



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2851 of 1983

Satish and others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s) : Aushim Luthra (Amicus Curiae), K. Sahai, Sanjay Singh
Counsel for Respondent(s) : A.G.A.

Along with :

1. Criminal Appeal No. 2856 of 1983 :
Bhupat and others
Versus
State of U.P.

2. Criminal Appeal No. 2862 of 1983 :
Vikram
Versus
State

Court No. - 44

HON'BLE SIDDHARTH, J.
HON'BLE VINAI KUMAR DWIVEDI, J.
(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Mr. Aushim Luthra, learned Amicus Curiae for the appellant no. 1; Mr. Sanjay Singh, learned counsel for the appellant nos. 2 & 3; Mr. Ashwani Kumar Yadav, learned A.G.A.-I for the State; perused the Trial Court record as well as the judgment of the Trial Court.

2. These Criminal Appeal Nos. 2851 of 1983, 2856 of 1983 and 2862 of 1983 have been filed by the accused-appellants, Satish, Shiv Kumar, Ashok, Bhupat, Rakesh, Vijay and Vikram against the judgment and order dated 17.11.1983 of learned Trial Court passed in Sessions Trial

No. 432 of 1982 (State vs. Vikram and others) arising out of Case Crime No. 426 of 1982, under Sections 147, 148, 323, 324, 307, 302/149 IPC, Police Station Haridwar, District Saharanpur.

3. Prosecution story as stated by informant Nathiram (PW-1) in written report, Exhibit Ka-1, is that on 10.08.1982, I along with Satish Kumar son of Pyare Lal and Shri Ram son of Beni Prasad resident of Balmiki Basti, Kankhal had gone to Haridwar to take medicines of my father on the bicycles. After exchanging the medicine, we all three were coming back to our houses at Kankhal. Along with me, Satish Kumar was sitting on carrier of my bicycle and Shri Ram was alone on his bicycle. At about 6:00 p.m., when three of us were riding bicycles and had reached near the Dak Kothi, close to a big mango tree, Satish son of Netram, Bhupat son of Ganesha Ram, Rakesh and Vijay sons of Hari Ram, Shiv Kumar son of Asha Ram Hawaldar, Vikram son of Shankar Lal, and Ashok son of Nathu Ram, all residents of our locality in Kankhal and with whom cases have been pending in Court for a long time, suddenly emerged from the direction of the mango tree, out of them, Satish Kumar and Shiv Kumar had *gupti* and Bhupat, Rakesh and Vikram had knives and Ashok had chain of bicycle and Vijay had country-made pistol in his hand. All those persons jointly stopped us, and after stopping us, Satish and Shiv Kumar asked us to come towards the side of the canal. Upon this, I refused to go towards the side of the canal, then Shiv Kumar had dragged Satish Kumar son of Pyare Lal, who was sitting on the backside of my bicycle and suddenly Satish, Shiv Kumar, Bhupat, Rakesh and Vikram with *guptis* and knives holding in their hands began to assault Satish Kumar. I and Shri Ram tried to save him then Ashok assaulted Shri Ram with the chain. Upon this, I and Shri Ram made a noise then Vijay had fired upon us with the country-made pistol with intention to kill. However, due to being hidden behind the tree, we managed to escape. On our noise, nearby peoples of the neighbourhood have come. Upon seeing coming of the people, accused persons ran away. Blood was oozing from the wounds sustained by Satish Kumar due to the knife and *gupti* injuries. We took Satish Kumar

to hospital in a three-wheeler vehicle and on the way, he died. Prem Chandra Ghaghar has full hand behind execution of this incident.

4. This written report, Exhibit Ka-1, was written by informant Nathiram (PW-1) on 10.08.1982. On the basis of the said written report, the F.I.R., Exhibit Ka-6, was registered on the same day at 07:10 p.m. against the named accused at Case Crime No. 426 of 1982 under Sections 147, 148, 149, 323, 324, 307, 302, 120-B, and 34 of the IPC by Head Moharrir Omvir Singh (PW-6).

5. After registration of the F.I.R., Exhibit Ka-8, at the police station and on receiving the information of the incident, SI Devendra Pratap Singh (PW-7) has taken the investigation of the case in his hand. Investigating Officer Devendra Pratap Singh (PW-7) reached at the hospital where the dead body of the deceased Satish Kumar was lying. In the supervision and direction of the Investigating Officer Devendra Pratap Singh (PW-7), S.S.I. Kunwar Singh Rana prepared the *panchayatnama* of the dead body of the deceased, Exhibit Ka-8. S.S.I. Kunwar Singh Rana also prepared the challan lash, Exhibit Ka-9, photo lash, Exhibit Ka-10, and letter to C.M.O., Exhibit Ka-11. Thereafter, Investigating Officer Devendra Pratap Singh (PW-7) reached at the place of occurrence with informant Nathiram and on the pointing of the informant, prepared the site plan of the place of occurrence, Exhibit Ka-12. Blood-stained clothes of informant Nathiram (PW-1) was also taken from informant Nathiram (PW-1) by the Investigating Officer Devendra Pratap Singh (PW-7), and the recovery memo of the same was prepared as Exhibit Ka-13. Blood-stained and simple soil were also taken from the place of occurrence and the recovery memo was prepared as Exhibit Ka-14. From the place of occurrence, one pair of slippers and a single piece of slippers were also taken into possession and the recovery memo was also prepared as Exhibit Ka-15. At the place of occurrence, one bicycle Hero No. AT96802, of the informant, was taken into possession, and a recovery memo was prepared, and that bicycle Hero No. AT96802, was handed over to the informant Nathiram (PW-1) and the memo was prepared as Exhibit Ka-16. The dead body of the deceased Satish Kumar

was sent for post-mortem examination to Meerut, and injured Shri Ram was also sent by the police for medical examination of his injuries at Meerut. The Investigating Officer Devendra Pratap Singh (PW-7) recorded the statement of the prosecution witnesses under Section 161 Cr.P.C. After completing all the formalities of the investigation, the Investigating Officer filed a charge-sheet, Exhibit Ka-17, against the accused persons. The Investigating Officer also sent the shirt, pants received from Nathiram, and vest (*banyan*), loincloth (*langot*), one pair of sandals, and also blood-stained and simple soil taken from the place of occurrence to the Forensic Science Laboratory for their examination.

6. Shri Ram, son of Beni Prasad, who was injured in the incident at the place of occurrence, was sent by the police for medical examination. Dr. Yashpal (PW-4) examined the injuries found on the body of the injured Shri Ram and prepared the injury report, Exhibit Ka-3. According to the injury report, Exhibit Ka-3, which was prepared by Dr. Yashpal (PW-4), the following injuries were found on the body of the injured Shri Ram :

“(i) Contusion 14 cm. x 1 cm. on the body of the back upper 1/3rd. It is semicircular on the shoulder back level and then runs obliquely towards the middle of the back. Red in colour.

(ii) Contusion 12 cm. x 1 cm. on the middle part of the right half of the back 5 cm. below no.1 injury. Red in colour.

(iii) Contusion 10 cm. x 1 cm. on the right half of the back 3 cm. inside no.2 injury. Red in colour. Running vertical.

(iv) Contusion 8 cm. x 1 cm. on the right half of the back 2 cm. below no.3 injury. Running vertically. Red in colour.

(v) Contusion 8 cm. x 1 cm. on the middle of the left shoulder blade. Running obliquely. Red in colour.

(vi) Contusion 7 cm. x 1 cm. on the left half of the back temple 1/3rd. Red in colour.

All these injuries were simple in nature and could be caused by some blunt weapon. He is also of the opinion that these injuries could be caused by cycle chain. The injuries were fresh in duration at the time of medical examination and could be caused on that very day at about 6 p.m.”

7. Dr. Sumer Chandra Singhal (PW-3) conducted the post-mortem examination of the dead body of the deceased, Satish Kumar, and prepared the post-mortem report, Exhibit Ka-2. It is worthwhile to mention here that the defence has admitted the genuineness of the post-

mortem report of the deceased, Satish Kumar. According to the post-mortem report of the deceased, Satish Kumar, Exhibit Ka-2, following ante mortem injuries were found on the dead body of the deceased, Satish Kumar :

- “(i) Incised wound left side neck 1.5 cm. x 0.5 cm. 4.5 cm. below left ear. Vertical direction.*
- (ii) Stab wound on left scapular region 1 cm. x 0.5 cm. x 1.5 cm. deep the margin of the wound are clear cut and slightly everted.*
- (iii) Incised wound 2 cm. x 0.7 cm. x 1 cm. deep left forearm outer side.*
- (iv) Incised wound 2 cm. x 0.7 cm. x 1 cm. inner side forearm 4 cm. below elbow joint.*
- (v) Incised wound 1.5 cm. x 0.7 cm. on left forearm outer side 5 cm. above the left and joint.*
- (vi) Abrasion over back of elbow left measuring 1 cm. x 1 cm.*
- (vii) Stab wound with clean cut margins slightly everted left side chest 2 cm. x 1 cm. x long deep 7 cm. below and 9 cm. left to mid line vertically placed.*
- (viii) Stab wound 3.5 cm. x 1 cm. x long cavity deep left side chest 2 cm below injury no. 7. vertically placed.*
- (ix) Incised wound transversely placed in epegestic region measuring 2.5 cm. x 0.7 cm. x muscle deep.*
- (x) Liniar abrasion rt. side abdomen three cm. blow subcortal margin transversely placed.*
- (xi) Incised wound 2.5 cm. x 1 cm. x bone deep rt. side siproscapular region 5 cm. rt to shoulder joint.*
- (xii) Incised wound 2.5 cm. x 1 cm. x bone deep left side back 1.5 cm. below injury no. 11.*
- (xiii) Incised wound transversely placed 2 cm. x 1 cm. left side back x bone deep 2 cm. below longer angle of scapula.*
- (xiv) Incised wound left side back vertically placed 1 cm. x 0.5 cm. 1.5 cm. rt. to midscapular region.*
- (xv) Incised wound 1 cm. x 0.7 cm. x muscle deep rt. side back 2 cm. left to rt. scapular region.*

Dr. Singhal (PW-3) is of the opinion that the death of the deceased was caused due to injury to lung causing haemorrhage and shock on account of injuries sustained by him. These injuries were in the ordinary course of nature sufficient to cause his death. He is also of the view that the death of Satish Kumar could be caused on 10.08.1982 at about 6 or 6.30 p.m. These injuries could be caused by knife and Gupti.”

8. After submission of the charge-sheet, Exhibit Ka-17, by the Investigating Officer Devendra Pratap Singh (PW-7) in the concerned Magistrate Court having jurisdiction, learned Magistrate has committed the case to the Court of Sessions for trial.

9. Charges were framed by learned Trial Court against the accused-appellant, Ashok, under Sections 147, 323, 324/149, 307/149, and 302/149 IPC on 26.02.1983. Against the accused-appellant, Vijay, charges were also framed under Sections 148, 323/149, 324/149, 307, and 302/149 IPC on 26.02.1983 itself. Against the accused-appellants, Vikram, Satish, Bhupat, Rakesh, and Shiv Kumar, charges were also framed under Sections 148, 323/149, 324/149, 307/149, and 302/149 IPC on 26.02.1983. All accused persons have denied the charges and claimed trial.

10. In support of its case, the prosecution adduced informant Nathiram (PW-1) and Shri Ram (PW-2) as eye-witnesses of the incident along with Dr. Sumer Chand Singhal (PW-3), Dr. Yashpal (PW-4), Ravindra Singh (PW-5), Omveer Singh (PW-6), Investigating Officer Devendra Pratap Singh (PW-7), and Iqbal (PW-8) as formal witnesses. Apart from the oral evidence, the prosecution also relied on documentary evidence from Exhibit Ka-1 to Exhibit Ka-26.

11. After recording of the evidence in the Court, the accused-appellants were examined under Section 313 Cr.P.C. by the learned Trial Court. In their statements under Section 313 Cr.P.C., the accused-appellants expressed ignorance to the questions put to them and they all denied the allegations as levelled against them. All accused persons denied the prosecution story and stated that the prosecution story is totally false and fabricated and they were falsely implicated in this case due to enmity. The accused-appellants did not adduce any defence evidence in their support. After recording the evidence of the prosecution witnesses and examining the accused-appellants under Section 313 Cr.P.C., learned Trial Court heard the arguments of the prosecution and defence. Learned Trial Court, after perusing all the evidence available on the record, found all the accused-appellants guilty of the charges framed against them. Appellant, Ashok, was sentenced to one year's rigorous imprisonment under Section 147 IPC. He was also convicted for six months' rigorous imprisonment under Section 323 read with Section 149 IPC, one year's imprisonment under Section 324 IPC, four years'

imprisonment under Section 307 read with Section 149 IPC and life imprisonment under Section 302 read with Section 149 IPC. Appellant, Vijay, was sentenced to undergo one year's rigorous imprisonment under Section 148 IPC, six months' imprisonment under Section 323 read with Section 149 IPC and one year's imprisonment under Section 324 read with Section 149 IPC, four years's rigorous imprisonment under Section 307 read with Section 149 IPC, and life imprisonment under Section 302 read with Section 149 IPC. The accused-appellants, Vikram, Bhupat, Rakesh, Satish, and Shiv Kumar were sentenced to one year's rigorous imprisonment under Section 148 IPC, six months' rigorous imprisonment under Section 323 read with Section 149 IPC, one year's rigorous imprisonment under Section 324 read with Section 149 IPC, four years' rigorous imprisonment under Section 307 read with Section 149 IPC, and life imprisonment under Section 302 read with Section 149 IPC. All the sentences of all the accused persons were directed to run concurrently.

12. Learned counsel for the accused-appellants have submitted that the prosecution story, as stated in the written report, Exhibit Ka-1, lodged by informant Nathiram (PW-1) is doubtful. The manner, mode, and place of occurrence where the incident happened appear to be suspicious. This fact makes the prosecution story highly suspicious. Learned counsel has also submitted that the so-called eye-witnesses of the incident, informant Nathiram (PW-1) and Shri Ram (PW-2), were not present at the place of occurrence and their presence at the place of occurrence is also doubtful. When the presence of the informant Nathiram (PW-1) and Shri Ram (PW-2) at the place of occurrence is highly suspicious, then their evidence about the happening of the incident would also be suspicious and unbelievable. Both the prosecution witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2), are highly interested witnesses of the prosecution. There is no independent and impartial witness in this case who could support the prosecution case. Learned counsel has also submitted that there is clear-cut enmity between the prosecution side and defence side. Enmity is a

double-edged weapon which cuts both sides. Only on the ground of enmity, no accused can be convicted for commission of the crime. It is also submitted by learned counsel for the appellants that there is no recovery of any incriminating material, objects or murder weapon from the possession of the accused persons. However, learned Trial Court, without considering and discussing this major and material aspect, by wrongly appreciating the evidence, has convicted the accused-appellants for commission of the crime. The prosecution was unable to prove its case beyond reasonable doubt against the accused-appellants, but learned Trial Court has not appreciated the prosecution evidence in proper perspective and in the light of the settled principles of law in this regard. Therefore, the judgment and order of conviction and sentence dated 17.11.1983 is liable to be set aside and the criminal appeals of the appellants are liable to be allowed.

13. Learned A.G.A. for the respondent-State has submitted that this case is based on direct evidence of eye-witnesses, the informant Nathiram (PW-1) and Shri Ram (PW-2). Both Nathiram (PW-1) and Shri Ram (PW-2) were present with the deceased, Satish Kumar, and they were returning to their home after taking medicines from a medical store at Haridwar to their home at Kankhal. Both the above eye-witnesses are the natural witnesses of the incident. Although there was enmity between the prosecution side and the defence side, however, this fact persuaded the accused-appellants and motivated them to commit the alleged crime. In retaliation against the deceased, Satish Kumar, the accused-appellants, with common object surrounded the deceased, Satish Kumar, on 10.08.1982, and before the eye-witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2), dragged Satish Kumar from the bicycle of Nathiram (PW-1) and assaulted him with weapons held in their hands, by which Satish Kumar died on the way when he was being carried to the hospital to save his life. There are no material and major contradictions in the evidence of the prosecution witnesses. The prosecution was successful in proving its case beyond reasonable doubt against the accused-appellants. The learned Trial Court has rightly

appreciated the prosecution evidence in proper perspective and in a legal manner. The learned Trial Court has given sound findings and reasoning which are based on cogent evidence. There is no infirmity, illegality, or perversity in the impugned judgment and order of conviction and sentence dated 17.11.1983 of learned Trial Court. Hence, the criminal appeals of the appellants lack merits and, therefore, are liable to be dismissed.

14. At this stage, it is proper to mention here that, during the pendency of the appeal of appellant no. 2, Rakesh, in Criminal Appeal No. 2856 of 1983, has died. Due to his death, the appeal against him has abated. Therefore, now the appeals are being adjudicated only in respect of the surviving appellants, Satish, Shiv Kumar, Ashok, Bhupat, Vijay and Vikram.

15. In the light of the arguments and counter-arguments of learned counsel for the parties, and from perusal of the written report, Exhibit Ka-1, it appears that the incident happened on 10.08.1982 at 6:00 p.m. in the evening, when informant Nathiram (PW-1) with the deceased, Satish Kumar, on one bicycle, and injured eye-witness Shri Ram (PW-2) on another bicycle, had gone to Haridwar to exchange and take medicines for the father of the informant, Nathiram (PW-1). After exchanging the medicines of the father of the informant Nathiram, informant Nathiram (PW-1) was riding his bicycle, and the deceased, Satish Kumar, was sitting behind him on the carrier of the bicycle, while Shri Ram (PW-2) was riding his another bicycle. All the three persons were returning to their houses at Kankhal. In the meantime, when they reached at the place of occurrence, suddenly, the accused-appellants emerged from behind a big mango tree and attacked Satish Kumar with dangerous weapons, causing his death.

16. From perusal of the written report, Exhibit Ka-1, it is evident that all the accused-appellants are named as accused for commission of the crime in the F.I.R. After the incident, informant Nathiram (PW-1) has written himself the written report, Exhibit Ka-1, on 10.08.1982 and has lodged the same at Police Station Haridwar at 07:10 p.m. Thus, the F.I.R.

has been lodged within one hour and ten minutes from the happening of the incident. Therefore, we find that there is no delay in lodging the F.I.R. at Police Station Haridwar. From perusal of the written report, Exhibit Ka-1, we find that in the written report, Exhibit Ka-1, it is stated that accused-appellant, Shiv Kumar, dragged Satish Kumar from the bicycle. Upon this, appellants, Satish Kumar, Shiv Kumar, Bhupat, Rakesh (now deceased) and Vikram had assaulted Satish Kumar with *guptis* and knives held in their hands. When informant Nathiram (PW-1) and Shri Ram (PW-2) tried to intervene and save the life of Satish Kumar, then the appellant, Vijay, fired from a country-made pistol upon them. However, they were saved from the gunshot injury because they hid themselves behind the mango tree. We find that in the written report, Exhibit Ka-1, the prosecution story has been stated in simple language without any artificiality or concoction.

17. From the record of this case, it is evident that this is a case of direct evidence. Informant Nathiram (PW-1) and Shri Ram (PW-2) are two eye-witnesses in this case who were with the deceased, Satish Kumar, when the accused-appellants assaulted the deceased, Satish Kumar. From perusal of the evidence of informant Nathiram (PW-1), who is an eye-witness of the incident, and Shri Ram (PW-2), who is also an eye-witness of the incident, it is revealed that the accused-appellants and informant Nathiram (PW-1), Shri Ram (PW-2), and deceased Satish Kumar were residents of one and the same locality at Balmiki Basti, Kankhal. From the evidence of Nathiram (PW-1), it is revealed that three months before the incident, a hand bomb was thrown upon Surendra, brother of the deceased Satish Kumar, in which appellant, Satish, son of Netram, and Ashok were named as accused persons. Even at the time of the incident, a case under Section 107/116 Cr.P.C. was also pending in the Court. Informant Nathiram (PW-1) and Shri Ram (PW-2) have stated in their evidence the same facts as were written by the informant Nathiram in his written report, Exhibit Ka-1. There is no variation, improvement, or concoction in the evidence given by them in the Trial Court. From the perusal of the evidence of eye-witnesses informant

Nathiram (PW-1) and Shri Ram (PW-2), it is stated by these witnesses that Shiv Kumar dragged Satish Kumar from the bicycle and the accused-appellants assaulted Satish Kumar with *guptis* and knives. When informant Nathiram (PW-1) and Shri Ram (PW-2) tried to intervene and save the life of Satish Kumar, then the appellant, Ashok, attacked Shri Ram with a chain. On hue and cry being made by them, appellant, Vijay, fired from his country-made pistol. However, that fire missed and did not hit any person. After the assault upon Satish Kumar, and even upon hue and cry being made by Nathiram (PW-1) and Shri Ram (PW-2), a few persons from the neighborhood came to the spot, whereupon the accused persons ran away from the spot. Thereafter, informant Nathiram (PW-1) took the body of the deceased, Satish Kumar, from the place of occurrence, placed him in a three-wheeler vehicle, and took him to the hospital. However, on the way, Satish Kumar died. In this process, the clothes of informant Nathiram (PW-1) stained with blood. Investigating Officer Devendra Pratap Singh (PW-7) took the blood-stained clothes of informant Nathiram (PW-1) from him and prepared a recovery memo, Exhibit Ka-13. One used terricot pants and one pink-colored full shirt stained with blood were taken from informant Nathiram (PW-1) and sent for examination.

18. On the record of the case, the report of the chemical examination of the shirt and pants of informant Nathiram (PW-1), which are at serial Nos. 1 and 2 respectively; the pants, shirt, vest (*banyan*), loincloth (*langot*), and one pair of sandals of the deceased, which are at serial Nos. 3, 4, 5, 6, and 7 respectively; and the blood-stained and simple soil taken from the place of occurrence, which is at serial No. 8, have been sent to the Forensic Science Laboratory, Agra, Uttar Pradesh, for examination.

19. Reports of the chemical examination of the above articles are on the record as Exhibits Ka-25 and Ka-26. From perusal of the report of the Forensic Science Laboratory, Agra, Uttar Pradesh, it is stated that in the examination report, shirt and pants of informant Nathiram (PW-1) were found stained with human blood. The pants, shirt, vest (*banyan*), loincloth (*langot*), and one pair of sandals of the deceased, Satish

Kumar, were also found stained with human blood. Blood-stained and simple soil taken from the place of occurrence was examined, and disintegrated blood was found on it. Thus, this report that shirt and pants, which are stained with the blood, were taken from informant Nathiram (PW-1) was found stained with human blood in the examination report of the Forensic Science Laboratory, Agra, Uttar Pradesh. This fact corroborates and proves the presence of informant Nathiram (PW-1) at the place of occurrence. This fact clearly establishes that at the time of the happening of the incident, informant Nathiram (PW-1) was with the deceased, Satish Kumar, when the appellants surrounded and assaulted Satish Kumar. In this way, the presence of informant Nathiram (PW-1) at the place of occurrence is found to be corroborated from the examination reports, Exhibit Ka-25 and Ka-26, of the Forensic Science Laboratory, Agra, Uttar Pradesh. This means that informant Nathiram (PW-1) is a natural witness who has seen the happening of the incident with his own eyes. Due to this reason, the presence of informant Nathiram (PW-1) at the place of occurrence is clearly proved beyond reasonable doubt. Therefore, in the light of the above facts and circumstances, we could not doubt the credibility and trustworthiness of the evidence of informant Nathiram (PW-1). From the evidence of prosecution witness Ravindra Singh (PW-5), who was Sales Man at Amba Medical Store, Haridwar, has also stated that on 10.08.1982, medicines of Ganga Sharan were taken from my shop by Nathiram (PW-1). He had made entry regarding this in cash memo. Original cash memo and register are Exhibit Ka-4 and Exhibit Ka-5, respectively. From the above evidence of Ravindra Singh (PW-5), it is evident that on 10.08.1982, on the date of incident, informant Nathiram (PW-1) had gone to Haridwar at Amba Medical Store to take medicines of his father, Ganga Sharan. After taking medicines of his father, when he was returning to his home at Kankhal then this incident happened. This fact also corroborates and supports the evidence of informant Nathiram (PW-1) and also the prosecution story. From this, it is clearly evident that informant Nathiram (PW-1) is a natural eye-witness of the incident who was

present at the place of occurrence when the incident happened. Due to this reason, the written report, Exhibit Ka-1, and his evidence as given by him in the Court, is found fully reliable, trustworthy, and credible. In the light of the above facts, we find no force in the arguments of learned counsel for the appellants in this respect.

20. The next eye-witness, Shri Ram (PW-2), is also a natural eye-witness of the incident. His name found place in the written report, Exhibit Ka-1, lodged by the informant, Nathiram (PW-1). When this eye-witness tried to intervene and to save the life of the deceased, Satish Kumar, the accused-appellant, Ashok, assaulted him with a chain. Shri Ram (PW-2) has also received injuries in this incident. From the evidence of Dr. Yashpal (PW-4), who examined the injuries of this eye-witness, Shri Ram (PW-2), has stated in his evidence that police constable no. 608 brought the injured Shri Ram to Harmilap Hospital and at 10:10 pm, he examined him. Dr. Yashpal (PW-4) found total six injuries on the body of injured Shri Ram and prepared the injury report, Exhibit Ka-3. In his opinion, all the injuries were simple in nature, caused by a blunt object, and were fresh at the time of their examination. Dr. Yashpal (PW-4) has also given the opinion that the injuries could be caused by the chain of the bicycle. Thus, on the same date of the incident, i.e., 10.08.1982, at 10:10 p.m., eye-witness Shri Ram (PW-2) has been examined by Dr. Yashpal (PW-4) without any delay. Eye-witness Shri Ram (PW-2) has stated in his evidence that when he and Nathiram (PW-1) tried to save the life of Satish Kumar, Ashok assaulted him with a chain, and accused-appellant, Vijay, fired from the country-made pistol. However, the shot fired by the country-made pistol has not hit anyone. Thus, this fact that accused-appellant, Ashok, has assaulted Shri Ram with a chain of the bicycle found corroboration from the injury report, Exhibit Ka-3, and also from the evidence of Dr. Yashpal (PW-4), who examined the injured Shri Ram and prepared the injury report, Exhibit Ka-3. This fact clearly established the fact that eye-witness Shri Ram (PW-2) was also present at the place of occurrence when the accused-appellants committed the crime. In this way, there is no iota of

doubt about the presence of Shri Ram (PW-2) at the place of occurrence. This fact clearly proves and establishes that the injured witness, Shri Ram (PW-2), was present at the place of occurrence when the incident happened, and he was a natural eye-witness who has seen the incident with his own eyes. His presence at the place of occurrence could not be doubted on any ground.

21. From the perusal of the evidence of informant Nathiram (PW-1) and Shri Ram (PW-2), it is clearly established that they are natural eye-witnesses of the incident, who have seen the commission of the crime with their own eyes. They have stated in the Court during recording of their evidence in a very simple and natural way and language, without any concoction or artificiality. Although we find that, according to the informant Nathiram (PW-1) and Shri Ram (PW-2), there was bitter enmity between the prosecution side and defence side, and many cases were running and were pending between them, however, from the perusal of the evidence of informant Nathiram (PW-1) and Shri Ram (PW-2), we find that their presence at the place of occurrence is clearly established beyond reasonable doubt. They have stated the happening of the incident in a very natural and simple way. There is no concoction, artificiality or embellishment in their statements. Therefore, only on this ground that there was enmity between the prosecution side and the defence side, and the witnesses are inimical towards the accused-appellants, the trustworthy testimony and credible evidence of eye-witnesses Nathiram (PW-1) and Shri Ram (PW-2), who were present at the place of occurrence, could not be rejected or doubted on this basis. What is required where witnesses are inimical towards the accused persons is that careful and cautious scrutiny of the evidence of inimical witnesses must be done by the Court. If, after careful and deep scrutiny and appreciation of evidence of inimical witnesses, it is revealed that the witnesses have stated the prosecution story without any concoction and artificiality in a very simple and natural way, and their presence at the place of occurrence is proved beyond reasonable doubt, then in this condition, the evidence of the eye-witnesses of the occurrence could not

be doubted and rejected on this ground. Hon'ble Supreme Court in the case of **Suresh Sitaram Surve vs. State of Maharashtra, (2002) 10 SCC 28**, has held on this point in para 6 as follows:

“The evidence of the injured eyewitnesses cannot be discarded in toto on the ground of inimical disposition towards the accused or the improbability of narrating the details of actual attack. True, their evidence has to be scrutinized with caution taking into account the factum of previous enmity and the tendency to exaggerate and to implicate as many as possible. But on a perusal of the evidence tested in the light of the broad probabilities, the High Court was justified in reaching the conclusion that the prosecution witnesses are natural witnesses and they could not have concocted the case against the accused without any basis. The fact that the FIR was lodged almost immediately after the occurrence naming the appellant as the main assailant lends positive assurance to the credibility of the prosecution case as unfolded by the eyewitnesses, most of whom were injured. Both the trial court and the High Court found that there was sufficient light emitted by the tubelight in front of the house to identify the accused who were known persons. The fact that the incident occurred outside and inside the house cannot be doubted as there was blood both at the steps where the dead body lay and inside the house and weapons stained with human blood were found lying in the adjoining narrow lane and the injuries were found on almost all the inmates of the house. It is highly unlikely that within a short time of the occurrence the prosecution party could have come forward with a false version implicating the persons who were not at all seen, while leaving out the real culprits. The eyewitnesses' account of the attack by the appellant is quite consistent. Though certain doubts are sought to be created as to the genesis of the incident and the manner of attack, but the prosecution case is not belied on account of such factors.”

Thus, in the light of the law as enunciated by the Hon'ble Apex Court in the case of **Suresh Sitaram Surve (supra)**, it is propounded that only on the ground of inimical witnesses and enmity between the prosecution and defence side, reliable and trustworthy evidence that inspires confidence about the happening of the incident could not be doubted on the ground that the witnesses are inimical or there was enmity between both sides. Therefore, in the light of the above discussions, we find no force in the arguments of learned counsel for the appellants in this respect.

22. It is settled law that the evidence of an injured witness could not be doubted and rejected if, after deep and proper scrutiny of the

evidence, it is found that the injured witness has received injury during the commission of the crime by the accused-appellants and there is no major inconsistency or improvement in the evidence of the injured witness, and also his presence at the place of occurrence is proved, then the evidence of the injured eye-witness could be wholly reliable and acceptable for the conviction of the accused-appellants for the commission of the alleged crime.

23. From perusal of the evidence as available on the record, it is evident that Investigating Officer Devendra Pratap Singh (PW-7) arrested the accused-appellants. However, Investigating Officer Devendra Pratap Singh (PW-7) has not cared to recover the murder weapon (*guptis* and knives) and other weapons, which were used by the accused-appellants in the commission of the alleged crime. From perusal of the evidence of eye-witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2), we find that both the eye-witnesses have stated that the accused-appellants assaulted Satish Kumar with *guptis* and knives, causing his death. From perusal of the evidence of Dr. Sumer Chand Singhal (PW-3), who prepared the postmortem report, Exhibit Ka-2, of the deceased Satish Kumar, it is evident that total fifteen injuries were found on the body of the deceased Satish Kumar, out of which, ten injuries were incised wounds, three injuries were found to be stab wounds, one injury was of abrasion, and one injury was linear abrasion. Most of the injuries were on vital parts of the body of the deceased Satish Kumar. According to Dr. Sumer Chand Singhal (PW-3), the injuries could be caused by *guptis* and knives. Thus, it is clear that the ocular testimony of eye-witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2), found corroboration from the postmortem report, Exhibit Ka-2, of the deceased Satish Kumar. Dr. Sumer Chand Singhal (PW-3) has also expressed his opinion that these injuries could be caused by *guptis* and knives. Thus, the ocular evidence finds support from the medical evidence. In other words, the ocular evidence and medical evidence corroborate and support each other.

24. It is a settled principle of law that if the prosecution story finds support and is fully corroborated by the ocular evidence, then in that situation, non-recovery of the murder weapon from the accused-appellants would not affect and could not be doubted in any way about the veracity of the prosecution story. In other words, if the prosecution story is fully corroborated and established by the ocular evidence or the evidence of the eye-witnesses of the prosecution and the Investigating Officer intentionally could not recover the murder weapon from the possession of the accused-appellants, then on this ground, the prosecution story and the ocular evidence of the eye-witnesses could not be doubted. Hon'ble Supreme Court in the case of **Nankaunoo vs. State of Uttar Pradesh, (2016) 3 SCC 317**, has held on this point in para 9 as follows:

“courts below failed to take note of the fact that the alleged weapon “country-made pistol” was never recovered by the investigating officer and in the absence of any clear connection between the weapon used for crime and ballistic report and resultant injury, the prosecution cannot be said to have established the guilt of the appellant. In the light of unimpeachable oral evidence which is amply corroborated by the medical evidence, non-recovery of “country-made pistol” does not materially affect the case of the prosecution. In a case of this nature, any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined de hors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice.”

Thus, in light of the law as laid down by the Hon'ble Supreme Court in the case of **Nankaunoo (supra)**, it is clear that the recovery of the murder weapon is not a *sine qua non* for the proof and veracity of the prosecution story. In the present case at hand, it is clearly evident from the perusal of the prosecution evidence that the ocular evidence found support from the medical evidence and corroborate each other, therefore, non-recovery of the murder weapon from the possession of the accused-appellants does not in any way affect the prosecution story.

25. Hon'ble Supreme Court in the case of **Rakesh and Another vs. State of Uttar Pradesh and Another, (2021) 7 SCC 188**, has held in paragraph 12 that :

“Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with the firearm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non.”

In the light of the above legal principles as enunciated by the Hon'ble Supreme Court in the case of **Rakesh and Another (supra)**, we find that in the case at hand, the informant Nathiram (PW-1) and Shri Ram (PW-2) are eye-witnesses of the incident, and the incident happened before them, therefore, their presence at the place of occurrence is fully proved and established by their evidence, which is also corroborated from other evidence. They are reliable and trustworthy eye-witnesses of the incident. They have specifically and clearly stated in their evidence that the accused-appellants assaulted Satish Kumar with *guptis* and knives, due to which Satish Kumar suffered injuries of fatal nature and died. The post-mortem report, Exhibit Ka-2, and the opinion of Dr. Sumer Chand Singhal (PW-3) corroborate the evidence of the eye-witnesses Nathiram (PW-1) and Shri Ram (PW-2). Apart from this, the eye-witness Shri Ram (PW-2) is himself an injured witness who received injuries in the incident when he tried to intervene and save the life of Satish Kumar. Therefore, in the light of the credible, reliable, and trustworthy evidence of the eye-witnesses, informant Nathiram (PW-1) and injured eye-witness Shri Ram (PW-2), non-recovery of the murder weapon from the accused-appellants by the Investigating Officer, Devendra Pratap Singh (PW-7), has no effect on the prosecution case. On this ground, we cannot doubt or reject the credible, trustworthy, and reliable evidence of the eye-witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2). Therefore, in the light of the above discussions, we

find no force in the arguments of learned counsel for the appellants in this respect.

26. It is a settled principle of law that on the ground of non-availability and non-examination of independent witnesses, we cannot doubt and reject the prosecution story which found full support from the statement of the eye-witnesses account and from the evidence of the injured witness. In the present case at hand, the informant Nathiram (PW-1) and the injured eye-witness Shri Ram (PW-2) were present at the place of occurrence when the incident happened. Their presence at the place of occurrence is fully established by the prosecution evidence. They have fully supported the prosecution case and the mode of the commission of the crime by the accused-appellants. Therefore, according to the law, there is no legal requirement to produce an independent witness in support of the prosecution story. In view of the above, we find no force in the arguments of learned counsel for the appellants in this respect.

27. We have also gone through the judgment and order of conviction and sentence dated 17.11.1983 passed by the learned Trial Court. From perusal of the judgment and order of the Trial Court, we find that the Trial Court has appreciated the evidence available on record in a legal and proper perspective. Trial Court has fully and minutely discussed the cogent evidence of the eye-witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2), and other prosecution evidence, and found that the prosecution story is fully corroborated by the evidence of the witnesses. Trial Court has also found the presence and participation of the appellants in the commission of the crime fully established from the evidence of the prosecution. The finding and reasoning of the Trial Court are fully based on the cogent evidence available on record and in accordance with the settled principles of law in this regard. We find no infirmity or perversity in the judgment and order of conviction and sentence passed by the Trial Court. From the evidence of the prosecution, it is clearly established that on the date and time of the incident, the accused-appellants, in prosecution of a common object,

surrounded the deceased, Satish Kumar, at the place of occurrence, and in prosecution of their common object, the accused-appellants assaulted Satish Kumar with deadly weapons.

28. In the light of the above discussions, we find that the criminal appeals of the accused-appellants are found to be devoid of merits and therefore are liable to be dismissed and the judgment and order of conviction and sentence as delivered by the Trial Court dated 17.11.1983 is liable to be affirmed.

29. From perusal of the record, it is revealed that after conviction of the appellants by the Trial Court, they have filed these criminal appeals before this Court and they were enlarged on bail by this Court. However, at the time of hearing of the appeals in the Court, due to non-appearance of learned counsel for the appellants or the appellants themselves, non-bailable warrants have been issued against the appellants and in the light of the non-bailable warrants issued by this Court, accused-appellants were arrested and presently they are languishing in jail.

30. In the result, the above three criminal appeals are **dismissed**. The impugned judgment and order dated 17.11.1983 passed by the learned Trial Court is affirmed. The appellants, Satish, Shiv Kumar, Ashok, Bhupat, Vijay and Vikram, are in jail. They shall remain in jail to serve out the sentence awarded to them by the Trial Court.

31. Let a copy of this judgment be transmitted to the Trial Court along with the Trial Court records forthwith for necessary compliance.

32. Learned *Amicus Curiae* is held entitled to professional fees of Rs.15,000/- payable to him within three weeks' for raising of bill.

(Vinai Kumar Dwivedi,J.) (Siddharth,J.)

June 08, 2026
SHUBHAM