV cameras at his shop located nearby the place of occurrence and connected to the DVR at his residence i.e. H.No. A-4, Chander Vihar, Palam Extension, Sector-7, Dwarka. PW-14 incidentally happened to be the real uncle of A-4/Choti and obviously being an interested witness, he intended to save the skin of his nephew A-4/Choti and therefore he did not deliberately produce the bill in respect of the DVR and thereby concealing the model number and make of DVR.

32. Be that as it may, it is borne out from the record that PW-23/Vivek Kumar was initially examined on 09.12.2020 and later on recalled on an application under Section 311 of the Cr.P.C. moved by the State on 30.01.2024, which was allowed *vide* order dated 02.02.2024 and on 06.02.2024 his testimony *vis-à-vis* that of PW-44/Rohan Sharma would show that the data had been retrieved from the DVR that was



transferred to DVD-1, DVD-2 and DVD-3 which are Ex.PW-23/1 to Ex.PW-23/3 respectively and report Ex.PW-23/A was proven. Although, DVD-1 i.e. Ex.PW-23/1 when played in the Court on 29.01.2024 came out to be blank, it was categorical testimony of PW-44/Rohan Sharma that DVD Ex.PW-44/PX-1 and DVD Ex.PW-43/PX-1 were the same DVDs in which the data from DVR Ex.PW-23/4 was retrieved.

33. At this stage, it would be apposite to reproduce the observations made by the learned Trial Court while examining the CCTV footage that captured the entire incident in question in the deposition of PW-43/Inspector A.K. Singh, which go as under:

“83. In the present case, the entire incident can be duly seen by virtue of being recorded in the CCTV footage which was played in the court during the deposition of PW-43/IO Inspector A.K Singh, wherein it can be seen that:

At 13.13 hours, a white colour i-10 arrived at place of occurrence. Four persons were in this car, two accused persons namely Ravi Solanki and Amit @ Rocky and two other persons came out from the said car. Only accused Manish Solanki @ Chola (abated) remained in the said car. At 13.20 hours accused Anil @ Choti came near that car and entered in the car. Accused Anil @ Choti came out from car after 5 minutes at 13.25 hours and after few seconds deceased Nikhil and complainant Gaurav Bhardwaj reached there on scooty back side of this car. Accused Anil @ Choti is then seen in CCTV footage with deceased and other persons. Accused namely Dheeraj Vats who reached at the spot on one motorcycle also entered in said the car. At 13.35 hours accused Manish Solanki @ Chola (abated) came out from car and after 1 minute he reached near other accused persons and witnesses and all persons stood together. At that time accused Anil @ Choti remained with witness. Accused Manish @ Chola (abated) tried to take fire arm from accused Anil @ Choti and it is seen that then accused Anil @ Choti had taken one step towards accused Manish @ Chola (abated) and then accused



Manish @ Chola (abated) took fire arm from the possession of accused Anil @ Choti. It is further seen that accused Manish @ Chola (abated) fired on the chest of deceased Nikhil. Deceased Nikhil sat down near a rehadi (stall). At that time it is seen in the CCTV footage that accused Anil @ Choti tried to block the accused Manish @ Chola (abated) but after few seconds he left and stood aside and accused Manish @ Chola (abated) fired again in a minute at deceased Nikhil but the same misfired, later on he again fire in the head of the deceased.”

34. At this juncture we must point out that on having examined the CCTV footage a couple of times while hearing the present matter, we find that the picture quality is quite good, showing digital time log and date, the coverage is uninterrupted, continuous, and there is no challenge that it has been edited or tempered by anyone except that it is without the audio recording. It is also a matter of record that the certificate under Section 65-B of the Indian Evidence Act, 1872 Ex.PW-44/A dated 05.02.2024 has also been proven in the testimony of PW-44 and the same has not been assailed in any manner. In the said facts and circumstances, there are no grounds to dispense with the CCTV footage as being unreliable, inadmissible or being tampered with in any manner possible.

35. Thus, we have no hesitation in holding that the above said observations by the learned Trial Court setting out the manner in which the whole incident unfolded is flawless except that we have noted down the precise timings and we shall be drawing different inference from the CCTV footage as explained hereinafter. The crux of the CCTV footage covering the incident is that after the car arrived and parked at





the spot, A-1/Ravi comes out of the car from the front left seat of the driver and then comes out A-3/Rocky and PW-3/Prashant Yadav exiting from the rear seat, followed by PW-4/Rahul Rajput who came out from the rear seat of the car. It is in evidence that all of them were having drinks and they are joined by one more person Suraj, who is stoutly built man and wearing a black hoodie, and pertinently described as L-2 in the photographs marked as 3C and 5B in Annexure P-4 in CRL.A 720/2024. The CCTV footage shows that at about 13:21:22 hours A-4/Choti comes to the spot and slides into the car from the front door and sits on the co-driver seat. At 13:22:36 hours it was A-2/ Rinku who arrives and starts talking to A-5/ Chola, who was on the driver seat.

36. The time log at 13:25:32 hours CCTV footage then shows that A-4/Choti comes out of the car and at 13:26:01 hours two persons arrive on a white colour Scooty, which is parked behind the car and identified as the victim Nikhil and pillion rider PW-1/Gaurav Bhardwaj. The CCTV footage shows that all the accused persons (except A-5/Chola) alongwith the victim Nikhil, PW-1/Gaurav Bhardwaj and PW-4/Rahul Rajput besides Suraj (neither cited as a witness nor as an accused) were seen standing a little away from the car and interacting with each other. At 13:27:52 hours A-2/Rinku is seen entering inside the car through the front door on left side and sitting on the co-driver seat.

37. It is at 13:35:14 hours that A-5/Chola is seen coming out of the car and walks to the other side of the road but is seen returning back at 13:36:45 hours and approaches victim facing him at a handshake





distance and A-4/Choti standing on his left besides Suraj. At 13:37:06 A-2/Rinku comes out of the car and meets the above said party and then goes the other way. It is at about 13:40 hours onwards that A-5/Chola victim Nikhil and the appellant are having a discussion and one more identified as Suraj is seen moving away at 13:41 hours just when A-5/Chola takes out a Pistol from the waist/belt side of pant (*dhab*) of appellant A-4/Choti and seen firing from the Pistol at the deceased Nikhil.

38. At this point of time, when the first shot is fired, the appellant A-4/Choti forcibly pushes A-5/Chola away to some distance in what appears to attempting to dissuade him from firing again and the victim is seen clutching his hand to his chest, staggering and going three four steps towards the car, where *rehriwala* was stationed and the vendor is seen running away in fear and the victim is seen settling/sitting on the pavement facing the *rehri*. The CCTV footage shows that A-5/Chola appears to be unrelenting and he approaches the victim at point blank range and fires the second time, which perhaps misfires and then he perhaps sets right the pistol and fires again, and after some time A-5/Chola is seen kicking the victim Nikhil and leaving the place of occurrence.

39. In view of the above discussion, we find that the prosecution has been able to establish the following facts on the record beyond reasonable doubt:



- (i) that PW-1/Gaurav Bhardwaj was informed by victim Nikhil at about 01:00 p.m. that he had received a call from the appellant A-4/Choti who had asked him to meet him for some conversation/negotiation;
- (ii) that PW-1/Gaurav Bhardwaj joined the victim Nikhil and went to the house of appellant where he was told that the appellant would be found at his shop, and therefore, they reached the place of occurrence on a scooty as seen in the CCTV footage at about 13:26 hours;
- (iii) that the statement of PW-3/Prashant Yadav that they had arrived at the place of incident in i10 Car which was driven by A-5/Chola and that they were accompanied with A-1/Ravi, A-3/Rocky besides PW-4/Rahul Rajput and they were joined by A-2/Rinku is also corroborated by the CCTV footage from the time log 13:16:57 hours onwards;
- (iv) that not only the identification of each of the accused persons but also their presence at the place of occurrence has been clearly established by the testimony of PW-1/Gaurav Bhardwaj, PW-3/Prashant Yadav and further stands corroborated by the CCTV footage which would eventually show that A-5/Chola and A-4/Choti on the one hand and the victim Nikhil in the presence of Suraj were having some discussion and at that point of time



remaining accused persons including PW-1/Gaurav Bhardwaj were not around;

(v) that before the conversation took place, initiated by A-5/Chola along with the appellant A-4/Choti, there is nothing to discern that there was any hostile behaviour on the part of any of the accused persons except when A-5/Chola and A-4/Choti approached the victim and PW-1/Gaurav Bhardwaj at about 13:40 hours and seem to having a long conversation;

(vi) that the prosecution is further able to bring home that two gun shots wounds on the body of the deceased, one on the chest and the other on the head were singularly as also cumulatively were sufficient in the ordinary course of nature to cause death in terms of *post mortem* report Ex.PW-2/A;

(vii) that the prosecution is able to bring home that the pistol which was seized by the police at the time of arrest of A-5/Chola on 07.02.2016 had been examined by FSL and as per report Ex.PW-15/A the recovered empty cartridges from the body of the victim Ex.EB-1 and EB-2 were compared with the test fired empty cartridges EC-1 and EC-2 7.6 mm and the same were found to have been fired from the improvised Pistol marked F-1.



40. In summary, the testimony of PW-1/Gaurav Bhardwaj recorded on 30.11.2016 and 15.12.2016 unfolds the events on the date of incident i.e. 01.02.2016. The version of the incident narrated is not only corroborated by PW3/Prashant Yadav but also by the CCTV footage duly played before the court during the trial through DVDs (Ex.PW-43/PXI and Ex.PW-44/PXI). All said and done, the question is what inference should be drawn from the extensive CCTV footage? To answer the aforesaid question, the core question that arises for consideration is as to whether there was hatched any criminal conspiracy as amongst the accused persons before the crime was committed?

### **PROPOSITION OF LAW ON CRIMINAL CONSPIRACY**

41. It is well settled in criminal jurisprudence that Section 120-A is a distinct offence under the Penal Code and the very agreement, concert or league is the ingredient of the offence. There may be innumerable ways and techniques that may be adopted to achieve common goal of the conspiracy. There may be division of performances in chain of actions with the object to achieve real end of which every collaborator must be aware and in which each of them must be interested. The basic ingredient is agreement to do an act which is illegal and infact even some steps resorted to by one or the two conspirators without the knowledge of the others might be sufficient to impose culpability upon those who were associated with the object of the conspiracy. Indeed it is also well known fact that conspiracy is hatched in secrecy and it may



be difficult to adduce direct evidence. It is on a careful appraisal of the entire facts and circumstances brought by the prosecution on the record that an inference may be drawn as to their agreement, concert or league.

### **PROPOSITION OF LAW ON COMMON INTENTION**

42. It is well ordained in law that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. Avoiding a long academic discussion, in the case of **Sunil v. State (NCT of Delhi)**<sup>22</sup>, the Supreme Court reiterated the law as to when conviction with the aid of Section 34 of the IPC could be made. The Supreme Court referred to the decision in the case of **Pandurang v. State of Hyderabad**<sup>23</sup>, wherein it was observed:

“33. Now in the case of Section 34 we think it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all : Mahbub Shah v. King-Emperor. Accordingly, there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case : Barendra Kumar

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<sup>22</sup> 2023 SCC OnLine SC 1203

<sup>23</sup> (1954) 2 SCC 826



Ghosh v. King-Emperor and Mahbub Shah v. King-Emperor. As their Lordships say in the latter case, “the partition which divides their bounds is often very thin : nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice.

34. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example, when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre-arranged plan however hastily formed and rudely conceived. But pre-arrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other, e.g., the intention to rescue another and, if necessary, to kill those who oppose.”  
(Emphasis supplied)

43. In **Balu alias Bala Subramaniam v. State (UT of Pondicherry)**<sup>24</sup>, the Supreme Court held as Court held:

“11. To invoke Section 34 IPC, it must be established that the criminal act was done by more than one person in furtherance of common intention of all. It must, therefore, be proved that : (i) there was common intention on the part of several persons to commit a particular crime, and (ii) the crime was actually committed by them in furtherance of that common intention. The essence of liability under Section 34 IPC is simultaneous conscious mind of persons participating in the criminal action to bring about a particular result. Minds regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. Common intention implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan. Common intention is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention.”  
(Emphasis supplied)

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<sup>24</sup> (2016) 15 SCC 471



44. After observing as above, in paragraph 15, it was observed as follows:

“15. Under Section 34 IPC, a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. The question whether there was any common intention or not depends upon the inference to be drawn from the proven facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they could be convicted.”

**(Emphasis Supplied)**

45. What is clear from the decisions noticed above is that to fasten the liability with the aid of Section 34 of the IPC, what must necessarily be proved is a common intention to commit the crime actually committed and each accused persons can be convicted of that crime, only if it is in furtherance of common intention of all. Common intention pre-supposes a prior concert, though pre-concert in the sense of a distinct previous plan is not necessary, as common intention to bring about a particular result may develop on the spot. **The question whether there was any common intention or not depends upon the inference to be drawn from the proven facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion, whether the accused had a common intention to commit an offence with which they could be convicted.**

**FINAL CONCLUSIONS:**



46. In view of the aforesaid proposition of law, reverting to the instant matter, what is clearly discernible is that the prosecution has not been able to establish on record any facts and circumstances inviting an inference of there existing any criminal conspiracy amongst the accused persons. There is led no *iota* of evidence as to what sort of association the accused persons had with one another prior to the incident. There is certainly one credible version that A-1/Ravi along with A-3/Rocky and A-5/Chola arrived at the scene of crime, who had been having a drinking session for quite some time and they were joined by A-2/Rinku, Suraj and later by A-4/Choti. While there is evidence to suggest that victim Nikhil came to the spot at the instance of A-4/Choti, there is no *iota* of evidence on the record to suggest that A-4/Choti had any deliberation, meeting of mind or agreement to do an unlawful act with A-1/Ravi, A-2/Rinku, and A-3/Rocky prior to coming to the spot. The IO miserably failed to gather information about the location of the accused persons through their mobile sets, if any, with them and no evidence is brought on the record that the accused persons were in touch with one another through their mobile sets or otherwise prior to the incident. There is no evidence that A-1/Ravi, and A-3/Rocky before coming to the spot in the car along with A-5/Chola had any deliberation, before or after they were joined by A-2/Rinku. There is no evidence of meeting of mind or agreement to commit murder of the victim Nikhil at the instance, coaxing or instigation of the appellant A-4/Choti.

47. In summary, what is clearly amiss in the prosecution evidence is





as to what sort of conversation took place amongst the accused persons. There is no evidence of their being a common agreement, concert or league as amongst the A-4/Choti and the remaining three accused persons viz., A-1/Ravi, A-2/Rinku and A-3/Rocky so as to do any harm to the life of victim Nikhil. It clearly appears that there was no overt or covert act on the part of A-1/Ravi, A-2/Rinku and A-3/Rocky and as per the CCTV footage it appears that they were not even very close to A-4/Choti and A-5/Chola and the victim when the fire incident took place.

48. It was urged by the learned counsel for A-4/Choti that there could be attributed no common intention to A-4/Choti as he had not handed over the improvised pistol to the co-accused A-5/Chola (proceedings abated). It is significant to mention that the examination of the CCTV footage reflects that A-4/Choti was indeed sitting in the car with A-5/Chola (proceedings abated) for about good 10 to 15 minutes, and thereafter, A-4/Choti came out and A-5/Chola joined him after almost 5-6 minutes and it does invite an assumption that the accused person, viz., A-5/Chola (proceedings abated) was aware that A-4/Choti was in possession of the pistol.

49. It must be stated that the prime objective of the criminal justice delivery system is to accord justice to all the stakeholders-the accused, the complainant/victim, the society as well as the prosecution. There is no gainsaying that integral to such objective is a fair trial to the accused and a fair chance to prove the case to the prosecution. This finds echoed



in a reiteration by the Supreme Court of India in **Dayal Sin. v. State of Uttaranchal**<sup>25</sup>, in which it was emphasized thus:

“—34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a —fair trial, the Court should leave no stone unturned to do justice and protect the interest of the society as well.”

50. Thus, in order to be fair to A-4/Choti, we have no hesitation in holding that having regard to the manner in which the occurrence unfolded, it is difficult to discern that the appellant i.e. A-4/Choti had any intention with A-5/Chola to commit murder of the victim Nikhil. This is exemplified from the fact that after the first shot was fired, A-4/Choti forcibly pushed A-5/Chola away from the side of victim but A-5/Chola, who was strongly built, remained uncontrollable and unrelented, and it is seen that A-4/Choti started is seeing drifting away in disgust and A-5/Chola in some rage coming close to the victim and then firing with his pistol second time.

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<sup>25</sup> (2012) 8 SCC 263



51. While it may be said that A-4/Choti clearly invited trouble when he was having a weapon in his possession but there is no *iota* of evidence to suggest that he brought the pistol to the place of occurrence. There is a probability that he had taken the pistol from A-5/Chola while sitting in the car in order to prevent any untoward incident. It was argued in the course of the hearing that the A-4/Choti was piqued with victim Nikhil as he had not attended the cremation of his elder brother Sunil Pandit, who had been killed some time in 2015 by some dreaded criminals of the area, and that led A-4/Choti to suspect that perhaps victim Nikhil had informed the assailants whereabouts of Sunil Pandit who was then killed.

52. Be that as it may, while no motive is established as such, however, at the cost of repetition, there is no *iota* of evidence that any foul language was exchanged or if exchanged between the victim and the A-4/Choti, the same went beyond their control. As a matter of fact, though we have accorded much credence to the testimony of PW-1/Gaurav Bhardwaj, what also stares on the face of the record from the examination of CCTV footage is that at the time of firing by A-5/Chola, PW-1/Gaurav Bhardwaj was not in picture and he is actually seen standing across the road at some distance. It manifestly appears that the shooting of the victim appears to be a solitary act on the part of the A-5/Chola who was drunk and at some stage got infuriated due to something uttered by the victim and in a rage he fired the shot. It can be observed that the prosecution has left huge gap in its case against A-



4/Choti in particular by leaving out Suraj, shown as L-2 in the photograph Marked in Annexure P-4, who was present when conversation was going on between the victim, A-5/Chola and A-4/Choti and who could have thrown light as to what conversation took place during the climax movement before the first shot was fired by A-5/Chola. Lastly, we must also observe that Suraj, who was evidently present at the time when the incident occurred, had neither been cited as an accused nor as a victim and this puts a question mark on the fairness of the investigation.

53. In this view of the matter, this Court has no hesitation in holding that insofar as CRL.A. 720/2024 filed by the complainant Mr. Satya Prakash is concerned, the same is devoid of any merits and the impugned Judgment dated 28.02.2024 passed by the learned Trial Court thereby acquitting A-1/Ravi, A-2/Rinku and A-3/Rocky does not suffer from any illegality, perversity or incorrect approach in law. The said appeal is accordingly dismissed.

54. Insofar as the CRL.A. 434/2024 is concerned, we find that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt. Hence, the same is allowed and the A-4/Choti i.e. the appellant is acquitted of the charges levelled against him. The appellant A-4/Choti be set free, if not required in any other case.

55. A copy of this judgment be sent to the Jail Superintendent concerned for necessary information and compliance. Judgment be uploaded on the website forthwith. The physical record from the Trial



Court be sent back and the same be weeded out in accordance with the rules.

**DHARMESH SHARMA, J.**

**PRATHIBA M. SINGH, J.**

**MAY 27, 2025**

*Sadiq*