then he informed to the police before the witness that the clothes as well as the dead body of the deceased could be recovered. The case of the accused Kalloo is distinguished from that of accused Pradeep and Pankaj as the appellant Kalloo who enticed away/kidnapped the minor and the other co-accused were with him at the time of recovery of the dead body and clothes of the deceased. The case of the appellant was beyond reasonable doubt hence the appellant was convicted only.

47. From the depositions of prosecution witness, the post conduct of the appellant and on his pointing out subsequent recovery of the dead body and clothes, it is clear that chain of circumstantial evidence is complete. Therefore, we find no infirmity in the finding returned by the Trial Court. The conviction of the accused appellant Kalloo by the learned trial court is in consonance with the evidence and there is no need to interfere with the judgment of the trial court.

48. In view of the above, we concur with the findings of the learned trial court in holding the accused-appellant guilty.

49. The appeal being devoid of merits is **dismissed**. The impugned judgment of conviction and order of sentence are confirmed. Since the accused appellant is absconding, his bail bonds are cancelled and the sureties are discharged. He shall be taken into custody forthwith to serve the sentence. The Chief Judicial Magistrate and Senior Superintendent of Police/Superintendent of Police shall ensure the arrest of the accused-appellant.

50. Trial court record be sent to the concerned Court forthwith.

51. Let this order be communicated to all concerned by the Registrar (Compliance) for compliance.

(2025) 5 ILRA 679
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED:ALLAHABAD 09.05.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Criminal Appeal No. 5215 of 2003

Asif Ali ...Appellant
Versus
State Of U.P. ...Respondent

Counsel for the Appellant:
Araf Khan

Counsel for the Respondent:
Govt. Advocate, Satish Trivedi

Criminal Law - Indian Penal Code, 1860 - Sections 147, 148, 149, 302 & 307 - Code of Criminal Procedure,1973 - Sections 161 & 164 - Murder - PW-2, injured eye-witness was neither injured nor eye-witness - Injuries on right side of face of PW-2 could never occurred in incident, enormity was evident from F.I.R. itself - When four bullets fired from front and four of them exited from back, logical conclusion that PW-2 should have injured by one of bullets which exited from body of deceased - PW-2 throughout changing his version - He St.d immediately after incident he jumped off motorcycle, ran through sugar cane field, then reached police station along with PW-1 - Later St.d F.I.R was not lodged then he went to maternal uncle of deceased, accompanied him to police station where F.I.R lodged - Further St.d he had seen body being thrown from bridge into river - Improbable story, as he only heard about manner in which body disposed of but never seen actual disposal of dead-body,

disappeared from scene immediately after incident started off to take place - F.I.R lodged much later as mentioned in St.ment of PW-1 and PW-2 wherein they St.d after good amount of conference between police personnel, first informant and elders of village, F.I.R lodged - Other witnesses never come to witness box - When evidence on basis of which four accused persons acquitted, it could not have been possible to convict other two on basis of same evidence - Entire story about assailants coming on jeep disbelieved. (Para 29)

Appeal allowed. (E-13)

List of Cases cited:

1. Vadivelu Thevar Vs The St. of Madras reported in AIR 1957 SC 614, (Para 11)

2. Mahendra Singh & ors. Vs St. of M.P. reported in (2022) 7 SCC 157

3. Rajesh Yadav & anr. Vs St. of U.P. reported in (2022) 12 SCC 200

4. Balram Vs St. of M.P. reported in (2023) SCC Online SC 1468, (Paras 15 to 18)

5. Jodhraj & ors. Vs St. of Raj. reported in (2020) 14 SCC 205, (Paras 8, 9)

6. Basaveni Ravi & anr. Vs St. of Andhra Pradesh reported in (2012) 12 SCC 466, (Para 9)

7. Than Singh Vs St. of U.P. reported in (2020) 112 ACC 717, (Paras 30 to 34)

8. Javed Shaukat Ali Qureshi Vs St. of Guj. reported in (2023) 9 SCC 164, (Para 15)

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Ms. Nand Prabha Shukla, J.).

1. Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Araf Khan, learned counsel appearing for the appellant; Sri Amit Sinha, learned Additional Government Advocate for the State and Sri Satish Trivedi, learned Senior Advocate assisted by Sri Ajay Kumar Pandey, learned counsel appearing for the informant.

2. When one Ashraf was killed on 24.09.1997 allegedly at 09:00 AM, a first information report was got lodged on 24.09.1997 by his maternal uncle, Afzal, at Police Station – Simbhawali, Gadhmukhteshwar, District – Ghaziabad.

3. As per the first information report, the incident had taken place at 09:00 AM and the first information report was lodged at 10:15 AM. Upon the lodging of the first information report, investigation commenced and thereafter the accused persons named in the first information report namely Kamal son of Jamaluddin, Kamil and Khursheed sons of Bhure, Naufeel son of Shakur who allegedly were on a jeep and also Afsar and Asif sons of Manjoor who were made accused in the case and were on a motorcycle surrendered on different dates and they were arrested. When the investigation commenced, there were certain statements, of the eye-witnesses whose names were mentioned in the first information report, recorded under Section 161 of the Cr.P.C. Statements of certain witnesses were also recorded under Section 164 of Cr.P.C. before the relevant magistrate. During investigation the police on 24.09.1997 itself had recovered four empty cartridges of 315 bore which were found on the spot. The recovery memo was numbered as Exhibit Ka-6. Initially however when all the accused persons were not surrendering then by coercive measures the police had searched them out and arrested them.

4. It is the case of the prosecution that while the deceased, Ashraf, who was accompanied by the PW-1, Muslim, was going on a motorcycle in the village

Simbhawali then a jeep carrying four persons namely Kamal, Kamil, Khursheed and Naufeel came in front of the two, namely Ashraf and PW-2, Muslim. Because of the fact that their way was intercepted by the jeep, the motorcycle slowed down and in the meantime another motorcycle carrying Ashraf and Asif came from behind and thereafter the six accused persons who were also the assailants and were carrying country made pistols fired upon the deceased, Ashraf. It is the further case of the prosecution that thereafter PW-2, Muslim, jumped from the motorcycle and ran to inform the maternal uncle of Ashraf namely one Afzal and the latter thereafter had gone to the police station to get the first information report lodged. Upon the matter having been reported, the police had got the post-mortem of the deceased done on 25.09.1997. After the investigation had come to an end, the police had submitted its charge-sheet.

5. Upon the completion of the investigation when the chargesheet was submitted by the police, the Court of 13th Additional Sessions Judge, Ghaziabad on 20.01.1999 framed charges for the offences under Section 147, 148 and 307 of I.P.C. against the accused persons namely Kamil, Afsar Ali, Naufeel, Asif Ali and Khursheed. Alongwith those sections charges were also framed under Sections 302 read with section 149 of I.P.C. Charges vis-a-vis the accused, Kamal were framed separately. When the accused denied the charges, trial commenced.

6. From the side of the prosecution as many as eleven prosecution witnesses were produced. For the assistance of the court, one court witness Vijendra Singh, the Investigating Officer of the CBCID, was produced and from the side of the defence five defence witnesses were also produced.

7 PW-1, Afzal, is the maternal uncle of the deceased Ashraf. He, in his examination-in-chief, had stated that the incident had taken place on 24.09.1997 and had further stated that his nephew (Bhanja) Ashraf, the deceased, was resident of village Jisauri, Police Station – Mundali, District – Meerut but he had for the most of the time stayed with PW-1. He had stated that on 24.09.1997 he was with him and that in the morning alongwith his cousin, Muslim son of Munaf, he had gone out on his Yamaha motorcycle which had a number plate being number DBX 4218. They were going towards the village Saina. In between, at the Simbhawali Mill Haraura Road near the Vinod Cinema Hall, Kamal son of Jamaluddin, Kamil and Khursheed sons of Bhure and Naufeel son of Shakur came on their jeep and intercepted the way of the deceased, Ashraf. He had stated further in his examination-in-chief that all four of them were having country made pistols in their hands. He had further stated that at that very moment Afsar and Asif sons of Manjoor also came on their motorcycle with country made pistols in their hands and that all the other accused persons thereafter with an intention to kill the deceased, Ashraf, fired from their country made pistols and because of the bullet injuries, Ashraf died on the spot and fell down from the motorcycle. The pillion rider, Muslim, was also hurt by a bullet fired upon Ashraf. However, Muslim jumped from the motorcycle and ran away. He had stated that the incident had happened at 09:00 AM and that the accused persons lifted the dead-body of the deceased and took the same on the very motorcycle of the deceased. While the body was being carried the jeep of the accused persons followed the motorcycle and thereafter in the middle of the Ganga Nahar from the bridge the dead-body was thrown.

He had further stated that at the relevant point of time PW-3 Gulam Rabbani son of Ali Hasan resident of Muradpur and Irshad son of Mahfuz resident of village Saina were also there on the spot and they had witnessed the entire incident. He had further stated that the entire incident was informed to him by the injured Muslim, PW-2. He had also stated that the first information report was scribed by Gufran Ali on the dictation of the PW-1. He had stated that there was enmity between the deceased and Kamal and therefore he was killed. Upon being cross-examined from the side of Kamal, the PW-1 had stated that even though the Inspector from the CID had approached him, he had not recorded any evidence of his. He had thereafter stated that Muslim, PW-2, had taken him from his house to get the first information report lodged. He had thereafter stated that Muslim had reached his house in between 09:00 to 09:15 AM and when he had come to the house of the first informant he was also accompanied by another person called Muzaffar and thereafter he had stated that on that very motorcycle he had accompanied Muslim to the police station. Upon further cross-examination he had stated that he was educated and had passed High-School Examination but because he was very tense on account of the murder he had himself not written the first information report but had got it scribed on his dictation. When he had gone to the police station he was accompanied by Muslim and Gufran. He had stated that when he had got the information about the incident he had reached the police station and had not gone to the place of incident. He had further stated that Muslim had also injuries on his body of the bullets which were fired. He had in fact stated that there was one bullet which had actually struck him. Thereafter he had stated that the medical examination of Muslim was done on the same day at 03:00 PM. There also he had accompanied him. The distance between the police station and the Government Hospital was around 200 yards and the distance could be covered within five minutes if a person walked to the Government Hospital from the police station. He had in his cross-examination stated that Muslim had not informed him about the number of the jeep. He had only informed that the colour of the jeep was blue. When he had reached the place of incident, the eye-witnesses Rabbani and Irshad were there from before. He thereafter gave the reason for the incident and stated that Ashraf and Kamal were inimical to each other as Ashraf was staying with the first informant and Kamal and the first informant never enjoyed a very good relationship. He had also stated that Kamal had on an earlier occasion also fired on the first informant. However, fortunately no one had got injured. He had stated that the panchayatnama was done in his presence. At that time apart from him Irfan, Jay Prakash Tyagi, Momin Pradhan, Islam were also present and that the panchayatnama was filled at 06:00 PM. He had thereafter stated that the motorcycle on which the deceased had gone was not found. Where it had gone he did not know. Upon a question being asked as to whether Ashraf was a criminal, he had stated that two or three cases were being tried against him and amongst them one was also of murder. The cross-examinations as were done by the other accused persons were virtually on the same lines.

8 PW-2, Muslim, the injured eye-witness had in his examination-in-chief again narrated the entire incident as was reported in the first information report. In the cross-examination he had stated that

when the incident had occurred, he had jumped off the motorcycle and had gone into the sugar cane field and thereafter he came out of the sugar cane field and reached the main road. Upon reaching the Thana on the main road, he had informed the Daroga Ji about the incident. Further in the cross-examination, he was put certain questions with regard to the statements he had made before the CBCID. Despite the fact that in the court he had stated that after he jumped off from the motorcycle, he had gone through a sugar cane field and had reached the main road where the police station was situate and he had tried to get the information lodged with regard to the incident, when a specific question was asked as to whether before the CBCID he had stated such a fact, he had denied that he had stated any of those facts before the CBCID. Thereafter, in the court when his cross-examination was continuing, he had stated that after the incident, he had gone to the police station and from there he had gone to his maternal uncle's house. He had stated that no blood was oozing out of the injuries which he had sustained. He had thereafter stated in the cross-examination that he had asked his uncle to go to the canal/nahar and thereafter they had straight away reached the canal/nahar. He had stated that when they had reached the canal/nahar they had not found any dead-body. He had thereafter stated that Gulam Rabbani and Irshad had reached the canal/nahar earlier in point of time. He had thereafter stated that the dead-body was taken out from the canal/nahar at around 02:30 PM. He had thereafter stated that after the dead-body was taken out, he had gone to the hospital. He was accompanied by a police constable when he had gone for his medical examination. He had thereafter stated that the Police Inspector had asked the maternal uncle, Afzal, to get the report lodged. He had thereafter also stated that the maternal uncle and certain other elderly persons alongwith the Police Inspector had a due consultation with each other and only thereafter they had got the first information report lodged. He had thereafter stated that by the time the first information report was lodged he had got his medical examination done. He had also stated in the court that in between the first informant, he himself and the accused persons there was old enmity and there were many cases going on between them. He had already stated that prior to the incident on 14.11.1994, the accused Asif, his father Manjur and the accused Naufeel's nephew Munkad and Rakib were attacked with the purpose of killing them and in that case the father of the PW-2, his uncles Abrar, Munkad, Irshad, Ashraf and Anees were made accused. He had thereafter stated that on 19.01.1998 the father of the accused Khursheed and Kamil whose name was Bhure was also murdered and on 19.01.1998 itself in the same incident the father of Naufeel whose name was Shakur was injured and that criminal cases vis-a-vis those incidents were going on. He had also informed about the house trespass case which was going on against his own father and his uncle etc. He had also stated that on 06.12.1998 Dr. Rajendra Harijan was murdered and in that case he himself and Naseem were made accused. Again in the cross-examination which was done on 11.10.2000 the PW-2 had stated that before the first information report was lodged there was a full fledged conference between Afzal, the first informant, and the other elders of the village and that the PW-2 was also present at the time of the consultation which was going on and only thereafter the first information report was got lodged. He had stated that after he had jumped off from the motorcycle and had

gone to the sugar cane field, he had hidden himself behind the sugar cane crop and he had seen the accused persons from there. He had stated that police had taken his statement after around 10-15 days of the incident. On 03.11.2000, the PW-2 was again recalled for giving his statement after he had been examined by the prosecution, the accused persons also cross-examined him. When he was recalled, he was confronted with certain statements, he had got recorded before CBCID and he had denied having made those statements before the CBCID. He, throughout in his cross-examination after he was recalled, had stated that he had mentioned the name of Kamal as an accused. This prosecution witness upon being confronted that he had been giving contradictory statements, had stated that at this times he was speaking the truth and on other occasion he was lieing as he was from time to time being threatened by the accused persons. He had stated that even before the CBCID, he had not stated the correct fact as the CBCID Inspector was abusing him. He categorically thereafter stated that before he had given his statement on 01.09.2000 the accused Kamil had threatened him with dire consequences if he spoke out the truth. He had thereafter stated again in the cross-examination when he was recalled by the CBCID Inspector that he had stated that he was not hit with any bullet but he had been injured because of the barood.

9 PW-3, Gulam Rabbani, is the other eye-witness. He had stated that the incident was of 24.09.1997 and had occurred at 09:00 AM. He had also tried to corroborate the case as was taken in the first information report and had stated about the jeep first coming with the accused Kamal, Kamil, Khursheed and Naufeel. He further stated that thereafter the motorcycle came which carried Afsar and Asif. He had stated that all the six accused persons had in a planned manner shot at the deceased, Ashraf, and that all six accused persons had country made pistols in their hands. Ashraf was hit by the bullets and he had fallen down there itself and had died. He had stated that PW-2, Muslim, had also been injured by the bullets. He had thereafter stated that Afsar had asked Asif to load the dead-body on the motorcycle of the deceased and had planned to do away with the dead-body in the Ganga Nahar. He had also stated in his examination-in-chief that he had asked the accused not to dispose of the dead-body but they had taken the body on the motorcycle of the deceased and thereafter had thrown it in the Gang Nahar. In his cross-examination, he had stated that he had on the date of incident gone to see his agricultural fields and thereafter had gone to the bridge from where the body was thrown and he had on that date itself bought some “khal”. He, however, stated that he did not remember as to where and from which shop he had purchased the khal. However, he had stated that he had purchased khal which weighed around 15 kilograms. He had thereafter remained at his agricultural field and he had returned to his village thereafter and then he had gone to the shop to purchase khal at around 02:00 PM and after purchasing khal had come back at around 03:00 PM. He had thereafter tried to give an eye-witness account and stated that he had seen the jeep and also the motorcycle carrying the assailants. He had also stated that there were six fire shots. He had thereafter stated that he had met Afzal on the bridge from where the dead-body was allegedly thrown at around 4:00 to 5:00 PM in the evening. Thereafter, upon being asked as to what he had done after purchasing khal, he had stated that at around 12:00 Noon he had

gone to his sugar cane field and there he was lying down.

10 PW-4, Dr. R.N. Mishra, was the doctor who had conducted the post-mortem of the deceased and had stated that there were four entry wounds and four exit wounds and he had stated that in the stomach of the deceased there was 100 grams of undigested food. He had, however, stated that all the entry wounds and exit wounds were caused by bullets. He had also stated that by looking at the dead-body it did not appear that it was taken out from any water body.

11. PW-5, Vijay Pal Singh, was the Sub-Inspector under whose guidance the inquest was conducted.

12. PW-6, Dr. Sunil Kumar Gupta, was the doctor who had examined the injuries of the PW-2 and had stated that the injuries were 2 mm X 1 mm and that they were many in number and were on the right side of the cheek and the neck within the range of 18cm X 8cm.

13. PW-7, K.D. Singh Station Officer, was the first Investigating Officer.

14. PW-8, Mahendra Pal Singh, was the second Investigating Officer.

15. PW-9, V.K. Singh, was the third Investigating Officer. They all got recorded their statements-in-chief and they were also cross-examined.

16. PW-10, Yaduraj Singh, was also one of the Investigating Officer.

17. PW-11, Rajkumar, who was the chik writer and he had proven the first information report.

18. The Investigating Officer of the CBCID, Vijendra Singh, was called as a court witness and he had categorically stated that he had taken the statement of the injured Muslim while he was in jail for some other crime in which he was involved in and he had stated that he had definitely got recorded his statement saying that the entire incident had occurred because of the various enmities in the village and that Afsar, Vasil sons of Irshad Ali and Salim son of Khursheed had committed the crime. He had also given the record of the various statements he had taken of various witnesses and he had also stated that with regard to the fact that the jeep, involvement of which was alleged was in the workshop from 23.09.1997 to 28.09.1997. Thereafter from the defence side, five defence witnesses were produced.

19. DW-1, Akhtar Husain, had categorically narrated about the fact as to how the jeep was being repaired.

20. DW-2, Sri Pal Singh, had also categorically stated about the fact that there was only motorcycles which he had seen at the place of incident.

21. DW-3, Sunil Kumar, had again stated about the fact that he had also only seen the motorcycles at the place of incident.

22. DW-4, Dilawar, had also stated only about the motorcycle.

23. Similarly, Tareekat, DW-5 had given his statement in favour of the accused persons.

24. The accused thereafter had got their statements recorded under Section 313

of Cr.P.C. and had denied having been committed the crime.

25. On the basis of all the evidence which was led the Additional Sessions Judge, Court No. 12, Ghaziabad in Session Trial No. 458 of 1998 had found that Afsar and Asif had reached the place of incident on their motorcycle and had committed the crime, he had acquitted the other accused persons namely Kamil, Naufeel, Khursheed and Kamal. Afsar had died during the trial. When the appellant-Asif was convicted under Section 302 read with section 201 of the I.P.C., he had filed the instant Criminal Appeal.

26. Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Araf Khan, learned counsel appearing for the appellant has submitted as follows:

(i) It was very doubtful that the PW-2, the injured eye-witness, was at all present at the place of incident. He has drawn the attention of the Court to the report of the medical examination of the PW-2 and had stated that he had suffered injuries which were of the size of 2mm X 1mm and that they were within an area of 18cm X 8cm. He has stated that even the injuries were absolutely not possible on the right side of the PW-2 who was a pillion rider. He submits that there were four entry wounds from the front of the body of the deceased, Ashraf and all the four bullets which had entered from the front had come out from the back and it does not stand to reason that not even one bullet hit the pillion rider.

He therefore submitted that it, therefore, becomes very doubtful that the PW-2 was at all there on the spot. He submits that the manner in which the PW-2 was changing his statement on the pretext that he was being threatened by the accused persons also shows that in fact the PW-2 was not sure of the statement which he was getting recorded and when he found that his statements were in contradiction with each other, he used to say that he was being threatened by the accused persons. Learned counsel for the appellant has submitted that PW-2 had in fact gone to the extent to state that even the Inspector of the CBCID had abused him to an extent that he could not give proper replies to him as well. Learned counsel for the appellant states that the PW-2 had very categorically stated that the incident had occurred because of certain internal rivalries between the villagers and that he had taken the names of those persons also. Learned counsel for the appellant states that the PW-2 had stated that the incident had occurred because of the internal rivalries between the villagers and this was clear from the statement he had got recorded before the CBCID Inspector and this statement was also proved by the CW-1 wherein he had stated as under :

"मैने मजूरूब मुस्लिम का बयान दि. 28.2.98 को जिला कारागार गा. बाद में लिया था। गवाह से मेरे द्वारा सत्यता घटना की बावत पूछने पर उसने मुझे बताया था कि इस घटना की प्रष्ठ भूमि में हमारे गांव की रंजिश है और मारने में हमारे गांव के अफसर, वासिल S/o इसाद अली व सालिम S/o खुरशैद थे गोलिया वासिल व सालिम ने चलाई थी। मोटर साइकिल अफसर चला रहा था मैने थाने मे सबसे पहले यही बात बताई थी।"

(ii) Learned counsel for the appellant states that if the first information report is seen, it has been stated that the PW-1 had got the first information report lodged on the information given by the PW-2, Muslim, and in the first information report he had also stated that PW-2 had informed him that the accused persons after

killing Ashraf had taken his dead-body on the motorcycle of Ashraf and had dropped the dead-body from the bridge into the river. Learned counsel for the appellant states that if the statement of this witness i.e. PW-2 is seen, then it becomes very doubtful that he would have seen the dead-body being taken to the river and being dropped from there. At the most from the statement of the PW-2 it could be gathered that he had heard the accused that they would take him to the river. In fact, the PW-2 had stated in his statement before the Court that when the incident had occurred he had jumped off from the motorcycle and had run away into the sugar cane field and from there he had gone to the police station situate on the main road and when his first information report was not lodged, he had gone to Afzal's house and he alongwith Afzal had thereafter gone to lodge the first information report. Learned counsel for the appellant states that even this statement was not believable in view of the statements of the PW-2 wherein he had stated that the first information report was lodged immediately before he had got his injuries examined and that also the first information report was lodged after the police, certain elderly persons and Afzal had discussed the matter intensely and had thereafter got lodged the first information report. He therefore submits that in fact the first information report was not lodged at 10:15 AM as had been stated in the first information report but was lodged much later at around 02:30 PM after a full fledged discussion was held between the police and the first informant Afzal and certain other elderly persons of the village. The first information report was lodged after due discussion and not simply on the information given by the PW-2, becomes evident from the statement recorded of the PW-2 at page no. 40 of the paper book and the same is being reproduced here as under :

"इन्सपेक्टर साहब ने इस मुकदमें की रिपोर्ट लिखाने के लिये मुझसे नही कहा था अफजाल से कहा था। फिर अफजाल, मेरे गाँव के ताउ चाचा व इन्सपेक्टर साहब रिपोर्ट लिखाने की बावत मशविरा करने बैठ गये थे। मुझे यह ध्यान नहीं कि अफजाल क्गैरा ने गुलाम में रब्बानी व इरशाद से पूछकर गवाही में नाम लिखाये थे। वैसे गुलाम रब्बानी व इरशाद गवाह नहर पर समय मौजूद थे जब इन्सपेक्टर साहब अफजाल वगैरा के मशविरे से रिपोर्ट लिखा रहे थे।"

That the first information report was lodged after due consultation is also evident from the statement of the PW-2 at page no. 43 of the paper book. The relevant portion is being reproduced here as under:

"रिपोर्ट लिखाने से पहले मेरे ताऊ चाचा जो नहर पर आ गये थे उन्होने अफजाल से मशविरा किया था उस वक्त मैं भी मौजूद था। 10 बजे के बाद मैं पहले थाने गया फिर अस्पताल डाक्टरी कराने गया। मैं थाने से सीधे अस्पताल चला गया था। बीच में कही नही रूका था। मेरे ताऊ चाचा किस सवारी से आये थे मैने नही देखा"

Further the statement which makes it even more evident that the first information report was a result of a due discussion, the statement is being reproduced here as under:

"जब हम नहर के पुल पर रिपोर्ट लिखाने के लिये मशविरा कर रहे थे तो उस वक्त वहाँ पुलिस मौजूद थी। जब अफजाल के साथ मशविरा कर रहे थे तो कितने पुलिस वाले मौजूद थे मुझे ध्यान नही है। रिपोर्ट में अफजाल ने क्या लिखाया है मुझे पढकर नही सुनाई थी। मैं अपना नाम लिख लेता हूँ।"

(iii) Learned counsel for the appellant further states that the PW-2 as a witness was a wholly unreliable witness. Learned counsel for the appellant relied upon a judgment of the Supreme Court in **Vadivelu Thevar vs. The State of Madras** reported in **AIR 1957 SC 614** submitted

that a witness could either be : (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. Since the learned counsel for the appellant has relied upon the relevant portion of the paragraph 11 of the judgment, the same is being reproduced here as under :

"If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable."

Learned counsel for the appellant further relied upon the judgments of Supreme Court in **Mahendra Singh & Ors. vs. State of Madhya Pradesh** reported in **(2022) 7 SCC 157**. The relevant paragraphs on which the learned counsel for the appellant relied upon are being reproduced here as under :

"It will be apposite to refer to the following observations of this Court in its celebrated judgment in Vadivelu Thevar : (AIR p. 619, paras 11-12)

"11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

13. It could thus be seen that this Court has found that witnesses are of three types viz. (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is "wholly reliable", the court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the court finds that the witness is "wholly

unreliable", there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

Also learned counsel for the appellant relied upon **Rajesh Yadav & Anr. vs. State of Uttar Pradesh** reported in **(2022) 12 SCC 200** and submitted that when the sole injured eye-witness was wholly unreliable and when there was no corroborative evidence then it was absolutely unsafe to have convicted the accused person i.e. the appellant. He thereafter submits that in the instant case the PW-2 appears to be a witness who was wholly unreliable.

(iv) Learned counsel for the appellant thereafter submitted that PW-3, Gulam Rabbani, was also shown as an eye-witness but his statement also became absolutely unreliable in view of the fact that while he was narrating about his presence at the place of incident, he was stating all unbelievable facts. He had stated that he was the eye-witness and he had stated that he had seen the assailants taking the dead-body. Learned counsel for the appellant states that if that was the case, then the assailants would have themselves done away with the eye-witness, PW-3. Learned counsel for the appellant further states that from the statement of PW-3 it is evident that he had alleged that he had seen the incident from a distance of ten feet. If that was again the case then definitely the assailants would have done away with the PW-3 also as they would not have left behind a definite eye-witness. Still further the testimony of the PW-3 becomes unbelievable as he had stated that in between the time of the incident and the time when he had met the first informant Afzal he had gone to do some shopping of khal. It seems to be a highly improbable thing to be done by an eye witness.

(v) Learned counsel for the appellant further argued that when the four of the accused who had faced trial on account of the very first information report which was lodged on the basis of the information given by PW-2, Muslim, and when the case vis-a-vis them were found to be unbelievable then the entire case as was brought by the PW-2 becomes unbelievable. The PW-2 was the only injured eye-witness when he had been considered a wholly unbelievable witness, then the entire prosecution story was falsified. Against the acquittal of the accused appellant-Tarikat, a Revision was filed being Criminal Revision No. 4066 of 2003 which has already been dismissed by the order of this Court dated 24.07.2023.

In this regard learned counsel for the appellant also relied upon the judgment of Supreme Court in **Balram vs. State of Madhya Pradesh** reported in **(2023) SCC Online SC 1468**. Since the learned counsel for the appellant relied upon paragraphs no. 15, 16, 17 and 18 of the judgment, they are being reproduced here as under :

"15. Per contra, PW.6-Mulchand attributes the fire injuries to three persons. One to accused Rameshwar, the other to Uma Charan and the third one to appellant-Balaram. On the basis of the very same evidence, the Trial Court has disbelieved the version of these two witnesses, insofar as accused Uma Charan is concerned.

16. We find it difficult to accept the distinction drawn by the learned Trial Judge while believing the evidence of PW.5-Ramkali and PW.6-Mulchand insofar as appellant- Balaram and Rameshwar (since deceased) are concerned.

17. As already discussed herein above, previous enmity is a double edged weapon; on the one hand it provides the motive, whereas on the other hand, the possibility of false implication cannot be ruled out.

18. We find that when the Trial Court has disbelieved the testimony of PW.5-Ramkali and PW.6-Mulchand insofar as accused Uma Charan was concerned, it could not have applied a separate standard while considering the case of the present appellant-Balaram and Rameshwar (since deceased)."

Further learned counsel for the appellant relied upon the judgment of Supreme Court in **Jodhraj & Ors. vs. State of Rajasthan** reported in **(2020) 14 SCC 205**. Since the learned counsel for the appellant relied upon paragraphs no. 8 and 9 of the judgement, they are being reproduced here as under :

*"**8**. At the outset, it is required to be noted that the learned trial court convicted five accused out of 14 accused who came to be tried for the offences under Sections 148, 302/149, 379 IPC. The prosecution heavily relied upon the deposition of PW 2 and PW 3 who claimed to be the eyewitnesses. The prosecution also relied upon the so-called dying declaration; however, the dying declaration has not been believed. In an appeal, the High Court has further acquitted another accused Bhanwar Lal on the ground that the statement of PW 2 Om Prakash and the statement of PW 3 Ram Dayal under Section 161 CrPC were recorded after a period of 18 days and that the statement of Ram Dayal was exaggerated and more and more persons of the family were tried to be implicated. Therefore, the High Court was of the opinion that recording the statement under Section 161 CrPC of Om Prakash PW 2 and Ram Dayal PW 3, leaves no doubt that both the witnesses took benefit of delay and for the three injuries on the person of the deceased Hariram, out of which one was abrasion, the witnesses have resorted to implicate 14 accused. Thus, the blemish on the part of the witnesses, calls upon us to sift grain from the chaff. Thus, the High Court did not accept the deposition of PW 2 and PW 3 so far as the accused Bhanwar Lal is concerned. However, at the same time, relying upon the statement of very two witnesses PW 2 and PW 3, the High Court has confirmed the conviction of the appellants Jodhraj and Jagdish Prasad. Therefore, considering the facts and circumstances of the case, we are of the opinion that if the deposition of PW 2 and PW 3 are not reliable qua one of the accused on the grounds stated hereinabove and one of the accused came to be acquitted by giving benefit of doubt, the same benefit ought to have been given to the other accused also, unless there is some further material/evidence against the other accused.*

***9**. As observed hereinabove, except relying upon the deposition of PW 2 and PW 3, there is no other evidence implicating the appellant-accused convicts. Under the circumstances, in the absence of any further evidence implicating the accused convicts, the High Court has materially erred in confirming the*

conviction of the appellant solely relying upon the deposition of PW 2 and PW 3 whose deposition has been doubted by the High Court and not relied upon by the High Court so far as one of the accused is concerned, the same reasoning should be applied in the appellants' case also which weighed with the High Court while acquitting Bhanwar Lal. So far as the acquittal of Bhanwar Lal is concerned, we are in complete agreement with the view [Jodhraj v. State of Rajasthan, 2016 SCC OnLine Raj 1264] taken by the High Court. Cogent reasons have been given by the High Court for not believing the deposition of PW 2 and PW 3."

Still further learned counsel for the appellant relied upon **Basaveni Ravi & Anr. vs. State of Andhra Pradesh** reported in **(2012) 12 SCC 466** and has specifically relied upon paragraph 9 of the judgment, the same is being reproduced here as under :

*"**9**. We have carefully perused the conclusion reached by the trial court and the High Court for acquitting all the accused persons except A-5 and A-8. The least that we can say is, we are surprised by the judgment and order passed by the trial court as well as by the High Court. We say so for the reason that, having acquitted all the other accused persons on the same piece of evidence available on record, A-5 and A-8 could not have been convicted, though they were charged under Section 302 read with Section 34 IPC."*

Also the learned counsel for the appellant relied upon **Than Singh vs. State of U.P.** reported in (2020) 112 ACC 717. Since the learned counsel for the appellant relied upon paragraphs no. 30, 31, 32, 33 and 34 of the judgment, they are being reproduced here as under :

"30. We do not find any merit in the aforesaid argument of learned A. G. A. because all the four witnesses of fact have consistently assigned the role of firing at the deceased to each of the accused and the role of appellant Than Singh, cannot be distinguished from that of Pooran merely because he was also ascribed the role of catching hold of the deceased. Moreover, the aforesaid consideration had not weighed with the learned trial Judge while acquitting co-accused Pooran and convicting the appellant Than Singh, as is evident from the perusal of the impugned judgement and order.

31. The trial court by acquitting the co-accused Pooran obviously did not find the testimony of the eyewitnesses qua Pooran reliable, although their evidence could not be split to grant benefit to some co-accused while convicting others who stood on the same footing.

32. Faced with an identical situation, the Apex Court in the case of Ram Laxman Versus State of Rajasthan reported in (2016) 12 SCC 398 in paras 6 and 7 of its judgement held as hereunder:

6. Strangely, the High Court disbelieved Ganesh qua the other co-accused and granted them acquittal but accepted his testimony in respect of the appellants by explaining that the maxim "falsus in uno, falsus in omnibus" stands disapproved since long as per the judgement of this Court in Ugar Ahir Versus State of Bihar.

7. In our considered view the Division Bench committed a serious error

in relying upon the aforesaid judgement. No doubt, it is an established principle of criminal law in India that only account of detecting some falsehood in the statement of a witness who is otherwise consistent and reliable, his entire testimony should not be discarded. It is equally settled law that if a witness is found undependable and unreliable his evidence cannot be split to grant benefit to some co-accused while maintaining conviction of another when in all respects he stands on the same footing and deserves parity."

33. Thus, in view of the principle enunciated by the Apex Court in the aforesaid case and after bestowing anxious considerations to the material on record, we are unable to agree with the reasons given by the trial court for convicting the appellant Than Singh and acquitting co-accused Pooran. The evidence of the witnesses of fact examined by the prosecution during trial is not of such nature which may be splitted to grant differential treatment to the different co-accused.

34. Since the case of the appellant Than Singh stands on the same footing as that of co-accused Pooran, who was acquitted, if not on better footing, appellant Than Singh was entitled to acquittal, apart from merits, on parity as well. Thus, in view of the foregoing discussion, we are of the view that neither the recorded conviction of the appellant Than Singh nor the life sentence awarded to him can be sustained and is liable to be set aside. Criminal Appeal No. 2004 of 1986 qua appellant Than Singh is hereby allowed and he is acquitted of all the charges."

Learned counsel for appellant in the end has relied upon a judgment of Supreme Court in **Javed Shaukat Ali Qureshi vs. State of Gujarat** reported in **(2023) 9 SCC 164** and stated that it was therefore very unsafe to convict the accused persons on the basis of a wholly unreliable eye witness. Since the learned counsel for the appellant has relied upon paragraph 15 of the abovementioned judgment, the same is being reproduced here as under:

*"**15**. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination."*

27. Sri Satish Trivedi, learned Senior Advocate assisted by Sri Ajay Kumar Pandey, learned counsel appearing for the informant has submitted, as under:

(i) The occurrence in question happened at 09:00 AM on 24.09.1997 and the first information report of the said occurrence was lodged promptly on 24.09.1997 at 10:15 AM at P.S. Simbhavali, District Ghaziabad by P.W.-1 Afzal nominating the appellant and 05 others persons as accused.

(ii) As the first information report has been lodged promptly and without any undue delay, hence the possibility of the same being either ante-timed or the result of any discussions, deliberations or confabulations stands ruled out.

(iii) Admittedly the first informant (P.W.-1) is not an eye witness of

the occurrence and is the maternal uncle of the deceased but yet at no stage of the case did he ever show himself as an eye witness, which he could have done, but his role of being confined to lodging of the F.I.R only shows that the prosecution has come up with clean and fair hands.

(iv) Pertinently the injured witness Muslim (P.W.-2) had accompanied P.W.-1 to the Police Station where the F.I.R. was lodged vide G.D. No.14 at 10:15 AM and as per the same G.D. P.W.-2 had been sent with Chitthi Majroobi to the Primary Health Center in the company of Constable 369 Mesho Pal Singh. The said fact further shows that the F.I.R. was not ante- time and also establishes the fact about his being injured in the course of the occurrence in question.

(v) In so far as the testimony of P.W.-2 is concerned, it is submitted that after his examination in chief had been recorded on 19.05.2000, the defence did not continue with his cross examination and the cross examination was conducted after about 04 months on 01.09.2000, 07.09.2000 and 11.10.2000 and it is this part of the testimony of P.W.-2 upon which the defence claims that the case of the prosecution stands dented. However, in his cross examination on 03.11.2000 conducted by the prosecution P.W.-2 has clearly stated that the accused had threateneded to eliminate him as a result of which he had stated the facts in his cross examination by the defence and he had also given an affidavit on the said issue.

(vi) Pertinently P.W.-2 in his statement recorded under Section 164 of the Cr.P.C. during the course of the investigation has fully supported the case of the prosecution.

(vii) It is therefore apparent that the prosecution has intimidated, threateneded and tampered a witness of the prosecution and the defence therefore cannot take any advantage from that part of the testimony in which he has not fully supported the case of the prosecution.

(viii) It is settled law that that part of the testimony of the hostile witness can be considered by the Court in which he is intact and has supported the case of the prosecution and only on the ground that some part of his testimony does not support the case of the prosecution, the entire testimony of P.W.-2 cannot be discarded outrightly.

(ix) Even otherwise where a witness is termed to be partially reliable, then the Court can seek corroboration from other evidences and in the present case the testimony of P.W.-2 stands corroborated from the medical version as well as the F.I.R. as well as even in the statements of DW2 Sripal and DW3 Sunil Kumar.

(x) The fact that P.W.-2 had sustained fire arm injury and was sent promptly with Chitthi Majroobi from the Police Station, establishes his presence at the place of the occurrence.

(xi) In so far as the medical evidence is concerned it is noteworthy that the antemortem injuries of the deceased show that the seat of the first fire arm wound of entry is on the right upper part of the chest, the second fire arm wound of entry is situated on the right side of the chest near the right nipple, the third fire arm wound entry is above the left nipple and the fourth fire arm wound of entry is on the left temporal reason. All the said fire arms wounds of entry are therefore located

either on the left or right side of the body of the deceased.

(xii) The appellant and co-accused Afsar were riding on a motorbike and had approached the deceased from behind while other co-accused had confronted the deceased and injured from the front and in such a situation, the shots were fired by the appellant and co-accused while approaching the deceased from the side which explains the fire arm wounds on the side of the body of the deceased.

(xiii) Other shots were also sustained by the deceased which were fired by the co-accused riding in the Jeep and their acquittal stands challenged by the first informant through Criminal Revision No.4066 of 2003 (Tarikat Vs. State of U.P. and others).

(xiv) P.W.-2 had sustained a grazing fire arm injury as a result of the shot exiting from the body of the deceased (ante-mortem injury no.2) which is on the right side of the body of the deceased and is on the right side of the face and throat of the injured witness P.W.-2.

(xv) Where the offence has been committed in broad day light and in a dare devil manner, wherein after having shot the deceased fatally the deceased threw the body of the deceased in the canal, there was no reason for the prosecution witnesses to falsely nominate the appellant and co-accused and the manner of the occurrence also makes it apparent that the same would have been witnessed by several persons.

(xvi) It is settled law that the defence cannot take advantage of defects or lapses as a result of a perfunctory investigation.

(xvii) It is settled law that it is the quality of the evidence and not the quantity of evidence that is important.

(xviii) Where P.W.-2 is an injured witness his injuries having been proved and he has given an ocular version supporting the case of the prosecution and the same is also corroborated by other material evidences then the conviction of the accused can be very well secured on the basis of even the solitary testimony of P.W.-2.

(xix) The appellant had been absconding alongwith the other co-accused during the investigation and during their absconding the police report under Section 173 (2) of the Cr.P.C. had been submitted. Hence the absconding of the appellant would be a relevant fact under Section 8 of the Evidence Act showing his subsequent conduct.

(xx) P.W.-3 is a wholly natural witness and has correctly depicted the sequence of events comprising the occurrence in question and the same also stands corroborated by other evidences and there is nothing in his testimony that could dent the case of the prosecution and apparently the accused have also tampered and intimidated the said witness.

(xxi) With regard the testimony of P.W.-2 and P.W.-3, it is submitted that minor discrepancies are not to be given undue emphasis until and unless such omission or discrepancy goes to the rout of the matter hence minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and only serious contradictions and omissions cant materially affect the case of the prosecution.

(xxii) The PW2 is not an unreliable witness, instead his evidence is reliable and stand corroborated even with the evidence of defence witness.

28. In support of his submissions, he took us through the evidence of prosecution witnesses and the defence witnesses and submitted that the date, time and place of incident, the death of the deceased and the injury received by the P.W.-2 in the incident in question, is wholly proved. He drew our attention to the statement of PW-2 under Section 164 Cr.P.C. and chitthi majrubi.

29. Having heard learned counsel for the parties, we are of the view that the appellant deserves to be acquitted. The PW-2 who has been shown to be an injured eye-witness was neither injured nor was an eye-witness. This we say as the injuries which were shown to have been on the right side of the face of the PW-2 could never have occurred in an incident, the enormity of which was evident from the F.I.R. itself. When the four bullets were fired from the front and the four of them had exited from the back, there was a logical conclusion that the PW-2 should have been injured by at least one of the bullets which exited from the body of the deceased. Also, we are of the view that the PW-2 had been throughout changing his version. At one point of time, he had stated that immediately after the incident had occurred he had jumped off the motorcycle and had ran through the sugar cane field and thereafter reached the main road and then reached the police station alongwith PW-1. Later in his evidence he had stated that the first information report was not got lodged then he went to Afzal, maternal uncle of the deceased, and had accompanied him to the police station where the first information report was got lodged. Also, we are of the view that he had stated that he had seen the body being thrown from the bridge into the river. However, this also seems absolutely an improbable story as he himself had stated that he had only heard about the manner in which the body was to be disposed of but he never in fact had seen the actual disposal of the dead-body as he had disappeared from the scene immediately after the incident had started off to take place. Still further we are of the view that the first information report was lodged much later in the day as had been mentioned in the statement of PW-1 and PW-2 wherein they stated that after a good amount of conference between the police personnel, the first informant and the elders of the village the first information report was got lodged. Also the PW-3 was absolutely unbelievable. The other witnesses mentioned in the F.I.R. never come to the witness box. Still further we are of the view that when the very evidence on the basis of which four of the accused persons namely Kamal, Khursheed, Kamil and Naufeel were acquitted, it could not have been possible to convict the other two on the basis of the very same evidence. We find that the entire story about the assailants coming on the jeep had been disbelieved. The story therefore could not be both believed and disbelieved. In view of what we have stated, we are of the view that the Appeal deserves to be allowed.

30. The appellant is acquitted of all the charges. The judgment and order dated 14.10.2003 is quashed and is set-aside.

31. The instant Appeal is accordingly, **allowed**.

32. The appellant - **Asif Ali** shall be set free, if he is in jail and in the event, he is on bail, his bail bonds shall stand discharged subject to compliance of

Section 437A of Cr.P.C. provided he is not wanted in any other case.

33. Copy of this order be sent by the Registrar (Compliance) to the Chief Judicial Magistrate concerned for necessary action.

(2025) 5 ILRA 696
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.05.2025

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Special Appeal No. 117 of 2025

Dr Manoj Kumar Rawat ...Appellant
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Appellant:
Alka Upadhyay, Manish Tiwari, Naveen Kumar Tripathi, Prabhakar Awasthi, Sr.Advocate

Counsel for the Respondents:
Varun Dev Sharma, Ankit Shukla, Avneesh Tripathi,C.S.C., Gagan Mehta, Parijat Mishra

A. Service Law – UP Education Service Selection Commission Act, 2023 – UP Higher Education Act, 1980 – Section 13(4) – Jurisdiction of Director – Selection list was prepared in furtherance of advertisement issued under old Act of 1980 – How far Director has jurisdiction to intimate the name of a candidate from such list for appointment in vacancy arisen after New Act – Held, the power available to the Director under the previous enactment, particularly, section 13(4) of the Act, 1980 would not be available to be exercised after the new Act of 2023 has come into effect – Once the new Act contains no power with the Director to fill up a substantive vacancy which has come into existence later, to be filled from a candidate selected in an earlier advertisement, the action of the Director would be without jurisdiction. (Para 15 and 17)

Special Appeal dismissed. (E-1)

(Delivered by Hon'ble Ashwani Kumar Mishra, J.)

1. This appeal arises out of an order dated 17.02.2025 passed by learned Single Judge in Writ-A No. 15433 of 2024, whereby, the placement of the appellant pursuant to order of Director dated 15.01.2024 in Meerut College, Meerut, has been set aside.

2. The undisputed facts of the case as are noticed by learned Single Judge are that the Uttar Pradesh Higher Education Services Commission (hereinafter referred to as "Commission") issued Advertisement No. 49 of 2019 inviting applications for appointment to 219 posts of Principal in aided Post-Graduate Colleges in the State of Uttar Pradesh. This advertisement included the post of Principal in Meerut College, Meerut. The appellant participated in the selection proceedings and was ultimately placed in the waiting list. It transpires that one Dr. Sachchidanand Sharma was placed as Principal in Meerut College, Meerut. He joined pursuant to his placement and worked in the college for nearly 1 and 1/2 year, whereafter, he left. The post of principal in Meerut College, Meerut, has, thereafter, fallen vacant.

3. The records reveal that the appellant though was initially placed in the waiting list but he secured appointment on account of vacancies which were found to have