Case :- CRIMINAL APPEAL No. - 5107 of 2003 **A.F.R**

Reserved on:04.02.2022
Delivered on:29.04.2022

Appellant :- Phool Singh And Another
Respondent :- State of U.P.
Counsel for Appellant :- N.K. Mishra,Apul Misra,Shilpa Ahuja
Counsel for Respondent :- Govt. Advocate,Mahesh Chandra Dwivedi
And

Case :- CRIMINAL APPEAL No. - 5642 of 2007
Appellant :- Kallu
Respondent :- State of U.P.
Counsel for Appellant :- K.D. Tiwari,Vinod Kumar
Counsel for Respondent :- Govt. Advocate

And

Case :- CRIMINAL APPEAL No. - 4990 of 2003
Appellant :- Jogendra And Another
Respondent :- State of U.P.
Counsel for Appellant :- K.D. Tiwari,Apul Misra,Nand Kishor Mishra
Counsel for Respondent :- A.G.A.,M.C. Chaturvedi,S.C. Dwivedi

Hon'ble Mrs. Sunita Agarwal,J.
Hon'ble Subhash Chandra Sharma,J.

(Delivered by Hon'ble Mrs. Sunita Agarwal,J.)

1. Heard Sri Apul Mishra learned Advocate on behalf of appellants Phool Singh, Hari @ Harish Chandra and Charan, Sri Vinod Kumar learned Advocate on behalf of appellant Kallu and Sri Roopak Chaubey learned A.G.A for the State.

2. These three connected appeals are directed against the judgment and order dated 30.9.2003 passed by the Sessions Judge, Mahoba in Sessions Trial no.55 of 1998 arising out of Case Crime no.219 of 1997 P.S-Kulpahad District-Mahoba whereby five appellants namely Kallu, Phool Singh, Hari @ Harish Chandra, Charan and Jogendra have been convicted for the offence under Section 302/149 I.P.C and sentence for life imprisonment; under Section 324/149 I.P.C they were sentenced for rigorous imprisonment for three years as also for the offence under Section 148 I.P.C. punishment for which is two years rigorous imprisonment. All the punishment are to run concurrently.

These three connected appeals are filed by five accused persons, amongst them one appellant Jogendra had died and the appeal on his behalf has been abated.

3. The prosecution story unfolds with a first information report lodged on 19.11.1997 at about 17.00 hours which was on a written report given by Ratan Singh s/o Karore Yadav resident of Kulpahad, Mahoba. As per the written report, the brother of the first informant namely Jai Singh while going to his fields at about 3.00 p.m on 19.11.1997 was attacked by Kallu and Phool Singh by their 12 bore gun and rifle. At that point of time, the victim was near the house of Tikka Ram and was heading towards "Arjun Bandh" from his house. The fires opened by Kallu and Phool Singh hit at the hands of Jai Singh and he ran towards his house. At that time appellants Jogendra, Hari and Charan came out of the house of the Kallu carrying 12 bore guns and started firing at the victim Jai Singh. These persons also fired at the back of the victim Jai Singh. As per the version of the first informant in the written report, the fires opened by the appellants hit the head, back, chest, hands and face of the victim who fell down at the door of his house and died. In the course of firing, one child Sunil s/o Kallu Teli aged about four years had also sustained pellet injuries in his Torso. The motive of committing the crime had been assigned to appellant Charan and Jogendra who were accused in criminal case wherein the deceased was a witness. It was stated that the appellants were having ill will against the deceased on account of his evidence. The incident was witnessed by the younger brother of the deceased namely Todan and one person named Bhaiyan s/o Amar Singh Yadav resident Ragauli P.S-Srinagar and Mohan Singh s/o Balkhandi Sela.

4. Based on the written report, check F.I.R was prepared by the Constable Moharrir P.S-Kulpahad examined as P.W-3. This witness had proved the check report as Exhibit Ka-2 and the G.D entry no.25 dated 19.11.1997 at 17:00 hours as Exhibit Ka-3. In cross, P.W-3 had proved that the written report bears thumb impression of the first informant and the copy of the check was handed over to the Investigating Officer before he proceeded to the spot. The suggestion that the written report was scribed and the check FIR was lodged after the Investigating Officer had returned from the spot had been categorically denied.

5. The papers prepared during the course of investigation had been proved by the Investigating Officer examined as P.W-7, who has deposed that he was posted as Station House Officer in P.S-Kulpahad on the date of the incident and the FIR was lodged in his presence. The investigation was received by him and he proceeded to the place of the incident where the statements of the first informant and other witnesses were recorded. However, as by that time, the night had set in and there was no sufficient light, the dead body and other incriminating material relating to the incident were kept preserved by the police officials posted there. On the next date, i.e 20.11.1997, the inspection of the site of the incident was made and the site plan was prepared which was exhibited as Exhibit-Ka-6. The blood stained and plain earth collected from the spot was exhibited as Exhibit Ka-7 and six empty cartridges recovered from different places of the incident were noted in a recovery memo which is Exhibit-Ka-8. The inquest of the body was made between 7.30 a.m to 8.30 a.m and the body was sealed and sent for post mortem through two constables after preparation of other related papers. The inquest and other related papers were exhibited as Exhibit-Ka-9 to Exhibit Ka-13. On 24.11.1997, the accused Kallu, Charan and Jogendra were arrested and their statements were recorded. The accused Phool Singh was arrested on 29.11.1997 and his statement was recorded and the statement of accused Hari was noted on 12.12.1997. After recording statements of other material witnesses, chargesheet was prepared and filed as Exhibit-Ka-14. The blood stained, plain earth and shoes of the two deceased were exhibited as material Exhibit-1, 2 and 3; respectively. P.W-7 had deposed that the case property was sent to the forensic laboratory.

6. The doctor conducted post mortem had been examined as P.W-6. He had proved injuries on the person of the deceased as under:

“(1) Fire arm wound of entry 2.5 cm x 2.0 cm over left temporal region 8 cm above left tragus of ear, Shape oval, margin abraded, Clean cut with fracture of left temporal bone directing above and forward toward right side, cork four one plastic tikli recovered from right side cerebral cortics and 19 pellets also.

(2). Fire arm would of entry 2 cm x 2 cm size over left lower jaw, 1 cm below left angle mouth, circular in shape, margin inverted. Left side mandible bone fractured in multiple pieces, directed forward and upward to left side.

(2B). Fire arm wound of entry 3 cm x 5 cm in size over left side of cheek 2 cm...to left tragus of ear margin....oval in shape.

(3). Contusion 7 cm x 4 cm right side of maxillary prominence with fracture of right side maxilla bone.

(4 a). Firearm would of entry 8 cm x 4.5 cm, gutter shape over left mid part of upper area...lateral aspect of clavicle 12 cm below tip of left shoulder joint margins inverted, direction upward and forward anterior and posterior.

(4 b). Fire arm wound of exit 12 cm x 8 cm in size irregular shape left upper arm 10 cm shoulder joint, margins outward.

(5) Multiple abrasions of 2.5 cm x 2.5 cm in size, circular in shape 9 cm x 7 cm size area over left lateral aspect of chest below posterior auxillary fold 13 in number minimum aspect 7 cm above skin deep.

(6 a) Firearm wound of entry of 2 cm x 5 cm size over sternum 17 cm below supra sternal notch margin inverted circular in size direction anterior to posterior.

(6 b). Firearm wound of entry 2.5 x 2.5 cm right side of back heart punctured through and through right side of back of chest 9 cm below right scapula bone, heart punctured through and through.

On internal examination, it was found that brain lining was punctured pericardium punctured, heart empty, one litre pasty food was present in the stomach, gases in small intestine and gases and faecal matter in large intestine. Liver and spleen were congested.

7. The cause of death was indicated as shock and hemorrhage due to ante mortem injuries. The proximate time of death was one day. As per the observation of the doctor on the internal examination of the body, it was found that pericardium and brain lining were broken. Heart was empty. One litre food was present in the stomach. Gases in small intestine and gaseous and feacal matter was present in the large intestine. The rigour mortis had passed on from the neck and present in the upper and lower limbs. P.W-6 had opined that the proximate time of death could be 3.00 p.m on 19.11.1997. He has proved the post mortem being in his handwriting and signature, which is Exhibit Ka-5.

8. P.W-4, doctor Bhram Dutt Dwivedi had proved the injury report of the child Sunil wherein age of the injured has been mentioned about 5

years. It was deposed that the injured was brought to him by the Constable of the Police Station-Kulpahad. The injuries found on the person of the child are:-

"(1). Six small wounds of gun short measuring 0.2 cm x 0.2 cm x muscle deep over an area of 12 cm x 9 cm over the left side of the abdomen, blackening present over the wound, advised X-ray AP and lateral.

(2) 2 small wounds of gunshot measuring 0.2 cm x 0.2 cm x muscle deep 4 cm apart from each other over the medial aspect of the left foot 3 cm below the medial..., blackening present over the wound, advised X-ray AP and lateral.

The doctor has opined that both the injuries had been caused by some fire arm and had been kept under observation and referred to Superintendent CHC for radiological examination to determine the nature of injury and management.

The injury report contains left thumb impression of the injured Sunil and had been attested by the doctor concerned."

9. The two injuries found on the injured were fire arm injuries according to the doctor P.W-4. The nature of injuries though could not be determined by him because of the absence of X-Ray but P.W-4 stated that the injuries were fresh and the possibility of them occurring on 19.11.1997 at about 3.00 p.m was very much there. The injury report had been proved being in the writing and signature of P.W-4 as Exhibit Ka-'4'. He also proved that the injury report contained identification mark and the thumb impression of the injured.

10. Thus, formal witnesses had proved the documents prepared by them related to the case.

11. The forensic science laboratory report is Exhibit-Ka-'15' wherein it is mentioned that in large portion of the clothes, shoes and ring of the deceased blood was found and most of the blood was in the item nos.1, 2 and 5 which were sadri, safi and shoes of the deceased. The blood found in these items was human blood. The blood group of blood of item nos.1, 2, 4 and 5 was identified as Group-'O' and on item no.3 and 7 the blood was found disintegrated as such its blood group could not be determined.

Amongst the witnesses of fact, P.W-1 is the brother of the deceased; P.W-2 Todan Singh is another brother of the deceased; P.W-5 Bhaiyan is also

an eye witnesses.

12. This is a case of eye witness account of the incident which had occurred during day hours. Challenging the order of conviction passed by the trial court, it is vehemently argued by Sri Apul Mishra learned Advocate for the appellant that as per own case of the prosecution, P.W-1 was not an eyewitness. His testimony is a hearsay evidence. Further, the presence of P.W-2, another brother of the deceased is found doubtful for various contradictions in his version and improbabilities of the circumstances put forth by him. P.W-5 Bhaiyan, a relative of the deceased is a chance witness as he was resident of a different village and the reason given by him for his presence at the spot is not convincing. One injured, boy of five years, was a passerby who had received only pellet injuries. As per own statement of the prosecution witnesses, there was enmity between the deceased and accused persons, their false implication therefore, cannot be ruled out. The whole prosecution story is manufactured and it was not possible for the witness to see entire incident from the place of their presence indicated in the site plan. The presence of P.W-1 is nowhere indicated in the site plan and he had not seen the incident.

13. From the statement of P.W-1, it is pointed out by the learned counsel for the appellants that this witness in the course of deposition could not even remember the name of an eyewitness and stated that the eyewitness was a resident of Gram Ragauli. P.W-1, in his examination in chief, deposed that the incident was witnessed by three persons namely Todan and Mohan and one relative and that the entire details of the incident was described to him by the eyewitness. At the time of the incident, he was in his field and reached the spot hearing the sounds of fire. Mohan did not enter in the witness box. Two witnesses namely Todan and Bhaiyan were closely related to the deceased and the possibility is that the P.W-1 concocting the whole story on the description given by the alleged eyewitness had lodged the FIR. It is urged that the motive assigned by P.W-1 was that the deceased was a witness in a case of

marpeet against the accused person.

14. On a suggestion that the statement of the deceased was already recorded and the accused persons had been acquitted was denied by the prosecution witnesses in a vague manner. It was admitted by P.W-1 that in the case of the murder of father of one of the appellant namely Jogender, P.W-2 Todan, his father and other brothers were named accused and the case was pending in the Court.

15. Pointing out the above facts, it was vehemently submitted by the learned counsel for the appellants that it is a case of false implication of appellant Jogendra and his acquaintance on account of the fact that the deceased and his family members were arraigned as accused in a criminal case for murder of father of Jogendra. P.W-1 had admitted that he was present in his field at the time of the incident and by the time he reached at his house, his brother was already dead and his body was inside the house. The statement of P.W-1 is that when he came besides the dead body of his brother Jai Singh, other witnesses met him there and after staying for about 20-25 minutes besides the dead body he went to the police station alongwith some villagers and injured Sunil. It took them about 1½ hours to reach the police station. P.W-5 stated that the scribe of the written report namely Lakhan Singh met him at Gondi Chauraha, 200 paces from the police station Kulpahad. After the report was scribed at that place they both went to the police station to lodge the same. The scribe of the written report had not entered in the witness box. In fact, the FIR is antetimed as it was prepared by the Investigating Officer for implication of accused persons after deliberation. And for this the first informant had given a vague statement as to how he met Lakhan Singh near the police station by chance and got the report scribed by him.

16. It is contended that noticeable is that the scribe did not enter in the witness box to explain as to how and when he had written the report and lodged it with the first informant P.W-1. Another circumstance which makes the FIR ante time is that the inquest was conducted on the next day in the morning and the explanation offered by the Investigating Officer for

delay in the inquest is not convincing, inasmuch as, the body was found in the house of the deceased. It is nobody's case that electrification of the village was not done, so the reason given by the Investigating Officer that it was dark and because of insufficient light inquest was conducted in the morning is not acceptable. This fact itself shows the murder had occurred in the dead of night and no one had seen the occurrence. In fact the police had filled the blanks and the correct sequence of investigation was not followed. The above explanation offered by the Investigating Officer is nothing but an effort to present the FIR as a truthful document.

17. It is argued that the version of P.W-1 itself negates the presence of other two eyewitness at the spot. It is vehemently contended that from the deposition of P.W-1 as also the written report and the statement of P.W-2-Todan Singh, the presence of P.W-2 at the spot is found doubtful, inasmuch as, in his deposition, this witness stated that he had witnessed the entire incident while standing at the Chabutra of the house of Bhagwan Das and two other witnesses namely Mohan Singh and Bhaiyan, who were introduced by the first informant (P.W-1) and P.W-2, were also present with him. These three persons, according to the prosecution had witnessed the entire incident while standing at the said place; whereas P.W-2 in his statement under Section 161 Cr.P.C., had stated that he witnessed the incident while standing at the door of his house and other two witnesses were also present with him. This contradiction in the statement of P.W-2 clearly prove that the place of incident was not the same as narrated by the prosecution witnesses; otherwise, there was no reason to shift the place of witnessing the entire scene. In all probability, the deceased was killed while he was sitting at the door of his house and some unknown assailants had killed him. As per P.W-1, he reached the spot hearing the sounds of the fire and the body of the deceased was inside the house. It is urged that in view of this version of P.W-1, when P.W-2 could not explain his position ie his presence at the door of his house while making deposition in the Court in consonance with his statement under Section 161 Cr.P.C., he had shifted his position

conveniently. This shift in the statement of P.W-2 is a material improvement and impeach the credibility of this witnesses.

18. P.W-2 also proved enimity between the deceased and the accused persons, false implication of the accused in a blind murder, therefore, cannot be ruled out.

19. It is further contended that P.W-1, the first informant, in the written report and in his examination in chief, had assigned rifle in the hands of accused Phool Singh whereas P.W-2 who was projected as an eyewitness had assigned gun in the hands of Phool Singh. This contradiction in the statement of P.W-2 is material improvement in the prosecution case, inasmuch as, the prosecution had changed its version as no injury on the person of deceased could be related to rifle.

20. Further, it was argued that P.W-5 had been introduced by the prosecution on deliberation. This witness is brother-in-law of son of the deceased and a resident of Village Ragauli which was at a distance of 5-6 Kose from the village of the deceased. P.W-5 stated that he came to the house of the deceased to meet him without any reason, whereas P.W-2 on a question put to him stated that Bhaiyan (P.W-5) came to the village to bring his sister. In fact, P.W-2 admitted that there was no reason for P.W-5 to be at the spot. Further, P.W-1, the first informant, could not even recollect the name of this witness (P.W-5) while making his deposition, in the examination in chief. In cross of P.W-5, it has come that the body was sent for post mortem on the date of incident on 19.11.1997 as he stated that the body was taken by the Investigating Officer within one hour of going at the spot, after completion of necessary formalities and the day on which this process was completed was the day of the incident. From the inquest report and the deposition of the Investigating Officer, it is evident that the inquest was done on the next day i.e 20.11.1997. The falsity in the statement of P.W-5 is proved from the circumstances reflected from the record and was sufficient to discard his presence at the spot. Further, P.W-5 even denied his statement under Section 161 Cr.P.C by saying that the

Investigating Officer did not interrogate him nor recorded his statement. This denial also prove that P.W-5 was not an eye witness and had been introduced by brothers of the deceased in order to project a so called independent witness in a case of false implication of the accused persons.

21. With the above facts, it was further argued that as per the case of the prosecution witness firing had started in front of the house of Tika Ram which has been shown in the site plan as place (B). Eye witness (P.W-2 and P.W-5) had fixed their presence at place marked as (E). The distance between these two places as is evident from the description in the site plan is about 100 paces. P.W-5, in cross, admitted that the distance between the house of Tika Ram at place (B) (where firing had started) and house of Bhagwan Das (E) was 100 paces and all the witnesses had witnessed the incident sitting at the door of Bhagwan Das. It is argued that the place where allegedly the firing had started was quite far from the place where the witnesses were allegedly present. It, therefore, cannot be accepted that the witnesses could have seen the incident so accurately as described in the FIR.

22. It is contended that a further perusal of the site plan indicates that the deceased ran for his life from place (B) to (A) and he had received first shot at place (B). The distance between (A) and (B) as indicated in the site plan is 88 paces. The injury no.5 on the person of the deceased was such a large injury which makes it impossible to believe that the deceased could have run for such a long distance. Further, the injury nos.4A, 4B as also injury nos.6A and 6B are on such places that the deceased could not have run after getting those shots. The story narrated by the prosecution witnesses, thus, that the firing had started by the accused persons at place (D) while the deceased was at place (B) and he ran from the place (B) to (A) when other accused persons joined in firing at place (F) and he finally fell down and died at place (A), is highly improbable. The prosecution has not been able to furnish any explanation of the above query. Further, no blood was found between place (B) to (A), i.e on the road where the deceased was first hit and ran for his life which

also dispels the manner of the incident as per the narration of the prosecution witnesses. More and highly probable version of the defence that the deceased was hit by someone else while he was sitting at the door of his house is worthy of acceptance.

23. Further, though rifle had been allocated to one of the accused there is no shot of rifle typically. Injury no.3 seems to have been caused by a blunt object. The witnesses projected by the prosecution are not natural witnesses. No one had seen the incident. The motive for false implication is proved from the version of the prosecution witnesses itself. The massive discrepancies in the statement of prosecution witnesses and documentary evidence, placed by the police show that the prosecution had suppressed the true version of the incident.

24. Lastly it is argued that there is no explanation for 12 hours delay in conducting the inquest when the body was found in the house of the deceased. This show that the family members of the deceased were not sure as to who were the assailants and they bought time with the aid of police to introduce the accused persons and the place of the incidents. It is, thus, argued that the entire prosecution story is cooked up and is full of contradictions, deliberations and apparent inconsistencies. In the totality of the facts and circumstances of the case the conviction of the appellants cannot be sustained.

25. Sri Apul Mishra learned counsel on behalf of the appellant Hari further submits that this appellant had taken a categorical plea of alibi in his statement under Section 313 Cr.P.C by saying that he was in the Court of Civil Judge/J.D for recording his evidence and was not present at the spot. This plea was illegally rejected by the trial court by saying that looking to the distance of the place of incident from the District Court Mahoba, the presence of the accused appellant Hari at the spot cannot be discarded.

26. Sri Vinod Kumar learned Advocate for the appellant Kallu submits that no motive had been assigned to appellant Kallu by any of the

eyewitnesses. Only suggestion of enmity with appellant Kallu as has come up in the cross of P.W-2 relates to an incident of murder of grand father of Kallu that too in the year 1965 wherein father of P.W-2 was an accused. Looking to the remoteness of the motive suggested for appellant Kallu, his involvement in the crime is false. While adopting all other argument placed by Sri Apul Mishra, Sri Vinod Kumar learned Advocate appearing for the appellant Kallu submitted that appellant Kallu is in jail for more than 20-21 years. Section 57 I.P.C prescribes that imprisonment of life is to be reckoned as equivalent to imprisonment for 20 years. The period of incarceration of appellant Kallu, therefore, is sufficient for his release from jail, even in case his conviction is upheld. While arguing on the issue of sentence, it is submitted by the learned counsel for the appellant Kallu that in view of the decision of this Court in *Criminal Appeal no.2135 of 2013 (Savir vs State of U.P)* dated 5.2.2021, the life sentence of the appellant has to be reckoned to 20 years, as in that case, this Court had fixed the term of life as 14 year and six months. In similar circumstance, the Apex Court in *Criminal Appeal no.1044 of 2012 (Shekhar vs State of M.P.)* ; Criminal Appeal no.1563-1564 of 2018 had commuted life sentence to 15 and 18 years of the period undergone by the appellants therein. The judgment of the Apex court in ***Brajendra Singh vs State of U.P***[1] has been placed before us to assert that the Apex Court while commuting the death sentence had fixed the term of life imprisonment as 21 years. In ***Ashok Debbarma alias Achak Debbarma vs State of Tripura***[2] in the case of Armed Extremists death was commuted to 20 years of life imprisonment. The submission, thus, is that the High Court is empowered to put a cap/ceiling of keeping the accused behind the bar and commute the life sentence to a fixed term. In view of the circumstance of the case, keeping the accused Kallu in jail further is against the spirit of the decisions of the Apex Court.

27. Learned A.G.A, in rebuttal, submits that there is no suggestion to

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1.*(2012) 4 SCC 289*

2.*(2014) 4 SCC 747*

P.W-1, first informant with regard to the FIR being ante time. P.W-3 is a natural witness. There is no suggestion of enmity with this witnesses. The injured was examined on the date of the incident itself and it was proved that he was brought to the doctor by a police constable with Majrubi Chitthi. It was a broad day light murder and sequence of events established by the prosecution witnesses gives details of the occurrence. In the FIR if some details are not provided, that would not lead to an inference that the prosecution had presented a concocted story. The eye witnesses of the occurrence are natural witnesses. Minor contradictions in their version rather prove their truthfulness as they did not bother about corroborating their evidence while narrating the occurrence. The reason why blood was not found between the place (B) and (A) is explained from the manner in which the deceased was shot. The entire occurrence between two points could have been completed within 15-20 seconds and further the inquest report and the forensic report indicate that large amount of blood was found on the clothes and shoes of the deceased. It was winter time and dress like Sadri could soak a lot of blood. The blood found in the shoes of the deceased further supports the prosecution case that the deceased ran for his life from place (B). In the FSL report also human blood was found on the clothes, shoes and other articles.

28. It is further argued that the version of P.W-1 also shows the truthfulness of the prosecution story discarding all hypothesis of false implication. Had P.W-1 concocted the story he could have very conveniently included himself as an eyewitness. The contention that P.W-5 was a chance witnesses is not acceptable rather he was a natural witness who had proved his presence in the house of the deceased from about 2-3 days prior to the date of incident. The reason given by P.W-5 to come to the house of the deceased could not be successfully disputed by the defence. However, even if P.W-5 is taken as a chance witness as per the version of the defence, his testimony cannot be discarded as a whole by the mere fact of him being a chance witnesses. The settled law is that if a witness is found to be present on the place of the incident by chance, his

testimony has to be carefully scrutinized by the Court with due care and circumspection and not that it must be discarded. The contradictions shown in the statements of P.W-1 and P.W-5 were not put to P.W-5. The arguments of the learned counsel for the appellants, therefore, cannot be accepted.

29. It is further argued by learned A.G.A that it was a prompt report of the occurrence and the statements of the witness under Section 161 Cr.P.C. were recorded on the same day. P.W-1, P.W-2 and P.W-5 fixed their presence at the time of the incident in their first version before the Investigating Officer. P.W-5 had no personal enmity with the accused persons. Other two witnesses namely P.W-1 and P.W-2 though are related but cannot be said to be inimical. Their testimony is natural. The motive that the deceased was a witness against Jogendra, a named accused, in a criminal case had been proved from the statement of the prosecution witnesses. Further, when the accused had fired together at the deceased, only inference that can be drawn is that they had prosecuted the common intention of the unlawful assembly. The medical evidence on record corroborates the occular version and the injuries. No witness had stated that the deceased was shot from close range and none of the injuries suggest otherwise. Injury no.3 had been explained by the doctor by saying that it could occur due to fall. In the ocular evidence it has come that the deceased fell down at the door of his house having received injuries between point (B) to point (A). The pieces of stones collected from place 'A' were found stained in the FSL report with human blood. Injury 4A is a gutter shaped wound which could have been caused due to rifle. All the discrepancies pointed out by the learned counsel for the appellant, therefore, stood explained and in the light of the evidence on record, it is evident that two eyewitnesses were present from the beginning of the incident and promptness of the first information report show that there was no scope of deliberation. The conviction of the appellant, therefore, cannot be set aside.

30. On the submission of Sri Vinod Kumar learned Advocate for

appellant Kallu for fixing the period of sentence of imprisonment for life, it is argued that the submissions of the learned counsel for the appellant Kallu is based on misinterpretation of the judgment. In all the decisions of the Apex Court relied upon by him, the situation was that while commuting sentence of death to life, the Apex Court put a ceiling fixing the minimum term for which the accused therein had to remain in confinement without remission. The idea was that the accused therein may not get remission prior to the tenure fixed by the Apex Court as after 14 years of life sentence, an accused may be granted remission by the State Government as per its policy. In none of the cases, the Apex Court has held that the High Court is empowered to fix an upper ceiling or cap on the period of life imprisonment. The sentence of imprisonment of life as held by the Apex Court is till the natural life of the accused which cannot be fixed in years by this Court.

31. Reliance has been placed on the judgments of the Apex Court in ***Sarat Chandra Rabha and others vs Khagendranath and others***[3], ***Gopal Vinayak Godse vs State of Maharastra and others***[4] ***Maru Ram vs Union of India***[5], ***Swamy Shraddananda (2) vs State of Karanataka***[6], ***Sahib Hussain Alias Sahib Jan vs State of Rajasthan***[7], ***Gurvail Singh Alias Gala vs State of Punjab***[8], ***Union of India vs V.Sriharan Alias Murugan and others***[9], ***Vikas Yadav vs State of U.P and others***[10] and ***Jitendra alias Kalla vs State of Govt, of NCT of Delhi***[11].

32. Having heard learned counsel for the parties and perused the record,

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3. *AIR 1961 SC 334*

4. *AIR 1961 SC 600*

5. *AIR 1980 SC 2147*

6. *(2008) 13 SCC 767*

7. (*2013) 9 SCC 778*

8. (*2013) 10 SCC 631*

9. (*2016) 7 SCC 1*

10. *(2016) 9 SCC 541*

11. *AIR 2018 SC 5253*

noticing that the police papers and the report prepared by the doctors were proved with the deposition of the relevant witnesses, it is pertinent to record at the inception that this is a case of eyewitness account and the murder was committed in the broad day light. The P.W-2, an eyewitness said to have seen the whole occurrence from the beginning of the firing till the deceased had succumbed to his injuries. The ocular version of P.W-2, the manner in which the deceased was assaulted, is supported from the injuries found in the medical examination. As per the statement of P.W-2 when first fire was opened on the deceased by the accused Kallu and Phool Singh, he ran for his life towards his house. In between point '(B)', (where the deceased was first hit at point) and '(A)', (the house of the deceased), at place '(F)' house of Kallu has been shown in the site plan which is undisputed. As per the version of P.W-1, other three accused persons namely Jogendra, Charan Singh and Hari pounced from place '(F)' (house of Kallu) and started firing at the deceased who finally fell at the door of his house but the accused persons continued to fire at him. This version is corroborated from the number and nature of injuries sustained by the deceased. P.W-2 is the natural occupant of the house where the deceased was residing. He fixed his presence at place '(E)' which is in front of the house of Bhagwan Das, near the house of the deceased. The presence of P.W-2 at place (E) cannot be discarded by the mere fact that in his statement under Section 161 Cr.P.C, it was recorded that he was present at the door of his house. The said statement of this witnesses was recorded on 19.11.1997 whereas site plan was prepared on 20.11.1997 at the instance of P.W-2 who had fixed his presence at place (E). The distance between place (A) and (E) indicated in the site plan is 18 paces only. The version of P.W-2 in his statement under Section 161 Cr.P.C that he was present at the door of his house and in his cross examination that he was sitting at the Chabutra in front of the house of Bhagwan Das cannot be said to be contradictory.

33. Moreso, the statement of P.W-2 was recorded on the date of the incident itself soon after the Investigating Officer had reached the spot

after registration of the FIR, we cannot loose sight of the fact that when the statement under Section 161 Cr.P.C of P.W-2 was recorded, he was overwhelmed by the manner in which his brother was assaulted, chased by the accused and then brought to death at the door of his house.

34. A witness of the incident like this where murder of his own brother had been caused by five persons in such a daring manner, cannot be expected to give each and every detail on the same day. However, it can be seen that on the very next day when the site plan was prepared by the Investigating Officer on the pointing of this witness, P.W-2 had clearly fixed his place at (E) which is in corroboration with his oral testimony in the Court. We may also take notice of the fact that looking to the distance between two places (A) and (E), if P.W-2 stated that he was at the door of his house, he cannot be said to have given any contradictory statements, inasmuch as, in common parlance a person standing outside his house or near a place outside his house, would normally say that he was at the door of his house (घर के दरवाजे पर था). This version of P.W-2 in his statement under Section 161 Cr.P.C cannot be taken literally to mean that he was standing at the door of his house and could not be at the place (E) as indicated by him in the site plan and also stated in his examination-in-chief. The presence of P.W-2 at the site of the incident, thus, cannot be doubted. The house of the witness being nearby the place where witnesses were present, the submission of the learned counsel for the appellant that there is material shift in the version of P.W-2 with regard to the place of his presence at the time of incident, is liable to be rejected.

35. P.W-5 is a witness who was related to the deceased but he was not in a direct relationship either with P.W-1 or P.W-2, brothers of the deceased. P.W-5 is the brother-in-law of son of the deceased. It is, thus, not surprising that P.W-1 could not remember his name while making his deposition in the Court. P.W-1, however, clarified that this witness (P.W-5) was a relative and resident of village of Ragauli which is correct. As regards the submission of P.W-5 being a chance witness, we do not find

substance in the same for the categorical statement made by P.W-5 that he came to the house of the deceased about two or three days prior to the incident to see his sister or to bring her with him. His presence in the house of the deceased prior to the incident cannot be doubted for the minor contradictions pointed out in his testimony. In fact, there is no material contradiction in the testimony of P.W-2 and P.W-5 who both had seen the incident together from one place (E). The presence of P.W-5 at the place (E), where another eyewitness P.W-2 was present at the time of the incident, cannot be discarded.

36. The question now is as to whether it was possible for the witnesses to see the first incident occurred at place '(B)', the distance of which was 88 paces from the place (E) (where the witnesses were present). To answer this, we may look at the site plan which is undisputed. The road on which the incident had occurred is a straight road and two assailants had opened fires at the deceased from place (D) and chased the deceased, other three assailants pounced from the house of Kallu which was located at the same road on the opposite side of the house of the deceased. It was, therefore, possible for the witnesses to identify the accused persons clearly and also the weapons carried by them. The assertion of P.W-2 that the assailants Kallu and Phool Singh had opened fire at his brother from place (D) cannot be doubted only because of the distance from the place (E) where witnesses were present. From the site plan, it can be clearly seen that the deceased was at the place '(B)' when firing had started, from there it was natural for him to run towards his house to save his life as the assailants at place '(D)' were on the other side. However, three other assailants joined at place '(F)' and they also shot the deceased resulting in his death. All the injuries on the person of the deceased are fire arm injuries and injury no.3 can be explained from the fact that the deceased fell down on the stone floor at the entrance of his house and died. No discrepancy could be found in the version of the prosecution witnesses.

37. With regard to the timing of the incident and the suggestion that it was a night incident for the reason that the inquest was conducted on the

next day, we may note that the prosecution witness had proved that the first information report was lodged within two hours of the incident where the distance of the Police Station was 7 kms. The Investigating Officer had reached the spot by 6-6.30 p.m. and recorded the statements of the witnesses which fact could not be disputed.

38. The reason given by the Investigating Officer is that there was no sufficient arrangement for light and as such he made arrangements for safety of the body and other incriminating material and went back and again in the next morning he came to make inquest. This seems to be a wise decision of a prudent man as the inquest would require minute details of the position of the dead body, clothes worn by it and the details of the injuries, which may not be possible to note even in the electric light. Further, the incident had occurred in the month of November and at that point of time, the place may not be lit up sufficiently. Moreover, there is no suggestion of any enmity of the accused persons with the Investigating Officer. There is no reason before us to doubt the decision of the Investigating Officer not to make inquest in the late evening hours.

39. Further to deal with the submission that no blood was found between place (B) to (A) and, therefore, the prosecution story that the deceased ran after being hit at place (B) is false, suffice it to say that the inquest report as well as FSL report indicate that large amount of blood was found in clothes one of which was Sadri (winter clothes) and shoes of the deceased. The fact that blood was found in the shoes of the deceased itself supports the prosecution story that the deceased ran after being hit at place (B). Had the deceased been sitting at the door of his house while being shot, as per the suggestion of the learned counsel for the appellants, there was no question of large amount of blood being found in his shoes. It is further pertinent to note that blood stained and plain pieces of stones were collected from the spot (A), the door of the house of deceased, where he fell down in the end. The FSL report indicates that human blood was found on the said articles.

40. Further inconsistency pointed out in the statement of the prosecution witnesses are minor and do not shake the prosecution version. It is settled that the errors due to lapse of memory or perception of individual should not be given undue importance. Even minor embellishment in the version of prosecution witnesses perhaps for the fear of their testimony being rejected by the Court are liable to be ignored.

41. On the question of false implication, it is to be noted that motive assigned to the accused persons or causing the murder had been proved by the witnesses P.W-1 and P.W-2 in the course of the cross examination. It is an admitted fact that the deceased was a witness in a case against one of the accused Jogendra and the suggestion of the defence that his testimony was already recorded has not been proved by any cogent evidence. On the date of the incident, the case was going on. In the said scenario, the prosecution has established the motive for the commission of the crime by definite statement. The presence of motive, if established, provides a foundation material to connect the accused with the crime. However, in a case of ocular direct evidence, even absence of motive is insignificant. As to the suggestion of false implication, we may only note that as the motive operates on the minds of different persons, it is not possible for the Court to find out motive of false implication of accused persons. It may be a strong reason to commit the crime or for false implication. ***Reference: Shankarlal Gyarasilal Dixit***[12].

42. Lastly, the eyewitness are found to be natural witness whose presence on the spot could not be successfully disputed by the learned counsel for the appellants. The fact that the witnesses are related to the deceased would not be sufficient to discard their testimony as a close relative of the deceased does not, per se, become an interested witness. In law, an interested witnesses is one who is interested in securing the conviction of a person out of vengeance or enmity or due to a dispute and deposes before the Court only with that intention and not to further the cause of justice. **Reference:** ***Raju alias Balachandran and others***

12. *(1981) 2 SCC 35*

vs State of Tamil Nadu.[13]

43. In the instant case, the related witnesses to the deceased are two brothers and one brother-in-law of his son. The deceased was himself a witness in a criminal case against one of the accused Jogendra. There is no suggestion of enmity of the witnesses with that of the accused. The first informant, brother of the deceased had truthfully deposed he was not an eyewitness of the incident and the narration in the FIR or in his examination in chief was based on the information passed on by other two witnesses namely P.W-2 and P.W-5, who were present at the spot. P.W-5 is a distant relative, no enmity with the appellants could be attributed to him. As regards P.W-2 he is closely related witness and carefully scrutinizing his testimony, we find that his evidence is cogent, credible and trustworthy. This witnesses can be placed in the category of wholly reliable witness.

44. In the totality of facts and circumstances of the case, it can be seen that the prosecution had proved each and every circumstance leading to the homicidal death of deceased Jai Singh from cogent and trustworthy evidence. Both ocular and medical evidence corroborate each other. No infirmity, therefore, could be found in the judgment of conviction of the trial Court. The sentence provided by the trial Court is minimum.

45. On the question of remission, Sri Vinod Kumar learned Advocate has placed reliance on two decisions of the Division Bench of this Court in Criminal Appeal no.2135 of 2013 (Savir vs State of U.P) and in Criminal Appeal no.1839 of 2004 (Veersen vs State of U.P) to submit that this Court is competent to fix the term of life imprisonment and direct for release of the appellant after 20 years of incarceration. The period of 14 years, according to him, has been fixed as tenure of life imprisonment under Section 57 of the Indian Penal Code.

46. Dealing with this submission of the learned counsel for the appellant Kallu, seeking his release from jail on completion of 20 years

13. (*2012) 12 SCC 701.*

incarceration treating it as a sentence for life, we may note that the Division Bench of this Court in both the above noted decisions had relied upon the judgment of the Apex Court in ***Vikas Yadav*** *(supra)* and also referred to a decision in ***Maru Ram vs Union of India*** *(supra)* while proceeding to hold that the period of incarceration of a life convict in both the cases being more than 14 years would be just and proper while upholding the judgments of their conviction. We, therefore, first have to go through the decision of the Apex Court in ***Maru Ram*** *(supra)* wherein the challenge was to the vires of Section 433-A of the Criminal Procedure Code. While dealing with the said question, the Apex Court in ***Maru Ram*** *(supra)* in paragraph '25' had considered the Constitution Bench judgment in ***Gopal Vinayak Godse vs State of Maharastra and others*** *(supra)* wherein the concept of the nature of life sentence has been highlighted. It was noted that the Constitution Bench took the view that a sentence of imprisonment for life was nothing less and nothing else than an imprisonment which lasted till the last breath.

47. Another decision of the Constitution Bench in ***Sarat Chandra Rabha and others vs Khagendranath and others*** (supra) was relied therein to note that the order of remission does not wipe out the offence, it also does not wipe out the conviction. It does have an effect only on the execution of the sentence, as on remission, a convict person need not to serve that part of the sentence which has been ordered to be remitted. An order of remission, thus, does not in any way interfere with the order of the Court; and it affects only the execution of the sentence passed by the Court. The power to grant remission is executive power and cannot have the effect which the order of appellate and revisional Court would have of reducing the sentence passed by the trial Court and substituting in the decision adjudged by the appellate or revisional Court.

48. It was also noted in ***Maru Ram (supra)*** that the nature of life sentence is incarceration until death, a life convict cannot be released as such until there is a release order by the appropriate Government in accordance with the Criminal Procedure Code or a clemency order in

exercise of power under Article 72 or 161 of the Constitution of India. It was noted that the Constitution Bench judgment in Godse's case (supra) is authority for the proposition that a sentence for imprisonment of life "imprisonment of the whole remaining period of the convicted persons natural life". The relevant observations of the Constitution Bench in ***Godse's Case*** (supra) has been quoted therein as under:

"Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life, term in prison. The rules framed under the Prisons Act enable such a prisoner to earn remissions- ordinary, special and State-and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate the time of his death. That is why the rules provide for a procedure to enable the appro- priate Government to remit the sentence under s. 401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under s. 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release."

It was also held by the Constitution Bench in Godse's (supra) case that Section 57 IPC does not in any way limit the punishment for imprisonment of life to a term of 20 years. It is only for calculating fractions in terms of punishment.

49. In ***Vikas Yadav*** *(supra)*, the question was as to whether the statutory power of the State under Section 433-A Cr.P.C cannot be curtailed by the Court by prescribing a sentence for life imposing a fix term curtailing the power of remission after 14 years as envisaged under Section 433-A Cr.P.C. In ***Vikas Yadav*** *(supra)* the trial Court sentenced the appellant to life imprisonment with fine whereas the High Court while affirming the conviction and sentence had awarded sentence to appellant Vikas Yadav of life imprisonment which shall be 25 years of actual imprisonment without consideration of remission. It is in this circumstance, the aspect of legal impermissibility for imposition of the said sentence was examined by the Apex Court. It was argued therein that

the Court imposed a third category of sentence by an experience directing for non granting the remission as provided under Section 433-A after expiry of 14 years which is legally not permissible, inasmuch as, the Court cannot direct the statutory provision to be kept in abeyance as a mode of sentencing structure. The challenge, thus, was that the High Court had fallen in grave error by imposing "fix term sentence", curtailing the power for remission after 14 years, which was beyond its jurisdiction. It was also argued that in respect of the offence under Section 302 IPC, life is the minimum and the maximum is the death sentence and, therefore, the Court has a choice between the two and is not entitled to follow any other path, for that would be violative of sanctity of Article 21 of the Constitution which clearly stipulates that no person shall be deprived of his life or personal liberty except according to the procedure established by law. With that it was argued that imposition of sentence for a fix term was contrary to the procedure established by law and hence impermissible.

50. This question was answered by the Apex Court with the aid of the Constitution Bench judgment in ***Union of India vs V. Sriharan*** (supra) wherein out of several questions raised, two questions relevant for our purposes, are to be noted as under:-

"2.2 (i) Whether imprisonment for life means for the rest of one's life with any right to claim remission?

(ii) Whether as held in Shraddananda case (2), a special category of sentence; instead of death; for a term exceeding 14 years and put that category beyond application of remission can be imposed?"

51. By majority decision, the Constitution Bench after referring to its earlier decisions in ***Maaru Ram*** (supra), ***Gopal Vinayak Godse*** (supra) and ***State of M.P vs Ratan Singh***[14] opined that the legal position is quite settled that the life imprisonment only means the entirely of the life unless it is curtailed by remissions validly granted under the Criminal Procedure Code by the appropriate Government or under Article 72 and 161 of the Constitution by the Executive Head; viz, the President

14.(*1976) 3 SCC 470*

or the Governor of the State; respectively.

52. The decision of the Apex court in ***Bhagirath vs Delhi Administration***[15] was noted in paragraph '59' of the Constitution Bench in ***Union of India vs V. Sriharan*** as under:

" Coming next to the question of set off under Section 428 of the Code, this Court held:

"11.....The question of setting off the period of detention undergone by an accused as an undertrial prisoner against the sentence of life imprisonment can arise only if an order is passed by the appropriate authority under Section 432 or Section 433 of the Code. In the absence of such order, passed generally or specially, and apart from the provisions, if any, of the relevant Jail Manual, imprisonment for life would mean, according to the rule in Gopal Vinayak Godse, imprisonment for the remainder of life."

53. In paragraph-'61', having noted the Constitution Bench judgment in ***Godse's*** and ***Maru (supra),*** it was observed that:-

"61.....The first part of the first question can be conveniently answered to the effect that imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code only means imprisonment for rest of the life of the prisoner subject, however, to the right to claim remission, etc. as provided under Articles 72 and 161 of the Constitution to be exercisable by the President and the Governor of the State and also as provided under Section 432 of the Criminal Procedure Code."

54. Further, considering the principles propounded in ***Swamy Shraddananda (2)*** vs ***State of Karanataka*** (supra)***,*** it was observed in ***Union of India vs V. Sriharan***(supra) that the said decision was a well thought out one. The special category of sentence to be considered in substitute of death penalty by imposing life sentence, ie, the entirety of life of a term of imprisonment which can be less than full life time but more that 14 years and put that category beyond application of remission, has been propounded by the Court which is the third category of sentencing for a murder convict.

55. Reverting to ***Vikas Yadav (supra),*** it was concluded therein that the situation that has been projected in ***Swamy Shraddananda (2) (supra)*** and approved in ***Union of India vs V.Sriharan*** (supra) speaks eloquently of judicial experience and the fix term sentence cannot be said to be unauthorised in law. It was concluded in para-'45' that:

"*Section 302 IPC authorizes imposition of death sentence. The minimum sentence is*

15.(***1985) 2 SCC 580***

imprisonment for life which means till the entire period of natural life of the convict is over. The courts cannot embark upon the power to be exercised by the Executive Heads of the State under Article 71 and Article 161 of the Constitution. That remains in a different sphere and it has its independent legal sanctity. The court while imposing the sentence of life makes it clear that it means in law whole of life. The executive has been granted power by the legislature to grant remission after expiry of certain period. The court could have imposed the death sentence. However, in a case where the court does not intend to impose a death sentence because of certain factors, it may impose fixed term sentence keeping in view the public concept with regard to deterrent punishment. It really adopts the view of "expanded option", lesser than the maximum and within the expanded option of the minimum, for grant of remission does not come in after expiry of 14 years. It strikes a balance regard being had to the gravity of the offence."

56. It is in the above context that the Apex Court in ***Vikas Yadav (supra)*** has quoted in para '104' the Constitution Bench in ***Union of India vs V.Sriharan (supra)*** to note that the High Court while modifying punishment of a life convict may provide for any specific term of incarceration or till the end of convict's life as an alternate to death penalty.

57. As noted above in ***Vikas Yadav (supra)***, the trial Court had imposed the life sentence and the High Court while declaring to enhance the sentence for imprisonment for life to death had imposed fix term sentence curtailing the power of remission after 14 years as envisaged under Section 433-A Cr.P.C, which has been affirmed by the Apex Court while disposing of the appeal.

58. The ratio of the decision of the Apex Court in ***Swamy Shraddananda(2) Alias Murali Manohar Mishra*** (supra) as approved in ***Union of India vs V. Sriharan*** (supra) and considered in ***Vikas Yadav*** (supra) is that the power to impose the modified punishment providing for any specified term of incarceration or till the end of convict's life, as an alternate to death penalty, can be exercised only by the High Court and the Apex Court and not by any other inferior Court. However, the ratio of the Constitution Bench in ***Godse's Case*** (supra), i.e. the fundamental principle that a sentence of imprisonment for life is an imprisonment which last till the last breath of the convict has been consistently approved. We also note that the question in *Godse's case* for consideration was whether there is any provision of law whereunder a

sentence for life without any formal remission can be treated as one for the definite period by the Court and it was answered in negative. It is, thus, clear that the special category created in ***Swamy Shraddananda (2) Alias Murali Manohar Mishra*** (supra) where the death penalty might be substituted by the punishment of imprisonment for life of imprisonment for a term in excess of 14 years and to put that category beyond the application of remission was approved in the later decisions of the Apex Court. [(In Vikas Yadav (supra)].

59. Further, Section 28 of the Criminal Procedure Code empowers the Court to impose sentence authorised by law. Section 302 IPC authorises the Court to either award life imprisonment or death. The minimum sentence is life imprisonment and maximum is death. The Court cannot curtail the minimum sentence as authorised by the statute. It, therefore, cannot curtail the sentence for life and fix a period of incarceration of a life convict. Life imprisonment as held in ***Godse's Case (supra)*** means the whole of the period of convict's natural life which is subject to the power of the appropriate government to grant remission under Section 432 of the Criminal Procedure Code read with section 433-A.

60. In a recent decision in ***Duryodhan Rout vs State of Orissa***[16] on a question of interpretation of Section 31 Cr.P.C, it was observed by the Apex Court that imprisonment for life is not confined to 14 years of imprisonment. In view of Section 55 of IPC and Section 433 and 433-A Cr.P.C, only appropriate Government can commute the sentence of imprisonment for life for a term not exceeding 14 years or accedes to the release of such persons unless he has served atleast 14 years of imprisonment. Section 57 of the Indian Penal Code merely relates to calculating fractions of term of punishment by providing numerical value of 20 years to life imprisonment. It was thus held that a person sentenced to life imprisonment is bound to serve the remainder of his life in life imprisonment unless the sentence is commuted by the appropriate Government in terms of Section 55, 433 ad 433-A of the Code of

16. (***2015) 2 SCC 783***

Criminal Procedure.

61. Reliance is placed on the decisions of the Apex Court in ***Gopal Vinayak Godse*** (supra) and ***State of M.P. vs Ratan Singh*** (supra) as also other decisions in ***Naib Singh vs State of Punjab***[17]***; Ashok Kumar vs Union of India***[18]; ***Subhash Chander vs Krishan lal***[19]***; Mohd Munna vs Union of India***[20]to hold that :

"*26. This Court reiterated that life imprisonment was not equivalent to imprisonment for 14 years or 20 years in Mohd Munna vs Union of India. The Court held that the life imprisonment means imprisonment for whole of the remaining period of the convicted person's natural life. There is no provision either in the Penal Code or in the Criminal Procedure Code, whereby life imprisonment could be treated as either 14 years or 20 years without there being of formal remission by the appropriate Government. "*

62. In ***Raj Kumar vs State of Uttar Pradesh***[21], it was held that :

"14. A bare perusal of Section 433 of Cr.PC shows that the powers under Section 433 can only be exercised by the appropriate Government. These powers cannot be exercised by any court including this Court. At best, the court can recommend to the State Government that such power may be exercised but the power of the appropriate Government cannot be usurped by the courts and the Government cannot be directed to pass 'formal compliance order'. We are, therefore, not inclined to pass a similar order because that is beyond the jurisdiction of this Court."

63. With due respect to the Bench, the Division Bench of this Court in Criminal appeal no.2135 of 2013 (Savir vs State of U.P) and Criminal appeal no.1839 of 2004 (Veersen vs State of U.P) has wrongly interpretted the decisions of the Apex Court in ***Maru Ram (supra)*** and ***Vikas Yadav (supra)*** to fix a term of life imprisonment to 14.6 years and 15 years; under Section 302 IPC, depending upon the period of incarceration of the appellants in those cases. The conclusion drawn by it is a result of misreading of the said decisions of the Apex Court and ignorance of law. Both the above noted judgments of the Division Bench of this Court are held 'Per incuriam'.

64. Thus, to deal with the submissions of Sri Vinod learned Advocate

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17. ***(1983) 2 SCC 454***

18. ***(1991) 3 SCC 498***
19. (***2001) 4 SCC 458***

20.***(2005) 7 SCC 417***

21.(***2019) 9 SCC 427***

for the appellant on the issue that since the appellant Kallu has remained in jail for about 20-21 years, his sentence for life imprisonment has to be commuted to the period undergone by him and that he is entitled to be released from jail, we may record that it is not permissible for the Court to fix the period of life sentence to certain years, in as much as, the legal position is that the period of life sentence is natural life of a person. However, as per law of remission, it is within the discretion of the State Government to grant remission to life convict after he has served minimum 14 years of sentence in jail. In the cases relied upon by learned counsel for the appellants, the position as emerges is that the Apex Court while commuting the death sentence to life had fixed a cap so that the convicted accused would not be entitled to seek remission prior to expiry of the said period which was 15 to 21 years in the cases relied by the counsel for the appellant. However, in none of the cases, the decision can be read in the manner as submitted by the learned counsel for the appellant that the High Court is empowered to fix the period of life sentence in a particular case with regard to a particular accused. The submission in this regard are, thus, liable to be rejected.

65. However, noticing that the appellant Kallu remained in jail for 20-21 years, it is open for the jail authorities to assess the condition of his release from jail on remission of his sentence and recommend the same to the State Authorities, if the case of the appellant falls within the four corners of the policy framed by the State Government in the matter of remission of life convict. It is clarified that our observation herein shall not be treated as direction of the Court and the authorities concerned are free to take independent decision in that regard.

66. In view of the above, the appeals stand **dismissed.**

67. The appellant Phool Singh is in jail in execution of non bailable warrant and appellant Kallu is also in jail.

68. The appellants Hari @ Harish Chandra and Charan are on bail. Their bail bonds are cancelled and sureties are discharged.

69. The Court concerned is directed to take the appellants namely Hari @ Harish Chandra and Charan in custody and send them to jail to serve out the remaining sentence.

70. The office is directed to transmit back the lower court record along with a certified copy of this judgment for information and necessary compliance.

71. Certify this judgment to the court below immediately for necessary action.

(Hon'ble Subhash Chandra Sharma,J) *(Hon'ble Mrs. Sunita Agarwal,J)*

Order Date :- 29.04.2022

Harshita