

Neutral Citation No.- 2025:AHC:157223-DB

Reserved On:- 23.5.2025

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A.F.R.

In Chamber

Case :- CRIMINAL APPEAL No. - 2477 of 1986

Appellant :- Har Swaroop

Respondent :- State

Counsel for Appellant :- S.P.S. Raghav,Rohit Shukla

Counsel for Respondent :- A.G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Jitendra Kumar Sinha,J.

(Per: Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Sri Akhilesh along with Ripu Soodan Yadav, learned counsel for the appellant no. 2 and Sri Rahul Asthana, learned AGA for the State.

2. The appellants by way of this appeal have challenged their conviction under section 302 r/w 149 IPC and under section 148 IPC and sentence of imprisonment for life under section 302/149 IPC and sentence of two years rigorous imprisonment under section 148 IPC. All the sentences have been ordered to run concurrently.

3. Vide order dated 11.3.2019, the appeal stood abated in respect of appellant no.1-Harswarup, appellant no. 3-Jawahar and appellant no. 4-Tulsi and vide order dated 27.2.2024, the appeal stood abated in respect of appellant no. 5-Bhagat Singh. Now the appeal is surviving only in respect of appellant no. 2-Suresh.

4. The prosecution case in brief is that the informant Kunwar Pal gave a written report to the SHO of police station Kosikala District Mathura stating therein that Harswarup, Charan Singh

and Kishan Dutt are real brothers. The informant, Charan Singh and Kishan Dutt used to live together and Harswarup was living separately from them. It is further submitted that a dispute was existing regarding the partition of the dwelling house of the informant side as stated above. On the date of giving written report i.e. on 17.9.1984, the brother of the informant Charan Singh was ploughing the field of Mahendra son of Jagram by Mahindra Eicher Tractor and his elder brother Kishan Dutt and his son Sundar Sher Singh were ploughing their field which was in his common share by the tractor. He and Mahendra Singh had gone to deliver afternoon meal to Charan Singh, Kishan Dutt and his son Sundar Sher Singh and they had taken the meal together. After taking the meal, Charan Singh started ploughing the field and he, Mahendra Singh and his brother Kishan Dutt and his son Sunder sat under the Choker tree and were talking to each other. At about 1:30 P.M. Harswarup, Suresh, Jawahar, Bhagat Singh and Tulsi and one other person whose name he did not know but he could identify by face reached there. Harswarup, Tulsi and Bhagat Singh were armed with country-made pistol whereas Suresh and Jawahar were armed with gun and one person whose name he did not know but he could identify by face reached there, was armed with *ballam* (spear), stopped Charan Singh and aforesaid persons assaulted them by opening fire with their country-made pistol, gun and by *ballam* (spear) and his brother received fire arm injuries and when the informant rushed to save his brother, he was also fired upon by them but he somehow escaped unhurt and they fled towards Nagla Atra. When the assailants left the place, they came there and saw Charan Singh was lying dead on driving seat of the tractor. The informant has further stated that due to fear of the assailants, he reached the

police station leaving behind the dead body of Charan Singh and the tractor at the place of occurrence.

5. On the basis of above written report, case Crime No. 157 of 1984 was registered under sections 147, 148, 149, 307 and 302 IPC against Harswarup, Suresh, Jawahar, Bhagat Singh and Tulsi and one person who could be identified by face. The investigating officer conducted the investigation and submitted charge sheet against Harswarup, Suresh, Jawahar, Tulsi and Bhagat Singh under sections 147, 148, 149, 307, 302 IPC

6. Learned Magistrate took cognizance of the offence and committed the case to the court of Session. The learned Sessions Judge Mathura framed charge against the accused Harswarup, Suresh, Jawahar and Tulsi and Bhagat Singh under sections 148, 302 r/w 149 and 307 IPC.

7. The prosecution, in order to bring home the charge, has produced Head Constable Deen Dayal Upadhaya as P.W. 1, Constable Ram Naresh as P.W. 2, Kunwar pal as P.W. 3, Mahendra as P.W. 4, Dr. P.P. Pathak as P.W. 5, Kishan Dutt as P.W. 6, Rajendra Singh Tomar as P.W. 7

8. The prosecution has also proved documentary evidence, as F.I.R.-Ex.Ka1, Written report-Ex.Ka.4, Recovery memo of blood stained clothes- Ex.Ka13, Recovery memo of blood stained and plain soil- Ex.Ka. 14, Recovery memo of 'tractor' and supurdaginama'-Ex.Ka.15, P.M. Report-Ex.Ka.5, Panchayatnama-Ex.Ka.7, Report of chemical examiner-Ex.Ka.19, Charge Sheet 'mool'- Ex.ka. 17, Site plan with index-Ex.Ka.16.

9. After closure of the prosecution evidence, the statement of the accused were recorded under section 313 Cr.P.C. in which they have denied their involvement in the commission of the offence

but they have stated that they have been implicated in this case due to enmity. The surviving appellant Suresh has stated that he is son of Harswarup. Kishan Dutt and Kunwar Pal had borrowed Rs. 30,000/- from Charan Singh and had purchased a tractor and there was a dispute regarding payment of instalments of the said loan.

10. The defence has examined Krishan Chandra as D.W. 1, K.K. Matre as D.W. 2, Hari Singh as D.W. 3 and Jauhari Prasad as D.W. 4.

11. Learned trial court after hearing the argument of the prosecution and the defence passed the judgement of conviction and order of sentence impugned.

12. Learned counsel for the applicant has filed written arguments and has submitted that according to first information report the alleged occurrence has taken place in field of one Mahendra son of Jagram on 17.9.1984 at 1:30 PM and its first information report was lodged on 17.9.1984 at 5:30 PM but according to the testimony of P.W. 5 Dr. PP Pathak who has conducted the post mortem of the deceased person on 18.9.1984 at 5:00 PM has opined that duration of injuries could vary by 6 hours on either side since the time of conducting the post mortem of the deceased and the injuries received by the deceased might have been caused at 5:30 AM to 6:00 AM at 18.9.1984 which shows that the date and time of alleged incident is different and not according to prosecution version as it has been stated. It is further argued that as per prosecution version the deceased had taken the food at 12:00 to 12:15 PM on 17.9.1984 and the alleged incident has taken place at 1:30 PM on 17.9.1984 and the deceased died on spot due to injuries sustained by him

but according to post mortem report, the semi digested food was found in the stomach of the deceased but in the opinion of doctor the possibilities that deceased might have taken food 3 or 4 hours prior to his death is not ruled out in the present case. The deceased is said to have died after an hour of taking food. It is further submitted that in view of the above the prosecution story becomes highly doubtful.

13. It is further argued that the prosecution story is inconsistent with the post mortem report of the deceased. He further submitted that as per prosecution version general role of firing has been attributed against all the five appellants and one unknown person who was carrying ballam (spear) and caused the injuries upon the person of the deceased with their respective weapons but the deceased has sustained total nine ante-mortem injuries in which injury nos. 1,2,3,4 are fire arm entry wound and the injury no. 5 is the fire arm wound of exit of corresponding injury no. 2 and injury nos. 6 and 7 are the punctured wound which might have been caused by pointed weapon ballam (spear) and injury nos. 8 and 9 are the incised wound which might have been caused by any sharp edged weapon. Ballam (spear) is the pointed weapon, therefore, injury nos. 8 and 9 cannot be caused by ballam (spear) meaning thereby injury nos. 8 and 9 are unexplained injuries by the prosecution.

14. It is also argued by learned counsel for the appellants that the dimension of the fire arm injuries received by the deceased person are also found to be different. The dimension of injury no. 1 which is fire arm entry wound having dimension of 4cm x 3cm into cavity on right side with multiple fire arm wound injury in area of 10cm x 6cm on the right side of the forehead size bearing 0.2cm x 0.2cm into muscle deep blackening and tattooing

present and dimension of injury nos. 2, 3 and 4 are similar 2cm x 2cm into cavity deep on front side of left chest and right chest respectively which shows that the injuries nos. 2, 3 and 4 might have been caused by a single fire arm weapon from front side and nature of weapon may be rifle and 315 bore country-made pistol, which have not been shown in the hands of any accused persons.

15. Learned counsel for the appellant vehemently argued that as the directions of the fire arm injuries received by the deceased is concerned, all the fire arm injuries are straight injuries and so far the injury no. 2 is concerned which is through and through injuries which cannot be caused by the accused person upon the person of the deceased while he was sitting on the driver seat with the height of 6 to 7 foot from the earth. Therefore, if the prosecution version is supposed truthful, in that event, the direction of the fire arm injuries received by the deceased should have been upward.

16. Learned counsel further submitted that in present case not a single injury sustained by deceased is found to be upward which also creates doubt and suspicion on the part of the prosecution story.

17. Learned counsel also argued that as per prosecution version the deceased was ploughing the field by tractor where he was assaulted by all the accused persons with respective weapons but he received all the injuries from the front side which are on chest and abdomen but these injuries cannot be possible to be sustained by the deceased while he was sitting on the driver seat of the tractor. It also raises doubt on the prosecution version that all the accused persons were armed with fire arm weapon then

what was need of another person, whose name is not disclosed, to assault with ballam (spear).

18. It is further argued that injuries caused by ballam (spear), which has been received on the left and right side of the chest of the deceased, cannot be caused if the deceased was sitting on the driving seat. Therefore, these all aspects clearly go to show that the actual story of prosecution is different, which is not as alleged by the prosecution and the alleged eye witnesses P.W. 3, P.W.4 and P.W.6 are not disclosing truthful version of the prosecution story and the presence of the alleged eye witnesses are absolutely doubtful and their testimonies are highly tainted.

19. It is further submitted that according to the testimony of P.W. 7 Rajendra Singh Tomar, investigating officer, who has taken the blood-stained earth from the place of occurrence, the field of Mahendra son of Jagram, on 17.9.1984 at 10:30 PM and site plan was prepared on 18.9.1984 at 7 AM but in the site plan the investigating officer has not shown the blood-stained earth from where it was taken. But in the report of chemical examiner the human blood was found on item nos. 2 to 5 and item no. 1 concerned which was blood-stained earth in which the blood was found disintegrated.

20. Learned counsel further refers to the testimony of P.W. 7 investigating officer wherein he has stated that no trail of blood was found on the dead body of the deceased in the field where incident had taken place, therefore, there is no occasion of presence of blood near the dead body of the deceased which shows that the place of occurrence becomes doubtful.

21. Learned counsel further submitted that conduct of P.W. 3 and P.W. 6 are highly unnatural as they have stated that they

did not get down the dead body of the deceased from the tractor, even they did not touch the body of the deceased. Learned counsel further submitted that P.W. 3 and P.W. 6 are real brothers of the deceased and their conduct of not touching the dead body of the deceased is highly unnatural which proves that they were not present at the place of occurrence.

22. It is further submitted that P.W. 4 Mahendra son of Chhida is also claiming to be eye witness and he is also nephew of the P.W. 3 and the deceased and he is also related witness and he is not an independent witness, therefore, the evidence of P.W. 4 cannot be considered as truthful.

23. It is further submitted that presence of P.W. 3, P.W. 4 and P.W. 6 who were said to be eye witnesses, is doubtful as they did not try to save the life of the deceased and they have not received any fire arm injuries in the alleged indiscriminate firing by the accused persons.

24. Learned counsel also argued that there is no recovery of any incriminating material from the possession of the appellants and there is no motive and intention of the appellants to commit the alleged offence and they have been falsely implicated in the present case. Learned counsel further submitted that as per testimony of P.W. 3 partition between all the brothers had already taken place and accused namely Harswarup had started to reside at Faridabad (Haryana) and after partition in the family and the deceased, namely, Charan Singh, Kunwar Pal and Kishan Dutt were residing in the village and they also purchased the tractor jointly on loan in which the deceased as well as witnesses namely Kunwar Pal, P.W. 3 and Kishan Dutt, P.W. 6 had failed to make the payment of instalments of loan of the tractor and

they became defaulter in this regard the evidence of DW-2 namely Sri K.K. Matre who was Agricultural Finance Officer at Central Bank of India, has also proved this fact that last payment of instalment of loan was made on 25.6.1984 thereafter no instalment of loan was being paid by the deceased as well as Kishan Dutt and Kunwar Pal.

25. It is further argued that deceased was having multi corner enmity in the village because of the murder case of his father, the deceased, namely, Charan Singh was the witness and Harswarup who is the real brother of the deceased had lodged the first information report regarding the murder case of his father in which one Mohan Lal was found guilty in that case and he was awarded sentence of life imprisonment, who was released after serving out the sentence. Therefore, the needle of suspicion to commit the murder of deceased goes to Mohan Lal or his family members who was having enmity with respect to the murder case of the father of the deceased.

26. Learned counsel further submitted that surviving appellant Suresh has specifically stated in his statement recorded under section 313 Cr.P.C. that the deceased was having enmity in the murder case of his father in which one Mohan Lal was found guilty and he was also awarded life sentence in the murder case of his father and the appellant, namely, Suresh has been falsely implicated in the present case.

27. Learned counsel lastly submitted that prosecution has not established its case beyond reasonable doubt and surviving appellant Suresh is entitled to be acquitted of the charges framed against him. In support of his argument, learned counsel for the appellant has placed reliance on the judgement of Hon'ble

Supreme Court passed in *Criminal Appeal Nos. 335 and 336 of 2015, Amar Singh and others vs. The State (NCT of Delhi)*.

28. On the other hand, learned AGA for the State argued that the testimonies of P.W. 3, P.W. 4 and P.W. 6 who are the eye witnesses of the occurrence are reliable. He further submitted that there might be some minor contradictions but they are not of material nature and they cannot impact on the reliability of their testimonies.

29. Learned AGA further submitted that the testimony of witness P.W.3, P.W.4 and P.W.6 is fully corroborated by the medical evidence of P.W. 5. Learned counsel further submitted that admittedly there was enmity between the accused and the informant side and it is well established that the enmity is double edged weapon which cuts both ways and it can be cause of false implication as well as it can be cause of commission of offence. Learned counsel further submitted that the first information report is prompt and non recovery of any weapon of offence cannot be a ground to discard the otherwise trustworthy eye witnesses. He further submitted that other witness are formal in nature and the prosecution has been able to prove its case against the surviving appellant Suresh beyond the shadow of reasonable doubt and appeal lacks merit and deserves to be dismissed.

30. In a recent judgment of **Dheer Singh and Others vs State of U.P. , 2025 (4) ADJ 791**, a co-ordinate Bench of this Court, of which one of us (Vivek Kumar Birla, J.) was a member has considered the law as to why a realistic approach has to be adopted by Criminal Courts, which appreciating evidence in Criminal trial. The law in respect of injured, related and

interested witness was also considered extensively, paragraph nos.22 to 35 whereof reads as under:-

“22. In [Krishna Mochi and others vs. State of Bihar](#), (2002) 6 SCC 81, the Hon'ble Apex Court laid emphasis on realistic approach to be adopted by the criminal courts while appreciating evidence in criminal trial, paragraph 32 whereof is quoted as under:

"32. The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time....."

(Emphasis supplied)

23. In [Masalti vs. State of U.P.](#), AIR 1965 SC 202, Hon'ble Apex Court in paragraph 14 observed as under:

“ 14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice."

(Emphasis supplied)

24. In [Darya Singh vs. State of Punjab](#), AIR 1965 SC 328, the Hon'ble Apex Court has also taken the view that related witness does not necessarily mean or is equivalent to an interested witness. A witness may be called interested only when he or she derives some benefit from the result of litigation; a decree in a civil case, or in seeing a person punished in a criminal trial, paragraph 6 whereof is quoted as under:

“ 6. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars.”

25. In [Appabhai and another vs. State of Gujarat](#), AIR 1988 SC 696, the Hon'ble Apex Court in paragraph 11 observed as under:

“11.....Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their, course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner.....”

(Emphasis supplied)

26. Similar view has been taken in State of A.P. vs. S. Rayappa and others, (2006) 4 SCC 512 wherein it has been observed that it is now almost a fashion that public is reluctant to appear and depose before the court especially in criminal cases and the cases for that reason itself are dragged for years and years, paragraph 6 whereof is quoted as under:

"6.....by now, it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons."

(Emphasis supplied)

27. In Pulicherla Nagaraju @ Nagaraja Reddy v. State of AP, (2006) 11 SCC 444, the Hon'ble Apex Court in paragraph 16 has held as under:

"16. In this case, we find that the trial court had rejected the evidence of PW1 and PW2 merely because they were interested witnesses being the brother and father of the deceased. But it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise, found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted."

(Emphasis supplied)

28. In [Satbir Singh and others vs. State of U.P.](#), (2009) 13 SCC 790, the Hon'ble Apex Court in paragraph 26 held as under:

“26. It is now a well-settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon ”

(Emphasis supplied)

29. In [Jayabalan vs. U.T. of Pondicherry](#), 2010 (68) ACC 308 (SC), the Hon'ble Apex Court in paragraph 21 held as under:

“21. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

(Emphasis supplied)

30. In [Dharnidhar vs. State of U.P.](#), (2010) 7 SCC 759, the Hon'ble Apex Court held that there is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case, paragraphs 12 and 13 whereof is quoted as under:

“12. There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of [Jayabalan v. U.T. of Pondicherry](#) [(2010)1 SCC 199], this Court had occasion to consider whether the evidence of interested witnesses can be relied upon.

The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under:

" 23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

13. Similar view was taken by this Court in [Ram Bharosey v. State of U.P.](#) [AIR 2010 SC 917], where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown over- board, but has to be examined carefully before accepting the same.

14. In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then we see no reason why

the statement of so called 'interested witnesses' cannot be relied upon by the Court."

(Emphasis supplied)

31. In a very recent judgement rendered by Hon'ble Apex Court in [Baban Shankar Daphal and others vs. The State of Maharashtra](#), 2025 SCC Online SC 137 in respect of testimony of witness which should not be discarded merely because of relation with victim, the Hon'ble Apex Court has, in paragraphs 27 and 28, held as under:

"27. One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased and for prudence the prosecution ought to have examined some other independent eyewitness as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses also, who had reached the place of incident, the evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinized with care and caution. It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.

28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

(Emphasis supplied)

32. In a recent judgement rendered by Hon'ble Apex Court in Shahaja @ Shahajan Ismail Mohd. vs. State of Maharashtra, (2023) 12 SCC 558 has observed that the appreciation of ocular evidence is a hard task and has summed up the judicially evolved principles for appreciation of ocular evidence in a criminal case, paragraphs 29 and 30 whereof is quoted as under:

“29. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

29.1 While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

29.2. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

29.3 When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

29.4. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating

officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

29.5. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

29.6. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

29.7. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

29.8. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

29.9. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

29.10. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

29.11. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

29.12. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing

cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

29.13. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.[See [Bharwada Bhoginbhai Hirjibhai v. State of Gujarat](#), 1983 Cri LJ 1096 : AIR 1983 SC 753, Leela Ram v. State of Haryana, AIR 1999 SC 3717, and Tahsildar Singh v. State of UP, AIR 1959 SC 1012]

30. To put it simply, in assessing the value of the evidence of the eye-witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence."

(Emphasis supplied)

33. Paragraph 48 of Pahalwan Singh and others vs. State of U.P., 2020 (6) ALJ 166 is quoted under:

"48. Thus, in view of aforementioned decisions of the Supreme Court, it is now a settled position of law that the statements of the interested witnesses can be safely relied upon by the court in support of the prosecution story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons who are closely related to the deceased. When their statements find corroboration by other evidence, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then there is no reason as to why the statement of so-called 'interested witnesses' cannot be relied upon by the Court. It would be hard to believe that the close relatives shall leave the real culprit and shall implicate innocent persons falsely simply because they have enmity with the accused persons.

(Emphasis supplied)

34. Insofar as the testimony of injured witness is concerned, this Court in Kaptan Singh vs. State of UP, 2020 (1) ADJ 106 (DB) has, in paragraph 20, observed as under:

"20. Close scrutiny of the evidence shows that the statements of (PW-1) Vimla Devi and (PW-2) Ram Singar Pandey are clear, cogent and credible. They have been subjected to cross-examination, but they remained stick to the prosecution version and no such fact, contradiction or inconsistency could emerge, so as to create any doubt about their testimony. Keeping in view the fact that after incident, deceased as well as injured were taken to hospital and were admitted there and that on the same night deceased Ram Niwas Rao has succumbed to injuries, it is apparent that the first information report of the incident was lodged without any undue delay. Version of (PW-1) Vimla Devi finds corroboration from testimony of (PW-2) Ram Singar Pandey and is fully consistent with medical evidence. It is also to be kept in mind that (PW-2) Ram Singar Pandey has himself sustained injuries in the same incident. In Jarnail Singh v. State of Punjab, (2009) 9SCC 719, the

Supreme Court reiterated the special evidentiary status accorded to the testimony of an injured accused. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case, the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon. Similar view was expressed in the case of [Krishan v. State of Haryana](#), (2006) 12 SCC 459. Hon'ble Supreme Court in Criminal Appeal Nos. 513-514 of 2014 [Baleshwar Mahto and another v. State of Bihar and another](#), decided on 9.1.2017, has reiterated the law as under :

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

"Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC 881:1973 SCC (Cri) 563:AIR 1972 SC 2593], *Malkhan Singh v. State of U.P.* [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12], *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], *Appabhai v. State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696], *Bonkya v. State of Maharashtra* [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113], *Bhag Singh* [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163], *Mohar v. State of U.P.* [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472], *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] 29. While deciding this issue, a similar view was taken in [Jarnail Singh v. State of Punjab](#) [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107],

where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29) "28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In [Shivalingappa Kallayanappa v. State of Karnataka](#) [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In [State of U.P. v. Kishan Chand](#) [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide [Krishan v. State of Haryana](#) [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the Courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein." In this very judgment, relationship between the medical evidence

and ocular evidence was also discussed, based on number of earlier precedents, as under: "33. In [*State of Haryana v. Bhagirath*](#) [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] it was held as follows: (SCC p. 101, para 15) "15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the Court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the Court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject." In [*Shivalingappa Kallayanappa v. State of Karnataka*](#), 1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694, the Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

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(Emphasis supplied)

35. In a recent judgement rendered by Hon'ble Apex Court in [*Neeraj Sharma vs. State of Chhattisgarh*](#), (2024) 3 SCC 125 in respect of importance of injured witness in a

criminal trial, the Hon'ble Apex Court has, in paragraphs 22 and 23, held as under:

“22. The importance of injured witness in a criminal trial cannot be over stated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as an extremely valuable evidence in a criminal Trial. “

23. In the case of [Balu Sudam Khalde v. State of Maharashtra](#) 2023 SCC OnLine SC 355 this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eye-witness. This court held as follows:

"26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

31. The incident is said to have taken place on 17.9.1984 at 1:30 PM and the first information report has been lodged on the

same day at 5:30 P.M. The surviving appellant as well as four other co-accused, namely, Jawahar, Harswarup, Bhagat Singh and Tulsi have been assigned the role of firing by their respective fire arms whereas sixth person whose name has not been shown in the first information report but he could be identified by face is said to have assaulted the deceased with ballam (spear) and at the time of the incident, the deceased Charan Singh is said to be sitting on the driver seat of the tractor and he was ploughing the field by the said tractor.

32. We have also noticed the fire arm injuries sustained by the deceased Charan Singh as has been proved by P.W. 5 Dr. P.P. Pathak who conducted the post mortem of the deceased. The following injuries have been found on the postmortem report of the deceased, Charan Singh-

- 1. Firearm wound of entry 4 cm x 3 cm x cavity deep on right side with multiple firearm wounds of entry in an area of 10 cm x 6 cm on right side of forehead size varying .2 cm x.2cm muscle deep Blackening and tattooing present.*
- 2. Firearm wound of entry 2 cm x 2 cm cavity deep on front side of the left of chest 8 cm medical to left nipple blackening and tattooing present.*
- 3. Firearm wound of entry 2 cm x 2 cm x cavity deep on front of the right chest 6 cm medical and above right nipple. Blackening and tattooing present.*
- 4. Firearm wound of entry 2 cm x 2 cm on front of left abdomen 11 cm above the umbilicus. Blackening and tattooing present.*
- 5. Firearm wound of exit 4 cm x 4 cm x cavity deep on back of the left side of the chest middle part just lateral to mid line continuing to injury no. 2.*
- 6. Punctured wound 3 cm x 1 cm x cavity deep on the outer side of the right side of chest 10 cm below right axilla in mid axillary line,*

7. Punctured wound 3 cm x 1 cm x cavity deep on outer side of the left of the chest 5 cm below of left axilla in axillary line,

8. Incised wound 1 cm x 1/2 cm x muscle deep on front and outer side of the left arm lower part obliquely.

9. Incised wound 2 cm x 1/2 cm x muscle deep on inner aspect of the left arm upper part.

From the injuries received by the deceased the direction of none of the injuries is upward and we find force in the submissions of the learned counsel for the applicant that when the deceased was sitting on the driving seat of the tractor and accused persons are said to have opened fire from the ground level by their respective weapons, the direction of the wound must have been upward, that is not so, therefore the prosecution case on this point appears to be inconsistent.

33. P.W. 3, P.W. 4 and P.W.6 eye witnesses have stated that they did not get down the deceased from the tractor after the assailants left the place. They have also stated that they did not touch the dead body of the deceased and P.W. 3 and P.W. 6 are brother of the deceased and P.W. 4 is also near relative, therefore the conduct of all the three eye witnesses is highly unnatural.

34. So far as conduct of eye witnesses are concerned that they did not try to get down dead body of the deceased, is unnatural and makes their presence at the place of occurrence highly doubtful.

35. We also find force in the argument of the learned counsel for the appellant that when five persons were armed with various fire arms and all of them opened fire on the deceased then there was no occasion for the sixth person to assault him with ballam

(spear). The fire arm injuries sustained by the victim was sufficient to cause his death. Injury no.8 and 9 of the deceased has been caused by sharp edged weapon which would not have been caused by Ballam. Injury no. 8 and 9 of the deceased are unexplained.

36. It has also come in the testimony of P.W. 3 the eye witness that blood of the deceased did not fall on the soil whereas the investigating officer, P.W. 7 has stated in his statement that he collected the blood-stained soil. Further no empty cartridges are said to have been recovered from the place of occurrence and no sign of any fire arm shot has been found on the tractor. P.W. 3 has been specifically cross examined on the point that deceased was having enmity with other persons and due to that enmity he has been murdered by some unknown persons which he has denied but P.W. 3 has admitted that Mohan Lal who was an accused in the murder of the father of the deceased and convicted in the said case of murder and he came out from jail after spending the sentence awarded to him.

37. Similarly P.W. 4 has stated in his cross examination that he himself did not go to the investigating officer to tell him that he had seen the occurrence. He did not disclose any reason for the above.

38. Similarly P.W. 6 has admitted in his cross examination that the deceased was his real brother and the tractor which he was using was in the joint possession of the deceased, himself and P.W. 3 and all the three persons were jointly paying the instalments of the loan of the said tractor. P.W. 6 has admitted and stated in his cross examination that he had extended help in getting down the deceased from the tractor and the clothes of the

deceased were soaked in blood but his clothes were untouched by blood which also raises doubt on the veracity of the statement of this witness.

39. Other witnesses are formal witnesses. P.W. 1 is the Head Constable Deen Dayal who has proved the chick FIR and GD entry, P.W. 2 Head Constable Ram Naresh has accompanied the daroga for inquest proceeding of the deceased whereas P.W. 7 Rajendra Singh Tomar is investigating officer of the case.

40. It is also pertinent to mention that nothing incriminating has been recovered from the possession of any of the accused persons and no recovery of any fire arm has been effected at their instance.

41. C.W. 1 Satyendra Prakash is record keeper of collectorate Mathura who has deposed to the effect that radiogram was received which was entered into register regarding the murder of deceased Charan Singh on 17.9.1984 and the said radiogram was entered at serial no. 1245.

42. So far as the defence witnesses are concerned D.W.1 Kishan Chanda JA-2 collectorate Mathura has proved that as per record no specific report has been received by the District Magistrate while D.W. 2 K.K. Matre, Agricultural Finance Officer, Central Bank of India has proved that Tractor No. UJO7574 was in the name of Kunwar Pal, Charan Singh and Kishan Dutt and loan was advanced on 12.6.1979 and last installment was paid on 25.6.1984 thereafter no installment was paid.

43. D.W. 3 Hari Singh Head Operator, 2/c DCR, Police lines Mathura he had stated that the record of the radiogram sought from him, has not been brought by him as the relevant records

has already been summoned. D.W. 4 Javhari Prasad has proved the register in which inquest of the deceased was entered.

44. We find from the over all appreciation of the evidence that the conduct of the eye witness P.W. 3, P.W. 4 and P.W. 6, who are near relatives of the deceased, in not touching the dead body of the deceased after the incident and not trying to get the dead body of the deceased down, is highly unnatural.

45. Further eye witnesses P.W. 3, 4 and 6 have stated that no blood fell on the soil whereas investigating officer P.W. 7 has collected the blood-strained soil also makes the prosecution story inconsistent. Moreover the dimension and size of the injuries received by the deceased also does not correspond to the eye witnesses account as there is no upward mark of fire arm injury on the person of the deceased. It is the defence case that Mohan Lal was convicted for the murder of the father of the deceased and he had spent considerable time in the jail and he had come out and therefore it is quite possible that murder of the deceased could have been committed by the said Mohan Lal. The fact that Mohan Lal was convicted for the murder of the father of the deceased has been admitted by P.W. 3 the informant who was also the brother of the deceased has been committed by P.W. 3. We, therefore, find that presence of eye witnesses P.W.3, P.W.4 and P.W.6 at the place of occurrence is highly doubtful and the defence has been successful in raising the doubt that it was not the accused persons who committed the offence but it might be some other persons who had committed the offence.

46. From the above, we find that the prosecution has failed to prove its case against the surviving appellant Suresh beyond the

shadow of reasonable doubt and the appellant Suresh is entitled to benefit of doubt.

47. We, therefore, find that the judgement of conviction and order of sentence passed by the learned trial court against the appellant is not justified and appellant Suresh deserves to be acquitted of the charge levelled against him and judgement of conviction and order of sentence is liable to be set aside and appeal is liable to be **allowed**.

48. In view of the above, we allow this appeal and set aside the order of conviction and sentence passed by the learned trial court against appellant Suresh in Session Trial No. 15 of 1985.

49. If the surviving appellant, namely, Suresh is on bail, he need not surrender. His bail bonds are cancelled and sureties are discharged.

50. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate concerned for compliance within a week.

51. The Chief Judicial Magistrate, Mathura is also directed to send his compliance report within two months to this Court.

52. The trial court record be sent to the concerned Court forthwith.

Order Date :- 8.9.2025

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