RESERVED
A.F.R.

Court No. - 29

Case :- CRIMINAL APPEAL No. - 5013 of 2012

Appellant :- Pratap Singh And Others
Respondent :- State of U.P.
Counsel for Appellant :- Apul Misra,Noor Mohammad
Counsel for Respondent :- Govt. Advocate,Ram Babu Sharma

Hon'ble Munishwar Nath Bhandari, Acting Chief Justice
Hon'ble J.J. Munir,J.

(Delivered by : Hon'ble J.J. Munir, J.)

1. The appellants here, who are four in number, have been convicted by Mr. S.N. Tripathi, the then Additional Sessions Judge, Court No. 6, Budaun of an offence under Section 302 read with Section 34 of the Indian Penal Code, 1860[1] and sentenced to suffer imprisonment for life, and a fine of Rs. 40,000/- each. In the event of default, the appellant concerned has been ordered to suffer an additional simple imprisonment for a period of ten months. The aforesaid judgment has been passed by the learned Additional Sessions Judge in Sessions Trial No. 213 of 2006, State v. Pratap Singh and others (arising out of Case Crime No. 212 of 2003), under Section 302/34 of the Penal Code, Police Station - Kadar Chowk, District - Budaun, decided on 27.11.2012.

2. The First Information Report[2] leading to the prosecution, that has since culminated in the impugned conviction, was lodged on 11.11.2003 at 12:25 in the afternoon hours by one Sirajuddin, son of Bajruddin, a native of Village Nauli Fatuabad, Police Station - Ushait, District - Buduan. It reported an occurrence that took place earlier in the day at 10:30 a.m. It was said in the F.I.R. that about a year and a half ante-dating the occurrence, the informant's son, Riazuddin and another resident of the village, Pratap Singh, had both applied for the position of a *Shiksha Mitra*. The informant's son, Riazuddin, was selected. Pratap Singh and his family allegedly harboured animosity on this score against

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1 **for short "the Penal Code"**
2 **for short "F.I.R."**

the informant's son. It is claimed that Pratap Singh had told the informant's son that though the latter had succeeded in becoming a *Shiksha Mitra*, but Pratap would not spare his life. On 11.11.2003, the informant's son was riding a *tonga* (described as a *buggi*) to Kadar Chowk. The horse-driven carriage had on board Hasanuddin, son of Basaruddin and Fisauddin, son of Waziruddin, both natives of the informant's village. As the party reached between Mahmurganj and a place called Gadhiya, they were intercepted and waylaid by the four appellants, who came along riding a tractor. They are said to have forced down the informant's son from the carriage, saying that "*Lets make him into a Shiksha Mitra*". The informant's son was forced down the carriage at about 10:30 a.m. and dragged by the appellants through a distance, abusing him. He was thrown in front of the tractor. The other three appellants are said to have exhorted Pratap Singh to run him over. Pratap Singh is alleged to have run over and crushed the informant's son to death under the wheels of the tractor. It is reported that Hasanuddin and Fisauddin, besides the driver of the carriage, witnessed the incident. The informant too said that he proceeded to the spot and had seen his son's dead body lying in *situ*, where a large crowd had congregated.

3. On the basis of the written report lodged by the informant, Ex.Ka1, the *chik* F.I.R. Ex.Ka.3, also dated 11.11.2003, giving rise to Case Crime No. 212 of 2003, under Section 302 of the Penal Code was registered at Police Station - Kadar Chowk, District - Budaun. The crime aforesaid was registered *vide* G.D. entry no. 17 at 12:25 p.m. at the police station last mentioned. A copy of the said G.D. is available on record.

4. The Police, after registration of the crime, proceeded to investigate the same. The inquest was held on 11.11.2003, commencing 01:15 p.m. and ending at 03:30 p.m. The inquest is on record as Ex.Ka.4. The dead body was sent for autopsy. The doctor undertook the necessary postmortem examination and an autopsy report dated 12.11.2003 was submitted, that is on record as Ex.Ka.2. A site plan was

drawn and statements of witnesses taken down. Samples of blood-stained soil and unstained soil were also collected, besides a pair of sandals that the deceased had worn.

5. All the accused, except Pratap Singh, surrendered in Court. Pratap Singh is said to have been arrested on 21.12.2003 along with the Tractor of Sonalika make bearing registration no. UP-24B-2647.

6. PW-5, Dr. D.S. Misra, who conducted the autopsy on 12.11.2003 found the following antemortem injuries on the body of the deceased:

> "(1) A crush injury on Rt. side of skull size 7.5cm x 6 cm underneath skull bone found fractured. Meninges and brain matter found lacerated clotted blood present in brain cavity.
>
> (2) Contusion with abrasion in front of chest in an area ranging 10cm x 5 cm. Both clavicles, 2nd, 3rd, 4th and 5th ribs on both sides found fractured. Liver and lungs found lacerated.
>
> (3) Multiple abrasions on whole of the right upper limb size ranging from 2 x 1 cm to 4 x 2.2 cm.
>
> (4) Multiple abrasions on whole of the left upper limb size ranging from 2.5cm x 1.5cm to 3.5cm x 2cm.
>
> (5) An abrasion on anterior aspect of right upper leg sizing 2.5cm x 1.2 cm.
>
> (6) An abrasion on anterior aspect of left knee sizing 4cm x 2cm.
>
> (7) An abrasion sizing 5cm x 2.2cm on posterior aspect of the left thigh."

7. The Investigating Officer, Devendra Pandey, PW-8, submitted two charge sheet; the first bearing no.5 of 2004 dated 10.02.2004 against the appellants, Pratap Singh, Sadhu and Devendra and the other, bearing no.5A of 2004, dated 19.04.2004 against the appellant, Srikrishna. The two charge sheets are marked as Ex. Ka-13 and Ka-14, respectively. All the appellants were *challaned* for an offence punishable under Section 302 of the Penal Code.

8. The case was committed to the sessions by the learned Chief Judicial Magistrate, Budaun *vide* order dated 20.02.2006. Post committal, the case came up before the Additional Sessions Judge,

Court no.5, Budaun for framing of charges on 27.09.2006. The learned Additional Sessions Judge, after hearing the learned Counsel for the parties, proceeded to frame a charge against the appellants under Section 302 read with Section 34 of the Penal Code. The appellant pleaded not guilty and claimed trial.

9. In order to prove their case, the prosecution have examined the following witnesses:

(1) PW-1, Sirajuddin (father of the deceased and informant of the case, a witness of fact);

(2) PW-2, Fisauddin (uncle of the deceased, an eye witness of the occurrence);

(3) PW-3, Hasanuddin (another uncle of the deceased, another eye witness of the occurrence);

(4) PW-4, Anwar (the driver of the *buggi*, also an eye witness of the occurrence);

(5) PW-5, Dr. D.S. Misra (the doctor who conducted postmortem examination of the deceased's corpse);

(6) PW-6, HCP Shri Krishna Sharma (who registered the case, drew up the *chik* and made the requisite G.D. Entry in the Station Diary. He is a formal witness);

(7) PW-7, S.I. Gandhi Lal Sharma (who prepared the inquest and other *fard* and sent the body for postmortem); and,

(8) PW-8, S.I. Devendra Pandey (Investigating Officer of the case).

10. The prosecution have relied on the following documentary evidences:

Sr. No.	**Exhibit No.**	**Exhibited documents with brief particulars**
1.	Ex. Ka-1	Written report lodged with the Police Station Kadar Chowk by PW-1, Sirajuddin, relating to the occurrence.
2.	Ex. Ka-2	Postmortem report of the deceased dated 12.11.2003
3.	Ex. Ka-3	Chik F.I.R. dated 11.11.2003 scribed by PW-6, HCP Shri Krishna Sharma
4.	Ex. Ka-4	Inquest report drawn up by PW-7, S.I.

		Gandhi Lal Sharma, dated 11.11.2003
5.	Ex. Ka-5	Sketch of the corpse (photo *Lash*), dated 11.11.2003
6.	Ex. Ka-6	Sample Seal
7.	Ex. Ka-7	*Challan Lash* (Police Form – 13), dated 11.11.2003
8.	Ex. Ka-8	Letter sent to RI, dated 11.11.2003
9.	Ex. Ka-9	Letter sent to C.M.O. for postmortem, dated 11.11.2003
10.	Ex. Ka-10	Recovery memo of slippers of the deceased
11.	Ex. Ka-11	Recovery memo of plain and blood-stained earth
12.	Ex. Ka-12	Site plan of the place of occurrence, dated 11.11.2003
13.	Ex. Ka-13	Charge-sheet no.5 of 2003, dated 10.02.2004
14.	Ex. Ka-14	Charge-sheet no.5A of 2003, dated 19.04.2004

11. The appellants, Pratap Singh, Sadhu, Devendra and Srikrishna, in their statements under Section 313 of the Code of Criminal Procdure, 1973[3] have denied the incriminating circumstances appearing against them and said that they have been falsely implicated on account of Village *party-bandi* and animosity. All the appellants said that they wanted to enter defence. It must, however, be remarked that no evidence in defence was led.

12. The learned Trial Judge, *vide* his judgment and order, proceeded to convict the appellants, sentencing each of them in the manner hereinbefore detailed.

13. Aggrieved, the instant appeal has been preferred.

14. Heard Mr. Apul Misra, learned Counsel for the appellants, Ms. Kumari Meena, learned A.G.A. and Ms. Manju Thakur, learned A.G.A. for the State-respondent.

15. It is submitted by Mr. Apul Misra, learned Counsel for the

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appellants, that the prosecution could not establish motive, enough for the appellants, to do the deceased to death and that too, brutally. He says that the motive assigned by the prosecution, that Pratap Singh harboured animosity and ill-will against the deceased due to the fact that the latter was selected as a *Shiksha Mitra*, whereas Pratap Singh was unsuccessful, hardly affords a motive for a brutal murder, like the one the prosecution seeks to establish.

16. The learned A.G.A., on the other hand, submits that both the deceased and Pratap Singh had vied for the position of a *Shiksha Mitra* and the deceased's appointment to the said position had left Pratap Singh seething with anger. He had sworn revenge, which culminated in this crime.

17. To our outstanding, motive is not very relevant in a case of direct evidence, where a dependable ocular version is available. Once there is evidence forthcoming on the basis of an eye-witness account, that is consistently narrated by multiple witnesses, motive is hardly relevant. If an unimpeachable ocular testimony is there to establish the prosecution case, an investigation into the motive or the sufficiency of it to result in the crime and the manner in which it has been perpetrated, would not at all brook inquiry. The testimony of PW-2, PW-3 and PW-4, as would be analyzed in greater detail later in this judgment, is broadly consistent about the time, place and manner in which the deceased was done to death by the appellants. All the three witnesses have stood by their account of the occurrence in their cross-examination. There is a broad consistency of version amongst all the three eye-witnesses, that is to say, PW-2, PW-3 and PW-4. In a case that rests on ocular evidence motive for the accused to have acted in the manner they did, is besides the point. In this connection, there is authoritative statement of the law to be found in the decision of the Supreme Court in **Bipin Kumar Mondal v. State of West Bengal**[4]. In **Bipin Kumar Mondal**, it has been held:

> **"21.** The issue of motive becomes totally irrelevant

4 **(2010) 12 SCC 91**

when there is direct evidence of a trustworthy witness regarding the commission of the crime. In such a case, particularly when a son and other closely related persons depose against the appellant, the proof of motive by direct evidence loses its relevance. In the instant case, the ocular evidence is supported by the medical evidence. There is nothing on record to show that the appellant had received any grave or sudden provocation from the victims or that the appellant had lost his power of self-control from any action of either of the victims.

Motive

22. In fact, motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime.

23. In *Shivji Genu Mohite* v. *State of Maharashtra* [(1973) 3 SCC 219 : 1973 SCC (Cri) 214 : AIR 1973 SC 55] this Court held that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy.

24. It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide *Hari Shanker* v. *State of U.P.*[(1996) 9 SCC 40: 1996 SCC (Cri) 913], *Bikau Pandey* v.*State of Bihar* [(2003) 12 SCC 616: 2004 SCC (Cri) Supp 535] and *Abu Thakir* v. *State of T.N.* [(2010) 5 SCC 91: (2010) 2 SCC (Cri) 1258])"

18. Mr. Misra was at pains to impress upon us the fact that the motive

attributed to the appellant, Pratap Singh, that is to say, his non-selection for the position of a *Shiksha Mitra* and the deceased's selection instead, does not afford a motive strong enough to kill the deceased, and that too, in the brutal fashion the crime is said to have been committed. The way a man would think and act is best known to him. We do not wish to analyze the question of motive in this case any further for the good reason that principle guides us not to investigate the motive, in a case that primarily rests on direct evidence of eye-witnesses.

19. It is next submitted by Mr. Apul Misra, learned Counsel for the appellants, that the presence of the three eye-witnesses at the scene of crime is highly suspect. He submits that each of the three witnesses, PW-2, PW-3 and PW-4 have not at all seen the occurrence. He moots the point that these witnesses have spun a false story of murder around an event involving Riazuddin's accidental death. To the above end, the learned Counsel for the appellants submits that the unexplained delay in lodging the F.I.R. is in itself an index of the absence of these eye-witnesses. He submits that in the event any of these eye-witnesses had been present along with the deceased when he was, as they say, forced down the t*onga* and brutally murdered, at least one of them would have immediately rushed to the police station and lodged an F.I.R. It is pointed out that the distance of the police station from the place of occurrence was just 4 kilometers, whereas the F.I.R. came to be lodged some one hour and fifty-five minutes after the occurrence. And to add to it, is the story that all the three eye-witnesses, instead of rushing to the police station, behaved in a queer fashion, where PW-2, Fisauddin rushed off to Riazuddin's father, Sirajuddin, then in his native village, to inform him of his son's murder. This behaviour of the three witnesses has been emphatically underscored by the learned Counsel for the appellants to submit that none of these witnesses ever saw the incident. The conduct of all the three eye-witnesses is castigated, as shown, to submit that under the circumstances obtaining, their presence at the scene of the crime has to be disbelieved.

20. Dilating on the issue, Mr. Misra submits that PW-2, Fisauddin was a relative of the deceased, the deceased being his nephew. The other eye-witness, PW-3 is also said to be an uncle of the deceased. Given this background of kinship between the two eye-witnesses, PWs-2 and 3, it is submitted that the inaction of these witnesses in not endeavouring to save the deceased when he was forced down the carriage, dragged through a distance and then crushed to death under the wheels of the tractor, is unbelievable. If these witnesses had, in fact, been present, the learned Counsel for the appellants says that they would have done a lot to save the deceased, particularly given the fact that the entire episode took about 10–15 minutes to reach its fatal culmination.

21. It is also emphatically urged that the eye-witnesses have falsely said for the first time in their dock evidence that the accused were carrying firearms, which prevented them from rescuing the deceased. This fact has never been mentioned by these witnesses in their statements to the Police under Section 161 of the Code. In this connection, our attention has been drawn to the cross-examination of PW-2, Fisauddin, to which we will presently allude. The story about the appellants being armed, that the witnesses have put forth for the first time in their dock evidence, is also assailed by the learned Counsel for the appellants on the foot of the reasoning that if this were true, the appellants would have simply shot the deceased, instead of undertaking that rather unconservative, cumbersome and inherently risky method of doing Riazuddin to death.

22. The learned Additional Government Advocate has refuted the above contentions advanced on behalf of the appellants. It is urged by the learned A.G.A. that there is consistent eye-witness account, not of a solitary witness, but three, all of whom have described the occurrence consistently in all material particulars. There is no inherent contradiction between the testimonies of PWs-2, 3 and 4 regarding the time, manner and place of occurrence; and also about the identity and role of the

appellants in the crime. The learned A.G.A. submits that the ocular version is dependable, consistent and free from blemish. There is no ostensible reason for three men – the three prosecution witnesses to falsely implicate the appellants in a case that involves a heinous offence.

23. The fact that none of the three eye-witnesses immediately rushed to the police station to lodge an F.I.R. is not a circumstance that may, by itself, lead us to the conclusion that they never witnessed the occurrence. The conduct of a person, who witnesses a morbid, dangerous and bizarre occurrence, like a murder, particularly one carried out in a dastardly fashion, like the one in hand, cannot be expected to exhibit the copy-book conduct of a vigilant and educated citizen proceeding to the police station to report a crime. The behaviour of an individual in a life threatening situation, like the one these witnesses were apparently exposed to, would much differ on an individual basis governed by different parameters. The behaviour, in expecting an eye-witness to hold his nerves calm and proceed confidently to the police station to report a murder of this kind, would depend on diverse factors like the personal mental makeup of the individual concerned, his background and status in life, his personal exposure to similar situations in the past and the associated experiences, the outlook of an individual based on his profession and the training or the age and maturity of the individual, to name but a few. To illustrate these varying individualities of behaviour, one may, except a policeman or an army-man, to remain unperturbed by the fatal violence witnessed and proceed fearlessly to the police station to report the matter. Likewise, an ordinary person, who is inherently endowed with strong nerves and has not, in past, suffered any psychologically debilitating experience, may react in the ideal way that Mr. Misra submits, of walking the distance of four kilometers to report the incident to the Police.

24. By contrast, a timid man may get so scared on witnessing an occurrence of this kind that he may not share it with anyone, let alone

report it to the Police. Also, in a situation of this kind, judicial notice must be taken of the fact when evaluating evidence, that turns upon the conduct of men, that the Police generally, and without casting any stigma on them, have earned the reputation of often implicating the man, who comes to them to report a crime involving a homicide or accident; or at least detaining him and subjecting the person to searching interrogation. It may be a necessary way for the Police to do so, but it does act as a deterrent for many individuals to fearlessly step into a police station to report an incident of murder. It is for this reason that it is the closest of kin, who becomes the first informant even if he/ she is not an eye-witness. Here, if the one sees the two witnesses, PW-2 and PW-3, who were related to the deceased, one nearer than the other, what cannot be lost sight of is the fact that all these three men came from a rural and ordinary background. There is nothing to show that they were particularly resourceful or had any kind of training or position in society, that would make them boldly move to the police station and report the matter. Also, there is nothing to show that there was any background of these men that would leave them unshaken and free from fear for their own lives to make that move. If these ordinary men from a village had witnessed the appellants, murdering a kindred or an acquaintance in such a dastardly fashion, one can reasonably expect them to steer clear of the prompt action of rushing to the police station, where the one who did so could expect an immediate reprisal from the appellants and an abominable fate, similar to the deceased's. It is in these circumstances that the conduct of all the three witnesses in not promptly moving to the police station has to be evaluated. Still, one could have thought that the inaction of three men who had witnessed the crime, two related to the deceased, was a factor with some weight to doubt their presence. But, that would be so, if these witnesses were confronted with their conduct about not promptly reporting the crime to the police, shortly after the appellants' exit from the scene of crime.

25. A careful perusal of testimony of PW-2, that is to say, his cross-

examination does not show that any question was put to him as to the reason he did not proceed to the police station from the place of occurrence and report the matter himself, instead of rushing back to the deceased's village to inform his father. In the absence of this witness being confronted about his conduct in not proceeding to the police station straight from the place of occurrence, it does not much lie in the appellants' mouth to urge at the hearing before us that this conduct of PW-2 makes his presence doubtful. Likewise, is the case with PW-3, where not a single word about the witness's failure to go over to the Police has been put.

26. So far as PW-4 is concerned, he is an unrelated witness and a professional driver of the t*onga*, that was carrying the deceased and other witnesses, together with other passengers when the party were waylaid. It does appear that some question was put to him about his inaction of not reporting the matter to the Police. This witness, in whatever manner confronted, has said that he did go to the Police and report the matter. He has said that *Darogaji* there took down a written information from him and made him thumb mark it. He also took this witness's statement at the station. The *Darogaji*, after about two hours and a half, proceeded to the place of occurrence, where he came across the first informant, Sirajuddin. The relevant part of this witness's testimony during cross-examination reads:

> "थाने में जाकर मैंने सूचना दी दरोगा जी ने मेरी सूचना लिखी मेरा अंगूठा लगवाया। मेरा ब्यान वहीं पर लिया था फिर दो ढाई घन्टे बाद मुझे लेकर दरोगा जी मौके पर चले गये उसके बाद मौके पर सिराजउद्दीन पहुचे फिर उसके बाद मैं सिराज उद्दीन व दरोगा जी थाने आये थे।"

27. Now, this testimony of PW-4 does show that he went to the police station and gave a written information of the occurrence. He was asked to thumb mark it. He is apparently an illiterate man, who did not know what was scripted there. No doubt, the factum of PW-4 reporting the

incident to the police has been denied by the Investigating Officer, about which Mr. Misra has something else to say in criticism of the prosecution. But, that is quite another matter; that would be dealt with later on in this judgment.

28. So far as the three eye-witnesses are concerned, in the opinion of this Court, the mere fact that none of them actually lodged the F.I.R. relating to this incident does not, in the circumstances, derogate from the *factum* of their being eye-witnesses. The overall conduct of PW-2 and PW-3, in not directly proceeding to the police station and instead, going back to the deceased's father in the village, also in the circumstances, should not, in our opinion, cast suspicion about their presence at the scene of crime. In this regard, reference may be made to the observations of a Division Bench of the Delhi High Court in **Naresh Kumar v. State**[5]. In **Naresh Kumar**, one Ashu, a prosecution witness and a nephew of the deceased, Mukesh was an eye-witness of the occurrence, who had made no efforts to save or report the matter to the relatives or the Police. His conduct was, therefore, criticized by the appellants as unnatural and unrealistic in order to discredit his eye-witness account. In those circumstances, it was remarked by the Division Bench:

> "**16.** It is prudent to say that in normal circumstances, it is quite grotesque of any person who is a witness of a crime to not inform the police or the relatives of the victim of the crime reporting the incident and such a behavior on the part of such eye witness normally would be considered unnatural, abnormal and ludicrous. Nevertheless, no straight-jacket formulae or principle can be laid down as to how a particular witness will react at such a situation. It may depend upon couple of circumstances depending upon the facts of each case. It is not always necessary that at a given situation similarly placed person will react in a same fashion. Much will depend on the fact situation of each incident and also the individual behavior of the person including his psyche. One may be timid or may be very bold and it is also possible that a person otherwise timid in

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> his life may turn out to be bold at a particular moment or vice versa. The prompt reaction or the immediate outcry whether being bold or timid of the person is an important aspect which has to be taken care of while dealing with such terrifying crimes…..."

29. On an overall view of the matter, therefore, the conduct of the three eye-witnesses in not reporting the incident to the Police promptly, after witnessing a ghastly murder, cannot lead to an inference, in our considered opinion, that these witnesses never saw the crime or that they were not present at the place of occurrence.

30. The next part of Mr. Misra's submission, by dint of which he assails the very presence of the three eye-witnesses, is the fact that their conduct in not attempting to rescue the deceased is so unnatural that their presence on the spot has to be ruled out; at least seriously doubted. He has, particularly, emphasized the fact that PWs-2 and 3 are kinsmen of the deceased and it cannot be imagined that they would have allowed the deceased to be done to death by the appellants through a course of violence that lasted 10-15 minutes, without demur. The reason that they did not do so, according to the prosecution, is that appellants were carrying firearms. This has been criticized by Mr. Misra as an unbelievable story and afterthought. This part of the submission would be dealt with a little later.

31. For the moment, we proceed on the assumption that the appellants were not armed and did Riazuddin to death in the manner alleged. The question is: Would it be correct to assume that the prosecution witnesses' inaction to move in and save Riazuddin from the clutches of the assailants, as they perpetrated their fatal violence, over a period of 10-15 minutes, is cause enough to disbelieve that these witnesses were present at the scene of crime? The submission that the prosecution witnesses' failure, particularly that of PWs-2 and 3, to rush in and act in defence of the victim, is based on an assumption about some kind of a standard reaction of men, when placed in the

circumstances that the prosecution witnesses were. It assumes a standard reaction to come from a blood relative of the victim of a murderous assault, where the relative is inevitably expected to rush in and attempt a rescue.

32. To our mind, this submission is fallacious, because the assumption of a standard behaviour, on the foundation of which it proceeds, is imaginary. It has no basis to it, inferable from the experience of mankind about individual behaviour. Quite contrary to what the learned Counsel for the appellants submits, there is no standard reaction of men when exposed to the situation, where they witness another being brutally murdered. Even for a relative, generally considered, witnessing a gruesome kind of crime, is a harrowing experience that excites generally the emotion of fear or fright. A person, depending on the individual's traits of personality, may react very differently to the situation, as said earlier. The individual's reaction, on witnessing a gruesome crime, like the present one, may vary according to his psychological makeup, his professional training, his prior exposure to like situations and the experience there. The causes that could contribute to individually varying reactions could be innumerable; and, so could be the variation in the reaction or the response of witnesses when exposed to a ruthless crime, like murder. Therefore, to say that all the three eye-witnesses, at least the two, who were related to the deceased, ought to have attempted a rescue, is a hypothesis that does not stand the test of human experience.

33. Assuming that the appellants were not armed with any deadly weapons, the eye-witness account does show extreme violence exhibited by the perpetrators, and, a particularly abominable mode of doing the victim to death. It could have been a possibility for the three witnesses to have rushed to the victim's rescue and that would be quite natural. The fact that they got a scare of their life and did not move to rescue the deceased is a possibility that is equally likely and natural. There is no element of incredibility about it. The reaction of one of the

witnesses that shows him to be frightened into moving away from the spot is well indicated in the cross-examination of PW-4, Anwar, where he says:

> "जैसे ही यह घटना हुई मैं बुग्गी लेकर भाग आया था दूर हट गया था दो तीन मिनट के बाद मैं सवारियों को लेकर कादरचौक चला आया।"

34. This reaction of PW-4 upon witnessing the murder is one of the many typical responses that are to be expected of a man, circumstanced like him. PW-4 was not a relative of the deceased, but a very natural witness. He was the driver of the t*onga*, that was carrying passengers, amongst whom the deceased was one when the party was waylaid. The other two witnesses, PWs-2 and 3 did not move in to rescue the deceased. They were apparently scared into inaction. About this possible variation in the response of men, when they witness a gruesome crime, there is valuable guidance to be found in the decision of the Supreme Court in **Rana Partap and others v. State of Haryana**[6]. In **Rana Pratap**, it has been observed by their Lordships, thus:

> "**6.** Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

35. In view of what has been said above, we are clearly of opinion that the submission advanced on behalf of the appellants about the

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absence of eye-witnesses at the place of occurrence urged to be inferable from their inaction in attempting a rescue, deserves to be negatived.

36. The next part of Mr. Misra's submission, inviting us to disbelieve the presence of the eye-witnesses, is a part of his submission that we have just disposed of. It is about the incredibility of eye-witnesses' explanation why they did not come to the aid of the deceased when assaulted by the appellants. The explanation, why the eye-witnesses did not come to the deceased's rescue, that has fallen for Mr. Misra's criticism, is the fact that the perpetrators are said to have been armed. It is said unanimously by all the witnesses that the appellants were wielding country-made pistols, which deterred each of them from rescuing Riazuddin. We have held, while disposing of the earlier part of this submission, that assuming that the appellants were not armed, there is no reason to expect the prosecution witnesses to behave in a particular way, where their failure to rescue the deceased, must inevitably lead to an inference about their absence from the scene of crime. In view of the said finding, the fact whether the appellants were armed or not, would not be very material. Nevertheless, once the prosecution witnesses have come up with the assertion in their dock evidence that has been much criticized by Mr. Misra, it must be taken due note of also. Learned Counsel for the appellants, particularly emphasizes that the fact that the appellants were armed with country-made pistols etc., does not find mention in the F.I.R., which otherwise carries wholesome detail of the occurrence.

37. Learned Counsel for the appellants also says that the fact that the appellants wielded firearms, that they are said to have pointed at the witnesses, does not find mention in the statements of PWs-2, 3 and 4 recorded by the Police. This particular feature of the prosecution case is an improvement made by the witnesses during trial for the first time when they have taken stand in the dock. It is true that the F.I.R. does not mention the appellants' wielding firearms. It is also true that the F.I.R.

narrates the incident in some detail. But, as is well known, the law does not expect the F.I.R. to mention every detail, particularly when it is an information by a person, who is not an eye-witness. So far as absence of the fact that the appellants were carrying firearms in the statements of PWs-2, 3 and 4 is concerned, to our understanding, it is not very decisive under the circumstances, though it may be a cause for eyebrows to be raised. In the total scheme of the evidence, it can be nothing more than that. PW-2, Fisauddin, who is the deceased's father's brother, has stated thus in his cross-examination on the issue:

> "..... मुलजिमान पर असलहे थे इसलिये छुड़ाने का प्रयास नही किया हम लोग बीस कदम दूर भाग गये थे। मुलजिमान पर तमँचे थे।
>
> मैने दरोगा जी को यह बात बतायी थी कि मुलजिमान पर असलहे थे उन्होने दिखाये थे व हम लोग बीस कदम भाग गये थे यदि यह बात मेरे 161 के ब्यान में नही है तो वजह नही बता सकता।
>
> यदि मुलजिमान पर असलहे नही होते तो हम मृतक को बचा लेते। मुलजिमान पर असलाह होने वाली बात दिखाने वाली बात मैने रपट लिखने से पहले सिराजुद्दीन व अब्दुल स्लाम भंद्रा वालो की बतायी थी।"

38. This witness has adequately asserted the fact about the appellants wielding firearms and blamed the absence of a mention of this fact in the statement under Section 161 on the Investigating Officer. There is no reason to disbelieve him.

39. PW-3, on the other hand, has acknowledged the fact that he did not disclose the information about the appellants carrying firearms to the Investigating Officer, but that omission, as already said, in the totality of circumstances, cannot lead us to doubt the prosecution in all its complete detail.

40. PW-4 has again said in his cross-examination that he did tell the Investigating Officer that one of the appellants was carrying a gun, though he cannot say which of them was wielding it. He has also said

that but for the gun pointed at them by the appellants, the witnesses would have rescued the deceased. This witness, like PW-2, has said that he did tell the Investigating Officer about the appellants carrying firearms and also said that the reason why the said fact has not been recorded by the Investigating Officer, is not known to him. As already said, on the totality of the evidence, there is no reason to disbelieve the eye-witnesses that the appellants were, in fact, carrying firearms.

41. Learned Counsel for the appellants has also strongly cajoled us into disbelieving the fact that the appellants were carrying firearms, and, in fact, the entire prosecution on the foundation of his reasoning that if the appellants were carrying firearms, there was no necessity for them to have resorted to the unconservative, cumbersome and gruesome method of murdering the deceased by crushing him under the wheels of a tractor. They could have simply shot him dead. The argument is, indeed, attractive, but not one which holds no substance. The manner in which the author of a crime would choose to perpetrate it, is known to him alone. The *factum* of the crime cannot be discredited or doubted, because the perpetrator had an easier way out to achieve the result. Unless the *modus operandi* be so demonstrably absurd that it is fantastic or incredible under the circumstances, there is no reason to disbelieve a credible eye-witness account, banking on an unfamiliar, rare or unconservative manner of perpetration of the crime. We do not find from the eye-witness account, of the three witnesses, who are *ad idem* about the manner in which the deceased was done to death, any reason to doubt their version, merely because the appellants had an easier way to eliminate the deceased. Here, the fact, that the medico-legal evidence broadly supports the ocular version, would also be relevant, which we shall presently dwell upon in this judgment. Evaluating the evidence as a whole, we do not find any force in the submission of the learned Counsel for the appellants that the three eye-witnesses, PWs-2, 3 and 4 were not present at the scene of crime and did not witness it.

42. It is next submitted by the learned Counsel for the appellant that there is irreconcilable discrepancy between the ocular version and the medico-legal evidence, which renders the prosecution case utterly unsustainable. He submits that the injuries received by the deceased could never have been caused in the manner described by the eye-witnesses. It is urged that the case about the tractor running over the deceased does not explain the injuries caused to him on the head and chest. Mr. Misra has, during the submissions, drawn our attention to the testimony of PW-3, where he has said during his cross-examination that the appellants, after forcing the deceased down from the *tonga*, assaulted him employing sticks, delivering blows to his limbs, as they dragged him across a distance to the tractor, where he was thrown under its wheels. Learned Counsel points out that the injuries in the autopsy report do not disclose anything that may be attributed to those blows that the appellants are said to have inflicted, employing sticks *(danda)*. It is particularly emphasized that there are no contusions that would inevitably be there in case of blows from a stick. Instead, there are generally abrasions that are not compatible with an ante-mortem assault by sticks that the deceased is said to have suffered. It is for this reason, according to the learned Counsel for the appellants, that the ocular version of the three witnesses deserves to be disbelieved.

43. Learned A.G.A. has refuted the appellants' contention on this score and said that the crush injury on the skull is enough to establish the prosecution case.

44. The three eye-witnesses, that is to say, P.Ws. 2, 3 and 4 are consistent about the fact that the deceased was forced down the tractor by the appellants and dragged through a distance. He was thrown under the wheels of the tractor by appellant nos. 2, 3 and 4, whereas the first appellant, Pratap Singh, drove the tractor, crushing the deceased under its wheels. The most graphic description of the precise manner of commission of this crime has come from PW-2 in his cross-examination, where he has said :

"ट्रैक्टर मृतक के सिर से चढाया था और पहिया सिर चेहरा से होता हुआ सीने से उतर गया। खून सब बाहर निकल गया था भेजा भी बाहर निकल गया था। खून जमीन पर गिरा था काफी खून जमीन पर गिरा। दरोगाजी बटोर कर लाये।"

45. In his examination-in-chief, this witness has described the incident in the following words :

"जब हम लोग गढिया व मामूर गंज के बीच में पहुंचे तो पीछे से एक ट्रैक्टर आ रहा था जिसे प्रताप चला रहा था उसमे श्री कृष्ण देवेन्द्र व साधू बैठे थे। यह लोग मेरे गाँव नौली फतुहाबाद के थे। इन लोगो ने अनवार की वुग्गी रुकवा ली और ट्रैक्टर स्टार्ट किये हुये प्रताप बैठा रहा। वाकी तीनो लोग उतर कर आये और कहा कि साले को आज शिक्षा मित्र बना दो। यह कहते ही रियासउद्दीन को वुग्गी से उतार लिया व घसीटते हुये लाकर ट्रैक्टर के नीचे पटक दिया और तीनो ने कहा कि प्रताप चढा दे ट्रैक्टर इसके ऊपर। तभी प्रताप ने रियासउद्दीन के उपर ट्रैक्टर चढा दिया व ट्रैक्टर चढा कर मार डाला। फिर मुलजिमान ट्रैक्टर लेकर भाग गये।"

46. Likewise, PW-3 has described the incident in his examination-in-chief thus:

"जब ताँगा मामूर गंज व गढ़िया के बीच में पहुँचा तो ट्रेक्टर प्रताप चला रहे थे, प्रताप वुग्गी से आगे आये और कहा वुग्गी रोक लो। उस ट्रेक्टर पर श्री कृष्ण साधू देवेन्द्र भी थे। मुलजिमान वुग्गी में से रियासउद्दीन को पकड़ कर खेचते हुये ले आये। प्रताप ट्रेक्टर स्टार्ट किये खडे थे। गाली गलौच की और आज इसे शिक्षा मित्र बना दो व गाडी के नीचे डाल दो। तभी श्री कृष्ण, साधू व देवेन्द्र ने ट्रेक्टर के आगे रियासउद्दीन को पटक दिया व प्रताप ने ट्रेक्टर चडा दिया हम हट गये दूर से देखते रहे शोर मचाया तो पडोस के मामूर गंज के लोग आ गये मुझे उनके नाम नही पता। फिर मुलजिमान ट्रेक्टर लेकर भाग गये।"

47. Particularly, this witness has described the assault prior to the deceased being run over by the tractor, in his cross-examination, in these words :

"मुलजिमान मृतक को लात घूँसे, डन्डो से मारते पीटते व घसीटते ले गये थे व पहियों के नीचे डाल दिया था। हम डन्डे गिन नही पाये दस पाँच डन्डे मारे होगे। डन्डे मारने वाली बात आज पहली बार बता रहा हूँ। सिराजुद्दीन व दरोगा जी को नहीं बतायी थी। पैरों में चूतड़ो पर व हाथ में डन्डे मारे थे।"

48. PW-4 Anwar has narrated the occurrence in his examination-in-chief in the following words :

"आज से करीब छै साल पहले की बात है। दिन के साढे दस बजे की बात है। जब मै अपने ताँगा बुग्गी से अपने गाँव के हसनुद्दीन, फिसाउद्दीन व रियासुद्दीन को लेकर कादरचौक होता हुआ बदायू जा रहा था कि जब हमारी बुग्गी मामूरगंज व गडिया के बीच में पहुची तो पीछे से मुल्जिम प्रताप, श्रीकृष्ण, साधू व देवेन्द्र ट्रैक्टर से आ गये जिसको प्रताप चला रहे थे कि जैसे ही बुग्गी के पास पहुचे तो रियासुद्दीन से बोले कि आज इसे शिक्षामित्र बना दो तभी श्रीकृष्ण साधू व देवेन्द्र ने ट्रैक्टर से उतरकर रियासुद्दीन को बुग्गी से उतार लिया व घसीटते हुए व गाली देते हुए ट्रैक्टर के सामने पटक दिया और प्रताप से कहा कि इसके उपर ट्रैक्टर चढा दो तभी प्रताप ने रियासुद्दीन के उपर ट्रैक्टर चढ़ाकर कुचल दिया और उसकी मौके पर ही मृत्यु हो गयी तभी मुल्जिमान जिधर से आये थे उधर ही अपने गाँव की तरफ चले गये"

49. In his cross-examination, he has detailed the occurrence in the following words :

"मृतक को घसीटकर मुल्जिमान कितनी दूर ले गये 5-6 कदम ले गये थे फिर यह कहा मुल्जिमानों ने मृतक को जमीन पर गिरा दिया फिर खीचकर ट्रैक्टर के सामने ले गये तीनो उसे पकडे रहे हाथ पैर गिराकर दाब लिये थे हाथ पैर पकड़े रहे और फिर एक ने ट्रैक्टर पर जाकर ट्रैक्टर स्टार्ट कर ट्रैक्टर उस पर चढ़ा दिया फिर कहा ट्रैक्टर स्टार्ट था प्रताप ट्रैक्टर पर बैठा था मुल्जिमानों ने मृतक को मेरी बुग्गी से उतार लिया और कहा कि आज तुझे पक्का शिक्षा मित्र बनाते है। मृतक उनके हाथ से छूटकर नहीं भाग पाया था "पक्का शिक्षामित्र बनाये देते हैं" यह बात मैंने दरोगा जी को बता दी थी यदि दरोगा जी

ने पक्का शब्द नहीं लिखा है। तो इसकी वजह नहीं बता सकता।"

50. A perusal of the three versions about the occurrence, all by the three eye-witnesses, makes it vivid that they are broadly consistent about the place, time and the manner of occurrence. All of them say that they were all riding the *tonga*, also described as *buggi*, from the parties' native village to Budaun via a place called Kadar Chowk. The *tonga* was driven by PW-4 Anwar. It had, on board, PW-2 Fisauddin, PW-3 Hasnuddin and deceased Riazuddin, amongst others. The party was waylaid by the appellants, who came riding along a tractor driven by Pratap Singh, appellant no. 1. The deceased was forced down from the carriage and dragged through the distance between the stalled carriage and the waiting tractor. He was thrown before the tractor, where the appellant Pratap Singh was on the wheel. The deceased was crushed under the wheels of the tractor by Pratap Singh. All the witnesses have said that appellant nos. 2, 3 and 4 exhorted appellant no. 1 to run over the deceased, employing the tractor.

51. It must be remarked that the witnesses testified in the dock between 3-6 years after the occurrence. The earliest testimony of PW-2 was recorded on 29.11.2006, whereas the incident is one dated 11.11.2003. By the time PW-4 testified, it was already well into the month of December, 2009, that is to say, six years from date of occurrence. During all this while, the witnesses are to be given due allowance for some inaccuracy, on account of fading memories. But, still, the account is remarkably consistent.

52. Now, given the fact the the ocular testimony is broadly consistent, the submission advanced on behalf of the appellants that it is irreconcilable with the medico-legal evidence to an extent that the ocular version must be rejected, requires careful consideration. The autopsy report, Ex.Ka.2, shows that injury no. 1 is a crush injury that has led to a fracture of the skull, rupture of the meninges and the brain matter torn out, with clotting of blood. This kind of an injury is *ex-facie* compatible

with the version about the wheel of the tractor crushing the deceased's head. The second injury is located on the chest, which is a contusion with abrasion. The dimensions are 10 cm. x 5 cm. Both the clavicles are fractured and rib nos. 2, 3, 4 and 5 on both sides of the rib cage are also fractured. If one were to go with the closest detail in the ocular version about the crime, a description of it in the cross-examination of PW-2 shows that the wheel of the tractor went over the deceased's head, face and chest. *Ex-facie*, in our opinion, the kind of injuries that one can expect, compatible with this ocular version, are those described as injury nos. 1 and 2 in the autopsy report. The doctor, testifying as PW-5 in the dock, has faced a very brief cross-examination on behalf of the appellants, where he has said :

> "वाहन से कुचलने पर इस प्रकार की चोटों की आने की संभावना ज्यादा है। यह चोटें दुर्घटना में वाहन से आने की संभावना है।"

53. The doctor does not, at all, rule out the injuries being caused by being crushed under the wheels of a vehicle. He has not been subjected to any further cross-examination on behalf of the appellants in order to elicit whether the two injuries are, in any manner, fundamentally incompatible with the ocular version.

54. Now, we may consider the other part of Mr. Misra's submissions that there are no contusions consistent with that part of the ocular testimony which says that the deceased was thrashed with sticks, where blows were delivered to his limbs. This Court is of opinion that the absence of contusions on the limbs or their mention in the autopsy report, where the deceased was subjected to a violent death of this kind, may not have been very consequential. Once the ocular version is broadly compatible with the medico-legal injuries, some contradictions about the absence of certain injuries that ought to have been there, given the ocular version, would not lead to a consistent version of three eye-witnesses, being rejected. A consistent and dependable ocular version is generally to be preferred over medico-legal evidence, unless

the two be so fundamentally repugnant that they cannot co-exist. There is no such fundamental repugnance here in the ocular version and in the medico-legal evidence. In our opinion, the absence of contusions on the limbs of the deceased in the autopsy report is not an incompatibility of such a fundamental kind which may render the ocular version liable to be discarded. This question fell for consideration recently before the Supreme Court in **Pruthiviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala & Others**[7]. The issue there was that incompatibility between the ocular version and medico-legal evidence had led the High Court to acquit the appellant, because the testimony of witnesses described the weapons of assault as iron pipes, steel rods and sticks, whereas the injuries were three stab wounds and nine incised wounds. The nature of the injuries found in the autopsy and the ocular version, describing the weapons of assault, had led the High Court to acquit the appellant on account of inconsistency between the ocular version and medical evidence. In this connection, the following holding of their Lordships is direct on the point under consideration here :

> "**18.** Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW-2 and PW-10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. In the present case, we find no inconsistency between the ocular and medical evidence. The High Court grossly erred in appreciation of evidence by holding that *muddamal* no. 5 was a simple iron rod without noticing the evidence that it had a sharp turn edge.
>
> **19.** The aforesaid discussions leads us to the conclusion that the acquittal by the High Court is based on misappreciation of the evidence and the overlooking of relevant evidence thereby arriving at a wrong conclusion. It is not a case where two views are possible or the credibility of the witnesses is in doubt. Neither it is a case of a solitary uncorroborated witness. The conclusion of the High Court is therefore held to be perverse and

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> irrational. The acquittal is therefore held to be unsustainable and is set aside. In the nature of assault, Section 304 Part II, IPC has no application. The conviction of respondent nos. 1 to 4 by the Trial Court is restored."

55. To our understanding, the presence of witnesses at the scene of crime not being found doubtful, there is no reason for us to doubt their testimony, which, in our considered opinion, puts forth a dependable eye-witness account. There is no such inherent inconsistency between the ocular version and the medico-legal evidence that may persuade us to reject the prosecution case on that score. We hold, accordingly.

56. It is next submitted by the learned Counsel for the appellants that the Police have not fairly investigated the case and have suppressed the earliest version of the occurrence that they received through PW-4, Anwar, the t*onga* driver. He has drawn the attention of the Court to the testimony of PW-4, where this witness has said that he went to the police station and informed the Police about the incident. The witness has also stated that the *Daroga* at the station took down the information and got it thumb marked by him. He has further said that the Police also took down his statement. About this testimony of PW-4, Mr. Misra submits that the Police have not brought the information given by PW-4 on record. It is pointed out that the Investigating Officer, in his evidence, has completely denied the fact that PW-4, Anwar, came over to the police station and laid any information. It is submitted by the learned Counsel further that the conduct of PW-4 going over to the police station and informing the Police, was a natural and spontaneous conduct. The Police, by keeping back the information that they received about the occurrence from PW-4, have rendered the investigation tainted by withholding vital facts and evidence from the Court.

57. The learned Counsel for the appellants submits that the fact that the earliest information about the occurrence, received by the Police from PW-4, has been hidden away from the eyes of the Court, throws a cloud of doubt over the prosecution version. Mr. Misra has also drawn

the attention of the Court to that part of the cross-examination, where PW-4 has said that he had earlier given an affidavit in favour of the appellants, and said in the next breath, during the cross-examination, that he never did so. About this fact, Mr. Misra submits that this witness is unreliable. We must remark here that the cross-examination of this witness does not show that he was confronted with the affidavit or that it was put to him. Largely, the submission, therefore, put forward by the learned Counsel for the appellants, is that investigation done by the prosecution is not fair and forthright. The earliest account of the occurrence coming from PW-4 has been suppressed from the Court.

58. The learned Counsel for the appellants has also pointed out that the Investigating Officer has not inquired into the angle of enmity between parties that could have led to a patently false implication. It is also urged that the failure of the Investigating Officer in not ensuring a technical examination of the tractor, which is the weapon of offence in this crime, or seizing and producing it as case property, is fatal to the prosecution. It is also emphasized that the Investigating Officer has not looked into the appointment letter of the deceased, appointing him to the post of a *Shiksha Mitra*. The attention of the Court has also been drawn by the learned Counsel for the appellants to that part of the Investigating Officer's cross-examination, where he has acknowledged that there was a discrepancy in the distance of the police station from the place of occurrence given in the F.I.R. and the inquest report. Our attention has been drawn to this discrepancy to show that the distance entered in the F.I.R. is four kilometers, whereas, in the inquest report it is five kilometers. To sum up, it is submitted by Mr. Misra that the prosecution stands on shaky ground because of these discrepancies in investigation, and that, therefore, the conviction should be overturned.

59. The learned A.G.A. has said that whatever has been pointed out by the learned Counsel for the appellants is nothing more than some discrepancies in investigation. The prosecution case is well established by a dependable eye-witness account of the three witnesses, PWs-2, 3

and 4.

60. We must remark at the outset that the submissions of Mr. Misra, presently under consideration, can be divided into two parts. The first part, though short, is distinct from the rest. That short submission is about the veracity of PW-4, which has been sought to be impeached by the appellants on ground that he had tendered some kind of affidavit, disowning his statement to the Police, about which he has said, during his cross-examination in the first go that he did give such an affidavit, and in the next breath, disowned it. As already remarked by us, the contents of the affidavit were not put to the witness, during his cross-examination, and, therefore, it is no part of the evidence. PW-4 has been acknowledged by the appellants to be an independent witness and to our mind also, he is a natural witness. Though the contents of the affidavit have not figured in the testimony, even if at some point of time, the witness, on account of some consideration, spoke exculpatory on affidavit tendered to some Authority or the Court prior to commencement of trial, his clear and unequivocal evidence in the dock, cannot be impeached on that account. During investigation, and some times during trial, witnesses are known to vacillate and prevaricate owing to different kinds of pressures and succumbing to myriad human feelings. What has to be seen, however, particularly in the case of an eye-witness account, is whether the witness is essentially truthful, consistent and dependable in his account of the occurrence in the witness-box. If the witness has not been fundamentally shaken during his cross-examination, there is no reason to discard his testimony or to hold him discredited. As we have already remarked, the testimony of PW-4 in his examination-in-chief and cross-examination, is fairly consistent and inherently inspires confidence. For the said reason, we are not inclined to doubt him on account of the fact that at some point of time, prior to commencement of trial, he might have said something on affidavit, not supportive of the prosecution.

61. The next part of the appellants' submission can be conveniently

dealt with under one head, and that is about failures on the part of the Investigating Officer to produce relevant evidence, even keeping back some evidence, that is said to be an instance of unfair investigation. It is trite law that unless failures, discrepancies or even unfairness of investigation prejudices the accused, mere lapses of investigation or some taints there, cannot be permitted to get better of the law. A case, that is well proven by evidence, that comes before the Court, cannot be thrown out merely because the Investigating Officer, by incompetence or design, produces some fallacies. To consider the failures of investigation or what Mr. Misra says, clear instances of unfair investigation, this Court may look into the specific instances. It is pointed out, amongst those failures or instances of unfair investigation, that the Investigating Officer has kept back the earliest written account of the occurrence, that the Police received from PW-4. We may notice that PW-4 has not been cross-examined at all on the point whether in his alleged written information given to the Police at the station, had he come up with a different version, other than the one that he has come up with in the dock. We find that nothing has been asked of PW-4 as to what his earliest version to the Police was. In the absence of that question, there is no reason to believe that even if an information, that the witness says, was given to the Police by him earliest in point of time, anything different would have been said there. Also, the Investigating Officer has been emphatic that no such information was given by PW-4 to the Police at any point of time. We do not find anything in the testimony of the Investigating Officer to disbelieve him on that count.

62. Now, so far as the question of the Investigating Officer not proving the enmity that might have led to a false implication of the appellants is concerned, by looking into the appointment letter of the deceased, which is said to relate to his placement as a *Shiksha Mitra*, these are no more than lapses of investigation, if at all. Likewise the more serious issue about not seizing or producing the tractor by sending it for a technical examination, also does not go beyond a mere lapse of investigation.

Likewise, is the case with the varying mention of the distance between the place of occurrence and the police station on the F.I.R. and the inquest. It is, as already said, trite law that lapses in investigation or failures of the Investigating Officer, or even deliberate manipulation at his hands, cannot brook advantage to the accused, unless the lapse or the taint in investigation be such that it has prejudiced the accused in his defence. That is not the case here, because the eye-witness account of the three witnesses, whose presence at the scene of crime, we have no reason to doubt, is clear, unambiguous and inculpatory. The outcome depends on what evidence comes before the Court and not the way the investigating agency collects the evidence or reaches its conclusions. The conclusions of the investigating agency are no more than a proposal or a claim, the worth of which has to be judged by the Court, on the evidence produced before it in the dock. Even if the investigating agency has failed somewhere or corrupted the prosecution by its lapses, incompetence or design, that cannot stand in the Court's way of reaching its conclusion on the evidence before it. Here, whatever has been pointed out on behalf of the appellants, does not, in any way, derogate from the dependable and consistent account of the three eye-witnesses. In this connection, reference may be made to the decision of the Supreme Court in **Dhanaj Singh v. State of Punjab**[8], where it has been held:

> "**5.** In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh* v. *State of M.P.* [(1995) 5 SCC 518 : 1995 SCC (Cri) 977])
>
> **6.** In *Paras Yadav* v. *State of Bihar* [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is

8 **(2004) 3 SCC 654**

> reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.
>
> **7.** As was observed in *Ram Bihari Yadav* v. *State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in *Amar Singh* v. *Balwinder Singh* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641]. As noted in *Amar Singh case* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] it would have been certainly better if the firearms were sent to the Forensic Test Laboratory for comparison. But the report of the ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eyewitnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect the credibility of the prosecution version.
>
> **8.** The stand of the appellants relates essentially to acceptability of evidence. Even if the investigation is defective, in view of the legal principles set out above, that pales into insignificance when ocular testimony is found credible and cogent. Further effect of non-examination of weapons of assault or the pellets, etc. in the background of defective investigation has been considered in *Amar Singh case* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641]. In the case at hand, no crack in the evidence of the vital witnesses can be noticed."

63. Again, in **Ram Bali v. State of U.P.**[9], it was held in the context of omissions, lapses or even negligence in investigation, thus:

> "**14.** As was observed in *Ram Bihari Yadav* v. *State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again

9 **(2004) 10 SCC 598**

reiterated in *Amar Singh* v. *Balwinder Singh* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] . As noted in *Amar Singh case* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] it would have been certainly better if the firearms were sent to the Forensic Test Laboratory for comparison. But the report of the ballistic expert would merely be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eyewitnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect the credibility of the prosecution version."

64. The same principle finds eloquent mention in **Abu Thakir and others v. State of Tamil Nadu represented by Inspector of Police, Tamilnadu**[10], where it has been observed:

> **"36.** We may have to deal with yet another submission made by the learned Senior Counsel for the appellants that the investigation was not fair as there were many missing links in the process of investigation. This submission was made by the learned counsel contending that the investigation does not reveal as to how the investigating officer came to know about the presence of PWs 2 to 4 at the scene of occurrence and for recording their statements in that regard.
>
> **37.** This Court in *State of Karnataka* v. *K. Yarappa Reddy* [(1999) 8 SCC 715 : 2000 SCC (Cri) 61] held that: (SCC p. 720, para 19)
>
> > "*19*. … even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. … Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case."
>
> The ratio of the judgment in that case is the complete answer to the submission made by the learned Senior Counsel for the appellants."

10 **(2010) 5 SCC 91**

65. Of particular relevance, there is the guidance of their Lordships of the Supreme Court in **Mritunjoy Biswas v. Pranab**[11], where there was no recovery of the weapon of offence from the accused and that was mooted as a fatal flaw in the prosecution. In that connection, it was held:

> "**33.** The learned counsel for the respondent has urged before us that there has been no recovery of weapon from the accused and hence, the prosecution case deserves to be thrown overboard and, therefore, the judgment of acquittal does not warrant interference.
>
> **34.** In *Lakshmi* v. *State of U.P.* [(2002) 7 SCC 198 : 2002 SCC (Cri) 1647] this Court has ruled that : (SCC p. 205, para 16)
>
> > "*16*. Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder."
>
> **35.** In *Lakhan Sao* v. *State of Bihar* [(2000) 9 SCC 82 : 2000 SCC (Cri) 1163] it has been opined that : (SCC p. 87, para 18)
>
> > "*18*. The non-recovery of the pistol or spent cartridge does not detract from the case of the prosecution where the direct evidence is acceptable."
>
> **36.** In *State of Rajasthan* v. *Arjun Singh* [(2011) 9 SCC 115 : (2011) 3 SCC (Cri) 647] this Court has expressed that : (SCC p. 122, para 18)
>
> > "*18*. … mere non-recovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, bloodstained clothes, etc. cannot be taken or construed as no such occurrence had taken place."

11 **(2013) 12 SCC 796**

> Thus, when there is ample unimpeachable ocular evidence and the same has been corroborated by the medical evidence, non-recovery of the weapon does not affect the prosecution case."

66. The evidence of eye-witnesses here is clear, consistent and specific. It has not been shaken in any manner, during cross-examination of the three prosecution witnesses, who, in our opinion, have clearly established beyond all reasonable doubt, the place, manner and the time of occurrence; particularly, the fact that it was the appellants alone, who acting in furtherance of a common intention, committed a premeditated murder, eliminating the deceased. The discrepancies in investigation, whatever, have been pointed out by the learned Counsel for the appellants, cannot vitiate the prosecution, that has thoroughly succeeded in establishing the charge beyond reasonable doubt.

67. We have carefully gone through the findings recorded by the learned Sessions Judge and independently reappraised the entire evidence. There is no reason for us to take a different view of the evidence, which in our opinion, is clear, cogent and unimpeachable.

68. Here, it also requires mention that the appellants, in their statements under Section 313 of the Code, have not assigned any particular motive to the witnesses to falsely implicate them. There is a stereotype answer in response to the question put to each of the appellants, as to why the concerned appellant was prosecuted. The answer is: 'village *party-bandi* and animosity'. There is not a whisper there as to what are the particulars of the village *party-bandi* or the animosity, *vis-a-vis* each of the appellants and the *animus* of the prosecution witnesses. The appellants have indicated their inclination to lead evidence in defence, but they did not enter defence, as already said. Then in answer to a general question put to each of the appellants, if the concerned appellants had anything else to say, the identical answer is: 'No'. The right under Section 313 of the Code is very valuable right of the accused, where he can say whatever he has to in his

defence. It is open there for the accused to show, particularly, the reason for a *mala fide* or false implication, which can then be established by entering defence and leading evidence. Here, that opportunity was amply afforded to the appellants, but not availed.

69. To sum up, this Court is of opinion that the prosecution have established the charge beyond all reasonable doubt and there is no warrant for us to interfere with the impugned judgment.

70. In the result, this appeal fails and is **dismissed**. The impugned judgment passed by the learned Additional Sessions Judge is affirmed. The appellants, Sadhu, Devendra and Srikrishna are on bail. They shall surrender immediately before the Trial Court to serve out the sentences, awarded to each of them. In the event of default, the Trial Court shall take immediate steps to take them into custody and commit them to prison.

71. Let this order be certified to the Trial Court by the office and separately communicated by the Registrar (Compliance) through the learned Sessions Judge, Budaun. Let a copy of this order be also communicated to appellant no.1, Pratap Singh, who is in jail, through the Jail Superintendent, Budaun, or wherever he is serving his sentence, by the Registrar (Compliance).

72. The lower court records shall be sent down forthwith.

Order Date :- September the 15th, 2021
Anoop / I. Batabyal

(J.J. Munir, J.) (Munishwar Nath Bhandari, ACJ.)

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