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RESERVED





2026:AHC:130298-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 241 of 2021

Sabal Singh and 3 others

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Dhiraj Singh, Noor Muhammad, Surya Pratap Singh Parmar, Yogesh Kumar Srivastava
Counsel for Respondent(s)	:	G.A.

Along with :

1. Criminal Appeal No. 217 of 2021 :
Sumer Singh

Versus

State of U.P.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

Both these criminal appeals bearing Nos. 241 of 2021 and 217 of 2021 have been preferred by accused-appellants, Sabal Singh, Man Singh, Mangal Singh, Lallu Kahar and Sumer Singh, against the judgment and order of conviction and sentence dated 10.12.2020 passed by learned Sessions Judge, Chitrakoot in Session Trial No. 70 of 2012 (State of Uttar Pradesh v. Sabal

Singh and others) arising out of Case Crime No. 23 of 2012, under Sections 147, 302/149, 201, 120B IPC, Police station Pahadi, District Chitrakoot.

2. By the impugned judgment and order dated 10.12.2020, the learned Trial Court sentenced the accused-appellants under Section 147 IPC to undergo two years' imprisonment and fine of Rs. 2000/- each and in default of payment of fine, to undergo one month's additional imprisonment. Under Section 302 read with Section 149 IPC, the accused-appellants were sentenced for life imprisonment and fine of Rs. 20,000/- each and in default of payment of fine, they were directed to undergo additional imprisonment of six months. Under Section 201 IPC, the accused-appellants were sentenced to undergo three years' imprisonment and fine of Rs. 2000/- each and in default of payment of fine, they were directed to undergo three months' additional imprisonment. All the sentences were ordered to run concurrently.

3. The facts of the case as revealed from the written report, Exhibit Ka-1, which was lodged by informant Sumer Singh (PW-1) are that he has given a written report, Exhibit Ka-1, dated 08.02.2012. In this written report, informant (PW-1) has stated that he is a resident of Village Kaheta, Police Station Pahadi, District Chitrakoot. Yesterday on 07.02.2012 at 10:30 PM, Veer Singh, son of his aunt (bua), resident of Village Ranipur, Police Station Kamasin, was sitting on the door. At that time, Sabal Singh, Man Singh, Mangal Singh and Sumer Singh, all sons of Kedar Singh, and Lallu Kahar, resident of the village came to his door and took Veer Singh with them. They in front of their door brutally assaulted Veer Singh, due to which he died on the spot. The dead body of the deceased is lying in front of the door of Natthu Teli. Due to grief at night, he could not come to police station. Now he came to the police station to give information.

4. On the basis of written report, Exhibit Ka-1, as was lodged by informant PW-1 at police station Pahadi, the first information

report (*chik* F.I.R.), Exhibit Ka-2, was registered by Head Constable Lala Bhaiya at Case Crime No. 23 of 2012, under Sections 147, 302, 201 IPC against all the named accused persons, appellants herein, and Sub Inspector Dharmendra Kumar (PW-5) took the charge of the investigation of the case.

5. Investigating Officer Dharmendra Kumar (PW-5) reached the place of occurrence, prepared the site plan, and inquired the witnesses present at the spot. He conducted the inquest proceedings (*panchayatnama*) of the deceased, Veer Singh, prepared the requisite police papers, and thereafter sent the dead body for post-mortem examination.

6. Dr. A.K. Mohan (PW-4) conducted the postmortem of the dead body of the deceased Veer Singh and prepared paper no. 19K/Exhibit Ka-4. According to the postmortem report, which was prepared by Dr. A.K. Mohan (PW-4), following ante mortem injuries were found on the dead body of the deceased Veer Singh :

> *(1) Contusion present on right side of scalp on frontal parietal region, size 10 cm x 4 cm.*
>
> *(2) Abrasion present on left side of face and forehead size (1) 3 cm x 2 cm, (2) 2 cm x 2 cm, (3) 21 cm x 1 cm, (4) 1 cm x 1 cm.*
>
> *(3) Contusion present on posterior aspect of right elbow size 8 cm x 6 cm, on incision, posterior dislocation of elbow present.*
>
> *(4) Contusion present on left elbow posteriorly, size 7 cm x 8 cm and posterior dislocation of elbow present.*
>
> *(5) Four contusion present on right thigh just above knee two transverse and two oblique size of transverse (1) 12 cm x 3 cm, (2) 11 cm x 3 cm oblique size (1) 15 cm x 3 cm, (2) 11 cm x 3 cm. No fracture of shaft of femur.*

(6) Three contusion present on left thigh just above knee, two transverse on one oblique, size of transverse are (1) 10 cm x 3 cm, (2) 11 cm x 3 cm, oblique contusion size 16 cm x 3 cm. No fracture of underlying bone.

(7) Contusion present on left ankle on middle side size 5 cm x 2 cm. No fracture.

According to the postmortem report, cause of death of the deceased was asphyxia as a result of neurological shock (head injury).

7. Investigating Officer Dharmendra Kumar (PW-5) recorded the statements of the prosecution witnesses during the course of investigation. He further arrested the accused-appellants, Man Singh and Sabal Singh, on 09.02.2012 from Chaura Turning on the road and allegedly recovered one lathi and one danda, both made of bamboo, which were stated to have been used in the commission of the murder of the deceased, Veer Singh. The Investigating Officer made a *fard* recovery of these objects as Exhibit Ka-4. After completing all the formalities of the investigation, Investigating Officer Dharmendra Kumar (PW-5) submitted a charge-sheet against the accused-appellants in the Court of concerned Magistrate having jurisdiction.

8. Since the case was exclusively triable by the Court of Session, hence learned concerned Magistrate committed the case to the Court of Session for trial.

9. Charges were framed against the accused-appellants under Sections 147, 302/149, 201 and 120B IPC and they denied from the charges and claimed trial.

10. In order to substantiate the charges against the accused-appellants, the prosecution examined Sumer Singh (PW-1), the informant; Prabha Bai (PW-2); Lala Bhaiya (PW-3); Dr. A.K. Mohan (PW-4); Dharmendra Kumar (PW-5); Baldev Prasad (PW-6); Harivansh (PW-7); Kashi Prasad (PW-8); and Suresh Singh

(PW-9). In addition to the oral testimony of these witnesses, the prosecution also relied upon documentary evidence, marked as Exhibit Ka-1 to Exhibit Ka-7.

11. In the Trial Court, the prosecution examined its witnesses and recorded their evidence. After the prosecution witnesses' evidence was recorded, the accused-appellants were examined under Section 313 Cr.P.C. In their statements, the appellants denied the charges and contended that they had been falsely implicated due to village rivalry and politics. Although in their statements under Section 313 Cr.P.C., accused-appellants have stated that they shall adduce evidence in their defence, but no defence evidence was adduced by them.

12. After completion of the trial, learned Sessions Judge, Chitrakoot after hearing the arguments of both the parties, perusing the oral as well as documentary evidence, held the accused-appellants guilty under Sections 147, 302/149, 201, 120B IPC and convicted them vide order dated 10.12.2020. Aggrieved by the judgment and order of conviction and sentence dated 10.12.2020, the appellants have preferred these criminal appeals before this Court.

13. We have heard the arguments of learned Counsel for the appellants and learned A.G.A. for the respondent/State. We have gone through all oral and documentary evidences and also perused the impugned judgment and order of conviction and sentence dated 10.12.2020 passed by learned Trial Court.

14. Learned Counsel for the appellants has argued that Investigating Officer recorded the statement of prosecution witnesses but they did not attribute specific role to any of the accused as to who was the author of the fatal injury rather only general role of causing injuries was assigned to all accused persons. It is also submitted that after committal of the case, prosecution examined as many as nine witnesses, out of which,

one Prabha Bai (PW-2) claimed herself to be the eye witness of the incident but she failed to describe the manner of occurrence of the event and she also failed to connect the appellants with the present case. It is further submitted that similarly, Harivansh (PW-7) also claimed himself to be the eye-witness of the said incident but he in his statement could not establish the guilt of the appellants and made material contradictory statement, which goes to show that he is not the eye-witness of the incident. In fact, there is no eyewitness to the incident; rather, the prosecution case is based on circumstantial evidence, but the chain of circumstances is incomplete and does not unerringly point to the guilt of the appellants. He has also submitted that although Investigating Officer claimed to have recovered *lathi* and *danda* at the instance of accused but no bloodstain was found on it. During the course of investigation, Investigating Officer did not find involvement of the appellant Sumer Singh in this case, as such, he submitted final report in his favour but during trial, learned trial Court summoned him under Section 319 Cr.P.C. to face trial on the application of the prosecution. Learned counsel for the appellants has also submitted that prosecution failed to prove the motive of the occurrence rather some of the witnesses deposed that present incident occurred due to previous enmity between the parties. All accused-appellants have been implicated on the basis of suspicion, village party bandi and enmity. Prosecution has failed to prove its case beyond reasonable doubt by adducing cogent and reliable evidence.

15. On the basis of above arguments, learned Counsel for the appellants has submitted that learned Trial Court has not appreciated the prosecution evidence in right perspective. Learned Trial Court misread the evidence. Learned Trial Court only considered the examination-in-chief of all the prosecution witnesses and has not considered the cross-examination of any of the prosecution witnesses in the finding and reasoning as given

by the learned Trial Court. In the light of the above arguments and submissions, learned Counsel for the accused-appellants has submitted that judgment and order of conviction and sentence as passed by learned Trial Court is totally against the evidence available on record and is also against the settled principles of law. Hence, in view of the above, criminal appeals of the accused-appellants are liable to be allowed and judgment and order of conviction and sentence passed by learned Trial Court is liable to be set aside.

16. Per contra, learned A.G.A. for the respondent/State has submitted that prosecution story has been supported by the reliable eye-witnesses in this case, who have fully supported the prosecution story. Deceased Veer Singh was brutally assaulted by the accused-appellants with *lathi* and *danda*, which caused fatal injuries on the body of the deceased, due to which deceased Veer Singh died on the spot. Learned A.G.A. for the State has also submitted that there are no material and major contradictions in the evidence of the prosecution witnesses as recorded in the trial Court. The evidence of the prosecution witnesses fully supported the prosecution case beyond reasonable doubt. Learned A.G.A. for the State lastly submitted that prosecution was fully able to prove the guilt of the accused-appellants by their evidence beyond reasonable doubt. The finding and reasoning given by the learned Trial Court to hold the accused-appellants guilty is fully based on the evidence available on record. No perversity or illegality has been committed by the learned Trial Court in convicting the accused-appellants, hence criminal appeals filed by the accused-appellants are liable to be rejected.

17. In view of the rival submissions advanced by learned Counsel for the parties, we find that all accused-appellants were named in the written report, Exhibit Ka-1, by informant Sumer Singh (PW-1) for brutally assaulting the deceased Veer Singh with *lathi* and *danda* and causing his death.

18. From perusal of the written report, Exhibit Ka-1, it is revealed that the incident took place on 07.02.2012 at 10:30 PM. However, the informant, Sumer Singh (PW-1), lodged the written report at the concerned police station on 08.02.2012 at 7:30 AM. The delay of more than nine hours in lodging the F.I.R. is stated to be due to the grief caused by the incident. Informant Sumer Singh (PW-1), in his examination-in-chief, stated that the cause of delay was that, due to fear during the night, he did not go to the police station. However, in the written report (Exhibit Ka-1), the cause of delay in lodging the report promptly was stated by the informant as grief caused by the incident. Thus, in the written report, the reason for the delay is mentioned as grief due to the incident, whereas in his examination-in-chief, the reason for not lodging the F.I.R. during the night is stated to be fear. It is also revealed from the evidence of informant Sumer Singh (PW-1) that he has a two-wheeler motorcycle. It is further revealed that the neighbors living adjacent to his house have a four-wheeler vehicle, and there were many other two and four-wheeler vehicles in the village. From the evidence, it is also revealed that Police Station Pahadi was situated at a distance of only seven kilometers from the place of occurrence. It is also amply clear that, after the incident, the informant Sumer Singh (PW-1) and other prosecution witnesses did not take the deceased, Veer Singh, to any hospital for treatment. The above facts and conduct of the prosecution witnesses including informant Sumer Singh (PW-1) clearly indicate that prosecution has not come with real truth of the case in the Court. It is also clear that prosecution is concealing real facts of the incident. Proper and judicious explanation for delay in lodging the F.I.R. of more than nine hours has not been explained by the prosecution in a confidence creating manner.

19. The above conduct and behavior of the prosecution witnesses indicate that, after a full night of consideration, deliberation, and afterthought, the accused-appellants were

implicated in this case for the alleged commission of the crime. These facts and circumstances create serious doubt about the veracity of the prosecution story. The conduct and behaviour of the prosecution witnesses make the prosecution story suspicious and doubtful.

20. The informant, Sumer Singh (PW-1), stated in his examination-in-chief that the incident took place on 07.02.2012 at about 10:30 p.m. The deceased, Veer Singh, who was the son of his aunt (Bua), was sitting in front of the door. He, his mother, and Veer Singh were sitting at the doorway, warming themselves by the fire. Sumer Singh, Mangal Singh, Man Singh, Sabal Singh, and Lallu Kahar came and, on some pretext, took Veer Singh with them to the door of Sabal Singh. The house of Sabal Singh is located at a distance of about fifty steps from his house. All five accused brutally beaten Veer Singh with *lathi*, and he started crying. Upon hearing his cries, he, his mother, and other villagers reached the door of Sabal Singh. They saw that all five accused were beating Veer Singh with *lathi* and *danda*. As soon as they reached there, the accused persons fled away after killing Veer Singh. They left his dead body at the door of Natthu Teli and escaped. While they were fleeing, he saw them. Due to fear during the night, he did not go to the police station. The next morning, he went to the police station to lodge the report.

21. In his cross-examination, the informant, Sumer Singh (PW-1), stated that Police Station Pahadi is located at a distance of seven kilometers from his village. There is a metalled (*damar*) road connecting the village to the police station. He has a two-wheeler motorcycle, and his adjacent neighbor has a four-wheeler vehicle. There are also several other two and four-wheeler vehicles in the village. He further stated that during the night, he asked his uncles, Umashankar, Shiv Shankar and Ram Kishan Singh, to accompany him to the police station to lodge the F.I.R., but they refused due to some dispute. Thereafter, he did not

speak to anyone else about lodging the report. This witness also stated in his cross-examination that he had mentioned in his written report that, upon hearing the cries of the deceased, he, his mother, and other villagers ran to the spot. However, upon going through the report, he admitted that this fact was not recorded therein and he could not tell any reason for this. He further admitted that he had not asked the accused why they were taking Veer Singh with them. He stated that his mother's name is Smt. Prabha Bai. He and his mother searched for the deceased throughout the night. The dead body of the deceased was found lying in front of the house of Natthu Teli during the night. He did not carry the dead body to his house; it remained there. He stated that he saw the accused beating the deceased and fleeing from the spot after assaulting him, and denied that this statement was made at the instance or tutoring of others. He further stated that there were no bloodstains on the ground in front of the house of Natthu Teli, nor did he see any blood marks in any direction near the house. He also stated that at the time of the incident, accused Sumer Singh was studying at Bhadosa and residing there. The incident occurred at about 10:30 p.m., and he reached the spot approximately ten minutes later. He and his mother remained awake throughout the night, sitting in their house and talking to each other. Thus, from the testimony of informant Sumer Singh (PW-1), it emerges that all the accused-appellants came to the door of his house, where he, his mother Prabha Bai (PW-2), and the deceased Veer Singh were sitting and warming themselves by the fire. The accused called Veer Singh and took him away. According to this witness, the accused brutally assaulted Veer Singh with *lathi* and *danda*. After beating him, the accused-appellants allegedly left his dead body at the door of Natthu Teli and fled.

22. However, this witness has not gone to the police station Pahadi to lodge the written report against the accused-appellants,

which is situated at a distance of seven kilometers only. According to this witness, due to fear, this witness has not gone to the police station. From the evidence of this witness, it is also revealed that this witness and his mother Prabha Bai (PW-2) were awaking full night in their home and were talking with each other. This witness has two wheeler motorcycle and there were many other two and four wheeler vehicles in the village. However, this witness could not try to take the deceased Veer Singh to any hospital for medical treatment.

23. As per the evidence of this witness in his cross-examination, he and his mother have searched Veer Singh throughout the night. This statement of the informant Sumer Singh (PW-1) clearly indicate the fact that this witness and also his mother Prabha Bai (PW-2) have not seen any occurrence or beating the deceased Veer Singh by the accused-appellants. Statement of this witness in his cross-examination also demolished his statement that all accused-appellants came to his door and took Veer Singh away with them. Statement of this witness as given by him in his cross-examination amply shows that this witness has not seen any incident with his own eyes. According to this witness, he had also not seen any bloodstains or blood mark at any direction of the house of Natthu Teli, where dead body of the deceased was lying. In his cross-examination at one place, this witness has stated that he had reached at the spot after ten minutes of the incident. This statement of this witness clearly indicate that he has not seen any happening of the incident. The evidence of informant Sumer Singh (PW-1) also clearly indicate this fact that he after hearing the news that dead body of the deceased Veer Singh is lying in front of door of house of Natthu Teli, he with his mother Prabha Bai after deliberation and afterthought throughout the night, concocted and fabricated a false prosecution story implicating accused-appellants for commission of the crime.

24. Thus, from perusal of the whole evidence of informant Sumer Singh (PW-1), this fact clearly emerged that this witness had not seen any incident with his own eyes. This witness was not present at the spot where the accused attacked upon the deceased Veer Singh. The conduct of informant Sumer Singh (PW-1) indicate this fact that till the morning at 07:30 AM of 08.02.2012, this witness was unaware about the persons, who killed the deceased Veer Singh. After imagination, consideration and deliberation, this witness implicated accused-appellants next day on 08.02.2012 at 07:30 AM by lodging the written report, Exhibit Ka-1.

25. In view of the above contradictions and discrepancies, which are present in the evidence of this witness, are the material and major contradictions, which shake the veracity and reliability of this witness. In this way, the evidence of this witness Sumer Singh (PW-1) does not inspire any confidence. The testimony of this witness is wholly unreliable and unbelievable.

26. Prosecution adduced Prabha Bai (PW-2) as prosecution witness in the Court. She is mother of informant Sumer Singh (PW-1). In her examination-in-chief, she deposed the same facts as those stated by her son, the informant Sumer Singh (PW-1). The only new fact, which was not stated by the informant Sumer Singh during his examination-in-chief, has been stated for the first time by this witness, Prabha Bai, that there was electric light. However, in her cross-examination, this witness has stated that “I have told to the Investigating Officer that on 07.02.2012 in the night, I was at my house and was cooking food. At that time, Lallu @ Balak Kahar came to my house and asked about Veer Singh, then I asked him what is the work. Lallu had not taken Veer Singh with him by saying that Virendra Singh and Vijay Singh are cooking fish and calling Veer Singh. How the Investigating Officer had written this, I could not tell reason for this.” Further, in her cross-examination, this witness has stated that “when Lallu had

taken Veer Singh, it was too late at night then I suspected and told my son Sumer Singh. When I told Sumer Singh, it was 10:00 PM at that time. Then Sumer Singh went to search Veer Singh, returned and told that nothing is known about the whereabouts of Veer Singh. The dead body of the deceased was found in the front of house of Natthu Teli in the morning. At that time, there were about twenty five people of the village gathered. Harvansh Singh was not with Sumer Singh in searching the deceased Veer Singh. I do not remember the exact time in the morning when the discussion took place between my son and me regarding the murder of Veer Singh. Before this, there was no discussion. Before that, I have no knowledge about murder of Veer Singh." She has also stated that "there was no enmity with any person in the murder of Veer Singh."

27. Thus, from perusal of the testimony of the so-called eye-witness of prosecution Prabha Bai (PW-2), it is clearly revealed that although in her examination-in-chief, this witness narrated the prosecution story in the same way as was narrated by her son informant Sumer Singh (PW-1). However, in her cross-examination, this witness spoke about name of accused Lallu Kahar and stated that Lallu came to her home and said to the deceased Veer Singh that Vijay Singh and Virendra Singh are cooking fish. They called you. After late night at about 10:00 PM, when deceased Veer Singh had not returned, then this witness suspected and told her son Sumer Singh. After that Sumer Singh (PW-1) went to search Veer Singh and returned home and told to Prabha Bai (PW-2) that whereabouts of Veer Singh are not known. In the morning, dead body of deceased was found lying in front of the house of Natthu Teli. How in the light of above statement of Prabha Bai (PW-2), this witness and informant Sumer Singh (PW-1) could see the incident and brutal beating by accused-appellants and commission of the crime. In other words, statement of this witness in her cross-examination clearly

establish this fact that Prabha Bai (PW-2) and her son Sumer Singh (PW-1) had not seen any incident with their eyes and they had also not seen brutal beating of Veer Singh by the accused-appellants with *lathi* and *danda*. This fact also clearly establish this fact that so-called eye-witnesses of the prosecution PW-1 and PW-2 are not the eye-witnesses of the incident and also accused-appellants had not come to the home of informant and Prabha Bai on 07.02.2012 and had not taken the deceased Veer Singh with them. To strengthen the prosecution story with consideration and deliberation, Prabha Bai (PW-2) has stated about the light of electricity on the date of incident on 07.02.2012. From the evidence of this witness, it is clearly established that when in the morning of 08.02.2012, dead body of the deceased, Veer Singh, was found lying in front of house of Natthu Teli, then hearing about the lying of the dead body of the deceased, Veer Singh, informant Sumer Singh (PW-1) and his mother Prabha Bai (PW-2) reached at the place where the dead body of the deceased Veer Singh was lying. Since the informant Sumer Singh (PW-1) and Prabha Bai (PW-2) had not seen the incident with their eyes, they did not lodge any written report against any person promptly on the night of 07.02.2012. Only after the dead body of the deceased Veer Singh was found in front of the house of Natthu Teli in the morning of 08.02.2012, then informant Sumer Singh (PW-1) and his mother (PW-2) with afterthought, consideration and deliberation only on the ground of suspicion and conjectures named all accused persons as accused implicating them for commission of the alleged crime. Thus, in the light of discussions, we find testimony of Prabha Bai (PW-2) wholly unreliable. The deposition of Prabha Bai (PW-2) shattered the entire case of the prosecution.

28. On behalf of prosecution, Harivansh (PW-7) was adduced as eye-witness of the prosecution story. This witness in his examination-in-chief has stated that “I am resident of village

Ranipur. I have relation with Sumer Singh of village Kaheta. One day prior to the incident, I came to the house of Sumer Singh at village Kaheta." Further, in his examination-in-chief, this witness has narrated the same story as was narrated by the informant Sumer Singh (PW-1). This witness in his examination-in-chief stated himself to be the eye-witness of the incident. However, in the evidence of informant Sumer Singh (PW-1) and Prabha Bai (PW-2), name of this witness was not stated to be present at their home on 07.02.2012 when accused-appellants had come to their home. If really this witness would have been present on 07.02.2012 at the home of informant PW-1 and PW-2 then in this condition, informant PW-1 and his mother PW-2 would have stated in their evidence that Harivansh was also present at their door when accused-appellants came to their home and carried deceased, Veer Singh, with them. This fact clearly indicate this fact that prosecution with a view to strengthen its case and to give force to the prosecution story, later with afterthought and deliberation tried to project Harivansh (PW-7) as eye-witness of the incident. Further in his cross-examination, Harivansh (PW-7) has stated that "I have not told to the Investigating Officer that I have seen the incident with my own eyes and was present at the spot. I have told first time in the Court that I was present at the place of incident and saw the incident with my own eyes. I have not told this fact to any person before 15.04.2019." Further, in his cross-examination, this witness has stated that "I had given an affidavit to the Police Superintendent in respect of this incident. I had heard the contents of my affidavit and thereafter I had endorsed my signature. It is true that the affidavit has been given by me to Superintendent of Police. In my affidavit, this fact was not written that I have seen the incident. I was present at the place of incident."

29. Thus, from perusal of the testimony of the so-called eye-witness of the prosecution Harivansh (PW-7), it is clearly

emerged that prosecution projected this witness as an eye-witness of the incident. However, in his cross examination, this witness has clearly accepted this fact that this witness was not present at the place of occurrence and also he has not seen any incident with his own eyes. During the course of cross-examination, this witness in clear words accepted this fact that he had not given affidavit to Police Superintendent, Chitrakoot stating therein that he was present at the place of occurrence and he witnessed the commission of crime. In this way, it is clearly established from the testimony of this witness that this witness Harvansh (PW-7) is not the eye-witness of the incident. This witness was not present at the place of incident. After hearing about the murder of Veer Singh, this witness came in village Kaheta on 08.02.2012 and tried to project himself as the eye-witness of the incident. In view of the above testimony and statement of this witness, we find the testimony of this witness is fully unacceptable. Prosecution finds no support from the evidence of this witness.

30. Kashi Prasad (PW-8) is a witness of *panchayatnama* of the dead body of the deceased Veer Singh.

31. Prosecution witness Suresh Singh (PW-9), who is father of the deceased Veer Singh, is a witness of hearsay. After hearing the news of murder of his son Veer Singh, this witness came to village Kaheta Mafi. This witness came to know about the fact of murder of his son from his nephew Harvansh Singh (PW-7), who gave information to me on 08.02.2012. Suresh Singh (PW-9) stated that Sabal Singh, Man Singh, Mangal Singh, Sumer Singh and Lallu Kahar of the village had murdered Veer Singh. On receiving this information, he reached at Village Kaheta Mafi. Whatever have been stated by this witness is based on only hearsay evidence since this witness was at his home at Village Ranipur, Police Station Kamasin, District Banda, whereas the incident occurred in Village Kaheta Mafi. Since the entire

evidence and testimony of Suresh Singh (PW-9) is hearsay and is based only on the information told to him by his nephew Harivansh Singh (PW-7), we find no relevancy in the testimony of this witness.

32. From the perusal of the cross-examination of the Investigating Officer, Dharmendra Kumar (PW-5), we find that he has stated that Smt. Prabha Bai (PW-2) had told him that she herself, along with many other persons, searched Veer Singh throughout the night. The dead body of Veer Singh was found on the platform (*chabutra*) of house of Natthu Teli near the house of Man Singh in the morning. The Investigating Officer has also stated in his cross-examination that this witness has also given this statement that "my son with his maternal brother Harvansh, son of Shiv Singh, resident of Ranipur, Police Station Kamasin, District Banda, has made a hectic search." This witness has also stated that "Prabha Bai has not given this statement that at the time of incident, there was electricity in the village." This witness deposed in his cross-examination that "in the site plan shown by letters ‘A’ and ‘B’, I had not found any blood in the site plan shown by letters ‘A’ and ‘B’. Even the statement of Dharmendra Kumar (PW-5) establishes the fact that the murder of Veer Singh was committed at some other place and, after murdering him, his dead body was left at the place of occurrence. Due to this reason, no mark or stain of blood was found from the place where the dead body of the deceased Veer Singh was lying. This fact also makes the prosecution story highly doubtful and suspicious. It also indicates that prosecution witnesses have narrated a concocted and artificial story against the accused-appellants and they were implicated in this case for commission of alleged crime only on the ground of suspicion. However, no prosecution witness have seen the commission of the crime with their own eyes. Thus, from the evidence of the Investigating Officer Dharmendra Kumar (PW-5),

testimony and evidence of the so-called eye-witnesses of the prosecution also becomes highly doubtful and suspicious.

33. It is worthwhile to mention here the case law of Supreme Court in the case of **Badam Singh v. State of Madhya Pradesh, (2003) 12 SCC 792** wherein in para 16, it has been held that;

> *"The learned Sessions Judge after considering the evidence on record and accepting the evidence of the eyewitnesses found the appellant guilty of the offence under Section 302 IPC and sentenced him to imprisonment for life. The High Court by its impugned judgment dismissed the appeal preferred by the appellant. We have perused the impugned judgment of the High Court. The High Court which was the first court of appeal did not even carefully appreciate the facts of the case. It mentions that the FIR was lodged by PWs 5 and 6 whereas the fact is that the FIR was lodged by PW 4, the Forest Officer. Without subjecting the evidence on record to a critical scrutiny, the High Court was content with saying that the three eyewitnesses having deposed against the appellant, the prosecution had proved its case beyond reasonable doubt. In our view, the High Court has not approached the evidence in the manner it should have done being the first court of appeal. The mere fact that the witnesses are consistent in what they say is not a sure guarantee of their truthfulness. The witnesses are subjected to cross-examination to bring out facts which may persuade a court to hold, that though consistent, their evidence is not acceptable for any other reason. If the court comes to the conclusion that the conduct of the witnesses is such that it renders the case of the prosecution doubtful or incredible or that their presence at the place of occurrence as eyewitnesses is suspect, the court may reject their evidence."*

34. In the light of legal principles as laid down by the Supreme Court in the case of Badam Singh (supra), when we have perused

the finding and reasoning as recorded by the Trial Court in the judgment and order of conviction dated 10.12.2020, we find that learned Trial Court has only considered the evidence of the prosecution witnesses in their examination-in-chief. Trial Court only on the basis of so-called eye-witnesses of the prosecution held the accused-appellants guilty for commission of the alleged crime. Meaning thereby that Trial Court has not considered and kept in view the cross-examination of the prosecution witnesses, in which there are major and material contradictions, which shake the testimonies of all prosecution witnesses. Trial Court only on the ground of evidence as given by the prosecution witnesses in their examination-in-chief without considering and giving any finding in the light of the major and material contradictions that crept into their cross-examination delivered a finding that is against the settled principles of law of evidence.

35. The meaning of “evidence” is defined in Section 3 of the Evidence Act as under:;

> *“1. all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;*
>
> *2. all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.”*

As per Section 3 of the Evidence Act, both examination-in-chief and cross-examination are included within the definition of oral evidence.

36. It is settled principle of law that cross-examination of a witness is as relevant as his examination-in-chief. Court cannot consider and record a finding only on the basis of examination-in-chief of a witness and neglect the cross-examination of that witness. It is also a settled principle of law that evidence of any witness must be read and appreciated in totality by considering both examination-in-chief and cross-examination. By means of

cross-examination, veracity of the witnesses is to be tested by the opposite party that whether witnesses are stating in Court true facts or misleading the Court and stating wrong facts. However, in the case at hand, trial Court has not considered the cross-examination of any prosecution witness. We cannot totally neglect the cross-examination of any witness and only on the ground of examination-in-chief cannot record a finding of guilty and conviction. From the appreciation of evidence of informant Sumer Singh (PW-1) and Prabha Bai (PW-2), it is clear that these two prosecution witnesses are not the eye-witnesses of the incident. In view of the statements of these witnesses, accused-appellants have not come to their home nor they have taken the deceased Veer Singh with them. From the cross-examination of these witnesses, it is apparent that informant Sumer Singh (PW-1) has a motorcycle and there are many other two and four wheeler vehicles in their neighbourhood. Informant Sumer Singh (PW-1) and Prabha Bai (PW-2) due to so-called grief and fear were sitting in their house and they have not attempted to inform the police even by a telephonic call and informant Sumer Singh (PW-1) and Prabha Bai (PW-2) discussed and considered the matter throughout the night. This conduct of these two above prosecution witnesses makes the prosecution story highly doubtful and suspicious.

37. Apart from this, from the statement as given by prosecution witnesses informant Sumer Singh (PW-1) and Prabha Bai (PW-2), it is also revealed that whereabouts of deceased Veer Singh were not known. Due to this reason, whole night of 07.02.2012, prosecution witnesses informant Sumer Singh (PW-1) and Prabha Bai (PW-2) had made a search of deceased Veer Singh. From the evidence of these prosecution witnesses, it is also clear that when they came to know about this fact that dead body of the deceased Veer Singh was lying in front of house of Natthu Teli then these prosecution witnesses came to the place of occurrence in the

morning of 08.02.2012 and with full consideration and afterthought, the informant falsely implicated the accused-appellants for commission of the alleged crime. Thus, the conduct of so-called prosecution witnesses in this respect is highly unnatural and against the human behaviour. The conduct and behaviour of the prosecution witnesses is highly suspicious due to which statement of these prosecution witnesses as given by them in their evidence are found wholly unreliable. The Trial Court has not considered the major and material contradictions, which are present in the evidence of the prosecution witnesses, that are so grave and fatal that shakes the foundation of the prosecution story itself.

38. From the evidence of Investigating Officer Dharmendra Kumar (PW-5), it is also clear that where dead body of the deceased Veer Singh was found, there was no bloodstain or blood mark on the ground. From this, it is emerged that after murder of deceased Veer Singh at another place, his dead body was thrown on the place of occurrence in front of house of Natthu Teli. This fact also makes the prosecution story doubtful.

39. From perusal of the overall prosecution evidence, it is clear that there is no eye-witness of the incident, prosecution with afterthought and consideration projected and produced all the prosecution witnesses of fact as the eye-witnesses but prosecution miserably failed in its attempt to substantiate the allegations against the accused-appellants beyond reasonable doubt. In other words, prosecution totally failed to prove its case beyond reasonable doubt against the accused-appellants.

40. Therefore, in the light of above discussions, we find that judgment and order of conviction and sentence as passed by learned trial Court dated 10.12.2020 in Session Trial No. 70 of 2012 (State of Uttar Pradesh v. Sabal Singh and others) arising out of Case Crime No. 23 of 2012, under Sections 147, 302, 149, 120B, 201 IPC, Police Station Pahadi, District Chitrakoot is not

sustainable. Hence, we find that judgment and order of conviction of learned trial Court is liable to be set aside and the appeals of the accused-appellants are liable to allowed.

41. Accordingly, the criminal appeals of the accused-appellants are **allowed** and the judgment and order of conviction dated 10.12.2020 is set aside. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties stand discharged. However, they shall comply with the provisions of Section 437-A Cr.P.C.

42. Let a copy of this judgment be sent to the learned Trial Court forthwith along with the Trial Court record for compliance.

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

July 01, 2026
SHUBHAM

Digitally signed by :-
SHUBHAM KUMAR AGRAHARI
High Court of Judicature at Allahabad