

64. Let a copy of this order be communicated by the Registrar (Compliance) to the Court concerned for compliance and to proceed in accordance with law in case the accused fails to surrender.

(2025) 4 ILRA 827
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.04.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Criminal Appeal No. 345 of 1984

Dheer Singh & Anr. ... Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:

Sri Sumit Goyal, Sri Rajrshi Gupta, Sri Rijwan,
 Sri Dileep Kumar (Sr. Adv.)

Counsel for the Respondent:

D.G.A., Sri Anurag Pathak

(A) Criminal Law - Murder - Direct evidence - Appeal from conviction - Intentional homicide using tractor - Indian Penal Code, 1860 - Sections 302 & 302/34 - Crushed victim under tractor wheels - Evidence of injured and independent eyewitness corroborated by medical and expert evidence - Common intention - Related Witness - Medical Corroboration - *Motive established-Ocular vs. Medical evidence* - Direct and cogent ocular and medical evidence proved guilt beyond reasonable doubt - Injured witness testimony has higher evidentiary value - related witness not inherently unreliable - Conviction under Section 302 IPC can be sustained where the prosecution case is supported by reliable injured eyewitness testimony, promptly lodged FIR, and medical and site

inspection evidence. (Para - 4,12,31,35,43-47)

Litigation regarding passage (rasta) was ongoing between complainant and accused - confrontation occurred where Mangat (deceased) was assaulted - complainant was also injured - While returning from police station after lodging report, accused and Yashpal followed on a tractor - Accused drove the tractor over deceased on exhortation of Yashpal - resulting in his death - FIR lodged promptly and medical/post-mortem evidence corroborated ocular version.(Para - 4, 5, 6, 12, 13, 31)

HELD: - Appellant was found guilty of intentionally driving tractor over deceased after prior enmity and assault.

Ocular evidence of injured and independent witnesses corroborated by post-mortem and expert opinion. Conviction under Section 302 IPC upheld. Accused directed to surrender and serve out sentence. (Para - 44-48)

Criminal appeal dismissed. (E-7)

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 Punj., AIR 1965 SC 328
4. Appabhai & anr. Vs St. of Guj., AIR 1988 SC 696
5. St. of A.P. Vs S. Rayappa & ors., (2006) 4 SCC 512
6. Pulicherla Nagaraju @ Nagaraja Reddy Vs St. of A.P., (2006) 11 SCC 444
7. Satbir Singh & ors. Vs St. of U.P., (2009) 13 SCC 790
8. Jayabalan Vs U.T. of Pondicherry, 2010 (68) ACC 308 (SC)
9. Dharnidhar Vs St. of U.P., (2010) 7 SCC 759

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

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

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

13. Kaptan Singh Vs St. of UP, 2020 (1) ADJ 106 (DB)

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

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

1. Heard Shri Dilip Kumar, learned Senior Counsel assisted by Shri Rijwan, learned counsel for the sole surviving appellant Dheer Singh as well as Shri Ghanshyam Kumar, learned AGA for the State of U.P. and perused the record.

2. Present Criminal Appeal has been filed against the judgment and order dated 31.01.1984, passed by learned Sessions Judge, Saharanpur in Sessions Trial No.112 of 1982, convicting and sentencing the appellant no.1-Dheer Singh under section 302 IPC and appellant no.2 Yashpal under section 302/34 IPC to undergo imprisonment for life to both the appellants.

3. Vide order dated 31.07.2018 the appeal stood abated in respect of appellant no.2-Yashpal. Now the appeal is surviving only in respect of appellant no.1- Dheer Singh.

4. Prosecution story in brief is that a litigation was going on between the complainant and the accused Dheer Singh with regard to passage (Rasta). On 13.10.1981 at about 8 a.m. one Kantu,

Vikram, Dharam Pal and one Banwari, who is stated to be the brother-in-law of Dharam Pal, tried to block the said way, which was resented by the deceased Mangat, whereupon Kantu, father of the accused Dheer Singh, caught-hold of Mangat and Dharampal and Banwari assaulted him with Lathis and when the complainant-Ramphal tried to save him, Vikram assaulted him with 'Kulhari' and Dharam Pal assaulted him with a Lathi. Complainant and the deceased Mangat raised an alarm, which invited Megh Raj, Pahal Singh, Suresh and a number of other persons, who saved them. Complainant-Ramphal and the deceased Mangat came to their house and thereafter left for the Police Station to lodge the report. When they reached near the plot of Shyam Singh, at about 8-30 a.m. the accused Dheer Singh and Yashpal came there on a tractor, which was being driven by accused Dheer Singh. Accused Yashpal is said to have exhorted Dheer Singh to run the tractor over Mangat so that he may be taught a lesson for lodging the report. Accused Dheer Singh then drove the tractor towards Mangat who turned towards south towards the plot of Shyam Singh to save himself but Mangat was crushed by the tractor. The complainant claims to have saved himself by going towards the North of the road. Mangat was crushed by the tractor and died on the spot. This incident is said to have been seen by Pitamber and Sethpal. Complainant-Ramphal then went to village Khatkaheri, lying at a distance of half a kilometre from there and wrote the report. It was said that Prem Singh, brother of the complainant-Ramphal also reached the spot in a tractor and thereafter both of them went to the Police Station, Rampur, where the first information report was lodged at 9-30 a.m.

on the same day by Head Constable Tejpal Singh, who prepared the chik-report and registered the case in the General Diary.

5. Investigation of this case were entrusted to Sri Balkishore, Sub Inspector, who was present at the time the case was registered in the police station. He alongwith Head Constable-Tejpal Singh left for the scene of occurrence. He found the dead body of the deceased Mangat lying in the plot of Shyam Singh. He prepared the Panchayatnama (Ex. Ka-5), Diagram (Ex.Ka-6) and Challan of the dead body (Ex. Ka-7). He wrote a letter (Ex.Ka-8) for the post-mortem examination of the dead body and sent the same for post-mortem examination through Constables Daya Ram and Kartar Singh.

6. Dr. J. G. Garg conducted the post-mortem examination of the dead body. He found the following ante-mortem injuries on the dead body:-

i. Contusion 6 cm x 4 cm on back and right side of skull.

ii. Incised wound horizontal 2.5 cm long, cutting upper 1/3rd part of ear and separating it.

iii. Abraded contused area 9 cm x 7 cm on front of right shoulder.

iv. Contusion 7 cm x 2 cm on front of right upper arm, upper-half part and oblique.

v. Abraded contusion in an area of 4 cm x 3 cm on front of left shoulder.

vi. Contusion 8 cm x 1.5 cm vertical on left upper part, upper 1/4th part.

vii. Contusion 9 cm x 2 cm on left lower and outer quadrant.

viii. Contused area 12 cm x 5 cm on front of left thigh upper 1/2 part.

ix. Contusion 7 cm x 2 cm on front of right thigh horizontal and lower 1/3rd part.

x. Contused area 11 cm x 9 cm on front of right knee upper part and thigh about 2. cm below injury No.9.

xi. Incised wound 6 cm x 2 cm x muscle deep (2.5 cm deep) on medial aspect of right leg on upper 1/3rd part.

xii. Contused area 12 cm x 8 cm on front of left knee upper half and thigh lower part.

xiii. Abrasion 2.5 cm x 2 cm on front of left leg upper 1/3rd part.

7. In the opinion of Dr. J. G. Garg, the deceased Mangat had died as a result of the injuries sustained by him on his head.

8. Thereafter investigation was started by the Investigating Officer and after concluding the same a charge-sheet was submitted against the accused persons. The accused pleaded not guilty to the charge and denied to have murdered Mangat. They claim to have been falsely implicated due to enmity and Party-Bandi.

9. The prosecution has examined as many as 7 witnesses, namely, P.W.1- Ramphal, the complainant, and P.W.2- Pitamber Singh were the alleged eye-witnesses of the incident. P.W.3- Head Constable Tejpal has prepared the chick report and registered the case in the general diary. He has also proved the other relevant G.D. entries. P.W.4- Sri Balkishore has initially investigated the case. He has also proved the charge-sheet against the accused. P.W.5- Dr. J.G. Garg has conducted the post-mortem of the dead body of the deceased Mangat while P.W.6 Dr. Satish Kumar had medically examined Ramphal with regard to the incident which

is stated to have taken place at 8 a.m. P.W.7-Head Constable Sahukar Singh had conducted the technical examination of the tractor. Dr. Krishna Kumar Singhal Expert appeared as CW-1 to give expert medical opinion.

10. The prosecution has also submitted documentary evidence, which were marked as Exhibit Ka-1-Written Report, Exhibit Ka-2-First Information Report, Exhibit Ka-3-General Diary, Exhibit Ka-5-Panchayatnama, Exhibit Ka-6-Diagram, Exhibit Ka-7-Challan of the dead body, Exhibit Ka-8-Letter for the post mortem examination written by P.W.4, Exhibit Ka-9-Memo, Exhibit Ka-10-Recovery Memo of Cycle Atlas, Exhibit Ka-11-Site Plan Exhibit Ka-12-Chargesheet Mool, Exhibit Ka-13, Post Mortem Report, Exhibit Ka-14-Injury Report.

11. Undisputed fact is that accused-Dheer Singh was the nephew of the accused Yashpal. Both the accused and the complainant- Ramphal, who is son of the deceased- Mangat belong to one family. They were descendants of one Hoshiar Singh. Accused Yashpal was one of the nephews and accused Dheer Singh was one of the grandsons of deceased Mangat by family relationship. A litigation was also going on between the family members of the deceased and the accused with regard to passage (Rasta).

12. Before proceeding further it may be noted that in the first information report dated 13.10.1981 there is a reference of two incidents. One, that had taken place at about 8.00 am when Kantu, Vikram, Dharam Pal and one Banwari, who is stated to be the brother-in-law of Dharam Pal, tried to block the passage in respect whereof a dispute was pending

between the parties for quite sometime and litigation was also going on. Allegation is that in the aforesaid incident, Kantu, father of accused Dheer Singh, caught-hold of Mangat, father of the informant, and Dharampal and Banwari assaulted him with Lathis and when the complainant- Ramphal tried to save him, Vikram, who was holding axe in his hand, assaulted Ramphal on his shoulder and Dharam Pal also attacked him with a Lathi. On raising alarm certain persons came there and on seeing them accused persons ran away from the spot. The second incident mentioned in the first information report (with which we are concerned in the present appeal), is the incident that had taken place at 8.30 am when the informant Ramphal and his father-Mangat were going to police station for lodging the first information report about the incident that had taken place at 8.00 am and when they reached near the plot of Shyam Singh, accused Dheer Singh and Yashpal came there on a tractor, which was being driven by accused Dheer Singh. Mangat who was riding his bicycle was dashed from behind by the tractor and was crushed under the wheels of the tractor and died on the spot. In so far as the first incident which had allegedly taken place at 8.00 am, criminal prosecution on Kantu, Vikram, Dharam Pal, had taken place under section 323/34 and 324/34 IPC in Criminal Case No.2664 of 1999 wherein the examination in chief of PW-1, Ramphal who is the informant herein was recorded but thereafter he did not turn up for cross examination and no one appeared from the prosecution side on various dates fixed for recording of the prosecution evidence. In absence of prosecution evidence the accused persons were acquitted for want of prosecution by the

judgment and order dated 28.02.2001 passed by learned Additional Chief Judicial Magistrate, Saharanpur.

13. Shri Dilip Kumar, learned Senior Counsel has produced a certified copy of the aforesaid judgment obtained in the year 2001 itself, after perusal whereof the same was returned to learned Senior Counsel after retaining photocopy of the same. On the basis of said judgment he sought to submit that as the prosecution had not pressed the criminal prosecution in the alleged first incident that has taken place on the same day about half an hour prior to the present incident hence, the prosecution story in the present case is not worth belief.

14. On merit, learned Senior Counsel at the very outset, fairly admitted that the tractor dashed the deceased- Mangat is not in dispute. He, however, submits that the incident is purely accidental in nature and the surviving appellant Dheer Singh has been wrongly convicted and punished under Section 302 IPC. The judgment is contrary to law and is based on wholly incorrect appreciation of evidence on record.

15. Elaborating his argument, he has drawn the attention to the medical report, ante mortem injuries at page 77 of the paper book, which reflects that as many as 13 injuries were suffered by the deceased. It is submitted that only injury no.1 on the head of the deceased is fatal and that there was no crush injury on the dead body of the deceased, which clearly shows that the ocular evidence is incorrect and concocted and is not corroborated by the medical evidence. Attention in this regard was drawn to the statement of PW-1-Ramphal, wherein, he had stated that accused Dheer Singh was driving the tractor and accused

Yashpal (now deceased) was sitting on the mudguard of tractor and on the instigation of Yashpal, Dheer Singh speeded up the tractor and hit Mangat father of the complainant from behind. Mangat after being hit by the tractor fell down in the field of Shyam Singh thereafter accused Dheer Singh with the intention to kill Mangat ran over the tractor over him. Attention was also drawn to statement of Dr. J.G. Garg, who had conducted the post mortem to contend that as per his cross examination there was no crushing injury on the dead body of the deceased and in his opinion the deceased died because of head injury. He has further drawn the attention to the statement of PW-5 that in case the tractor ran over the deceased there is every possibility of fracture in his bone. It is submitted that although there were as many as 13 injuries, however, there was no fracture and cause of death as opined by the Doctor was head injury. The submission, therefore, is that the eye witness account of PW-1-Ramphal who is the son of the deceased is concocted and cannot form basis for conviction of the appellant.

16. He further contended that it is only for this reason initially the first information report was registered under section 304 IPC, which was subsequently converted under section 302 IPC. It was also submitted that even the expert opinion given by CW-1, Dr. Krishna Kumar Singhal reflects that no definite opinion about the deceased having been crushed under the wheels of the tractor was expressed by him, who has deposed as CW-1 after having been summoned by the court. It is highlighted that even the expert has not given any definite opinion as to whether if the deceased is crushed under the wheels of the tractor the bone may or may not get fractured. Submission,

therefore, is that although it is not proved that deceased died because of crushing under the wheels of the tractor. Submission, therefore, is that it is not in dispute that tractor dashed the deceased, however, injuries suffered by the deceased is only accidental in nature and no case of conviction under section 302 IPC is made out on perusal of the evidence on record. During course of argument learned Senior Counsel has taken us through the statement of the witnesses, post mortem report, statement of Doctor conducting the post mortem and the expert opinion report. The site plan was also placed before us. Argument was also made that first information report was not in existence when the panchnama was prepared by the Investigating Officer and therefore, the entire prosecution story is faulty and baseless.

17. Lastly, it is submitted that no case for conviction under section 302 IPC is made out on appreciation of evidence and although not admitted but at the worst an offence may have been committed under section 304 IPC. Submission, therefore, is that the sole surviving appellant Dheer Singh is liable to be acquitted from charges under section 302 IPC.

18. Per contra, Shri Ghanshyam Kumar, learned AGA for the State Respondents submits that in respect of the first incident admittedly criminal prosecution had taken place and it is quite apparent that the examination-in-chief of PW-1-Ramphal, who is the informant herein, had also been recorded in that criminal prosecution, however, acquittal was for want of prosecution as having been convicted of the charge under section 302 IPC the prosecution side did not pursue the criminal prosecution in respect of offence

under Section 323/34 and 324/34 IPC, therefore, acquittal in the aforesaid criminal prosecution is of no consequence. He further submitted that it is a case of prompt FIR. The second incident had taken place at 8.30 am whereas the first information report was lodged at 9.30 am on the same day and the distance of police station is 4 miles. He submits that the ocular evidence is intact to the effect that the deceased was dashed by the tractor, which was driven by accused, Dheer Singh. This fact is also admitted by learned Senior Counsel appearing for the appellant and further the ocular evidence is to the effect that when the deceased fell down in the field of Shyam Singh, the tractor was taken down towards him and he was crushed under the wheels of the tractor. Submission, therefore is that clearly there was intention to kill Mangat and incident is not at all accidental in nature. He submits that undisputedly, there was enmity between the parties and just half an hour before the present incident, first incident had taken place at about 8.00 am wherein the deceased and the informant both were beaten by the accused persons who are directly related to the present accused. It was also pointed out one proceeding under section 133 Cr.P.C. was also pending between the parties.

19. By drawing attention to Post Mortem Report, statement of PW-5-J.G. Garg, statement of expert, CW-1-Dr. Krishna Kumar Singhal he submitted that medical evidence clearly supports the ocular version. The doctor who had conducted the post mortem had clearly stated that injuries could have been caused by crushing under the wheels of the tractor. The expert report is also not contrary to the medical evidence. He submitted that in any case the eye-witness account will have preference over the medical report and the

informant is the injured witness who had suffered injuries in the first incident which had taken place just half an hour before the present incident and it was also submitted that Pitambar Singh, PW-2 is independent eye witness and the presence of PW-1 and PW-2 is not disputed. It was also pointed out that to satisfy itself the learned Sessions Judge had conducted spot inspection and found the site plan prepared by the Investigating Officer to be in order and proper and to remove any doubt the court had also called for expert opinion and expert-Dr. Krishna Kumar Singhal had appeared and submitted his report and proved his report by appearing him as CW-1 and his opinion to the effect that the said injury could have been caused by crushing under wheels of the tractor. Submission, therefore, is that it clearly proved beyond any shadow of doubt that there was an intention to kill the deceased and offence have committed under section 302 IPC. The surviving appellant Dheer Singh himself was driving the tractor and, therefore, there is no illegality or infirmity in the judgment of conviction.

20. We have considered the rival submissions and perused the records.

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

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

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

(Emphasis supplied)

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

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

the sole ground that it is partisan would invariably lead to failure of justice."

(Emphasis supplied)

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

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

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

"11.....Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the

prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner....."

(Emphasis supplied)

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

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

(Emphasis supplied)

27. In **Pulicherla Nagaraju @ Nagaraja Reddy v. State of AP**, (2006) 11

SCC 444, the Hon'ble Apex Court in paragraph 16 has held as under:

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

(Emphasis supplied)

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

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

(Emphasis supplied)

29. In **Jayabalan vs. U.T. of Pondicherry**, 2010 (68) ACC 308 (SC),

the Hon'ble Apex Court in paragraph 21 held as under:

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

(Emphasis supplied)

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

"12. There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of Jayabalan v. U.T. of Pondicherry [(2010)1 SCC 199], this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person

closely related to the victim. The Court held as under:

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

.....

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

14. In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their

statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then we see no reason why the statement of so called 'interested witnesses' cannot be relied upon by the Court."

(Emphasis supplied)

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

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

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

(Emphasis supplied)

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

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

29.1 While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly

keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

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

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

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

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

29.6. By and large a witness cannot be expected to possess a

photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

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

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

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

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

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

29.12. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up

details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

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

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

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

inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.”

(Emphasis supplied)

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

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

(Emphasis supplied)

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

“20. Close scrutiny of the evidence shows that the statements of (PW-1) Vimla Devi and (PW-2) Ram Singar

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

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is

generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

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

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v.*

State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

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

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

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

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

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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."

(Emphasis supplied)

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

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

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

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

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

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

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

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

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

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

(Emphasis supplied)

36. On perusal of records, we find that it is not in dispute that prior to the present incident that had taken place at 8.30 am, the first incident had taken place at 8.00 am, wherein Mangat (now deceased) and his son Ramphal, who is the informant herein, had suffered injuries. The spot of both the incident is different. The present incident had taken place when the injured father and son were going to police station for reporting the incident. Accused Dheer Singh and Yashpal Singh, who were directly related to the accused of the first incident came there on tractor, and Dheer Singh while driving tractor dashed the deceased from behind, who was riding his bicycle. Father of the informant fell down in the field of Shyam Singh which is about

2-3 feet deep. We may take note of the fact that learned Sessions judge has conducted spot inspection on 17.08.1983 and found that the Site Plan prepared by the Investigating Officer is in order and correct. To remove his doubt after going through the medical evidence and assertions and arguments raised before him he had called for report from medical expert Doctor Krishna Kumar Singhal, who has submitted his report and also appeared as CW-1 and proved his report.

37. At this stage, we may also take note of the judgment passed in respect of the first incident (taken place at 8.00 am), in which Kantu his son Vikram and cousin Dharmpal were involved, whereas in the present case Dheer Singh, the appellant herein who is son of Kantu and Yashpal (now deceased), brother of Dharmpal are accused. Allegation is that when the accused of first incident assaulted the deceased and the informant with lathi and kulhari they were going to report the first incident to the police station. Accused Dheer Singh and Yashpal Singh came to the spot on tractor. Tractor was being driven by the appellant Dheer Singh, who dashed Mangat, father of the informant from behind. At this stage, we may also take note of the fact that criminal prosecution had taken place in respect of the first incident as well. It is also not in dispute that the informant was also injured in the first incident and was also medically examined. The injury report is also on record, therefore, he is natural and also injured eye witness of the incident whose presence on the spot could not be disputed or disproved by the defence. Further, there is an independent eye witness, namely, PW-2, Pitambar Singh, whose name has been mentioned in the first information report itself which was promptly lodged within

one hour of the second incident, which had taken place when both injured father and son were going to report the first incident (at 8.00 am) to the police and the distance of police station was about four miles. Therefore, the first information report was lodged promptly and even the defence has failed to dislodge the presence of injured witness.

38. We have also gone through the statements and the cross-examinations of witnesses carefully. In so far as the medical evidence is concerned, we find that the stand taken by the prosecution regarding the manner in which the incident had taken place could not be dislodged as both PW-5-Dr. J.G. Garg and expert CW-1-Dr. Krishna Kumar Singhal remained intact. In so far as the ocular evidence is concerned, PW-1-Ramphal had clearly proved the pending litigation under section 133 Cr.P.C. that the dispute was in respect of raising wall on a passage against which the deceased side was granted injunction in civil proceeding. Both eye witnesses PW-1-Ramphal and PW-2-Pitambar Singh have also proved the site where the incident had taken place and clearly stated that the field of Shyam Singh is about 2-3 feet deep from the road as the same was used for brick kiln and that the tractor can easily go into that. The learned Sessions Judge conducted the spot inspection and the site plan was found to be correctly prepared.

39. Learned Senior Counsel for the accused-appellant had argued before this Court that in the first incident the deceased had not suffered any bleeding injury and it is only in the second incident he has suffered bleeding injury and had argued that such injuries could not have been caused by crushing under the wheels of tractor as PW-1 has stated that after bicycle

having been dashed by the tractor the deceased fell in the field of Shyam Singh and that as per the post mortem report and PW-5-Dr. J.G. Garg there was no crushing injury and the cause of death is head injury.

40. To examine the substance in the aforesaid argument of learned Senior Counsel coupled with the statement of PW-1, we have seen the ante mortem injuries suffered by the deceased. PW-5- Dr. J.G. Garg, who had conducted the post mortem of the deceased, had clearly stated that the deceased was bleeding from mouth, nose and both the ears and the fatal injury, according to him, was head injury. He clearly opined that the injuries suffered by the deceased could have been suffered by having been dashed by the tractor and by crushing under the wheels of the tractor as well. In his cross examination, he has only opined that there is possibility of bone fracture when crushed under the tractor wheels but no definite opinion was expressed by him. Simultaneously, he has also noticed the fact that cloth (kurta) of the deceased was having mud on it. We have also carefully gone through the report of expert CW-1- Dr. Krishna Kumar Singhal, who has also clearly recorded that the injuries could have been caused on the body of the deceased which was lying on the soft soil of paddy field by crushing under the front wheel of tractor without there being any fracture. He had also opined that if the deceased is crushed under the rear wheel of the tractor the bone may or may not be fractured. He had also opined that sharp edged injuries could have been caused because of material/garbage that may be lying in the field. He had further opined that 13 injuries that were suffered by the deceased could have been suffered by him; firstly, because of beating by lathi and thereafter, having been dashed his

bicycle by the tractor and falling on the ground and thereafter by crushing under the wheels of tractor as reflected in the post mortem report.

41. On cross-examination CW-1-Expert had opined that lacerated wound could give the impression of an incised wound if a magnifying glass was not used at the time of the examination of those injures. In his cross-examination he had proved and explained his report in respect of injury no.2 and 11. He further states that he had conducted experiment on naked bone but the flesh on the bone protects the bone.

42. We, at this stage, cannot ignore the fact that the deceased was a farmer and was living in rural area and under normal living status and circumstances must be having robust health and as the incident had taken place on the soft soil, he may not have suffered bone fracture.

43. We therefore, find nothing so exceptional in the medical report; statement of PW-5-Dr. J.G. Garg, who conducted the post-mortem; expert opinion of CW-1-Dr. Krishna Kumar Singhal; ocular evidence of two eye witnesses, namely, PW-1-Ramphal and PW-2-Pitamber Singh, out of which one is naturally present on the spot and was also injured just half an hour before the incident to reject the prosecution case. As held by the Hon'ble Apex Court as referred above, testimony of PW-1-Ramphal cannot be rejected merely because he is a related witness. He is a natural injured witness present on the spot. The other eye witness, PW-2-Pitambar Singh is the independent witness, whose name figured in the first information report, which was lodged very promptly within an hour from the second incident whereas the distance of police

station was about four kilometres. PW-2 has no reason to falsely implicate the accused as the defence has not given any evidence which may even suggest any interest contrary to each other for which PW-2 may be interested in their conviction.

44. A perusal of the site plan, which was duly verified by the presiding officer himself by making spot inspection, also clearly corroborated the eye witnesses account of two injured witnesses. The site plan clearly reflected dotted line of the paddy crops and there were marks of the tyres of the tractor and as the direction in which the accused were proceeding was too high, the tractor was reversed and they ran away from the spot. Ocular evidence is to the effect that after the deceased, who was riding his bicycle was dashed from behind fell down in the field of Shyam Singh which is about 2-3 feet deep from the road, the tractor was also taken down in the field of Shyam Singh and was reversed. Therefore, we find that the ocular evidence proved beyond doubt that the tractor was taken down in the field of Shyam Singh where the deceased had fallen down after being hit by the tractor from behind and was deliberately crushed under the wheels of the tractor.

45. Although it is a case of direct evidence and motive takes back stage, still strong motive is also present and proved in the present case.

46. In first incident, the father and the son both were injured in which different accused persons, namely Kantu, Vikram, Dharampal and Banwari were involved. In the second incident, accused Dheer Singh, son of Kantu, was involved alongwith other persons, therefore, there was every motive and intention to prevent the deceased and

his son from lodging police report of the first incident and co-accused Yashpal had played the role of exhortation which also could not be dislodged by the defence side. Thus the accused has clearly committed culpable homicide amounting to murder punished under section 302 IPC and that the intention to kill the deceased was proved beyond any shadow of doubt by leading ocular evidence of PW-1 and PW-2, medical evidence and the expert opinion.

47. At this stage, we have also perused the trial court judgment and find that the reasoning given by the trial court is perfectly just and proper and we, on our own appreciation of evidence on record, find no merit in the present appeal and the same is accordingly dismissed. The conviction of surviving appellant Dheer Singh is confirmed.

48. While reserving the order we have stayed the execution of the Non Bailable Warrants issued against the appellant- Dheer Singh vide order dated 20.03.2025. Since the appeal has been dismissed and conviction and sentence awarded by the trial court has been confirmed by us, his bail bonds are cancelled and sureties are discharged. The Chief Judicial Magistrate, Saharanpur is directed to take the appellant Dheer Singh into custody and send him to jail to serve out the sentence awarded by the trial court and confirmed by us.

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

50. The Chief Judicial Magistrate, Saharanpur is also directed to send his

compliance report within one month to this Court.

51. Lower court record be sent to the concerned Court forthwith.

(2025) 4 ILRA 845
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.04.2025

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Criminal Appeal No. 442 of 2013
 And Crl. Appl. 772 of 2013 & 789 of 2013

Ibrahim		...Appellant
	Versus	
State of U.P.		...Respondent

Counsel for the Appellant:

Sri Amit Daga, Sri Yogesh Srivastava, Sri Ajay Kumar Mishra

Counsel for the Respondent:

Govt. Advocate

Criminal Law - Code of Criminal Procedure, 1973 - Section 374 - The Evidence Act, 1872 - Section 106-Conviction

under Sections 147, 302 read with Section 149 of IPC and sentence of life imprisonment by the Trial Court---Burden to show as to what happened after the accused persons taken the deceased to their house and subsequently the dead bodies were recovered from the house of the appellants would shift on the accused as these facts were only within the knowledge of accused and they failed to discharge the burden u/s 106 of the Evidence Act---There was no question from the side of the defence as to whether it is a case of strangulation or hanging. In the post-mortem report, both hyoid bone were fractured and the defence has admitted that both the deceased were murdered---It is established law that a man can tell a lie but circumstances cannot. Even the witnesses who later on turned hostile have admitted that both