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2026:AHC:130182-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 441 of 2020

Bhanwar Singh

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Ajay Dubey, Arvind Kumar Singh, Harish Kumar Shukla, Kuldeep Singh Chahar, Satya Dheer Singh Jadaun, Sushil Kumar Chaturvedi, Vikrant Pandey
Counsel for Respondent(s)	:	Devi Prasad Tripathi, G.A., Manish Kumar Pandey

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Along With:

1. **Criminal Appeal No. 392 of 2020:**
Beniram and 2 others

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.)

1. Both these criminal appeals bearing Criminal Appeal No. 441 of 2020 (Bhanwar Singh *v.* State of U.P.) and Criminal Appeal No. 392 of 2020 (Beniram and 2 others v. State of U.P.), have been preferred by the

convicts, to wit, Bhanwar Singh, Beniram, Om Prakash and Kaptan Singh, against the judgment and order of conviction and sentence dated 13.01.2020, passed by the learned Additional Sessions Judge, Court No. 15, Agra, in Sessions Trial No. 1144 of 2007 (State v. Beniram and Others) arising out of Case Crime No. 178 of 1998, under Section 302/34 of I.P.C., Police Station Kagarol, District Agra.

2. By the impugned judgment and order, the learned Additional Sessions Judge, Court No. 15, Agra, has convicted the appellants for an offence punishable under Section 302/34 IPC and sentenced them to suffer imprisonment for life. Aggrieved by the judgment and order dated 13.01.2020, the appellants have preferred this appeal.

3. Brief facts of the case are that informant Harbhan Singh (PW-1), son of Bhagwan Singh, resident of Bisalpur, Police Station Kagarol, District Agra, has got scribed a written report dated 15.10.1998 (Exhibit Ka-1) from Kishan Singh Rawat Jat and lodged at Police Station Kagarol, District Agra. Informant Harbhan Singh (PW-1) has stated in his written report (Exhibit Ka-1) that yesterday i.e. 14.10.1998, my brother Sukhpal @ Munna had gone to Munna Khan's dairy at *Gaharra Ki Pyau* to deliver milk. Usually, my brother would return home by around 9:00 P.M., but when he did not return on time that night, I, along with my brother Jawahar Singh, uncle Mahaveer Singh, brother-in-law Jawahar Singh and cousin Udaiveer, went towards *Gaharra ki Pyau* to look for him. On the way, we met Rajveer Singh, son of Hardam Singh and Dharmpal Singh, son of Jagan Singh, who do milk business in my village. When asked about my brother, these two men stated that Munna was returning to the village with them. However, at the second kilometer mark, they met Shivraj Singh & Mangal Singh, sons of Veeri Singh and Harpal Singh, son of Laxman Singh, from the village, with whom Munna started talking and stayed with them. Since there was an old dispute with these three individuals, they became suspicious. Moving forward, they noticed noise and screaming about three or four fields ahead of the second kilometer mark. They ran toward the sound shouting, we are coming and just as they were about to reach, they heard

three or four gunshots. Upon hearing their voices, Shivraj Singh, Mangal Singh and Harpal Singh fled, saying, now he is dead, his family members are coming. In the light of our torches, we saw and identified these three men fleeing. When we reached the spot, we found the body of my brother Sukhpal @ Munna in the field of *Laccho*, a resident of *Beri Chahar*. It was about 11:00 P.M. at night. There were several wounds from gunshots and knives on my brother's body. Upon seeing the dead body, we wept and screamed gradually, people from the surrounding area gathered. Some local leaders prevented us from going to the police station, saying that they would call the officials to the spot, initiate action, and block the road. The leaders did exactly that as soon as morning arrived. The aforementioned Shivraj Singh, Mangal Singh and Harpal Singh brutally murdered my brother due to personal enmity.

4. On the basis of the written report (Exhibit Ka-1), a first information report was registered at Police Station Kagarol, District Agra, on 15.10.1998 at about 11:15 A.M., against the accused Shivraj Singh, Mangal Singh and Harpal Singh, bearing Case Crime No. 178 of 1998, under Section 302 IPC.

5. After registration of the first information report, the investigation was taken up by Investigating Officer Sanjeev Katiyar (PW-8). He visited the place of occurrence, inspected the dead body of the deceased Sukhpal @ Munna and prepared the panchayatnama (Exhibit Ka-4). He also prepared other necessary police papers, such as, the *photolash* (Exhibit Ka-5), the report to the C.M.O. (Exhibit Ka-6), the letter to the R.I. (Exhibit Ka-7), and the *challanlash* (Exhibit Ka-8). He also prepared the site plan (Exhibit Ka-9) and collected two empty .315 bore cartridges and one bullet found near the deceased’s body, for which he prepared a recovery memo (Exhibit Ka-10). The Investigating Officer further collected and took into custody a bloodstained chappal (slipper) found near the deceased’s body and prepared a recovery memo (Exhibit Ka-12).

6. The Investigating Officer (PW-8) recorded the statements of the witnesses under Section 161 Cr.P.C. and sent the dead body of the deceased Sukhpal @ Munna, for post-mortem examination. After completing all necessary formalities of the investigation, PW-8 submitted a charge-sheet (Exhibit Ka-13) against the accused persons, namely, Mangal Singh and Shivraj Singh, under Section 302 IPC. Since accused Harpal Singh could not be arrested, the investigation against him remained pending.

7. Meanwhile, an application (Exhibit Ka-2) dated 19.11.1998, was submitted by the residents of village Bisalpur, Police Station Kagarol, District Agra, before the Superintendent of Police, Agra. In the said application, it was submitted by the villagers that in the night of 14/15.10.1998, near the *Naga Beri Chahar Canal*, the murder of Sukhpal @ Munna, son of Bhagwan Singh, was committed by unknown persons. It was also submitted in the application that, due to prior enmity, the informant falsely implicated Shivraj Singh and Mangal Singh, sons of Veeri Singh and Harpal Singh, son of Lakshman Singh, in the present case. In their application, the villagers also submitted that the deceased Sukhpal @ Munna, was a man of loose character and that when he went to deliver milk, he used to halt at night in *Nagla Mohana* at the house of Badan Singh and Phool Singh. The villagers also stated that there were rumours about Sukhpal @ Munna that he had illicit relations with a woman and a girl of *Nagla Mohana*. They further stated that after the murder, dog squad reached the room of Phool Singh, from which, it is apparent that in the night of the incident, the deceased Sukhpal @ Munna was present in that room. On the basis of the alleged illicit relations of Sukhpal @ Munna with a woman and a girl of *Nagla*, the villagers expressed their suspicion upon Phool Singh and Badan Singh. They further stated that an impartial investigation must be done so that innocent persons are not implicated in this case and the real culprits are brought to justice.

8. On the basis of the aforesaid application submitted to the Superintendent of Police, District Agra, by the villagers of Bisalpur, the

case was handed over to the CBCID (The Crime Branch-Criminal Investigation Department). The CBCID re-investigated the matter and, after completing its investigation, rejected the previous charge-sheet filed against Shivraj Singh and Mangal Singh. Thereafter, the CBCID filed charge-sheets against the appellants, namely, Bhanwar Singh, Beniram, Om Prakash and Kaptan Singh, under Sections 302/34 IPC and Section 27 of the Arms Act, *vide* Charge Sheet Nos. 10, 10A & 10B. In this way, the CBCID, in its investigation, found no role or involvement of the accused named in the written report (Exhibit Ka-1).

9. Dr. A. K. Singh (PW-7), conducted the postmortem examination of the deceased Sukhpal @ Munna, and prepared the postmortem report (Exhibit Ka-2). According to the postmortem report, the following ante-mortem injuries were present on the dead body of deceased:

> "(i) Firearm entry wound measuring 3 cm × 3 cm. A gunshot wound of entry measuring 4 cm× 3.5 cm was present just above the right ear. The margins were inverted (turned inward).
>
> (ii) A gunshot wound of entry measuring 4 cm × 3.5 cm was present on the front side of the neck towards the right side. Blackening and tattooing were present around the wound.
>
> (iii) Superficial burn injury measuring 20 cm × 15 cm was present on the front of the chest.
>
> (iv) An incised wound measuring 1.5 cm × 1 cm was present on the right side of the chest at the 4 o'clock position from the right nipple.
>
> (v) Multiple incised wounds were present in an area of 28 cm × 20 cm, approximately 13 in number, each measuring about 2 cm × 1.5 cm, present on the upper abdomen. The intestines were protruding out.
>
> (vi) Four incised wounds were present over an area of 15 cm × 10 cm on the front aspect of the arm.
>
> (vii) An abrasion measuring 10 cm × 8 cm was present on the front of the left arm."

According to Dr. A. K. Singh (PW-7), the cause of death was shock and hemorrhage as a result of ante-mortem injuries.

10. On 01.12.2007, the Trial Court framed charges against the appellants, namely, Bhanwar Singh, Beniram, Om Prakash and Kaptan Singh, under Sections 302/34 of IPC and Section 27 of Arms Act, on the basis of the charge-sheets submitted by the CBCID against them. The appellants denied the charges and claimed trial.

11. In support of its case, the prosecution initially examined twelve witnesses, namely, Harbhan Singh (PW-1), Rajendra Singh (PW-2), Lal Singh (PW-3), Mohan Singh (PW-4), Ajay Pal Singh (PW-5), Dharam Pal Singh (PW-6), Dr. A.K. Singh (PW-7), Sanjeev Katiyar (PW-8), Ranjeet (PW-9), Suresh Chand (PW-10), Suresh Chandra (PW-11) and Gopal Singh (PW-12). Thereafter, the prosecution further examined Jawahar Singh son of Bhagwan Singh as PW-1, Raj Kunwar Singh as PW-2, Jawahar Singh son of Lakhan Singh as PW-3, Dharam Pal Singh as PW-4, and Mahaveer Singh as PW-5. Apart from the oral evidence, the prosecution also relied upon documentary evidence marked as Exhibits Ka-1 to Ka-14.

12. After the examination of all prosecution witnesses, the Trial Court proceeded to record the statements of the appellants under Section 313 Cr.P.C. In their statements recorded under Section 313 Cr.P.C., the appellants denied all allegations levelled against them by the prosecution and asserted that they have been falsely implicated in the case. They further contended that the prosecution had relied upon false and fabricated evidence and that they have wrongly been charge-sheeted. The appellants, however, did not adduce any evidence in their defence.

13. After hearing the arguments advanced by the prosecution as well as the defence, the Trial Court found the appellants, namely, Bhanwar Singh, Beniram, Om Prakash and Kaptan Singh, guilty of the alleged offence, therefore, convicted and sentenced them *vide* judgment and order dated 13.01.2020, for the offence punishable under Section 302/34 I.P.C. to imprisonment for life, along with a fine of Rs. 20,000/- each.

However, the Trial Court acquitted the appellants of the charge under Section 27 of the Arms Act in Sessions Trial No. 1144 of 2007 (arising out of Case Crime No. 178 of 1998). Aggrieved by the impugned judgment and order of conviction and sentence dated 13.01.2020, passed by the learned Trial Court under Section 302/34 I.P.C. in the aforesaid Sessions Trial, the appellants have preferred these two criminal appeals before this Court.

14. We have heard the arguments advanced by Mr. Satya Dheer Singh, learned Counsel for the appellants in both the appeals, Mr. Arvind Kumar Singh, learned *Amicus Curiae* for the appellant in Criminal Appeal No. 441 of 2020 and Mr. Shashi Shekhar Tiwari and Mr. Anil Kumar Mishra, learned Additional Government Advocates on behalf of the State. We have also perused the entire evidence on record, as well as the impugned judgment and order of conviction and sentence dated 13.01.2020, passed by the learned Trial Court.

15. Learned Counsel for the appellants have submitted that the impugned judgment and order dated 13.01.2020 passed by the Trial Court, is based on conjectures and surmises, which is contrary to the evidence available on record. The trial of three accused named in the written report (Exhibit Ka-1) has been separated as Sessions Trial No. 1144-A of 2007, and they were acquitted by the Trial Court, *vide* order dated 30.01.2014. Trial Court has wrongly decided the case of the appellants and convicted them to life imprisonment. It is also submitted on behalf of the appellants that they are elderly persons, suffering from multiple ailments due to their advanced age.

16. The alleged incident occurred in the night, and none of the witnesses has claimed to have seen the incident. However, the appellants have been implicated in the present case only on the basis of suspicion and doubt, which was also not proved against them. In the present case, two stories were run by the prosecution. First by the informant, who gave direct evidence against accused Shivraj, Mangal and Harpal, named in the written report (Exhibit Ka-1) but did not give any evidence against

the appellants. Only on the basis of the statements of Raj Kunwar Singh (PW-2) and Jawahar Singh (PW-3), who were not the eyewitnesses of the alleged incident, and were later produced as prosecution witnesses, the appellants have been convicted and sentenced to life imprisonment. It is also submitted on behalf of the appellants that there is no eyewitness of the incident, who could have seen commission of the crime by the appellants with their own eyes. Only on the grounds of rumour, suspicion and doubt, which have been expressed by the later prosecution witnesses i.e., Raj Kunwar Singh (PW-2) and Jawahar Singh (PW-3), the appellants have been wrongly convicted and sentenced by the Trial Court, against the settled principle of law of evidence.

17. It is a well-settled principle of the law of evidence that no person can be convicted of any offence merely on the basis of rumours prevailing in the village or on the basis of doubt and suspicion. In the present case, the Trial Court has misread and misappreciated the evidence on record and has erroneously relied upon material which, in law, was not admissible or could not have been safely relied upon against the appellants. On the basis of the above arguments, it is submitted by the learned Counsel for the appellants that the impugned judgment and order passed by the Trial Court is contrary to law and not supported by any reliable and cogent evidence, therefore, both the criminal appeals preferred by the appellants are liable to be allowed.

18. *Per contra*, the learned Additional Government Advocate for the State submitted that subsequent to the registration of the first information report on the basis of the written report (Exhibit Ka-1) lodged by the informant, Harbhan Singh (PW-1), the villagers of Bisalpur submitted an application to the Superintendent of Police, District Agra. In the said application, it was asserted that the persons named in the written report (Exhibit Ka-1) have been falsely implicated due to prior enmity, and a prayer was made for a fair and impartial investigation. It is further submitted that, pursuant to the said application submitted by the villagers, the investigation of the case was entrusted to the CBCID. Upon re-investigation, the CBCID concluded that the

persons named in the written report (Exhibit Ka-1) have been falsely implicated and have no role in the commission of the alleged offence.

19. It is further submitted that the CBCID, during the course of its investigation, found evidence against the appellants, namely, Beniram, Bhanwar Singh, Kaptan Singh and Om Prakash, in connection with the alleged crime, hence, charge-sheeted them under Section 302/34 of IPC & Section 27 of Arms Act. The prosecution witnesses, as adduced by the prosecution, have fully supported the prosecution case, and there exists a strong motive against the appellants for the commission of the alleged crime. On the basis of the evidence subsequently adduced by the prosecution witnesses, i.e., Jawahar Singh (PW-1) son of Bhagwan Singh, Raj Kunwar Singh (PW-2), Jawahar Singh (PW-3) son of Lakhan Singh, Dharam Pal Singh (PW-4), and Mahaveer Singh (PW-5), the Trial Court found ample evidence in their depositions against the appellants. Accordingly, the Trial Court, in the correct perspective and in a legal manner, appreciated the evidence available on record, found the appellants guilty and convicted them for the alleged crime. There is no illegality or perversity in the impugned judgment and order passed by the learned Trial Court. Hence, both the criminal appeals, preferred by the appellants, are devoid of merit and are liable to be dismissed.

20. In light of the above submissions advanced by the learned Counsel for the appellants and the counter submissions advanced by the learned A.G.A. for the State, we have perused the evidence of the prosecution witness, Harbhan Singh (PW-1). Upon perusal, we find that PW-1 has deposed before the Court in the same manner as stated by him in his written report (Exhibit Ka-1). In this way, the informant (PW-1) has stated that he, along with other prosecution witnesses, saw Shivraj Singh, Mangal Singh and Harpal Singh running away from the place of occurrence in the light of a torch. However, Rajendra Singh (PW-2) has narrated a different version of the incident.

21. From a perusal of the testimony of Rajendra Singh (PW-2), we find that PW-2 stated that he was acquainted with the appellants, namely,

Om Prakash, Beniram, Kaptan Singh and Bhanwar Singh. He further deposed that on the date of the incident, i.e., 14.10.1998 at about 11:00 PM, while he was returning from Kagarol after procuring diesel for his tractor, he saw all four appellants in the light of the tractor. Upon noticing him, the appellants turned back and moved down from the road. According to this witness, on the following morning, at about 7-7:30 A.M., Ajay Pal, son of Rameshwar Ram, came to the Devi Mandir near Bisalpur and informed that Sukhpal @ Munna, had been murdered and that his dead body was lying in the field of *Laccho*. PW-2 further stated that Sukhpal @ Munna, was a characterless man and he had illicit relations with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash. According to PW-2, the murder was committed by the appellants as an act of revenge for the alleged illicit relations. The witness also stated that he had given his statement before the police as well as before the CBCID.

22. Rajendra Singh (PW-2), in his cross-examination had stated that it is correct that Harbhan Singh (PW-1) son of Bhagwan Singh, resident of Bisalpur, had filed a written report (Exhibit Ka-1) regarding the murder of his brother. The written report (Exhibit Ka-1) was filed on 15.10.1998. PW-2 stated that it is correct that Harbhan Singh had filed the written report for this incident against accused, Shivraj Singh, Mangal Singh and Harpal Singh under Section 302 I.P.C. PW-2 further stated that it is also correct to say that the police had filed a charge-sheet against named accused, Shivraj Singh, Mangal Singh and Harpal Singh under Section 302 I.P.C. In connection of this case, a senior police officer recorded my statement after two-three months. I have given statement to the police that one kilometer before *Nagla Mohana* from the direction of the canal, near *Lachho's* field, all four appellants were coming towards the road and I identified them in the light of the tractor. After that CBCID officials arrived, they interrogated me and recorded my statement.

23. From perusal of the cross-examination of PW-2, we find that this witness in a clear cut words stated that he did not inform the police

officers or any other officer or the Station In-charge of Kagarol, etc., in writing or orally on the second, third, fourth day, or within a month of the incident, that in the night of 14.10.1998, he saw appellants, namely, Om Prakash, Beniam, Bhanwar Singh and Kaptan Singh coming from the direction of the road near *Laccho's* field from the side of *Beri Chahar* in *Nagla Mohana* and identified them in the light. PW-2 has accepted in his cross-examination that he had not seen the alleged illicit relations of the deceased Sukhpal @ Munna with Chandravati, wife of Hari Singh, and with Savitri, the daughter of Om Prakash.

24. From a perusal of the evidence of the informant, Harbhan Singh (PW-1), it is apparent that he deposed against the accused, Shivraj Singh, Mangal Singh, and Harpal Singh, named in the written report (Exhibit Ka-1), in a doubtful and uncertain manner. The CBCID, during its investigation, did not find any involvement of the said accused in the present case. Subsequently, after re-investigation, the CBCID submitted charge-sheets against the appellants, namely, Bhanwar Singh, Beniram, Om Prakash, and Kaptan Singh. It is noteworthy that the informant, Harbhan Singh (PW-1), deposed against persons who are not parties to these criminal appeals, and therefore, his evidence holds no relevance in the present case. The deposition and testimony of Harbhan Singh (PW-1) are neither reliable nor trustworthy, being entirely doubtful and suspicious.

25. From a perusal of the evidence of Rajendra Singh (PW-2), it is evident that despite his claim of having seen and identified in the light the appellants, namely, Om Prakash, Beniram, Bhanwar Singh, and Kaptan Singh coming from the roadside, he failed to disclose this fact for a period of four months from the date of the incident, i.e., 14.10.1998. In his cross-examination, this witness also admitted that he had not seen the alleged illicit relations of the deceased Sukhpal @ Munna with Chandravati, wife of Hari Singh, and with Savitri, the daughter of Om Prakash. In view of these admissions, it becomes amply clear that Rajendra Singh (PW-2) has deposed falsely against the appellants in his testimony before the Court. In reality, this witness did

not witness the incident with his own eyes on 14.10.1998. From a further perusal of the evidence of PW-2, it is apparent that he is giving false evidence in the Court against the appellants only on the ground of doubt and suspicion, which was based on the so-called illicit relations of the deceased Sukhpal @ Munna with Chandravati, wife of Hari Singh and with Savitri, daughter of Om Prakash.

26. In this way, we find that Rajendra Singh (PW-2) has given evidence in the Court against the appellants only on the ground of suspicion and so-called rumours which were prevalent in the village that the deceased Sukhpal @ Munna had illicit relationship with Chandravati, wife of Hari Singh, and with Savitri, daughter of Om Prakash. Thus, evidence and statements which are wholly based on doubt, suspicion, and rumours cannot be treated as evidence according to the settled principles of law. Hence, we find no relevancy or reliability in the evidence of the informant Harbhan Singh (PW-1) and Rajendra Singh (PW-2).

27. The prosecution produced Lal Singh as PW-3. From the perusal of the evidence of Lal Singh (PW-3), we find that this witness has not seen the commission of the crime by the appellants with his own eyes. This witness received information on 15.10.1998 at 7-8 A.M. that the dead body of Sukhpal @ Munna was lying in the field. This witness has only stated in his evidence that about one week prior to the incident, Phool Singh and Madan Singh had come to the house of Bhagwan Singh during the daytime and had said that he should advise his child not to halt at night in their houses. At that time, according to this witness, he was sitting at the *chabutra* of temple situated near the house of Bhagwan Singh, and other people were also sitting there. According to this witness, Bhagwan Singh stated that he would advise his child.

28. From a perusal of the evidence of PW-3, it is revealed that this witness and many other villagers of Bisalpur had written a typed application (Exhibit Ka-2) to the Superintendent of Police, Agra, stating therein that the alleged murder had been committed by unknown

persons. Thus, from a perusal of the evidence of this witness, we find that this witness is not an eyewitness to the alleged incident. Whatever has been stated by this witness, in his evidence, is only hearsay evidence as received by him from other persons of the village.

29. This witness was also a party in writing the application (Exhibit Ka-2) to the Superintendent of Police, Agra, for fair and impartial investigation in the case because, according to this witness himself, the murder was committed by unknown persons. Hence, there is no relevancy in the evidence of this witness, and the prosecution finds no legal support from the evidence of Lal Singh (PW-3).

30. The prosecution adduced Mohan Singh as PW-4. From the perusal of the evidence of this witness, it is revealed that this witness is also not an eyewitness to the alleged incident. Information about the murder of Sukhpal @ Munna was received by this witness from other people. After receiving this information, he also reached the place of occurrence and saw the dead body of the deceased Sukhpal @ Munna. Apart from this, according to this witness, dog of the police after smelling the dead body of the deceased Sukhpal @ Munna, reached the house of Phool Singh situated in *Nagla Mohana*. This witness also stated that the deceased had illicit relations with the wife of Hari Singh, due to which the wife of the deceased Sukhpal @ Munna, being angry, had gone to her parental home. The wife of Hari Singh wanted to keep Sukhpal @ Munna with her.

31. We find that, according to Mohan Singh (PW-4), it was the common opinion of the crowd that the murder of the deceased Sukhpal @ Munna had been committed by appellants, namely, Om Prakash, Beniram, Kaptan Singh, and Bhanwar Singh due to the alleged illicit relationship, and after committing the murder, appellants had thrown the dead body of the deceased Sukhpal @ Munna. However, in his cross-examination, this witness has also accepted that Harbhan Singh (PW-1) had lodged a report against Shivraj Singh, Mangal Singh, and Harpal Singh, which was wrong.

32. Thus, from a perusal of the whole evidence of this witness, Mohan Singh (PW-4), it is amply clear that this witness is expressing doubt only on the basis that it is the common opinion of the crowd that the deceased Sukhpal @ Munna, was murdered by the appellants due to the illicit relations. Thus, it clearly emerges from the evidence of this witness that, on the ground of rumours prevalent in the village that the deceased had illicit relations with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash, for this reason the appellants committed murder of the deceased Sukhpal @ Munna. However, whatever this witness has deposed in his evidence, is only based on hearsay facts and rumours prevalent in the village Bisalpur and nearby villages, hence, there is no relevancy or reliability in the evidence of this witness (PW-4). The prosecution story finds no support against the appellants from the evidence of this witness. Thus, the evidence of this witness has no relevancy in respect of the prosecution case. The evidence of this witness is wholly unreliable and unworthy of credit.

33. From a perusal of the evidence of Ajay Pal Singh (PW-5), it is revealed that this witness has also not seen the commission of the alleged crime with his own eyes. Information about the murder of the deceased Sukhpal @ Munna was received by this witness from Virendra, son of Ram Gopal, who told this witness that Sukhpal @ Munna of your village had been murdered by shooting in the night by some unknown person, and his dead body was lying in the field of *Laccho*. In his cross-examination, this witness has accepted that till date he has no knowledge as to who committed the murder of Munna.

34. Dharam Pal Singh (PW-6) has not supported the prosecution story and was declared hostile. According to the evidence of this witness, on 14.10.1998, the deceased had gone to the dairy with milk, after which he did not return and the next day his dead body was found. I do not know who murdered deceased Sukhpal @ Munna. However, in a surprising manner during course of his cross-examination by the defence, this witness stated that 'I used to go with Rajveer to deliver milk to Agrasen Dairy and on that day as well, both of us were returning. We met the

deceased Sukhpal @ Munna at *Gaharra Ki Pyau*. Three of us were going to our village Bisalpur on bicycles. When we were two km away from the village, accused, Shivraj, Mangal Singh, and Harpal met us on the way. They stopped Sukhpal @ Munna and started talking to him. Rajveer and I returned to the village. After this, I do not know what happened. No incident took place in my presence.'

35. Thus, we find that PW-6 has turned hostile towards the appellants. However, he has wrongly pointed fingers towards accused, Shivraj Singh, Mangal Singh, and Harpal Singh named in the written report (Exhibit Ka-1). In this way, we find that highly contradictory statements and evidence have been given by this witness, which we find to be wholly unreliable and without any relevancy in support of the prosecution case. Thus, we find that the evidence of this witness is also wholly unreliable.

36. Prosecution adduced Ranjeet Singh as PW-9. In his examination-in-chief, Ranjeet (PW-9) has stated that on 14/15.10.1998 in the night at about 10:00 P.M., I was going to plough the field. There, I saw some people standing in the shade of a tree. Among them were appellants, namely, Om Prakash, Beniram, Kaptan and Bhanwar Singh. A dead body was lying next to the *burji*. The body belonged to Munna. At that time, I did not realize whose body it was, I found out in the morning that it was Munna's body. By morning, this news had spread through my village and the surrounding area. People had also blocked the road at *Laheri Ki Pyau*. I also went near the body the next day. The deceased had been shot in the chest. Sniffer dogs of police also arrived. The dogs went up to the houses of the accused. This is all that I saw. Munna used to work in the milk business.

37. In his cross-examination PW-9 has stated that, 'Harbhan Singh has lodged the first information report of this case, who is the real brother of the deceased Sukhpal @ Munna. Harbhan Singh had lodged the report against accused, Shivraj, Mangal and Harpal at Police Station Kagarol. It is true that today accused Shivraj has come to Court with me. It is true

that on the date of the incident i.e., 14.10.1998, I had met Munna at *Gaharra Ki Pyau* at the time of delivering the milk. After that, I had not met Munna. This thing is also true that I had also not seen the appellants with Munna. I had seen the appellants in the light of the tractor about 1/2 km from the field. I had not asked the appellants standing in the night why they were standing there. The appellants also had not talked to me.'

38. This witness has further stated in his cross-examination that on the next day, he came to know at 9:00 A.M. in the morning that this dead body was of Munna. It is true that I had not seen the dead body in the night. I had told this fact of seeing the dead body in the night in my examination-in-chief in the Court for the first time. It is true that I had not told the Darogaji that I had seen the dead body in the night. This thing is true that my statement was recorded by the CBCID after three years. When I reached near the dead body of Munna, there were thousands of people. The brothers of the deceased, Harbhan Singh and Jawahar Singh were also present. I had not told the brothers of the deceased, Harbhan and Jawahar that I had seen the appellants in the night standing near the dead body. This thing is true that at that time there were police and higher officials of the police present. I do not know whether the police and higher officials of the police were inquiring with the people present there or not. I had also not told the police and other higher officers of the police that I had seen the accused persons near the dead body of the deceased in the night. I had never told the informant Harbhan Singh (PW-1) that I had seen the appellants standing near the dead body in the night. There were gunshot injuries on the dead body of the deceased. I had not seen any article near the dead body of the deceased. The dead body was covered with a white cloth. Sniffer dog arrived at the place of occurrence in the morning at 10-11 A.M. At that time, I was also present there. After smelling the dead body, the sniffer dog immediately proceeded towards *Nagla Mohana*. I have no knowledge of what report was prepared by the police team regarding the sniffer dog. There is no report on record indicating that the sniffer dog

went towards the houses of the appellants at *Nagla Mohana*, therefore, I am unable to provide any reason for this.

39. In his cross-examination, PW-9 has further stated that I had told the Darogaji of the CBCID that I had seen the dead body from the road. If this fact has not been written in my statement, I cannot give any reason for the same. It is correct to say that I had stated before the Darogaji of the CBCID that on 15.10.1998 at about 9:00 A.M., I heard from villagers that Sukhpal @ Munna had been murdered during the night. After hearing this news, I went near the dead body. It is also correct that prior to receiving this information, I had no knowledge regarding the occurrence. It is further correct that the accused, Shivraj Singh, Mangal Singh, and Harpal Singh, who were named in the written report (Exhibit Ka-1), were taken to the police station after being arrested. I had given my statement to the Darogaji of the CBCID after three years of the incident. During this period of three years, I had not disclosed these facts elsewhere, for which I cannot assign any reason.

40. Thus, from a perusal of the entire evidence of prosecution witness Ranjeet (PW-9), it is revealed that although this witness, in his examination-in-chief, stated that on the date of the incident, i.e., 14/15.10.1998 at about 10:00 P.M., while he was going to plough his field, he saw the appellants standing in the shade of a tree, but he did not disclose this important fact either to the informant Harbhan Singh (PW-1) or to any police officer, including the SHO in-charge present at the place of the incident. This witness kept this fact to himself and concealed it, and did not inform any person, including the informant Harbhan Singh (PW-1), any police officer, or any superior police officer present at the place of occurrence, although he also reached the place where the dead body of the deceased Munna @ Sukhpal was lying. Despite these circumstances, the witness withheld this information and did not disclose it to any person, whether private or public, and stated it for the first time before the Court during the course of recording his evidence. This fact was admitted by the witness in his cross-examination.

41. From an overall analysis and perusal of the evidence of this witness, Ranjeet (PW-9), it is revealed that the prosecution produced and projected this witness to support its case, however, during his deposition before the Court, the witness narrated and fabricated a false story. From the testimony of this witness, it is evident that his evidence inspires no confidence and lacks reliability and truthfulness, on the basis of which it could not be regarded as reliable and trustworthy.

42. The prosecution produced Gopal Singh as PW-12, who turned hostile and did not support the prosecution's case. This witness clearly stated that he had no knowledge as to when the murder of Sukhpal @ Munna was committed. He also expressed his ignorance regarding the prosecution case and its facts.

43. After examining twelve witnesses in support of its case, the prosecution also adduced Jawahar Singh, son of Bhagwan Singh, as PW-1. Jawahar Singh (PW-1), is the real brother of the deceased Sukhpal @ Munna. From a perusal of the evidence of this witness, it emerges that Ajay Pal son of Rameshwar, a resident of the same village, had told this witness that the dead body of Sukhpal @ Munna, was lying in *Beri Gaon* in the field of *Laccho*. This witness has also stated that, due to party bandi, his elder brother Harban Singh lodged a false report against accused, Shivraj Singh, Mangal Singh and Harpal Singh. In the evidence of this witness, it is also stated that at the place of occurrence, thousands of villagers had gathered and blocked the road. At about 11:00 A.M., sniffer dog of the police came there and after smelling the clothes of the deceased, went at *Nagla Mohana* up to the houses of appellants, namely, Beniram, Kaptan Singh, Om Prakash and Bhanwar Singh.

44. During cross-examination by the defence, Jawahar Singh (PW-1) stated that after reinvestigation of the case by the CBCID, appellants were charge-sheeted and made accused in the present case. This witness, in his cross-examination, also stated that it is true that the murder of his brother, Sukhpal @ Munna, was committed at another place and after the murder, the dead body was laid in the field of *Laccho*. He further stated

that it is true to say that accused, Mangal Singh, Shivraj Singh and Harpal Singh have not commit the murder of his brother.

45. Thus, from a perusal of the evidence of Jawahar Singh (PW-1), it is found that this witness has only stated that sniffer dog, after smelling the dead body and the clothes of the deceased, went up to the appellants' houses. This witness has not seen the commission of the offence by the appellants with his own eyes. The witness clearly stated that his elder brother, Harban Singh, due to party bandi, falsely lodged a report against accused, Shivraj Singh, Mangal Singh and Harpal Singh. We find no relevance, reliability, or truthfulness in the evidence of this witness. From a perusal of the testimony of Jawahar Singh (PW-1), it is evident that he has made self-contradictory statements in his deposition before the Court. The prosecution derives no support from the evidence of this witness. There is no reliability or creditworthiness in the evidence of Jawahar Singh (PW-1) on the basis of which the appellants can be held guilty for the alleged crime. Thus, the evidence of this witness is self-contradictory and wholly unreliable.

46. Among the second set of witnesses, Raj Kunwar Singh has been adduced by the prosecution in support of its case as PW-2. From a perusal of the evidence of Raj Kunwar Singh (PW-2), it is evident that this witness is the cousin brother of the deceased Sukhpal @ Munna. From a perusal of the evidence of this witness, it is also evident that on 14.10.1998, he had seen on the way accused, Shivraj, Mangal and Harpal, named in the written report (Exhibit Ka-1), interacting with Munna. According to this witness, when Harbhan Singh, Udaiveer, Mahaveer, and Jawahar, who were searching for the deceased Sukhpal @ Munna, approached him, this witness had told them that he had seen accused, Shivraj Singh, Mangal Singh and Harpal Singh on the way interacting with the deceased Sukhpal @ Munna. Later, it came to be known that accused, Shivraj Singh, Mangal Singh and Harpal Singh had murdered Sukhpal @ Munna.

47. From a perusal of the cross-examination of Raj Kunwar Singh (PW-2), it is evident that he had not seen the accused, Shivraj Singh, Mangal Singh and Harpal Singh murdering the deceased Sukhpal @ Munna. He only heard about the incident. He stated that the murder of Sukhpal @ Munna, had been done by the accused persons present in the Court. I am stating this fact solely on the basis of hearsay facts.

48. From a perusal and analysis of the evidence of Raj Kunwar Singh (PW-2), it is evident that he did not witness the commission of the alleged crime by the accused, Shivraj Singh, Mangal Singh and Harpal Singh named in the written report (Exhibit Ka-1). He only saw them interacting with the deceased, Sukhpal @ Munna, on 14.10.1998. The statements of this witness are doubtful, suspicious, and appear to be fabricated and concocted. During cross-examination, he admitted that his evidence is based on hearsay, derived from what he heard from others.

49. Thus, from a perusal of the evidence of Raj Kunwar Singh (PW-2), it is clear that his testimony is based on hearsay facts and cannot be relied upon according to settled principles of the law of evidence. In this respect, the prosecution derives no support from the evidence of this hearsay witness. The testimony of this witness has not inspired any confidence. It is highly doubtful and suspicious and therefore, wholly unreliable.

50. From a perusal of the evidence of Jawahar Singh (PW-3), son of Lakhan Singh, as deposed by this witness in Court, we find that this witness, after the alleged incident, had seen the dead body of the deceased Sukhpal @ Munna, in the *Laccho's* field of *Beri Gaon* and identified the dead body. According to this witness, after hearing about the incident, the family members of the deceased Sukhpal @ Munna had gone to the place of occurrence. According to this witness, on the date of the incident, the accused, Shivraj, Harpal and Mangal, named in the written report (Exhibit Ka-1), had not met him on the way. This witness became hostile and denied any involvement of the named accused in the present case.

51. However, during the course of his cross-examination by the defence, PW-3 stated that later he came to know that Munna had illicit relationship with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash. Due to the alleged illicit relations, the appellants, namely, Om Prakash, Beniram, Bhanwar Singh and Kaptan Singh have enmity with the deceased Munna. He further stated that, due to said enmity, the appellants had murdered the deceased Sukhpal @ Munna, the brother-in-law of this witness and had thrown the dead body in the field of *Laccho*.

52. Thus, from the evidence of this witness, it clearly emerges that he did not give any evidence against the accused, Harpal Singh, Mangal Singh and Shivraj Singh, named in the written report (Exhibit Ka-1). However, on the basis of hearsay i.e., rumors prevalent in the village, the witness expressed doubt and suspicion against the appellants, namely, Om Prakash, Beniram, Bhanwar Singh, and Kaptan Singh, alleging that they had killed the deceased Sukhpal @ Munna because the deceased had illicit relations with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash, residents of *Nagla Mohana*. This witness, however, had not seen any direct facts or circumstances regarding such alleged relations and only expressed suspicion against the appellants based on hearsay facts.

53. This witness has also not seen the commission of the crime by the appellants with his own eyes and has deposed against them solely on the basis of hearsay facts. Thus, from a perusal of the evidence as discussed and analyzed above, it is clear that there is no relevance or reliability in the testimony of this witness, as it is based entirely on facts and statements heard and known by others. Accordingly, we find that the evidence of this witness is not reliable and cannot support the prosecution’s case.

54. The prosecution adduced Dharam Pal Singh as PW-4. This witness is also the cousin of the deceased Sukhpal @ Munna. From a perusal of the evidence of this witness, it is clear that this witness stated that he had

not seen accused, Shivraj Singh, Mangal Singh and Harpal Singh, named in the written report (Exhibit Ka-1), interacting with the deceased Sukhpal @ Munna. This witness has not supported the prosecution version and turned hostile.

55. During cross-examination by the defence, PW-4 stated that it is true that the deceased Sukhpal @ Munna, was a characterless man. He used to sleep in the village *Nagla Mohana* and he had illicit relations with Savitri, daughter of Om Prakash and Chandravati, wife of Hari Singh. The CBCID re-investigated the case and after completing the investigation, filed charge-sheets against the appellants, namely, Om Prakash, Beniram, Bhanwar Singh and Kaptan Singh and did not file charge-sheet against accused, Shivraj Singh, Mangal Singh and Harpal Singh, named in the written report (Exhibit Ka-1). According to this witness, the sniffer dogs had went and stopped at the houses of the appellants, namely, Om Prakash, Beniram, Bhanwar Singh and Kaptan Singh. The murder of the deceased Sukhpal @ Munna had been committed by the appellants.

56. Thus, from a perusal of the evidence of PW-4, it is clear that he did not see the commission of the alleged crime with his own eyes. Instead, on the basis of the so-called, unproven, and unseen illicit relationship of deceased Sukhpal @ Munna with the aforementioned ladies, this witness expresses the opinion that the appellants may have committed the murder. From a perusal of the evidence of Dharam Pal Singh (PW-4), it is further evident that this witness is stating the involvement of the appellants in the present case solely on the basis of hearsay evidence i.e., information he received from other persons. Thus, we find no relevance in the evidence of this witness. His testimony lacks trustworthiness and credibility, rendering the entire evidence unreliable. Consequently, the prosecution derives no support from the evidence of this witness.

57. Among the second set of witnesses produced by the prosecution in support of its case, Mahaveer Singh has been adduced as PW-5. From

the evidence of this witness, it has emerged that this witness has not stated against accused, Shivraj Singh, Mangal Singh and Harpal Singh, named in the written report (Exhibit Ka-1), and has not supported the prosecution story. Hence, this witness was also declared hostile.

58. However, in his cross-examination, PW-5 also stated the same facts and story as narrated and stated by Dharam Pal Singh (PW-4), that the deceased Sukhpal @ Munna, was a characterless man, who had illicit relations with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash, residents of the village *Nagla Mohana*. According to this witness, sniffer dogs had gone up to the houses of the appellants, namely, Beniram, Kaptan Singh, Om Prakash and Bhanwar Singh, situated at *Nagla Mohana*. According to this witness also, there is party bandi in the village, due to which Harbhan Singh (PW-1) had lodged a false first information report against accused, Shivraj Singh, Mangal Singh and Harpal Singh. However, due to opposition of the villagers, the CBCID had re-investigated the case, and after completing the investigation, the CBCID had charge-sheeted the appellants.

59. According to PW-5, the murder of Sukhpal @ Munna had not been committed by accused, Shivraj Singh, Mangal Singh and Harpal Singh, named in the written report (Exhibit Ka-1), but had been committed by the appellants, namely, Om Prakash, Beniram, Kaptan Singh and Bhanwar Singh. Thus, from a perusal of the evidence of this witness, it has emerged that this witness, on the basis of the so-called illicit relationship of the deceased Sukhpal @ Munna with the abovementioned ladies, and also on the ground that the sniffer dog had gone up to the houses of the appellants, expressed his view that the murder of the deceased Sukhpal @ Munna had been committed by the appellants. However, this witness has also not seen the alleged incident with his own eyes, as he was not present at the place of occurrence at the time of the incident.

60. From the evidence of this witness, it becomes clear that this witness is also deposing in the Court against the appellants only on the

basis of hearsay facts and rumours prevalent in the village. Thus, we find no truth or creditworthiness in the evidence of this witness. The evidence of this witness is also found to be unreliable and not creditworthy.

61. In this way, from a perusal of the evidence of all the prosecution witnesses adduced in support of the prosecution case, it is clear that the prosecution projected two versions of the case. First, in the written report (Exhibit Ka-1), Shivraj Singh, Mangal Singh, and Harpal were named as accused persons. Subsequently, the villagers of Bisalpur submitted a joint application before the Superintendent of Police, Agra for fair and impartial investigation. Thereafter, the CBCID re-investigated the matter. However, earlier, a charge-sheet had been filed against the accused, Shivraj Singh and Mangal Singh by the Investigating Officer, and the investigation remained pending against Harpal Singh. Before the framing of charges by the Trial Court, the CBCID rejected the earlier charge-sheet filed against the accused, Shivraj Singh and Mangal Singh, named in the written report (Exhibit Ka-1), and filed a charge-sheet against the present appellants, namely, Om Prakash, Beniram, Bhanwar Singh and Kaptan Singh, for the commission of the alleged crime. The second prosecution story, as projected by the prosecution itself is that the appellants committed the murder of the deceased Sukhpal @ Munna due to the alleged illicit relations of the deceased with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash.

62. From a perusal of the record of the Trial Court, it is revealed that after the submission of the charge-sheets by the CBCID against the appellants, namely, Beniram, Bhanwar Singh, Om Prakash and Kaptan Singh, when the evidence of Harbhan Singh (PW-1), Rajendra Singh (PW-2), Lal Singh (PW-3) and Mohan Singh (PW-4) had been recorded, then applications under Section 319 Cr.P.C. were filed against the accused, Shivraj Singh, Mangal Singh, and Harpal Singh, named in the written report (Exhibit Ka-1). These applications were filed on behalf of the informant Harbhan Singh (PW-1) and a Senior Prosecution Officer of the CBCID, praying for summoning the above persons as accused to face trial. Accused, Shivraj Singh, Mangal Singh, and Harpal Singh were

summoned by the Trial Court to face trial under Section 302/34 IPC *vide* order dated 06.07.2009.

63. From the record, it is also apparent that the accused Shivraj Singh, Mangal Singh, and Harpal Singh filed Application No. 124-B for the separation of their trial. Thereafter, the then Presiding Officer, vide order dated 27.01.2014, separated their trial as Sessions Trial No. 1144-A of 2007 (State v. Shivraj Singh and others) under Section 302 of the IPC. After the trial, on 30.01.2014, the accused Shivraj Singh, Mangal Singh, and Harpal Singh, named in the written report (Exhibit Ka-1), were acquitted of the alleged charges. However, the learned Additional Sessions Judge, Court No. 15, Agra, who delivered the impugned judgment and order dated 13.01.2020, adversely commented on the separation of the trial on page 5, in the last lines of the impugned judgment and order dated 13.01.2020.

64. Thus, the prosecution itself projected two prosecution stories in this case. From the above facts, it is evident that the prosecution is not clear about its own case and appears to be confused between the two prosecution stories. Regarding the two sets of accused persons, the first set, as mentioned in the written report (Exhibit Ka-1), comprises Shivraj Singh, Mangal Singh and Harpal Singh, while the second set, according to the second prosecution story, comprises the appellants, namely, Beniram, Bhanwar Singh, Kaptan Singh and Om Prakash, who were charge-sheeted by the CBCID. Therefore, this is a very peculiar case presented by the prosecution, in which there are two prosecution stories against two sets of accused persons, one named in the written report (Exhibit Ka-1) and the second charge-sheeted by the CBCID. Thus, the prosecution itself is not clear and certain as to which prosecution story, and against which set of accused persons, it is adducing evidence.

65. From a perusal of the evidence of all the prosecution witnesses, it is evident that the informant Harbhan Singh (PW-1) is still giving so-called doubtful evidence against the accused Shivraj Singh, Mangal Singh and Harpal Singh, named in the written report (Exhibit Ka-1),

despite the fact that the CBCID, after reinvestigation of the case, rejected the first charge-sheet filed against the accused named in the written report (Exhibit Ka-1). Thereafter, the Presiding Officer (not the Presiding Officer who delivered the impugned judgment dated 13.01.2020) of the Trial Court separated the trial of the accused persons named in the written report (Exhibit Ka-1) and acquitted them of the charges.

66. Rajendra Singh (PW-2), in opposition to and against the doubtful evidence of the informant Harbhan Singh (PW-1), has given evidence on a hearsay basis against the appellants, namely, Om Prakash, Beniram, Kaptan Singh and Bhanwar Singh, based on so-called rumors prevalent in the village that the deceased Sukhpal @ Munna had illicit relations with Chandravati, wife of Hari Singh, and Savitri, daughter of Om Prakash. Similarly, Lal Singh (PW-3), indirectly, on the basis of rumors and suspicion regarding the illicit relationship of the deceased Sukhpal @ Munna with the aforementioned two ladies, expressed doubt and suspicion against the appellants, but also submitted that some unknown persons may have killed the deceased. This fact is also written in the application (Exhibit Ka-2), which was submitted to the Superintendent of Police, Agra, for a fair and impartial investigation. Mohan Singh (PW-4) also exonerated the accused Shivraj Singh, Harpal Singh, and Mangal Singh, named in the written report (Exhibit Ka-1), from the alleged crime, and expressed his suspicion against the appellants based on the opinion of the crowd gathered at the place of occurrence, that the appellants had committed the murder of the deceased Sukhpal @ Munna due to the alleged illicit relations with Chandravati, wife of Hari Singh and Savitri, daughter of Om Prakash.

67. Ajay Pal Singh (PW-5) has not supported the prosecution story against any set of accused persons in his evidence. Dharam Pal Singh (PW-6) has also not supported the prosecution case, has not given any evidence against the appellants, and was declared hostile, clearly stating that no incident had occurred in his presence. Prosecution witness Ranjeet (PW-9) has given suspicious and doubtful evidence against the

appellants, based on rumours and so-called tracking of sniffer dog reaching the houses of the appellants. Gopal Singh (PW-12) has not supported the prosecution story and was declared hostile. This witness has also not implicated any set of accused persons in the commission of the alleged crime.

68. Among the second set of prosecution witnesses adduced in support of its case, Jawahar Singh (PW-1), son of Bhagwan Singh, has not given any evidence against the accused persons named in the written report (Exhibit Ka-1) and stated that the sniffer dogs, after smelling the clothes of the deceased, went up to the houses of the appellants, namely, Beniram, Kaptan Singh, Om Prakash and Bhanwar Singh, situated in the village *Nagla Mohana*. Raj Kunwar Singh (PW-2) has given evidence only on the basis of hearsay facts against the first set of accused Shivraj Singh, Harpal Singh and Mangal Singh, named in the written report (Exhibit Ka-1). Jawahar Singh (PW-3), son of Lakhan Singh, has clearly exonerated the first set of accused Harpal Singh, Mangal Singh and Shivraj Singh, named in the written report (Exhibit Ka-1), and only expressed doubt that, due to the so-called illicit relationship of the deceased Sukhpal @ Munna with Chandravati, wife of Hari Singh, and Savitri, daughter of Om Prakash, the appellants had murdered the deceased Sukhpal @ Munna and threw the dead body in *Laccho's* field.

69. Dharam Pal Singh (PW-5) exonerated the first set of accused, Shivraj Singh, Mangal Singh and Harpal Singh, named in the written report (Exhibit Ka-1), and turned hostile. He stated that the sniffer dogs had stopped at the houses of the appellants, namely, Om Prakash, Beniram, Kaptan Singh and Bhanwar Singh, and on that basis, stated that the appellants had murdered the deceased Sukhpal @ Munna. Mahaveer Singh (PW-6) similarly exonerated the accused named in the written report (Exhibit Ka-1) and turned hostile. He also, on the basis that the sniffer dog, after smelling the dead body and clothes of the deceased, reached the houses of the appellants, stated that the appellants had committed the murder of the deceased Sukhpal @ Munna.

70. Therefore, from the above analysis and discussion of all the evidence of the prosecution witnesses, it is evident that the prosecution itself is not clear as to against which set of accused persons it is adducing evidence, whether the evidence is against the persons named as accused in the written report (Exhibit Ka-1) or against the appellants. Some of the prosecution witnesses exonerated the accused persons named in the written report (Exhibit Ka-1) and, on the basis of suspicion, doubt, or hearsay, expressed their doubt against the present appellants. Conversely, some of the prosecution witnesses exonerated the appellants and implicated the persons named in the written report (Exhibit Ka-1) on the basis of their suspicions and doubt. Hence, the prosecution is found to be confused and has no clear idea about the accused persons against whom it is prosecuting the case and adducing evidence.

71. From the above discussion of the evidence of all the prosecution witnesses, it clearly emerges that those who implicate the appellants in the commission of the alleged crime, do so, on the basis of hearsay evidence and rumours prevalent in the village regarding the alleged illicit relations of the deceased Sukhpal @ Munna. They have also expressed suspicion against the appellants on the ground that the sniffer dogs had reached the appellants' houses. However, a perusal of the record, as well as the statements of the prosecution witnesses, reveals that there is no report or document on record to establish that the sniffer dogs had, in fact, reached the appellants' houses. Thus, there is no report about the proceeding of sniffer dog.

72. In our opinion, there must be a reliable and complete record of the exact manner in which tracking was done in the *Panchnama*. The dog tracking evidence will have to be clear and complete, properly proved and supported by the evidence of the handler. There must be no discrepancy between the version as recorded in the *Panchnama* and the evidence of the handler as deposed before the Court. The handler's evidence will have to pass the test of cross-examination independently.

73. However, in the present case, there is no document or report regarding the movements of the sniffer dogs from the place where the dead body of the deceased Sukhpal @ Munna was found, nor is there any record to show that, after smelling the dead body or clothes of the deceased, the sniffer dog reached and stopped at the houses of the appellants. The handler of the sniffer dogs has also not been examined as a prosecution witness before the Court. In view of the above facts and circumstances of the case, the so-called evidence of the sniffer dogs, as stated by the prosecution witnesses in their testimony, cannot be relied upon as evidence against the appellants for the commission of the alleged crime.

74. The Suprme Court in ***Gade Lakshmi Mangaraju alias Ramesh v. State of A.P.*; (2001) 6 SCC 205** has held:

> *"There are inherent frailties in the evidence based on sniffer or tracker dogs. The possibility of an error on the part of the dog or its master is the first among them. The possibility of misunderstanding between the dog and its master is close to its heels. The possibility of a misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out. Last, but not the least, is the fact that from a scientific point of view, there is little knowledge and much uncertainty as to the precise faculties which enable police dogs to track and identify criminals. Police dogs engage in these actions by virtue of instincts and also by the training imparted to them. Criminal courts need not bother much about such evidence based on sniffer dogs, although the investigating agency can employ such sniffer dogs for helping the investigation to track down criminals. Investigating exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them."*

75. However, upon examining the findings and reasoning recorded by the Trial Court while convicting the appellants, we find that, only upon the evidence of prosecution witnesses Rajendra Singh (PW-2), Lal Singh (PW-3), Mohan Singh (PW-4) and Ranjeet Singh (PW-9), the Trial Court held the appellants guilty and convicted them for the alleged murder of the deceased Sukhpal @ Munna, solely on the basis of hearsay evidence. The said prosecution witnesses have stated that the deceased had illicit relations with Chandrawati, wife of Hari Singh and Savitri, daughter of Om Prakash. However, these prosecution witnesses themselves admitted in their testimonies that they had merely heard, as part of village rumours, that the deceased Sukhpal @ Munna, had such illicit relations.

This clearly indicates that the Trial Court relied upon hearsay evidence, which was not proved by the prosecution beyond reasonable doubt through cogent and reliable evidence, to conclude that the deceased had illicit relations with the aforementioned ladies and that, on account of which, the appellants committed his murder.

76. Thus, only on the ground of hearsay evidence, rumours prevalent in the village, doubt and suspicion, the Trial Court by misreading and misappreciating the prosecution evidence, wrongly held the appellants guilty for the commission of the alleged crime, which is, in our considered view, against the settled principles of law that no accused person can be convicted and held guilty only on the basis of hearsay evidence, which is based on suspicion and rumor. For the conviction of any person in any crime, strong and irrefutable evidence beyond reasonable doubt must be adduced by the prosecution. Therefore, we are totally in disagreement with the findings and reasoning given by the Trial Court. It appears that the Trial Court, only on the ground of suspicion and doubt as expressed by the prosecution witnesses about the illicit relations of the deceased Sukhpal @ Munna, held the appellants guilty and convicted them for the alleged crime.

77. The Supreme Court in ***Sujit Biswas v. State of Assam*; (2013) 12 SCC 406** has held in para-13 as under:

> "***13.*** *Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be*

given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

78. The Supreme Court recently in ***State of Odisha v. Banabihari Mohapatra And Another*; (2021) 15 SCC 268** has held:

"It is well settled by a plethora of judicial pronouncement of this Court that suspicion, however strong cannot take place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt."

79. Thus, in light of the above discussions and analysis, we find that the impugned judgment and order dated 13.01.2020 passed by the learned Additional Sessions Judge, Court No. 15, Agra, is not sustainable in the eyes of law and is liable to be set aside.

80. Accordingly, the impugned judgment and order of conviction and sentence dated 13.01.2020, passed by the learned Additional Sessions Judge, Court No. 15, Agra, in Sessions Trial No. 1144 of 2007, *State v. Beni Ram and Others* (arising out of Case Crime No. 178 of 1998), under Section 302/34 IPC, Police Station Kagarol, District Agra, is hereby **set aside**. Consequently, both the criminal appeals are ***allowed***.

81. The appellants, namely, **Bhanwar Singh, Beniram, Kaptan Singh** and **Om Prakash**, are on bail. Their bail bonds stand cancelled and sureties discharged.

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

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

July 01, 2026
Aditya

Digitally signed by :-
ADITYA KUSHWAHA
High Court of Judicature at Allahabad