them have supported the prosecution case. Therefore, the facts of the present case are in no manner similar to the facts of the cases of **Javed Gulam Nabi Shaikh and Bhanwar Singh** (Supra) cited by the learned Counsel for the applicant.

17. The learned Counsel for the applicant could not point out any major discrepancies in the statements of the prosecution witnesses. Occurrence of some minor discrepancies in the statements of witnesses is natural and it would not give any benefit to the applicant. There is no allegation that the prosecution is causing undue delay in trial.

18. The applicant's father co-accused Komal Singh has been granted bail by the Hon'ble Supreme Court keeping in view the fact that he is a septuagenarian whereas the applicant is merely 42 years of age and this fact distinguishes the case of Komal Singh from the case of the applicant.

19. In view of the aforesaid discussion, I am of the considered view that the peculiar facts of the present case noted above do not warrant exercise of discretion of this Court in favour of the applicant by enlarging him on bail. The second bail of the applicant is accordingly ***rejected.***

(2025) 2 ILRA 373
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.02.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Criminal Appeal No. 2806 of 1983

Rakshpal & Anr. ...Appellants
Versus
State of U.P. ...Opposite Party

Counsel for the Appellants:
Sri Kundan Singh, Sri A.K. Dikshit, Sri Harish Chandra Tiwari (A.C.)

Counsel for the Opposite Party:
D.G.A., A.G.A, Sri Sudhir Mehrotra

Criminal Law -Indian Penal Code-Section 394, 397 & 460-Clear eyewitness account in the present case-PW-1 and PW-3 being immediate family members are natural eyewitnesses of the occurrence-specific St.ment in respect of presence of surviving accused with country made pistol in his hand has also been made-firearm injury caused to the deceased.

Appeal dismissed. (E-9)

List of Cases cited:

1. Krishna Mochi & ors. Vs St. of Bihar,(2002) 6 SCC 81,

2. Masalti Vs St. of U.P., AIR 1965 SC 202

3. Darya Singh Vs St. of Pun., AIR 1965 SC 328

4. Appabhai & anr.Vs St. of Gu., AIR 1988 SC 696

5. St. of A.P. Vs S. Rayappa & ors., (2006) 4 SCC 512

6. Satbir Singh & ors.Vs St. of U.P., (2009) 13 SCC 790

7. Jayabalan Vs U.T. of Pondicherry, 2010 (68) ACC 308 (SC)

8. Dharnidhar Vs St. of U.P., (2010) 7 SCC 759

9. Baban Shankar Daphal & ors. Vs The St. of Mah., 2025 SCC Online SC 137

10. Shahaja @ Shahajan Ismail Mohd. Vs St. of Mah., (2023) 12 SCC 558

11. Pahalwan Singh & ors.Vs St. of U.P., 2020 (6) ALJ 166

12. Kaptan Singh Vs St. of U.P., 2020 (1) ADJ 106 (DB)

13. Neeraj Sharma Vs St. of Chhattisgarh, (2024) 3 SCC 125

(Delivered by Hon'ble Vivek Kumar Birla, J.)

1. This criminal appeal has been preferred assailing the judgement and order dated 15.11.1983 passed by Additional Sessions Judge, Etah, in Sessions Trial No. 242 of 1983 convicting and sentencing the appellants under section 394 IPC read with section 397 IPC to undergo seven years rigorous imprisonment and under section 460 IPC to undergo sentence of life imprisonment directing all the sentences to run concurrently.

2. By the order dated 18.11.1983 both the appellants were released on bail. As per the office report dated 10.5.2024 based on the report submitted by the Chief Judicial Magistrate, Etah, the appellant no. 2-Jagdish, son of Jaerath Singh has died, therefore, appeal in respect of appellant no. 2 stood abated. The appeal now survives only on behalf of appellant no. 1-Rakshpal, son of Raghuvir Singh.

3. It is pertinent to mention here that co-accused Rameshwar and Menhdi had approached this Court by filing Criminal Appeal No. 2958 of 1983 (Rameshwar and another vs. State of UP). During pendency of appeal appellant no.2 Menhdi therein died, therefore, appeal on his behalf stood abated. In respect of the appellant no.1-Rameshwar therein the appeal was partly allowed by a Co-ordinate Bench of this Court vide order dated 28.3.2024. In the said judgement, brief prosecution story has been appropriately narrated in paragraph 6 of the said judgement, therefore, there is no need to reiterate the same. Paragraph 6 of the said judgement is quoted as under:

"6. The prosecution case is in brief is that in the intervening night of 25/26.7.1982, at about midnight, an armed robbery took place at the house of complainant, Shiv Raj Singh in village, Nagla Himmat hamlet of Raya, within the circle of Police Station Jaithara, district Etah, in which Johari, the brother of the complainant was gunned down and Ram Chandra, the father of Shiv Raj Singh, was inflicted Lathi injuries at the hands of the hooligans. On the fateful night, complainant, Shiv Raj Singh, alongwith his nephews, Arjun Singh and Ram Kumar, was sleeping under a thatch on north-eastern corner of the courtyard. Deceased, Johari, was sleeping on the roof in a thatch. J?i Singh and Shri Ram, the brothers of the complainant, were sleeping in another thatch in the west of the courtyard. Complainant's father, Ram Chandra and mother were sleeping in another thatch in front of the chaupal in west-south corner of the house. Ladies and the children were sleeping in a Dehliz, of which the main door of the house in east and another door connecting it in the west towards the court-yard. A burning Lantern was hanging on an iron rod embedded in the northern wall of the staircase from which sufficient light was spreading in the entire house. At about mid night, some miscreants entered the house scaling through the roof from the western side. The complainant and other family members woke up on hearing some sound and they noticed and recognised appellant no.1, Rameshwar, armed with a S. B. B.L. gun, appellant no.2 Mehndi armed with a Lathi and co-accused, Jagdish and Rakshpal, armed with pistols in the house. Appellant no.1, Rameshwer, and Mehndi surrounded the house inmates and warned them not to run otherwise they would be shot-dead, while accused Rakshpal and Jagdish looted

the house hold articles, from different apartments of the house. When the hoodlums were about to decamp with the looted property, Johari, the brother of the complainant, and Ram Chandra, father of Shiv Raj Singh, complainant, tried to run raising an alarm, on which Rameshwar fired shots at Johari, which hit on his legs and he fell down in the Dehliz (room). Accused Menhdi assaulted Ram Chandra with Lathi. The shrieks and cries of the house-inmates and the sound of the fires attracted Ram Dularey and Ram Dayal, gun-licencees, who arrived there with their guns and torches, and Dalpat Singh and Ram Nath with Lathis flashing their torches. It is said that they witnessed the entire occurrence from northern side of the Cattle Gher of the complainant standing near a tree and Burji(a place for stocking straw for the cattle). On the challenge of the witnesses and the fires made by the gun-licencees, the ruffians decamped with the looted booty, coming outside the house from the eastern door and then went away in the south. Afterwards the house inmates went inside the Dehliz and found Johari lying wounded who also disclosed that Rameshwar made a fire at him. After some times Johari succumbed to his injuries at the same place. It is alleged that the house inmates and the witnesses saw and recognized fully the accused in the light of the burning lantern in the courtyard and the torches of the witnesses while fleeing."

4. On the basis of written report of the complainant, a first information report was lodged against four accused persons namely, Rameshwar, Menhdi, Rakshpal and Jagdish being Case Crime No. 91 of 1982 under Sections 302, 302/34 and 397/394 IPC. Accused Rameshwar has been charged under Sections 397 read with Section 394 and 302 IPC while accused Menhdi, Rakshpal (appellant no. 1 herein) and Jagdish (appellant no. 2, now dead) have been charged under Sections 397 read with Section 394 IPC and 302 read with Section 34 IPC.

5. In order to establish the prosecution case, PW-1 Shiv Raj Singh, PW-2 Ram Nath and PW-3 Ram Chandra as eyewitnesses of the occurrence and PW-4 Dr. V.K. Sharma who conducted the post-mortem, PW-5 Constable Ravindra Pal who brought the dead body for post-mortem, PW-6 Head Constable Jai Chandra who prepared chik FIR and registered the case in the GD, PW-7 S.I. Sri Ram Sewak Dubey who investigated the case and PW-8 Dr. Lajja Ram, Medical Officer, PHC Jaithare who examined the injured Ram Chandra as formal witness, were examined and certain documents were exhibited before the Court concerned. In addition to this, the prosecution produced certain documents, which were exhibited during the trial as under:

(i) Written report as Ext. Ka-1, (ii) Recovery Memo and supurdginama of lantern as Ext. Ka-2, (iii) Recovery Memo and supurdginama of torch as Ext. Ka-3, (iv) Injury report as Ext. Ka-4 and 5, (v) Post-mortem report as Ext. Ka-6, (vi) FIR as Ext. Ka-7, (vii) Panchayatname as Ext. Ka-9, (viii) Recovery memo of blood-stained and plain earth as Ext. Ka-15, (ix) Recovery memo of blood-stained shoes as as Ext. Ka-16, (x) Empty cartridge as Ext. Ka-17, (xi) Recovery Memo and supurdginama of torch and cartridge as Ext. Ka-18, (xii) Recovery Memo and supurdginama of torch and cartridge as Ext. Ka-19, (xiii) Search memo of house as Ext. Ka-20 (xiv) Recovery Memo and supurdginama of torch as Ext. Ka-21, (xv) Site plan with index as Ext. Ka-22, (xvi) Charge-sheet 'Mool' as Ext. Ka-27.

6. We have heard Sri Harish Chandra Tiwari, learned Amicus Curiae for the

appellants and Sri Ghanshyam Kumar, learned AGA for the State respondents.

7. Sri Harish Chandra Tiwari, learned Amicus Curiae submitted that all the witnesses are interested witnesses and out of three prosecution witnesses, two witnesses, namely, PW-1 is real brother and PW-2 is the father of the deceased, hence no reliance could have been placed on their testimony; there was a complete defective investigation in the present case and sought to submit that the offence could not have been committed in the manner as shown in the site plan. He sought to argue that it was not possible to cause firearm injury to the deceased from the direction showing presence of accused persons as shown in the site plan; he had drawn our attention to the site plan in support of his argument. He further submits that the role of causing fire has been assigned to the co-accused Rameshwar and it is not proved that appellant has caused injury or death of deceased Johari who died because of sole firearm injury. He further submits that the Investigating Officer has deliberately shown place of dead body in *Dehliz* so as to make out the offence and charges levelled against accused persons whereas no such incident had taken place and the spot of occurrence has wrongly been shown in the site plan. He further submits that the appellant Rakshpal has been falsely implicated simply because one Suresh known to him had lodged one complaint against inspector Ramcharan, P.S. Jatra wherein he was one of the witnesses although his statement was not recorded in the aforesaid complaint. He next submits that the reason that the appellant Rakshpal was absconding by itself is not sufficient to raise presumption against him that he has committed any offence. Submission, therefore, is that no offence is proved against the appellant Rakshpal and the judgement of the trial court is liable to be set aside and the surviving appellant Rakshpal is liable to be acquitted of all the charges. He, lastly submitted that no charge was framed under Section 460 IPC and therefore, the accused Rakshpal could not have been convicted with the aid of said Section; hence, conviction of the surviving appellant Rakshpal is liable to be set aside.

8. Sri Ghanshyam Kumar, learned AGA appearing for the State respondents has contended that the incident had taken place during mid-night of 25/26.7.1982 and first information report was promptly lodged at 5:30 AM on the same night and as the distance of the police station from the place of occurrence is about 5 kilometer; there is direct eyewitness account by natural eyewitnesses; the minor shortcomings or defects in the investigation itself are not sufficient to acquit the surviving appellant Rakshpal; there is no allegation that there was any enmity between the accused persons and the deceased and his family members, who were also eyewitnesses, or with even any other witnesse in the present case; all the accused persons including the present appellant Rakshpal were present on the spot and their presence was proved by the eyewitness account of natural eyewitnesses present on the spot being family members and occurrence having taken place during mid-night and it is also proved that the accused Rakshpal, altogether other accused (now dead) was carrying deadly firearm in his hand. Submission, therefore, is that the charges levelled against the accused persons have been proved on correct appreciation of evidence by the trial court and all the accused persons were rightly convicted with the aid of Section 460 IPC, which clearly provides that every person

jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable for fine. He submits that the Court has power to do so in view of provisions of Section 222 CrPC. He further pointed out that the Co-ordinate Bench has upheld the conviction of co-accused Rameshwar while upholding the judgement of the trial Court after hearing Sri Harish Chandra Tiwari, who was also Amicus Curiae in the aforesaid appeal and the learned AGA appearing in the aforesaid appeal at length. He pointed out that in the connected appeal, the Court has clearly held that there does not appear to be any major, legal or actual error found in the judgement of the trial court and minor and ignorable discrepancy in the prosecution case/evidence pointed out by the learned Amicus Curiae appearing for the appellant could not be made a ground for acquitting the appellant no. 1, however, as the appellant Rameshwar was languishing in jail since 15.11.1983 after confirming conviction of the appellant, his sentence was reduced to period already undergone from the sentence to life awarded to him by the Court below under Section 460 IPC and the sentence for seven years under Sections 394, 397 IPC and the judgement and order of the trial Court was modified to that extent. He, therefore, submits that present criminal appeal is devoid of merit and no interference is warranted in the judgement and order of the trial Court.

9. We have considered the rival submissions and perused the paper book.

10. Before proceeding further, it would be appropriate to refer to various relevant judgements of Hon'ble Apex Court as well as of this Court.

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

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

(Emphasis supplied)

12. In **Masalti vs. State of U.P.,** AIR 1965 SC 202, Hon'ble Apex Court in paragraph 14 observed as under:

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

(Emphasis supplied)

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

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

14. In **Appabhai and another vs. State of Gujarat, AIR 1988 SC 696,** the Hon'ble Apex Court in paragraph 11 observed as under:

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

(Emphasis supplied)

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

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

or the other either because of animosity or some other reasons."

(Emphasis supplied)

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

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

(Emphasis supplied)

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

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

(Emphasis supplied)

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

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

(Emphasis supplied)

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

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

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

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

……..

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

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

(Emphasis supplied)

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

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

the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.

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

(Emphasis supplied)

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

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

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

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

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

29.4. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

29.5. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between

two statements of the same witness) is an unrealistic approach for judicial scrutiny.

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

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

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

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

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

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

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

29.13. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096 : AIR 1983 SC 753, Leela Ram v. State of Haryana, AIR 1999 SC 3717, and Tahsildar Singh v. State of UP, AIR 1959 SC 1012]

30. To put it simply, in assessing the value of the evidence of the eye-witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the

evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence."

(Emphasis supplied)

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

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

(Emphasis supplied)

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

"20. Close scrutiny of the evidence shows that the statements of (PW-1) Vimla Devi and (PW-2) Ram Singar Pandey are clear, cogent and credible. Theyhave been subjected to cross-examination, but they remained stick to the prosecution version and no such fact, contradiction or inconsistency could emerge, so as to create any doubt about their testimony. Keeping in view the fact that after incident, deceased as well as injured were taken to hospital and were admitted there and that on the same night deceased Ram Niwas Rao has succumbed to injuries, it is apparent that the first information report of the incident was lodged without any undue delay. Version of (PW-1) Vimla Devi finds corroboration from testimony of (PW-2) Ram Singar Pandey and is fully consistent with medical evidence. It is also to be kept in mind that (PW-2) Ram Singar Pandey has himself sustained injuries in the same incident. In Jarnail Singh v. State of Punjab, (2009) 9SCC 719, the Supreme Court reiterated the special evidentiary status accorded to the testimony of an injured accused. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case, the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon. Similar view was expressed in the case of Krishan v. State of Haryana, (2006) 12 SCC 459. Hon'ble Supreme Court in Criminal Appeal Nos. 513-514 of 2014 Baleshwar Mahto and another v. State of Bihar and another, decided on 9.1.2017, has reiterated the law as under :

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed

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

"Convincing evidence is required to discredit an injured witness." [Vide Ramlagan Singh v. State of Bihar [(1973) 3 SCC 881:1973 SCC (Cri) 563:AIR 1972 SC 2593], Malkhan Singh v. State of U.P. [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12], Machhi Singh v. State of Punjab [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696], Bonkya v. State of Maharashtra [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113], Bhag Singh [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163], Mohar v. State of U.P. [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472], Vishnu v. State of Rajasthan [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], Annareddy Sambasiva Reddy v. State of A.P. [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] 29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107], where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

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

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

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

evidence on the basis of major contradictions and discrepancies therein." In this very judgment, relationship between the medical evidence and ocular evidence was also discussed, based on number of earlier precedents, as under: "33. In State of Haryana v. Bhagirath [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] it was held as follows: (SCC p. 101, para 15)

"15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the Court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the Court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject."

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(Emphasis supplied)

24. In a recent judgement rendered by Hon'ble Apex Court **in Neeraj Sharma vs. State of Chhattisgarh,** (2024) 3 SCC 125 in respect of importance of injured witness in a criminal trial, the Hon'ble Apex Court has, in paragraphs 22 and 23, held as under:

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

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

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

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

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

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

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

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

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

(Emphasis supplied)

25. We find that there is clear eyewitness account in the present case. The occurrence has taken place in night and PW-1 Shivraj Singh and PW-3 Ramchandra, real brother and father respectively, being immediate family members are natural eyewitnesses of the occurrence. The informant has appeared as PW-1. His real brother Johari was shot in the incident. To the same effect, another eyewitness PW-2 Ram Nath who is a neighbour and has reached the spot with torch upon hearing noise of hue and cry raised by family members and of firing has made the statement. PW-3 Ram Chandra is an injured witness has also given eyewitness account and his presence is clearly proved on the spot. All the three eyewitnesses have individually and categorically stated that all the accused persons were known to him and specific statement in respect of presence of surviving accused Rakshpal with country made pistol in his hand has also been made. The formal witness PW-4 Dr. V.K. Sharma has also proved injury report and the firearm injury caused to the deceased. There is no dispute as to how and in what manner the injury was caused although learned counsel for the appellant during course of argument sought to dispute the direction of the injury. Suffice to say that in such moments, when under attack it is not unnatural for the persons under attack to take a spontaneous turn. Therefore, this cannot prove fatal to the prosecution case. Source of light (lantern) has been given and its place has also been specified in the site plan. There is recovery memo of lantern (Ext. Ka-2) and torches (Ext. Ka-3, Ka-18 and Ka-19) as well. It is a case of prompt FIR and investigation. Nothing contradictory or materially proving otherwise has come out from the cross-examination of the eyewitnesses or of the formal witnesses. At this stage, we may notice that Sri Harish Chandra Tiwari, learned Amicus Curiae has also appeared in the appeal of Rameshwar and during course of argument he very fairly admitted that all such arguments that have been raised before this Court were raised before the Co-ordinate Bench in the appeal of Rameshwar but did not find favour with the Hon'ble Co-ordinate Bench. We have also gone through the statement of present surviving appellant Rakshpal recorded under Section 313 CrPC. In his defence, in response to the several questions he had stated that he does not know anything about the questions asked whereas in respect of some other questions he has stated that allegation is false. In his defence, he has

stated that he has been falsely implicated simply because one Suresh has lodged one complaint against inspector Ram Charan, P.S. Jatra wherein he was one of the witnesses and therefore, the policeman was having enmity against him and for this reason the policeman has falsely implicated him. This reflects that he has not claimed any enmity against the informant or the deceased or his family members who were also witnesses of the incident. He has further admitted that even his statement has not been recorded in the alleged complaint. No further detail of such alleged complaint has come on record and therefore, this defence that he has been falsely implicated by the police moreso, when said inspector Ram Charan is not associated with the investigation of the present case is not substantiated. During course of arguments, learned Amicus Curiae Sri Tiwari has family conceded that the Court has powers to award punishment so awarded in the present case with the aid of Section 460 CrPC.

26. We, therefore, are of the opinion that there is no reason to differ with the findings recorded by the Co-ordinate Bench that there may be some minor and ignorable discrepancy in the prosecution case/evidence as pointed out by the learned Amicus Curiae, however, there appears to be no major, legal or actual error in the appreciation of evidence by the trial Court, which may prove fatal to the prosecution case. The judgement has been upheld by the Co-ordinate Bench and conviction of the appellant Rameshwar has been confirmed although because of his period of incarceration he has been granted relief to the sentence undergone. We find that in the present case the appellant Rakshpal was granted bail by this Court vide order dated 18.11.1983 and he is on bail since then.

27. Present appeal lacks merit and is accordingly dismissed. The conviction of surviving appellant Rakshpal is confirmed.

28. Since the surviving appellant Rakshpal is on bail, his bail bonds are cancelled and the sureties are discharged.

29. Lower court record be sent to the concerned Court.

30. Let a copy of this order be communicated to the lower Court concerned for compliance.

(2025) 2 ILRA 387
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.02.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Appeal No. 8466 of 2022

Mayank Parasari ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Pradeep Kumar

Counsel for the Respondent:
G.A.

Criminal Law - The Indian Evidence Act,1872 – Sections 145 & 155 - Code of Criminal Procedure - Section 162-Deceased died of firearm injury - Sec 145 & 155 of the Indian Evidence Act and Section 162 Cr.P.C., allow the party adversely affected by a deposition made at a trial- to confront the witness (making such deposition) with their previous St.ment including that recorded u/s 161 Cr.P.C.- deposition of D.W.-1 cannot be brushed aside-neither the prosecution could bring out any contradiction in the testimony of