

(2025) 1 ILRA 74
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.01.2025

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE MOHD. FAIZ ALAM KHAN, J.

Criminal Appeal No. 351 of 2005
And
Criminal Appeal No. 532 of 2005
And
Criminal Appeal No. 402 of 2005

Annu Khatik & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:

C.L.Yadav, A A Zaidi, Bipin Kumar Rai,
Mohd. Shahnawaz Khan, Nagendra Kumar
Dwivedi, P.K. Mishra, R K Dwivedi,
S.K.Srivastava, Sagar Singh, Shatrughan
Yadav, Shri Ram Maurya

Counsel for the Respondent:

Govt. Advocate

A. Criminal Law - Murder - Indian Penal Code, 1860 - Section 302 - Indian Evidence Act, 1872 - Section 8 - Motive - In cases based on the direct evidence of witnesses, the same should be decided on the basis of the quality and probative value of such eye-witnesses. Where the direct evidence is worthy of credence and can be believed, the question of motive becomes more or less academic. Motive does not have a major role to play in cases based on eye-witness account of the incident. It assumes importance only in cases that rest on circumstantial evidence. Mere absence of proof of motive for the commission of a crime cannot be a ground to presume the innocence of an accused if his involvement is otherwise established. Prosecution is not obliged to prove those facts which are either impossible to prove or are locked up in the mind of the

accused as to what made them commit the crime. In the instant case, the family of the deceased and the accused were having enmity regarding a land. The accused had made hindrance in the access of the informant to the said land, and altercations had occurred many times regarding the same. (Paras 28, 29)

B. Criminal Law - Credibility of Related Witnesses - Natural witness - Indian Evidence Act, 1872 - Sections 3, 118 & 134 - Merely because the witnesses are close relatives of the victim, their testimonies cannot be discarded. Relationship with one of the parties is not a factor that affects the credibility of a witness. A relative would not conceal the actual culprit and make allegations against an innocent person. If the prosecution witnesses, who claim to have seen the incident, are natural witnesses and their presence at the place of occurrence is natural and cannot be doubted, then their relationship with the deceased or the informant is not of much importance. However, the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible. (Para 39)

C. Criminal Law - Murder - Indian Evidence Act, 1872 - Independent witness - If an independent witness has not been produced by the prosecution, the same may not be sufficient to discard the evidence of other prosecution witnesses, who in the opinion of the Court, appears to be the natural witnesses of the incident. (Para 43)

D. Criminal Law - Murder - Indian Evidence Act, 1872 - Credibility of Witnesses contradictions, embellishments in the evidence of the prosecution witnesses - Court must bear in mind the set up and the circumstances in which the crime is committed, the quality of evidence, nature and temperament of the witnesses, the level of understanding and power of perception and examination of individual witness and probability in

ordinary course of nature about the act complained of as might have been witnessed by the witnesses. Endeavour must be to find out the truth from the evidence on record. At the same time, it must not be forgotten that there cannot be a prosecution case with a cast iron perfection in all respects. Obligations lies upon the courts to analyze, sift and assess the evidence on record, with reference to trustworthiness and truthfulness of the prosecution case, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the evidence without being obsessed by an air of total suspicion about the case of the prosecution. The contradictions, infirmities, that might have been pointed out in prosecution case must be assessed with the yardsticks of probabilities of the existence of a fact or not. Unless, infirmities and contradictions are of such nature as to undermine the substratum of the evidence and found to be tainted to the core of the prosecution case, over emphasis may not be applied to such contradictions and infirmities. To judge the credibility of the evidence of witness, one has to look to his evidence, and if any discrepancies found in the ocular account of the witnesses not affecting the root of the say of the witness, the witness may not be labeled as not credit worthy. At the same time, seeking rule of corroboration, mathematical niceties may not be expected. The account of the witnesses must be read as a whole and once the impression is formed that the account contains ring of truth, jettisoning whole of the evidence would amount to doing injustice to a reliable and honest witness. Even honest and truthful witnesses may differ in some details, which may not be related to the main cause of prosecution case, and their evidence therefore must be appreciated keeping in mind the power of observation, retention and reproduction of the same by the witness to be judged by human standard. (Par 46)

E. Criminal Law - Murder - Indian Penal Code, 1860 - Section 302 - Code of Criminal Procedure, 1973 - Section 157 -

Where the F.I.R. is recorded without delay and investigation has started on its basis, delay in dispatch of its copy to the Magistrate cannot, by itself, justify a conclusion that the investigation was tainted. Delay under Section 157 Cr.P.C. for doubting the authenticity of the F.I.R. is not just any delay but only extraordinary and unexplained delay. Delay which is properly explained cannot be said to be fatal to the prosecution. In the instant case, the deceased, who was injured at that time, was first taken to the police station and thereafter to the District Hospital, Faizabad. Only after that, P.W.-1 again went to the police station and lodged the F.I.R. The same cannot be termed either ante-timed or lodged with delay. The prosecution has explained the little delay which occurred in lodging of the F.I.R. properly and with documentation. The Court held that the prosecution's case could not be doubted only on this score. (Paras 32, 33, 34)

F. Criminal Law – Murder – Indian Penal Code, 1860 – Sections 34 & 149 – Constructive Criminality – Common Intention and Common Object. Sections 34 & 149 of the IPC both deal with the concept of constructive criminality, i.e., vicarious liability of one person for the acts of others. However, a clear distinction exists between common intention u/s 34 and common object u/s 149. Common intention requires a pre-arranged plan and concerted action, supported by evidence of prior meeting of minds. In contrast, common object under Section 149 does not necessitate prior concert or preplanning. While Section 34 requires active participation in the crime, especially where physical violence is involved, Section 149 imposes liability merely by virtue of membership in an unlawful assembly sharing a common object, even without active participation. Existence of common intention must be established by the prosecution with credible evidence. Notably, Section 34 is not attracted by mere common intention unless some act is done in furtherance of that intention. In cases where fewer than

five accused are finally convicted under Section 149 due to acquittals, the Court may invoke Section 34 instead, depending on the facts. However, substitution of Section 34 for Section 149 should not prejudice the accused unless the common object necessarily involves a common intention. In the present case the evidence established that the three appellants arrived together, assaulted the deceased inside his house, dragged him outside and assaulted him again in front of the temple, and then fled together. Their coordinated actions demonstrated a pre-designed plan and shared common intention. Therefore, they were rightly convicted under Section 34 IPC in place of Section 149 IPC. (Para 64)

Dismissed. (E-5)

List of Cases cited:

1. Marudanal Augusti Vs St. of Kerala; 1980 SCC (Cri) 985
2. Ishwar Singh Vs The St. of U.P. AIR 1976 SC 2423
3. Lakshmi Singh & ors. etc. vs St. of Bihar AIR 1976 SC 2263
4. Arjun Marik Vs St. of Bihar reported in MANU/SC/1037/1994 : 1994 Supp (2) SCC 372
5. Sukhram Vs St. of Mah. MANU/SC/3346/2007 : (2007) 7 SCC 502
6. Sunil Clifford Daniel (Dr.) Vs St. of Pun. MANU/SC/0740/2012 : (2012) 8 SCALE 670
7. Pannayar Vs St. of T.N. by Inspector of Police MANU/SC/1462/2009 : (2009) 9 SCC 152
8. Molu & ors. Vs St. of Har. MANU/SC/0143/1976 : AIR 1976 SUPREME COURT 2499
9. Praful Sudhakar Parab Vs St. of Mah., MANU/SC/0689/2016 : AIR 2016 SUPREME COURT 3107
10. Ishwar Singh & ors. Vs St. of U.P. MANU/SC/0120/1976 : AIR 1976 SC 2423
11. Anil Rai Vs St. of Bihar, MANU/SC/1586/2001
12. Sucha Singh & ors. Vs St. of Pun., MANU/SC/0527/2003
13. Dharnidhar & ors. Vs St. of U.P. & ors., MANU/SC/0480/2010
14. Gangabhavani Vs Rayapati Venkat Reddy & ors. (04.09.2013 - SC) : MANU/SC/0897/2013
15. Bhagaloo Lodh & ors. Vs St. of U.P. reported in MANU/SC/0700/2011
16. Bharwada Bhoginbhai Hirjibhai Vs St. of Guj. as reported in AIR 1983, 753, MANU/SC/0090/1983
17. Mahendran & ors. Vs St. of T.N. and Ors. Reported in MANU/SC/0257/2019
18. Baljinder Singh & ors. Vs St. of Pun., MANU/SC/1063/2024
19. Madhusudan & ors. Vs St. Of M.P., Criminal Appeal No.1509 of 2010 dt 05.05.2024

(Delivered by Hon'ble Mohd. Faiz Alam Khan, J.)

1. Heard Shri Rajesh Kumar Dwivedi, learned Amicus for appellant- Chunni Lal and Raj Kumar Yadav, who have been released from the prison after remission has been granted to them in Criminal Appeal Nos. 351 of 2005 and 532 of 2005, Shri Chandra Shekher Pandey for appellant- Sanjay Yadav in Criminal Appeal No. 402 of 2005 and Shri Bipin Kumar Rai for appellant- Annu Khatik and Shri A.A. Zaidi for appellant- Munna Khatik in Criminal Appeal No. 351 of 2005 and Shri Prabhat Adhulia, learned A.G.A. for the State and perused the record.

2. All these appeals have been preferred by the convict appellants against the same impugned judgment and order and thus for the sake of convenience all these three appeals are being disposed off by this common judgment.

3. These criminal appeals have been preferred by appellants- Annu Khatik, Munna Khatik and Chunnilal in Criminal Appeal No.351 of 2005, appellant- Raj Kumar Yadav in Criminal Appeal No. 532 of 2005 appellant- Sanjay Yadav in Criminal Appeal No. 402 of 2005, under Section 374(2) Cr.P.C. against the judgment and order dated 18.02.2005 passed by Special Judge (S.C./S.T. Act), Faizabad convicting and sentencing the appellants under Sections 147 IPC for one year rigorous imprisonment each, under Section 452 IPC for three years rigorous imprisonment with fine of Rs. 1000/- each and under Section 302 read with Section 149 IPC for life imprisonment with fine of Rs. 500/- each, the appellant no.3/Chunni Lal in Criminal Appeal No. 351 of 2005 under Section 3(1)(X) SC/ST Act for two years rigorous imprisonment with fine of Rs. 1000/- and in default of payment of fine the rigorous imprisonment for one year year each, acquitting the appellants no.1 and 2 under Section 3(1)(X) of SC/ST Act and acquitting the appellants under Sections 504 and 506 IPC each in S.T. No. 400/1996, arising out of Case Crime No. 1747/1991, under Sections 147, 452, 506/149, 504/149, 302/149 IPC and 3(1) (X) SC/ST Act, Police Station Kotwali Nagar, District Faizabad.

4. Brief facts necessary for disposal of the instant appeals are in terms that the informant Nirmala lodged a First Information Report at Police Station Kotwali Nagar Faizabad on 25.11.1991 at 22.30 hours by moving a written application alleging therein that she is resident of Mohalla Khurdabad

and on 25.11.1991 at about 6.00 p.m. accused persons Raj Kumar Yadav, Chunnilal Kahar, Sanjay, Munna, Annu and others came to her house and called her son Raju and when she replied that he is coming in a while, accused Raj Kumar entered into her house, hurling filthy abuses and assaulted her son and on an alarm raised by her, her son Putti Lal and many others persons of the locality arrived and at that moment accused persons dragged her son outside the house and started assaulting him with lathi and hockey on his head with the intention to kill him and thinking that he is died they all fled away. The head of her son was fractured from many places, he became unconscious. It is also stated in the end that she had admitted her son in a hospital.

5. On the basis of above written information an FIR at case Crime No. 1747 of 1991, under Sections 147, 452, 323, 308, 504, 506 IPC and 3(1) (X) of the SC/ST Act was registered and the investigation was entrusted to Sub Inspector Shri Santosh Kumar Yadav.

6. The injured Raju was taken to District Hospital Faizabad and following injuries were found on his person by Dr. K.N. Kaushal:-

"(i) Lacerated wound on left side of skull 2 c.m.x 5 c.m. x muscle deep 4 c.m. above left eye brow bleeding present.

(ii) Lacerated wound 4 c.m. x 5 c.m. bone deep on the left side, 1 c.m. above injury no.1, bleeding present.

(iii) Lacerated wound 7c.m. x 5 c.m. x bone deep on right side of skull 6 c.m. of above right eye brow.

(iv) Lacerated wound 1.5 c.m. x 0.5 c.m. muscle deep on right side of forehead 3.5 c.m. above eye brow.

(v) *Lacerated wound 2.5 c.m. x 0.5 c.m. bone deep on right side of head 2 c.m. above the injury no.2.*

(vi) *Lacerated wound 3.5 x 1.0 c.m. x bone deep on right side of head 9 c.m. above right eye bleeding present.*

(vii) *Contused swelling 2x1 c.m. on middle of forehead 3 c.m. above bridge of nose.*

(viii) *Abrasion 1.5 c.m. x 1 c.m. on the bridge of the nose."*

All these injuries were fresh and kept under observation x-ray of skull was advised and in the opinion of the doctor these injuries had been caused by hard and blunt object. The injured was found conscious and he was bleeding from his injuries.

7. The deceased died during the course of treatment and as Sub Inspector Santosh Kumar Yadav was not present at the Police Station, Sub Inspector of Police Indra Prakash Singh proceeded to spot and prepared inquest report of the deceased and also necessary papers for the purpose of postmortem and forwarded the dead body of the deceased for the purpose of postmortem.

8. The postmortem on the dead body of the deceased was conducted by Dr. Santosh Kumar Singh on 27.11.1991 at 4.15 p.m. and following injuries were found on the dead body of the deceased:-

"(i) Stitched wound 2 c.m. long 1 stitched present on the left side of the head, 4 c.m. above left eye.

(ii) Stitched wound 7 c.m. long 4 stitches present at right side of skull, 6 c.m. above of right eye brow.

(iii) Stitched wound 4 c.m. long 2 stitches present left side of the head, 1 c.m. above injury no.1.

(iv) Stitched wound 10 c.m. long 5 stitches present on right side of forehead 4 c.m. above eye brow.

(v) Stitched wound 2.5 c.m. long 1 stitch present on right side of skull, c c.m. above injury no.3.

(vi) Stitched wound 3.5 c.m. long 2 stitches present right side of skull.

(viii) contusion 2 c.m. x 1 c.m. on middle of nose.

viii) Abrasion 1.5 c.m. x 0.1 c.m. on the bride of the nose.

(ix) Black discoloration of right eye."

9. On internal examination parietal, occipital and frontal bones of the skull were found fractured. The membranes were found lacerated and 3 ounce clotted blood was also found in the skull and 4 ounce liquid has been found abdominal cavity and as per the opinion of the doctor the death of the deceased had occurred due to shock on account of 'ante- mortem' injuries.

10. The second Investigating Officer of the case Sub-Inspector Pannalal prepared site plan of the spot and also recorded the statement of the witnesses and thereafter the investigation of the case was transferred to Sub Inspector Santosh Kumar Yadav who also recorded the statement of various witnesses and also moved an application for recording the statement of the witnesses, namely, Nirmala, Putti Lal and Tara under Section 164 Cr.P.C. and after finding sufficient material/ evidence, he forwarded charge sheet against all the accused persons except Munna Khatik under Sections 147, 149, 452, 504, 506, 302 IPC and Section 3(1) (X) of the SC/ST Act. The Investigating Officer has submitted a separate charge sheet under the same penal section against Munna Khatik separately.

11. The trial court framed charges against the accused persons under Sections 147, 452, 506/149, 504/149, 302/149 IPC and under Section 3(1) (X) of the SC/ST Act. All accused persons denied the charges and claimed trial.

12. Prosecution in order to prove its case presented before the trial court P.W.1- Nirmala, P.W.2- Putti Lal, P.W.3- Sub Inspector Santosh Kumar Yadav, P.W.4- Indra Prakash Singh, P.W.5- Dr. K.N. Kaushal, P.W.6- Dr. Santosh Kumar Singh.

13. **P.W.1- Nirmala** is the informant of the instant case. She stated before the trial court that on the relevant day and time there was a feast in the house of accused persons- Annu Khatik and Munna Khatik as a bride had arrived in their house and accused persons Raj Kumar Singh and Chunni Lal have arrived in their house to participate in the ceremony and at about 6-7 p.m. when she was at her house the accused persons arrived and asked about her son Raju and when she informed that Raju is inside the house, they entered the house and dragged Raju out of the house and took him towards the temple and assaulted him brutally and thinking that he has died they left him there. She also stated that the deceased was assaulted by Raj Kumar and Sanjay with 'lathi', while Chunni Lal was carrying a 'hockey' and Munna and Annu were carrying 'bottles' and they assaulted the deceased with the same. She also stated to have taken the injured/deceased to the Police Station and also that the police personnel advised her to take the injured to the hospital and she after admitting her son in the hospital came back to the police station and had given written application on the basis of which the FIR was lodged.

14. **P.W.2- Putti Lal** is claiming himself to be the eye witness of the crime

and he has stated that at the relevant day at about 6.00 p.m. when he was at his house the accused persons Raj Kumar, Chunni Lal and Sanjay arrived and asked about Raju and when his mother informed that he is in the house, accused persons Raj Kumar and Chunni Lal with 'lathi' and Sanjay Yadav with 'hockey' assaulted Raju in his house and dragged him out of his house and on hue and cry made by Raju, Annu and Munna and many other persons assembled and after seeing them the accused persons fled away. He also stated that injured Raju has sustained many injuries on his head and was taken to Kotwali from where they were directed to take the injured to the hospital and to lodge the report thereafter.

15. **P.W.3- Sub Inspector Santosh Kumar Yadav** is the second Investigating Officer who has submitted the charge sheet against the accused persons under the relevant penal sections and he stated to have recorded the statement of many witnesses and to have submitted charge sheet against the accused persons, Sanjay Yadav, Chunni Lal, Annu Khatik and Raj Kumar Yadav and also against Munna Khatik separately. He has also proved the Chick FIR as well as the copy of the General Diary by stating that the same was written by Constable Ram Lakhan and he is conversant with his hand writing as they have remained posted together at a police station.

16. **P.W.4- Indra Prakash Singh** has stated to have prepared the inquest report of the deceased and necessary papers for the postmortem.

17. **P.W.5- Dr. K.N. Kaushal** is stated to have examined the injuries of the injured Raju at 8.35 p.m. on 25.11.1991 and the description of his injury has been

given at the appropriate place in this jugemnt.

18. **P.W.6-Dr. Santosh Kumar Singh** has stated to have prepared the postmortem report of the deceased and proved the same as Ext. Ka-16 and the injuries noted by him as well as internal examination conducted by him has been recorded in the postmortem report, which has been mentioned at an appropriate place in this judgment herein-before. He has also stated that the death of the deceased, in his opinion, was caused by 'shock' as a result of ante-mortem injuries.

19. Apart from the above mentioned oral evidence the prosecution has also relied on various documentary evidence e.g. written information, Chick FIR, G.D. Kayami, Site Plan, injury report of the deceased Raju who at that point of time was alive, postmortem report, necessary papers prepared for the purpose of sending the body to postmortem, inquest report and charge sheets.

20. After conclusion of the evidence of the prosecution, the statement of the accused persons under Section 313 of the Cr.P.C. was recorded wherein they denied all the evidence produced by the prosecution and further stated that the deceased was a person of bad character and also a police informer and he has been done to death by unknown persons in the darkness of night and on the basis of enmity a false case has been framed against the accused persons.

21. The trial court after appreciating the evidence available on record found the case of the prosecution proved against the accused persons beyond reasonable doubt and convicted all of them under Section

147 IPC, 452 IPC and 302 IPC read with Section 149 IPC and 3(1)(X) of the SC/ST Act and sentenced accordingly. However, all the accused persons were acquitted of the charges framed against them under Sections 504, 506 IPC.

22. Learned counsels for the appellants while challenging the impugned judgment and order of the trial court, submitted that the trial court has committed manifest illegality in appreciating the evidence available on record and has passed the judgment of conviction only on the basis of '*surmises and conjectures*'. It is submitted that the F.I.R. is doubtful as P.W.-1/Nirmala and P.W.-2/Putti Lal both have stated that they had first gone to the police station and from there they were directed to take the injured to the hospital and after admitting the injured in the hospital P.W.-1/Nirmala came back to the police station for the purpose of lodging the F.I.R. while there is no G.D. entry with regard to the same and the F.I.R. appears to have been interpolated as it has been written in that F.I.R. with a different ink that the injured has been admitted in the hospital.

It is further submitted that the case of the prosecution is that the deceased was dragged from his house upto the temple, in front of which he was done to death, but there was no dragging marks found by the investigating officer and even no blood was found by the investigating officer on spot.

It is also submitted that it is admitted to the prosecution that the injured was alive and had died during the course of treatment after his admission in the hospital, however, no attempt has been made to record his dying declaration so the truth may surface.

It is next submitted that there is a huge delay in lodging the F.I.R. and the same has not been explained and a copy of the F.I.R. was also not forwarded to the magistrate, as required under Section 157 of the Cr.P.C. and no specific weapon has been assigned to any particular accused person, to have been used in the assault.

23. Shri Chandra Shekhar Pandey, learned counsel appearing for the convict-Sanjay Yadav, vehemently submits that the improbability in story of the prosecution would be evident from the fact that though father of the deceased is alive and was also present in the village but he was kept completely out of the scene as he has neither taken the injured to the hospital nor he had gone with his wife, namely, P.W.-1/Nirmala to the police station or hospital and this itself speaks volumes about the falsity of the case of the prosecution as when he was present at the time of inquest why he did not go to the hospital or police station.

It is further submitted that even after lodging of the F.I.R. the investigating officer has not visited the injured person for the purpose of recording of his statement under Section 161 Cr.P.C. It is also highlighted that it appears to be an admitted fact that on the day of the incident there was a ceremony in the house of Munna Khatik and Annu Khatik as the bride of Annu Khatik had arrived in his house and the other three accused persons, namely, Raj Kumar Yadav, Chunni Lal Yadav and Sanjay Kumar Yadav had come as guests in the dinner/get-together and, therefore, there was no opportunity available to them to have participated in the 'marpeet' without there being any reason and it is not clear from the evidence of the prosecution witnesses as to why the accused persons

would assault the deceased on that day when there is a feast organized at the house of Munna Khatik and there were several persons of the village attending the same.

It is further submitted that accused persons Annu Khatik and Munna Khatik were shown carrying bottles in their hands and also to have assaulted the deceased with the same, however, there is no injury found on the person of the deceased which may relate to these bottles.

It is also submitted that only two witnesses of fact have been presented by the prosecution while the testimony of both these witnesses is highly suspicious, contradictory and is not reliable and the trial court has committed an illegality in relying on the testimony of these untruthful witnesses.

It is vehemently submitted that P.W.-1/Nirmala Devi and P.W.-2/Putti Lal are mother and son and, thus, no independent witness has been produced and apart from the fact that their testimony is not reliable and having sufficient contradictions the same could also not be accepted as they are related witnesses.

24. Shri Rajesh Kumar Dwivedi, learned Amicus for the appellants- Raj Kumar Yadav and Chunni Lal has relied on following cases propounded by the Hon'ble Supreme Court;

1- 1980 SCC (Cri) 985
(Marudanal Augusti vs. State of Kerala)

2- AIR 1976 SC 2423 **(Ishwar Singh vs. The State of U.P.)**

3- AIR 1976 SC 2263 **(Lakshmi Singh and others etc. vs State of Bihar).**

25. Learned A.G.A. on the other hand submits that P.W.-1/Nirmala Devi and P.W.-2/Putti Lal are the natural witnesses of incident they have seen the incident and

have given detailed account of the incident and accused Annu Khatik and Munna Khatik are sons of the *jethani* of P.W.-1/Nirmala and Rajkumar is the person to whom the disputed land has been given by *jethani* Lalli and it is an admitted fact that the parties were having inimical relationship on account of claim and counter claim on a piece of agricultural land and also that the prosecution witnesses have given truthful account of the incident and keeping in view all the facts and circumstances of the case, no illegality appears to have been committed by the trial court.

26. Perusal of the record in the light of the submissions made by learned counsels for the parties would reveal that so far as submission of Ld counsel for the appellant with regard to inadequacy of motive is concerned P.W.-1/Nirmala Devi in her statement has stated that her husband Ram Autar and father of accused Munna Khatik were real brothers and they have divided their properties and were living separately since long. She further stated that some land was lying near her house wherein she and accused Munna Khatik were having equal share and some days before the incident mother of Munna Khatik and Annu Khatik, namely, Lalli had asked her not to go towards that land and they were having enmity with regard to the same land. She also stated that her *jethani* Lalli had given this land to the accused Raj Kumar Yadav. It is also evident from the statement of this witness that accused persons Sanjay and Chunni Lal are the friends of Raj Kumar while Chuuni Lal is a resident of Gonda but he had come to reside in the house of his maternal uncle Ram Autar 'kahar' and when Lalli Devi had given the disputed land to Raj Kumar these all five persons started making hindrance in

the access of the informant on that land and altercation had occurred many times with regard to the same.

27. Thus, it is evident that the parties were inimical towards each other on the basis of above piece of land wherein P.W.-1/Nirmala Devi and Munna Khatik were having equal share and the said land was given by the mother of Munna, namely, Lalli Devi (*jethani* of the informant Nirmala) to accused Raj Kumar Yadav. The accused in their statements recorded under Section 313 Cr.P.C. have denied the fact that they were having enmity with the informant side. However, they apart from saying that deceased was a person of bad character and was also a police informer and has been done to death by some unknown person have further stated that they have been implicated in this case on the basis of '*ranjish*' (enmity). Thus, the element of enmity has also been admitted by the accused persons/convicted appellants. Thus, it was proved before the trial court that the informant Nirmala and accused person Munna Khatik and his family were having inimical relationship and the basis of this enmity was a piece of land jointly owned by Nirmala and Lalli, which was given by the mother of Munna, namely, Lalli Devi to accused Raj Kumar.

28. In *Arjun Marik v. State of Bihar* reported in MANU/SC/1037/1994 : 1994 Supp (2) SCC 372, the Supreme Court explained that:

"...mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established. But it has to be remembered that in incidents in which the only evidence available is circumstantial

evidence then in that event the motive does assume importance if it is established from the evidence on record that the accused had a strong motive and also an opportunity to commit the crime and the established circumstances along with the explanation of the accused, if any, exclude the reasonable possibility of anyone else being the perpetrator of the crime then the chain of evidence may be considered to show that within all human probability the crime must have been committed by the accused."

It is fairly well-settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest on circumstantial evidence. In the cases of *Sukhram v. State of Maharashtra* MANU/SC/3346/2007 : (2007) 7 SCC 502, *Sunil Clifford Daniel (Dr.) v. State of Punjab* MANU/SC/0740/2012 : (2012) 8 SCALE 670, *Pannayar v. State of Tamil Nadu by Inspector of Police* MANU/SC/1462/2009 : (2009) 9 SCC 152], this principle has been highlighted.

29. A three Judges Bench Of Hon'ble Supreme Court in *Molu and others v. State of Haryana* MANU/SC/0143/1976 : AIR 1976 SUPREME COURT 2499 opined as under:-

"11. Finally it was argued by the appellants, following the reasons given by the Sessions Judge, that there was no adequate motive for the accused to commit murder of two persons and to cause injuries to others. It is wellsettled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes, however, the motive is shrouded

in mystery and it is very difficult to locate the same. If, however, the evidence of the eye-witnesses is credit-worthy and is believed by the Court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant. For these reasons, therefore, we agree with the High Court that the prosecution has been able to prove the case against the appellants beyond reasonable doubt."

*In **Praful Sudhakar Parab v. State of Maharashtra**, MANU/SC/0689/2016 : AIR 2016 SUPREME COURT 3107 Hon'ble Supreme Court stated as under:-*

*"16. One of the submissions which has been raised by the learned amicus curiae is that the prosecution failed to prove any motive. It is contended that the evidence which was led including the recovery of bunch of keys from guardroom was with a view to point out that he wanted to commit theft of the cash laying in the office but no evidence was led by the prosecution to prove that how much cash were there in the pay office. Motive for committing a crime is something which is hidden in the mind of accused and it has been held by this Court that it is an impossible task for the prosecution to prove what precisely have impelled the murderer to kill a particular person. This Court in **Ravinder Kumar and another v. State of Punjab**, MANU/SC/0536/2001 : 2001 (7) SCC 690: (AIR 2001 SC 3570), has laid down following in paragraph 18:*

"18 It is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that prosecution in many cases could point to is the possible mental element which could have been the cause for the murder. In this connection we deem it useful to refer

to the observations of this Court in ***State of Himachal Pradesh v. Jeet Singh*** {MANU/SC/0165/1999 : 1999 (4) SCC 370: (AIR 1999 SC 1293)}:

"No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

Keeping in view the above stated law we are of the considered opinion that the prosecution is not obliged to prove those facts which are either impossible for the prosecution to prove or which are locked up in the mind of the accused persons, as to what made them to commit the crime. Therefore, the cases which are based on direct evidence of the witnesses should be decided on the basis of the quality and probative value of the evidence of such eye witnesses.

30. Learned counsel for the appellants has also assailed the Judgment of the trial court on the ground that there is inordinate delay in lodging of the F.I.R. and also on the score that F.I.R. is ante-timed as the copy of the F.I.R. has not been forwarded to 'Ilaka Magistrate' as provided under Section 157 of the Code of Criminal Procedure.

In this regard, learned Amicus Shri Rajesh Kumar Dwivedi has relied on the law laid down by the Hon'ble Supreme Court in ***MANU/SC/0120/1976 : AIR 1976 SC 2423 (Ishwar Singh and others vs. State of U.P.)***.

31. At first, it is to be highlighted that in the law relied on by learned Amicus, the extraordinary delay in sending the copy of the F.I.R. to 'Ilaka Magistrate' was not the only ground for recording the judgment of acquittal and for doubting the prosecution case as there were many other factors also which have rendered the case of the prosecution as highly improbable.

32. Hon'ble Apex Court in ***Anil Rai vs. State of Bihar, MANU/SC/1586/2001***, held as under :-

"30. This provision is designed to keep the Magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and, if necessary, to give appropriate direction under Section 159 of the Code of Criminal Procedure. But where the F.I.R. is shown to have actually been recorded without delay and investigation started on the basis of the F.I.R., the delay in sending the copy of the report to the Magistrate cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable Pala Singh and Anr. v. State of Punjab MANU/SC/0199/1972 : AIR 1972 SC 2679. Extraordinary delay in sending the copy of the F.I.R. to the Magistrate can be a circumstance to provide a legitimate basis for suspecting that the first information report was recorded at much later day than the stated day affording sufficient time to the prosecution to introduce improvement

and embellishment by setting up a distorted version of the occurrence. The delay contemplated under Section 157 of the Code of Criminal Procedure for doubting the authenticity of the F.I.R. is not every delay but only extraordinary and unexplained delay. However, in the absence of prejudice to the accused the omission by the police to submit the report does not vitiate the trial. This Court in Sarwan Singh and Ors. v. State of Punjab MANU/SC/0169/1976 : AIR 1976 SC 2304, held that delay in despatch of first information report by itself is not a circumstance which can throw out the prosecution's case in its entirety, particularly when it is found on facts that the prosecution had given a very cogent and reasonable explanation for the delay in despatch of the F.I.R."

33. Perusal of the record would reveal that the F.I.R. of the instant case has been lodged at 22:30 hours i.e. 10:30 pm. on 25.11.1991 pertaining to an incident which had occurred at about 6:00 pm. It is the case of the prosecution that after the commission of the incident by the accused persons, the injured was taken to the police station by P.W.-1/Nirmala with a written application, however, she was directed by the police personnels to first make arrangements for the treatment of her son as he was not in a good condition and it is on this basis the informant had taken the deceased immediately to the hospital and after admitting him there, She came back to the police station and lodged the F.I.R. In this regard, the time when the injured, who later on died, was examined by Doctor K.N. Kaushal at district hospital Faizabad/Ayodhya is relevant as the injuries on the person of injured Raju were examined by Dr. K.N. Kaushal at district hospital Faizabad on 25.11.1991 at 8:35

pm. Thus, it is evident that before 8:35 pm. the injured/deceased would have been admitted in the hospital. The truthfulness of the fact that the informant was directed by the police personnel to first go to the hospital is also evident from the perusal of the F.I.R. wherein this fact that she had admitted the injured in the hospital has been written in a different ink and pen.

Perusal of the Chik F.I.R. would further reveal that the substance of the information so given by the informant in writing has been entered in the General Diary of the police station, which is also available on record and has also been proved by the prosecution. Thus, having regard to the fact that the deceased, who at that point of time was injured, was first taken to the police station and thereafter he was admitted in the district hospital Faizabad and thereafter P.W.-1/Nirmala had again came to the police station and lodged the F.I.R., The same could not be termed as either ante-timed or lodged with delay.

34. It is to be recalled that every delay in lodging of the F.I.R. is not fatal. The delay, which has not been properly explained by the prosecution could only be held fatal for the prosecution and in our considered opinion, the prosecution has explained the little delay which has occurred in lodging of the F.I.R. in this case properly and with documentation. Thus, the case of the prosecution could not be doubted only on this score.

So far as the fact that the copy of the F.I.R. of the instant case has been sent to the Magistrate with delay could also not be a ground to doubt the otherwise truthful testimony of the eye witnesses. Perusal of the record would further reveal that there is

an endorsement on the Chik F.I.R. of the circle officer of the police dated 29.11.1991 of forwarding the Chik F.I.R. to the Magistrate, which reflects that the copy of the F.I.R. has been sent by the C.O. to the magistrate with some delay. But keeping in view that fact that F.I.R. was lodged quickly, injured was admitted to the hospital and his injuries were examined at 8:30 pm., we do not find this delay to be fatal to the prosecution.

34. It has also been highlighted by learned counsel for the appellants that P.W.-1/Nirmala is the mother of the deceased Raju while P.W.-2/Putti Lal is the brother of the deceased and, therefore, their evidence could not be accepted as independent public witnesses have not been presented by prosecution before the trial court.

35. So far as this submission of learned counsel for the appellant is concerned that the evidence of these two witnesses, namely, P.W.-1/Nirmala Devi and P.W.-2/Putti Lal could not be believed only on the score that they are mother and son and related to the deceased, we do not find any substance therein. The evidence of these witnesses could not be rejected on this score alone that they are related to the deceased or related to each other.

36. In ***Sucha Singh and Ors. vs. State of Punjab***, MANU/SC/0527/2003 Hon'ble Supreme Court has observed as follows :-

"15. In Dalip Singh and Ors. v. The State of Punjab MANU/SC/0031/1953 : [1954]ISCR145 it has been laid down as under:-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be

tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely, Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

16. The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan MANU/SC/0107/1973 : 1974CriLJ331 in which Vadivelu Thevar v. State of Madras MANU/SC/0039/1957 : 1957CriLJ1000 was also relied upon.

17. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness. should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. It the foundation for such an observation is based on the fact that the

witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one one which another Bench of this Court endeavoured to dispel in - 'Rameshwar v. State of Rajasthan MANU/SC/0036/1951 : 1952CriLJ547 . we find, however, that it unfortunately still persists, it not in the judgements of the Courts, at any rate in the arguments of counsel."

37. In **Dharnidhar and Ors. vs. State of U.P. and Ors.**, MANU/SC/0480/2010, Hon'ble Supreme Court has observed as follows :-

"8. The arguments raised on behalf of the appellants, in fact, can be discussed together inasmuch as they are based upon somewhat common submissions. There is no doubt that PW1 and PW2, both are related to the deceased. The contention raised before us is that both of them are interested witnesses and have not stated true facts before the Court and thus, their statements should be entirely disbelieved. We are unable to find any merit in this contention. It has come on record that Pyare Lal was pursuing a case in which members of the family of the accused persons were involved in a murder. There was apparently some anger and rift between the families. According to the story of the prosecution, they had come prepared to kill Bahadur Singh as well as Pyare Lal as they were carrying guns, sphere etc. The deceased were attacked by the accused in the presence of their brothers, who could not intervene and save them because of the fear of the gun fire and the manner in which the incident occurred.

It was but natural for the prosecution to produce PW1 and PW2 as the main eye witnesses as they had actually seen the occurrence and they have been believed by the trial Court, as well as by the High Court. Even before us, no serious attempt has been made and infact, nothing appears from the record to show that these two witnesses were not present on the site. 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 MANU/SC/1801/2009 : (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."

"Similar view was taken by this Court in **Ram Bharosey v. State of U.P.**

MANU/SC/1829/2009 : 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. 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. In the present case, the circumstances are such that we cannot find any error in the concurrent findings of fact recorded by the Trial Court, as well as by the High Court that these two witnesses were present at the respective places and had actually seen the occurrence. Their statements about gun fires, as well as the injuries caused by the kulhari and sphere respectively are duly supported by the medical evidence, as well as by the statements of the investigating officers. Thus, we find that the contention raised on behalf of the appellants is liable to be rejected."

38. In **Gangabhavani vs. Rayapati Venkat Reddy and Ors.** (04.09.2013 - SC)

: **MANU/SC/0897/2013** Hon'ble Supreme Court held as under :-

"11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (Vide: *Bhagaloo Lodh and Anr. v. State of U.P.* MANU/SC/0700/2011 : AIR 2011 SC 2292; and *Dhari and Ors. v. State of U.P.* MANU/SC/0848/2012 : AIR 2013 SC 308).

12. In **State of Rajasthan v. Smt. Kalki and Anr.** MANU/SC/0254/1981 : AIR 1981 SC 1390, this Court held:

"5A. As mentioned above the High Court has declined to rely on the evidence of P.W. 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased".....For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W. 1

had no interest in protecting the real culprit, and falsely implicating the Respondents.”(Emphasis added)(See also: Chakali Maddilety and Ors. v. State of A.P. MANU/SC/0609/2010 : AIR 2010 SC 3473).

13. In Sachchey Lal Tiwari v. State of U.P. MANU/SC/0865/2004 : AIR 2004 SC 5039, while dealing with the case this Court held:

“7....Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witness' is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence.”

14. In view of the above, it can safely be held that natural witnesses may not be labelled as interested witnesses. Interested witnesses are those who want to derive some benefit out of the litigation/case. In case the circumstances reveal that a witness was present on the scene of the occurrence and had witnessed the crime, his deposition cannot be discarded merely on the ground of being closely related to the victim/deceased.”

39. In Bhagaloo Lodh and Ors. vs. State of U.P. reported in MANU/SC/0700/2011 it was held as under :-

“14. Evidence of a close relation can be relied upon provided it is trustworthy. Such evidence is required to be carefully scrutinised and appreciated before resting of conclusion to convict the accused in a given case. But where the Sessions Court properly appreciated evidence and meticulously analysed the same and the High Court re-appreciated the said evidence properly to reach the same conclusion, it is difficult for the superior court to take a view contrary to the same, unless there are reasons to disbelieve such witnesses. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are inter-related to each other or to the deceased. (Vide: M.C. Ali and Anr. v. State of Kerala MANU/SC/0247/2010 : AIR 2010 SC 1639; Myladimmal Surendran and Ors. v. State of Kerala MANU/SC/0670/2010 : AIR 2010 SC 3281; Shyam v. State of Madhya Pradesh MANU/SC/7112/2007 : (2009) 16 SCC 531; Prithi v. State of Haryana MANU/SC/0532/2010 : (2010) 8 SCC 536; Surendra Pal and Ors. v. State of U.P. and Anr. MANU/SC/0713/2010 : (2010) 9 SCC 399; and Himanshu @ Chintu v. State (NCT of Delhi) MANU/SC/0006/2011 : (2011) 2 SCC 36).

In view of the law laid hereinabove, no fault can be found with the evidence recorded by the courts below accepting the evidence of closely related witnesses.”

It is therefore settled that merely because witnesses are close relatives of victim, their testimonies cannot be discarded. Relationship with one of the parties is not a factor that affects credibility of witness, more so, a relative would not conceal the actual culprit and make allegation against an innocent person. However, in such a case Court has to adopt a careful approach and analyse the

evidence to find out, whether it is cogent and credible evidence.

40. The aforesaid legal position propounded by the Hon'ble Supreme Court would reveal in categorical terms that the relationship of the witnesses with the deceased or informant may not be the only ground to reject their evidence if the prosecution witnesses, who are claiming themselves to have seen the incident, are natural witnesses and their presence at the place of occurrence is natural and could not be doubted. Their relationship with the deceased or informant may not be of much importance if their evidence is otherwise truthful and reliable. However, the testimony of these witnesses is required to be appreciated with a little amount of caution.

41. It is recalled that, in the F.I.R. lodged by P.W.-1/Nirmala, she has stated that there were many residents of the 'mohalla' who had assembled at the scene of the incident and during the course of her examination before the trial court she has also mentioned the name of one Nazar Ali, however, Nazar Ali was not produced as a witness.

42. In **Appabhai and Ors. vs. State of Gujarat**, MANU/SC/0028/1988 The Supreme Court held as under :-

"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."

43. This Court also could not turn its eye away from the fact what is happening in the society. We are living in a society where nobody wants to get himself involved in the matter of others and when the matter is with regard to a criminal case people, who have seen the incident are reluctant to become witnesses due to various reasons. They want to keep themselves away from the difficulties of Court and police procedure and also they do not want to create any trouble for themselves in near future and, therefore, the prosecution is bound to rely on those prosecution witnesses who are having courage to depose before the Court. In this background, if an independent witness has not been produced by the prosecution, the same may not be sufficient to discard the evidence of the two prosecution witnesses, who in the considered opinion of this Court, appears to be the natural witnesses of the incident having regard to the time on which the incident is said to have occurred.

44. Learned counsel for the appellants have also laid much emphasis on the alleged contradictions, embellishments which according to them have emerged in the evidence of the two witnesses of fact i.e. P.W.-1/Nirmala and P.W.-2/Putti Lal to show that these witnesses are not

trustworthy and, therefore, the trial Court has committed an illegality in recording the judgment of conviction.

45. The manner in which the evidence of prosecution eye witnesses, who are claiming themselves to have seen the incident, is to be appreciated is now no more *res integra* and has been set at rest by *Catena of Judgments* passed by the Hon'ble Supreme Court

46. While appreciating the evidence on record with reference to the contentions raised, the court is required to exercise due diligence though the standard of such exercise would be of an exercise by prudent person. The Court must bear in mind the set up and the circumstances in which the crime is committed, the quality of evidence, nature and temperament of the witnesses, the level of understanding and power of perception and examination of individual witness and probability in ordinary course of nature about the act complained of as might have been witnessed by the witnesses. The endeavour must be to find out the truth from the evidence on record. At the same time, it must not be forgotten that there cannot be a prosecution case with a cast iron perfection in all respects and reason being that the perfection to that degree in ordinary course of human life is an Utopian thought. However, nevertheless, obligations lies upon the courts to analyze, sift and assess the evidence on record, with reference to trustworthiness and truthfulness of the prosecution case, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the evidence without being obsessed by an air of total suspicion about the case of the prosecution. What is to be insisted upon is *simpliciter* proof emanating from the

circumstances of the case and a ring of truth. The contradictions, infirmities, that might have been pointed out in prosecution case must be assessed with the yardsticks of probabilities of the existence of a fact or not. Unless, infirmities and contradictions are of such nature as to undermine the substratum of the evidence and found to be tainted to the core of the prosecution case, over emphasis may not be applied to such contradictions and infirmities. To judge the credibility of the evidence of witness, one has to look to his evidence, and if any discrepancies found in the ocular account of the witnesses not affecting the root of the say of the witness, the witness may not be labeled as not credit worthy. At the same time, seeking rule of corroboration, mathematical niceties may not be expected. The account of the witnesses must be read as a whole and once the impression is formed that the account contains ring of truth, jettisoning whole of the evidence would amount to doing injustice to a reliable and honest witness. Even honest and truthful witnesses may differ in some details, which may not be related to the main cause of prosecution case, and their evidence therefore must be appreciated keeping in mind the power of observation, retention and reproduction of the same by the witness to be judged by human standard. The attending circumstances of the case on and the probabilities must be judged keeping in mind the human conduct and occurring of the evidents in ordinary course of nature.

47. In *Gangabhavani vs. Rayapati Venkat Reddy and Ors. Reported in MANU/SC/0897/2013* held as under:-

"In State of U.P. v. Naresh MANU/SC/0228/2011 : (2011) 4 SCC 324, this Court after considering a large number

of its earlier judgments held: In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

A similar view has been reiterated by this Court in Tehsildar Singh and Anr. v. State of U.P. MANU/SC/0053/1959 : AIR 1959 SC 1012; Pudhu Raja and Anr. v. State, Rep. by Inspector of Police MANU/SC/0761/2012 :

JT 2012 (9) SC 252; and Lal Bahadur v. State (NCT of Delhi) MANU/SC/0333/2013 : (2013) 4 SCC 557).

10. Thus, it is evident that in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence."

48. Honble Apex Court long back in the matter of **Bharwada Bhoginbhai Hirjibhai v State of Gujarat as reported in AIR 1983, 753, MANU/SC/0090/1983** held that: "Apex Court observed and settled following principles for appreciation of evidence without entering into re-appraisal or re-appreciation of the evidence in the context of minor discrepancies:

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork 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.

(6) 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.

(7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made 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 - perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

49. Thus it is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be

considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission.

50. Hon'ble Supreme Court of India in ***Mahendran and Ors. Vs. State of Tamil Nadu and Ors. Reported in MANU/SC/0257/2019*** : in para 38 of the report held as under:-

"38. The argument that the entire case set up is based on falsehood and thus not reliable for conviction of the Appellants, is not tenable. It is well settled that the maxim "falsus in uno, falsus in omnibus" has no application in India only for the reason that some part of the statement of the witness has not been accepted by the trial court or by the High Court. Such is the view taken by this Court in Gangadhar Behera's case, wherein the Court held as under:

15. To the same effect is the decision in State of Punjab v. Jagir Singh

MANU/SC/0193/1973 : (1974) 3 SCC 277 and *Lehna v. State of Haryana*, MANU/SC/0075/2002 : (2002) 3 SCC 76. Stress was laid by the Accused- Appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of "*falsus in uno, falsus in omnibus*" (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an Accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an Accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other Accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim "*falsus in uno, falsus in omnibus*" has no application in India and the witnesses cannot be branded as liars. The maxim "*falsus in uno, falsus in omnibus*" has not received general acceptance nor has this maxim come to occupy the status of Rule of law. It is merely a Rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory Rule of evidence". (See *Nisar Alli v. State of U.P.* MANU/SC/0032/1957 : AIR 1957 SC 366) Merely because some of the Accused persons have been acquitted, though evidence against all of them, so far as

direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the Accused who had been acquitted from those who were convicted. (See *Gurcharan Singh v. State of Punjab* MANU/SC/0122/1955 : AIR 1956 SC 460). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound Rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See *Sohrab v. State of M.P.* MANU/SC/0254/1972 : (1972) 3 SCC 751 and *Ugar Ahir v. State of Bihar* MANU/SC/0333/1964 : AIR 1965 SC 277.) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background

against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. MANU/SC/0093/1952 : AIR 1954 SC 15 and Balaka Singh v. State of Punjab MANU/SC/0087/1975 : (1975) 4 SCC 511.)..... "

39 . Therefore, the entire testimony of the witnesses cannot be discarded only because, in certain aspects, part of the statement has not been believed."

Thus, the evidence of above mentioned two prosecution witnesses, namely, P.W.-1/informant Nirmala Devi and eye witness P.W.-2/Putti Lal is to be appreciated in the background of the aforesaid legal propositions.

51. At the cost of repetition, it is to be recalled that the case of the prosecution is that, on 25.11.1991 at about 6:00pm. appellants Raj Kumar Yadav, Chunni Lal 'Kahar', Sanjay Yadav, Munna Khatik and Annu Khatik had arrived at the house of the informant and had called the deceased Raju and when the informant said that he is coming, the appellant Raj Kumar Yadav entered her house and assaulted him and thereafter the deceased was dragged out of his house and was taken in front of a temple situated nearby and was further assaulted there as a result of which, he sustained multiple injuries on his head. It is also stated in the F.I.R. that the appellants had assaulted the deceased with '*lathi and hockey*' on his head.

P.W.-1/Nirmala in her evidence recorded before the trial court, has stated that she is having dispute with Munna Khatik pertaining to a piece of land and the mother of Munna Khatik and Annu Khatik, Lalli Devi had warned her not to go towards the said land and had also given

that land to the appellant Raj Kumar. She has also stated that appellant Sanjay and Chunni Lal are the friends of Raj Kumar. Thus, the enmity between the two families, who are also related to each other, is evident and the same was pertaining to a piece of land which was jointly owned by them and the mother of Munna Khatik and Annu Khatik had given that land to the appellant Raj Kumar. This witness i.e. Nirmala has further stated that at the relevant point of time all five accused persons had come to her home and inquired about Raju (deceased) and also that Raj Kumar and Sanjay were possessing sticks in their hands while appellant Chunni Lal was possessing 'hockey' and Munna Khatik & Annu Khatik were armed with bottles and they all entered her house and dragged Raju out of her house while assaulting him and dragged him to the temple. She has also admitted while under cross-examination that on that day there was a feast in the house of Annu Khatik and Mannu Khatik as on that day the bride of Annu Khatik had arrived in their house and Raj Kumar Yadav, Chunni Lal and Sanjay were also invited in that feast. However, she was contradicted on the factum that she has not stated in the F.I.R. that all accused persons had entered her house, pertaining to which, she replied that, she could not give any explanation for that. She also stated that there were blood stains in the house as well as at the place in front of the temple where her son was assaulted. She was also contradicted with her statement recorded under Section 161 Cr.P.C. on the point that she has not stated the place from where she has seen the incident, which according to her had occurred in front of the temple. She admitted while under cross-examination that, at first her son was assaulted in the house and after assaulting him in the house

thereafter he was dragged to the temple and this distance of the temple from her house is about 20 paces.

52. While giving detailed account of the incident, she had stated that appellant Sanjay was possessing a 'hockey' and she had seen him assaulting Raju in the house as well as in front of the temple and appellant Chunni Lal who was possessing a 'hockey', but in her cross-examination, she has not assigned the role of assault to Chunni Lal as she has stated that Chunni Lal was possessing a hockey. She further stated that appellant Annu Khatik and Munna Khatik were holding bottles and they had assaulted her son with the bottles. However, she clarified that the glass of the bottles was not broken and was not inserted anywhere on the body of the deceased as the bottles had not broken. She assigned the role of assaulting with 'lathi' to appellant Raj Kumar. She further stated that all these persons were highly intoxicated. She has also admitted that Annu Khatik and Munna Khatik had given invitation to all but she was not invited. Thus, this witness has given detailed account of the incident and assigned the role of assault with 'lathi' and 'hockey' to Raj Kumar, Chunni Lal and Sanjay while the role of assaulting with 'bottles' to Annu Khatik and Munna Khatik.

53. We will discuss this aspect of the matter i.e. the role assigned to the Munna Khatik and Annu Khatik of having assaulted the head of the deceased with bottles later on in this Judgment. Now so far as the appellants Raj Kumar, Chunni Lal and Sanjay are concerned, they have been assigned the role of assault with 'lathi and hockey' by this witness.

P.W.-2/Putti Lal, who is the son of the informant P.W.-11/Nirmala and

brother of deceased, whose evidence was recorded before the trial court after 09 years of the incident, has stated that at that point of time Raj Kumar, Chunni Lal and Sanjay had arrived at his house and asked about deceased Raju and thereafter they (Raj Kumar, Chunni Lal and Sanjay) entered his house and Raj Kumar and Chunni Lal were carrying 'lathi' while Sanjay was having 'hockey' and they started assaulting his brother inside the house and dragged him out of his house and on an alarm raised Annu Khatik and Munna Khatik and many other persons assembled. He also stated that his brother has sustained many injuries on his head and also that his brother was taken first to the Kotwali and thereafter to the hospital where he died. He was subjected to lengthy cross examination. In his cross-examination, he stated that appellants at first assaulted his brother inside the house and thereafter he was dragged out of house and was further assaulted in front of the temple and he stated that when appellants (Raj Kumar, Chunni Lal and Sanjay) were assaulting the deceased in his house they had raised an alarm. He has further clarified that when appellants Raj Kumar, Chunni Lal and Sanjay had entered his house and assaulted his brother Raju, electricity bulb was lighted inside the house and he had seen them assaulting the deceased. He has given detailed account of the incident. There appears only slight contradictions in his testimony pertaining to the weapon possessed by the accused persons, but having regard to the period of 09 long years, which has elapsed since the incident had occurred and recording of his evidence, the same, in our considered opinion, appears to be without negligible. Significantly, while under cross-examination, this witness has admitted categorically that on the day of the incident

the bride of Annu Khatik had arrived in their house and there was a feast organized and they (Annu Khatik and Munna Khatik) were busy in attending to their relatives and they have neither entered into his house nor have assaulted the deceased-Raju. He also stated that he could not recall as to whether Annu Khatik and Munna Khatik was mentioned by him before the Magistrate or to the investigating officer.

Thus, the evidence of P.W.-2/Putti Lal would reveal in categorical terms that his evidence is trustworthy and reliable so far as the involvement of the appellants Raj Kumar, Chunni Lal and Sanjay is concerned in committing the incident, while he has exonerated Annu Khatik and Munna Khatik and stated that they have not assaulted the deceased nor they have entered into his house.

54. We are also in agreement with the evidence given by this witness and we find him to be more reliable than P.W.-1/Nirmala, who in our considered opinion, might have taken the name of Annu Khatik and Munna Khatik, as she was having enmity with them with regard to a piece of land which the mother of Annu Khatik and Munna Khatik, namely, Lalli Devi had given to appellant Raj Kumar.

55. One more fact which is persuading us to doubt the presence of Annu Khatik and Munna Khatik at that point of time inside the house of the deceased or near the temple and to have participated in the 'marpeet' is that, it appears to be an admitted case of the prosecution that on the day when the incident had allegedly taken place there was a feast organized by the Annu Khatik and Munna Khatik at their house, as the bride of Annu Khatik had come to their house and the relatives were invited and these two persons were busy in

attending to them. If this situation is tested on the anvil of probability, it is highly improbable for a person in whose house a feast is going on and relatives are coming and dining that he will go to the house of another and would cause any incident and would indulge in 'marpeet' and to our mind P.W.-2/Putti Lal has given a more reliable account of the incident than P.W.-1/Nirmala. Thus, we do not have any reason to disbelieve the testimony of P.W.-2/Putti Lal. It is again recalled that the principle of falsus in uno and falsus in omnibus is not applicable in India and the duty of the Court is to draw out truth from the evidence of witnesses. Thus, having considered the evidence of P.W.-1/Nirmala, we are of the considered opinion that her evidence is reliable with regard to appellants Raj Kumar, Sanjay Yadav and Chunni Lal. Hence, keeping in view the evidence of P.W.-1/Nirmala and P.W.-2/Putti Lal in totality, we are of the considered view that their evidence is reliable, trustworthy and may be accepted so far as the commission of the offence only by appellants Raj Kumar, Chunni Lal and Sanjay is concerned.

56. There are many other minor points which have been highlighted by learned counsels for the parties like the 'lathi' and 'hockey', which is said to have been used by the accused persons in the incident, has not been recovered or no blood was found on the clothes of P.W.-1/Nirmala and P.W.-2/Putti Lal, who have taken the injured/deceased to the hospital and also that no 'Dying Declaration' has been recorded by the doctor or investigating officer. All these arguments, which have been advanced by learned counsels for the parties, in our considered opinion, are not having any force. If the investigating officer has not conducted the investigation

in right perspective, the same may not be sufficient to demolish the case of the prosecution and similarly if the investigating officer has not acted diligently and has not proceeded with promptness to the hospital in order to record the statement of the deceased u/s 161 Cr.P.C. which could also be used as 'Dying Declaration', the same may not be held sufficient enough to discard the otherwise reliable evidence of the two eye witnesses, who in our considered opinion are reliable, trustworthy and their evidence is having a ring of trust around it. It is also to be recalled that crimes are not committed with prior notice and the prosecution could not be compelled to answer/explain each and every hypothesis put forth by the accused persons and it would be sufficient that they have succeeded in proving this case beyond reasonable doubt.

57. The other argument, which has been advanced, is with regard to the alleged contradictions in medical evidence and the oral account of the incident.

58. We have perused the evidence available on record and find that, the assault is stated to have been committed with '*lathi*' and hockey. **P.W.-5/Dr. K.N. Kaushal**, who has first examined the deceased, has noticed 06 lacerated wounds all around the head and face of the deceased along with one contusion on his forehead and one abrasion over his neck. He stated that all these injuries were fresh and the heartbeat of the injured was about 110 per minute, he was in his senses and his blood pressure was 110/70 mm. He has categorically opined that all these injuries may be inflicted on 25.11.1991 at about 6:00 pm. and may be caused by '*lathi and hockey*'. The fact that during the course of treatment of the deceased/injured in the

hospital these injuries were stitched and in the postmortem report these injuries have been found as 'stitched wounds' may not be sufficient enough to cast any doubt with regard to the case of the prosecution.

P.W.-6/Dr. Santosh Kumar, who has conducted the postmortem on the body of the deceased, has categorically opined that the deceased had died on 27.11.1991 at 2:50 am. at district hospital Faizabad. He has also noticed 06 stitched wounds all around his head and face apart from one abrasion at nose and blackening of his right eye and on internal examination, the parietal, occipital and frontal bones of the deceased were found fractured and membranes were lacerated and according to him the death of the deceased has been caused due to 'shock' on account of ante-mortem injuries. As the injuries were stitched, he stated that he is not in a position to tell as to from which weapon these injuries may be caused.

59. As we have already explained that **P.W.-5/Dr. K.N. Kaushal** who had examined the deceased in his lifetime has specifically stated that these injuries may be caused by '*lathi*' and '*hockey*' and were fresh and he has also noticed the nature of the wounds as lacerated wounds contusion and abrasion, there appears no contradiction of medical evidence with ocular evidence of the incident and in fact the medical evidence in this case is in support of the ocular version of the incident.

In this regard, the argument advanced by Shri Chandra Shekhar Pandey, learned counsel appearing for the appellant-Sanjay Yadav in terms that the lacerated wounds could not be stitched, also appears to be not having any force, The medical

science has advanced much so far as surgery is concerned and we do not want to devote much time on this argument, as in our considered opinion, a lacerated wound may very well be stitched by a skilled surgeon.

60. Another argument which have been advanced by learned counsels for the appellants is that the father of the deceased, namely, Ram Autar is wholly out of picture in this case while the witnesses have admitted that he was present in the house. He did not attempt to save the deceased nor had gone to the Kotwali or hospital and this suggests that true account of the incident is not being given by the prosecution. At first we cannot accept this argument to doubt the case of the prosecution moreso when the defence has not made any attempt to summon the father of the deceased as their witness, moreover, Ram Autar has never claimed to have seen the incident as according to P.W.-1/Nirmala and P.W.-2/Putti Lal, only they in the family, have seen the incident and it has come in the evidence of P.W.-1/Nirmala that her daughter-in-law had also asked about the incident and she has narrated to her as to what had actually happened and, thus, the only circumstance that the father of the deceased did not go to the police station or to the hospital may not be a circumstance on the basis of which the otherwise reliable evidence of the prosecution eye witness may be doubted.

61. Keeping in view all the facts, circumstances and the evidence available on record, in our considered view, it has been proved by the two prosecution eye witnesses P.W.-1/Nirmala and P.W.-2/Putti Lal with certainty that on 25.09.1991 at about 6:00 pm. appellants Raj Kumar Yadav, Chunni Lal Kahar and Sanjay had

entered into the house of the deceased Raju and assaulted him with 'lathi' and hockey and also dragged him out of his house and he was further assaulted by them in front of a temple and the incident was seen by the two prosecution witnesses, namely, P.W.-1/Nirmala and P.W.-2/Putti Lal. These witnesses have been subjected to lengthy cross-examination and even after lengthy cross-examination the evidence of P.W.-1/Nirmala Devi could only be doubted with regard to the involvement of the two appellants, namely, Munna Khatik and Annu Khatik, for the reasons we have already recorded herein-before and also admitted in categorical terms by the P.W.-2/Putti Lal. There is no contradiction of medical evidence vis-a-vis the oral account of the incident, as narrated by P.W.-1/Nirmala and P.W.-2/Putti Lal. An argument may be advanced to reject the evidence of P.W.-1/Nirmala Devi, as she has also involved co convicts Annu Khatik and Munna Khatik by stating that they were also involved in the assault. It is to be recalled that P.W.-1/Nirmala is not having any cordial relations with Munna Khatik and Annu Khatik, who are the sons of her *jethani* Lalli Devi and if in this context the evidence of P.W.-2/Putti Lal is perused, it would emerge that the three appellants, namely, Raj Kumar Yadav, Chunni Lal Kahar and Sanjay Yadav at first had entered into the house of the deceased and dragged him outside his house and it is at that moment on an alarm was raised by them, and it was on hearing the alarm raised by him, Annu Khatik and Munna Khatik and many other persons had assembled. Therefore, it may be suspected by P.W.-1/Nirmala especially when there was a crowd assembled at the scene of crime that these two persons have also participated in the 'marpeet', while the P.W.-2/Putti Lal has cleared in his evidence

that these two appellants, namely, Annu Khatik and Munna Khatik had neither entered his house nor have assaulted the deceased. We do not have any reason to doubt the reliable and trustworthy account of the incident given by natural witnesses P.W. 1/ Nirmala and P.W.-2/Putti Lal at it may be accepted. The witnesses sometimes deliberately or sometimes under illusion tend to give false statements while under cross examination, however, if a witness has spoken some untruthful facts in his evidence, his whole evidence could not be discarded on this score, as the duty of the Court is to appreciate their evidence in order to separate the falsehood from the truth and if the falsehood could be separated from the truth, it is the duty of the Court to accept the truth which has been so separated, but if the truth and falsehood are so intermixed that they could not be separated, then it would be safe for the Court to discard such testimony. In our considered opinion, the testimony of P.W.-1/Nirmala Devi though is containing some amount of falsehood, so far as the involvement of Munna Khatik and Annu Khatik in the incident is concerned but the same may not be sufficient to discard her evidence in toto, and if the evidence of PW 1/Nirmala is read with the evidence of P.W.-2/Putti Lal it would emerge that Annu Khatik and Munna Khatik had arrived at the scene of the crime after hearing the alarm and they did not participate in the 'marpeet' nor had entered the house of the deceased. We also do not find any injury which may be caused by bottles on the person of the deceased and it would be hard to believe that despite being assaulted with bottles, they would remain intact and would not cause any injury of sharp incised nature on the body of the deceased. Thus, the involvement of the appellant Annu Khatik and Munna Khatik is not proved from the

evidence available on record and thus, the trial court, in our considered opinion, has committed an illegality in convicting them and they, in our considered opinion, are entitled to be acquitted of all the charges framed against them.

62. The trial court has convicted the appellants with the aid of Section 149 I.P.C.. Since we have found that the Annu Khatik and Munna Khatik have not participated in the 'marpeet', now only three appellants remained and, thus, Section 149 I.P.C. could not be invoked against them.

63. Hon'ble Supreme Court in **Baljinder Singh and Ors. Vs. State of Punjab, MANU/SC/1063/2024** has opined as under :-

"22. In this connection, we may refer to paragraph 14 of the decision of this Court in Chittarmal v. State of Rajasthan MANU/SC/0008/2003 : 2003:INSC:5 : (2003) 2 SCC 266. The relevant excerpt from such decision reads:

14. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the Sections deal with combinations of persons who become punishable as sharers in an offence. Thus, they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is a substantial

*difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge Under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the Accused and ought not, therefore, to be permitted. But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the Appellants Under Section 302 read with Section 34 Indian Penal Code, if the evidence discloses commission of an offence in furtherance of the common intention of them all. [See **Barendra Kumar Ghosh v. King Emperor** MANU/PR/0064/1924 : AIR 1925 PC 1, **Mannam Venkatadari v. State of A.P.**, MANU/SC/0137/1971 : (1971) 3 SCC 254, **Nethala Pothuraju v. State of A.P.**, MANU/SC/0479/1991 : 1991:INSC:226 : (1992) 1 SCC 49, **Ram Tahal v. State of U.P.**, MANU/SC/0171/1971 :1971:INSC:318 : (1972) 1 SCC 136]"*

64. Hon'ble Supreme Court in **Criminal Appeal No.1509 of 2010 Madhusudan & Ors. v/s State Of Madhya Pradesh**, decided on may 5, 2024 held as under;-

"15. There is a significant distinction between Section 34 and Section 149 of IPC. Section 34 requires active participation and prior meeting of minds

whereas Section 149 assigns liability merely by membership of an unlawful assembly and has a wider scope than Section 34 IPC. The Supreme Court in **Virendra Singh v. State of M.P, (2010) 8 SCC 407** noted the differences as under:

"46 (i) Section 34 does not by itself create any specific offence, whereas Section 149 does so;

(ii) Some active participation, especially in crime involving physical violence, is necessary under Section 34, but Section 149 does not require it and the liability arises by reason of mere membership of the unlawful assembly with a common object and there may be no active participation at all in preparation and commission of the crime;

(iii) Section 34 speaks of common intention, but Section 149 contemplates common object which is undoubtedly wider in its scope and amplitude than intention; and

(iv) Section 34 does not fix a minimum number of persons who must share the common intention, whereas Section 149 requires that there must be at least five persons who must have the same common object."

16. In **Chittarmal vs. State of Rajasthan,(2003) 2 SCC 266** this Court examined the distinction and similarity between Section 34 and 149 of IPC and also the circumstances when both Sections are simultaneously applicable. The Court analyzed the earlier decisions on the issue and made the following pertinent observations:-

"14. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers

in an offence. Thus they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is a substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all. (See **Barendra Kumar Ghosh v. King Emperor** [AIR 1925 PC 1 : 26 Cri LJ 431], **Mannam Venkatadari v. State of A.P.** [(1971) 3 SCC 254 : 1971 SCC (Cri) 479 : AIR 1971 SC 1467], **Nethala Pothuraju v. State of A.P.** [(1992) 1 SCC 49 : 1992 SCC (Cri) 20 : AIR 1991 SC 2214] and **Ram Tahal v. State of U.P.** [(1972) 1 SCC 136 : 1972 SCC (Cri) 80 : AIR 1972 SC 254])”

18. A reference to the recent Three Judge Bench decision in **Rohtas v. State of Haryana**, (2021) 19 SCC 465 would also aid us on the issue. It was noted that there could be shortfall of five accused needed for conviction under Section 149, due to acquittals. In such a situation, the Court has the flexibility to alter the charge and seek aid of Section 34 IPC. The Court’s relevant observations are extracted: - “17. This does not, however, imply that courts cannot alter the charge and seek the aid of Section 34IPC (if there is common intention), or that they cannot assess whether an accused independently satisfies the ingredients of a particular offence. Sections 211 to 224 CrPC which deal with framing of charges in criminal trials, give significant flexibility to courts to alter and rectify the charges. The only controlling objective while deciding on alteration is whether the new charge would cause prejudice to the accused, say if he were to be taken by surprise or if the belated change would affect his defence strategy. [Nallapareddy Sridhar Reddy v. State of A.P., (2020) 12 SCC 467 : (2020) 4 SCC (Cri) 162, paras 16-21] The emphasis of Chapter XVII CrPC is thus to give a full and proper opportunity to the defence but at the same time to ensure that justice is not defeated by mere technicalities. Similarly, Section 386CrPC bestows even upon the appellate court such wide powers to make amendments to the charges which may have been erroneously framed earlier. Furthermore, improper, or non-framing of charge by itself is not a ground for acquittal under Section 464CrPC. It must necessarily be shown that failure of justice has been caused, in which case a retrial may be ordered. [Kantilal Chandulal Mehta v. State of Maharashtra, (1969) 3 SCC 166 : 1970 SCC (Cri) 19]”

19. While it is true that it is permissible for Courts to alter charges, it

can only be done by careful analysis of evidence in the case. It is most essential to identify the ingredients of "common intention", before implicating any accused with the aid of Section 34 IPC. The existence of common intention in a given case must necessarily be established by the Prosecution with relevant evidence. The Court also has the responsibility to analyze and assess the evidence before convicting a person with the aid of Section 34 of the IPC. Importantly, a mere common intention per se may not attract Section 34 IPC without action in furtherance of such common intention."

The evidence available on record clearly suggests that the three appellants, namely, Raj Kumar Yadav, Chunni Lal Kahar and Sanjay Yadav had arrived in the house of the deceased together and assaulted him inside the house and after dragging him out of his house assaulted him in-front of the temple and they also fled together and, thus, they were sharing a "common intention" to commit the offence in pursuance of a pre designed plan, which could be inferred from the fact that they came together and departed together from the scene of the crime and all of them have participated in the assault given to the deceased. Thus in our considered opinion there is sufficient evidence available on record which suggests that the assault was made by appellants Raj Kumar Yadav, Chunni Lal Kahar and Sanjay Yadav in pursuance of the pre designed plan and they were sharing common intention to cause the death of deceased and they all deserved to be convicted with the help of section 34 of IPC in place of section 149 IPC.

65. Keeping in view the reasons given herein-before, we **allow** the appeals filed by the appellant **Annu Khatik** and **Munna Khatik**. The judgment and order

of the Trial Court is set aside to this extent and they are acquitted of all the charges framed against them and the Judgment and order of the trial Court dated 18.02.2005 is, hereby, set-aside to this extent.

66. So far as the appeals filed by the appellants- **Raj Kumar Yadav, Chunni Lal** and **Sanjay Yadav** are concerned, we do not find any force therein and the same are hereby dismissed and the judgment and order of the trial court is affirmed in this regard.

67. However having regard to the acquittal of co-accused Munna Khatik and Annu Khatik, Appellants Raj Kumar Yadav, Chunni Lal Kahar and Sanjay Yadav are now convicted under Section 302 read with section 34 of the I.P.C..

68. The conviction of the above appellants and sentence passed by the trial court with regard to other offences would remain the same as passed by the trial court.

69. Appellants Munna Khatik and Annu Khatik appear to be on bail. They need not to surrender anywhere unless they are wanted in any other criminal case, however they shall file their personal bonds along with two sureties of Rs. 25,000/- before the trial Court within 30 days from today, as provided under Section 437-A of the Code of Criminal Procedure (Now Section 481 of the B.N.S.S.).

70. Appellants- Raj Kumar Yadav and Sanjay Yadav are shown to have been released by the State Government after granting remission and the same has also been recorded by this Court in its order dated 08.08.2022 and 07.11.2023. They

also need not to surrender as they have already been released on remission.

71. So far as the appellant Chunni Lal Kahar is concerned, he appears to be on bail. He will surrender before the trial court within 15 days from today to serve out the sentence as imposed by the trial court.

72. Shri Rajesh Kumar Dwivedi, who has represented appellants- **Raj Kumar Yadav** and **Chunni Lal** as Amicus Curiae will get Rs. 11,000/- as honorarium, which would be paid by the Uttar Pradesh State Legal Services Authority within 60 days from today.

73. A copy of this order be sent to the trial Court along with the trial court's record as well as to the Member Secretary Uttar Pradesh State Legal Services Authority for compliance.

(2025) 1 ILRA 104
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.11.2024

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Criminal Appeal No. 651 of 1983
 With
 Criminal Appeal No. 652 of 1983

Jagdish Singh & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:
 Keshav Sahai, Apul Misra, Dileep Kumar,
 Rajrshi Gupta, Satyendra Narayan Singh,
 Upendra Vikram Singh

Counsel for the Respondent:
 D.G.A.

Criminal Appeal-Eye Witnesses-Eye-
 witnesses were not there on the spot at all- eye witnesses not recognized the dacoits and only to implicate certain known inimical persons, the first information report got lodged-FIR was also ante-timed-the case of the prosecution does not inspire confidence - cooked up story only to implicate known persons who were impugned judgment set aside.

Appeals allowed. (E-9)

List of Cases cited:

1. Iqbal & anr. Vs St. of U.P. reported in (2015) 6 SCC 623
2. Lakshman Prasad Vs St. of Bihar reported in AIR 1981 SC 1388
3. Prem & ors. Vs St. of U.P. reported in 2022 (6) ADJ 529 (DB)
4. Shrishti Narain Vs Bindeshwar Jha & ors., 2009 (6) SCC 457

(Delivered by Hon'ble Siddhartha Varma, J.
 &
 Hon'ble Syed Qamar Hasan Rizvi, J.)

1. When an incident which allegedly took place in the night of 12/13.01.1977, a first information report was lodged on the very same day at around 4:30am on the 13th January 1977. As per the first information report, which had been got lodged by one Harihar Singh son of Jung Bahadur Singh, in the night of 12/13th January 1977 while he himself had gone to sleep after having food etc., in the varandah of the house along with his son Hridya Narayan Singh and other elderly relatives by the names of Deo Nath Singh and Ramagya Singh then at around 1:30AM in the night Jagdish Singh, Amardeo Singh, Durvasha Singh, Jai Shankar @ Dondha Singh, Deo Narayan @ Bhukhad Singh, Munda @ Raj Narayan Singh, Sriram Singh, Siyaram Singh, Rama Singh, Sagar