



been convicted for the offence punishable under Section 302/34 IPC and awarded the sentence of life imprisonment and a fine of Rs.5,000/- further the appellant has been convicted for the offence punishable under Section 4/25 of Arms Act and awarded the sentence of one year rigorous imprisonment and a fine of Rs.1,000/-, with default stipulations. Both the sentences have been directed to run concurrently.

3. As per the prosecution case, first information report in the instant case has been lodged by one Jaiveer Singh, uncle of the deceased Parul vide written report dated 24.11.2009 (Ext. Ka-4), which was registered vide Case Crime No. 413 of 2009, under Sections 307 IPC, Police Station Saroorpur, District Meerut at 08:15 p.m., carbon copy whereof has been drawn vide G.D. Report No. 42 at 20:15 p.m., which has been proved and marked as Ext. Ka-5 by Constable Clerk Ram Chandra (P.W.5) at the relevant date and time.

4. Briefly, the prosecution story, as stated in the first information report, is that on 24.11.2009 at about 07:15 p.m., Kumari Parul, daughter of his brother Harvir Singh after stepping out from the door of her house was giving breads to the dogs, when two unknown persons reached there and both of them stabbed Kumari Parul with a knife in her abdomen. After assaulting her, they immediately left the place of incident, which incident has been witnessed by some persons. His brother along with his nephew Rahul had taken Parul to the hospital at Meerut. On the basis of the aforesaid allegations, a written report was scribed by the scribe Rajpal Singh, son of Ranjeet Singh, resident of Karnaval, Tehsil Sardhana, Meerut and thereafter it was lodged in Police Station Saroorpur, District Meerut vide Case Crime No. 413 of 2009, under Section 307 IPC.

5. The said FIR was registered in the presence of S.I. Devendra Singh (P.W.7), who was entrusted with the investigation of the said case. He thereafter recorded the statement of the first informant and then visited the place of incident and collected blood stained earth and plain earth from the place of incident, kept it in a separate container, sealed it and thereafter prepared the recovery memo, which has been proved and marked as Ext. Ka-2.

6. Thereafter, P.W.7, the Investigating Officer had prepared the site plan, which has been proved and marked as Ext. Ka-7. On getting the information about the death of the victim Kumari Parul, the case was converted under Section 302 IPC, thereafter the Investigating Officer visited her house and had prepared the inquest report and thereafter prepared the other relevant documents namely photo-nash, challan-nash, letter to R.I., letter to C.M.O., sample seal and thereafter wrapped the dead body in a cloth and handed it over to the constable for taking it to the mortuary for post-mortem. The inquest report as well as the other documents have been proved and marked as Exts. Ka-8 to Ka-13. The Investigation of the case was then entrusted to P.W.8 Pramod Kumar Sharma.

7. An autopsy was conducted on the person of the deceased Parul on 25.11.2009 at 04:30 p.m. by Dr. D.K. Saxena (P.W.6). The Doctor has noted the following ante-mortem injuries on the person of the deceased:

*(i) Stab wound 5 cm x 2m x cavity deep left side of sub costal region 12 cm below left nipple at 7 'O' clock position direction backward and medially. On dissection underneath the wound soft tissues and peritoneum is cut at places.*

*Stomach and left side of liver is found cut on various places. Abdomen cavity filled with 2 litres of clotted blood.*

*(ii) Stab wound 5 cm x 2 cm cavity deep. On left side Abdomen 4 cm from the umbilicus at 3 'O' clock position on dissection peritoneum found cut at places.*

8. The cause of death of the deceased has been noted to be shock and haemorrhage, as a result of ante-mortem injuries.

9. Thereafter on 27.11.2009, the first informant Jaiveer Singh gave another written application stating therein that on 24.11.2019 at about 07:15 p.m., his niece was stabbed by knife, information in respect of which was given by him in the police station. On the basis of a written report scribed by Rajpal Singh, an FIR was registered. Subsequently his niece succumbed to her injuries. On the said day, his sister-in-law Parvita was returning back to her home from her Gher, who saw the assailants assaulting the victim with knife and had fallen down unconscious in the lane, whose physical condition later deteriorated. Today after recovering from the said shock, Parvita disclosed that her daughter Parul was stabbed by Pankaj and Babloo (son of maternal uncle of Pankaj), who then ran away towards their house. He further stated that today one Satveer Singh, of his village had also informed him that at the time of incident, he was standing near the shop of Chintu, when Pankaj along with Babloo (his maternal uncles' son) reached there and assaulted Parul with the knife in their hands and ran towards their house. The next day, Satveer Singh had left to mourn the death of his relative and today when he returned back and came to know that the FIR has been lodged against the

unknown persons, then he had disclosed the truth to Jaiveer Singh.

10. The contents of the said written application were reduced in writing in the case diary on 27.11.2009 and have been proved and marked as Ext. Ka-1. Thereafter on 29.11.2009, the Investigating Officer had recorded the statement of Parvita, mother of the deceased, Smt. Geeta wife of Jaiveer, Smt. Poonam wife of Ravindra. Further on 07.12.2009, Babloo is shown to be arrested and on his pointing out a knife was recovered, the recovery memo of which was prepared by the Investigating Officer (P.W.8) and has been proved and marked as Ext. Ka-14. Thereafter on 17.12.2009, the appellant- Pankaj surrendered before the court and on 18.12.2009, his disclosure statement was recorded in District Jail, pursuant to which, on 23.12.2009, after taking him in police custody remand, recovery of a knife has been shown to be made, fard recovery memo of which has been prepared on 23.12.2009, which has been proved and marked as Ext. Ka-15. The site plan of the said place of recovery of knife has also been prepared and proved and marked as Ext. Ka-17.

11. The Investigating Officer thereafter recorded the statement of the relevant witnesses and after collecting the cogent and material evidence against the nominated accused persons submitted the charge-sheet against the accused Pankaj and Babloo under Section 302 IPC, which has been proved and marked as Ext. Ka-18.

12. On the basis of the said charge-sheet submitted by the Investigating Officer, learned Magistrate had taken cognizance, however, since the case was exclusively triable by the court of Sessions,

as such, it was committed to the court of Sessions, who, on its turn, made over the case to the Court of Additional Sessions Judge, Court No. 13, Meerut, where it was registered vide Sessions Trial No. 418 of 2010 (State Vs. Pankaj and another), under Sections 302 IPC with Sessions Trial No. 419 of 2010 (State Vs. Pankaj), under Sections 25/4 of Arms Act.

13. On the basis of the material collected during the course of investigation, the trial court framed the charges against the accused persons Pankaj and Babloo, under Section 302 IPC and Section 25 (ii)(b) of Arms Act. The said charges were read out and explained to the accused-assailants, who pleaded not guilty and claimed to be tried.

14. The prosecution, in order to prove its case, has produced as many as 10 prosecution witnesses and number of relevant documents have also been produced and brought on record, which have been proved and marked as Exts. Ka-1 to Ka-25. Their testimony, in brief, is enumerated as under :-

15. P.W.1 Jaiveer Singh is the first informant of the instant case. He, in his testimony, has stated that the incident is dated 24.11.2009 at 07:15 P.M. On the relevant date and time of incident, his niece Kumari Parul after stepping out from the house was feeding bread to the dogs, when two unknown persons arrived there, who stabbed her in her abdomen, causing injuries and ran away. Kumari Parul was thereafter brought to Meerut for treatment. In respect of the said incident, he had lodged a written report scribed by one Rajpal Singh and after signing it had delivered it at Police Station Saroorpur, on the basis of which, chik FIR was prepared and case was registered.

16. P.W.1 further stated that, when he along with his family members was taking his niece to Meerut for treatment, en-route to the hospital, she breathed her last, as such, they returned back without she being taken to the hospital. It is further stated that at the time of incident his sister-in-law Parvita, mother of the deceased Parul was returning back from the Gher, who saw the incident and thereafter fell unconscious, consequent thereto, her medical condition deteriorated and she was taken to Budhana for treatment. Thereafter on 27.11.2009, when her condition improved, she returned back to her house and disclosed that she had seen and identified the assailants, who stabbed her daughter on the day of incident and disclosed their names to be Pankaj and Babloo. He further stated that on 27.11.2009, one Satveer Singh of the village had also come at his house and informed him that at the time of incident, he was standing near the shop of Chintu, when Pankaj and Babloo emerged and they assaulted Parul by their respective knives and ran towards their house near the jungle.

17. On being questioned, as to why Satveer had not disclosed this fact earlier, he stated that since he had gone to mourn the death of his relative, as such, he could not earlier disclose the said information. The said information was again reduced in writing by one Brajpal, which was read out to him and thereafter he handed over the said written report at the gate of police station to P.W.8, who incorporated the same in the case diary, which has been proved and marked as Ext. Ka-1. On the basis of earlier FIR lodged by him, the police had reached the place of incident and conducted the inquest and collected relevant materials including plain earth and blood stained earth and prepared its recovery memo, which has been proved and marked as Ext.

Ka-2. Thereafter, the police conducted the inquest and the body of the deceased was sent for post-mortem.

18. During cross-examination, P.W.1 stated that Satveer Singh, witness of the incident is related to him as 'uncle'. He further stated that Jasveer s/o Srinivas and Robin s/o Rampal had seen the accused assailants running away and had disclosed this fact to him, however, he did not disclose the said names to the Investigating Officer, because of fear. He further stated that at the time of incident, he was 100-150 yards from his house and at the relevant time, two other ladies along with his mother Seema Devi and sister-in-law Poonam were present in the house. He further stated that the factum of stabbing Parul was disclosed to him by Robin, Yashvir and Chintu, when he was on his way to his house and after reaching there he had gone to lodge the report.

19. P.W.1 further stated that prior to reaching his house, his brother Harvir and nephew Rahul had already taken Parul to Meerut hospital. He further resiled from his earlier statement dated 04.10.2010 before the court and states that “मैं नहीं कह सकता कि दिनांक 4.10.10 को जो मैंने बयान दिया 'जब मैं तथा मेरे अन्य परिवार जन अपनी भतीजी कु० पारुल को इलाज के लिए मेरठ ला रहे थे तो रास्ते में ही उसने दम तोड़ दिया था' मैं नहीं कह सकता कि यह बात सही है या गलत है ”

20. P.W.1 further stated that shop of Chintu is at the distance of 20 yards from his house and when he reached at the shop of Chintu, he does not remember, if any other person was there, however, Chintu was present at his shop, where he informed him of the incident. After lodging of the report, when he was returning back, he received a phone call about the death of

Parul. He further stated that he does not remember that when he reached the shop of Chintu to get the paper for scribing the report, his uncle Satveer was present there or not.

21. P.W.1, in his further cross-examination, stated that the factum of two persons reaching the place of incident had been disclosed to him by his father and mother, however, he cannot state that, as to who informed them about the factum of stabbing of his niece by two unknown persons. He further stated that when he reached the village, Police was already there. He further stated that, while police was carrying out the requisite proceedings at the place of incident, the factum that his sister-in-law, had fallen unconscious was within his knowledge. He further stated that his sister-in-law was taken to the hospital by his brother Ravindra to Budhana in an unconscious state. He further stated that he has no knowledge as to where in Budhana her sister-in-law was admitted in a nursing home. He further stated that except Ravindra, nobody from his family had gone to meet his sister-in-law in Budhana and she remained admitted in the nursing home from 24.11.2009 to 26.11.2009.

22. P.W.1 further stated that while conducting the inquest, the police had interrogated Yashvir, Robin and Jaipal in his presence. He further stated that he had asked Babu Ram, Ompal Singh, Subodh, Rajkumar, Katare and Chintu about the incident, but they had not disclosed him anything due to fear. The said witness further stated that on 27.11.2009 at about 07:00-08:00 a.m. in the morning, Satveer Singh and his sister-in-law Parvita had disclosed the name of the accused-persons to him, who had stabbed the victim. He further stated, that on 26.11.2009, his

sister-in-law had returned back to the village in the evening at her house and at the relevant time was speaking and had a conversation with him as well as with the other family members.

23. He further showed his ignorance, as to whether the Investigating Officer had reached at his house to record the statement of his sister-in-law Parvita. He further denied the suggestion that since he was having enmity with Pankaj and Babloo (his maternal uncle's son), as such, they have been falsely implicated in the present case. He further denied the suggestion that Parul was having relations with number of boys of the village. He further denied the suggestion that Babloo had been falsely implicated in the present case. He further denied the suggestion that Parul had illicit relations with the villagers and wanted to elope before the marriage, consequent to which, she has been done to death by her family members. He further denied the suggestion that accused persons have been falsely implicated.

24. P.W.2 Satveer Singh is another witness, who claims himself to be an eye-witness of the incident. He, in his testimony, stated that Pankaj is the son of Vijendra, resident of his native village and Babloo is the son of his maternal uncle. The incident is dated 24.11.2009. At about 07:15 p.m. at the time of incident, he had gone from his house to the shop of Chintu for purchasing bidi, where he saw the accused-assailants assaulting the victim Parul, when she had stepped out of her house for giving breads to the dogs. He further stated that both the accused-assailants had made the victim fall down on the ground and both Pankaj and Bablu assaulted her with their knives. The said incident is said to have been witnessed in

the electric light placed at the shop. He further stated that on raising alarm by the victim, apart from him, her mother Parvita w/o Harvir, who was returning from her Gher had also reached the place of incident and had also seen two assailants assaulting her daughter Parul with their knives and thereafter escaping towards south of their house with knives in their hands. After the incident, on account of fear, he returned back to his house and on the next day went to mourn the death of his relative. On 26.11.2009, he stayed at his house in Kankarkheda, which was under construction and returned back on 27.11.2009. Upon reaching his village, he came to know that the family members of the Parul had lodged the report against unknown persons and thereafter he visited Jaiveer, uncle of Parul and informed him being the eye witness of the incident, where Parul was assaulted with knives by Pankaj and Babloo.

25. He, in his cross-examination, stated that at about 07:00 P.M., while he had gone at the shop of Chintu for purchasing bidi, by that time he had received information about the death of his relative over phone. The said death had taken place about four days back and one Gulveer Singh had died, whose younger brother is Baljeet s/o Balveer, with whom his real niece Savitri is married. On the next day, he had gone to mourn the death of Gulveer Singh, though his tehravi was fixed after 4-5 days. He further stated that at about 07:10 P.M., he had reached the shop of Chintu and had purchased bidi and while he had opened the bundle and was lightening the bidi, no other person was present at the shop of Chintu. Chintu was also inside his house and had come out to give him the bidi. He further stated that from the said place for about 2-3 minutes,

he witnessed the incident and thereafter went to his house, however, at the relevant time had not seen Jasveer and Robin at his shop. He further stated that while he was standing at the shop of Chintu, he had seen Parvita coming from her Gher and reaching the turning from a distance of about 1½ yards. He further stated that Parvita at the relevant time, when he had first seen her, was at a distance of 10 yards from her house. He further stated that he is related as an 'Uncle' to Harvir.

26. After recording of his testimony on 19.01.2011, next date 25.01.2011 was fixed for further cross-examination, however, he could not be cross-examined on the said date and his evidence was closed.

27. Consequently, an application was filed by the accused-appellant Babloo for recalling him, which was allowed and P.W.2 was further cross-examined on 16.03.2011, wherein he stated that at the time of incident, he had reached the place of incident to rescue Parul, though Chintu did not made any attempt to save her. At the relevant time, no one was seen coming and the assailants were 20 yards away from him. He further stated that he had also seen Parul coming out from the house with breads in her hand and then after about one and half minutes, had seen the assailants coming there, who were correctly identified by him, however, he could not overhear the conversation between Parul and the assailants. When the assailants stabbed the victim, she raised alarm 'Maa', consequent to which, his attention was drawn there. Pankaj, first assaulted the victim with knife and then Babloo assaulted her. At the relevant time, feeling that her life was in danger, he tried to rescue her. The assailants after assaulting her tried to

escape from the place where he was standing and he also raised alarm. He further stated that he had not seen, if Chintu had come out, as he chased the assailants by raising alarm. While he was chasing the assailants, he saw Parvita coming.

28. He further stated that he continued to chase the assailants for about 20-30 yards and thereafter after chasing them, he straight away went to his house and thereafter did not visit the house of Parvita. After his return, he did not enquire about the surviving status of Parul. On 25.11.2009, he did not visit Harvir, as he left for Meerut and returned on 27.11.2009. On the day of incident he was present at his house, but had no information that the police had visited the place of incident. He was interrogated by the Investigating Officer after three days. The incident was witnessed by him in the electric light, however, the said factum was not disclosed as he was not questioned for the same by the Investigating Officer. He had also not informed the Investigating Officer about the construction of his house at Kankarkheda.

29. He further stated that he had informed the Investigating Officer about the return of victim's mother Parvita from the Gher and reaching the place of incident. He further stated that the house of Pankaj is situated in front of his house, though Babloo is resident of other village and he used to meet him everyday.

30. He further denied the suggestion that on account of relations with the family members of the deceased, he is falsely deposing. He further denied the suggestion that he had not seen the incident. He further denied the suggestion that he had not seen Pankaj and Babloo assaulting the victim

Parul. He further stated that after the incident, where Parvita was taken, is not known to him. On the date of incident, he had seen her. He further stated that in his presence, nobody had taken away Parvita in an unconscious state. He further denied the suggestion that he is falsely implicating Babloo in collusion with the first informant.

31. During cross-examination, on behalf of Pankaj, he further stated that at the relevant time of incident, he had reached there, however, no alarm was being raised. In order to rescue the girl, he rushed 10-15 paces, however by the time he reached there to rescue the deceased, the assailants had already left. He did not stay near Parul, but chased the assailants for about 25 meters and thereafter returned back to the place of incident. He, in his further cross-examination, stated that when he reached the place of incident, Jaiveer and mother of the deceased were present there, however, he does not remember as to who else was present there. He did not make any attempt to take Parul to hospital. To quote:

“जब मैं घटना स्थल पर पहुंचा जयवीर, उसकी माँ वहाँ मौजूद थे वहाँ और कौन लोग मौजूद थे मुझे ध्यान नहीं है मैंने लड़की पारूल को अस्पताल ले जाने की कोशिश नहीं की, माँ और चाचा ने की होगी”

32. He further stated that at the time of incident there was no supply of electricity. He did not go to the hospital with the victim nor visited the police station to inform about the incident.

33. P.W.2 further stated that on the night of incident, he could not get the information, if his grand daughter had died, as he had gone to his house. When he reached at his house, he met his son

Upendra and his two children but not his wife, as she was on the second floor. In respect of the incident, he had informed his son Upendra and his two grand daughters Sonu and Monu about the factum of assault by knife. Getting the said information, they had visited at the house of Jaiveer whereas he along with his wife remained present at his house. After ten minutes, Upendra had returned back to his house and informed him that Parul has been taken to Meerut Hospital. He further stated that he did not visit the house of Jaiveer after getting information of the death of his niece as he had to go out, nor participated in her funeral.

34. He further denied the suggestion that Gulveer had not died, nor he visited there to mourn his death. He further stated that on 26.11.2009, he stayed at his house at Kankankheda for the reason that he had seen the assailants assaulting the victim and apprehending that he may not fall in some difficult situation, he preferred to stay there and did not even made a phone call. He further denied the suggestion that he had not seen the incident nor was present at the shop of Chintu. He further denied the suggestion that on account of darkness, he had not seen the incident. He further denied the suggestion that on account of being the family member, he is concealing the true facts. He further denied the suggestion that the boy with whom marriage of Parul was fixed was not appreciated by Parul and due to such annoyance, she wanted to leave her house on the day of incident. He further denied the suggestion that the factum of her running away was disclosed to them and consequent thereto, she was done to death by them.

35. P.W.3 Parvita is the mother of the deceased. She, in her examination-in-chief,

has stated that the incident had taken place about 22 months back at about 07:15 p.m, while she was returning for her home from her Gher and when she reached near the turning, she saw Pankaj and Babloo assaulting her daughter Parul with knife in front of her house. The said incident is stated to have been witnessed in the light of a bulb lit by inverter. Apart from her, Satveer had also witnessed the incident. Witnessing the said incident, she immediately fell unconscious and when she regained consciousness, she found herself admitted in the hospital owned by Dr. Rakesh Mittal at Budhana. She further stated that she had regained consciousness on 26.11.2009. She further stated that when she came back to her house from the hospital, then at her house, she had informed her brother-in-law Jaiveer about the incident. Upon reaching at her home, she came to know about the death of her daughter. She further stated that marriage of her daughter Parul was to be held on 28.11.2009, however, the accused-assailants forcibly wanted to marry her. Since her daughter had refused to marry them, as such, she was done to death by the accused persons.

36. During cross-examination, she stated that on 24.11.2009 at about 06:30 p.m., she had gone from her house to Gher for providing water to her cattle, who were two in numbers and had no other work there. She further stated that she took about 45 minutes in providing water to her cattle. At the relevant time, Harvir and his two brothers Jaiveer and Ravindra were present in the house along with the other ladies and children. She further stated that while returning from the Gher, it was almost dark and when she reached in the lane in front of the house of Ram Kumar, she had seen Satveer standing there, who was facing the

other way. Apart from Satveer Singh, no other person was present there. She further stated that while returning from her Gher, when she had reached the house of Ram Kumar, she heard the alarm of rescue, however, could not identify, as to whose alarm it was. After hearing the alarm, she rushed to her house, Satveer also proceeded towards her house from the shop of Chintu, however, she was ahead of Satveer and he was following her.

37. In her further cross-examination, she stated that she had witnessed the accused-assailants assaulting Parul by knife, when she had reached at the turning. She further stated that when she reached near Parul, she fell down unconscious. The place where she fell down unconscious was at a distance of 10-11 yards from the turning and Parul was lying there, however, no other person was present there. At the time when she had seen Parul lying down on the ground after receiving stab injuries, none of her family members had come out from the house. Parul was lying at a distance of 2-3 yards from the door of her house. She further stated that though she had seen Parul lying down after receiving stab injuries, but she did not made any attempt to raise her as she had fallen unconscious. Prior to this incident, after hearing any sad news, she had never fallen unconscious nor she ever suffered convulsions. She had not seen the body parts where Parul was stabbed but had only seen blood flowing out.

38. P.W.3 further stated that after picking Parul from the place of incident, she does not know as to in which room of her house, she was kept. She also does not know as to who had taken her to the hospital. Subsequently, she came to know that her brother Ravindra had taken her in

an unconscious state to the nursing home at Budhana run by Dr. Rakesh Mittal. She further stated that her brother used to live in Bitvada, which is 25-26 k.m. away from Karnaval. She remained lying at the place of incident in an unconscious state till his brother came from Bitvada and took her to the hospital. She further stated that she remained admitted in nursing home from 24.11.2009 upto 07:00 P.M. on 26.11.2009. In the nursing home, her mother Rajvali was only present and apart from her, no other person from Karnaval was present there. On 26.11.2009 at about 07:00 P.M., she regained her consciousness and at the relevant time her mother was with her and on 26.11.2009 at about 07:00-07:30 P.M., she reached Karnaval along with her mother in a taxi.

39. P.W.3 further stated that the prescriptions at the nursing home and other receipts including doctor fees is lying at her house, which has not been filed in the court. She further stated that at about 07:45 P.M., she reached her home from nursing home and informed Jaiveer, her brother-in-law, about the incident. At the nursing home, she did not inform anyone about the incident nor even to her mother. She further stated that Investigating Officer recorded her statement on 29.11.2009 in her village. At the relevant time, when the Investigating Officer had recorded her statement, number of family members were present in the house including Satveer and Jaiveer, however, her statement was not recorded in the nursing home. She further stated that she had deposed before the Investigating Officer that Pankaj and Babloo repeatedly stabbed the victim and thereafter left for their house with knives in their hands. She further stated that in her statements before the Investigating Officer, she had stated that on 27.11.2009, when she regained her

consciousness, she informed the inmates of her house that her daughter Parul had been assaulted by Pankaj and Babloo. She further stated to the Investigating Officer that she had seen the incident in the bulb lit by inverter placed outside the shop and at the relevant time, Satveer was also present there and witnessed the incident. After witnessing the incident, she fell unconscious. She had also informed the Investigating Officer that she was admitted in the nursing home of Dr. Rakesh Mittal at Budhana and regained consciousness on 26.11.2009 in the evening.

40. P.W.3 further stated to the Investigating Officer that marriage of Parul was to be held on 28.11.2009 and the accused-assailants wanted to marry her daughter, however, her daughter had refused to marry them, as such, the assailants had killed her. The factum of going to nursing home was also disclosed to him. She further stated that the aforesaid facts were disclosed to the Investigating Officer in her statement recorded by him, however, if the said factum is not mentioned in her statement, then she cannot assign any reason for its non-mentioning.

41. She further denied the suggestion that she had not witnessed the incident and remained present in the village at the time of incident till 27.11.2009 and did not fell unconscious. She further denied the suggestion that her daughter wanted to marry as per her own wishes, however, since they were not agreeable to that, as such, she was done to death. She further denied the suggestion that she had not seen the assailants assaulting the victim and is falsely implicating them. Regarding Pankaj, she stated that Pankaj is the resident of her mohalla, but she does not know as to how far his house is situate

from her house. She further stated that Parul had informed him that Pankaj and Babloo wanted to marry her and Babloo had asked Parul to marry him, however, she had refused for the same. The said factum was disclosed to her about 15-20 days back and she had informed her husband and other family members about it. Proposal by Babloo to marry the victim was disclosed to the Investigating Officer, however, if it is not mentioned there, she cannot assign any reason for the same.

42. During further cross-examination, P.W.3 has candidly stated that prior to the date of incident, she had never fallen unconscious nor any injury was ever caused on her head. She further stated that on 26.11.2009, when she regained consciousness, all her family members were with her and she had disclosed the incident to Jaiveer, who himself had asked her about the incident. She further denied the suggestion that she had not witnessed the incident. She further denied the suggestion that she did not fell unconscious. She further denied the suggestion that she was not admitted in any nursing home. She further denied the suggestion that Pankaj had informed her that her daughter was likely to leave her house. She further denied the suggestion that on account of said animosity, she is falsely implicating the appellant Pankaj.

43. P.W.4. Dr. Rakesh Mittal is the Medical officer in whose nursing home mother of the victim Parvita is said to have been admitted. He, in his examination in chief, has stated that on 24.11.2009 Parvita wife of Harvir Singh was brought at his nursing home in acute mental shock and depression and was having convulsions. After examining her, he advised her to stay in his clinic and when by the evening her

condition did not improve, he asked her to remain admitted there for two days at his home, which earlier was his clinic. He further stated that on 26.11.2009, after resuming her consciousness at 05:00 p.m., he had discharged Parvita from the hospital. The medical treatment given to the patient and her case history, prepared in his handwriting is on record and is proved and marked as Ext. Ka-2. To medically re-examine Parvita, he had called her on 27.11.2009 and after re-examining her on 27.11.2009, he had discharged her, discharge slip of which has been proved and marked as Ext. Ka-3.

44. During cross-examination, P.W.4 states that he had medically examined Parvita in the afternoon on 26.11.2009 at 02:00 p.m., thereafter she started regaining consciousness. He further stated that he does not remember, if at the time of regaining consciousness her family members were present at the clinic. Parvita was brought at his clinic by her brother Ravindra with whom he is well acquainted with and apart from him, he cannot identify any of her relatives. He further stated that in front of his clinic Ravindra is having a computer institute. He further stated that he had not seen any lady at his clinic attending her. He further stated that on 24-25.11.2009, Parvita did not regain consciousness to speak. He further stated that he had admitted Parvita at his home, which earlier was his clinic. He further stated that in his clinic, he has permission to admit two patients but at the relevant time, no other patient was admitted at his clinic. He further stated that the admission of the patients is maintained in a register, however, he has not brought the said register. He further stated that he cannot state the serial number at which Parvita was admitted.

45. The treatment provided to the patient Parvita on 24.11.2009 has been filed in the court, which has been marked as Ext-Ka-2 containing all relevant details, however, in the said Ext. Ka-2, there is no description of blood pressure, pulse rate etc. of the patient. The bedhead ticket of Parvita was also prepared, however, it is not on record. He further denied the suggestion that Parvita was not admitted in his clinic and that is why the said documents are not available. He further stated that prior to 24.11.2009, he had not provided any treatment to Parvita. He further candidly stated that on 27.11.2009, Parvita was again re-examined by him and then the discharge slip was issued, which has been proved as Ext. Ka-3. He further denied the suggestion that Exts. Ka-2 and Ka-3 are fake documents and on account of his friendship with Ravindra, he is falsely deposing in the court.

46. P.W.4 further stated that while Parvita was admitted in his clinic, no police personnel had reached there to record her statement and during her treatment, neither Ravindra nor anyone else had informed him about the incident. He further stated that neither on Ext.Ka-2 nor on Ext.Ka-3, the identification of the patient is mentioned. The factum of treatment of Parvita was also not verified by any of the police personnel. He further stated that he has been known to Ravindra for the last three and a half years and his clinic is situate just in front of his institute. He further denied the suggestion that on account of acquaintance with Ravindra, he had forged the documents Exts. Ka-2 and Ka-3.

47. P.W.5 Ram Chandra is the constable, who, on the basis of the written report by Jaiveer, had registered the FIR

vide Case Crime No. 413 of 2009, under Section 307 IPC and had drawn corresponding G.D., which has been marked as Exts. Ka-4 and Ka-5. During cross-examination, he stated that in Ext. Ka-4, there is no description as to when the same was sent to the C.O., even the factum of giving a copy of the report to the first informant is also not mentioned in Ext. Ka-4, however, he denied the suggestion that the FIR was not registered by him at 20:15 hours and subsequently shown to be registered by making it ante-time. The said witness has been recalled and his further testimony is recorded on 22.11.2012, where he states that on 07.12.2009, on the basis of recovery of knife he had registered the FIR vide Case Crime No. 432 of 2009, under Section 25/4 of Arms Act and has proved the same as Ext. Ka-19, carbon copy of which has been drawn vide G.D. Report no.36, which has been proved and marked as Ext. Ka-20.

48. P.W.6 Dr. D.K. Saxena is the Medical Officer, who had conducted the autopsy on the person of the deceased on 25.11.2009 at 04:30 a.m. The injuries found on the person of the deceased was reiterated by him in his testimony, which has already been mentioned above. The autopsy report has been proved by him as Ext. Ka-6. He further stated that he cannot state as to whether the injuries noted by him could have been caused in between 07:00-07:30 p.m. on 24.11.2009. He further stated that the injuries caused to the victim may be the cause of her death and were sufficient in ordinary course to cause her death.

49. During cross-examination, he has shown his inability to express the opinion, if both the injuries were caused by one weapon and by the same force. He further

stated that the victim could have died in between 07:00 to 07:30 p.m. on 24.11.2009.

50. P.W.7 Devendra Singh is the first Investigating Officer, in whose presence on 24.11.2009, the FIR of Case Crime No. 413 of 2009 was registered and investigation was entrusted to him. He after registration of the said FIR, recorded the statement of the first informant in the case diary and thereafter reached the place of incident and collected the plain earth and blood stained earth, sealed it in a container and prepared its fard recovery memo, which has been proved and marked as Ext.Ka-2. The site plan was also prepared by him, which has been proved and marked as Ext. Ka-7. The inquest report on 24.11.2009 was also prepared by him, which has been proved and marked as Ext. Ka-8 and the other relevant documents like letter to C.M.O., letter to R.I., photo-nash, challan-nash etc. had been prepared by him and marked as Ext. Ka-8 to Ka-13. On getting information about the death of the deceased, the case was converted under Section 302 IPC and thereafter the investigation was entrusted to the Pramod Kumar Sharma S.H.O. (P.W.8). On 07.12.2009, a recovery of knife is shown to have been made at the pointing out of the co-accused Babloo from near the tube-well, fard recovery of which was also prepared by P.W.6 and has been proved and marked as Ext.Ka.15.

51. During cross-examination, he has stated that he had not recorded any disclosure statement of Babloo. The said knife was not even sent for forensic examination. He, in his cross-examination, has further stated that after the registration of the case under Section 307 IPC, the relevant documents were handed over to him for investigation. He immediately

thereafter reached the place of incident, which was in front of the door of Jaiveer and recorded the statement of Jaiveer and thereafter collected plain earth and blood stained earth from the place of incident, kept it in a container, sealed it and its recovery memo was prepared and thereafter he set out to arrest the accused-appellant, however, he was informed that the victim has already passed away. The dead body of the victim was brought to her house. Thereafter, he again reached at the house of the deceased and conducted the inquest. He further stated that he cannot recollect if at the time of inquest, her mother was not found in an unconscious state at the place of incident nor had he seen Parvita lying in an unconscious state there. Thereafter, he prepared the site plan at the pointing out of Jaiveer.

52. He further stated that he had recorded the statement of first informant Jaiveer before the dead body of Parul reached at her house. He further stated that Jaiveer in his statement has not stated to him that when the incident took place with Parul, his sister-in-law, Parvita, who is the mother of Parul was returning to her house from her Gher and witnessed the actual incident of assault, who thereafter fell down unconscious. Jaiveer also did not inform him that she has been taken to hospital at Budhana. Jaiveer also did not inform him that the assailants while running away were noticed by Jasveer s/o Srinivas and Robin s/o Rampal, who had informed him of the said incident. Jaiveer also did not inform him in his statement under Section 161 Cr.P.C. that Chintu was present at his shop and had informed him about the incident. He also did not inform him that after lodging the report, he along with Rajpal had gone to Meerut on a motorcycle. He also did not inform him

that when they reached at the village Chanu, they received a call from Prakash nursing home about the death of Parul. He also did not inform him that her sister-in-law Parvita in an unconscious state was taken to the hospital by her brother Ravindra and that Ravindra had taken away his sister-in-law Parvita from the place of incident before his reaching the village.

53. He further stated that though it is true that in the said incident, the first informant is not an eye witness of the incident, yet on his pointing out he had prepared the site plan. Even in the site plan, no source of light was pointed out even the shop of Chintu has not been pointed out. He also did not record statement of any of the witnesses living in the vicinity of the place of incident nor shown their houses. The cloth in which the knife is sealed does not bear the signature of the court nor there is any seal. The knife shown to be recovered has no blood stains. He also showed his ignorance as to whether the knife taken into custody has been sent for forensic examination. He further denied the suggestion that he had not visited the place from where the recovery of knife has been shown and he further denied the suggestion that fake recovery has been shown and relevant documents have been prepared at the police station. He further denied the suggestion that the site plan was not prepared by him at the place of incident but subsequently forged at the police station itself. He further denied the suggestion that no witness was examined and their fake statements have been shown to be recorded.

54. P.W.8 Pramod Kumar Sharma is the second Investigating Office and on 25.11.2009 was entrusted the investigation of the instant case, when it was converted under Section 302 IPC. He, in his

testimony, has stated that on 27.11.2009, an application was given by the first informant Jaiveer, wherein it was stated that his sister-in-law is said to have witnessed the incident and nominated the accused persons, namely, Pankaj and Babloo (his maternal uncle's son), who stabbed the victim Parul. The said application was copied in the case diary. On 29.11.2009, he had recorded the statement of Parvita, wife of Harvir, Smt. Geeta wife of Jaiveer, Smt. Poonam wife of Ravindra. On 17.12.2009, he had arrested the accused Babloo and recorded his disclosure statement wherein the accused had stated to get recovered the crime weapon, pursuant to which, he along with the witnesses had proceeded to the Karnaval jungle and near the tube-well of Om Singh got recovered a knife, being the crime weapon, which was taken in possession. Thereafter, its fard recovery was prepared, which was signed by the witnesses including the accused and the same is proved and marked as Ext. Ka-14. The site plan from where the weapon was recovered has also been prepared, which has been proved and marked as Ext. Ka-16.

55. He further stated that on 17.12.2009, another accused Pankaj surrendered before the court and on 18.12.2009, he recorded his statement in the District Jail, wherein accused Pankaj also stated to get recover the crime weapon. Consequent thereto, on 23.12.2009, on the basis of police custody remand, P.W.8 reached the Karnaval jungle and near the tube-well of Om Singh from the sugarcane field got recovered a knife, which was taken in his possession and its fard recovery was prepared by S.I. Devendra Singh, which was signed by the witnesses and has been proved and marked as Ext. Ka-15. The site plan of recovery was also prepared, which has been proved and

marked as Ext. Ka-17. On 10.01.2010, he recorded the statement of Dr. Rakesh Mittal and after concluding the investigation submitted the charge-sheet, which has been proved and marked as Ext. Ka-18.

56. During cross-examination, he stated that on 24.11.2009 Jaiveer had lodged a report regarding stabbing of her niece Parul and on the same day at about 21:05 hours, information about her death was received, which was reduced in writing. He further stated that after receiving the information about the death of victim Parul, he reached her house, however, cannot state if her mother Parvita was present there. On 25.11.2009, he again visited the place of incident, however, did not record the statement of the witnesses though Ravindra, maternal uncle of deceased was present there but could not state whether her mother Parvita was present there at her house. On 27.11.2009, near the Karnaval gate, Jaiveer Singh had given him an application dated 27.11.2009, however, he did not record the statement of Parvita on 27.11.2009, as she was not present at her house and had gone to take medicines. He further stated that the hospital in which Parvita was being treated in an unconscious state is not known to him nor was disclosed by any witnesses.

57. P.W.8 further stated that Jaiveer, in his statement under Section 161 Cr.P.C., has not stated that Robin, Yasveer and Chintu had informed him about the stabbing of Parul nor he gave the statement that before Jaiveer reached his house, his brother Harvir and Rahul had already taken the victim Parul to the Meerut Hospital. Jaiveer also did not state to him that Chintu was present at his shop and disclosed him about the incident. He also did not disclose that prior to his reaching the village, Rahul

and his father had reached home with the dead body of the deceased. He also did not state to him that his sister-in-law Parvita in an unconscious state was taken to hospital by his brother Ravindra before he reached the village. He also did not disclose that his sister-in-law was taken to Budhana in an unconscious state for treatment nor he disclosed that except Ravindra, no other family member went to attend Parvita in the hospital. P.W.1 also did not state to him that between 24.11.2009 to 26.11.2009 Parvita remained admitted in the nursing home. He also did not disclose that on 26.11.2009 his sister-in-law returned back home from the nursing home and in the evening was speaking and she had a talk with him and his other family members.

58. He further stated that Satveer in his statement did not disclose that both the accused-assailants Pankaj and Babloo had assaulted the victim after making her fall on the ground. He also did not disclose to him that he had witnessed the incident in bulb light, lit at the shop and Parvita had also reached the place of incident. P.W.2 Satveer also did not disclose that he had left for Kankarkheda to supervise the construction of his house and returned back on 27.11.2009. He also did not inform him that on the next day, on getting information about the death of some of his relative, he had gone to Ganganagar. He further did not inform him that he also went to the place of incident and tried to rescue Parul, nor had disclosed that he had seen Parul coming out of her house with bread in her hand. Satveer also did not disclose to him that when accused persons assaulted the victim, she raised alarm stating 'Maa'. He also did not state that first Pankaj stabbed Parul and Babloo made her fall on the ground. He also did not state that when he chased the assailants, then he saw Parvita, nor

disclosed that he chased the accused persons for about 20-30 paces and at the relevant time some persons were coming and going but could not name them. He also did not disclose to him that after chasing the assailants, he went to his house and thereafter did not visit Parvita's house. He did not disclose that after returning his house, he did not inquire about the condition of Parul and did not visit Harvir's house on 25.11.2009. He also did not disclose to him that when he reached the place of incident, he saw Jaiveer and his mother present there.

59. During further cross-examination, P.W.8 stated that he had obtained police custody remand of Pankaj and thereafter got recovered knife on his pointing out. He also did not record the statement of Om Singh near whose tube-well the crime weapon knife was recovered.

60. P.W.9 S.I. Vijendra Singh is the Investigating Officer of Case Crime No. 476 of 2009, under Section 25/4 of the Arms Act. He, in his testimony, has stated that on 24.12.2009, he had recorded the statement of S.H.O. Pramod Kumar Sharma and S.I. Devendra Singh and prepared the site plan.

61. P.W.10 Head Constable Sahjor Singh is the witness, who had drawn the chik FIR of Case Crime No. 476 of 2009, under Section 25/4 of Arms Act, which was registered in writing vide G.D. No.32 at 07:45 p.m.

62. After concluding the statements of the prosecution witnesses, statement of the accused-appellant Pankaj and Babloo under Section 313 Cr.P.C. has been recorded. The accused-appellant Pankaj, in his statement under Section 313 Cr.P.C., claimed the

entire prosecution evidence of the witnesses to be false and fabricated and denied the prosecution story. The appellant Pankaj in his statement has further stated that, in fact, Parul had fallen in love with some person and prior to her marriage, she wanted to elope with him, as such, family members of victim Parul or some unknown person, in order to protect their dignity, has caused her death and he has been falsely implicated in the instant case, as he had informed the family members of the deceased about the conduct of Parul and in the backdrop of the said animosity, he has been falsely implicated in the present case.

63. The trial court after appreciating the evidence and material on record and by placing implicit reliance upon the testimonies of P.W.1, P.W.2 and P.W.3 has held that the prosecution has successfully proved the case against the accused-appellant and the explanation tendered by the appellant was found inadequate and false and as such, he is liable to be convicted for the offence charged with and awarded the sentence of life imprisonment.

64. Being aggrieved and dissatisfied by the said judgment and order, the instant appeal has been filed by the appellant.

65. It is germane to point out here that during the pendency of the instant appeal, co-accused Babloo had already passed away and as such, his appeal has been dismissed as abated vide order dated 05.04.2024 passed in Criminal Appeal No.1861 of 2015 (State Vs. Babloo @ Ajit).

66. Learned counsel for the appellant has submitted that the trial court in the instant case has not appreciated the evidence and material on record in right

perspective and has illegally recorded the finding of conviction and sentence against the appellants.

67. Learned counsel for the appellant has next submitted that finding of conviction, based on the testimony of PW.1, P.W.2 and P.W.3, is in fact, based on surmises and conjectures, which can not be sustained being bad in law.

68. Learned counsel for the appellant has next submitted that upon going through the entire evidence adduced during the course of trial, we find that P.W.1 Jaiveer, who is the first informant of the instant case is not the eye-witness of the incident and only on the basis of hearsay, has lodged the report. It is further submitted that P.W.1 at the first instance had lodged the report of assaulting the victim Parul, her niece, against two unknown accused persons, who are said to have stabbed his niece Parul and ran away. Subsequently, after two days of the incident, on the basis of the information said to be received by him from one Satveer and his sister-in-law Parvita, mother of the deceased has filed a subsequent application dated 27.11.2009 stating therein that they had seen the accused-appellant Pankaj along with Babloo, his maternal uncle's son to have stabbed the victim Parul and thereafter making their escape good. He further submitted that when we go through the testimony of P.W.1, we find that his testimony is riddled with number of inconsistencies and improvements and in the backdrop of the said circumstance, by no stretch of imagination, he may be said to be a reliable witness as held by the trial court.

69. Learned counsel for the appellant has next submitted that even the testimony

of P.W.2 Satveer, who is alleged to have witnessed the incident from the shop of one Chintu also do not inspire confidence and his testimony too is riddled with inconsistencies and improvements. Even the Investigating Officer has pointed out that the said witness has not disclosed any relevant circumstance to him during the course of interrogation under Section 161 Cr.P.C., however, in his testimony, he has developed the prosecution story and has tried to project himself as an eye-witness though when we go through his entire evidence, we find that from his conduct before and after the incident, his testimony of being an eye-witness also does not inspire confidence and is liable to be discarded.

70. Learned counsel for the appellant has next submitted that even the testimony of P.W.3, the mother of the deceased also do not inspire much confidence. She is said to have witnessed the incident while she was returning from her Gher and had reached at the turning and witnessing the incident, she is said to have rushed to the place of incident, when she is said to have fallen down unconscious and was taken to the hospital by her brother Ravindra and is stated to have remained in hospital in an unconscious state for two days and thereafter on her return had informed the incident to her brother-in-law Jaiveer, on the basis of which, the entire prosecution story has been developed, however, when we go through the testimony of the said witness, we find that there are material inconsistencies and contradictions in her statement, which renders the prosecution story highly doubtful and in the given facts and circumstances, she also cannot be said to be a reliable witness, however, the trial court by placing implicit reliance on her testimony has recorded the finding of

conviction against the appellant, which is bad in law and is liable to be set aside.

71. Learned counsel for the appellant has next submitted that even the recovery of crime weapon knife shown to be made at the pointing out of the appellant Pankaj from an open place near the tube-well of Om Singh has not been proved as per the settled principles of law laid down by the Hon'ble Apex Court and therefore, the factum of recovery as against the appellant has also not been cogently and clinclingly proved by the prosecution, yet the trial court has convicted the accused appellant under Section 4/25 of the Arms Act and sentenced him accordingly, which is bad in law and liable to be set aside.

72. Learned counsel for the appellant has next submitted that the incident in question is said to have been witnessed by large number of persons namely Yashveer, Robin and Chintu, but none of the said witnesses has been produced before the trial court. Even Harvir, father of the deceased and Rahul brother of the deceased, who are said to have taken the deceased to the hospital have not been examined. Ravindra, the real brother of P.W.3 Parvita, who has taken her to the hospital has not been produced though they were relevant and material witnesses, however, have been deliberately withheld by the prosecution, which renders the prosecution story highly doubtful.

73. Per contra, learned AGA for the State as well as learned counsel for the first informant have supported the impugned judgment and order and have submitted that the accused herein has committed the offence, which stood proved beyond reasonable doubt from the evidence adduced during the course of trial and

pointed out towards the guilt of the appellant in commission of the offence and as such, the impugned judgment and order passed by the trial court suffers from no illegality and is liable to be affirmed.

74. Having considered the rival submissions made by learned counsel for the parties and considering the entire evidence adduced during the course of trial, we find that the present incident is said to have taken place on 24.11.2009 at about 07:15 p.m. in the evening at the doorstep of the victim deceased Parul, when she had gone out to feed breads to the dogs, however, is said to have been assaulted by two persons, causing her death, the information of which was given by her uncle Jaiveer at Police Station Saroorpur, Meerut. On the basis of said information, an FIR was registered against two unknown persons vide Case Crime No.413 of 2009, under Section 307 IPC.

75. From the testimony of P.W.1, we find that the first informant was not an eye-witness of the incident and only on the basis of suspicion had lodged the report against two unknown persons. In the FIR itself, the victim Parul is said to have been taken to the hospital by his father Harvir and his real brother Rahul, however, they have not been produced at all as a witness. The victim deceased is said to have breathed her last on 24.11.2009 and on getting the information of her death, the case was converted under Section 302 IPC and thereafter the police reached the house of the deceased, where her dead body was brought by her father and brother and the inquest report was prepared. Thereafter, the body was sent for post-mortem.

76. After two days of the incident, another application is said to have been

given by the first informant Jaiveer to the Investigating Officer stating therein that on 24.11.2009 at about 07:15 p.m. his niece was stabbed, the information in respect of which was given by him on 24.11.2009 itself, however subsequently, it has been disclosed that on the date of incident, his sister Parvita, mother of the deceased was returning back to her house from the Gher and when she reached near the turning near her house, she saw accused appellant Pankaj along with Bablu, his maternal uncle's son, stabbing the victim Parul, her daughter and seeing the incident, she fell down unconscious and subsequently her medical condition deteriorated and she was taken to the hospital, where after two days, on regaining consciousness, she had returned back to her house and informed Jaiveer that she had seen appellant Pankaj and Babloo stabbing her daughter causing her death.

77. The information in respect of the said incident on the said date was also given to him by one Satveer s/o Nahar Singh, resident of the same village while he was standing at the shop of one Chintu, where he had come to purchase bidi and who had seen the entire incident and narrated it to him, on the basis of which, the prosecution story has been developed and Pankaj and Babloo were treated as an accused. The police after their arrest on 07.12.2009 and 17.12.2009 had shown the recovery of crime weapon knife on their pointing out from an open place, on the basis of disclosure statement made by them.

78. The trial court on the basis of testimony of P.W.1 Jaiveer Singh, P.W.2 Satveer Singh and P.W.3 Parvita, mother of the deceased has come to the conclusion that the appellant Pankaj and Babloo have

caused the death of Parul outside her house, when she had refused to marry one of them and sentenced them for life imprisonment.

79. We have heard the parties, considered the evidence led at the time of trial and perused the judgment of the trial court. The issues that emerge for decision are (i) whether the evidence on record is sufficient to record the conviction against sole surviving appellant Pankaj (ii) If the answer of the above is in the affirmative what should be the appropriate punishment to be imposed upon the appellant Pankaj.

80. Before addressing the issues, we consider it appropriate to revisit the law laid down by the Hon'ble Apex Court regarding the weight to be attached to the testimony of the witnesses adduced during the course of trial. The Hon'ble Apex Court in several of its decisions has held that the oral testimony may be categorized into three categories vis. (i) wholly reliable (ii) wholly unreliable (iii) neither wholly reliable nor wholly unreliable. The first two categories of cases may not pose serious difficulty for the court in arriving at its conclusion, however, in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, and has a requirement of the rule and prudence.

81. Guided by the law as aforesaid and in our pursuit to answer the first question, we find that having examined their evidence threadbare, we notice manifest contradictions and discrepancies in the oral evidence of the prosecution witnesses. To our mind, these have the effect of casting a serious doubt with regard to the veracity of the prosecution version.

82. We shall now deal with each of the testimony of the eye-witnesses of the three prosecution witnesses produced during the course of trial.

83. So far as the testimony of Jaiveer Singh is concerned, we find that he is not an eye-witness of the incident and his testimony is based entirely on hearsay evidence of Satveer Singh P.W.2 and Parvita P.W.3. Apart from this, when we go through his testimony, we find that he is not a reliable witness at all and his testimony is riddled with inconsistencies and improvements.

84. P.W.1 Jaiveer in his examination-in-chief, categorically stated that after the incident of stabbing of Parul, he along with his other family members were taking his niece Kumari Parul to Meerut for treatment, however, en-route to the hospital she breathed her last and as such, they returned back home, however, subsequently, in his cross-examination, he has resiled from his said statement and stated that though on 04.10.2010, while his statement was being recorded before the trial court, he had stated that “मैं नहीं कह सकता कि दिनांक 4.10.10 को जो मैंने बयान दिया 'जब मैं तथा मेरे अन्य परिवार जन अपनी भतीजी कु० पारुल को इलाज के लिए मेरठ ला रहे थे तो रास्ते में ही उसने दम तोड़ दिया था' मैं नहीं कह सकता की यह बात सही है या गलत है।”

85. Thus, from his said testimony, it is evident that the said witness is highly inconsistent and is resiling from his own statement. When we further go through his evidence, we find that in his testimony he states that when he came to know about the stabbing of his niece Parul, he was at a distance of 100-150 yards from the place of incident and reached there in 10-15 minutes and he had collected a paper from the shop of Chintu on which he had scribed the

report. At the relevant time, Chintu was present at his shop and he had informed him about the incident. To quote :

“मुझे ध्यान नहीं उस समय कटारे व धर्मवीर आये थे या नहीं। जिस समय चिन्टू की दुकान पर मैं पहुंचा मुझे ध्यान नहीं है कि उस समय मेरे जान-पहचान का कोई खड़ा था या नहीं। चिन्टू दुकान में मौजूद था। दुकान पर मुझे चिन्टू ने वाक्ये के बारे में बताया था।”

86. However, when we test the veracity of the said statement, we find that the said witness is not a truthful witness. Had Chintu informed him of the incident as stated by him, he would certainly have lodged the FIR against the nominated accused persons and not against two unknown persons, which makes his testimony highly doubtful and difficult to believe. When we further go through his testimony, we find that he in his testimony has clearly stated that two unknown persons had committed the incident of stabbing his niece and this factum was disclosed to him by his mother Sona and father Baljeet, however, they have not been examined at all. He further stated that the factum, as to who disclosed the said fact of assault by two persons to his parents, was not known to him, which further renders his testimony doubtful. Furthermore, when we go through the testimony of P.W.1, we find that he in his testimony has categorically stated that his sister-in-law Parvita, seeing the incident, had fallen unconscious and was taken to the hospital by his real brother Ravindra, however, contrary to the said testimony P.W.3 Parvita in her statement has categorically stated that she was, in fact, taken to the hospital by his own brother Ravindra, who used to reside in village Bitvada. He further in his testimony stated that, when the police had reached his village on information given by him and was conducting the inquest etc., he had come to know that his sister-in-law

Parvita has been taken to the hospital in an unconscious state, however, this fact was not disclosed to the police which further renders the prosecution story doubtful.

87. The said witness in his testimony has categorically stated on 27.11.2009 at about 07:00-08:00 A.M. Satveer and his sister-in-law Parvita had disclosed the name of the accused persons to him though in his further testimony, he admitted that his sister-in-law returned back to her home in the evening on 26.11.2009 itself and was speaking at the relevant time and had discussion with him as well as other family members. To quote:

“27.11.09 को सुबह 7-8 मुझे सतवीर सिंह व मेरी भाभी परिवीता ने बताया था सुबह 7-8 बजे मुल्जिमान के नाम बताये थे कि इन्होंने ही चाकू से मारा हो।

मेरी भाभी 26.11.09 को नर्सिंग होम से गांव में शाम को घर पर आ गयी थी उस समय वह बोल चाल रही थी उससे मेरी व सभी घर वालों की बात-चीत हो गयी थी”

88. Thus, if we analyse the said statement of P.W.1, we find that as per his testimony her sister-in-law returned back on 26.11.2009 and had discussion with him and his family members, however, in such circumstances it does not stand to reason as to why on the next day only at about 07:00-08:00 A.M, she would disclose the name of the accused persons, who had assaulted her daughter with the knife. It appears that after much deliberations with family members, the name of the appellant Pankaj along with Babloo had been introduced as an assailant as an afterthought and that is why only after two days of the incident their name has surfaced as accused in the instant case, which circumstance also renders the prosecution story doubtful and makes the testimony of the said witness unreliable.

89. Now coming to the testimony of P.W.2 Satveer, we find that he is said to

be an eye-witness of the incident and has stated that he had seen the incident of assault by the accused-appellant from the shop of one Chintu, where he had come to purchase bidi. He is said to have witnessed the incident in bulb light and has further stated that while the assailants were assaulting the victim Parul, her mother had also reached the place of incident while returning from her Gher and had seen the accused persons assaulting the deceased by knife. He, in his examination-in-chief, has candidly stated that after the incident he had returned back to his home due to fear and on the next day had left to mourn the death of his relative and returned only after two days i.e. on 27.11.2009 and thereafter visited the house of the first informant Jaiveer and informed him of the incident.

90. During cross-examination, he stated that after witnessing the incident he had gone to Ganganagar to mourn the death of his relative, however, further stated that the death, in fact, had taken place four days prior to the incident and that too of his distant relative Gulveer, who is said to be the Jeth of his niece Savitri and returned only after two days, which itself appears to be quite improbable and cannot be believed by a man of ordinary prudence, particularly, in view of the circumstance that the death had taken place about four days back and that too of his distant relative where he stayed for two days. In fact, it appears that since the said witness is alleged to be the eye-witness of the incident, however despite being present there, he did not make any attempt to rescue the victim and is said to have gone to his house under fear and it was only on 27.11.2009, after two days of the incident, the said factum of him being the eye-witness account has been disclosed then to explain his absence for two days and disclosing the incident to the

first informant, the said explanation has been tendered to cover up the lacune in the prosecution story, which does not stand to reason at all.

91. Further, when we go through the testimony of P.W.2, we find that he in his testimony has candidly stated that at the time of incident of assault by the two accused nominated persons, he had seen Parvita at the turning, who was proceeding to her house, however, in his entire testimony, there is not a whisper that she after witnessing the incident of stabbing her daughter by two persons had fallen down unconscious, which is in complete contrast to the testimony of P.W.1 and P.W.3, who have categorically stated that on witnessing the incident of assault, Parvita had fallen down in an unconscious state. Though in his cross-examination, he has candidly stated that he had gone at the place of incident and tried to rescue Parul but has not noted Parvita, mother of the deceased to have fallen down in an unconscious state. This particular circumstance makes his eye-witness account highly doubtful.

92. It is further germane to point out here that when we go through the testimony of P.W.2, we find that his testimony is riddled with number of inconsistencies and improvements. He, in his examination in chief, has clearly stated that after witnessing the incident, because of fear he had returned back to his house and on the next morning left for mourning the death of his relative to Ganganagar, however, in his cross-examination, he stated that after witnessing the incident he had reached the place of incident and tried to rescue Parul while the accused persons tried to escape from the way where he was standing and he raised alarm to catch hold of them. He further improved his testimony

by stating that he after raising alarm, he chased the accused persons for a distance about 20-30 yards and after chasing them, he returned back to his house and did not visit the house of Parvita on that day. He further stated that he did not even visit the place of incident to enquire about the condition of the victim Parul and thereafter returned only on 27.11.2009, when he was informed that Parul has already passed away and then he informed Jaiveer, uncle of the deceased that the assailants Pankaj along with Babloo had killed the victim on 24.11.2009.

93. The aforesaid conduct of P.W.2 clearly suggest that he is not a reliable witness and has been making step by step improvement in his testimony and therefore cannot be held to be reliable witness. He is said to have been examined by the Investigating officer after three days and has narrated the entire incident to him, however, when we go through the testimony of the Investigating Officer Pramod Kumar Sharma (P.W.8), we find that Satveer, in his statement under Section 161 Cr.P.C., did not point out the relevant factum to the Investigating Officer and only for the first time is narrating the said facts before the trial court. In this respect, it is relevant to note the statement of P.W.8 where he has categorically stated:

“मुझे गवाह सतवीर ने यह बयान नहीं दिया कि 'दोनों हाजिर अदालत मुल्जिमान ने जमीन पर गिराकर उसे अपने हाथों में लिये चाकूओं से दोनों लोगों यानि पंकज व बबलू ने उस पर जानलेवा हमला कर दिया।' मुझे सतवीर ने यह बात नहीं बताई थी कि 'मैंने यह घटना दुकान पर लगी लाईट की रोशनी में देखी थी तथा मेरे अलावा प्रविता भी मौके पर आ गई थी।' मुझे सतवीर ने यह बयान भी नहीं दिया कि 'मैं अगले दिन शाम को अपने मकान कंकरखेड़ा में जो बन रहा है उसकी देखरेख के लिये वही रहा और 26.11.09 तक वही रहा दिनांक 27.11.09 को वापस करनावल आ गया।' मुझे सतवीर ने यह बयान भी नहीं दिया कि 'मैं जब अपने घर से चिन्टू की दुकान पर बीड़ी लेने चला था उससे

पहले मुझे अपनी रिश्तेदारी में मौत की खबर मिल चुकी थी। मुझे सतवीर ने यह भी नहीं बताया था कि अगले दिन मौत की खबर सुनकर जैसे ही परिवार से मिलने गंगा नगर चला गया था उस दिन कोई तेहरवीं वगैरा नहीं थी तेहरवी उसके चार पाँच दिन बाद थी। मुझे सतवीर ने यह भी नहीं बताया कि 'मैं गंगा नगर गुलवीर सिंह की मौत सुनकर 25.11.09 को सुबह छः बजे चला था।' मैंने चिन्टू की दुकान पर जसवीर पुत्र श्रीनिवास, रोबिन पुत्र रामपाल जो हमारे गांव के है उस समय चिन्टू की दुकान पर नहीं देखा। मुझे सतवीर ने बयान में यह नहीं बताया कि 'मैं मौके पर गया था तथा कु० पारूल को बचाने का प्रयास किया था।' यह भी बयान नहीं दिया कि 'जब मैं बचाने जा रहा था तब आते हुये किसी को नहीं देखा।' मुझे सतवीर ने यह बयान भी नहीं दिया कि 'मैंने पारूल को घर के दरवाजे से बाहर आते हुये भी देखा था पारूल के हाथों में रोटी थी।' मुझे सतवीर ने यह भी नहीं बताया कि 'जब मुलजिमान ने चाकू मारा तो उसने माँ कह कर शोर मचाया।' यह बयान भी सतवीर ने मुझे नहीं दिया कि 'सबसे पहले पंकज ने पारूल को चाकू मारा व बबलू ने पकड़ कर पारूल को गिराया।' सतवीर ने मुझे यह बयान भी नहीं दिया कि 'जब मैं मुलजिम का पीछा करने गया तो मैंने प्रविता को देखा मैं पीछा करते हुए 20-30गज भागा था उस समय कई आदमी इधर उधर आ जा रहे थे उनके नाम नहीं बता सकता।' मुझे सतवीर ने यह भी नहीं बताया कि 'पीछा करने के बाद मैं फिर अपने घर चला गया उसके बाद मैं मौके पर या प्रविता के घर उस दिन नहीं आया।' मुझे यह भी बयान नहीं दिया कि 'मैंने लौट कर पारूल की हालत नहीं देखी दिनांक 25.11.09 को अगले दिन सुबह भी मैं हरवीर के घर नहीं आया था।' मैंने सतवीर का बयान उसके घर पर लिया था। मुझे सतवीर ने यह बयान भी नहीं दिया कि 'जब मैं जोहड़ तक उनके पीछे भागा इस बीच रास्ते में मुझे कोई आदमी नहीं मिला। मुझे सतवीर ने यह बयान भी नहीं दिया कि 'जब मैं घटना स्थल पर पहुंचा जयवीर व उसकी माँ वहाँ मौजूद थे।"

94. Thus, it is relevant to point out here that the testimony of Satveer was narrated before the trial court for the first time and was not disclosed to the Investigating Officer and thus, his testimony is based on improvements and makes it highly difficult to believe. Furthermore, he in his testimony has stated that he had seen Parvita, mother of the deceased reaching the place of incident and also reached the place of incident but he in

his statement has categorically stated that he does not know, as to where Parvita after the incident was taken and further he has not seen anyone taking away Parvita in an unconscious state, which further renders his testimony highly doubtful. The said witness in his cross-examination has candidly stated that:

“जब मैं घटना स्थल पर पहुंचा जयवीर, उसकी माँ वहाँ मौजूद थे बाकी वहाँ और कौन लोग मौजूद थे, मुझे ध्यान नहीं है मैंने लड़की पारूल को अस्पताल ले जाने की कोशिश नहीं की। माँ और चाचा ने की होगी”

95. From his testimony, it is evident that when he reached the place of incident, the victim's mother and Jaiveer, first informant were present there, however, at this stage he did not disclose to the first informant regarding the fact that the said incident has been committed by Pankaj and Babloo. Moreover, the testimony of P.W.2 do not corroborate the prosecution story to the extent that on seeing the victim being assaulted, her mother had fallen down in an unconscious state. Failure to note this apparent circumstance creates a serious doubt about the veracity of his eye-witness account and in the totality of the circumstance emerging from his testimony, he do not appears to be a truthful eye-witness and has in fact, been introduced subsequently after two days of the incident narrating his eye-witness account.

96. Thus, we are of the opinion that the eye-witness account of P.W.2 does not inspire our confidence and makes him an unreliable witness. The contrary view taken by the trial court holding him to be a reliable witness is therefore, not acceptable.

97. There is one more circumstance, which makes the testimony

of P.W.2 highly doubtful. He in his testimony has stated that:

“मुझे घटना वाली रात को यह पता नहीं चला था कि मेरी पोती की मृत्यु हो गयी है। मैं अपने घर चला गया था। मुझे अपने घर उपेन्द्र मेरा लड़का व उसके दो बच्चे मिले थे पत्नी नहीं मिली क्योंकि वह दूसरी मंजिले पर रहती है। मैंने घटना के बावत अपने बेटे उपेन्द्र व अपने पोती सोनू व मोनू को चाकू लगाने वाली बात बतायी थी यह बात सुनकर के जयवीर के घर चले गये थे। मैं व मेरी पत्नी घर पर ही थे मेरी पत्नी व मेरे लड़के की पत्नी दूमंजिले पर थी 10 मिनट बाद उपेन्द्र वापिस लौट कर आया था उसने बताया था कि पारूल को मेरठ अस्पताल ले गये हैं यह बात उसने अपनी पत्नी व मां को बताई थी।”

98. When we analyze the said statement of P.W.2, we find that as per his testimony, he after witnessing the incident had gone to his house, where he met his son Upendra and his two children. He further stated that he had disclosed to his son Upendra and his grand niece Sonu and Monu regarding the assault by knife and after his disclosure, they had visited the house of Jaiveer and after ten minutes, Upendra had returned back to his house and informed him that the victim Parul has been taken to the Meerut Hospital. Had this testimony of P.W.2 been true and if he had narrated the incident of assault by knife to his son and grand daughter, who visited the house of first informant Jaiveer then certainly Upendra on that very day would have disclosed to the first informant Jaiveer about the incident of killing of Parul by Pankaj and Babloo and in the very first FIR lodged on 24.11.2009, the name of the assailants would have been disclosed, however, lodging the first FIR against two unknown persons creates a serious dent in the prosecution story and makes it highly doubtful.

99. This particular circumstance clinchingly establishes that the subsequent

story of nominating Pankaj and Babloo to have caused the death of Parul by stabbing her has been cooked up and concocted on 27.11.2009 in the morning, on the basis of alleged information given by Parvita and Satveer posing them to be the eye-witnesses of the said incident, however, when we go through the entire testimony of the said witnesses, we find that there are lot of inconsistencies and improvements in their testimony, which renders the said witnesses to be highly doubtful and difficult to believe as such, they cannot be said to be a reliable witnesses and creates serious dent in the prosecution story.

100. Now coming to the testimony of P.W.3 Parvita, mother of the deceased, we find that she is said to have witnessed the incident while returning from her Gher after giving water to her cattle and the incident is said to have taken place when she reached the turning of her house and reached the place of incident, where the victim Parul is said to have been assaulted. She is alleged to have seen the incident in the bulb lit by inverter though P.W.2 in his testimony has candidly stated that the incident had taken place in the electric light. Furthermore, P.W.3 in her statement has stated that witnessing the incident, when she reached the place of incident, she fell down unconscious and when she regained consciousness on 26.11.2009, she found herself admitted in the hospital at Budhana run by Dr. Rakesh Mittal and only on her return she had informed P.W.1, his brother-in-law about the manner and participation of appellant Pankaj and Babloo assaulting the victim by knives. Since P.W.2 in later part of the incident has stated that at the time of incident there was no supply of electricity, as such, to cover up the said discrepancy, inverter light has been introduced by P.W.3.

101. When we go through the testimony of P.W.3, we find that P.W.3 Parvita, mother of the deceased has stated that she had fallen unconscious seeing her daughter being assaulted and remained in an unconscious state for two days, which do not inspire much confidence for the following reason. As per the prosecution case, Parvita had also fallen down unconscious near the place of incident where her daughter was stabbed by the two assailants Pankaj and Babloo and was lying there in an injured condition, thereafter, it is alleged that though the victim Parul immediately after the incident was taken to hospital for treatment by her father Harvir and brother Rahul, however, P.W.3 Parvita, who was also lying there in an unconscious state was not at all noticed by them and continued to lie down there in an unconscious state till she was taken to the hospital by his brother Ravindra, who according to the prosecution case, used to live in Bitvada, which even according to P.W.3 is about 25-30 kms. from the place of incident.

102. This particular circumstance creates serious doubt about the prosecution story that the witness P.W.3 had fallen down unconscious immediately after seeing the incident of assault and remained lying there unattended by her husband and son Rahul, who had taken the deceased Parul to the hospital. The factum of P.W.3 lying down in an unconscious state at the place of incident also becomes doubtful from the testimony of P.W.2, Satveer Singh, who is said to be an eye-witness of the incident, however, he, in his testimony, has not made even a whisper that he had seen Parvita falling down in an unconscious state though in his testimony he clearly stated that after the incident he reached the place of incident and had seen Parvita and Jaiveer present there but had not

pointed out that Parvita was lying there in an unconscious state, which circumstance also creates a serious doubt about the factum that Parvita at the time of incident had fallen down unconscious. Had this fact been true, then certainly P.W.2 in his statement would have pointed out the said fact in his testimony, absence of which, creates a serious doubt about the truthfulness of the prosecution story.

103. Even the factum of providing medical treatment to victim Parvita at the hospital run by P.W.4 Dr. Rakesh Mittal is not beyond suspicion. P.W.3, in her testimony, has categorically stated that she remained in hospital in an unconscious state for two days i.e. from the time of incident stated to be 07:15 p.m up to 26.11.2009 till 07:00 p.m, which in itself appears to be highly suspicious in the backdrop of the fact that she in her testimony has categorically stated that:

मेरे साथ इस घटना के पूर्व कभी भी दुख भरी घटना सुनने या देखने के बाद बेहोशी नहीं हुई थी। ना ही मुझे इस घटना से पूर्व कभी बेहोश होने का दौरा पड़ा। मैंने यह भी नहीं देखा कि पायल के कहां-कहां और कितने चाकू लगे केवल खून बहते हुए देखा था”

104. Thus, from the said statement of P.W.3, it is evident that the victim only for the first time in her life had fallen unconscious, seeing the assault on her daughter and remained in an unconscious state for two days i.e. almost 48 hours, though she was a young lady aged about 40 years at the time of incident and was not suffering from any medical problem at the time of incident, which appears to be quite unnatural in the given facts and circumstance.

105. Even the doctor attending her in medical treatment has stated that she was suffering from acute mental shock and

depression fits and was admitted in the hospital on 24.11.2009 at 10:30 P.M. by his brother Ravindra, who used to live 25-30 kms. away from the place of incident meaning thereby that the said victim would have remained lying at the place of incident in an unconscious state at least for about one hour, but was not noticed either by her family members or her husband and son, who are said to have taken the deceased to hospital. Even as per the statement of P.W.4, the place where P.W.3 Parvita is said to have been given medical treatment was the own house of P.W.4 Dr. Rakesh Mittal, which earlier was his clinic and except the victim Parvita, no one else was admitted for treatment there.

106. P.W.4 in his testimony has categorically stated that “चूँकि प्रविता को मेरे क्लिनिक पर उसके भाई श्री रविन्द्र लेकर आये थे जिन्हें मैं पहले से ही जानता था अतः क्लिनिक में इलाज के दौरान उनके ही होने के अलावा मैं नहीं बता सकता कि कोई अन्य परिजन था या नहीं क्योंकि मैं किसी अन्य परिजन को नहीं जानता था। खुद कहा कि मेरे क्लिनिक के सामने ही रविन्द्र का कम्प्यूटर इंस्टीट्यूट है।”

107. Necessary entry in the admission register of the clinic has not been produced at all, which circumstance further creates serious doubt about the treatment been actually given to Parvita and she remaining in an unconscious state for two days. Even the bed head ticket has not been brought on record.

108. When we further go through the testimony of P.W.3, we find that she regained consciousness on 26.11.2009 at about 07:00 P.M. and at the relevant time her mother was with her, however, she did not disclose anything about the incident even to her mother. She further in her testimony stated that on 26.11.2009 at about 07:45 P.M., she had reached her house and thereafter on the query made by

her brother-in-law Jaiveer, she had informed him of the incident, however, when we go through the testimony of P.W.1, we find that Jaiveer in his testimony has categorically stated that only on 27.11.2009 at about 07:00-08:00 A.M. Satveer Singh and his sister-in-law Parvita had informed him that the accused-appellant Pankaj along with Babloo had stabbed her daughter by a knife.

109. Thus, we find that there are material discrepancies and inconsistencies in the statement of the witnesses in respect of the material particulars about disclosing the name of the assailants by the two witnesses, which creates a serious dent in the prosecution story and makes it highly doubtful.

110. Thus, from the sequence of events, we find that the incident had taken place in the dark hours of night and nobody had actually witnessed the incident and the name of the assailants were not known and that is why in the first FIR lodged by Jaiveer, nobody was named as an accused and it was lodged against two unknown persons on the information given by the parents of P.W.1 as pointed out by him in his statement. Though they had not nominated the accused and subsequently after two days of the incident, the entire story has been cooked up and concocted by the family members of the deceased after much discussion and deliberation, whereby it was decided to nominate the appellant Pankaj and Babloo as accused assailants by giving colour to the whole incident and subsequently the prosecution story have been developed that since Parvita had fallen unconscious and remained in an unconscious state for two days and other eye-witness Satveer had gone to mourn the death of his distant relative and only after

their return the name of the assailants had seen light of the day, however, when we go through the testimony of P.W.2 and P.W.3, we find that the story developed by them in not disclosing the name of the assailants on the day of incident do not inspire confidence and appears to have been cooked up and concocted as an afterthought by nominating the appellant Pankaj and Babloo as an accused.

111. The entire prosecution story and the testimony of eye-witnesses further stands falsified from the circumstance that though P.W.2 and P.W.3 have categorically stated that apart from them Chintu, Yashveer and Robin are also alleged to be present at the time of incident but none of them have been produced to corroborate the prosecution story. Moreover, even the father and brother of the deceased, who are said to have taken the victim to hospital have not been produced by the prosecution, who could have been the material witnesses to corroborate the prosecution story, however, seems to have been deliberately withheld though they are material witnesses of the case.

112. Moreover, neither the mother of P.W.3 nor her brother Ravindra, who had taken her to hospital and remained present at the hospital during her treatment has also been deliberately withheld by the prosecution though they were material witnesses to have corroborated the prosecution story, which further creates serious dent in the prosecution story and makes it doubtful.

113. The Hon'ble Apex Court in a recent decision of Ratnu Yadav Vs. State of Chhatisgarh, Criminal Appeal No.1365 of 2018 has held that the relevant witnesses, whose testimony appears to be material to

corroborate the prosecution story, if not produced, then adverse inference may be drawn against the prosecution.

114. In view of the said principles of law also since the aforesaid material witnesses who could have thrown light upon the veracity of the prosecution have not been produced further creates serious dent in the prosecution story and makes it doubtful.

115. In view of the aforesaid discussions, we are of the opinion that none of the three witnesses can be said to be reliable witnesses and their testimony do not inspire confidence to convict the appellant Pankaj under Section 302 IPC and he is liable to be extended the benefit of doubt. The contrary view taken by the trial court, in our opinion, is not a correct view in the facts and circumstances of the case and is, therefore, liable to be set aside and the appellant is liable to be extended the benefit of doubt and acquitted of the said offence charged with.

116. Now coming to the alleged recovery of knife on the pointing out of the appellant and while considering the factum of their conviction and sentence under Section 4/25 of the Arms Act, we find that from the evidence adduced during the course of trial, the said charges have also not been cogently and convincingly established. Even the disclosure statement leading to aforesaid recovery under Section 27 of the Evidence Act has not been narrated by the Investigating Officer to the accused while proving the said recovery, in the absence of which, as per the settled principle of law laid down by the Hon'ble Apex Court, the recoveries said to be made at the pointing out of the appellant Pankaj cannot be said to be proved in view of the

settled principles of law laid down by the Hon'ble Apex Court in the case of Babu Sahebagouda Rudragoudar and Others Vs. State of Karnataka (Criminal Appeal No. 985 of 2010), in Paragraph Nos. 58, 59, 60, 62, 63, 65, has held that :-

58. We would now discuss about the requirement under law so as to prove a disclosure statement recorded under Section 27 of the Indian Evidence Act, 1872 (hereinafter being referred to as 'Evidence Act') and the discoveries made in furtherance thereof.

9. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the Investigating Officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in the case of State of Uttar Pradesh Vs. Deoman Upadhyaya reported in (AIR 1960 SC 1125).

60 Thus, when the Investigating Officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The Investigating Officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).

62. The manner of proving the disclosure statement under Section 27 of the Evidence Act has been the subject matter of consideration by this Court in various judgments, some of which are being referred to below.

63 In the case of Mohd. Abdul Hafeez Vs. State of Andhra Pradesh reported in (1983) 1 SCC 143, it was held by this Court as follows: -

5 ....If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person."

65 Similar view was taken by this Court in the case of Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh reported in (2022 SCC Online SC 1396), wherein this Court held that mere exhibiting of memorandum prepared by the Investigating Officer during investigation cannot tantamount to proof of its contents. While testifying on oath, the Investigating Officer would be required to narrate the sequence of events which transpired leading to the recording of the disclosure statement."

117. Besides this, even according to the prosecutions own case, the said recovery is said to have been made from an open place from the sugarcane field, which further creates serious doubt about the veracity of the said recovery and makes it highly doubtful. It is further germane to point out here that except the police officials, who are alleged to have made the said recovery, no independent witness has been shown to have corroborated the said recovery, which further makes the said recovery doubtful and difficult to believe.

118. Thus, from their testimony, a big question mark is raised about the veracity of the recoveries at the pointing out of the appellant Pankaj and makes it non-est. In view thereof, we are of the opinion that the conviction of the appellant, under Section 4/25 of the Arms Act also cannot be upheld and is accordingly set aside.

119. In view of the foregoing discussions, we are of the opinion that the instant appeal is liable to be allowed and is accordingly, allowed. The impugned judgment and order passed by the trial court is set aside. The appellant is already on bail. He need not to surrender. His bail bonds are cancelled and sureties are discharged subject to compliance of Section 437-A of Cr.P.C. to the satisfaction of the trial court.

120. Let a copy of this judgment and order be sent to the trial court alongwith trial court record for information and necessary compliance.

-----  
**(2025) 5 ILRA 1277**  
**ORIGINAL JURISDICTION**  
**CRIMINAL SIDE**  
**DATED: ALLAHABAD 27.05.2025**

**BEFORE**

**THE HON'BLE ARUN KUMAR SINGH**  
**DESHWAL, J.**

Application U/S 528 BNSS No. 10997 of 2025

**Shashank Gupta @ Guddu & Ors.**  
**...Applicants**

**Versus**  
**State of U.P. & Anr. ...Respondents**

**Counsel for the Applicants:**  
 Sri Dharmendra Vaish

**Counsel for the Respondents:**

G.A.

**Criminal Law - Criminal Procedure Code,1973- Section 155 (2) - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 174 (2)** -The mandate of Section-155 (2) Cr.P.C. (corresponding Section 174(2) of BNSS) - that police cannot investigate a non-cognizable offence-if the police continues to investigate an FIR-which does not disclose cognizable offence-it would be against the mandate of Cr.P.C./BNSS and in such case, court can interfere-or stop the investigation in exercise of its power u/s 528 BNSS (corresponding Section 482 Cr.P.C.)- legal principles established in the Full Bench decision of Ramlal Yadav - may no longer be applicable due to recent developments in the law as interpreted by the Apex Court-refer this matter to a Larger Bench comprising nine judges. (E-9)

**List of Cases cited:**

1. Ramlal Yadav & ors.Vs St. of U.P. & ors.1989 SCC OnLine ALL 73
2. St. of Har. & ors.Vs Bhajan Lal & ors.1992 Supp 1 SCC 335
3. Imran Pratapgadhi Vs St. of Gujarat & anr. in Criminal Appeal No.1545 of 2025
4. The King Emperor Vs Khawaja Nazir Ahmad 1944 SCC OnLine PC 29
5. S.N. Sharma Vs Bipen Kumar Tiwari & ors. reported in (1970) 1 SCC 653
6. Gulam Mustafa Vs St. of Karn. & anr., (2023) 18 SCC 265
7. Abhishek Vs St. of M.P. reported in (2023) 16 SCC 666
8. P. Ramachandra Rao Vs St. of Karn. (2002) 4 SCC 578
9. Padal Venkata Rama Reddy @ Ramu Vs Kovvuri Satyanarayana Reddy & ors.reported in (2011) 12 SCC 437,
10. Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & ors. Vs St. of Guj. & anr. (2017) 9 SCC 641