2026:AHC-LKO:36609-DB

Reserved on 25.03.2026

Delivered on 21.05.2026

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL APPEAL No. - 163 of 1993

Shakir Ali

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Virendra Bhatia, Afaq Zaki Khan, Ali Yawar, Ashish Raman Mishra, Mohammad Sayeed
Counsel for Respondent(s)	:	Ashok Kumar Verma, Subodh K . Shukla

HON'BLE RAJNISH KUMAR, J.

HON'BLE MRS. BABITA RANI, J.

(Per: Hon'ble Mrs. Babita Rani, J.)

1. Heard, Shri Afaq Zaki Khan, learned counsel for the appellant, learned A.G.A. for the State and Shri Ravi Kant Pandey, Advocate assisted by Shri Ashok Kumar Verma, learned counsel for the complainant.

2. The present appeal has been filed against the judgment and order dated 31.03.1993 passed by Sessions Judge, Bahraich in Sessions Trial No. 78 of 1990 convicting the appellant under Section 302 of the Indian Penal Code ('**IPC**') and sentencing him to undergo rigorous imprisonment for life and further convicting him under Section 394 of IPC and sentencing him to undergo 7 years of rigorous imprisonment and further convicting him under Section 307 of IPC and sentencing him to undergo 5 years of rigorous imprisonment, with all the sentences being directed to run concurrently.

FACTUAL MATRIX OF THE CASE

3. For the sake of convenience, the parties shall be referred as per their original nomenclature as given at the time of trial.

4. The prosecution story as unfolded is that on 16.09.1989, at around 5:00 AM, the complainant's wife, namely Shanti Devi, and daughter, namely Gayatri Devi, had gone to the field situated on the northern side of their house to answer the nature's call, where accused Shakir Ali, Mohd. Sharif and Deshraj tried to snatch the nose-ring from Shanti Devi. In protest, the wife and daughter of the complainant started raising noise and giving them fight, due to which accused Shakir Ali stabbed Shanti Devi in the stomach while snatching the nose-ring and further chased and stabbed PW2 Gayatri Devi. Hearing the hue and cry, the complainant along with Mishrilal, Budhram, PW3 Hardwar and many other of the village came to the field and seeing them approaching to the place of scene, the accused ran away with their weapons and nose-ring. Shanti Devi died as a result of the stab wounds and PW2 Gayatri Devi was badly injured.

5. Shiv Shankar (PW7) also reached on the spot and wrote the tahrir Ex. Ka.1. under the dictation of complainant PW1 and same was signed by PW1. With the tahrir, injured was carried by PW1 complainant to the police station on rickshaw, where the first information report (Exhibit Ka.3) was registered on the same day at 8:35 a.m. under Sections 394/302/307 of IPC and same was entered into the general diary (Ex. Ka.4). The investigation of the case was conducted by PW8 SHO Yogendra Singh, who went to the scene of occurrence along with Sub-Inspector Surendra Nath Tripathi. The panchnama, challan of the dead body, site map and other documents, bearing Ex. Ka.7 – Ex. Ka.12, were prepared by the Sub Inspector S.N. Tripathi. He also collected the blood stained and plain earth vide recovery memo Ex. Ka.13 and one pair of shoes vide recovery memo Ex. Ka.14 from place of occurrence. Accused Shakir Ali and Mohd. Sharif were arrested on 21.09.1989 and at the instance of Shakir Ali, blood stained knife and clothes were recovered on the same day from the field of the accused Shakir Ali in village Shivpur vide recovery memo Ex. Ka.6, having been prepared on the spot in presence of witnesses and same was seized and sealed and sent to FSL for chemical examination. After completion of required formalities and conclusion of the investigation and on the basis of incriminatory evidence found against accused Shakir Ali, Mohd. Sharif and Deshraj, a chargesheet Ex. Ka.16 was prepared under Sections 302, 394 and 307 of IPC and submitted before the court.

6. Thereafter, the learned Magistrate took cognizance of the case and committed the case for trial to the court of Sessions. The learned trial court framed charges against accused namely Shakir Ali, Mohd. Sharif and Deshraj, under Sections 394, 302 read with Section 34 and Section 307 read with Section 34 of IPC, to which they pleaded not guilty and claimed trial.

During the course of trial, the prosecution examined as many as 8 witnesses and closed the evidence.

7. In order to properly appreciate the evidence and the circumstances which were arrayed against the accused, it may be apposite to have a brief resume of the evidence led by the prosecution. PW1 Maharaj Deen (complainant) stated that on the day of occurrence, his wife and daughter had gone out in the field at around 5:00 a.m. for nature's call, when accused tried to snatch his wife's nose-ring. Accused Shakir was carrying a knife and accused Deshraj and Mohd Sharif were carrying lathis. When the women raised alarm on being attacked, he along with Mishrilal, Malti Prasad, PW3 Hardwar and others came to the field. PW1 claimed to have seen accused Shakir stabbing his daughter PW2 Gayatri Devi. He, thereafter, took his injured daughter to the police station and submitted complaint Ex. Ka.1, on the basis of which the FIR was registered and subsequently, PW2 was sent to the Nanpara Hospital. PW1 stated that his wife and daughter used to go to the fields early morning to relieve themselves. He further stated that they had no prior enmity with the accused and he had informed the police that only Shakir Ali was carrying a knife and other two accused were carrying lathis but the police did not record the same for reasons best known to them.

8. PW2 Gayatri Devi also corroborated the testimony of her father and stated that accused Shakir Ali had stabbed her mother and then chased and stabbed her too while the other two accused were carrying lathis and standing guard. She said that Mishrilal and PW3 Hardwar had witnessed the entire incident, while her father and Budhram had seen the accused attacking her. She stated that she was taken to the police station and then to Nanpara Hospital where doctor was not available and so the police took her to Bahraich hospital.

9. PW3 Hardwar (eyewitness) stated that on the alleged day of incident, at around 5:00 AM in the morning, he was returning from the fields after nature's call and he saw accused Shakir Ali stabbing the deceased Shanti Devi while accused Mohd Sharif alias Patraku and Deshraj were holding lathis. He corroborated the testimony of PW1 and PW2 of snatching the nose-ring of Shanti Devi and on raising noise, chase of PW2 and thereafter stabbing her too severely. In addition, this witness also denied having any prior enmity or dispute with the accused.

10. PW4 Dr. A.N. Rai had prepared the injury report of PW2 and he stated that the injuries of Gayatri Devi (PW2) were serious in nature and thus she was referred to a surgeon. He confirmed that the incident could have taken place on 16.09.1989 at around 5:00 AM as alleged. While preparing the medical report Ex. Ka.2, he found following injuries on her person:

(1) Incised wound (10x3) cm x muscle deep on the left side neck 1 cm behind the left ear.

(2) Incised wound (5x2) cm x muscle deep on the left side neck just below the mandible.

(3) Incised wound (3x1) cm x skull deep on the left side face 1 cm below the left ear lobule.

(4) Incised wound (1.5x0.5) cm skin deep on the back of left palm 2 cm below the wrist joint.

(5) Abrasion (2.5x0.5) cm the outer aspect of left forearm 2 cm above of left wrist joint.

(6) Incised wound (2x0.5) cm x muscle deep on the front of distal phalynx of left ring finger adv. X-ray.

(7) Incised wound (1.5x0.5) cm x skin deep on the front of middle phalanx of left middle finger.

(8) Incised wound (2x1) cm x depth not Probed on the left side abdomen adjacent to mid line 8 cm above the umbilicus at 12'0 clock position.

(9) Incised wound (3x1) cm x depth not probed omentum is protruded on the right side of abdomen. 4 cm away from umbilicus at 10' clock position.

11. PW5 Head Constable Shyam Sunder Shukla stated that he was posted at the Nanpara police station on 16.09.1989 and at around 8:35 AM, complainant PW1 had reached the police station and submitted his complaint Ex. Ka.1 on the basis of which FIR Ex. Ka.3 was prepared.

12. PW6 Dr Vimal Kumar had conducted the post mortem of deceased Shanti Devi on 17.09.1989 and opined the time of the death around 1.5 days old and at around 5:00 AM on 16.09.1989. Cause of death was recorded due to blood loss and heamorrhage and shock as a result of ante-mortem injuries. He proved the post mortem report Ex. Ka.5 of deceased Shanti Devi to be in his own handwriting disclosing the following ante-mortem injuries:

(1) Incised wound 7cm x 3cm x abdominal cavity deep on upper part left side abdomen 11 cm above umbilicus. Rest of stomach & large bowel coming out through this wound.

(2) stab wound 2cm x 1cm x pleura cavity deep on outer aspect of

left side chest 9 cm below axilla.

(3) stab wound 2cm x 1cm x left plural cavity on left side back 2 cm below lower angle of right scapula.

(4) stab wound 2cm x 1cm x bone deep on outer aspect of upper part of left thigh 11 cm below upper border of left hip bone.

(5) Stab wound 2.5cm x 1cm x abdominal cavity deep on the right back 8 cm above upper border of right hip bone.

(6) Incised wound 1cm x 0.3 cm x subcutaneous tissue deep on the tip of Rt thumb.

(7) Incised wound 1cm x 0.3 cm x subcutaneous tissue deep on front of distal third of ring finger of right hand.

13. PW7 Shiv Shankar Lal is the writer of the complaint who wrote the complaint / tahrir at the dictation of PW1 complainant. In addition to it, he also has been a witness to the recovery of knife, recovered on pointing of accused Shakir Ali vide recovery memo Ex. Ka.6.

14. PW8 Yogendra Singh SHO was entrusted with the investigation of the case, who visited the site of incident and prepared site plan Ex. Ka.12 same day. Furthermore, he conducted the inquest proceedings including nominating punch witnesses and preparing panchnama, challan and other relevant documents and sent the body for post mortem in a sealed cover. Moreover, he collected blood stained and plain earth, pair of plastic shoes from the scene. He recorded the disclosure and got recovered the blood stained knife on pointing out of accused Shakir Ali in presence of witnesses vide recovery memo Ex. Ka.6 and after concluding the investigation, filed chargesheet.

15. The statements of accused were recorded under Section 313 of Code of Criminal Procedure, 1973 (hereinafter referred to as '***CrPC***' for brevity). They pleaded false implication due to prior enmity and claimed themselves to be innocent. Despite being provided opportunity of leading evidence, the accused did not furnish any evidence in their defence and accordingly, their opportunity of leading evidence was closed.

16. After considering the statements of the witnesses and evidence brought on record, the learned trial court acquitted the accused Mohd. Sharif alias Patraku and Deshraj from the charges under sections 302/34, 307/34 and Section 394 of IPC, while convicting accused Shakir Ali for the offence under Sections 302/307 and 394 of IPC. It is worthwhile to mention here that

no appeal has been filed challenging the acquittal of accused Mohd. Sharif alias Patraku and Deshraj.

CONTENTION RAISED BY PARTIES

17. Raising challenge to the impugned order and judgment, learned counsel for the appellant vehemently argued that learned trial court had ignored several material lacunas in the case of prosecution, which had rendered the prosecution story highly improbable and doubtful. The trial court had committed grave and material error in holding that there was no inordinate or unexplained delay in lodging the FIR and the learned trial court failed to appreciate that the material witnesses have failed to explain the delay in a reasonable manner. It is further pointed out that though PW2 is said to be an injured witness, yet her testimony is not worthy of credit and the learned trial court erred in relying upon her evidence and convicting the accused on the basis of the prosecution witnesses. In fact, PW2 has deposed a contradictory statement before the court and deviated from her statement recorded by the Magistrate, wherein she had assigned the act of snatching to Shakir Ali, while in the court, she has alleged the act of snatching of nose-ring against all. The prosecution had not examined the SDM, who recorded the statement of PW2, which is contended to have further weakened the case of the prosecution. Furthermore, the accused has assailed the evidence of PW1 on the ground that his presence has not been established on record and he himself has admitted that he did not see the accused causing injury to his wife and only reached on spot after hearing hue and cry. The presence of PW1 is also doubtful as he himself has admitted in his cross-examination that tahrir was written by PW7 on the dictation of persons, who had approached the spot upon hearing the noise and cry of the victims.

18. Further contention of learned counsel for the accused is that PW3 has stated that it was he, who supplied the information to PW1 that his wife has died and therefore, the evidence of PW1 that he was present on spot and saw the incident is neither reliable nor acceptable. So far as PW3 is concerned, his testimony was also assailed on the ground that he is a family member of PW1 and hence being related witness, his testimony must have been appreciated with great care and caution, but learned trial court has ignored the settled law while recording the conviction of accused.

19. The impugned judgement has also been challenged by the appellant accused on the ground that some unknown person had committed the incident and the accused were falsely implicated due to the prior enmity. It was emphasised that incident had taken place at 5 a.m. and certainly in the darkness, and in absence of any provision or source of light, identity of

accused could not be established beyond reasonable doubt, and hence accused ought to have been given the benefit of doubt on this score only. Further contention is that motive of committing the offence is shown as snatching of the nose-ring from Shanti Devi, but no injury has been found on her nose. Had there been any such offence committed as alleged, then there would have been some injury of snatching, which clearly articulates that no such snatching incident ever happened. The accused did not have any criminal history and in the absence of any motive, it is highly incomprehensible as to why the accused would kill the deceased only for a nose-ring. Hence, the conviction of the accused appellant under Section 394 of IPC is liable to set aside on the ground that the nose-ring which is alleged to have been robbed was never recovered and there was no injury on the nose of the deceased. Lastly, it was contended that since the co-accused Mohd. Sharif and Deshraj had been acquitted on the same set of evidence, his sole conviction could not have been sustained. With these broad submissions, it was argued that impugned judgement is liable to set aside and appeal filed by accused deserves to be allowed and accused be acquitted of the charges.

20. Per contra, learned AGA for the respondent-State vociferously defended the impugned order and judgment and stated that the learned Trial Court has passed a well-reasoned order which does not suffer from any illegality and thus, warrants no interference at the appellate stage.

POINTS OF DETERMINATION AS EMERGED AND FORMULATED

21. Upon perusal of the contentions advanced by both the parties, the testimony of the witnesses, the impugned judgment and other evidence available on record, the following issues emerge for consideration:

> *I. Whether learned trial Court erred in relying upon the testimonies of the prosecution eye-witnesses and failed to appreciate the discrepancies in their versions?*
>
> *II. Whether the learned Trial Court erred in convicting the accused on appreciation of the evidence available on record particularly when the other accused were acquitted on the basis of the same material?*
>
> *III. Whether the learned trial Court erred in convicting the accused in the absence of any reliable motive having been established by the prosecution?*

ANSWERS TO HEREINABOVE FORMULATED ISSUES

ISSUE NO.I

22. Before proceeding to pen down the answer to issue No.I, we deem it apposite to mention here that apart from the eye-witnesses, an injured eye witness PW2 of the incident has also been examined, who suffered fatal injuries in the incident and was under treatment for several days. Therefore, statement of this witness is of great value. However, before the appreciation of evidence of injured witness, it would be beneficial to refer to certain judicial pronouncements enunciating the general principles pertaining to the admissibility and relevance of testimony of injured.

23. In ***Abdul Sayeed v. State of M.P.; (2010) 10 SCC 259***, the Hon'ble Supreme Court made the following observations:

> "***28.*** *The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."*

24. In ***Brahm Swaroop & Anr vs State Of U.P; (2011) 6 SCC 288***, the Hon'ble Supreme Court made the following observations:

> "***26.*** *Merely because the witnesses were closely related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that effects the credibility of a witness, more so, a relation would not conceal the actual culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence (Vide: Dalip Singh v. State of Punjab, AIR 1953 SC 364; Masalti v. State of U.P., AIR 1965 SC 202; Lehna v. State of Haryana, (2002) 3 SCC 76; and Rizan v. State of Chhattisgarh, (2003) 2 SCC 661).*
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> ***27.*** *Injured witness Attar Singh (PW.1) has been examined, his*

testimony cannot be discarded, as his presence on the spot cannot be doubted, particularly, in view of the fact that immediately after lodging of FIR, the injured witness had been medically examined without any loss of time on the same day. The injured witness had been put through a grueling cross-examination but nothing can be elicited to discredit his testimony."

(Emphasis added by court)

25. There is no dispute to the fact that PW2 was about 15 years at the time of the incident. She is an injured witness, who sustained serious injuries in the course of the occurrence. Thus, her evidence assumes great significance as her presence at the scene of occurrence at the relevant time is undisputed. It is also undisputed that she knew the accused persons and was familiar with their names and faces. Her testimony has been challenged on the ground of various discrepancies particularly between the statement given by her to the SDM during her treatment and her deposition during trial. Although, PW2 did not testify about the statement made to the SDM during the treatment at Hospital in her chief examination, but in cross-examination, she has admitted that her statement was recorded by the Sub-Divisional Magistrate during treatment in the hospital. As per prosecution, her statement is said to have been recorded by the SDM on 17.09.1989, i.e. on the next day of occurrence, in Bahraich hospital, whereas during cross-examination, she stated that her statement was recorded on fourth day of her treatment. Before the Sub-Divisional Magistrate, she had stated that all the three accused had attacked her mother with knives. However, in her testimony, PW2 parted with her earlier statement and alleged that only accused Shakir Ali had stabbed her and her mother and two other accused were only standing guard holding lathis. However, when PW2 was recalled she made some deviations from her previous version and stated that accused Deshraj and Mohd Sharif were holding her mother's nose and hand when accused Shakir Ali snatched her nose-ring, the learned trial court found this discrepancy enough to acquit Deshraj and Mohd. Sharif but convicted the appellant accused Shakir Ali and this has been the core argument of the appellant in challenging the impugned order and judgment.

26. The entire argument of the accused rests in the contradiction between previous statement of PW2 and her testimony before court and so, in such a case, it is essential to see whether the above argument finds any strength or whether the previous statement is proved on record. Statement recorded before any Judicial Magistrate and Executive Magistrate during the investigation is not a substantial piece of evidence in so far as the prosecution witnesses are concerned. It can be used to corroborate or

contradict their testimonies as per Section 145 of the Indian Evidence Act, 1872. The procedure in which the previous statement recorded during the investigation can be used for contradicting the witness during cross examination has been enumerated under Section 145 of the Indian Evidence Act, 1872 as follows:

> "***145.*** *A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."*

27. In the case of ***Alauddin v. State of Assam; 2024 SCC OnLine SC 760***, the Hon'ble Supreme Court made the following observations:

> "***9.*** *When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161 (1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161 (1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross- examination.*
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> *****
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> ***11.*** *Section 145 operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross- examined by asking whether*

his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross- examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

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13. *It must be noted here that every contradiction or omission is*

> *not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission depends upon the facts of each case. Whether an omission is a contradiction also depends on the facts of each individual case."*

28. In the backdrop of the case, it was found from the testimony of PW2 that she did not speak about her statement being recorded by the Executive Magistrate, during the chief-examination and it was only in the cross-examination, she admitted about the statement been recorded by the Magistrate. The statement of injured can be read as statement of Section 161 CrPC, at the most. Therefore, this omission cannot be a ground to discredit her evidence. We do not find any reason to give weightage to the trifling argument of defence that she got recorded her statement the very next day of incident, and contrary to that has stated that same was got recorded in hospital on 4th day of her treatment. The incident is alleged to have taken place on 16.09.1989 and the cross-examination took place on 25.04.1991, i.e. after more than one and a half year.

29. So far as argument of participation of accused in snatching the nose-ring is concerned, we cannot lose sight of the fact that PW2 was badly injured as apparent from a bare perusal of the injury report Ex. Ka.2 and she cannot be expected to recount exact details when giving her statement to the Magistrate on the very next day of the incident. She should have been provided an opportunity to explain the deviation in the witness box but the same was not done. Even otherwise, PW2 has not materially deviated from her statement made to the Magistrate.

30. We also take note of the fact that at the time of her deposition, she was found to be highly disturbed while recalling an incident where her mother had been killed and she sustained severe injuries, and in such circumstances, witness of ordinary prudence cannot be expected to give a complete minute account of the incident.

31. In this regard, it is apposite to refer to the judgment of the Hon'ble Supreme Court, in the case of ***Baban Shankar Daphal & Others v. State of Maharashtra; 2025 SCC OnLine SC 137***, wherein the Hon'ble Supreme Court made the following observations:

> "***35.*** *The Trial Court gave undue weight to minor discrepancies in*

the eyewitness accounts, such as variations in their descriptions of the sequence of events or the exact number of blows inflicted. It is a well-established principle of law that minor contradictions or inconsistencies in testimony do not necessarily render it unreliable, as long as the core facts remain intact. The role of the court is to discern the truth by considering the evidence in its totality and not by isolating individual inconsistencies to discredit an entire narrative. The Trial Court erred by focusing excessively on trivial discrepancies, thereby losing sight of the broader picture and the compelling evidence against the accused.

36. *The High Court appropriately invoked the principle that when direct evidence, such as eyewitness testimony, is credible and reliable, it must be given due weight unless there are compelling reasons to disbelieve it. In this case, the eyewitnesses were independent and had no motive to falsely implicate the accused. Their testimony was consistent with the overall circumstances of the case and was corroborated by the medical evidence."*

(Emphasis added by court)

32. In ***Birbal Nath v. State of Rajasthan & Others; (2024) 15 SCC 190***, the Hon'ble Supreme Court made the following observations regarding the effect of discrepancies on the witness testimonies:

"***22.*** *The contractions in the two statements may or may not be sufficient to discredit a witness. Section 145 read with Section 155 of the Evidence Act, have to be carefully applied in a given case. One cannot lose sight of the fact that PW-2 Rami is an injured eye witness, and being the wife of the deceased her presence in their agricultural field on the fateful day is natural. Her statement in her examination in chief gives detail of the incident and the precise role assigned to each of the assailants. This witness was put to a lengthy cross examination by the defence.*

23. *Some discrepancies invariably occur in such cases when we take into account the fact that this witness is a woman who resides in a village and is the wife of a farmer who tills his land and raises crops by his own hands. In other words, they are not big farmers. The rural setting, the degree of articulation of such a witness in a Court of Law are relevant considerations while evaluating the credibility of such a witness. Moreover, the*

lengthy cross examination of a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness.

24. *In Rammi v. State of M.P. (1999) 8 SCC 649, this Court had held as under: (SCC p. 656, para 24)*

> *"24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non- discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.*
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> *****
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> ***27.*** *The purpose of the cross examination of a witness in terms of Section 145 and 155 of the Evidence Act is to bring contradictions in the two statements of the witness, in the case at hand, one given to police under Section 161 Cr.PC., and the other given before the court. Even assuming for the sake of argument that there is a difference in the two statements of PW-2 as she evidently does not disclose in her examination-in-chief that Jethnath was also working in the adjacent field and there was altercation between the two, this may discredit the witness only so far as the beginning of the incident; how it started. The fact that the incident happened is not in doubt. The offenders were the accused is also not in doubt. There is no doubt that the incident took place, which resulted in one death and grievous injuries to another. It may not have happened exactly as narrated by PW-2, yet for this discrepancy the entire testimony of PW- 2 cannot be discarded."*
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> (Emphasis added by court)

33. PW2 consistently deposed about how and when the accused attacked the

deceased and on her person as well as about the nature of injuries that had been inflicted. The presence of PW2 at the scene of incident is not disputed as is evident from the injury report and from the testimony of eye-witnesses. PW2, who is said to be eye-witness and injured, has categorically stated that it was accused Shakir Ali who tried to snatch the nose-pin of her mother and when she opposed, he stabbed her, which resulted in her death, and when PW2 raised noise, he chased her and gave several knife blows on her body, putting her life in danger of death. Injuries on the person of PW2 were so severe that she was hospitalised for treatment for several days. In addition, she deposed that her mother was inflicted with 8 to 10 stab injuries while she was stabbed 7 to 8 times. In answer to the question regarding place of occurrence, PW2 stated that her mother was attacked on the place of occurrence, i.e. in the field itself, while she was given the knife blow near the western side of the house of Shyam Bihari. Despite lengthy and detailed cross examination, nothing adverse could be brought on record, which may falsify or discard the testimony regarding the complicity of accused Shakir Ali in commission of offence, rather, she has undertaken an impenetrable, intact and unchallenged evidence against accused Shakir Ali. Her evidence finds corroboration with the testimony of PW1 and independent witness PW3 as well as medical evidence available on record.

34. Elaborating on the reason of her being present at the place of occurrence on the relevant date and time, she stated that at about 5 AM, she along with her mother had gone in the fields for nature's call and found accused armed with weapons. Accused Shakir Ali tried to snatch the nose-ring from her mother, and when she resisted, she was given blows of knife viciously, leading her death. Thereafter, he looted her nose-ring and when PW2 raised hue and cry, she was chased and stabbed by Shakir Ali with the knife. In the meantime, PW1, PW3, and other villagers reached on the spot and challenged the accused, subsequent to which, the accused flee from the spot. Therefore, not only has she narrated the entire incident, but has explained the reason of her being present on the spot. In addition, it should not be out of place to mention that her statement finds corroboration from the medical evidence and recovery of blood stained knife used in commission of offence, which was recovered at the instance of accused Shakir Ali. Further, the recovered knife was sent to FSL for its chemical examination, in which human blood was found on the knife, which also stamps the genuineness of the prosecution version.

35. It is not disputed that PW2 was familiar with the accused and thus, could identify them. No motive has been alleged for PW2 to falsely implicate the accused appellant and the only ground on which her testimony is challenged

is the aforementioned discrepancy. The discrepancy in the statement of PW2 may create doubt about the exact role of the two accused, who had been acquitted by the learned trial court but there is no such discrepancy about the incident taking place and the involvement of the appellant accused in the commission of the offence. The statement of PW2 in the witness box as well as before the Executive Magistrate has been consistent in so far as the role of the appellant accused is concerned.

36. While we do not deem it apposite to discard the testimony of PW2 because of the minor discrepancies, we are also of the considered opinion that PW2 is a reliable witness.

37. Now, at this juncture, the circumstances of the natural presence of the eye-witnesses on the spot are to be seen by us. As discussed above, PW2 being injured and eye witness of the incident has proved her presence by her unfettered and unblemished testimony. So far as presence of PW1 is considered, his presence at the scene of occurrence has been assailed by the accused for two reasons, firstly, that he is a related witness and secondly, that PW3 has stated that PW1 complainant was informed by him about the incident. Now these argument are to be addressed in light of evidence available on record. Perusal of evidence of injured PW2 and eye-witness PW3 shows that these both witnesses have categorically stated that PW1 also reached on spot on hearing hue and cry. Needless to mention that PW1 also categorically deposed that at the time accused Shakir Ali was chasing and inflicting injuries to PW1, he had reached on the spot and found PW3 already there. The manner in which PW1 has narrated the entire episode and firmly undertaken the cross-examination left no doubt in our mind for his presence on the place of incident. Apart from his creditworthy evidence, not only his presence but the presence of PW3 finds corroboration from the first information report which was registered on the basis of tehrir written on his dictation as well as other eye-witnesses present on the spot. So far as the statement of PW3 to the extent that he informed PW1 about the incident and death of his wife on the spot is concerned, we do not find any illegality or perversity in the observation of the learned Trial Court in this regard. PW1 has deposed that he reached the spot after hearing the hue and cry while PW3 was already on the spot. From the evidence of PW1, PW3 as well as injured PW2, this fact is no longer disputed that when PW1 reached on spot, his wife had already been stabbed and PW2 injured Gayatri was being chased by the accused, who stabbed her also in front of his eyes. As PW3 was already on spot and witnessed the stabbing of deceased by accused, in such a case, if PW3 had informed PW1 about the stabbing of his wife by accused, then taking adverse inference from such statement is neither in

consonance of justice nor does it suffice to make the presence of PW1 or PW3 doubtful at the place of occurrence. We do not find any illegality in the finding recorded by the learned Trial Court regarding their natural presence on spot as well as reliability and admissibility of their evidence.

38. So far as argument of related witness is concerned, there is no dispute that PW1 is husband of deceased Shanti Devi and father of injured PW2 Gayatri Devi while PW3 is remote family member of PW1.

39. Law is very well settled with regard to the relevance of the testimony of the interested witness. In this regard, we may refer with benefit to the pronouncement of the Hon'ble Supreme Court in ***Dalip Singh And Others v. State Of Punjab***; reported in **(1953) 2 SCC 36**, wherein the Hon'ble Supreme Court observed that:

> "***24.*** *A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause' for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.*
>
> ***25.*** *This is not to say that in a given case a Judge for reasons special to that case and to that witness cannot say that he is not prepared to believe the witness because of his general unreliability, or for other reasons, unless he is corroborated. Of course, that can be done. But the basis for such a conclusion must rest on facts special to the particular instance and cannot be grounded on a supposedly general rule of prudence enjoined by law as in the case of accomplices.*"

40. In ***Vadivelu Thevar v. State of Madras***; reported in **(1957) 1 SCC 700,** the Hon'ble Supreme Court held that witnesses can broadly be classified into

three categories which are:

> "***18.*** *Generally speaking, oral testimony in this context may be classified into three categories, namely:*
>
> *(1) Wholly reliable.*
>
> *(2) Wholly unreliable.*
>
> *(3) Neither wholly reliable nor wholly unreliable*
>
> *In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.*
>
> ***19.*** *There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.*"

(Emphasis added by court)

41. It is not disputed that PW3 was a neighbor of the deceased and complainant and thus, it cannot be said that he was a chance witness who suddenly appeared at the scene of occurrence at the relevant time. He is not a chance witness and has given a valid reason of being present at the scene of occurrence. PW3 stated in his testimony that he was also returning from the field after relieving himself when he witnessed the accused stabbing the deceased. No reason has emerged to show why PW3 would depose in support of PW1 merely because of his acquaintance or relation or any animosity with the accused. Nothing adverse has been brought on record as to why PW3 would depose against the accused with a malicious intent and why his evidence should be discarded merely on the basis of his being related witness.

42. Another circumstance which is to be dealt with is the identification of accused. The incident happened in the month of September at about 5 a.m. Not only PW2 but also PW1 and independent witness PW3 had identified the accused. There is no dispute that the accused belonged to the same village and were familiar to the injured and witnesses. PW1 specifically stated that he has no former enmity with the accused and had similar relations with them like other villagers. He had no motive to falsely implicate the accused and hide the actual culprits in an incident where his wife had been brutally killed and daughter had sustained serious injuries.

43. We find that on hearing the hue and cry, PW1 reaches on the spot and finds his wife dead due to the stab injuries and his daughter being chased by the accused. By the time he tried to rescue his daughter, she was also given severe knife blows. The accused after causing injuries ran away with their weapons. Apart from the complainant, several persons reached on spot and after the incident, a tehrir was written by PW7. Thereafter, the injured and complainant PW1 left for the police station and the injured was carried on a rickshaw. The fact is not disputed that the FIR was registered at 08:35 a.m. and after obtaining chitthi majroobi PW1 went to the hospital and got the injured admitted in the hospital and again came back to the place of occurrence where dead body of his wife was lying. If the entire situation is visualised from the view of a commoner, it can easily be realised that how horrific the incident would have been. Therefore, the argument raised by the accused that PW1 was not present on the spot is quite untenable and superficial in nature having no substance and is hence rejected.

44. The incident happened at 05:00 a.m. and FIR was lodged at 8:30 a.m. It has come on record by the evidence of PW1, PW3 and PW7 that it took around one hour in scribing tahrir. Distance of place of occurrence from

concerned Police station was around 9 km. Perusal of evidence of PW1 and PW2 demonstrates that injured was taken on rickshaw and it took around two hours in reaching the police station. Considering the entire episode and time spent in all the formalities and in reaching the police station as well as in lodging the FIR, irresistible conclusion can be drawn that there was no chance for PW1 to manipulate the version of FIR. Not only the FIR is proved to have been lodged promptly, but also the presence of PW1 and PW3 has been surfaced out beyond reasonable doubt. Both PW1 and PW3 were examined at length and no discrepancy could be found in his testimony. We thus find that the testimonies of all the three witness clearly establish the presence and involvement of the appellant accused in the commission of the offense and accordingly, we find no reason to interfere with the finding recorded by the learned Trial Court in this regard.

45. The appellant has not disputed the date of the incident but has further attempted to cast a doubt on the prosecution story by stating that the incident could have also occurred anytime in dark by any unknown assailants, due to dark, it would have been difficult for the witnesses to identify the accused. However, we find this to be a helpless attempt to impute an otherwise unblemished prosecution story through a hyper-technical approach. PW4 who prepared the injury report of PW2 and PW6 who performed the postmortem report of the deceased had opined that the death could have been caused at the alleged time and date. PW1, 2, 3 and 7 all have stated that the incident occurred at around 05:00 a.m. in the morning and the investigating officer PW8 has also supported the prosecution story. The recovery of the knife used in the incident was made at the instance of the appellant accused from his own field. The accused appellant was known to the eye-witnesses and he was not a stranger and the accused had been named in the complaint and FIR itself. Thus, we find no strength in this argument. The learned Trial Court has also considered this argument and opined that it is normal for the sun to rise by 05:00 a.m. in the concerned place and time. Nothing is on record which could convince us to interfere with this finding.

ISSUE NO.II

46. Another ground raised by the learned counsel for the appellant is that the learned Trial Court had acquitted the other two accused against the same set of evidence which formed the basis of conviction of accused / appellant and such an approach is wholly erroneous and untenable.

47. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in ***Darya Singh and Others v. State Of Punjab; 1963 SCC OnLine SC 123***, wherein the Hon'ble Supreme Court made the following

observation:

> "***6.*** *There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal Courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal Court to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance-witnesses or whether they were really present on the scene of the offence. If the offence has taken place as in the present case, in front of the house of the victim, the fact that on hearing his shouts; his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of the three eye-witnesses cannot be properly characterised as unlikely. If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised. In doing so, it may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the*

> *assailant, his evidence can never be accepted unless it is corroborated on material particulars. We do not think it would be possible to hold that such witnesses are no better than accomplices and that their evidence, as a matter of law, must receive corroboration before it is accepted. That is not to say that the evidence of such witnesses should be accepted lightheartedly without very close and careful examination, and so, we cannot accept Mr. Bhasin's argument that the High Court committee an error of law in accepting the evidence of the three eye-witnesses without corroboration."*

48. The learned Trial Court found the testimony of the eye-witnesses reliable except in so far as the naming of the other accused, namely, Mohd. Sharif and Deshraj was concerned. In their context, the learned Trial Court opined that since they were related to the accused/appellant, the complainant may have additionally implicated them. We do not find anything wrong in this approach as it is completely possible that the evidence produced by the prosecution may establish the guilt of one or more accused beyond reasonable doubt but may fall short of meeting the same threshold for the other arrayed accused. It is not uncommon for the police as well as the complainant/victims to additionally implicate the relatives and close-ones of the main accused in criminal proceedings and thus, the learned trial court took the right approach of acquitting the other accused whose implication seemed tainted or at the very least, not proved beyond reasonable doubt. The appellant accused cannot claim that merely because the other accused had been acquitted, he too deserves to be acquitted on the basis of the same set of evidence, even where the materials on record demonstrate his presence and involvement in the offense beyond reasonable doubt.

49. Now we come to the issue of recovery of the knife used in the commission of the offense. PW8 Investigation Officer has stated that the recovery was done on 21.09.1989, that is, on the same day when accused Shakir Ali and Mohd. Sharif had been arrested. He stated that the recovery was done at the instance of accused appellant Shakir Ali. Shakir Ali is said to have leading the way, with the police party following him and accused Mohd. Sharif further behind them. At the instance of accused Shakir Ali, a blood stained knife, *kurti* and *lungi* were recovered and recovery memo Ex. Ka.6 was recovered. The recovery is challenged on the ground that PW7, the witness to the recovery gave a somewhat different account and stated that Mohd. Sharif stayed in the police jeep and recovery was completed at the instance of accused Shakir Ali only who took out the knife and blood stained clothes. He further stated that after the knife was recovered, the police had

taken back accused Shakir Ali to the jeep and brought accused Mohd. Sharif to indicate where he threw the lathis. However, no recovery memo was prepared pursuant to Mohd. Sharif indicating where he threw the lathis.

50. From the testimonies of both PW7 and PW8 it is apparent that the recovery of the blood stained knife and clothes were done at the instance of the appellant accused Shakir Ali. Both the witnesses stated that accused Mohd. Sharif was either behind them or in the jeep when the recovery was effected. The forensic examination Ex. Ka.17 of the knife and clothes reveled presence of human blood. The Investigating Officer identified the knife and clothes in the witness box. Both the witnesses attested that the recovery was effected from the field of accused appellant Shakir Ali.

51. The injury report Ex. Ka.2 prepared on 16.09.1989 found all the injuries to be fresh and to have been caused by a sharp object except for injury no. 5. Similarly the postmortem report of deceased Shanti Devi disclosed that the margins of all the wounds were sharp. The wounds of Shanti Devi were said to have been caused by a knife. It thus appears that the recovery of the knife used in the commission of the offense was done at the instance of the accused appellant and the same stands corroborated by the medical evidence.

52. The eye-witness testimony, the recovery as well as the forensic and postmortem reports and the testimonies of Investigating Officer and PW7 writer of complaint, when taken together, all point to the guilt of the accused appellant beyond reasonable doubt.

ISSUE NO. III

53. Another contention raised by the appellant is with regard to the sustainability of his conviction under Section 394 of IPC. The learned Trial Court had convicted the appellant under Section 394 sentencing him to undergo 7 years of rigorous imprisonment. Section 394 of IPC deals with the punishment for voluntarily causing hurt in committing robbery. Robbery has been defined under Section 390 of IPC which states:

> "*In all robbery there is either theft or extortion.*
>
> ***When theft is robbery.***— *Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.*

> ***When extortion is robbery.***— *Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.*
>
> *Explanation.— The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.*"

54. The appellant had also raised a challenge to the impugned order and judgment on the ground that the learned Trial Court erred in convicting the appellant in the absence of any probable motive being established on the record by the prosecution. The appellant had contended that mere robbery of a nose-ring cannot be taken to be a reasonable motive for such lethal attack on the deceased and PW2.

55. In this regard, it may be beneficial to refer to the judgment of the Hon'ble Supreme Court in ***Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127***, wherein the Hon'ble Supreme Court made the following observations:

> "***20.*** *The Court can separate the truth from the false statements in the witnesses' testimony. In Leela Ram v. State of Haryana, (1999) 9 SCC 525, this Court held as follows:*
>
> > "*12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their overanxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."*
>
> ***21.*** *Moreover, it is not necessary that the entire testimony of a*

witness be disregarded because one portion of such testimony is false. This Court observed thus in Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381:

> "***15.*** *To the same effect is the decision in State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407] and Lehna v. State of Haryana [(2002) 3 SCC 76 : 2002 SCC (Cri) 526]. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of "falsus in uno, falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno, falsus in omnibus" has no application in India and the witnesses cannot be branded as liars. The maxim "falsus in uno, falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded."*

56. As per prosecution, the accused is alleged to have snatched a nose-ring from the deceased and to prove this aspect, evidence of PW1, PW2 and PW3 have been pressed into service. Therefore, it will be imperative to analyze their evidence to this regard. PW1 stated that he came out only upon hearing the hues and cries of the victims and at the time of his arrival at the scene of occurrence, the accused appellant was attacking PW2. Therefore, he did not witness the attack on the deceased and the fact of snatching nose-ring of his

wife. Another witness PW3 deposed that when he was returning from his field, he saw the accused attacking on the deceased and injured and snatching of nose-ring as well. The injured PW2 also corroborated version of PW3. The version of nose-ring snatching also finds mention in the complaint Ex. Ka1. PW1 stated in his testimony that PW 3 had told PW7 Shiv Shankar about the snatching of the nose-ring and thus, PW7 wrote it down in the complaint. However, PW7 denied the same and stated that he had written the complaint only on the dictation of PW1. The postmortem report Ex. Ka.5 found no injury on the nose of the deceased.

57. The version of the prosecution is that the nose-ring was snatched from the deceased by the accused/appellant. However, no ring was recovered by the Investigating Officer. Neither the post mortem report nor the recovery support the version of the nose ring snatching. The possibility of improvement by the witnesses cannot be conclusively ruled out in this regard. We find force in the argument of the appellant that the version of nose ring snatching may be an improvement by the prosecution. In any case, the fact of snatching of nose ring by the appellant accused is not established beyond reasonable doubt and thus, it would not be safe to convict the accused under Section 394 of IPC for the offence of robbery. To this extent, the appellant is entitled to relief solely by extending him the benefit of doubt.

58. In ***Subhash Aggarwal v. State (NCT of Delhi) reported in (2025) 8 SCC 440***, the Hon'ble Supreme Court, while referring to a catena of judgments on the effect of failure to establish the motive, made the following observations:

> "***29.*** *The declaration in the cited decisions and the decisions relied on therein, is to the effect that if the case is built solely upon circumstantial evidence, absence of motive will be a factor that weighs in favour of the accused. Just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. When the eyewitnesses are not convincing, a strong motive cannot by itself result in conviction, likewise when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence.*
>
> ******
>
> ***33.*** *Motive remains hidden in the inner recesses of the mind of the*

> *perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted."*

59. As discussed hereinabove, the statements of the witnesses, the recovery and other circumstantial evidence establish the guilt of the accused appellant beyond reasonable doubt. Even if a conclusive motive is not available on record, that alone cannot be the ground for acquitting the accused and interfering with the findings of the learned Trial Court in this regard. Motive is an internal aspect and it may not be possible for the prosecution to establish the motive in every case. The PW2 as well as PW3 stated that the accused were attempting to snatch the nose-ring. Even if that may not be the true motive, the mere failure of the prosecution in establishing a conclusive motive, particularly in light of the other evidences already established on record, cannot be the sole reason for disbelieving an otherwise impeccable prosecution story.

60. The injury report Ex Ka2 of PW2 Gayatri Devi found as many as 9 injuries present on her person and 8 of them were incised wound. The doctor opined that the injuries necessitated it to refer her to surgery. The postmortem report Ex Ka5 of the deceased Shanti Devi found as many as three incised wounds and 4 stab wounds on her person. Shanti Devi has died during the course of occurrence. The accused appellant first attacked Shanti Devi and then turned and chased PW2 child witness and inflicted severe injuries on her person fleeing only when other villagers came to the spot after hearing the screams of the victims.

61. In view of the above, the impugned judgment of conviction of accused is **partially modified** giving him the benefit of doubt and acquitting him under Section 394 of IPC. Accordingly, accused is **acquitted** under Section 394 of IPC. The conviction and sentence of accused / appellant under Section 302 & 307 of IPC is **upheld and affirmed.**

62. With the aforesaid, the appeal is **partly allowed.**

63. The appellant Shakir Ali is on bail, therefore, his bail bonds be cancelled and sureties be discharged from obligation. He shall surrender within two weeks from today before the learned Chief Judicial Magistrate, Bahraich, failing which, the CJM concerned shall take appropriate steps to arrest the

appellant to serve out the sentence.

64. All pending applications also stand **disposed of**.

65. Original record of lower court be remitted after due compliance forthwith and in any case within one week from today.

66. This order shall be communicated to the trial court concerned forthwith for necessary compliance.

May 21, 2026
S. Shivhare

(Mrs. Babita Rani,J.) (Rajnish Kumar,J.)