MUNNA LAL

v.

THE STATE OF UTTAR PRADESH

(Criminal Appeal No.490 of 2017)

JANUARY 24, 2023

[S. RAVINDRA BHAT AND DIPANKAR DATTA*, JJ.]

Code of Criminal Procedure, 1973 : s. 374(2) –Appeal from convictions – Murder of the complainant's father – Previous enmity between the parties – On the fateful day, the appellants armed with weapons inflicted gun shot injuries and blows to the victim resulting in his death – FIR against the appellants – Surviving appellants convicted u/s. 302 IPC and sentenced to life imprisonment – Upheld by the High Court – On appeal, held : PW-2 being inimical to the appellants, his testimony to be taken carefully – PW-3 was at the best, a chance witness – Circumstances on record do not justify the presence of PW-3 at the place of occurrence – Oral testimony of PW-2 and PW-3, the so-called eye witness, not free from doubt and their evidence not of unimpeachable quality – Rule of prudence demands corroboration of their versions from other witnesses present at the place of occurrence and witnessed the murder of the victim, however, they were not examined – Moreover, non-examination of the investigating officer created reasonable doubt in the prosecution case – On proper evaluation, it has transpired that there were reasons for which PW-2 might have falsely implicated the appellants and also that PW-3 was not a wholly reliable witness – There is a fair degree of uncertainty in the prosecution story and the courts below appear to have somewhat been influenced by the oral testimony of PW-2 and PW-3, without taking into consideration the effect of the other attending circumstances, thereby warranting interference – Charge that the appellants had murdered the victim, not proved beyond reasonable doubt, thus, entitled to benefit of doubt – Order of conviction and sentence passed by the courts below set aside – Evidence Act, 1872.

* Author

Allowing the appeals, the Court

HELD:

1.1 By reason of the uncontroverted evidence of a continued enmity existing from 10 (ten) years preceding the alleged murder of the victim by and between the two groups, it could be established that PW-2 nurtured personal ill–will towards the appellants and the possibility of PW-2 having acted with intention to keep the appellants away from legal proceedings as well as interference in property rights cannot be totally ruled out; hence, PW-2 being inimical to the appellants, his testimony has to be taken with a pinch of salt and a deeper scrutiny of the other evidence on record is also indeed called for. [Para 31]

1.2. Having found from the oral evidence of PW-2 what transpired on the fateful morning, it is considered necessary to look into the oral testimony of PW-3. There was indeed an attempt on the part of the appellants to establish that PW-3 was a relative of PW-2 and that being an interested witness apart from a 'chance witness', his testimony is not wholly reliable. It is not clear from the testimony of PW-3 as to why, so early in the morning, he had the occasion to pass by the place of occurrence. It is found that PW-3 is a resident of place N whereas PW-2 happened to be a resident of place S. The distance between the two places is 1–2 miles. The incident of murder happened within the jurisdictional limits of Police Station T. It has not surfaced from the evidence of PW-3 very early from where he started and where he was headed for. 'GD' could be the village, where the matrimonial home of the sister of PW-3 is; but for what purpose he had left is not too clear. It was not said by PW-3 that he was on his way to his sister's residence. In cross–examination, PW-3 denied having resided in place S. [Para 32]

1.3. In order to prove the guilt of the appellants beyond reasonable doubt, some more particulars were required given the circumstance that PW-3 was at best a 'chance witness'. Incidentally, PW-2 had denied being related to PW-3 and it was not elicited by the prosecution from PW-2 as to how he came

to know the name of PW-3, given the fact that the latter was a resident of a different village. Similarly, PW-3 too did not say that he knew PW-2 or his father from before. The nature of acquaintance that PW-2 and PW-3 had, ought to have been brought out by the prosecution. That apart, although it is true that PW-3 gave a vivid description of how N was shot by ML, no specific role was attributed insofar as SL is concerned except that all 4 (four) accused were "beating" (as deciphered from the evidence recorded in Hindi) and not "killing" (as available from the translated version in the paper–book) N. Again, in course of cross–examination, PW-3 deposed that ML had shot N without elaborating whether SL also inflicted any injury on N. There is an apparent inconsistency between the versions of PW-2 and PW-3 insofar as the role attributed to SL by PW-2 is concerned, which can hardly be overlooked. [Para 33]

1.4. The circumstances as appearing from the record do not justify the presence of PW-3 at the place of occurrence. The oral testimony of PW-2 and PW-3 is not free from doubt and their evidence not being of unimpeachable quality, the rule of prudence would demand a corroboration of their versions from other witnesses who, according to PW-2 and PW-3, were present at the place of occurrence and witnessed the murder of N. [Para 34]

1.5. As per the evidence of PW-2 and PW-3, there were other eye-witnesses of whom K was a key witness, and CL and KH were independent witnesses. Since it was the version of PW-2 and PW-3 that K, CL and KH were present at the place of occurrence and had also witnessed, inter alia, the incident of "beating" of N with a 'kanta' by SL and firing of a gunshot at him by ML, direct evidence could have been provided by either of the three (K, CL and KH) corroborating the versions of PW-2 and PW-3. For reasons best known to the prosecution, these three individuals, named both by PW-2 and PW-3 as other eye-witnesses, were not examined leading this Court to draw an inference that had they been examined, the prosecution story would not have been supported by them.[Para 35]

1.6. The statement of PW-3 under section 161, Cr. P.C. was recorded nearly 24 days after the incident. Since the Investigating Officer did not enter the witness box, the appellants did not have the occasion to cross–examine him and thereby elicit the reason for such delay. Consequently, the delay in recording the statement of PW3 in course of investigation, is not referred to and, therefore, remains unjustified. The possibility of PW-3, being fixed up as an eye-witness later during the process of investigation, cannot be totally ruled out. [Para 38]

1.7. Though PW-4 is said to have reached the place of occurrence at 1.30 p.m. on 5th September, 1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eyewitnesses, i.e., PW-2 and PW-3, not being found to be wholly reliable. The missing links could have been provided by the Investigating Officer who, again, did not enter the witness box. Whether or not non–examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non–examination of the Investigating Officer. In the facts of the instant case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable, the instant case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non–examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case. [Para 39]

1.8 As far as non-obtaining of ballistic report is concerned, it is no doubt true that its essentiality would depend upon the circumstances of each case. Since no weapon of offence was seized, no ballistic report was called for and obtained. No evidence has been taced in the records that ML had a licensed gun. However, nothing turns on it. The failure/neglect to seize the weapons of offence, on facts and in the circumstances of the instant case, has the effect of denting the prosecution story so much so that the same, together with non-examination of material witnesses constitutes a vital circumstance amongst others for granting the appellants the benefit of doubt. [Para 40]

1.9. The medical evidence tendered by PW-1, if believed in its entirety, leads to form an opinion that the evidence of PW-4 of he having recovered a bullet leading to its seizure at the place of occurrence as doubtful.[Para 41]

1.10. Although, mere defects in the investigative process by itself cannot constitute ground for acquittal, it is the legal obligation of the Court to examine carefully in each case the prosecution evidence de hors the lapses committed by the Investigating Officer to find out whether the evidence brought on record is at all reliable and whether such lapses affect the object of finding out the truth. Being conscious of the above position in law and to avoid erosion of the faith and confidence of the people in the administration of criminal justice, the evidence led by the prosecution is examined threadbare and refrained from giving primacy to the negligence of the Investigating Officer as well as to the omission or lapses resulting from the perfunctory investigation undertaken by him. The endeavour of this Court has been to reach the root of the matter by analysing and assessing the evidence on record and to ascertain whether the appellants were duly found to be guilty as well as to ensure that the guilty does not escape the rigours of law. The disturbing features in the process of investigation, since noticed, have not weighed in the Court's mind to give the benefit of doubt to the appellants but on proper evaluation of the various facts and circumstances, it has transpired that there were reasons for which PW-2 might have falsely implicated the appellants and also that PW-3 was not a wholly reliable witness. There

is a fair degree of uncertainty in the prosecution story and the courts below appear to have somewhat been influenced by the oral testimony of PW-2 and PW-3, without taking into consideration the effect of the other attending circumstances, thereby warranting interference. [Para 42]

1.11. The charge that the appellants had murdered N, cannot be said to have been proved beyond reasonable doubt; hence, they are entitled to the benefit of doubt. The trial court's judgment of conviction and order of sentence being unsustainable, is set aside; consequently, the impugned judgment and order passed by the High Court, upholding the conviction and sentence, too is set aside. [Para 43]

Jarnail Singh vs. State of Punjab **(2009) 9 SCC 719 : [2009] 13 SCR 774 – referred to.**

CRIMINAL APPELLATE JURIS DICTION : Criminal Appeal No.490 of 2017.

From the Judgment and Order dated 09.07.2014 of the High Court of Judicature at Allahabad in CRLA No.539 of 1986.

With

Criminal Appeal No.491 of 2017.

Mukesh K. Giri, Adv. for the Appellant.

Ankur Prakash, Sanjay Kumar Tyagi, Prabhat Kumar Rai, Sanjay Kumar, Pawan, Memansak Bhardwaj, Ms. Hardikaa, Advs. for the Respondent.

The Judgment of the Court was delivered by

DIPANKAR DATTA, J.

THE CHALLENGE

These two criminal appeals, arising out of the same occurrence, call in question the judgment and order of the High Court of Judicature at Allahabad dated 9th July, 2014 dismissing Criminal Appeal No.539 of 1986 [being an appeal under section 374(2) of the Code of Criminal Procedure (hereafter "Cr. P.C.", for short)] carried by the appellants from the judgment and order dated 29th January, 1986 of the Court of IInd Additional Sessions Judge, Shahjahanpur, Uttar Pradesh, in S.T. No.499 of 1985.

FIRST INFORMATION REPORT (F.I.R.)

2. Narayan, father of Ram Vilas, was murdered in the morning of 5th September, 1985 round about 10.00 hours. A written complaint was lodged soon thereafter, at about 12.10 hours, by Ram Vilas leading to registration of an F.I.R. under section 302 of the Indian Penal Code (hereafter "IPC", for short). One Dr. Mohd. Hanif Khan was the scribe of the said FIR. Munna Lal, Sheo Lal, Babu Ram, and Kalika were accused of committing such murder.

INQUEST

3. Consequent upon registration of the F.I.R., Shailendra Bahadur Chandra, the Station Police Officer of Police Station Tilhar (who was also the Investigating Officer) proceeded to the place of occurrence, along with Ram Pal Sagar, S.I., and Udham Singh, constable. Inquest had been conducted by Ram Pal Sagar in course whereof a bullet was recovered at the place of occurrence from the blood oozing out from one of the injuries suffered by Narayan.

CHARGE(S)

4. Upon completion of investigation, charge-sheet under section 302 was filed before the concerned court against each of the 4 (four) accused. Kalika had passed away in the meanwhile. Upon committal, the trial court framed the following charges:

"Charge

I, Sanwal Singh, II Addl. Sess. Judge, Shahjahanpur, do hereby charge you : -

1. Shiv Lal

2. Munna Lal

3. Babul Ram, as follows:

That you along with Kalika on 05.09.85 at about

10.00 A.M. in village Fatehpur Bujurg alias Mohaddipur, police station Tilhar, District : Shahjahanpur, at the field of Budhu Khan situated in the west of village Abadi did commit murder by intentionally and knowingly causing the death of Narain in that you Munna caused injuries by gunshot, you Babu Ram caused injuries by tamancha and you Shiv Lal caused injuries by Kanta and your associate Kalika deceased

caused injuries by lathi and all of you intentionally co-operated in the commission of the said offence and that you thereby committee an offence punishable under section 302 I.P.C. and within the cognizance of this court of sessions.

And I hereby direct that you be tried by this court of sessions on the said charge.

TRIAL

5. The prosecution examined 5 (five) witnesses to support its case and more than a dozen of documentary evidence. None was examined on behalf of the defence.

6. PW-1 was Dr. Ramesh, who conducted *post-mortem*. The following *ante-mortem* injuries were found on the cadaver of Narayan:

   (1) Lacerated wound 2 cm x 1 cm over forehead 3 cm above left eye brow wall maggots present.

   (2) Lacerated wound 4 cm x 1 cm over chin 1 cm below lower lip. Maggots were present.

   (3) Lacerated wound 3 cm x 1 cm left side face 2 cm left lateral to left side of mouth.

   (4) Incised wound 17 cm x 8 cm over front of abdomen cavity deep 5 cm above umbilicus. Visceral organs prolapsing.

   (5) Gunshot wound of entry 2 cm x 1 cm over front of abdomen 3 cm right lateral to umbilicus tattooing present. Direction backward downward.

   (6) Gunshot wound of exit 6 cm x 5 cm over left side of hip 5 cm below iliac crest.

   (7) Gunshot wound of entry 2 cm x 1 cm over front of right thigh 15 cm below ilicae spine (ant) with direction backward lateral.

   (8) Gunshot wound of exit 3 cm x 2 cm over lateral side of right thigh 12 cm below iliae crest."

7. According to PW-1, *"death of Narayan occurred due to shock and haemorrhage and much bleedings"*; injury nos. 5 and 6 and likewise injury nos.7 and 8 noted above were respectively the entry and exit wounds corresponding with each other, which could be caused by gun

and tamancha shots, whereas injury nos. 1, 2, and 3 were possible by lathi and injury no.4 could be caused by "kanta".

8. Ram Vilas, son of the deceased, while deposing as PW-2 stated that a quarrel had taken place 10 (ten) years before between Narayan and Jaswant (father of Sheo Lal) and Sheo Lal and that Jaswant died in that quarrel. One 'Aajudhi', on the side of Sheo Lal, was murdered. Narayan was, however, acquitted. PW-2 identified, *inter alia*, Munna Lal and Sheo Lal who were present in the Court. According to PW-2, on the date of the fateful incident, he along with his father Narayan after ploughing their field had reached the field of Budhu Khan when the 4 (four) accused persons suddenly came out from the field belonging to Sheo Lal. The said accused viz., Munna Lal, Sheo Lal, Babu Ram and Kalika, were armed with 'bandook' (gun), 'kanta' (sharp edged weapon), 'tamancha' (locally made gun), and 'lathi' (stick) respectively. They were hurling abuses, and exhorting to kill Narayan. Narayan received gunshot injuries from Munna Lal and Babu Ram, whereas Sheo Lal and Kalika inflicted blows on him by kanta and lathi, respectively. Such incident was also witnessed by Kedar, Hemraj, Khamkaran and Chhange Lal. Kedar and Hemraj requested not to kill. It was reiterated that Hemraj had come at the time of incident and had seen the incident. After the accused persons fled, other persons had reached there. PW-2 finding that Narayan was dead, reached the shop of Dr. Hanif and narrated the incident to him whereupon Dr. Hanif had written the complaint and read over the contents to PW-2. PW-2 neither signed nor affixed his thumb impression on the report written by Dr. Hanif but when PW-2 took the report to the police station, he had affixed his thumb impression on the report which was written by the 'munshi' in the police station.

9. In course of cross-examination, PW-2 disclosed that Narayan had made an application for cancelling the license of the gun of Jaswant and had made 'pairvi'. Narayan had earlier been tried in a case under section 302, IPC and he also filed a cross-case; further, a case under section 107/116, Cr. P.C. was pending against Narayan; also, a case under section 145, Cr. P.C. was pending wherein PW-2 and his father Narayan were the accused persons. In the latter case, Munna Lal was a witness against them. Since the murder of 'Aajudhi', there has been constant enmity with Sheo Lal. However, till the murder of Narayan, there was no 'marpeet' or 'pairokari' with PW-2 or his father. PW-2 "had

not affixed thumb impression on the report at the police station" but had affixed his thumb impression on it at the 'dukaan' (shop) of Hanif and handed over the same to the munshi.

10. Hemraj, an eye-witness, deposed as PW-3. Sister of PW-3 resides in Gopalpur Dhadhipura and he is on visiting terms. The distance between Mohaddipur and Gopalpur is 1-2 miles. Whenever PW-3 used to travel to Gopalpur from his village, he used to take the outer road of village Mohaddipur. When he reached near the field of Budhu Khan, the accused persons armed with gun, kanta, tamancha, and lathi, were killing Narayan. PW-2 was present at the place of occurrence. Two passersby viz., Chhange Lal and Khemkaran had reached there. Apart from PW-3, Kedar who was grazing two buffaloes had also seen the incident. After inflicting blows on Narayan, the accused persons fled towards the southern direction. Narayan had died.

11. In course of cross-examination, PW-3 denied the suggestions that he was related to the family of Narayan. PW-3 reiterated that Kedar was grazing animals near the place of occurrence and Khemkaran and Chhange Lal came there in his (PW-3) presence. By the time PW-3 left the place of occurrence, 20 (twenty) to 25 (twenty-five) persons assembled there of whom one old lady and one girl from the family of Narayan were weeping. Neither could PW-3 identify the wife of Ram Vilas nor did he know the name of villagers who reached there later.

12. Ram Pal Sagar, who conducted inquest, was PW-4. PW-4 deposed that in course of inquest, he found a bullet in the blood oozing out from the injury at the hip of the deceased. He proved the charge-sheet and the seizure memo pertaining to the bullet that was recovered. PW-4 also deposed that, among others, he could find Kedar on reaching the place of occurrence.

13. Constable Udham Singh deposed as PW-5. PW-5 had accompanied the Investigating Officer to the place of occurrence, where PW-4 had conducted the inquest.

14. Significantly, Dr. Hanif, Kedar, Chhange Lal, Khemkaran and the Investigating Officer were not examined by the prosecution. Further, neither the gun and the tamancha nor the kanta and lathi were seized. Also, there were no forensic laboratory or ballistic reports.

15. Ultimately, upon consideration of the evidence on record, the Sessions Judge held that the consistent and unimpeachable direct evidence proved

the case, which was supported by dependable probabilities, existence of motive, medical evidence and all other circumstances. In so holding, the ocular account of PWs 2 and 3 weighed with the trial court while holding Munna Lal, Sheo Lal and Babu Ram guilty of the offences with which they were charged. It was also held that the prompt F.I.R. presented a guarantee about the truthfulness of the case. Consequently, by his judgment dated 29th January, 1986, the judge convicted the surviving accused, viz., Munna Lal, Sheo Lal and Babu Ram, and imposed upon them the sentence of life imprisonment.

APPEAL

16. As noted above, the aforesaid judgment and order of the Sessions Judge was carried in appeal before the High Court of Judicature at Allahabad by Munna Lal, Sheo Lal and Babu Ram.

17. During the pendency of the appeal, Babu Ram passed away; hence, the appeal at his instance stood abated.

18. Upon hearing arguments advanced on behalf of Munna Lal and Sheo Lal as well as on behalf of the State of Uttar Pradesh and on consideration of the materials on record, the High Court concurred with the findings returned by the Sessions Judge and observed that there was no sufficient ground to interfere. While dismissing the said appeal, the High Court directed Munna Lal and Sheo Lal, who were on bail, to surrender before the trial court to serve out the remaining period of their sentences within 30 days, failing which the trial court was directed to ensure their arrest and to send them to jail for serving sentences in accordance with law.

PROCEEDINGS BEFORE THIS COURT

19. Aggrieved by the dismissal of Criminal Appeal No.539 of 1986 by the High Court, Munna Lal and Sheo Lal applied for special leave to appeal whereupon leave was granted by this Court by an order dated 6th March, 2017.

20. In the meanwhile, Munna Lal and Sheo Lal had been taken into custody after dismissal of their appeal by the High Court. Both the appellants having served their respective sentences in excess of 11 years and 11 months, they applied for bail. While considering the application(s) for bail on 10th January, 2023, this Court directed the parties to return better prepared the following day to address on the merits of the appeals.

21. Mr. Mukesh K. Giri, learned counsel appearing for the appellants viz., Munna Lal and Sheo Lal, and Mr. Sanjay Kumar Tyagi, learned counsel for the respondent, have been heard at sufficient length.

APPELLANTS'ARGUMENTS

22. Mr. Giri took serious exception to the findings returned by the trial court and the High Court. According to him, from the evidence on record, it is absolutely clear that there was a long-standing enmity between Narayan and Jaswant (father of Munna Lal) and the courts below failed to take note that it was a clear case of false implication. Further, he contended that the statement of Hemraj, PW-3, under section 161, Cr. P.C. was recorded on 29th September, 1985, i.e., more than 24 (twenty-four) days after Narayan was allegedly murdered by the appellants. In the absence of the Investigating Officer entering the witness box, there was no justifiable explanation for this delay in recording such statement and the same deeply prejudiced the appellants. Next, referring to non-production of Dr. Hanif, Kedar, Chhange Lal and Khemkaran, as prosecution witnesses, it was contended by him that the same ought to have been held fatal for the prosecution case.

23. Continuing further, Mr. Giri contended that PW-3 was only a chance witness, and being a resident of a village different from the village where the appellants and Narayan with his family members resided, he had no reason to be there at the place of occurrence at 10.00 hours in the morning and no plausible explanation was proferred by him. For supporting his contention that the evidence of a chance witness requires cautious and close scrutiny, that his presence at the place of occurrence must be adequately established, and that deposition of a chance witness, whose presence at the place of occurrence remains doubtful, should be discarded, reliance was placed by Mr. Giri on the decision of this Court reported in (2009) 9 SCC 719 (Jarnail Singh vs. State of Punjab).

24. Mr. Giri further contended that Munna Lal's double barrel gun was covered by a licence and no attempt was ever made to seize such gun. Interestingly, a bullet having been seized at the place where Narayan's dead body lay, there was also no attempt to obtain the opinion of a ballistic expert to ascertain whether the bullet could have been fired from Munna Lal's gun.

25. Also, Mr. Giri contended that failure of the prosecution to have the testimony of the Investigating Officer recorded ought to be regarded as a serious flaw which lends credence to the defence version that Narayan might have been murdered by someone else but because of the previous enmity, Munna Lal and Sheo Lal were falsely arraigned as accused.

ARGUMENTS OF THE STATE

26. *Per contra*, Mr. Tyagi, learned counsel for the common respondent, contended that the trial court as well as the High Court meticulously scanned the evidence on record and returned findings that Munna Lal and Sheo Lal along with Babu Ram were guilty of the offence of murder. Mere flaws in the process of investigation, according to him, would not be sufficient for dislodging the findings so returned. The versions of PW-2 and PW-3, the eye- witnesses, were found to be reliable and trustworthy by the courts below and there being nothing on record to impeach such versions, no interference is called for. He also contended that omission to seize the weapons of offence and/or mere non-production of ballistic report cannot by itself be fatal for the prosecution case where credible ocular evidence is available on record unmistakably pointing to the guilt of the accused. He concluded by submitting that the appeals being devoid of any merit, deserve dismissal.

THE QUESTION

27. The question that this Court is tasked to decide on these criminal appeals is, whether the trial court, on the basis of the materials before it, was justified in recording conviction and consequently, sentencing the appellants to spend the rest of their lives in prison. Since the High Court has upheld the judgment and order of the trial court, the answer to this question would guide this Court to decide the appeals one way or the other.

DECISION

28. Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a decision on these two appeals. Needless to observe, such principles have evolved over the years and crystallized into 'settled principles of law'. These are:

    (a). Section 134 of Indian Evidence Act, 1872, enshrines the well-recognized maxim that evidence has to be weighed and not

counted. In other words, it is the quality of evidence that matters and not the quantity. As a sequitur, even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and trustworthy, could lead to a conviction.

(b). Generally speaking, oral testimony may be classified into three categories, viz.:

(i) Wholly reliable;

(ii) Wholly unreliable;

(iii) Neither wholly reliable nor wholly unreliable.

The first two category of cases may not pose serious difficulty for the court in arriving at its conclusion(s). However, in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

(c). A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d). Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.

(e). Discrepancies do creep in, when a witness deposes in a natural manner after lapse of some time, and if such discrepancies are comparatively of a minor nature and do not go to the root of the prosecution story, then the same may not be given undue importance.

29. On appreciation of the oral evidence tendered by PW-2 and PW-3, this Court is of the view that its conclusions would have been no different from those arrived at in the judgments impugned but for certain vital factors, proposed to be discussed a little later, which unfortunately did not engage the attention of the courts below. Also, had the lacunae been of a minor nature, it may not have been at all difficult for this Court to accept what PW-2 and PW-3 deposed, in the light of the medical evidence

tendered by PW-1, and uphold the finding that Narayan succumbed to the gunshot and other injuries inflicted upon him by the appellants. Truly, it would have been an open and shut case of murder in which Narayan was the victim and the appellants were the perpetrators of the crime.

30. However, the situation takes a turn for the worse for the prosecution in view of the previous history of enmity, spread over almost 10 (ten) years prior to the murder of Narayan, between him (Narayan) and the appellants. Not only did the appellants testify in course of examination under section 313, Cr. P.C. that Munna Lal was a witness on behalf of Sheo Lal in proceedings under section 145, Cr. P.C. relating to a property dispute between the predecessors-in-interest of Sheo Lal and Ram Vilas (PW-2), it is evident from the deposition of PW-2 himself that there was a long standing quarrel during the last 10 (ten) years between Narayan on the one hand and Jaswant (father of Sheo Lal) and Sheo Lal on the other; further that, Jaswant and one other person had died in that quarrel; and that, such enmity continued since Sheo Lal wanted to take forcible possession of the residential land prior to the murder of Narayan, for which a case under section 145, Cr. P.C. had been registered and in which Munna Lal was a witness against PW-2. The endeavour on the part of the appellants has been to demonstrate before this Court that Munna Lal and Sheo Lal have been falsely implicated since PW-2 intended to ensure that they are put behind the bars and thereby an end to the property dispute is brought about in a manner not countenanced by law.

31. This part of the contention of the appellants cannot be totally brushed aside. By reason of the uncontroverted evidence of a continued enmity existing from 10 (ten) years preceding the alleged murder of Narayan by and between the two groups, it could be established that PW-2 nurtured personal ill-will towards the appellants and the possibility of PW-2 having acted with intention to keep the appellants away from legal proceedings as well as interference in property rights cannot be totally ruled out; hence, PW-2 being inimical to the appellants, his testimony has to be taken with a pinch of salt and a deeper scrutiny of the other evidence on record is also indeed called for bearing the settled principles, referred to above, in mind.

32. Having found from the oral evidence of PW-2 what transpired on the fateful morning, it is considered necessary to look into the oral testimony of PW-3. There was indeed an attempt on the part of the

appellants to establish that PW-3 was a relative of PW-2 and that being an interested witness apart from a 'chance witness', his testimony is not wholly reliable. It is not clear from the testimony of PW-3 as to why, so early in the morning, he had the occasion to pass by the place of occurrence. It is found that PW-3 is a resident of Nevdiya, Police Station Khudaganj, District Shahjahanpur whereas PW-2 happened to be a resident of Fatehpur Bujurg, Police Station Tilhar, District Shahjahanpur. The distance between the two places is 1-2 miles. The incident of murder happened within the jurisdictional limits of Police Station Tilhar. It has not surfaced from the evidence of PW-3 very clearly from where he started and where he was headed for. Gopalpur Dhadipura could be the village, where the matrimonial home of the sister of PW-3 is; but for what purpose he had left is not too clear. It was not said by PW-3 that he was on his way to his sister's residence. In cross-examination, PW-3 denied having resided in "Fatehpur Bujurg urf Mohaddipur".

33. In order to prove the guilt of the appellants beyond reasonable doubt, some more particulars were required given the circumstance that PW-3 was at best a 'chance witness'. Incidentally, PW-2 had denied being related to PW-3 and it was not elicited by the prosecution from PW-2 as to how he came to know the name of PW-3, given the fact that the latter was a resident of a different village. Similarly, PW-3 too did not say that he knew PW-2 or his father from before. The nature of acquaintance that PW-2 and PW-3 had, ought to have been brought out by the prosecution. That apart, although it is true that PW-3 gave a vivid description of how Narayan was shot by Munna Lal, no specific role was attributed insofar as Sheo Lal is concerned except that all 4 (four) accused were "beating" (as deciphered from the evidence recorded in Hindi) and not "killing" (as available from the translated version in the paper-book) Narayan. Again, in course of cross-examination, PW-3 deposed that Munna Lal had shot Narayan without elaborating whether Sheo Lal also inflicted any injury on Narayan. There is an apparent inconsistency between the versions of PW-2 and PW-3 insofar as the role attributed to Sheo Lal by PW-2 is concerned, which can hardly be overlooked.

34. However, what is of prime importance is that the circumstances as appearing from the record do not justify the presence of PW-3 at the place of occurrence. This Court is, therefore, of the firm view that the oral testimony of PW-2 and PW-3 is not free from doubt and their evidence

not being of unimpeachable quality, the rule of prudence would demand a corroboration of their versions from other witnesses who, according to PW-2 and PW-3, were present at the place of occurrence and witnessed the murder of Narayan.

35. As per the evidence of PW-2 and PW-3, there were other eye-witnesses of whom Kedar was a key witness, and Chhange Lal and Khemkaran were independent witnesses. Since it was the version of PW-2 and PW-3 that Kedar, Chhange Lal and Khemkaran were present at the place of occurrence and had also witnessed, *inter alia*, the incident of "beating" of Narayan with a 'kanta' by Sheo Lal and firing of a gunshot at him by Munna Lal, direct evidence could have been provided by either of the three (Kedar, Chhange Lal and Khemkaran) corroborating the versions of PW-2 and PW-3. For reasons best known to the prosecution, these three individuals, named both by PW-2 and PW-3 as other eye-witnesses, were not examined leading this Court to draw an inference that had they been examined, the prosecution story would not have been supported by them.

36. Not only were Kedar, Chhange Lal and Khemkaran not examined, the prosecution also did not examine Dr. Hanif to whom PW-2 had approached and allegedly narrated the incident of murder for being transcribed into a report. Whether at all Dr. Hanif had taken down the version of PW-2 in writing could have been deposed by him but in the absence thereof, a cloud of doubt is formed for which this Court is again compelled to draw an inference that Dr. Hanif may not have been in the picture at all. This Court, however, does not attach much importance to the clear inconsistency in the deposition of PW-2 as to where precisely he affixed his thumb impression on the report, i.e., in the shop of Dr. Hanif or at the police station. It is a minor discrepancy which can be discarded.

37. The aforesaid circumstances have to be appreciated in the light of three other circumstances, which could be viewed as extenuating.

38. First, statement of PW-3 under section 161, Cr. P.C. was recorded nearly 24 days after the incident. Since the Investigating Officer did not enter the witness box, the appellants did not have the occasion to cross-examine him and thereby elicit the reason for such delay. Consequently, the delay in recording the statement of PW-3 in course of investigation, is not referred to and, therefore, remains unjustified.

The possibility of PW-3, being fixed up as an eye-witness later during the process of investigation, cannot be totally ruled out.

39. Secondly, though PW-4 is said to have reached the place of occurrence at 1.30 p.m. on 5th September, 1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/ neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eye- witnesses, i.e., PW-2 and PW-3, not being found by this Court to be wholly reliable. The missing links could have been provided by the Investigating Officer who, again, did not enter the witness box. Whether or not non- examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the Investigating Officer. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable, this Court holds the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non- examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.

40. As far as non-obtaining of ballistic report is concerned, it is no doubt true that its essentiality would depend upon the circumstances of each case. Here, since no weapon of offence was seized, no ballistic report was called for and obtained. Although Mr. Giri contended that Munna Lal had a licensed gun, this Court has not been able to trace any evidence in the records in regard thereto. However, nothing turns on it. The failure/ neglect to seize the weapons of offence, on facts and in the circumstances of the present case, has the effect of denting the prosecution story so much so that the same, together with non-examination of material

witnesses constitutes a vital circumstance amongst others for granting the appellants the benefit of doubt.

41. Thirdly, the medical evidence tendered by PW-1, if believed in its entirety, leads this Court to form an opinion that the evidence of PW-4 of he having recovered a bullet leading to its seizure at the place of occurrence as doubtful. Injury nos.5 and 7, according to PW-1, were the entry points of the shots fired at the victim whereas injury nos.6 and 8 were the exit points of such shots. The bullets having pierced the abdomen and right thigh of the victim and there being corresponding exit points, what is of concern is how could PW-4 still find a bullet "in the blood oozing out from the injury at the hip of the dead body". Despite there being distinct exit points, it is quite improbable that after the injury at Sr. No.6, a bullet could still be found by PW-4 in the blood oozing out from the injury at the hip being one of two exit points. In any event, such bullet though seized under a seizure memo does not appear to have been exhibited at the trial which renders the version of PW-4 unacceptable.

42. Although, mere defects in the investigative process by itself cannot constitute ground for acquittal, it is the legal obligation of the Court to examine carefully in each case the prosecution evidence *de hors* the lapses committed by the Investigating Officer to find out whether the evidence brought on record is at all reliable and whether such lapses affect the object of finding out the truth. Being conscious of the above position in law and to avoid erosion of the faith and confidence of the people in the administration of criminal justice, this Court has examined the evidence led by the prosecution threadbare and refrained from giving primacy to the negligence of the Investigating Officer as well as to the omission or lapses resulting from the perfunctory investigation undertaken by him. The endeavour of this Court has been to reach the root of the matter by analysing and assessing the evidence on record and to ascertain whether the appellants were duly found to be guilty as well as to ensure that the guilty does not escape the rigours of law. The disturbing features in the process of investigation, since noticed, have not weighed in the Court's mind to give the benefit of doubt to the appellants but on proper evaluation of the various facts and circumstances, it has transpired that there were reasons for which PW-2 might have falsely implicated the appellants and also that PW-3 was not a wholly reliable witness. There is a fair degree of uncertainty in the prosecution story and the courts below appear to

have somewhat been influenced by the oral testimony of PW-2 and PW-3, without taking into consideration the effect of the other attending circumstances, thereby warranting interference.

CONCLUSION

43. For the reasons aforesaid, this Court is of the opinion that the charge that the appellants had murdered Narayan, cannot be said to have been proved beyond reasonable doubt; hence, they were and are entitled to the benefit of doubt. The trial court's judgment of conviction and order of sentence contained in its decision dated 29th January, 1986 being unsustainable, stands set aside; consequently, the impugned judgment and order dated 9th July, 2014 passed by the High Court, upholding the conviction and sentence, too stands set aside. The appellants having been lodged in the correctional home since the appellate judgment and order was made shall be set free immediately, if not wanted in any other case.

44. The appeals, thus, stand allowed without any order for costs.

Headnotes prepared by: Nidhi Jain (*Assisted by:* Tamana, LCRA)

Result of the case: Appeals allowed.