



2026:AHC-LKO:40399-DB

A.F.R.

Reserved on 27.02.2026

Delivered on 05.06.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 475 of 2020

Sanjay Rai

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s) : I.B.Singh, Atul Verma, Adarsh Chandra Srivastava, Apoorv Dev, Ayush Chaudhary, Eshan Kumar Gupta, Prashant Kumar Singh, Rakesh Kumar Chaudhary, Ramakar Shukla, Vaibhav Upadhyay, Vinod Kumar Yadav, Ishan Baghel, Sanjeet Kumar Singh, Sajeet Singh.

Counsel for Respondent(s) : S.P. Singh, Additional Government Advocate.

Along with :

1. Criminal Appeal No. 671 of 2020:

Rambabu @ Chotu and 3 Ors.

Versus

State of U.P.

2. Criminal Appeal No. 672 of 2020:

Rahul Rai

Versus

State of U.P.

3. Criminal Appeal No. 673 of 2020:

Sunil Kumar Saini @ Pahalwan

Versus

State of U.P.

Court No. - 9

HON'BLE RAJESH SINGH CHAUHAN, J.

HON'BLE ABDHESH KUMAR CHAUDHARY, J.

(Per: Hon’ble Abdhesh Kumar Chaudhary, J.)

1) Heard Sri I.B.Singh, learned Senior Advocate, Sri Atul Verma, Adarsh Chandra Srivastava, Apoorv Dev, Ayush Chaudhary, Eshan Kumar Gupta, Prashant Kumar Singh, Rakesh Kumar Chaudhary, Ramakar Shukla, Vaibhav Upadhyay, Vinod Kumar Yadav, Ishan Baghel, Sanjeet Kumar Singh, learned Counsels for the appellants and Sri S.P. Singh, learned Additional Government Advocate for the State of U.P.

2) The present Criminal Appeals filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as to “Cr.P.C.”) arises out of a common impugned judgment and order dated 28.02.2020, passed by the learned Trial Court in *Sessions Trial No. 445 of 2015*, arising out of *Case Crime no. 129 of 2013*; and *Sessions Trial No. 447 of 2015*, arising out of *Case Crime no. 163 of 2013*; Police Station - Indira Nagar, Lucknow whereby the Appellants have been convicted and sentenced for various offences, which can be depicted as per the following tabular chart:-

Criminal Appeal No. 475/2020	Sanjay Rai <i>(Convicted in Sessions Trial No. 445 of 2015, arising out of Case Crime no. 129 of 2013)</i>	Under Section 302 read with 120B I.P.C. and sentenced to Life Imprisonment and fine of Rs. 25,000/- and in default additional sentence of imprisonment for 6 months.
Criminal Appeal No. 671/2020	Ram Babu @ Chotu Ajeet Rai @ Shintu Sandeep Rai Rakesh Kumar Soni @ Bablu <i>(Convicted in Sessions Trial No.</i>	All Appellants convicted under Section 302 read with 120B I.P.C. and sentenced to Life Imprisonment and fine of Rs. 25,000/- and in default additional sentence of imprisonment for 6 months.

	<i>445 of 2015, arising out of Case Crime no. 129 of 2013)</i>	
Criminal Appeal No. 672/2020	Rahul Rai <i>(Convicted in Sessions Trial No. 445 of 2015, arising out of Case Crime no. 129 of 2013)</i>	Convicted under Section 449 I.P.C. for 10 years and fine of Rs. 5000/- and in default additional sentence of imprisonment for one month. Also convicted under Section 302 read with 34 I.P.C. and sentenced to Life Imprisonment and fine of Rs. 25,000/- and in default additional sentence of imprisonment for 6 months.
Criminal Appeal No. 673/2020	Sunil Kumar Saini @ Pahalwan <i>(Convicted in Sessions Trial No. 445 of 2015, arising out of Case Crime no. 129 of 2013)</i> <i>And also Convicted in Sessions Trial No. 447 of 2015, arising out of Case Crime no. 163 of 2013)</i>	Convicted under Section 449 I.P.C. for 10 years and fine of Rs. 5000/- and in default additional sentence of imprisonment for one month. Also convicted under Section 302 read with 34 I.P.C. and sentenced to Life Imprisonment and fine of Rs. 25,000/- and in default additional sentence of imprisonment for 6 months. Also sentenced to three years' rigorous imprisonment and a fine of Rs. 2,000/- for charges under <i>Sessions Trial No. 447/15, Case Crime no 163/2013</i>, Section 3/25 of the Arms Act.

CASE OF THE PROSECUTION

3) Shorn of unnecessary details, the factual matrix leading up to the filing of the present Criminal Appeals is delineated herein below:

3.1) In the present case, with respect to an incident which occurred on 29.05.2013, a written report/*tehrir (Exhibit Ka-1)* was filed with Police

Station Indira Nagar, Lucknow, by the informant namely Husn Bano, (P.W.-1) stating that on 29.05.2013, at around 10:30 PM, her nephew Maaz Ahmad Siddiqui, son of Khurshid Ahmed Siddiqui, aged about 14 years, was watching television while sitting on his bed inside her house, situated at Faridi Nagar, Lucknow. During that time, three men arrived on a motorcycle and called out to open the door. As soon as her other nephew Faizan Siddiqui, aged about 11 years, opened the door, all three men entered the house and fired indiscriminately at her nephew Maaz Ahmad with their firearms, causing grievous injuries and leaving him bleeding and writhing in pain on the bed, while the accused fled from the scene.

3.2) Since her nephew Maaz Ahmad was seriously injured, her sons namely Nadeem (P.W.-2) and Adib along with the neighbours took him to the Trauma Center, where he succumbed to the firearm injury, while reaching the hospital. The informant suspected that the said incident was orchestrated by one Arif, the brother-in-law of Faheem and his family members, who all were the resident of Bhakamau. Thus, a request was made for taking necessary legal action by filing a report.

3.3) Based on the aforesaid given written complaint, a First Information Report (F.I.R.) was registered against Arif and his family members as well as three unknown assailants, under Section 302 of the Indian Penal Code, Case Crime No. 129 of 2013 (*Exhibit Ka-4*), at Indira Nagar Police Station and the investigation was thereafter handed over to the Investigating Officer, Ramesh Chandra Yadav (P.W.-12).

3.4) During the course of investigation, statements of the witnesses were recorded under Section 161 Cr.P.C. Also statements of the complainant (*Exhibit- Ka-2*) and her son (Nadeem Ahemd) as *Exhibit-Ka-3* and Faizan was recorded under section 164 Cr.P.C. Further, a Site-map (*Exhibit Ka-11*) was prepared of the scene of the incident.

3.5) The Investigating Officer recovered four empty cartridges and three fired bullets from the crime scene, along with blood-stained bed-sheet and a plain bed-sheet for which a recovery memo was prepared (*Exhibit Ka-12*). Further, a Pulsar motorcycle was recovered from the house of the accused - Sanjay Rai on the pointing out of co-accused Ram Babu @ Chotu, for which recovery memo (*Exhibit Ka-13*) was prepared on 08.06.2013. On the same date, a Nokia mobile phone was also recovered from the possession of the said co-accused Ram Babu @ Chotu (*Exhibit Ka-14*).

3.6) Interestingly, on the same day i.e. 08.06.2013, the Investigating Officer also arrested two accused persons namely Ajeet Rai @ Shintu and Rahul Rai from District- Azamgarh and recovered two mobile phones, six SIM Cards, cash amounting to Rs. 4,430/-, and a Pulsar motorcycle bearing No. UP50 AB 502, for which a recovery memo was prepared (*Exhibit Ka-10*). Consequently, statement of both the accused were recorded and according to their statement, the said Pulsar motorcycle was used in the present crime.

3.7) Further, a Maruti Alto car without number plate, fake driving license, the car documents, clothes of the accused - Ajit Yadav @ Bunty and ATM card were recovered from the house of one Dinesh Chand Saini (P.W.-4) at Varanasi, on 04.07.2013 for which a recovery memo was prepared by *Exhibit Ka-15*. Subsequently, on 06.07.2013 accused - Sunil Kumar Saini @ Pahalwan was arrested from Lucknow and a country made pistol .315 bore along with five cartridges was recovered, for which a recovery memo was drawn as *Exhibit Ka-16*.

3.8) The Investigating Officer thereafter arrested the accused – Ajit Yadav @ Bunty from Mau on 13.07.2013 and recovered one mobile phone, a Pulsar motorcycle and a black bag containing owner manual, service booklet of Maruti car, six passport size photographs of accused

- Sanjay Rai and eight mobile phones along with fourteen SIM Cards, for which a recovery memo was prepared vide *Exhibit Ka-21*.

3.9) On 13.07.2013, the Investigating Officer, along with his team, raided the house of Dinesh Chandra Saini (P.W.-4), in Mohalla Parshuram Pur, Police Station Sarnath, District Varanasi, on the information furnished by accused Ajit Yadav @ Bunty, son of Chandrabali Yadav. According to the prosecution, the said accused took out a 9mm country-made pistol, one magazine, and five live 9mm cartridges wrapped in foil, from a bathroom located within the house of Dinesh Chandra Saini (P.W.-4) and handed them over to the Investigating Officer, saying that this is the same weapon used in the murder committed on 29.05.2013, at Indira Nagar. The recovered pistol, cartridges and an empty magazine were stitched in a plain cloth, for which recovery memo was prepared as *Exhibit Ka-17*.

3.10) Subsequently, upon finding sufficient evidence against the accused during the investigation carried out by the Investigating Officer, in Case Crime No. 129 of 2013, a charge sheet was filed against the accused - appellants Rambabu @ Chotu, Ajeet Rai @ Shintu, Rahul Rai, Sunil Kumar Saini @ Pahalwan, Ajit Yadav @ Bunty, Sanjay Rai, Sandeep Rai and Rakesh Kumar Soni @ Bablu, under Sections 302, 449, 34, 120-B, 420, 467, 468, 471, 116, 201 of I.P.C. Additionally, in Case Crime No. 167 of 2013, a charge sheet was filed against accused Ajit Yadav @ Bunty under Sections 3/25 of Arms Act. Similarly, in Case Crime No. 163 of 2013, a charge sheet against accused Sunil Kumar Saini @ Pahalwan, under Sections 3/25 of Arms Act was also sent to the Court.

3.11) Thereafter, cognizance of the offence was taken in the matter by the concerned Magistrate, following which the case was committed to the Court of Session as *Sessions Trial Nos. 445 of 2015 and 447 of 2015*;

and charges were framed under aforementioned Sections against the appellants, on 21.07.2018. However, the appellants denied the charges and demanded for a Trial.

4) PROCEEDINGS BEFORE THE TRIAL COURT

4.1) During Trial, in order to prove the charges against the accused - appellants, the prosecution examined the following witnesses namely: -

1.	<i>Husn Bano</i>	<i>P.W.-1</i>
2.	<i>Nadeem Ahmed</i>	<i>P.W.-2</i>
3.	<i>Mohd. Mobeen (Neighbor)</i>	<i>P.W.-3</i>
4.	<i>Dinesh Chandra Saini</i>	<i>P.W.-4</i>
5.	<i>H.C. Sant Kumar</i>	<i>P.W.-5</i>
6.	<i>Dr. Ram Narayan</i>	<i>P.W.-6</i>
7.	<i>Nand Kishore Mishra</i>	<i>P.W.-7</i>
8.	<i>Vishal Pandey</i>	<i>P.W.-8</i>
9.	<i>Const. Gaya Nand Yadav</i>	<i>P.W.-9</i>
10.	<i>Inspector Devendra Kumar Dubey</i>	<i>P.W.-10</i>
11.	<i>Inspector Anurag Mishra</i>	<i>P.W.-11</i>
12.	<i>I. O. Ramesh Chandra Yadav</i>	<i>P.W.-12</i>
13.	<i>H.C. Anil Kumar Tiwari</i>	<i>P.W.-13</i>
14.	<i>Satish Chandra</i>	<i>P.W.-14</i>
15.	<i>Inspector Kamlapati Yadav</i>	<i>P.W.-15</i>

16.	<i>Nida Arsi</i>	<i>P.W.-16</i>
17.	<i>S.I. Yashwant Singh</i>	<i>P.W.-17</i>
18.	<i>H.C. Jameel Ahmad</i>	<i>P.W.-18</i>
19.	<i>Inspector Pankaj Kumar Singh</i>	<i>P.W.-19</i>

4.2) Furthermore, the prosecution also relied on the following important documentary evidence, to substantiate its case during the Trial: -

i.	Written <i>Tehrir</i> given by the complainant Husn Bano	<i>Exhibit Ka-1</i>
ii	Statement of the complainant under Section 164 Cr.P.C.	<i>Exhibit Ka-2</i>
iii	Statement of witness Nadeem Ahmed under Section 164 Cr.P.C.	<i>Exhibit Ka-3</i>
iv	Chik FIR U/Section 302 I.P.C.	<i>Exhibit Ka-4</i>
v	General Diary of Case Crime No. 129 of 2013	<i>Exhibit Ka-5</i>
vi	Post mortem report	<i>Exhibit Ka-6</i>
vii	<i>Panchayatnama</i>	<i>Exhibit Ka-7</i>
viii	Invoice/Challan dead body	<i>Exhibit Ka-8</i>
ix	Photographs	<i>Exhibit Ka-9</i>
x	<i>Fard</i>/Recovery of two mobile phones, four	<i>Exhibit Ka-10</i>

	SIM cards and Rs. 4430	
xī	Naksa-Nazri/ Site-plan	<i>Exhibit Ka-11</i>
xii	<i>Fard/Recovery report: Empty cartridge, bullet, piece of bedsheet, blood stained bedsheet and plain bedsheet</i>	<i>Exhibit Ka-12</i>
xiii	<i>Fard/Seizure Report: Pulsar Motorcycle</i>	<i>Exhibit Ka-13</i>
xiv	<i>Fard/Recovery of One mobile phone</i>	<i>Exhibit Ka-14</i>
xv	<i>Fard/Recovery Memo of Maruti Alto Car</i>	<i>Exhibit Ka-15</i>
xvi	<i>Fard/Arrest Memo of the accused</i>	<i>Exhibit Ka-16</i>
xvii	<i>Fard/Recovery of Pistol</i>	<i>Exhibit Ka-17</i>
xviii	<i>Fard/Site-Map of recovery of the murder weapon</i>	<i>Exhibit Ka-18</i>
xix	Charge sheets	<i>Exhibit Ka-19</i> <i>& 20</i>

5. During the Trial, due to the absence of one of the accused Ajit Yadav at the stage of recording of statement under Section 313 Cr.P.C., his file was separated from the files of other accused on 14.01.2020. After the prosecution evidence was concluded, the accused's statements were recorded under Section 313 Cr.P.C. The accused denied the charges and asserted that the witnesses had given false testimony and declared themselves innocent.

6. During the examination by the prosecution, **P.W.-1/complainant Husn Bano**, deposed that on 29.05.2013 at about 10:30 PM, she along with her nephew Maaz Ahmad was watching television and her elder son Nadeem Ahmad was on terrace, when three unknown assailants knocked at the door which was opened by Faizan (another nephew). Two of the assailants entered the room and fired at Maaz Ahmad, causing him to collapse on the bed with severe bleeding injuries, after which the assailants fled from the spot. Her injured nephew was immediately taken to the Trauma Centre by her sons Nadeem and Adib and one neighbour, where he succumbed to the said injuries. A suspicion was inferred upon one Arif and his family members of being involved in the incident. She proved the written complaint lodged at Police Station Indira Nagar (*Exhibit Ka-1*) and testified her statement recorded under Section 164 Cr.P.C. (*Exhibit Ka-2*).

P.W.-1, in her cross examination stated that she is not satisfied with the investigation conducted by the Police, as they have framed wrong accused persons. She has on several occasions stated about the said factum that these accused have no connection to the present incident nor they are involved in the present case. She has stated the same thing in her statement recorded under Section 161 and 164 of Cr.P.C. She also has deposed that the accused persons were brought before her after their arrest but she refused to recognize as these persons were not involved in the crime. She also deposed that she does not know as to why police has framed the accused persons, on seeing them in the Court. She also deposed that she had approached higher officers of the police and also requested for conducting investigation by some other agency and removal of I.O. Ramesh Chandra Yadav. She has also referred to various representations sent to the higher officer in that regard. She also deposed of having approached the High Court for the same and even filing of an

application under Section 173(8) Cr.P.C. for further investigation in the matter.

7. P.W.-2 Nadeem Ahmed deposed that at about 10:00–10:15 PM on the fateful night, he heard 3-4 gunshots when he was on the terrace, thereafter, he rushed downstairs and saw one armed assailant inside the room and two others standing outside, near a motorcycle. The three assailants fled immediately thereafter. He found Maaz Ahmad grievously injured and accompanied him to the Trauma Centre. He admits of writing the Complaint/*tehrir* in his own handwriting. He deposed that he can identify the three assailants, in case they are produced before him. However, after seeing all the accused in the Court, P.W.-2 stated that none of them were present at the place of occurrence on the date of the incident. He proved his signature on the *panchnama* (*Exhibit Ka-7*) and his statement under Section 164 Cr.P.C. (*Exhibit Ka-3*). P.W.-2 also deposed that he has stated to the Police that one of his neighbour - Akmal is in one-sided love affair with his sister Nida Arshi and as such he suspects him to be involved in the said incident. In his cross-examination, he states that they are not satisfied with the investigation. He also states that none of the accused charge-sheeted are involved in the present crime. He state that although Police have stated that these persons are involved, however, in fact these people are not involved in the incident. He also admits to the dissatisfaction of his mother in the present investigation and filing of various representation to the higher authority in that regard.

8. P.W.-3 Mohammad Mobeen was declared hostile. Though he admitted signing certain papers, however denied witnessing any recovery, as per Memo (*Exhibit Ka-12*) relating to empty cartridges and live bullets from the crime site, as claimed by the prosecution and disowned the statement attributed to him under Section 161 Cr.P.C. He denied his presence on the crime site for recovery on 30.05.2013.

9. **P.W.-4 Dinesh Chandra Saini**, was also declared hostile, who denied having witnessed the alleged recoveries (*Exhibit Ka-15*) of an Alto car, a Driving License, ATM card and the personal articles of accused Ajit Yadav @ Bunty from his house at Varanasi. He explained that his signatures were taken on blank papers during one of the visit of the I.O. to his house at Varanasi, where he was informed about the arrest of Sunil Kumar Saini @ Pahalwan and one other co-accused. He denied that Sunil Kumar Saini @ Pahalwan or other co-accused Ajeet Rai has ever come to his Varanasi house. He acknowledged his signature on the recovery memo shown to him but disowned his earlier statements given under Section 161 Cr.P.C.

10. **P.W.-5 Sant Kumar**, Constable Clerk, proved the registration of F.I.R. No. 129/2013 under Section 302 of I.P.C. lodged upon the basis of the written report of P.W.-1. He proved the Chik F.I.R. (*Exhibit Ka-4*) and the corresponding General Diary entry (*Exhibit Ka-5*). In his cross-examination, he admits that the Complaint was lodged suspecting Arif and his family, as well as three unknown assailants. He also admits that the Complainant/P.W.-1 and his son were called to the Police station on several occasions for identification and confirmation of the accused.

11. **P.W.-6 Dr. Ram Narayan**, who conducted the post-mortem examination on 30.05.2013, found multiple ante-mortem firearm injuries on the chest, arms and back of the deceased. The internal examination revealed “*laceration of the lung and heavy accumulation of blood in the cavities*”. He has also stated that there were entry and exit of three bullet wounds which were communicating with each other and there was one entry wound of fire arm injury. One bullet was recovered from the body which was subsequently handed over to police in a double sealed envelope along with the X-ray report. Time of death was estimated to be approximately one day prior to the post-mortem and the cause of death was recorded as shock and haemorrhage due to ante-mortem injuries.

The post-mortem report was produced and exhibited (*Exhibit Ka-6*). The doctor concluded that death was caused by fire arm injuries. In his cross-examination, he stated that he could not say anything about the bore of the bullets, nor he could say anything about the fire-arms used in the said incident. He also admits that he could not state the distance from which the gunshot was fired at the deceased.

12. P.W.-7 Nand Kishore Mishra, an attesting witness to the *panchnama*, confirmed his presence during its preparation at the Medical College on 30.05.2013. He proved the *panchnama* (*Exhibit Ka-7*) and the related documents, including the Challan Nash and Photo Nash (*Exhibit Ka-8* and *Exhibit Ka-9*, respectively) and also testified to the visual observations made at the time when the *panchnama* was recorded (blood oozing, clots, bruises), supporting the need for a post-mortem. He further stated that the post-mortem was prepared in the handwriting of Constable Nizammudin on his saying.

13. P.W.-8 Vishal Pandey, Circle Officer, deposed that on 08.06.2013, acting on a tip, he apprehended two persons, namely accused Ajeet Rai @ Shintu (A-4) and Rahul Rai (A-6) while riding on a black pulsar motorcycle, near a temple in Azamgarh who, according to him, confessed involvement in the present murder and disclosed having been engaged to commit the crime for monetary consideration by co-accused Sandeep Rai (A-2) lodged in jail. The said witness has deposed that the co-accused has confessed that the incident was committed “on the asking of” one Sanjay Rai (A-1), who was known to accused Sandeep Rai (A-2). He also deposed that the accused had also confessed that Sandeep Rai (A-2) had given this work to them, along with co-accused Ajit Yadav @ Bunty, Sunil kumar Saini @ Pahalwan and that the said incident was effected with the help of Rinku @ Vimal Shukla, Rambabu @ Chotu (A-3) and Rakesh Kumar Soni @ Bablu (A-5), a resident of Sehore, Madhya Pradesh. He detailed the recoveries made

from each accused *i.e.* mobile phones, SIM cards, cash, an ATM card and a black Pulsar motorcycle, all sealed and documented on the spot. The witness proved the recoveries (*Exhibit Ka-10*) and the formal F.I.R. prepared on the spot.

However, in his cross-examination, the witness admits that the recovery effected from accused Ajeet Rai @ Shintu (A-4) were not found in the same condition as they had been when originally sealed. He admits that there was no mark made on the SIM or cash recovered nor he has got signature of the accused on the paper-envelope sealing these recovered articles. He also admits that all the raiding team members have not sealed and signed on the paper-envelope containing the seized articles. He deposes of the same discrepancy in the recovery made from accused Rahul Rai (A-6). He also admits that although the arrest had been made by them of the accused near a mandir, but he has not taken the signature of any pujari, mahant or neighbour as a witness to the arrest of these accused persons. He also admits that he had not informed the local police station either before or after arresting the accused person. He also admits that although the raid had been conducted by them by travelling to Azamgarh from Lucknow in a private vehicle, however he did not record the name of the owner nor that of the driver of the car, nor the same is mentioned in the recovery memo. He also admits that custodial interrogation of accused Sanjay Rai (A-1) was carried by him along with the Investigating Officer (P.W.-12). However, Sanjay Rai did not confess to the crime. He also admits about the rivalry of Sanjay Rai with one police officer of the department, because of his efficiency.

14. P.W.-9 Gaya Nand Yadav, a constable who accompanied P.W.-8, corroborated the arrest and recovery proceedings. He confirmed that the accused attempted to flee on a black Pulsar motorcycle, but were apprehended. He also stated that these accused namely, Ajeet Rai @ Shintu (A-4) and Rahul Rai (A-6) confessed about prior murder and of

having carried it out on the instructions of Inspector Sanjay Rai (A-1) *via* intermediary i.e. Sandeep Rai (A-2). The sealing of recovered items, and his signature on the recovery F.I.R. were exhibited as *Exhibit Ka-10*. However, in his cross-examination, he admits that the accused were not searched in his premises. He also does not know, which police man arrested which accused. He also admits to the same discrepancy as that of P.W.-8.

15. P.W.-10, Inspector Devendra Kumar Dubey. deposed that on 08 June 2013, while posted as S.H.O. at P.S.-Gomtinagar and accompanying the Circle Officer, his team acted on the information received from an informer and subsequently, apprehended two men on a black Pulsar motorcycle, near a temple in Lachhirampur, Azamgarh. The apprehended men identified themselves as, Ajeet Rai @ Shintu (A-4) and Rahul Rai (A-6), respectively and further stated that they had been earlier engaged to commit the murder at the behest of Inspector Sanjay Rai through intermediaries for Rs.2.5 lakh. The witness further deposed that the accused had confessed the distribution of the advance money and identified the Pulsar motorcycle as the vehicle used in the crime. Further, P.W.-10 produced the recovery report and identified the items recovered from the arrested persons (mobile phones, SIM cards, cash and motorcycle) and proved the recovery bundle. However, in his cross-examination, he admits that he was a team member of Sanjay Rai (A-1), who had unearthed the loot of Muthoot Finance case and also states that he does not know as to whether there was any dispute between Sanjay Rai (A-1) and his higher officers relating to the recovery in the said case, resulting in his false implication in the present case.

16. P.W.-11, Inspector Anurag Mishra deposed that on 08 June 2013 and during subsequent operations, he accompanied teams of Kotwali Lachhirampur and Mau in search of accused persons. He described the seizures effected on 05 June, 2013 from accused Ajeet Rai

@ Shintu (A-4) and Rahul Rai (A-6). He also deposed about the recovery made on 04 July 2013 of a Maruti Alto from the premises of Dinesh Chandra Saini at Varanasi, as well as the seizure of clothing, an ATM card, and a Driving license. He also deposed that the arrest of Ajit Yadav @ Bunt, on 13 July 2013 at Mau and the recovery from him of a mobile phone, SIM cards, pulsar motorcycle and a bag containing the owner's manual of Alto car, along with its service booklet in the name of Pradeep Rai bearing his address and phone number. He deposed that in the pocket of the recovered bag some passport-size photographs of Inspector Sanjay Rai (A-1) in uniform was found. The bag also contained eight mobile phones and three SIM Cards; the witness identified these recoveries and recorded the statements and F.I.R.s prepared on the spot. The said witness has also deposed that the accused-Ajit Yadav told him that the fire-arm used by him for the crime has been hidden by him at the house of his friend Dinesh Chandra Saini in Varanasi. In his cross-examination, he admits that a recovery memo has been prepared in his presence and the same has been written by different people. However, he does not remember as to which recovery has been made by whom.

17. P.W.-12, Inspector Ramesh Chandra Yadav, took over investigation on 30 May 2013 and prepared the Site-plan (*Exhibit Ka-11*). He stated that he took possession of empty cartridges, bullet fragments, blood-stained bed sheets and prepared recovery reports (*Exhibit Ka-12 and others*), recorded statements, conducted searches and recorded details of C.D.R. analysis and investigative steps in CDs. He described taking possession of the Pulsar motorcycle from outside (A-1) Inspector Sanjay Rai's residence during inquiry and the recovery of mobile phones and other items from accused Ajeet Rai (A-4) and others. He proved the relevant recovery reports and CDs. He deposed that memo of recovery dated 30.5.2013 (*Exhibit Ka-11*) has been prepared in

his own handwriting. He deposed taking statement of suspected accused and also contents of the complaint and obtained mobile number of suspected person and recorded in CD. He also met accused Sanjay Rai (A-1) and recorded his statement, which is mentioned in the CD. He also recorded statement of suspect – Akmal and recorded his statement and mentioned in the CD. He also recovered a pulsar motor cycle place on 08.6.2013 from outside of Sanjay Rai's house on the pointing of accused Rambabu @ Chotu (A-3).

In his cross-examination, he stated that a total of 11 accused have been found in the present crime of which in the first place, charge sheet has been filed against eight accused, of which 7 is named in the charge sheet and one accused in the supplementary charge sheet and investigation against 3 accused namely, Hemant Shukla, Amrit Pal and Pradeep Rai is pending. He admits that according to him name of 11 accused were involved in the offence, and does not know as to why charge sheet has not been filed against the other accused. He states that the entire investigation is based on the evidence of mukhbir (informant whose name could not be disclosed), confessional statement of accused, Recovery memos and mobile phone recovered from accused person. He also admits that as per the CDR records of the mobile phone, he did not find the location of the accused at the crime spot nor was able to find the accused talking amongst themselves in the CDR. He stated that voice sample was not collected by him as the same was refused by the learned CJM on the ground that Sandeep Rai (A-2), (one of the persons) who was alleged to be talking to Sanjay Rai (A-1), was lodged in Azamgarh Jail at that point of time, although accused Sanjay Rai (A-1) had offered to provide his voice sample.

He admits that he had recovered 3 pulsar motorcycle at various stage of investigation. The first motorcycle was recovered on 08.06.2013, in front of the house of Sanjay Rai on the pointing of

accused Rambabu @ Chotu (A-3). The second on 13.07.2013 from Ajit Yadav @ Bunty from Azamgarh, when he was arrested. He admits that the motorcycle being used in the crime because of the confessional statement of the accused persons. He admits that a Maruti Alto car was also recovered on 04.07.2013 during investigation, but the same was not recovered on the pointing of any accused nor from the possession of any accused. He admits that the basis of use of the said car in crime is the confession of guilt by the Accused.

He admits that besides him, there were four police man in his team on 13.07.2010 and that the Indira Nagar Police station records that these police party was leaving the station at 00.05 hours for Mau, which was about 300 km away. He denies the suggestion that a distance of more than 300 km could be travelled in 3 hours, which proved that all the investigation had been done in the Police station only. He admits that both the Alto car and country made pistol as pointed out by the accused Ajit Yadav @ Bunty were recovered from the same place, i.e. house of Dinesh Chandra Saini at Varanasi, within a gap of one week to which the said Dinesh Chandra Saini was a witness. He admits that recovered fire arm were sent for Ballistic evaluation, but does not know as to how the docket for sending the firearm from the malkhana records as dated 12.08.2013 and the report reveals that the said firearm came to be deposited with the F.S.L. only on 20.08.2013.

18. P.W.-13, Head Constable Anil Kumar Tiwari, testified the registration of F.I.R. under the Arms Act (including F.I.R. No.167/13 under Section 3/25 Arms Act) against the accused Ajit Yadav @ Bunty and identified the G.D. and F.I.R. entries prepared at the relevant times.

19. P.W.-14, Satish Chandra testified the registration of F.I.R. no. 163/2013 under Section 3/25 Arms Act) against the accused Sunil Kumar Saini @ Pahalwan and the process by which F.I.R. and related

entries were made at Indira Nagar Police Station, identified the F.I.R. and G.D. entries and authenticated the carbon copies and routine clerical records as *Exhibit Ka-22 and Exhibit Ka-23*.

20. P.W.-15, Inspector Kamalapati Yadav, deposed that he took over the investigation on 07.07.2013 relating to Crime No. 167/2013 under Section 3/25 Arms Act, inspected the crime scene, recorded the statement of accused Sunil Kumar Saini @ Pahalwan, prepared an on-site map (*Exhibit Ka-24*) on the marking of complaint and proved prosecution sanction papers and charge-sheet documents sent to the Court after completion of parts of the investigation against certain accused as *Exhibits Ka-25, Ka-28, Ka-29*. He described the preparation of maps and inventories relating to recovered weapons and the procedural steps culminating in prosecution sanction where applicable.

In his cross-examination, he states that he conducted investigation relating to the recovery of the fire arm from Ajit Yadav @ Bunty. He admits that the said recovery was made from the disclosure statement of Ajit Yadav @ Bunty at Dinesh Chandra Saini's house in Varanasi. He admits that ordinary law provides that a case is to be registered and trial to be conducted in the same district, where recovery is made. However, in the present case, although recovery was made from Varanasi, the trial was conducted in Lucknow, to which the I.O. (P.W.-12) can only answer.

21. P.W.-16, Nida Arsi testified herself as Cousin of the deceased and received the information about the shooting on 29 May 2013 *via* phone; she arrived during *panchnama* proceedings and identified family recollection of events. On perusal of her earlier statement recorded under Section 161 Cr.P.C., she disowned certain parts attributed to her and was declared hostile on those points.

In her cross-examination, she admits knowing the accused Sanjay Rai (A-1), for more than 5-6 months. She specifically denied that she

wanted to marry Akmal, who is in love with her or that Sanjay Rai (A-1) was against the said marriage. She denied any involvement of Sanjay Rai (A-1) in this regard, in the present crime. She also denied of having any love affair with Sanjay Rai (A-1).

22. P.W.-17, the Investigating Officer, Yashwant Singh deposed about continued investigative steps, perusal of special diary entries, recording of witness statements and preparation of supplementary papers and inter-office CD records during 2015–2016, as the investigation matured. His testimony elucidated procedural continuity and later investigative acts recorded in the file.

In his cross-examination, he states that he took over the investigation on 18.06.2015 and did not find any incriminating material against the alleged accused Rinku @ Hemant Shukla. He also stated that except for taking name by a co-accused, no incriminating material was found against the Hemant Shukla, Pradeep Rai and Amrit Prasad @ Kariya and thus they were not charge-sheeted.

23. P.W.-18, Head Constable Jameel Ahmed corroborated the arrest of Ajit Yadav @ Bunt at Mau, described recoveries of nine mobile phones, 14 SIM cards and six passport photographs of Inspector Sanjay Rai in uniform from a bag found on the accused and proved the recovery report prepared on the spot. He also described the arrest of Sunil Kumar Saini @ Pahalwan and recovery of a country-made pistol (315 bore), live cartridges and a mobile from him at Polytechnic Chauraha, Lucknow. However, in his cross-examination, he admits that the entire case diary has been written in his own handwriting, on the dictation of the Investigating Officer.

24. P.W.-19 Inspector Pankaj Kumar deposed that on 30 May, 2017 he was posted as S.H.O. at Wazirganj and reviewed the investigation file on administrative orders; he recorded that the investigation was at a

stage where further evidence were awaited and, at his deposition, that the investigation had been closed for want of sufficient evidence against some accused. He explained the shifting investigatory focus from initially suspected persons to those ultimately charged. In his cross-examination, he admits that although I.O. Ramesh Chandra Yadav had told him that Ajeet Rai @ Shintu (A-4) had called Ajit Yadav @ Bunty to commit the crime on phone, however, the C.D.R. reveals that the mobile was switched off during that period.

25. Thereafter, statement under Section 313 Cr.P.C. was recorded of all the accused, where each of them denied the circumstances put to them and claimed that they are innocent and had been falsely framed in the present case. Additionally, accused Sanjay Rai (A-1) claimed that the entire case has been initiated due to a personal rivalry between him as an Inspector of Police and his higher officials.

26. From a cumulative assessment of the entire evidence brought on record, both oral and documentary, the Trial Court concluded that the prosecution had succeeded in establishing a complete and unbroken chain of circumstances.

27. The learned Trial Court held that the medical and post-mortem evidence (*Exhibit Ka-6*) clearly proved that the deceased Maaz Ahmad died a homicidal death caused by firearm injuries on vital parts of the body, sufficient in the ordinary course of nature to cause death. The nature, location and trajectory of the entry-and-exit wounds, corroborated by the expert opinion of P.W.-6, established that the firearm was used with the intention of causing death, thereby proving the commission of culpable homicide amounting to murder of the deceased-Maaz on 29.05.2013 at approximately 10:30 PM in the house of Complainant/P.W.-1.

28. Although P.W.-1 and P.W.-2 did not identify the accused in Court and expressed dissatisfaction regarding the investigation, the Trial Court found that their hostility did not demolish the prosecution case because the material, scientific and circumstantial evidence independently corroborated the prosecution version. The recovery of empty cartridges, bullets, and blood-stained material from the crime-spot, duly proved through the documentary record, and their forensic matching with the pistol recovered at the instance of accused Ajit Yadav @ Bunty, formed a crucial link in the chain of circumstances.

29. The learned Trial Court strongly relied on the recovery of the Maruti Alto car from the house of witness Dinesh Chandra Saini, and held that the same was used in the crime. It further went on to hold that the documentary material establishing the car's ownership in the name of Pradeep Rai, the real brother of accused Sanjay Rai, provided further corroboration that the accused Sanjay Rai (A-1) had facilitated the commission of the crime by supplying the said vehicle to the hired assailants. The explanation offered by accused Sanjay Rai (A-1) under Section 313 Cr.P.C. regarding the presence of the car was found to be false and evasive, thereby lending additional support to the prosecution case under the settled principle that false answers furnish an additional link in the chain of circumstances.

30. The learned Trial Court also relied on the recovery of a country-made 9 mm pistol, on the pointing out of accused Ajit Yadav @ Bunty from the same premises from where the Alto car was recovered, and went on to hold that the recovery was duly proved through seizure memos and corroborated by P.W.-12. The Forensic Science Laboratory report, together with the comparison of the empty cartridges recovered from the scene of the occurrence with the pistol marked 1/2013, conclusively established that the said firearm was used in committing the

murder of the deceased Maaz Ahmad, who was 14 years old at the time of the incident.

31. The Trial Court also relied upon the documentary evidence relating to the applications made by accused Sanjay Rai (A-1), while posted in the Crime Branch, seeking permission to tap the mobile phones of Nida Arsi and Akmal as a crucial link to demonstrate the love affair between them. According to the Trial Court, these documents, bearing official endorsements, demonstrated an unusual and personal interest of accused Sanjay Rai (A-1), in monitoring the communications of Nida Arsi (P.W.-16). According to the Trial Court, this circumstance, when seen in the background of the admitted prior acquaintance between Sanjay Rai and Nida Arsi, led to infer that accused Sanjay Rai (A-1) was emotionally invested in Nida Arsi and was suspicious of her closeness with Akmal, which supplied the motive behind the conspiracy.

32. The learned Trial Court also relied on the confessional and disclosure statements of accused Ajit Yadav @ Bunty, though not substantive evidence in themselves, were found to be admissible to the extent of recovery and they were corroborated by objective recoveries of weapons, vehicles, SIM cards, photographs and other articles linking the accused with each other and with the crime.

33. Therefore, the learned Trial Court found that the chain of circumstances was complete. According to the learned Trial Court, the circumstances taken cumulatively, formed a coherent and compelling body of evidence pointing towards the guilt of accused Sanjay Rai (A-1) and the other co-accused. Although the learned Trial Court acquitted all the accused for the offence under Section 116, 201, 420, 467, 468, 471 I.P.C; it further held that the prosecution had proved its case beyond reasonable doubt for conviction against all the accused in the following manner: -

(i) Accused Rambabu @ Chotu, Ajeet Rai @ Shintu, Sanjay Rai, Sandeep Rai and Rakesh Kumar Soni @ Bablu to be convicted under Section 302 read with Section 120-B of the I.P.C. in Sessions Trial No. 445 of 2015 (Case Crime No. 129/2013).

(ii) Accused Sunil Kumar Saini @ Pahalwan and Rahul Rai to be convicted under Section 449, 302 read with Section 34 of I.P.C.

(iii) Accused Sunil Kumar Saini @ Pahalwan to be convicted under Section 3/25 of Arms Act in Sessions Trial No. 447/2015 (Case Crime No. No. 163/2013);

The sentence was also passed for different offence to the Appellants as elaborated in the chart appended to the opening paragraph No.2 of this Judgment.

PROCEEDINGS BEFORE THIS COURT

34. It is the aforementioned judgment and order of conviction dated 28.02.2020, which is under challenge before this Court by the present appellants in this bunch of cases, under Section 374(2) of the Code of Criminal Procedure, passed by the Ld. Trial Court in Sessions Trial No. 445 of 2015 (*State Vs. Rambabu @ Chotu & 6 others*) arising out of Case Crime No. 129 of 2013, P.S.- Indira Nagar, District Lucknow.

SUBMISSION ON BEHALF OF THE PARTIES

35. Challenging the impugned judgment and order of conviction and sentence dated 28.02.2020, Mr. I.B. Singh, the learned Senior Advocate assisted by Mr. Atul Verma, Advocate appearing for the appellants submitted that the Trial Court has erred in recording the findings of conviction and sentence against the present appellants. Learned Senior Counsel for the appellants has vehemently submitted that the conviction and sentence recorded by the Trial Court are perverse as the same is

based on inadmissible and unreliable evidence, which goes to the root of the present impugned judgment.

36. Learned Senior Counsel has strenuously highlighted that the F.I.R. in the present case was lodged on 29.05.2013, relating to a late-night firing incident, inside the complainant's house in which one Maaz Ahmad, aged about 14 years died. The Investigating Officer recorded several recoveries and later submitted charge-sheets against multiple persons; following which the Trial Court convicted the appellants. The prosecution case rests primarily on police investigation material, recoveries effected during investigation, testimony of certain police witnesses and the Forensic Report.

37. Learned Senior Counsel for the appellants has further submitted that the investigation as shown by the evidence itself, is arbitrary and manipulated. Multiple recovery memos (*Exhibits Ka-10, Ka-12, Ka-13, Ka-14, Ka-15, Ka-16, Ka-17 and Ka-21*) either lack independent corroboration or contain clear contradictions as to authorship and witness presence. The recovery memos were variously asserted to be in the handwriting of the Investigating Officer (P.W.-12) and, contradictorily, in the handwriting of Head Constable Jameel Ahmad (P.W.-18). This contradiction was not addressed by the Trial Court and fatally undermines the provenance of all such documents.

38. Several independent witnesses named in the recovery memos were either not produced or later disowned the recoveries (*i.e.*, P.W.-3 Mohd. Mobeen and P.W.-4 Dinesh Chand Saini were declared hostile to the prosecution). When independent witnesses were produced, they denied the recoveries and stated that their signatures were taken on plain paper. These material failures show that the recoveries were not of the "unimpeachable quality" which is inevitable to sustain a conviction. Furthermore, the Investigating Officer himself admitted that much of the

incriminating material collected during the investigation arose from police informers and confessions of co-accused, not from the independent witnesses which are ultimately inadmissible as evidence, to substantiate the case of the prosecution. Later Investigating Officers also recorded that the earlier investigation suffered from anomalies and manipulation. According to the learned Senior Counsel, the Trial Court erroneously relied upon the first Investigating Officer's account without reconciling it with the contradictory evidence of subsequent investigators. In support of his argument, learned Senior Counsel has strenuously relied upon the judgment rendered by the Hon'ble Supreme Court in the case of *Maghavendra Pratap Singh v. State of Chhattisgarh*, reported in *(2024) 12 SCC 401*.

39. Furthermore, learned Senior Counsel for the appellants has vehemently submitted that the alleged use of the Pulsar motorcycle and the Maruti Alto car in the commission of the alleged offence is based, on the prosecution's own admissions, solely on the confessional statements of the accused. There is no independent eyewitness or documentary proof (as the C.D.R. was not proved or relied upon). Where a pointing-out or recovery is based on confession/disclosure, to which the law demands independent corroboration, which is entirely missing here. Hence, the Trial Court erred in treating these recoveries as establishing use of the said vehicles in the commission of the alleged offence. In support of the same, learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of *Indra Dalal v. State of Haryana*, reported in *(2015) 11 SCC 31*.

40. Learned Senior Counsel has further argued that the forensic evidence does not connect the recovered weapon to the fatal bullets, hence, the chain-of-custody is defective. The Forensic Report relied by the Trial Court shows only that the empty cartridges recovered from the spot (EC-1 to EC-4) were fired from the pistol recovered later. However,

according to him, the *fired bullets* recovered from the spot and the one taken from the deceased's body (EB-1 to EB-4) were **not** found to have been fired from the weapon recovered on 13.07.2013. The Trial Court fundamentally misread/over-relied upon the ballistic report when it concluded that the recovered pistol was the weapon of assault. That omission is fatal to prosecution's ballistic link. The chain-of-custody is also vitiated. The weapon allegedly was handed over on 12.08.2013 but was deposited in the F.S.L. only on 20.08.2013; there is no explanation in the case diary where the weapon remained during the intervening period of eight days. The absence of proper sealing, timely dispatch and a trustworthy *malkhana* record creates grave doubt about possible tampering. According to the learned Sr. Counsel, the Trial Court was not justified in treating the forensic report as unimpeachable evidence. To buttress his aforesaid submission, the learned Senior Counsel has relied upon the judgments rendered by the Hon'ble Supreme Court in the cases of *Singh Ram v. State of Haryana*, reported in *1995 Supp (4) SCC 668*; *Nand Kishore v. State of Haryana*, reported in *1998 SCC (Cri) 568*; *State of Rajasthan v. Gurmail Singh*, reported in *(2005) 3 SCC 59*; and *State of Rajasthan v. Gopal*, reported in *(1998) 8 SCC 449*.

41. Learned Senior Counsel has also argued that key eyewitnesses also did not support the prosecution, during trial. The complainant, Husn Bano (P.W.-1) and the eyewitness Nadeem (P.W.-2) had given statements under Section 164 Cr.P.C. during investigation, which were exhibited as *Exhibit Ka-2 and Ka-3*. Both their statements and trial testimony did **not** implicate the appellants; in fact, both denied that the police-named persons were the assailants. The prosecution therefore, failed to establish the identity of the assailants through eyewitness testimony and the Court could not substitute investigative surmises for positive eyewitness identification.

42. Learned Senior Counsel for the appellants has vehemently submitted that the Trial Court treated the present case as one of circumstantial evidence. Mr. Singh, learned Senior counsel appearing for the Appellants, in his usual erudite manner submitted that the facts and circumstances on record do not satisfy the five golden principles laid down by the Hon'ble Supreme Court, in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra*** reported in (1984) 4 SCC 116; i.e., the circumstantial chain is not fully established, consistent only with guilt, conclusive in nature, excludes every other hypothesis and is so complete as to leave no reasonable doubt. On the contrary, multiple reasonable hypotheses (fabricated recoveries, wrong suspects, and an unconnected weapon) remain; therefore, conviction cannot stand. In support of the same, learned Senior Counsel has also relied on the following Supreme Court cases being, ***Hanumant v. State of M.P.***, reported in (1952) 2 SCC 71; ***Vijay Shankar v. State of Haryana***, reported in (2015) 12 SCC 644; ***Raja Naykar v. State of Chhattisgarh***, reported in (2024) 3 SCC 481; ***Padala Veera Reddy v. State of A.P.***, reported in 1989 Supp (2) SCC 706; ***Rajesh v. State of M.P.***, reported in (2023) 15 SCC 521; along with ***Bodhraj v. State of J&K***, reported in (2002) 8 SCC 45; ***State of Goa v. Sanjay Thakran***, reported in (2007) 3 SCC 755; and ***Sattatiya v. State of Maharashtra***, reported in (2008) 3 SCC 210.

43. Learned Senior Counsel for the appellants has also submitted that the charge of Criminal Conspiracy requires evidence of a prior meeting of minds or overt acts demonstrably connecting the accused persons. The prosecution has not proved any meetings, common plan, or reliable inter-accused communication. The Call Detail Records (C.D.R.) which might have shown such connectivity, were neither proved nor relied upon during trial. The Trial Court therefore, erred in convicting the appellants for conspiracy under Section 120B of the I.P.C. read with the

substantive offences. Furthermore, the appellants were not fairly given opportunities during their Section 313 examination, either the material circumstances were not put to them, or irrelevant and leading questions were asked, thereby denying them adequate opportunity to explain the incriminating circumstances. Further, the Trial Court also erroneously relied upon portions of the Case Diary which were not exhibited or proved in the Court. Reliance on such unproved diary material is impermissible in the eyes of law itself. In support of these arguments, learned Senior Counsel has strenuously relied upon the judgments rendered by the Hon'ble Supreme Court in the cases of ***Maghavendra Pratap Singh (supra)***; ***Baliya v. State of M.P.***, reported in ***(2012) 9 SCC 696***; ***Parveen v. State of Haryana***, reported in ***2021 SCC OnLine SC 1184***; and ***Ram Prakash Chadha v. State of U.P.***, reported in ***(2024) 10 SCC 651***.

44. Lastly, Senior Counsel for the appellants has submitted that due to the foregoing defects, namely the tainted investigation, uncorroborated recoveries, ballistic mismatch, hostile or exculpatory statements of eyewitnesses, failure to prove conspiracy and procedural flaws, the convictions recorded against the present appellants are wholly unsustainable and ought to be quashed and set-aside. Apart from the aforementioned submissions and precedents, the learned Senior Counsel has also filed his written submission and placed reliance on the following judgments of the Hon'ble Supreme Court to support his arguments:-

- * ***Habeeb Mohd. v. State of Hyderabad***, (1953) 2 SCC 231;
- * ***Mohd. Ankoos v. High Court of A.P.***, (2010) 1 SCC 94;
- * ***State of Maharashtra v. Sukhdev Singh***, (1992) 3 SCC 700;
- * ***Indrakunwar v. State of Chhattisgarh***, 2023 SCC OnLine SC 1364;

* *Narain Singh v. State of Punjab*, 1962 SCC OnLine SC 203;

* *Anees v. State (NCT of Delhi)*, (2024) 15 SCC 48.

45. *Per contra*, at the very outset, Mr. S.P. Singh, the learned Additional Government Advocate (A.G.A.), appearing for the State vehemently opposed the contentions advanced by learned Senior Counsel for the appellants and has submitted that the findings recorded by the learned Trial Court are well-reasoned, based upon a careful appreciation of the oral and documentary evidence available on record and are fully supported by settled principles of criminal jurisprudence, as well as scientific, documentary, and recovery-based material, all of which collectively point unerringly towards the guilt of the appellants.

46. Learned A.G.A. has submitted that it is not in dispute that certain public witnesses turned hostile during trial. However, the impugned judgment is not founded upon conjectures or surmises, but rests upon duly proved documentary evidence, recovery memos, Forensic Reports, Call Detail Records, and the consistent testimony of the Investigating Officers and police personnel, whose credibility remained unshaken during cross-examination. Further, the case in hand involved unknown assailants, and therefore, non-identification in F.I.R. or absence of Test Identification Parade is not fatal to the prosecution case. The two eye-witnesses, namely P.W.-1 Husn Bano and P.W.-2 Nadeem Ahmad, including Faizan, whose statement was recorded under Section 164 Cr.P.C, have consistently stated that three persons had forcibly entered the house and opened fire, clearly establishing the *manner of assault* and the element of *premeditation*. The prosecution case never depended on direct identification of the assailants but upon chain of circumstantial evidence, establishing the conspiracy and participation of the accused persons.

47. Learned A.G.A. has also submitted that the investigation in the present case was conducted in a systematic, scientific and professional manner, and that every material piece of evidence relied upon by the prosecution was duly proved in accordance with law. The recovery memos, namely *Exhibits 10, 12, 13, 14, 15, 16, 17 and 21* were proved by their respective authors and by the members of the investigating team who participated in unraveling the crime. Furthermore, the discrepancies regarding the handwriting on recovery memos have been unwarrantably exaggerated by the learned Counsel appearing for the appellants. Minor procedural or clerical inconsistencies, such as P.W.-18 admitting to writing memos on dictation of the Investigating Officer, do not render the recoveries fabricated. These are mere non-material irregularities. The core fact remains that the accused persons led the police to specific recoveries *i.e.* weapons, cartridges, mobile phones, SIM Cards, motorcycles and documents which were all duly proved, during trial.

48. Learned A.G.A. appearing for the State has further submitted that the prosecution has successfully established the motive behind the crime. As borne out by the evidence on record, the deceased Maaz Ahmad was murdered as part of a Criminal Conspiracy hatched by appellant Sanjay Rai (A-1), who intended to eliminate a member of the family of Nida Arsi (P.W.-16) and falsely implicate Akmal, thereby removing all perceived obstacles in his alleged personal relationship with her. The relationship between Nida Arsi and Akmal emerged clearly during trial, including in the cross-examination of P.W.-2 Nadeem Ahmad. Although P.W.-16 partially resiled from the same, during her examination-in-chief and cross-examination, resultant being declared hostile, but clearly established her communication with appellant Sanjay Rai (A-1) prior to the incident. According to Mr. Singh, learned A.G.A., it is well-settled that mere hostility does not wipe out the prosecution case. Even hostile witnesses admitted their signatures on the recovery memos, thereby

corroborating the presence of the police at the scene. P.W.-3 and P.W.-4 turning hostile is expected in crimes committed by organized groups; their hostility actually strengthens the prosecution's claim of intimidation and fear. Moreover, the actionable part of their earlier statements remains admissible under Section 157 of the Indian Evidence Act. Significantly, the appellant Sanjay Rai (A-1) was confronted with these incriminating circumstances during his examination under Section 313 Cr.P.C., particularly *Question No. 25*, wherein he admits to meeting Nida Arsi only once, lend further corroboration to the prosecution case. The appellant Sanjay Rai (A-1) failed to furnish any plausible explanation to the incriminating circumstances put to him during his examination under Section 313 Cr.P.C. According to him, the silence and evasive replies justified the adverse inference rightly drawn by the Trial Court, in consonance with settled law.

49. Learned A.G.A. has also submitted that P.W.-12, Inspector Ramesh Chandra Yadav, one of the principal Investigating Officers, gave a detailed, consistent and exhaustive examination-in-chief wherein he proved the Case Diary entries, Exhibits, Recovery memos, Call Details Records and other documentary evidence. His detailed testimony clearly explained the step-by-step progress of the investigation, including permissions obtained for phone tapping and the analysis of C.D.R. The cross-examination of P.W.-12, conducted at length by the defence, failed to elicit any contradiction, infirmity or material inconsistency. The credibility of this witness thus remained intact, and his testimony was rightly relied upon by the Trial Court.

50. Learned A.G.A. has vehemently opposed the challenge raised by the learned Senior Counsel appearing for the appellants pertaining to the reliance placed upon police papers and documentary evidence. In this regard, it was submitted that all relevant documents formed part of the record. The appellants never disputed the genuineness of these

documents during trial, nor were they denied when the opportunity was available under Section 294 Cr.P.C. Consequently, in view of the settled legal position, these documents were rightly read in evidence without formal proof, and no prejudice has been caused to the defence. The Trial Court has correctly applied the law laid down by the Hon'ble Supreme Court regarding admission of documents under Section 294 Cr.P.C., and the appellants cannot be permitted to raise such objections for the first time at the appellate stage.

51. Learned A.G.A. has also submitted that the recoveries of the weapons, cartridges, and the vehicle used in commission of the offence stands duly proved. Even though certain recovery witnesses resiled from their earlier statements, they admitted their signatures on recovery memos, and the recoveries stand corroborated by police witnesses, whose evidence inspires confidence. The Forensic and ballistic reports conclusively established that the empty cartridges recovered from the scene of occurrence were fired from the recovered country-made firearm. The non-matching of bullets recovered from the body of the deceased does not weaken the prosecution case, particularly considering the nature of country-made weapons, a fact judicially recognized. Learned A.G.A. has strongly refuted the assertion made by the learned Senior Counsel appearing for the appellants, that ballistic evidence is unreliable. The F.S.L. report clearly states that all four empty cartridges (*EC-1 to EC-4*) were fired from the pistol recovered from accused Ajit Yadav @ Bunty. This establishes that *the recovered firearm was indeed used at the spot*. Learned A.G.A. has further submitted that the learned Senior Counsel appearing for the appellants has deliberately highlighted only the mismatch of the fired bullets, ignoring the critical fact that recovery of empty cartridges from the scene, that match the recovered weapon is a clinching link placing the accused at the scene of crime.

Furthermore, the mismatch of the bullets can be explained by:

- (a) deformation of bullets on impact;*
- (b) possibility of multiple shots with more than one firearm;*
- (c) expert's inability to opine due to lack of clear striation marks
(as noted for EB-4).*

Even the F.S.L. report specifically states that EB-4 was “*too deformed to compare.*” Thus, mismatch does not break the chain of prosecution evidence.

52. Learned A.G.A. has further submitted that the Investigating Officer's omission to mention where the sealed packets were stored between 12.08.2013 and 20.08.2013 is a mere procedural *lapse*, not a substantive defect. There is no irrefutable proof or evidence of tampering. All the sealed packets were intact when received by F.S.L.; the docket entry records the same. Courts have repeatedly held that unless the seal integrity is compromised, the chain of custody is presumed intact.

53. Learned A.G.A. has also submitted that in the present case, Conspiracy is rarely proved by direct evidence, rather it has been fully established through conduct and circumstances. The following circumstances established prior meeting of minds:

- (i) coordinated movement of multiple accused across districts;*
- (ii) recoveries of eight mobile phones and fourteen SIM cards from accused Ajit Yadav @ Bunty;*
- (iii) recovery of motorcycles used for rapid escape;*
- (iv) consistent statements of Investigating Officers showing inter-related movements of the appellants;*
- (v) conduct of the appellants in absconding immediately after the incident.*

Therefore, these facts have cumulatively satisfied the ingredients of Section 120B of the I.P.C.

54. Furthermore, learned A.G.A. has vehemently submitted that the incident cited by the learned Senior Counsel appearing for the appellants, pertaining to the subsequent murder of Adib (son of the complainant), by Akmal, has no relevance to the incident dated 29.05.2013. The Counsel for the appellants is simply striving to import extraneous subsequent events to divert attention from overwhelming murder of a young boy and the evidence against present appellants. Although the motive witness P.W.-16 turned hostile, motive is not indispensable, particularly where the manner of assault, weapon used, multiple assailants, and recoveries cumulatively proving the guilt of the appellants.

55. Learned A.G.A. has also submitted that minor contradictions between the testimonies of P.W.-12, P.W.-17 and P.W.-19 are natural due to the long gap, multiple levels of investigation, and hostility of locals. None of these contradictions affect the core recovery and forensic evidence, which remained intact. All incriminating circumstances *i.e.* recoveries, the Forensic/ballistic match of empty cartridges, presence of accused/appellants at motorcycle recovery spots, disclosure statements, all were put to the appellants, but the appellants offered bald denials without any plausible explanation. Furthermore, the Trial Court referred to Case Diary portions only to appreciate contradictions, not as substantive evidence. Such limited reference is permissible under Section 172 of the Code of Criminal Procedure, 1973.

56. Learned A.G.A. has also submitted that even though certain independent witnesses turned hostile, the recoveries from the alleged houses and possession of accused (multiple SIM cards, mobile phones, vehicle documents, motorcycle keys and manuals) were duly proved through police witnesses and undisputed seizure documents. Even the F.I.R. was promptly lodged at 23:35 hrs, *i.e.* within one hour of the incident. Further, P.W.-1 and P.W.-2, also corroborated the core facts that

multiple gunshots, three intruders, death of Maaz from firearm injury, which was subsequently corroborated by the medical evidence as well.

57. Lastly, learned A.G.A. has submitted that the Trial Court rightly held that the chain of circumstances, comprising (i) recoveries of weapons and vehicles, (ii) recovery of multiple mobile phones and SIM cards, (iii) forensic matching of empty cartridges, (iv) conduct of the accused, and (v) disclosures; was fully established, consistent only with guilt. There is no rift or missing link as suggested by the appellants. Therefore, learned Trial Court has rightfully convicted the present appellants, relying upon the ballistic linking of cartridges, recoveries under Section 27 of the Indian Evidence Act, forensic consistency, conduct of the accused, cumulative chain of circumstances. Each link has independently supported the reason behind rightful conviction of the present appellants. Therefore, the impugned judgment and order dated 28.02.2020 does not requires any interference and the present appeals are liable to be dismissed *in limine*, in the interest of justice.

58. The learned A.G.A. has also filed his written submission and has heavily placed his reliance on the following precedents laid down by the Hon'ble Supreme Court in the cases of *Shyam Narayan Ram v. State of U.P.*, reported in 2024 SCC OnLine SC 2988; *Rameshbhai Mohanbhai Koli v. State of Gujarat*, reported in (2011) 11 SCC 111; *Sathyan v. State of Kerala*, reported in (2023) 13 SCC 767; *State of Karnataka v. K. Yarappa Reddy*, reported in (1999) 8 SCC 715; and *V.K. Mishra v. State of Uttarakhand*, reported in (2015) 9 SCC 588; in order to support his contentions.

ANALYSIS AND FINDINGS

59. We have given our thoughtful consideration to the submissions canvassed by the learned Counsels for the parties and have also perused the materials placed on record. At the very outset, it is very necessary to

remind ourselves that this Court as an Appellate Court and as such while hearing an appeal against conviction is legally obligated to evaluate all the evidence on record, weigh it independently, and make an assessment and examine as to whether the prosecution has successfully proved the guilt of the accused beyond a reasonable doubt. The present Appeals have been heard by this court on several occasions/dates and has been hotly contested by the parties. We record the endeavor and assistance extended by the learned Counsels appearing for both the sides and appreciate the tempo maintained by each of the parties during hearing, without any demeanor.

60. At the very outset, this Court may also note that there are two parallel narratives put forth in the present case. The first being that of the complainant, who lodged the F.I.R. and the second being that of the prosecution. Apparently, the story put forth by the prosecution has come to be believed by the learned Trial Court resulting in the conviction of all the accused, who are appellants before this Court.

61. Records reveal that the *de-facto* complainant/informant-Husn Bano (P.W.-1), lodged a complaint to the effect that on 29.05.2013 at about 10:30 PM, three motor cycle borne assailants entered her house situated at Faridi Nagar, Police Station- Indira Nagar, Lucknow and on the opening of door by his Nephew Faizan, these assailants fired indiscriminately upon her another nephew Maaz Ahmad Siddiqui, a minor boy aged about 14 years, while he was sitting on his bed watching television. Immediately hearing the gunshots, Nadeem and Adib, two sons of the complainant, who were upstairs rushed and took the injured Maaz to a Hospital, where he succumbed to the gunshot injuries. The complainant suspected the handwork of one Arif, brother-in-law of Fahim and his family and as such the F.I.R. came to be lodged against these people and the three unknown assailants.

62. However, we find that during the course of investigation, the names of the Appellants came into light along with some other person on the basis of information obtained from police informers and confessional statements of some of the co-accused. Thus, charge-sheet came to be filed against the Appellants. Although investigation against some co-accused like Hemant Shukla @ Rinku, Amrit Prasad Gond @ Karia and Pradeep Rai were kept pending during the filing of the charge-sheet, however no subsequent charge-sheet came to be filed, thus technically exonerating these accused persons. Further, we find that the named accused in the F.I.R. i.e. Arif and his family members as well as one Akmal, who had been named by P.W.-2 (Son of the complainant) to be an accused, were also exonerated during investigation.

63. Thus, we find the prosecution after the culmination of the investigation, built a different narrative, wherein according to them, the aforesaid murder was not an act of sudden violence, but the culmination of a premeditated Criminal Conspiracy hatched by accused Sanjay Rai (*hereinafter to be referred as A-1*) (*Appellant in Criminal Appeal No. 475/2020*). The story further unfolds by stating that the said Sanjay Rai (A-1), harbored animosity arising out of his failed romantic pursuit with Nida Arsi (P.W.-16), daughter of the complainant (P.W.-1), who was into an alleged relationship with one Akmal, living in her neighborhood. According to the prosecution, the said Accused- Sanjay Rai (A-1), to execute this design, hired shooters, weapons and vehicles were provided, and the murder was committed to terrorize the family of the complainant and achieve ulterior objectives.

64. This Court finds that the prosecution has even went on to assign different roles to these Accused persons, wherein the three unknown assailants, who came calling on the door of the complainant, were named to be (i) Ajit Yadav @ Bunty, (ii) Rahul Rai (*hereinafter to be referred as A-6*) (*Appellant in Criminal Appeal No. 672/2020*) and (iii) Sunil

Kumar Saini @ Pahalwan (A-7) (*Appellant in Criminal Appeal No. 673/2020*), wherein Ajit Yadav @ Bunty was shown to be firing the gunshot. (*Apparently, Ajit Yadav @ Bunty was arrested and was sent to Jail, however, during Trial he absconded and as such his Trial was separated from rest of the accused person and as such he being not convicted, is not an Appellant in this connected bunch of matters.*)

Going further, as far as the Accused- Ram Babu @ Chotu (*hereinafter to be referred as A-3*) is concerned (*Appellant No.1 in Criminal Appeal No. 671/2020*), the prosecution has assigned him the supporting role of providing logistical support to these assailants. According to the prosecution, these persons were contacted by Accused - Sandeep Rai (*hereinafter to be referred as A-2*) (*Appellant No.3 in Criminal Appeal No. 671/2020*), lodged in Jail at that point of time, who had also provided the assailant with the crime weapon. The other accused- Ajeet Rai @ Shintu (*hereinafter to be referred as A-4*) (*Appellant No.2 in Criminal Appeal No. 671/2020*) was shown to be waiting on road on a pulsar bike for supporting the assailants and Accused- Rakesh Kumar Soni @ Bablu (*hereinafter to be referred as A-5*) (*Appellant No.4 in Criminal Appeal No. 671/2020*) was waiting in support of the assailants at *Munshi pulia* in a Maruti Alto car.

65. This Court also finds that the narrative created by the prosecution is that the Alto car belonged to one Pradeep Rai, lodged in jail and who is the brother of the master Conspirator- Sanjay Rai (A-1). The contract for the said murder was for a deal of Rs.2,50,000/- of which Rs. 20,000/- was given as advance and since the accused – Sanjay Rai (A-1), could not pay the balance amount, the Maruti Alto car was taken by the assailants. It is this story of the prosecution woven on the basis of confessional statement of the accused during custodial interrogation, which has been believed by the learned Trial Court while arriving at a

judgment of conviction against the Accused/Appellants under Section 302, 120B, 449 and 34 I.P.C.

66. In order to prove the said story of the prosecution, we find that altogether 19 prosecution witnesses were examined and almost twenty exhibits have been filed. Amongst, these 19 prosecution witnesses, there are 6 fact witnesses of which it is revealed from records that almost all these fact witnesses namely, P.W.-1 (complainant and eyewitness) and P.W.-2 (eye witness), P.W.-3 (Neighbour and witness of recovery of bullets/clothes from crime site), P.W.-4 (Witness of Recovery of Maruti Alto car), P.W.-16 (Nida Arsi- Witness of Motive), have not supported the case of the prosecution. Although P.W.-1 and P.W.-2 have not been declared hostile, however, all the other fact witnesses have been declared hostile. The sixth fact witness namely P.W.-6 (Dr. Ram Narayan), who conducted the post-mortem has supported the case of the prosecution relating to the nature of injury. However, as far as the incident of crime being connected to the accused person is concerned, the entire case is primarily based on police and/or formal witnesses and amongst these P.W.-12 (Investigating Officer Ramesh Chandra Yadav) is the star witness.

67. Although, any prosecution case based solely on police testimony may not be inadmissible *per se*, as a lot would depend on the materials collected during investigation and the quality of evidence brought on record during Trial, however, when the entire case is based exclusively on police evidence, the Courts are generally skeptical in believing the story. This Court may note that although the Code of Criminal Procedure, 1973 provides for a fair investigation, wherein all the materials collected during investigation has to be brought on record and the decision of chargeability of offence has to be left to the Judicial Court, however, in most of the investigations the police act as an adversarial litigant and are highly motivated to secure a conviction in a

case and in that regard choose to bring only selective evidence on record, which alerts this Court to subject the prosecution's story to intense scrutiny and demand a higher standard of proof for *separating the grain from chaff*.

68. Before this Court embarks on its onerous path of marshalling the evidence brought on record, it would be pertinent to mention herein that the present case ought to have been essentially based on evidence of ocular witnesses as both P.W.-1(Husn Bano) and P.W.-2 (Nadeem Ahmed) were present on the crime spot, when allegedly the crime was committed. However, we find that P.W.-1 was not able to identify any of the accused person present in Court and she had also categorically stated that the person booked in the present case were not involved in the present case and also expressed her dissatisfaction on the investigation conducted as the same was misdirected, by filing application/complaint etc. for seeking further investigation. She had also deposed that Accused - Sanjay Rai (A-1) is not involved in the present case, as according to her the assailants while entering her house were calling for her son, who was upstairs, however, we see that no investigation has been carried by the police in that regard and further the specific statement of non-involvement of Accused - Sanjay Rai (A-1) has been viewed otherwise by the learned Trial Court, as according to the said Court, no explanation for her such non-involvement had been given by the said P.W.-1. This court is rather amused as to how can one give a negative proof of explanation as to how that person is not involved in a crime, except by the manner as stated by the PW1, because to the mind of this court any explanation means that PW1 knew the name & whereabouts of the actual assailants, which is not the case herein.

Similarly, P.W.-2 is also an eye-witness in the present case as he has deposed that he saw three assailants at the crime spot, while he was coming down after hearing gunshots. This P.W. also did not recognize

any of the accused in the Court and expressed his displeasure in the manner of investigation, as wrong persons have been framed. He has also deposed that one Akmal was in one-sided love affair with his sister – Nida Arsi (P.W.-16), however, the police did not investigate in that direction. Further, we find that P.W.-2 in his examination-in-chief has deposed that he had seen the three assailants and can recognize them. This court finds that no endeavor has been made by the police to conduct a T.I.P. (Test identification parade), which might be admissible evidence under Section 9 of the Indian evidence Act and which would have furthered the investigation as per the F.I.R. Thus, the present case essentially which ought to have been based on ocular account of the incident has taken a different direction as we find that both these witnesses have not supported the prosecution case.

69. Faizan, the nephew of complainant, who opened the door to let in the assailants also was not named as witness, although his statement was recorded under Section 164 Cr.P.C. Further, we find that the recovery of four empty cartridges, three bullet and bedsheet etc. (Exhibit-Ka-12) from the crime-spot was witnessed by an independent witness namely, P.W.-3 (Mohd. Mobeen) and P.W.-12 (I.O. Ramesh Chandra Yadav), however, we see that P.W.-3 has been declared hostile, as he refused any recovery in his presence, although he has admitted having signed on blank papers. Interestingly, neither P.W.-1 nor P.W.-2 had been made a witness of the said recovery, which would have furthered the case based on ocular witness.

70. Further, it is available from records and what this court finds interesting that the Investigating officer/ police have instead of taking steps in furtherance to the testimony of the eye-witness took upon itself a task of propelling & piloting a selective investigation in the matter. For the reasons not known, in a case of this nature, the investigating agency has not conducted T.I.P. (Test Identification Parade) nor has filed and/or

exhibited the C.D.R. or the call details of the Mobile to show the location or any communication between these Appellants, which according to us, would have clinched the entire issue. There are no independent witnesses for any recovery or any proof of fact or material which would lead to any connection with the culpability of the Accused persons. Furthermore, we find that except for recording of confessional statements of co-accused, there is no other evidence on record to implicate the appellants. Thus, we are constrained to record that as far as the investigation being based on ocular evidence is concerned, the investigation had been shoddy and abysmal.

71. Moreover, we find that the Investigating Officer apparently believing the confessional statements-initiated investigation and subsequently also filed charge-sheet. We find that even filing of this charge-sheet on the basis of confessional statement to be choosy on the part of the officer, as it has come on records that the I.O. has mentioned that there were altogether 11 accused persons, who have been found to have been involved in the present case. However, admittedly the charge-sheet has been filed against eight persons only, thereby technically picking and choosing the Appellants to face the Trial and picking and dropping the name of the other three co-accused namely Rinku @ Vimal Shukla, Karia Goad, whose role were similar to that of Appellant Ajeet Rai @ Shintu and third one being Pradeep Rai, who was assigned the role of a conspirator and have been accused for providing the Alto Car, which was allegedly used in the crime. Apparently, P.W.-12, the investigation officer when asked in his cross-examination as to why the aforesaid selective charge-sheet has been filed has merely stated that the investigation was continuing and was subsequently taken over by other I.O.'s namely, S.I. Yashwant Singh (P.W.-17) and Inspector Pankaj Kumar Singh (P.W.-18) and it was for them to explain about the same. Although, these facts may not be crucial in the chain of circumstances,

however the fact remains that this confessional statement was not taken seriously at all by the subsequent I.O.'s because of the legal impediment and it was only the brain child of P.W.-12 (I.O. Ramesh Chandra Yadav), who championed to file the present charge-sheet against the Appellants, which contains us to note that the investigation was carried at the whims and fancies of the Investigating officer rather than on reliable and permissible legal evidence.

72. In any case, in the absence of ocular witness, the prosecution has entirely based the present case on circumstantial evidence. The law regarding the appreciation of evidence in a case based on circumstantial evidence has been well settled by a plethora of decisions. The *locus classicus* on this issue being ***Sharad Birdhichand Sarda v. State of Maharashtra***, reported in **(1984) 4 SCC 116**; wherein the Apex Court formulated the five golden principles (*Panchsheel*) regarding appreciation of evidence in a case based on circumstantial evidence and held as follows: -

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established; It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047] “Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they

should not be explainable on any other hypothesis except that the accused is guilty;

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

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

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

73. Having noted these principles governing a case based on circumstantial evidence, we now proceed to discuss the evidence led by the prosecution to bring home the charges against the appellants. The learned Trial Court while returning a finding of conviction against the Appellants has basically bifurcated the whole hypothesis of guilt into three broad spectrums. The first being that as to whether the prosecution was successful in proving that the deceased Maaz Ahmed sustained fatal bullet injuries on 29th of May, 2013 at 10:30 PM at the residence of the complainant- Husn Bano. The learned Trial Court after considering the F.I.R. lodged by the complainant-P.W.-1 and analysing the evidence brought on record being the *panchayatnama* (*Exhibit-Ka-7*), Post-mortem report (*Exhibit- Ka-6*), deposition of P.W.-6, Recovery Memo (*Exhibit-Ka-12*), deposition of P.W.-12, Site-plan (*Exhibit-Ka-12*), found that there was no serious dispute and infirmity in the version of the witnesses and the recovery memo relating to the person who has been murdered and the place of murder and as such went on to hold that the said proposition in affirmative.

74. The second hypothesis set-up by the learned Trial Court was as to whether the deceased Maaz Ahmed died a homicidal death caused by firearm injuries on vital parts of the body, sufficient in the ordinary course of nature to cause death. The learned Trial Court held that the

medical and post-mortem evidence (*Exhibit Ka-6*) clearly proved that the deceased Maaz Ahmad died a homicidal death caused by firearm injuries on vital parts of the body, sufficient in the ordinary course of nature to cause death. The nature, location and trajectory of the entry-and-exit wounds, corroborated by the Expert opinion of P.W.-6, established that the firearm was used with the intention of causing death, thereby proving the commission of culpable homicide amounting to murder of deceased-Maaz Ahmad on 29.05.2013 at 10:30 PM in the house of Complainant/P.W.-1.

75. As far as the aforesaid two hypotheses is concerned, the learned Counsel for the Appellants have fairly submitted that there is no serious dispute relating to the aforesaid two hypotheses as they relate to the place and nature of occurrence of the incidence, but has in a very conscientious manner submitted that their such concession may not be adversely construed against the Appellants as the said two hypothesis does not connect any of the Appellant to the crime in question in any manner. Thus, we immediately come to the third hypothesis setup by the learned Trial Court, which is as to whether the prosecution on the basis of evidence, were able to prove that the allegations made against the accused persons for entering into a criminal conspiracy to murder Maaz Ahmed and in that regard have fraudulently and dishonestly forged documents of the Maruti Alto car and used the same to commit the crime by using the fake documents as genuine. An ancillary hypothesis was also framed as to whether the accused hid the weapon and the vehicle used in the murder of the complainant's nephew Maaz Ahmed with the intention of destroying the evidence.

76. Admittedly, the learned Trial Court went on to acquit all the accused/Appellants for the offences under Section 420, 467, 468, 471, 116 and 201 of the Indian Penal Code and since there is no cross-Appeal by the state, this Court rests the matter at this stage only, however, we

see that all these Appellants have been convicted under Section 302/120-B I.P.C. and additionally, Appellants - Sunil Kumar Saini@ Pahalwan (A-7) and Rahul Rai (A-6) for offences under Section 449/34 I.P.C. and Appellant-Sunil Kumar Saini@ Pahalwan (A-7) under Section 3/25 of the Arms Act.

77. A facial reading of the impugned judgment, brings us immediately to fore that the learned Trial Court has essentially based its conviction in terms of the third hypothesis, wherein according to the Trial Court the following circumstantial evidences formed a chain of events linking the accused person with the crime committed:

- (a) *Confessional Statement of co-accused;*
- (b) *Recoveries of Crime Weapon, Alto car and Motor Cycles;*
- (c) *Motive of murder;*
- (d) *Criminal conspiracy amongst the accused in furtherance to the aforesaid motive;*
- (e) *Inadequate explanation by the accused- Sanjay Rai (A-1) relating to Alto-car under Section 313 Cr.P.C.*

78. A perusal of the records reveal that the entire investigation of the present case is hinged on (i) information of informer, (ii) confessional statement of co-accused, (iii) disclosure statement of accused, and (iv) evidence of mobile network. A fact, which has also been deposed by P.W.-12 (Investigating officer), the star witness of the prosecution.

79. Having said so and delineated the boundaries within which this court has to examine the evidence, which has come on record, we find that the prosecution has heavily relied on two confessional statements recorded in verbatim. One being at the instance of Accused- Ajeet Rai @ Shintu and Rahul Rai, who were arrested on 08.06.2013 from Lachimpur (Azamgarh) as deposed by P.W.-8 (Vishal Pandey- Circle Officer), P.W.-9 and P.W.-10, all members of the Police party in the said arrest. As

regards the crime, these P.W.'s deposed that the arrested accused have confessed involvement in the present murder and disclosed having been engaged to commit the crime for monetary consideration by co-accused Sandeep Rai (A-2) lodged in jail “on the asking of” Sanjay Rai (A-1), who was known to accused Sandeep Rai (A-2). These accused in custody also allegedly confessed that Sandeep Rai (A-2) had given this work to them, along with co-accused Ajit Yadav @ Bunty, Sunil Kumar Saini @ @ Pahalwan and the crime was to be committed with the help of Rinku @ Vimal Shukla, Rambabu @ Chotu (A-3) and Rakesh Kumar Soni @ Bablu (A-5).

Apparently, both the accused persons have confessed that it was Sandeep Rai (A-2), who had asked them to commit the crime and not Sanjay Rai.(A-1). Further, it has also come in evidence that factually the confessional statement could not be correct as at that point of time, Sandeep Rai (A-2) was in Jail and no evidence has come on record whether oral or scientific (C.D.R.) establishing any connection and/or communication between Sanjay Rai and the Jailed Sandeep Rai or the said Sandeep Rai and these two co-accused. Thus, it is anybody's guess as to how there had been any communication.

80. In any case, the second confessional statement relied upon has been allegedly made by Accused- Ajit Yadav @ Bunty, who was apprehended on 13.07.2013 by P.W.-12 (I.O.- Ramesh Chandra Yadav) from Mau at about 3:15 AM in the morning, while riding a pulsar Motorcycle. The police, while apprehending the said Accused-Ajit Yadav also recovered a Mobile, SIM Cards and a sling bag, wherein service book of Maruti Alto car, which contained the name of the owner as Pradeep Rai. The said Ajit Yadav @ Bunty, while in police custody confessed that the said Maruti Alto car has been taken by him from accused- Sanjay Rai (A-1) as a deal for murder, as he was unable to pay the balance amount. In the side pockets of the sling bag, 6 passport size

photos of Accused - Sanjay Rai (A-1) were found and seeing the same, the said accused told it to be the same Sanjay Rai (A-1), who had got the murder done. He also named the other accused persons involved in the said crime and also made certain disclosure statement, which shall be dealt with later on. The said confessional statement has been sought to be proved by P.W.-12.

81. First and foremost, this confessional statement cannot be proved by P.W.-8, P.W.-9, P.W.-10 or P.W.-12 in the manner it has been sought to be proved. These witnesses have technically deposed in their examination-in-chief the confession allegedly made to them by the accused person, which is legally impermissible. The Hon'ble Apex Court in the case of ***Randeep Singh @ Rana V/s State of Haryana***, reported in **2024 SCC Online SC 3383**; on the issue of recording such kind of confessional statement went on to hold in paragraph 16 of the said judgment:

- 16.** *A perusal of the deposition of PW-27, which we have quoted above, shows that he attempted to prove the confessions allegedly made by the accused to a police officer when they were in Police custody. There is a complete prohibition on even proving such confessions. The learned Trial Judge has completely lost sight of Sections 25 and 26 of the Evidence Act and has allowed PW-27 to prove the confessions allegedly made by the accused while they were in police custody.*

(Emphasis supplied)

82. Thus, there is a complete ban on even proving the confessions made by a co-accused while in police custody. Further, so far as the confessional statement of co-accused Ajeet Rai @ Shintu, co-accused Rahul Rai or Co-accused Ajit Yadav @ Buntty naming Accused- Sanjay Rai (A-1), or other co-accused is concerned, the said statement cannot be a substantial piece of evidence in view of the embargo of Section 25-28 of the Indian Evidence Act. First and foremost, it must be understood that there is no definition of “confession” provided in the Indian

Evidence Act. It does not indeed come within the definition of "evidence" contained in Section 3 of the said Act. The logic is quite clear, any confessional statement is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination, thus, it is rightly not considered as evidence. Time and again the Courts have held confession to be a much weaker piece of evidence than the evidence of an approver, which is not subject to any of those infirmities. However, Section-30 of the Act, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act. Further, it would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. However, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not "evidence", as defined by Section 3 of the Indian Evidence Act.

83. The summation of the aforesaid proposition result is that in dealing with a case against an accused person based on confessional statement of a co-accused, the Court cannot start with the confession of a co-accused person; it ought to begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. In the celebrated judgment of *Kashmira Singh v. State of M.P.*, reported in *(1952) 1 SCC 275: AIR 1952 SC 159*; the Supreme Court devised an approach as to how this kind of evidence has to be dealt with. In the said judgment the Apex Court authoritatively held as follows: -

“The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.”

(Emphasis supplied)

84. Thus, the confessional statement of co-accused Ajeet Rai @ Shintu, Rahul Rai or Ajit Yadav @ Bunty can be used merely as an assurance to the Court and cannot be the very basis of conviction, in case of non-availability of other substantive evidence against the accused. This confessional statement cannot be an alternate to evidence and at the most can act as a fortifying act for this Court to reassure itself that yes, the accused are additionally guilty because of the confessional statement of the co-accused. It must be understood that the aforesaid is as a matter of rule and there cannot be any concept of moral conviction or grave suspicion in the case of any accused as named by these co-accused persons. A Constitution Bench of the Hon’ble Supreme Court in the case of ***Haricharan Kurmi V/s State of Bihar***, reported in ***AIR 1964 SC 1184***; which is being quoted herein below, deciphered the concept of the non-permissibility of conviction on the basis of confessional statement of the co-accused in the following manner:

“..the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to' accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible, from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In

criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.”

(Emphasis supplied)

85. The aforesaid judgment has been consistently relied upon by the Hon’ble Courts, including the Hon’ble Supreme Court in several cases, including in the case of ***Surinder Kumar Khanna v. Directorate of Revenue Intelligence***, reported in **(2018) 8 SCC 271**; wherein the Apex Court held that the conviction on the basis of confession of the co-accused is not permissible, as held in paragraph No.14 of the said judgment, which is extracted hereunder:

“14. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges levelled against him. We, therefore, accept this appeal, set aside the orders of conviction and sentence For example: *State vs. Nalini*, (1999) 5 SCC 253, paras 424 and 704 and acquit the appellant. The appellant shall be released forthwith unless his custody is required in connection with any other offence.”

(Emphasis supplied)

86. To the same effect is the judgment of the Hon’ble Supreme Court in the case of ***Dipakbhai Jagdishchandra Patel v. State of Gujarat***, reported in **(2019) 16 SCC 547**; wherein in this regard, it has been held as under :-

“.....the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an

assurance in support of its conclusions deducible from the said evidence. ... In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.”

87. On the conspectus of the aforesaid principle laid by the Hon'ble Supreme Court in the aforesaid Judgments, this Court is of the view that merely naming of any of the co-accused/appellants *per se*, in the confessional statement of a co-accused person does not in any manner proves the culpability of the other accused persons. Thus, we are clear in our mind that confessional statements of Ajeet Rai @ Shintu or Rahul Rai or Ajit Yadav @ Bunty being not a substantive piece of evidence it cannot be a base for conviction of any of the appellants.

88. Further, we find that although the confessional statement of Ajeet Rai @ Shintu and Rahul Rai does not lead to any discovery, however, we find that the confessional statement of the co-accused Ajit Yadav @ Bunty does not merely name the Accused – Sanjay Rai (A-1) and other co-accused, but also discloses other things related to the commission of crime. Apparently, as per the prosecution story, the said accused Ajit Yadav@ Bunty also confessed that the firearm used in the said crime, had been hidden by him in the house of cousin brother of his partner in crime, namely co-accused Sunil Kumar Saini @ Pahlawan (A-7) at Varanasi, while they were on the run because of the raid of the police on the intervening night of 3/4th of July, 2013 at that place. It was on the said statement of the accused and on his pointing out a 9 MM country made pistol along with a magazine and five live bullets were found from the bathroom of Dinesh Chandra Saini (P.W.-4) inside his house, at Varanasi.

89. Apparently, the confessional statement of Ajit Yadav @ Bunty can be notionally divided into two parts, the one being wherein he named the involvement of other co-accused person, which as observed herein above cannot be a substantive piece of evidence and the second being the statement given in the nature of disclosure, to be admissible under Section 27 of the Indian Evidence Act. Thus, we see that the second part of the confessional statement of the said accused, pursuant to which recovery of pistol has been made from the house of Dinesh Chandra Saini (P.W.-4) can be made admissible, provided the same is trustworthy. However, while considering this kind of confessional statement, there is a caveat, in as much as the Hon'ble Supreme Court in the case of *Aloke Nath Dutta v. State of W.B.*, reported in *(2007) 12 SCC 230 : (2008) 2 Supreme Court Cases (Cri) 264*; devised a mechanism as to how these kinds of confessional statements can be made admissible under law. The Apex Court in Paragraph Nos. 53, 137 to 139, which are extracted hereunder, held as under, relevant to the context:

“53. It is, however, disturbing to note that a confession has not been brought on record in a manner contemplated by law. Law does not envisage taking on record the entire confession by marking it an exhibit incorporating both the admissible and inadmissible part thereof together. We intend to point out that only that part of confession is admissible, which would be leading to the recovery of dead body and/or recovery of articles of Biswanath; the purported confession proceeded to state even the mode and manner in which Biswanath was allegedly killed. It should not have been done. It may influence the mind of the Court.

137. Judicial confession is admissible in evidence against the maker thereof under [Section 26](#) of the Evidence Act; but against the co-accused, [Section 30](#) will be applicable.

138. [Section 30](#) of the Evidence Act reads thus:

30. Consideration of proved confession affecting person making it and others jointly under trial for

same offence. – When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.”

139. The expression “the Court may take into consideration such confession” is significant. It signifies that such confession by the maker as against the co-accused himself should be treated as a piece of corroborative evidence. In absence of any substantive evidence, no judgment of conviction can be recorded only on the basis of confession of a co-accused, be it extra-judicial confession or a judicial confession and least of all on the basis of retracted confession.”

90. Though the confessional statement has not been brought on record as contemplated under law, in the sense that the recovery Memo's also contain the confession of crime also. However, this court being alerted by the judgment of the Hon'ble Supreme Court (supra) would tread the path carefully and in that manner the approach of this Court would be to consider the other part of the confessional statement as evidence against these Appellants, as in case the said evidence appears to be satisfactory and reliable. In case this Court would be inclined to hold that the said evidence may sustain the charge framed against the said accused person, then in that case, this Court would then turn to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right and legally tenable.

91. In the view of this Court, everything now turns to the disclosure statement of the accused Ajit Yadav @ Bunty relating to his disclosure leading to recovery of fire-arms from Varanasi and of course the other evidences collected in the present case. At this stage, we would like to refer to the deposition given by P.W.-12 (Investigating Officer). The said witness has specifically admitted that acting on the information received by them relating to the movement of accused-Ajit Yadav@ Bunty, the

police party left Lucknow at about 00.05 AM on 13.07.2013 as recorded in the rawangi register of PS: Indira Nagar and thereupon the accused Ajit Yadav @ Bunty was arrested on 13.07.2013 at about 3:15 AM at Mau, about more than 300 KM away from Lucknow. At this juncture, it is to be noted that there is an apparent doubt on the timing of arrest of the said Accused - Ajit yadav @ Bunty, as it appears from the evidence brought on record that the police party took merely 3 hours to travel a distance of close to 300 KM i.e. from Lucknow to Mau, which is hard to believe, if not impossible. Further, when PW-12 is cross-examined on the said aspect he does not give any satisfactory reply. Thus, the timing and place of arrest is under serious cloud of doubt. However, this cloud may not retain this court any further, as according to this court, the significant factor in the chain of event would be to test the recovery made pursuant to the disclosure statement of the accused Ajit Yadav@ Bunty and not stuck by the illegality or otherwise of the arrest.

92. The quest for search of truth by this court, brings us to the further story of the prosecution that the accused Ajit Yadav @ Bunty admitted his guilt and, therefore, his confessional statement was recorded. Thereafter, the police party took the said arrested Ajit Yadav to house of Dinesh Chandra Saini (P.W.-4) at Varanasi i.e. the house of cousin brother of his partner in crime, co-accused Sunil Kumar Saini @ Pahalwan (A-7), wherein it was confessed by the said accused as to the place where he had hidden the weapon of crime, while they were on the run because of the raid of the police on the intervening night of 3/4th of July, 2013. It was on the said confessional statement of the accused and on his pointing out a 9mm country made pistol along with a magazine and five live bullets were found from the bathroom of Dinesh Chandra Saini (P.W.-4). However, it is relevant to note that, from the Trial Court record, it is revealed that the place from where the weapon of crime had been hidden was raided earlier by the police party along with P.W.-12

(Investigating officer) on 04.07.2013 i.e exactly 8-9 days ago, wherein the said I.O. had allegedly recovered Maruti Alto Car used in the crime, forged Driving license of Accused - Ajit Yadav @ Bunty, his clothes, ATM Card etc. (*Exhibit-Ka-15*). Thus, the place of recovery of fire-arm was at the same place, wherein it was raided earlier by the same police personnel and keeping in view the stuff/material allegedly recovered in that earlier raid, it cannot be said that the fire-arm was not to be found that day. However, then the question arises as to why the fire-arms did not form a part of earlier recovery memo (*Exhibit-Ka-15*). This court finds that the earlier recovery was not on the pointing of any accused (say pursuant to disclosure statement of any accused) nor was recovered from the possession of any accused, because admittedly recovery has been made from the house of Dinesh Chandra Saini (P.W.-4), who is not an accused in the present case. Thus, possibly in order to give more legal sanctity and veracity to the recovery of fire-arms, it was but obvious for the investigating officer to show the recovery of fire-arms pursuant to a disclosure statement of accused- Ajit Yadav @ Bunty, so as to be admissible under Section 27 of the Indian Evidence Act. The said theory gains some significance and fortification in the light of the fact that the said recovery of fire-arms was witnessed by the owner of the house Dinesh Chandra Saini (P.W.-4), who turned hostile and stated that the said recovery was not effected in his presence and merely his signatures were obtained on blank paper, when the police had come to inform him at Varanasi about the arrest of accused - Sunil Kumar Saini @ Pahalwan, This aspect has come in evidence of P.W.-12 and P.W.-14, in their deposition.

93. Now, it is pertinent to note that from the Trial Court record, it transpires that the Accused – Ajit Yadav @ Bunty was arrested on 13.07.2013 and obviously his confessional statement was recorded on that date only. Thus, from the evidence led by the prosecution, it

transpires that before the confessional statement of the appellant/accused Ajit Yadav @ Bunty was recorded and before he could lead to recovery of the firearms, the Police party were very well aware about the place where the Accused Ajit Yadav @ Bunty and accused Sunil Kumar Saini @ Pahalwan (A-7) were hiding and had left their belongings. Thus, it appears that to get recovered a pistol from that hide-out by the police party and that too after more than fourteen days of the incidence from the bathroom of the house of Dinesh Chandra Saini (P.W.-4), who has turned hostile and not is an accused in the present case appears to be doubtful. This Court is further fortified in its belief for the simple reason that the house was not under the control of the accused- Ajit Yadav @ Bunty but was under the control of Dinesh Chandra Saini (P.W.-4) and his brother. The place of recovery was available and open to Dinesh Chadra Sinai, the owner of the house and to any person, who visited his house during the intervening more than 45 days as the incident is of 29.05.2013 and the date of recovery is 13.07.2013. There is absolutely no evidence on the aspect that when incriminating material like fire-arm or the earlier alto car etc. were recovered from the house of Dinesh Chandra Saini (P.W.-4), as to why he was not made an accused in the present case or why no investigation has been carried in that direction or at least investigate as to how the fire-arms or the alto car had made its way to his house in Varanasi located almost more than 325 KM from the place of incident at Lucknow.

94. Unfortunately, nothing of this kind has been done by the Investigating Officer. In fact, as a record, it has come in evidence the other way round that the owner of the house- Dinesh Chandra Saini (P.W.-4) has categorically stated that the accused- Ajit Yadav @ Bunty has never come his house at Varanasi. Further, P.W.-4, who was slated to be the only independent witness has turned hostile as he specifically denied the recovery having made in his presence and the signature were

merely made only on blank papers. Further, we see that there is no witness to support the said recovery, except for the police, who had visited the said premises earlier. Neither the local police of Varanasi had been contacted as deposed by P.W.-12 and P.W.-11 and most importantly the owner of the house Mr. Dinesh Chandra Saini has refused any such recovery from his house, whereupon he was declared hostile. Therefore, the recovery of the pistol at the instance of the accused on the basis of confessional statement given by him before the Police appears to be shrouded with thick black cloud of doubt. At this stage, we would like to refer to the decision rendered by the Hon'ble Supreme Court in the case of ***Bijender @ Mandar, (2022) 1 SCC 92***; wherein the Hon'ble Supreme Court has observed, in **Para-16**, as under:-

“16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. [Vijay Thakur v. State of H.P., (2014) 14 SCC 609 : (2015) 1 SCC (Cri) 454] We may hasten to add that circumstances such as : (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See : Tulsiram Kanu v. State [Tulsiram Kanu v. State, 1951 SCC 92 : AIR 1954 SC 1] , Pancho v. State of Haryana [Pancho v. State of Haryana, (2011) 10 SCC 165 : (2012) 1 SCC (Cri) 223] , State of Rajasthan v. Talevar [State of Rajasthan v. Talevar, (2011) 11 SCC 666 : (2011) 3 SCC (Cri) 457] and Bharama Parasram Kudhachkar v. State of Karnataka [Bharama Parasram Kudhachkar v. State of Karnataka, (2014) 14 SCC 431 : (2015) 1 SCC (Cri) 395])”

(Emphasis supplied)

95. Similarly, the Hon'ble Supreme Court in the case of *Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh*, reported in *2022 SCC OnLine SC 1396*; has devised a mechanism as to how recovery pursuant to a disclosure statement has to be made by the police. Unfortunately, we find that the recovery of the firearm on the pointing out of Accused- Ajit Yadav @ Bunty has been done in the most cavalier manner, although the same would had been vital and a significant link in the circumstantial evidence against the Appellant. Had the police followed the procedure known to law in recovery of the fire-arms, the same would have lent a conjunctional role in the chain of events of circumstantial evidence. At this juncture, we would refer to the judgment of the Apex Court in *Ramandand* (Supra), which laid down the procedure for making a recovery before and after the disclosure statement of the accused in the following manner: -

“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 to 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 completed 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.

54. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW-2, Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the blood stained clothes. The second panch witness namely Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the blood stained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

55. Applying the aforesaid principle of law, we find the evidence of the investigating officer not only unreliable but we can go to the extent to saying that the same does not constitute legal evidence.

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....”

96. From the aforesaid observation made by the Hon’ble Supreme Court, it can be said that when the accused- Ajit Yadav @ Bunty expressed his willingness to give his confessional statement, it was the bounden duty of the Investigating Officer to call for two independent witnesses and only 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 the offence. Further, when the accused while in custody makes such statement before two independent witnesses (Panch Witnesses), the exact statement or the exact words uttered by the accused should be incorporated in the first part of the *Panchnama* that the I.O. may draw in accordance with law. This first part of *Panchnama* for the purpose of Section 27 of the Indian Evidence Act is always drawn in 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 article used in commission of the offence has been hidden. Once the first part of the *Panchnama* is completed, 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 the offence or any incriminating material is

discovered then that part of the entire process would form the second part of the *panchnama* as contemplated under Section 27 of the Indian Evidence Act.

97. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the facts of the present case are examined, it is revealed that in the entire oral evidence of the Investigating Officer, he had not disclosed about the aforesaid aspects and, therefore, the theory of the prosecution with regard to the evidence of discovery made pursuance to the confessional statement of accused Ajit Yadav @ Bunty is not duly proved. On the contrary, as observed hereinabove, prior to recording the confessional statement of the said accused, the place where the crime weapon was hidden was known to the Police authority. It must be noted that Sections 25 and 26 of the Evidence Act stipulate that confession made to a police officer is not admissible. However, Section 27 is an exception to Sections 25 and 26 and serves as a proviso to both these Sections. This Court is of the view that Section 27 lifts the ban, though partially, to the admissibility of confessions, however the removal of the ban is not of such an extent so as to absolutely undo the object of Section 26. As such the statement whether confessional or not is allowed to be given in evidence but that portion only which distinctly relates to discovery of the fact is admissible. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the appellant/accused as to its existence (*Udai Bhan Vs. State of Uttar Pradesh, AIR 1962 SC 1116*).

98. Further, this Court finds that it is not only in the case of recovery exhibited as 'Ka-17', wherein the Investigating Officer has failed to follow the due process of drawing the discovery *panchnama* and has not been duly proved as per law, but in almost all the recovery memo. We find that there are almost eight recoveries made pursuant to disclosure

statement of the accused/appellants. This recovery can be presented chronologically in a tabular chart as follows:-

S. No.	RECOVERY MEMO	DATED	RELATING TO	WITNESS IN MEMO	PROVED BY
1.	Exhibit Ka-12 (written by P.W.-18 on dictation of P.W.-12)	30/05/2013	4 empty cartridges, 3 fired bullets, blood stained bed sheet and piece of plain bed sheet from crime site.	IO R.C. Yadav (P.W.-12) Mohd. Mobeen Ikhlqa Ahmad Interestingly, only PW-12 has been shown to be the only police personnel in the recovery Memo, although it has been shown that the memo was written by PW-18 on the dictation of PW-12, which creates a suspicion on the recovery made.	(P.W.-12) Mohd. Mobeen (P.W.-3) Declared hostile Therefore, no independent witness
2.	Exhibit Ka-13 (written by P.W.-18 on dictation of P.W.-12)	08/06/2013	Pulsar motor cycle from the house of Sanjay Rai on pointing of Rambabu @ Chotu * Used in crime, on confessional statement of accused	IO R.C. Yadav (P.W.-12) Const. Zamil Ahmad Const. Manoj Kumar Pandey	P.W.-12 admits in his cross-examinatin that confessional statement only available to connect the recovery with the crime.

			(P.W.-12)		No independent witnesss
3.	Exhibit Ka-14 (written by P.W.-18 on dictation of P.W.-12)	08/06/2013	1 mobile phone (NOKIA) from possession of Rambabu @ Chotu *Used in Crime - confessional statement of accused * CDR prepared but not incriminating as deposed by (P.W.-12)	IO R.C. Yadav (P.W.-12) Const. Zamil Ahmad Const. Manoj Kumar Pandey	P.W.-12 admits in his cross-examinatin that confessional statement only available to connect the recovery with the crime. No independent witnesss
4.	Exhibit Ka-10	08.06.2013	2 mobile phones 6 SIM cards Cash of Rs.4430 Pulsar motorcycle * Used in crime, confessional statement of accused	Vishal Pandey (P.W.-8)	(P.W.-8) P.W.-12 admits in his corss-examination that only confessional statement available to connect the recovery of motor cycle with the crime. Mobile, SIM, cash

					not to be incriminating
					No independent witnesss
5.	Exhibit Ka-15 (written by P.W.-18 on dictation of P.W.-12)	04/07/2013	Maruti Alto Car fake driving license Document of Car Clothes of Ajit Yadav @ Bunty ATM card from the house of Dinesh Chandra Saini, Varanasi	P.W.-12 Dinesh Chandra Saini Ramesh chand Saini	P.W.-12 * PW-4 (Dinesh Chandra Saini) declared hostile as he specifcially deposed that no recovery in his presence and signatures on blank papers. P.W.-18 claimed that the recovery memo was written in his own hand- writing, however, P.W.-12 has claimed that it was in his handwriting. Interestingly, P.W.-18 at

					the time of recovery was stationed at Lucknow PS and did not travel to Varanasi, which creates a serious doubt about the veracity and genuiness of the recovery.
6.	Exhibit Ka-16 (written by P.W.-18 on direction of P.W.-12)	06.07.2013	Country made pistol .315 Bore and Four live cartridges from Sunil Kumar Saini @Pahalwan	H.C. Zamil Ahmed, Constable Manoj Pandey, Constable Arun Kumar, Akshay Kumar, Constable Anil Singh, Sunil Saini, Anurag Mishra, Anil Singh Yadav, Ram Jee Yadav, Ramesh Chandra Yadav, I.O.	P.W.-12 P.W.-12 admits that the recovery memo has been written in the handwriting of P.W.-18. A facial reading of the recovery memo shows that all the recovery memo have been written in one hand writing.
7.	Exhibit Ka-21	13.07.2013	1 Mobile	Constable	P.W.-12

			Phone 1 Pulser Motorcycle 1 Black Bag from Ajit Yadav @ Bunty Seven bullets 6 Passport Size Photo 8 Mobile Phone 14 SIM Cards, at Mau at 3:15 a.m. (Village- Bajapur)	Dharmendra Kumar, HC Jamil Ahmed, constable Vinay Kumar Singh and constable Udit Narayan Singh.	
8.	Exhibit Ka-17	13.07.2013	9mm Pistol 5 Live cartridges from house of Dinesh Chandra Saini, Varanasi, on the pointing of Ajit Yadav @ Bunty	Dinesh Chandra Saini, his brother – Ramesh Chandra Saini, Constable Dharmendra Kumar, constable Vinay Kumar Singh and constable Udit Narayan Singh	P.W.-12 * PW-4 (Dinesh Chandra Saini) declared hostile as he specifically deposed that no recovery in his presence and signatures on blank papers. PW-18 claimed that the recovery memo was written in

					his own hand-writing, however P.W.-12 has claimed that it was in his handwriting.
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99. In the present case, the prosecution has merely produced I.O. Ramesh Chandra Yadav (P.W.-12) as the *panch* witnesses to prove the recovery pursuant to the disclosure made by the Appellant - Ajit Yadav @ Bunty, as per *Exhibit-Ka-17* and *Exhibit-Ka-21*, bare perusal of the document exhibited as *Exhibit-Ka-21* relating to the recovery of articles from the person of Accused - Ajit Yadav @ Bunty, shows that the same has been witness by Constable Dharmedra Kumar, H.C. Jamil Ahmed, Constable Vinay Kumar Singh and Constable Udit Narayan Singh. There are no independent witnesses. Similarly, *Exhibit-Ka-17* relating to the recovery of firearm from the house of Dinesh Chandra Saini (P.W.-4) from Varanasi, shows that the same has been witness by Dinesh Chandra Saini, his brother –Ramesh Chandra Saini, Constable Dharmedra Kumar, Constable Vinay Kumar Singh and Constable Udit Narayan Singh. Admittedly, it is P.W.-12 (I.O. Ramesh Chandra Yadav), who has only entered the witness box to prove both these Recovery Memo. This Court has no doubt in its mind that the P.W.-12 as being the Investigating Officer of the case is not barred from testifying the recovery memo as he was a competent witness, who had carried the said recovery, however in the present facts and circumstances, when the arrest of the accused Ajit Yadav @ Bunty is under doubt, it has come on record that the owner of

the place, wherein the recovery has been made has turned hostile, it was imperative that some independent person ought to have been also made to enter the witness box to testify these recovery.

100. We also find that except for the Recovery memo *Exhibit Ka-10* relating to recovery of 2 mobile phones and SIM cards after the arrest of Accused - Rahul Rai and Accused- Ajeet Rai, all the seven Recovery Memo has been proved by the Investigating Officer (P.W.-12) himself, notwithstanding presence of the police party and other witnesses named in the Recovery Memo creates an inquisitive doubt in the mind of this court. However, we would park this doubt at this juncture and deal with it later. Having said so, we find that the issue raised by the learned Senior Counsel for the Appellants relating to the statement of P.W.-12 in his deposition that these Recovery Memo has been written by him in his own handwriting being contradictory to the deposition of P.W.-18 (Constable Zamil Ahmed), who has deposed that all the recovery memo has been written by him, gain some prominence to test the veracity of these recovery memo, as to whether they were prepared at the place of recovery or at the police station. Further, we find that most of recovery memo might not only have been recorded in the presence of police party, but there ought to have been independent witnesses also, keeping in view the place as has been mentioned in this Recovery memo, which would have corroborated these recoveries. Thus, we find this recovery to be shrouded under doubt for the simple reason that it is not clear as to who recorded this recovery memo. In case, it is PW-18, who had recorded in his own handwriting, there is no explanation as to why he has not been shown as a witness in *Exhibit-Ka-12* and *Ka-15*. Further, in case he has recorded all the recovery, why he did not enter the witness box and at least share the overburdened investigating officer (P.W.-12).

101. We also find from the deposition of P.W.-12 that even the recoveries made pursuant to these recovery memos had been a futile exercise as it could not be corroborated from any independent witnesses or any other evidence relating to the use of this recovery in the crime. It is apparent from the records that the I.O. Ramesh Chandra Yadav (P.W.-12) had admitted in his cross-examination that except the confessional statements of the co-accused, there is no evidence to show that, (i) the Pulsar Motor-cycle recovered as per Exhibit-Ka-13, from the house of Accused - Sanjay Rai (A-1) and on the pointing of co-accused Ram Babu @ Chotu, or (ii) the Pulsar Motor-cycle recovered from Accused Ajeet Rai @ Shintu and Rahul Rai, while arresting them on 08.06.2013 vide *Exhibit Ka-10*, or (iii) the Pulsar Motor-cycle recovered from Accused - Ajit Yadav @ Bunty, while arresting him on 13.07.2013 vide *Exhibit- Ka-17*, were used in the crime. The same analogy follows for recovery of Maruti Alto car also recovered vide *Exhibit-Ka-15* from Varanasi, which has been admitted by P.W.-12 that besides the confessional statement of the co-accused, there is no independent or corroborative evidence to show the said car was used in the crime.

102. We also find that there is no evidence on record to connect the use of the recovered Maruti Alto car in the crime, which belonged to Pradeep Rai, brother of co-accused Sanjay Rai (A-1) and recovered from Varanasi. The learned Trial Court has been very sentimental towards the *factum* of recovery made relating to a Maruti Alto car from Varanasi and subsequently, there being no explanation of the said recovery by accused - Sanjay Rai in statement recorded under Section 313 of the Cr.P.C. Firstly, it has to be understood that the prosecution has to stand and fall on its own legs and cannot depend on the silence or no explanation of the accused for proving a case against him. There is always a right of

no self-incrimination available to an accused. However, it has been submitted by the learned Counsel for the state that no explanation is an important link in the chain of circumstantial evidence against the accused persons and as such the same cannot be lightly taken. However, we fail to understand that when the basic foundation of recovery of the said Maruti Alto car from the house of Dinesh Chandra Saini (P.W.-4) is shaken as he has specifically deposed that the recovery was not made in his presence and as such was declared hostile, why it was at all expected from the accused- Sanjay Rai (A-1) to prove the alto car's presence at Varanasi at Mr. Saini's house. Further, it must be understood that the recovery of this Maruti Alto car was not pursuant to any disclosure statement of any of the accused so as to make admissible under Section 27 of the Indian Evidence Act, nor the same was recovered from the possession of any of the accused person. In any case, no independent steps of proving that the recovery of the said Maruti Alto car was actually made from Varanasi has been made by the prosecution by producing any person and/or police from the local police of Varanasi, which could had clinched the issue.

103. We find that the Learned Trial court as well as the learned AGA for the state has attributed great significance to the release of the aforesaid Alto car by Pradeep Rai, brother of Sanjay Rai from the custody of the police, to establish that the car was used in the crime. The Ld. Trial court has extensively dealt with the ownership of the said Maruti Car in the impugned judgment, which according to us was not in dispute at all. We fail to understand as to how release of the said Alto car by the real owner would *Pari Materia* also mean its usage in the present crime, especially when we know that Mr. Pradeep Rai is not an accused in the present case. The release of the said car cannot be connected to the Appellant- Sanjay Rai. The Alto

car was admittedly not recovered on the disclosure or pointing of any of the accused person nor the same has been recovered from possession of any of the accused/Appellants. The Alto car is admittedly owned by Pradeep Rai, who is not an accused in the present case. Further, the Alto car was found at the house of one Mr. Dinesh Chandra Saini (P.W.-4) allegedly at Varanasi, who again is not an accused in the present case. Merely because Pradeep Rai is brother of Accused, does not provide a key to the involvement of the said Alto car in the present crime. As far as recovery of Service booklet from the sling bag, which was in possession of accused-Ajit Yadav @ Bunty is concerned, as aforesaid the recovery and arrest itself are doubtful. Further, one fail to understand that service booklet, which is normally kept in the car itself or at a place where the car is parked i.e. Varanasi, how did it find its place to a sling bag of accused Ajit Yadav @ Bunty to be got recovered from him at Mau. This court fails to understand as to how merely getting released the Alto car would lead to involvement of the car or Sanjay Rai in the crime, especially when the prosecution has failed to prove the recovery of the said car from Varanasi and as to how the said car has travelled from Lucknow to Varanasi, which is almost 325 KM. Admittedly, except for the confessional statement of the co-accused there is no evidence to show that the said Maruti Alto car was used in the crime. Even as per the deposition of P.W.-12, except for the confessional statement of the co-accused, there is no evidence on record to show that the said car was used in the crime.

104. Further, we find that as per the prosecution story, various Mobile and SIM cards were recovered as per the aforesaid recovery memo and were also investigated by the police. However, we find from the deposition of P.W.-12, the Investigating Officer, who is also the star witness that he has admitted in his cross-examination

that the call details records (C.D.R.) collected by him during the investigation did not show the presence of any of the accused person at the spot. The only incriminating evidence adduced by him is that he has deposed that the accused person were in contact, but again to prove the said deposition, the minimum which was expected from P.W.-12 was to file and exhibit the C.D.R. on the records of the present case. Alas, the Investigating Officer (P.W.-12) did not exhibit this C.D.R. and prove the same as per law and merely a futile attempt was made by the learned A.G.A. during the course of hearing to bring it within the domain of admissibility under Section 294 of the Code of Criminal Procedure. Needless to that the operation of Section 294 is in altogether different hemisphere, but we do not wish to enter that arena as we ourself took over the task of glancing the said C.D.R. during the hearing, which admittedly as per the learned A.G.A. also is absolutely incomprehensible and incoherent not leading to any person anywhere. We are confident that the prosecution and the Learned Trial Court having a glance of this C.D.R. has rightly chosen not to exhibit the said C.D.R. as it does not further the case of the prosecution in any manner. We also find that it was because of this incomprehensibility and specifically Sandeep Rai (A-2) being in Jail at that point of time that the competent court refused to permit the I.O. to draw voice sample of accused - Sanjay Rai during investigation, although the same was offered by the said Accused, and we find that besides the aforesaid 7 Recovery Memos, the I.O. has merely exhibited four other documents, i.e. *Exhibit Ka -11* (Site-Plan of place of incident), *Exhibit Ka -18* (Site Plan of recovery of Firearm from Varanasi) and the two charge-sheets, i.e. *Exhibit Ka -19* and *Exhibit Ka - 20*. Thus, P.W.-12 failed to prove the C.D.R. of any of the mobiles seized and/or recovered during Investigation.

105. We find that the learned Trial Court while convicting the accused has heavily relied on the forensic evidence to the extent that the firearm recovered as per *Exhibit Ka-17* on the pointing of accused- Ajit Yadav @ Bunty has been held to have fired the empty cartridges recovered from the crime-site as per *Exhibit-Ka-12*. Admittedly, as per the prosecution story, four empty cartridges and three fired bullets were recovered from the crime-site (as per *Exhibit Ka-12*) and one bullet was recovered from the body of the deceased as is apparent from the post-mortem report (*Exhibit Ka-6*) and the same was handed over to the concerned constable and sent to the S.S.P., Lucknow. However, from the forensic report, it is revealed that no doubt the empty cartridges matched with the firearm got recovered on the pointing of accused Ajit Yadav @ Bunty, but interestingly neither the three bullets recovered from the crime-site or the one found in the body of the deceased matched with the said firearm. The forensic report clearly mentions that of the three bullets recovered from the crime-site none of them have been fired from the firearm, which was got recovered by accused- Ajit Yadav @ Bunty and the fourth bullet found in the person of the deceased could not be compared, as it was deformed and due to absence of specific characteristics. We do not wish to comment on the said aspect of the evidence, which has been given amiss by the learned Trial Court, but we record that it has come in evidence that the firearm recovered on the pointing of accused- Ajit Yadav @ Bunty, which has been termed to be the weapon of crime by the prosecution was handed over to the Constable Satyendra Kumar Singh on 12.08.2013 from the *Malkhana*, however, the report itself reveals that the said weapon came to be deposited with the F.S.L. only on 20.08.2013.

106. There is absolutely no explanation as to where was the said firearm during this intervening period of eight days, which again cast a serious doubt on the quality and purpose of investigation by the police. Further, we cannot be oblivious to the fact that the four empty cartridges, which has been found to be matching with the firearm recovered on the pointing of Ajit Yadav, is under serious cloud, as firstly besides the two independent witness it was P.W.-12, who had been shown to be present as a witness. The said recovery memo (*Exhibit Ka-12*) has been proved by P.W.-12 himself as one of the independent witness namely, P.W.-3 turned hostile as he refused to agree that these empty cartridges were recovered in his presence and the other independent witness did not enter the witness box. If that was not enough, P.W.-18 (Zamil Ahemd) has claimed that the recovery memo was written in his own handwriting, but he has not been shown as a witness in the memo, which shows that the recovery memo was apparently prepared at the police station and not at the crime site and blank papers were got signed from the independent witnesses as has been claimed by P.W.-3 (Mohd. Mobeen), which all goes to cast a serious doubt on the recovery of blank cartridges as well as the forensic report. Further, time and again the courts have held that even when a recovered weapon matches the F.S.L. report, the recovery is unreliable if effected from one accessible location without independent attestation or an unbroken chain of circumstances. (*please see, Govind Vs State of Haryana, 2025 SCCOnline SC 2456*)

107. It is one thing to say that the recoveries are under suspicious cloud and were not effected as provided under law and another thing to say that these recoveries might have been not recovered as provided under law but they definitely provide an important link to the crime and as such may be considered by the Court. We find that

unfortunately the prosecution fails on both front as not only the recoveries are under suspicion but these recoveries do not find any linkage to the commission of crime. Except for the confessional statement of the co-accused, there is absolutely no evidence to show that these recovered articles were used in the present crime. The Hon'ble Apex Court in the case of *Mustkeem V/s State of Rajasthan*, reported in (2011) 11 SCC 724; held that sole circumstances of recover of weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused person.

108. At this juncture, we find that the P.W.-12 (Investigating Officer) in his cross-examination has specifically deposed that the entire case is based on four legs of investigation, viz (i) information provided by the police informers, which is inadmissible in eyes, (ii) Confessional statement given to co-accused, which again is inadmissible as per law, (iii) Call Details Records (C.D.R.) collected during investigation, which again does not show the presence of the accused nor any incriminating material and (iv) the recoveries made pursuant to disclosure statement. Thus, according to this court, the entire case would had turned on the recovery, however unfortunately these recoveries have found to be doubtful and does not inspire of any confidence. In any case as per the deposition of P.W.-12, except for the confessional statement of the accused during custodial interrogation, there is neither any corroborative material nor any independent witnesses to connect this recovery to the crime.

109. We further find that the Investigating officer (P.W.-12) in his deposition has basically brought the entire case diary on record by elaborating the investigation carried by him on various dates vide the various *parcha's* as mentioned in his evidence. First and

foremost, it must be understood that case diary, which are recorded under Section 172 of the Cr.P.C are not a piece of evidence. In order to further complicate the issue, the learned Trial court has gone one step ahead in convicting the appellants by relying on several parts of the case diary, which were not even relied by the prosecution during the Trial. It is settled law that portion of the statement recorded under Section 161 Cr.P.C can be used in the evidence, which is required to refresh memory of the said witness and the entire case diary or the entire statement cannot be exhibited in evidence. The learned Trial court has committed a manifest error in several circumstances which were narrated in the case diary and not proved as evidence as per law. Pertinently, there is absolutely no evidence which has come on record to show that accused Rahul Rai and Sunil Kumar Saini @ Pahalwan, were present on the crime spot, however the ld. Trial court has traversed into the realms of illegality by weaving itself a story without any basis and/or evidence on record to hold that Rahul Rai and Sunil Kr. Saini were at the crime spot and has trespassed into the house of the complainant to commit the offence of murder, so as to invoke the provisions of Section 449 of the Indian Penal Code against them. Interestingly, both the eye-witness, whose house has been trespassed has categorically deposed that these persons were not involved in any crime, nor even in tress-passing. The Hon'ble Apex Court in the case of *Mohd. Ankoos v. High Court of A.P.*, reported in *(2010) 1 SCC 94 : AIR 2010 SC 566*; in somewhat similar situation, went on to observe as follows:-

“28.A criminal court can use the case diary in the aid of any inquiry or trial but not as an evidence. This position is made clear by Section 172(2) of the Code. Section 172(3) places restrictions upon the use of case diary by providing that the accused has no right to call for the case diary but if it is used by the police officer

who made the entries for refreshing his memory or if the court uses it for the purpose of contradicting such police officer, it will be so done in the manner provided in Section 161 of the Code and Section 145 of the Evidence Act. The court's power to consider the case diary is not unfettered. In light of the inhibitions contained in Section 172(2), it is not open to the court to place reliance on the case diary as a piece of evidence directly or indirectly.”

110. We fail to understand that when the case diary cannot be used as evidence against the accused, as to how the same can be used in any other manner against him. The case diaries have been deposed by the Investigating Officer indiscriminately because of the simple reason that almost all the fact witness have turned hostile and the other statements are merely custodial confessional statement or are relating to factum of recoveries.. The evidence of the investigating officer (P.W.-12) was reckoned and the story as spoken of by the witness were elaborately discussed by the learned Trial Court in the impugned judgment, which in effect is based on the Section 161 Statements made by the various witnesses, before the police and can be used for the limited purpose of contradicting the said witness as per Section 162 of the Cr.P.C, which is not the present case herein. The Hon’ble Apex Court in the case of ***Renuka Prasad v/s State***, reported in ***2025 SCC Online SC 1074***; has specifically provided a procedure, which makes for an interesting read:

“24. *The next aspect dealt with by the High Court was on the conspiracy and preparation for the crime. Rightly reliance was placed on Mohd. Khalid v. State of W.B. wherein it was opined that conspiracies are not hatched in the open and when done in secrecy, it is very difficult for direct evidence to be produced relating to the conspiracy and the Court would have to fall back upon circumstantial evidence, which also has to be based on inferences made from the various circumstances proved from the acts and omissions of the accused. The Division Bench while referring to the*

various witnesses who were produced to prove the conspiracy first looked at the evidence of PW71, a Director of one of the institutions, also the wife of A1 and PW72, who was an employee in the same institution. PW71 though denied the various documents alleged to have been produced before Court, the Division Bench presumed that her testimony was a deliberate falsehood intended to save her husband. PW72 had produced the salary certificate of A2 issued by him in the capacity of in-charge Principal of the Dental College. The aforesaid evidence was relied on to find close acquaintance of A1 with A2 to A4, the former being the employer of the latter three persons. Insofar as the conspiracy hatched, the Court relied on the voluntary statements made by A3, A5 and A6 before PW87 and relied on Mehboob Ali v. State of Rajasthan. The testimony of PW87 regarding the sites, where discussions were held and money changed hands, pointed out through the voluntary statements made by A1, was relied on by the Division Bench. In addition, Section 161 statements of PW61 to PW64 who had resiled from their statements in the testimony before Court regarding A3 having been seen with A5 and A6 in a hotel on 28.04.2011, was also relied upon. As far as the preparation made, since the witnesses examined for proving the same also turned hostile, the evidence of the police officers were reckoned and the story as spoken of by the IOs were elaborately discussed, which in effect is based on the Section 161 Statements made by the various witnesses, before the police.

25. *Section 162 of the Criminal Procedure Code, 1898 was dealt with in Kali Ram v. State of H.P.9 to hold that the provision makes it plain that 'the statement made by any person to a police officer in the course of an investigation cannot be used for any purpose except for the purpose of contradicting a witness, as mentioned in the proviso to sub-section (1) or for the purposes mentioned in sub-section (2)' (sic para-17). The said principle was reiterated with reference to Section 162 under the Criminal Procedure Code, 1973 in R. Shaji v. State of Kerala¹⁰. It was held by this Court that 'statements under Section 161 Cr. P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr. P.C. can be used for both corroboration and contradiction' (sic para-25). It was further held that*

though the object of the statement of witness recorded under Section 164 is two-fold, there is no proposition that if the statement of a witness is recorded under Section 164 before a Magistrate, the evidence of such witness in Court should be discarded. Rajendra Singh v. State of U.P.¹¹ was a case in which the High Court, as in the present case, relied upon the statements of six witnesses, recorded by the IO under Section 161 Cr. P.C., to enter a finding that the respondent could not have been present at the scene of crime, as he was present in the meeting of the Nagar Nigam at Allahabad. It was unequivocally held that ‘a statement under Section 161 Cr. P.C. is not a substantive piece of evidence. In view of the proviso to subsection (1) of Section 162 Cr. P.C., the statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso’ (sic para-6). It was found that the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding on the alibi claimed by one of the accused.”

111. Further, it must be well understood and moreover the law stands settled that the case diary or the police diaries can be made use by the learned Trial court only for aiding it, in a Trial. It is absolutely improper for the Learned Trial Court to use them in its judgment or seek confirmation of its opinion on the question of appreciation of evidence from statements contained in that case diary. Any entries made by the police officer of its day- to- day activities in the case diary cannot be used as evidence against the accused.
112. Now, we come to the next limb of the circumstantial evidence as mooted by the Learned Trial court to convict the Appellant. *i.e.* theory of motive. It is *trite* that proof of motive is not *sine qua non* in a case of murder based on direct evidence. However, in a case based purely on circumstantial evidence, motive assumes significance and would provide an important corroborative link in the chain of incriminating circumstances. In *State (Delhi Admn.) v. Shri Gulzari Lal Tandon*,

reported in **1979 SCC OnLine SC 202**; the Apex Court shed light on the relevance of proving motive in a case based on circumstantial evidence in the following terms: -

*“1. ... We might also mention that **in cases where the case of the prosecution rests purely on circumstantial evidence, motive undoubtedly plays an important part in order to tilt the scale against the accused.** It is also well-settled that the accused can be convicted on circumstantial evidence only if every other reasonable hypothesis of guilt is completely excluded and the circumstances are wholly inconsistent with the innocence of the accused. ...”*

(emphasis supplied)

113. The prosecution, in its story, has attributed a slender motive to the appellant- Sanjay Rai (A-1) by alleging that he was in affair with Ms. Nida Arsi (P.W.-16), whereas she wanted to marry some Akmal, who was her neighbour. As per the story, the murder was conspired to falsely implicate Akmal in murder case, so as to win over Ms. Nida Arsi. We have marshalled the entire evidence on record. It has been alleged that Sanjay Rai kept an eye on Nida Arsi and for that matter tapped the phone of her for considerable period of time, which according to the prosecution shows some kind of love affair between the two. But this Court finds that neither the C.D.R. nor any proof has been exhibited which would establish the said proposition, whereas it has come on record that in the deposition of P.W.-16 that she does not wishes to marry Akmal and the said statement was supported by the deposition of P.W.-2, brother of Ms. Nida Arsi, who deposed that Akmal was a neighbour and was in a one sided love with his sister and he had also expressed complicity of Akmal in the murder during the investigation to the police. Apparently, the learned Trial Court has extrapolated the deposition of Nida Arsi and has presupposed that as Nida Arsi knew Sanjay Rai (A-1) since the last six months, it was to be equated to having a love

affair with him. We are completely astounded and loss for words for the said supposition, which does not have any basis nor any legs to stand. Thus, we are of the opinion that the aforesaid allegation seems to be nothing but a sheer conjecture and purely far fetched. The prosecution has led no evidence to show that the appellant Sanjay Rai (A-1) was having any relation with the said Ms. Nida Arsi. Further one fail to understand that the motive seems to be a amiss and not a plausible rendition of having an affair with any one as it would be absolutely insane for a person to not eliminate the lover (say with whom Nida Arsi planned to marry) in the first instance and rather plan and conspire to murder a distant cousin of 14 years, who does not have any role nor any interception in the alleged love story between the said Sanjay Rai and Nida Arsi. had the so-called plan of murder executed against the brother of Nida Arsi, it would have given a different complexion. This court may not sound verbose in noting that as a matter of fact & record the brother of Nida Arsi- Nadeem (P.W.-2) has specifically deposed that Sanjay Rai is not involved in the present crime and expressed his suspicion on Akmal. The motive appears to be a bogey merely provided for the sake of giving dimensions to the present case, for obvious reasons of completing the change of circumstantial evidence. However, Alas! the prosecution have failed even in proving this significant link against the Appellants..

114. The next question, which falls for our consideration is as to whether criminal conspiracy has been proved by the prosecution. It is fairly well settled that in order to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. No doubt, it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show

meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of I.P.C. The Apex Court in the case of ***Parveen v. State of Haryana***, reported in ***2021 SCC OnLine SC 1184***; held that “A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy.”

115. In any case, it must also be understood that the offence of criminal conspiracy has its foundation in an agreement to commit an offence or to achieve a lawful object through unlawful means. There is no admissible evidence of record, which would have any whisper as to the meeting of mind of any of the Appellants. The entire evidence is based on custodial confessional statement, which is not admissible as per law. We are aware that conspiracy would barely be hatched in the open and it would be practically not possible to have any direct evidence of the same, however time and again the Courts have held that there ought to be some material on record to draw an inference about the complicity of the Appellants in the present crime. Unfortunately, in the present case, on a bare reading of the evidence, we are unable to draw any such inference. The Hon’ble Supreme Court has held in the case of ***Baliya V/s State of M.P.***, reported in ***(2012) 9 SCC 696***; that :-

“17.Proof or otherwise of such conspiracy is a matter of inference and the court in drawing such an inference must consider whether the basic facts i.e. circumstances from which the inference is to be drawn have been proved beyond all reasonable doubt, and thereafter, whether from such proved and established circumstances no other conclusion except that the accused had agreed to commit an offence can be drawn. Naturally in evaluating the proved circumstances for the purposes of drawing any inference adverse to the accused, the benefit of any doubt that may creep in must go to the accused.”

116. We fail to find any meeting of mind having been proved by the prosecution. Even the conspiracy has been founded on the premises of confessional statement of the co-accused. Keeping in view the legal impermissibility of the confessional statements, we are clear in our mind that the rigorous of Section 120-B cannot be invoked against the Appellants. Even the alleged confessional statements of co-accused -Ajit Yadav @ Buntty, in absence of other acceptable corroborative evidence, is not safe to convict the accused. In the case of , ***Indra Dalal v. State Of Haryana***, reported in ***(2015) 11 SCC 31***; this Court has considered the conviction based only on confessional statement and recovery of vehicle used in the crime. In the said case, while setting aside the conviction, the Apex Court has held in paragraphs 16 and 17 as under :-

“16. The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practising oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countlessly by this Court as well as the High Courts.

17. The word “confession” has nowhere been defined. However, the courts have resorted to the dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and, therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgment of guilt and not the admission of any incriminating fact, however grave or conclusive. Section 26 of the Evidence Act makes all those

confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the immediate presence of a Magistrate. Therefore, when a person is in police custody, the confession made by him even to a third person, that is, other than a police officer, shall also become inadmissible.”

117. As far as the last link relating to inadequate explanation of the alto car by Accused- Sanjay Rai (A-1) in his statement recorded under Section 313 of the Cr.P.C is concerned, which has been construed as the last nail in the coffin to establish the guilt against the accused- Sanjay Rai (A-1), it must be clearly borne in mind that the law on the subject is almost settled that merely on the basis of suspicion, conviction would not be tenable. Merely that Sanjay Rai (A-1) could not give an adequate reply relating to Maruti Alto car cannot be the sole ground for his conviction. It is the bounden duty of the prosecution to prove beyond reasonable doubt that it is only the accused and the accused alone who has committed the crime. Inadequate reply under Section 313 cannot be the foundation for convicting the accused. The Hon’ble Supreme Court in the case of ***Raja Nayak Vs State of Chhattisgarh***, reported in **(2024) 3 SCC 481**; clearly held that non-explanation under Section 313 Cr.P.C cannot be used as an additional link to complete the chain of circumstances in a case based on circumstantial evidence, in the following words :-

“31. *Insofar as the finding of the High Court that the appellant has failed to give any explanation in his statement under Section 313 Cr. P.C. is concerned, we find that the High Court has failed to appreciate the basic principle that it is only after the prosecution discharges its duty of proving the case beyond all reasonable doubt that the false explanation or non-explanation of the accused could be taken into consideration. In any case, as held by this Court in the case of Sharad Birdhichand Sarda Vs state of Maharashtra, (1984) 4 SCC 116, in a case based on circumstantial evidence, the non- explanation or false*

explanation of the accused under [Section 313](#) Cr.P.C. cannot be used as an additional link to complete the chain of circumstances. It can only be used to fortify the conclusion of guilt already arrived at on the basis of other proven circumstances.”

118. Further, in ***Mohan Singh v. Prem Singh & Anr.***, reported in **(2002) 10 SCC 236**; the Apex Court held that the statement of the accused under Section 313 Cr.P.C. is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. If the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 Cr.P.C. cannot be made the sole basis of his conviction.

119. In ***Sujit Biswas v. State of Assam***, reported in **(2013) 12 SCC 406**; the Hon'ble Supreme Court held that an adverse inference can be drawn against the accused only and only if the incriminating material stands fully established, and the accused is not able to furnish any explanation for the same. However, the accused has the right to remain silent, as he cannot be forced to become a witness against himself. The Supreme Court authoritatively held in ***Shivaji Chintappa Patil Vs. State of Maharashtra***, reported in **(2021) 5 SCC 626**; that false explanation or non-explanation offered by accused under Section 313 Cr.P.C. cannot be used to prove case of prosecution. False explanation or non-explanation of the accused to the questions posed by the court under Section 313 of the Code of Criminal Procedure cannot be used as a link to complete the chain. It can only be used as an additional circumstance, when the prosecution

has proved the chain of circumstances leading to no other conclusion than the guilt of the accused.

120. Further, we see that Section 449 of the I.P.C. has been invoked against Appellants Rahul Rai (A-6) and Sunil Kumar Saini @ Pahalwan (A-7) on the ground that these two persons were the assailants along with another accused- Ajit Yadav @ Bunty, who had trespassed the house of the complainant (P.W.-1) on the fateful night of 29.05.2013 to commit the murder of Mazz Ahmed. However, on perusal of the evidence, which has come on record, we find that none of these eye-witness have named the said two persons to be present on the spot nor there is any such statement by the formal or police witnesses. P.W.-1 and P.W.-2, who were the eye-witness of the incident specifically deposed that these persons were not involved in the crime and they refused even to identify them as the assailants. Both P.W.-1 and P.W.-2 in their statement recorded under Section 164 Cr.P.C had not named any of these persons. It must be understood that there had been altogether eight accused in the present matter, wherein seven are appellants before this court and technically there is no role as such assigned during the investigation, which has been presumed by the learned Trial Court. The only role, which came to be assigned to the A-6 and A-7 is merely on the basis of confessional statements and there is no corroborative material on record. This court has already held herein above that confessional statement during custodial interrogation, without any disclosure is hit by the provisions of Section 25-27 of the Evidence Act and is not permissible as evidence in the eyes of law. Similarly, it follows for invocation of Section 34 I.P.C. against these two persons. There is no visible evidence on records about any common intention or meeting of mind of the accused persons.

121. Testing the facts of the case at hand on the anvil of the aforesaid dictum of the Supreme Court, this Court on a conspectus of the entire material available on record and for the purpose of rendering a reasoned and equitable decision, keeping in mind the role assigned to the different Appellants on the basis of confessional statement of the co-accused recorded during custodial interrogation, which is inadmissible in evidence and cannot form a basis of either criminal prosecution or establishing the guilt of the accused. (*Please see paragraph 16 to 21 of Indra Dalal V/s State of Haryana, (2015) 11 SCC 31*). The following questions are being put by this court to itself, so as to assess the individual role of each accused-appellant (**A-1 to A-7**) and reassure itself of the decision being taken :-

121.1) Sanjay Rai (A-1)

(a) What is the alleged role of accused-appellant Sanjay Rai (A-1) in the murder of Maaz Ahmad?

As per the prosecution's case, the accused-appellant Sanjay Rai (A-1) is the “*mastermind/principal conspirator*” who orchestrated the murder to overawe and fulfill his sinister objectives. His motive was to eliminate a hurdle in his romantic interest in Nida Arsi (P.W.-16) by killing a member of her family and framing her love interest, Akmal. He allegedly hired contract killers to carry out the shooting on May 29, 2013, at the complainant's house in Faridi Nagar, Lucknow.

(b) What evidence does the prosecution presented against accused-appellant Sanjay Rai (A-1)?

The prosecution heavily relied on recovery memos (*Exhibits 10-17, and 21*) proved by P.W.-8, Vishal Pandey and P.W.-12, Ramesh Chand Yadav, including the recovery of a Pulsar motorcycle from his house on June 8, 2013. Motive was sought to be supported by Nida Arsi's cross-

examination, where she admitted prior conversations and meetings with Sanjay Rai (A-1), and his admission under Section 313 Cr.P.C. (*Question 25*) that he knew her. Police documents, case diary statements under Section 161 Cr.P.C., and the investigation's scientific conduct are cited. His failure to explain the recovery of Alto car from Varanasi from the hose of Dinesh Chandra Saini (P.W.-4) under Section 313 Cr.P.C. was used to draw adverse inference.

(c) What are the defense arguments challenging the guilt of the accused – appellant Sanjay Rai (A-1)?

The Learned Senior Counsel appearing for the appellants has argued that the conviction is based on Police statements, Confessional statements (*inadmissible*), and flawed recoveries without independent witnesses or corroboration. No direct evidence linked the accused-appellant Sanjay Rai (A-1) to the crime spot; even C.D.R.s show no presence of A-1 at the crime scene or nearby. The investigation exonerated initial suspects (Arif's family and Akmal) prematurely, and Sanjay Rai's (A-1) name surfaced without any tip-off. Witnesses turned hostile and the complainant denied his involvement. Motive is unproven, as Nida Arshi denied any affair or marriage opposition. Mere non-elaboration of the answer under Section 313 Cr. P.C does not entail conviction against him.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Sanjay Rai (A-1)?

There are key inconsistencies which include lack of Test Identification Parade of assailants for the eye witnesses, no independent corroboration for recoveries, hostile eyewitnesses (including complainant Husn Bano) and no proof of conspiracy meetings. The role assigned to Sanjay Rai is on the basis of confessional statement of a co-accused recorded during custodial interrogation, who names him to be connected to Sandeep Rai (A-2). Allegedly as per the confessional statement, Sandeep Rai, who was

lodged in Jail at that point of time, had asked them to murder on the askance of Sanjay Rai. There is no material witnesses proving the linkage between the said persons. The prosecution cannot establish any link between the recovery of Pulsar Motor cycle from the premises of Sanjay Rai on the pointing of another co-accused Ram Babu @ Chotu with that of the murder executed. As explained, there is also no specific material to connect recovery of Alto car. The Forensic link of recovery of fire-arms is doubtful, which in any case dos not link to the culpability of Sanjay Rai (A-1). The Trial Court relied heavily on Case Diary excerpts not formally exhibited, which is impressible in law. The entire stroy is based on confessional statement, which again is not permissible under law. Additionally, to reassure ourself that Sanjay Rai could be given benefit of doubt, we find that it has come on record (vide an application filed under Section 391 Cr.P.C) that Akmal (exonerated earlier), named as an accused by P.W.-2 had been instrumental in the murder of one of the son-Adib of Complainant (P.W.-1), which possibly suggests towards intended misdirection in investigation. The said fact also stands fortified from the statement recorded under Section 164 Cr.P.C of P.W.-1, which is exhibited as *Exhibit Ka-2*, wherein she has stated that on the fateful night the assailants have come calling the name of his sons Nadeem and Adib, however Maaz Ahmed, her nephew has been murdered wrongly in their place.

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of the accused-appellant Sanjay Rai's (A-1)?

The prosecution's case is circumstantial, hinging on motive and Police recoveries, but lacks an unbreakable chain of evidence as elaborated herein above. *Thus, the circumstances from which the conclusion of guilt is to be drawn is not fully established as mandated in **Sharad Birdhichand Sarda case** (supra).* The procedural flaws in recovery and

inadmissible confessions, potentially creates reasonable doubt for innocence of the accused-appellant Sanjay Rai (A-1).

121.2) Sandeep Rai (A-2)

(a) What is the alleged role of the accused-appellant Sandeep Rai (A-2) in the murder of Maaz Ahmad?

Sandeep Rai (A-2) has been alleged to be a “co-conspirator” in the Criminal Conspiracy led by the principal conspirator - Sanjay Rai (A-1). The prosecution implies his involvement through association, as he was charge-sheeted along with 6 other co-accused on 01.09.2013, though specific details on his actions have not been elaborated in the evidence brought on record by the prosecution, in the present case.

(b) What evidence does the prosecution presented against accused-appellant Sandeep Rai (A-2)?

The evidence against accused-appellant Sandeep Rai (A-2) is primarily circumstantial, linked to the overall conspiracy. The only evidence which has been brought against him is the confessional statement of co-accused. The Recovery memos or the Police investigations does not connect him with the crime. The prosecution’s evidence focuses on the group's recoveries (i.e., vehicles, weapons), implying shared guilt along with the other accused-appellants, under Section 120B and Section 34 I.P.C.

(c) What are the defense arguments challenging guilt of Sandeep Rai's (A-2)?

The defense asserted that the accused-appellant Sandeep Rai (A-2) was in jail at the time of the incident (May 29, 2013), making physical participation impossible. No evidence proves his connectivity or conspiracy, meetings with Sanjay Rai (A-1) or other assailants. The

prosecution relied upon majorly on inadmissible confessions and Police statements, without any independent corroboration.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Sandeep Rai's (A-2)?

A significant lack that incarceration of the accused-appellant Sandeep Rai (A-2) on the date of incident excludes him from being at the crime-scene. No specific motive or role is detailed beyond collective charge-sheeting. General investigative flaws (*i.e.*, No T.I.P., hostile witnesses) apply and thus, weakening the chain of circumstances in the present case.

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of Sandeep Rai's (A-2)?

The prosecution's case of Criminal Conspiracy against the accused-appellant Sandeep Rai (A-2) is weak due to his *alibi*, inferring innocence from direct involvement. He has not been assigned any specific role, except for him naming in the conspiracy, which is under serious Doubt. Thus, the circumstances from which the conclusion of guilt is to be drawn is not fully established and the facts so established is not consistent with the hypothesis of his guilt.

121.3) Rambabu @ Chotu (A-3)

(a) What is the alleged role of the accused-appellant Rambabu @ Chotu (A-3) in the murder of Maaz Ahmad?

Rambabu @ Chotu (A-3) is alleged to have been part of the prior meeting of minds and agreement with the principal conspirator Sanjay Rai (A-1) and other accused-appellants, for committing the alleged crime. A-3 is alleged to have rendered active assistance and logistical support to the assailants by arranging essential resources like vehicle required for the commission of the offence and facilitating the movement of the assailants.

The accused-appellant A-3 along with accused-appellant Rakesh Kumar Soni @ Bablu (A-5) was shown to be waiting for the assailants at *Munshipulia*, Lucknow in an Alto car. Such facilitation was crucial in enabling the main assailants to reach the spot, execute the crime, and attempt escape undetected, thereby making him liable as a co-conspirator.

(b) What evidence does the prosecution presented against accused-appellant Rambabu @ Chotu (A-3)?

The prosecution in order to prove its case against the accused-appellant Rambabu @ Chotu (A-3), presented recovery of Pulsar motorcycle UP-73-C-2647 on his pointing out (*i.e. Exhibit-Ka-13*, dated June 8, 2013) from the house of Sanjay Rai (A-1) and a Nokia mobile phone from his possession (*Exhibit-Ka-14*), both proved by P.W.-12, Ramesh Chand Yadav, along with the accused-appellant Confessional statement during custody.

(c) What are the defense arguments challenging guilt of the accused-appellant Rambabu @ Chotu (A-3)?

The learned Counsel appearing for the accused-appellant Rambabu @ Chotu (A-3) asserted that the alleged recoveries had been made in the absence of any independent witnesses; only in the presence of Police personnel. Furthermore, the Complainant/P.W.-1 herself denied his involvement in the alleged crime. The evidence on record discloses only an inadmissible confession, bereft of any supporting C.D.R. analysis or proof linking the accused-appellant Rambabu @ Chotu (A-3) to the crime scene, rendering the prosecution case wholly unsubstantiated.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Rambabu @ Chotu (A-3)?

In the present case, the Motorcycle used to facilitate the movement of the assailants during the crime had been recovered only after the confession

of the accused-appellant Rambabu @ Chotu (A-3), proved by P.W.-12, Ramesh Chand Yadav, but without any corroboration by an independent witness. Even the witnesses turned hostile in the present case and the recovery memo is flawed. There is no corroborative evidence to show that the Motor Cycle recovered on his pointing was used in the crime or that he was waiting in an Alto car at *Munshipulia* for safe passage of the assailants. The investigating officer (P.W.-12) has admitted that, except for the custodial confessional statements of the co-accused, there is no evidence to link the recovery with the Accused.

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of accused-appellant Rambabu @ Chotu (A-3)?

In the present case, the Prosecution's recovery evidence is an important key to determine the guilt or innocence of the Rambabu @ Chotu (A-3), but the major procedural flaws exist in the said recovery, which creates a doubt, ultimately benefiting the accused-appellant Rambabu @ Chotu (A-3), favoring his innocence.

121.4) Ajeet Rai @ Shintu (A-4)

(a) What is the alleged role of the accused-appellant Ajeet Rai @ Shintu (A-4) in the murder of Maaz Ahmad?

The accused-appellant Ajeet Rai @ Shintu (A-4) is alleged to be one of the contract killers, hired by Sanjay Rai (A-1). He was waiting on road, on a Pulsar bike, when other assailants were trespassing at the complainant's house. He was arrested on June 8, 2013, in Azamgarh and he confessed his involvement in the shooting incident dated May 29, 2013 at the residence of Husn Bano situated in Faridi Nagar, Lucknow, proved by P.W.-8, Vishal Pandey.

(b) What evidence does the prosecution presented against accused-appellant Ajeet Rai @ Shintu (A-4)?

Acting upon an alleged tip-off, Police arrested and recovered two mobile phones and a Pulsar motorcycle from the accused-appellant Ajeet Rai @ Shintu (A-4) dated June 8, 2013. His confessional statement during his custodial interrogation links him to the murder of Maaz Ahmad. Part of the chain of recoveries from his possession were proved by P.W.-8, Vishal Pandey, against the accused-appellant Ajeet Rai @ Shintu (A-4).

(c) What are the defense arguments challenging guilt of accused-appellant Ajeet Rai @ Shintu (A-4)?

Learned Counsel appearing for the accused-appellant Ajeet Rai @ Shintu (A-4) asserted that the alleged recoveries have been made in the absence of any independent witnesses; only in the presence of Police personnel. His Confession recorded during custody is also inadmissible in the eyes of law. No Call Details Record evidence links him to the crime scene, although his mobile was seized during his arrest. Nothing incriminating was found from his possession. Furthermore, No Test Identification have been done by the eyewitnesses. There is clear sign of prejudice caused to the accused-appellant Ajeet Rai @ Shintu (A-4) in the alleged investigation, as initial suspects were exonerated.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Ajeet Rai @ Shintu (A-4)?

In the present case, the arrest of the accused-appellant Ajeet Rai @ Shintu (A-4) is solely based upon a “tip-off” without any substantial evidence. Also, the motorcycle recovery has not been corroborated by even a single independent witness. There is no evidence on record to show the involvement of the pulsar motor cycle in the crime, allegedly which he was riding on the fateful night. Even the fact eye-witnesses P.W.-1

(complainant) and P.W.-2 did not identify him or proved his presence at the crime scene.

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of accused-appellant Ajeet Rai @ Shintu (A-4)?

In the present case, the prosecution has heavily relied upon the alleged recoveries and confessions recorded during the custody, but defense has vehemently argued on its inadmissibility and lack of corroboration by the independent witnesses, leaning toward reasonable doubt towards innocence of the accused–appellant Ajeet Rai @ Shintu (A-4). The recoveries from their possession also does not lead anywhere. The facts *established are not consistent with the hypothesis of the guilt of the present accused/Appellant.*

121.5) Rakesh Kumar Soni @ Bablu (A-5)

(a) What is the alleged role of the accused-appellant Rakesh Kumar Soni @ Bablu (A-5) in the murder of Maaz Ahmad?

Rakesh Kumar Soni @ Bablu (A-5) is alleged to be a “co-conspirator” in the murder of a 14 year old boy, in a supporting role as he was alleged to be waiting for the assailants at *Munshipulia*, Lucknow in an Alto car along with aforesaid co-accused Ram Babu (A-3). The accused – appellant Rakesh Kumar Soni @ Bablu (A-5) has been charge-sheeted separately on May 02, 2014.

(b) What evidence does the prosecution presented against accused-appellant Rakesh Kumar Soni @ Bablu (A-5)?

The prosecution has linked the accused – appellant Rakesh Kumar Soni @ Bablu (A-5) through ongoing investigation and police documents, but no specific recovery has been brought on record as evidence. The prosecution has also allegedly implied the accused – appellant Rakesh

Kumar Soni @ Bablu (A-5) in group conspiracy for fulfilling the sinister objectives of the accused-appellant Sanjay Rai (A-1).

(c) What are the defense arguments challenging guilt of accused-appellant Rakesh Kumar Soni @ Bablu (A-5)?

Learned Counsel appearing for the accused-appellant Rakesh Kumar Soni @ Bablu (A-5) has asserted that the late charge-sheeting against the accused-appellant Rakesh Kumar Soni @ Bablu (A-5) suggests weak initial evidence. No direct link, motive, or recovery has been substantiated by the prosecution to establish the guilt of Rakesh Kumar Soni @ Bablu (A-5) as a co-conspirator. The general investigation reveals irregularities in this case.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Rakesh Kumar Soni @ Bablu (A-5)?

There is significant lack of specific details with respect to the guilt of the accused-appellant Rakesh Kumar Soni @ Bablu (A-5). Furthermore, there are no mention of his presence or any action at the crime scene or during alleged conspiracy.

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of accused-appellant Rakesh Kumar Soni @ Bablu (A-5)?

With respect to the accused-appellant Rakesh Kumar Soni @ Bablu (A-5), the Prosecution's case appears thinnest here, with defense likely succeeding on insufficient evidence for his culpability. Guilt would require proving conspiracy tie-in, which seems unestablished with respect to A-5 especially. The prosecution's case is circumstantial, hinging on conspiracy angle, which is basically lacking pointing towards a reasonable doubt about his involvement in the present case.

121.6) Rahul Rai (A-6)

(a) What is the alleged role of the accused-appellant Rahul Rai (A-6) in the murder of Maaz Ahmad?

The accused-appellant Rahul Rai (A-6) is alleged to be one of the main assailants, who entered the house of complainant Husn Bano and fired at the deceased boy, Maaz Ahmad along with two other assailants. A-6 was convicted under Sections 302/34 and 449 of the Indian Penal Code.

(b) What evidence does the prosecution presented against accused-appellant Rahul Rai (A-6)?

The accused-appellant Rahul Rai (A-6) was arrested along with another accused-appellant namely, Ajeet Rai @ Shintu (A-4) on June 8, 2013, at Azamgarh after receiving a tip-off. Prosecution has shown recovery of mobile phones and Pulsar motorcycle, alleged to be used in the crime, which has been proved by P.W.-12, Ramesh Chandra Yadav. Furthermore, the confessional statement links him with the crime and alleged conspiracy. Police documents and investigation chain also points towards his guilt for murdering Maaz Ahmad.

(c) What are the defense arguments challenging guilt of accused-appellant Rahul Rai (A-6)?

With respect to the guilt or innocence of the accused-appellant Rahul Rai (A-6) no eyewitness identification has been shown or proved; furthermore, even the eyewitnesses - P.W.-1 and P.W.-2 were not able to identify the said accused. Also, there is no basis for presence of the accused-appellant Rahul Rai (A-6) at the crime scene beyond his own confessions. Furthermore, even the Trial Court failed to reason, how (A-6) was linked as an assailant in the murder of Maaz Ahmad, as the Call

Details Records shows no proof of his location at the crime scene in Faridi Nagar, Lucknow.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Rahul Rai (A-6)?

Learned Counsel appearing for the accused-appellant Rahul Rai (A-6) has vehemently contended that the lack of a Test Identification Parade and independent evidence for trespass/firing, in the present case has purged the prosecution's case. Also, the alleged Forensic links shown by the prosecution are tied up with others recoveries and not directly to the recovery made with respect to Rahul Rai (A-6).

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of accused-appellant Rahul Rai (A-6)?

The prosecution's circumstantial evidence is contested by the absence of any direct proof against the accused - Rahul Rai (A-6), ultimately suggesting his innocence due to benefit of doubt. For convicting A-6 for trespassing the complainant's house requires some acceptance of his presence at the crime scene but nothing has been brought on record to prove it; to which the arguing Counsel has called it perverse. The benefit of doubt has to be given to the said accused. Except for the custodial confessional statement, there is no evidence on record to show his culpability in the present case.

121.7) Sunil Kumar Saini @ Pahalwan (A-7)

(a) What is the alleged role of the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) in the murder of Maaz Ahmad?

The accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) is alleged to be one of the assailants, amongst those who trespassed into the house of complainant Husn Bano and fired bullets at the deceased, causing him

grievously injured and who ultimately succumbed to an unfortunate death, in a very young age. The trial Court convicted the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) under Sections 302/34 and 449 I.P.C. Furthermore, a weapon has been recovered from the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) which includes a 315 bore country-made pistol, 4 alive cartridges; all proved by P.W.-14, Satish Chandra.

(b) What evidence does the prosecution presented against accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) ?

Recovery of the assault weapon produced as *Exhibit-Ka-16*, connects the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) to the crime scene and a link in the chain of conspiracy is sought to be established as evidenced by Police recoveries and statements recorded under Sections 161 Cr.P.C. and 27 of the Indian Evidence Act.

(c) What are the defense arguments challenging guilt of accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) ?

Learned Counsel appearing for the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) has vehemently contended that no identification or direct evidence for presence having been brought on record, coupled with the inadmissibility of the confessions and complete absence of independent corroboration. Furthermore, the Trial Court's conviction for trespass is also vitiated by sheer lack of substantial and sound reasoning against the accused-appellant (A-7). The country-made pistol recovered from his possession is admittedly not used in the crime.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Sunil Kumar Saini @ Pahalwan (A-7) ?

In the present case, there exists no direct Forensic link of the recovered weapon from the accused-appellant (A-7), as such link if asserted, pertains

only to a co-accused coupled with the hostility of key witnesses and the total lack of corroborative C.D.R.s, rendering the recovery wholly insufficient to sustain the conviction of the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7).

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of accused-appellant Sunil Kumar Saini @ Pahalwan (A-7)?

Analogous to the case of the accused-appellant Rahul Rai (A-6), here also the prosecution relied solely on contested circumstantial evidence to prosecute the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7), to which the defense contended that these incriminating materials are inadequate to sustain a finding of guilt of the accused-appellant (A-7), particularly where no eyewitness support whatsoever exists on record.. The circumstantial chain of evidence does not boost any confidence of its completion, so as to hold the present accused/appellant guilty. On the contrary, this broken chain of events leaves a reasonable doubt and a permissible ground for a conclusion consistent with the innocence of the accused. The benefit of doubt has to be given to the said accused.

122. As a sequel to our discussion and appreciation of material on records, we do not find any evidence connecting the Appellants with the aforesaid crime. The eyewitness account of P.W.-1 and P.W.-2 does not name any of the Appellant, in fact P.W.-1, eye-witness in the present case, conversely deposes that Sanjay Rai, Ram Babu @ Chotu and Ajit Yadav are not involved in the present case and the case has been wrongly set-up against them. No doubt her statement does not carry any weight, however keeping in view that the only evidence brought on record against the Appellants are confessional statement of the co-accused, which are hit by Section 25-27 of the Indian Evidence Act and even the recovery pursuant to the disclosure statement does not boost any confidence and there is a

conspicuous absence of causal link between these recoveries and the culpability of the Appellant, these disclosure statements does not, in any manner come to the rescue of the prosecution. Although, Motive assumes great significance in a case based substantially on circumstantial evidence, however we find that in the present matter, the prosecution has not even filed the C.D.R., which would have established the connection between Sanjay Rai, Nida Arsi and Akmal. The story of motive has merely been extrapolated by the learned Trial court by misreading the deposition of Nida Arsi (P.W.-12). Akmal never entered the witness box. Silence of Sanjay Rai in his statement under Section 313 Cr.P.C cannot be construed to be his admission. Thus, a significant link of circumstantial evidence being the motive could not be established by the prosecution. The prosecution has further failed to establish the object of the conspiracy, which according to them was to eliminate a family member of PW16 (Nida Arsi), so as to falsely implicate Akmal and thereby remove all perceived obstacles in the alleged love affair between Sanjay Rai and Nida Arsi. The existence of conspiracy is in air as it does not rely on any permissible evidence. The story woven appears to be a product of fertile mind of the prosecution. The, motive theory of the prosecution does not urge of any natural and pragmatic human behavior.

123. Thus, taking into consideration the entire gamut of evidence that has been brought on record, it can be reasonably concluded that the prosecution has failed to bring forth reliable evidence forming a complete string of events, leading to the guilt of the Appellants. The chain of events being sought to be projected is laden with deficiencies creating significant gaps, leading to other possible hypotheses leading to innocence of the Appellants. No doubt, one can argue that the whole incident raises suspicion because of the heinous nature of crime, wherein a 14 years old boy has been murdered in a gruesome manner, however we are clear in our mind that, any suspicion, however strong it may be, cannot take the

place of proof beyond a reasonable doubt and the Accused cannot be convicted on the ground of mere suspicion, no matter how strong it is. An Accused is presumed to be innocent unless proved guilty beyond reasonable doubt. This Court records with certainty that the prosecution has failed to travel the evidentiary distance with clear, cogent and unimpeachable evidence, so as to term the said distance to have travelled and transformed from the conceptual evidence of “may be true” to “must be true”. It will be apposite to refer to the judgment of **Ramanand v. State of U.P.**, reported in **(2023) 16 SCC 510**; wherein it has been observed that:-

“123. Thus, none of the pieces of evidence relied on as incriminating by the courts below, can be treated as incriminating pieces of circumstantial evidence against the accused. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Though the offence is gruesome and revolts the human conscience but an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. In Shankarlal Gyarasilal [Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35 : 1981 SCC (Cri) 315] , this Court (at SCC p. 44, para 33) cautioned — “human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions”. (emphasis supplied) This Court has held time and again that between “may be true” and “must be true” there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict.”

124. Be that as it may, however, the question now boils to the effect that when there is cogent evidence to belief the homicidal death of Maaz

Ahmed, then how can there be no person, who could be blamed for the said murder. The Hon'ble Supreme Court in somewhat exact situation has observed in the case of ***Mohd. Sameer Khan v. State***, reported in **2025 SCC OnLine SC 2298**; in the following words :-

“24.Merely because the medical evidence proves the unfortunate loss of life would not be enough to convict a person since he happened to be in the vicinity. In the absence of any forensic evidence when there is no eyewitness and the case is of circumstantial evidence, benefit would go to the accused.”

The Hon'ble Supreme Court in the said case, after discussing the law on the subject, went on to also hold that in cases wherein the guilt of the Accused is sought to be established by circumstantial evidence, if two views are possible on the evidence adduced in the case, one pointing to the guilt of the Accused and the other to his innocence, the view which is favourable to the Accused should be adopted.

125. No doubt it is true that there had been a brutal murder of a young child. However, the brutality of the offence does not dispense with the legal requirement of proof beyond a reasonable doubt. In this case, there is no legal evidence to prove the involvement of the accused. The Courts can convict an accused only if his guilt is proved beyond a reasonable doubt on the basis of legally admissible evidence. There cannot be a moral conviction. We are but obviously tempted to quote what the Hon'ble Supreme Court observed in paragraph 24 of its decision in the case of ***Subhash Chand v. State of Rajasthan***, reported in **(2002) 1 SCC 702**. It reads as follows:

“24. Thus, none of the pieces of evidence relied on as incriminating, by the trial court and the High Court, can be treated as incriminating pieces of circumstantial evidence against the accused. Though the offence is gruesome and

revolts the human conscience but an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. In Shankarlal Gyarasilal Dixit case [(1981) 2 SCC 35 : 1981 SCC (Cri) 315 : AIR 1981 SC 765] this Court cautioned — “human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions” (SCC p. 44, para 33). This Court has held time and again that between may be true and must be true there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict.”

126. The circumstances brought on record do not form a complete chain so as to lead to irresistible conclusion about the involvement of the Appellants in the present crime. Establishing one or two circumstances beyond reasonable doubt is not sufficient to hold that the entire chain is complete as the chain of circumstances must be so complete, so that it leads to no other conclusion than the guilt of the Accused person, which is not so in the present case. The degree of proof required to hold the Appellants guilty beyond reasonable doubt, on the strength of circumstantial evidence, is clearly not established. Due to the missing links findings of guilt cannot be recorded and the benefit of doubt must flow to the Appellants.

127. We are therefore satisfied that the prosecution has failed to bring home the guilt of the Appellants beyond reasonable doubt and the Appellant deserves to be acquitted.

CONCLUSION

128. In view of the detailed analysis aforesaid, this Court is of the considered opinion that the **prosecution has failed to prove the charges against the appellants beyond all reasonable doubt**. The judgment and

order dated **28.02.2020** passed by the learned Trial Court suffers from **perversity and infirmity**. The Appellants are entitled for benefit of doubts. Accordingly, the conviction and sentence awarded to the appellants is set-aside and the Appellants are acquitted of all the charges levelled against them. All the Criminal appeals **are hereby Allowed**. Consequently, all the appellants being (i) Sanjay Rai, (ii) Ram Babu @ Chotu, (iii) Ajeet Rai @ Shintu, (iv) Sandeep Rai, (v) Rakesh Kumar Soni @ Bablu, (vi) Rahul Rai and (vii) Sunil Kumar Saini @ Pahalwan, are set free and shall be released from Jail, in case any of them are not required in any other cases.

129. This Court would also like to acknowledge the consummate arguments advanced by the learned Counsels appearing on behalf of both the parties, including their juniors who appeared in this matter, for their diligent spadework in preparing the notes of arguments submitted by both the parties. We would also go amiss if we did not appreciate Research Associate- Mr. Ashutosh Srivastava, for his in-depth research and invaluable assistance rendered, in the adjudication of this matter.

130. Let the Trial Court record, along with copy of this judgment and order, be transmitted to the Court concerned for compliance.

131. All pending Application(s) are *disposed of* accordingly.

(Abdhesh Kumar Chaudhary,J.) (Rajesh Singh Chauhan,J.)

June 05, 2026
Anuj Singh