

Neutral Citation No. - 2025:AHC-LKO:4909-DB

Judgment reserved on 06.12.2024
Judgment delivered on 22.01.2025

Case :- CRIMINAL APPEAL No. - 1578 of 2004
Appellant :- Sanju And 4 Ors.
Respondent :- State of U.P.
Counsel for Appellant :- Rakesh Kumar Tripathi, Arun Sinha, Nagendra Mohan, V.K. Shahi
Counsel for Respondent :- Govt. Advocate, Aishwarya Mishra, Arnav Prakash Tikku, Girish Kumar Pandey, M.S. Khan, N.K. Mishra, R. Murtaza, Rishad Murtaza

along with

Case :- CRIMINAL APPEAL No. - 1917 of 2004
Appellant :- Hari Shankar
Respondent :- State of U.P.
Counsel for Appellant :- Arun Sinha, Deepak Kumar Agarwal, Nagendra Mohan, Pradeep Srivastava, Rajiva Dubey, Sanjeev Singh, Vivek Singh
Counsel for Respondent :- Govt. Advocate, Aishwarya Mishra, Arnav Prakash Tikku, Girish Kumar Pandey, N.K. Mishra, Rishad Murtaza

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Mohd. Faiz Alam Khan, J.

1. These two Criminal Appeals have been filed by six appellants against judgment and order dated 09.07.2004 passed by the learned Additional Session Judge, Fast Track Court-3, Sitapur, in Session Trial No.78 of 2003, in Case Crime No.267 of 2002, under Sections 147, 148, 302/149 I.P.C., Police Station Machhrehta, District Sitapur, and Sessions Trial No.222/2003 in Case Crime No.277/2002, under Section 25(1-B) of the Arms Act.

Both Session Trials were merged, making the Session Trial No.78/2003 as the leading case. The Trial Court has convicted the appellants for life imprisonment under Section 302/149 I.P.C. and fine of Rs.5000/- each and Additional imprisonment in case of non-payment of fine. Conviction has also been recorded under Sections 147 and 148 I.P.C. for all the appellants and for the offence under Section 25(1-B) of the Arms Act, the appellant Sanju has been charged along with fine and additional imprisonment in case of default.

2. Criminal Appeal No.1578 of 2004 has been filed by Sanju and Nannu Sons of Raghubir, Chhailu and Shatrughan, sons of Ramdutt and Parmanand Son of Upendra, all residents of Village Jakaria Hisampur and Criminal Appeal No.1917 of 2004 has been filed by Hari Shankar Son of Rajaram Resident of Village Bhadebhar P.S. Machhreta, District Sitapur.

3. We have heard Shri Arun Sinha and Shri Nagendra Mohan for the appellants and the learned Additional Government Advocate-1 Sri S.P. Singh for the State-respondent and Sri Rishad Murtaza along with Ms. Aishwarya Mishra for the complainant.

4. The prosecution story as mentioned in the written report dated 14.11.2002 filed by the informant Ram Naresh Dixit, son of Late Ram Lautan is that the informant belonged to Village Jakaria Majra Hisampura, One Sanju son of Raghubir, resident of the same village owed Rs.7000/- to him. When his money was not

being returned despite repeated request, his son Tinku Alias Gyanendra Kumar asked for return of money again on 12.11.2002. Sanju got angry and threatened him with dire consequences if he asked for his money again in public thereby insulting him. It was because of such annoyance that on 14.11.2002 at around 5:00 PM when the informant's son Tinku alias Atul was coming back from the agricultural field on his tractor after ploughing the same, and the informant along with three others, i.e. his younger son Rinku alias Atul, and Chhote Lal son of Babu Ram of Village Bhadebhar, and Kallu, son of Ramlal were following him on foot, when the tractor reached near the Arhar field of Naimish son of Ram Lal, the accused who were hiding themselves in the said Arhar field suddenly came out and ambushed his son, Tinku Alias Gyanendra Kumar. The accused Sanju and Nannu son of Raghubir, Shatrughan and Chhailu sons of Ramdutt, Parmanand son of Upendra and Hari Shankar son of Rajaram had firearms in their hands and also knives. Initially, Chhailu and Shatrughan fired gun shots but missed their target and the informant saw Tinku hurriedly getting down from his tractor and starting to run. His Lungi got entangled in his legs and he fell but he managed to get up and cross the Arhar field and reached the sugarcane field where the accused caught hold of him and he fell down. Then Sanju Son of Raghubir aimed his gun on the chest of Tinku and fired a shot, and Nannu, Chhailu, Shatrughan and Hari Shankar and Parmanand who were holding knives, attacked Tinku repeatedly with such knives which led to death of his son, Tinku.

The informant along with others who were following the tractor, raised an alarm, as a result the accused ran away while firing gunshots in the air. The informant left the dead body at the place of occurrence and approached Police Station Machhreta to lodge FIR.

5. We have also noticed that the police party reached the place of occurrence at around 09:30 PM on the same night, the FIR was lodged at 07:10 PM and it took around two hours for the inquest report to be prepared. The time being noted on the report as 11:45 pm The Investigating Officer the Sub-Inspector Incharge of Police Station Machhreta along with four other constables reached village Hishampur Jakaria, and after lighting a Petromax walked to the scene of crime and reached the sugarcane field of Balli son of Chhiddan Gadariya in village Bhadebhar next to the Arhar field of Naimish, son of Ramlal. The body was found lying on its back on the Northern boundary of the Arhar and sugarcane fields. Several villagers were found present and the police party appointed five witnesses SarvaSri Buddhisagar and Rajaram sons of Chhote Lal, Ram Bhajan Maurya, son of Teji Maurya, Nirmal Kumar son of Muralidhar Dixit, and Ramesh Chandra son of Ram Lauton. On examination of the body of the deceased, it was found to be wearing one yellow underwear, one white sleeveless vest, one white striped shirt, all of which, including sacred thread Janeu were blood soaked. In the light of Petromax, the body was examined, and it was found that there was a cut injury on the left

thumb/palm, a gunshot wound on the chest towards the left with tattooing and incised wounds on the chin, near the mouth, on the forehead and several incised wounds on the head and neck and abrasions (*Kharoanch*) with skin peeling off and contusions on the back (*Khanroanch aur Neelgu nishan*).

6. The body was sealed and sent for post-mortem to the Sadar Hospital Sitapur, the same night, however, it reached the Police lines at 10:15 am and the hospital in the afternoon of 15.11.2002. The explanation for the delay has been given by the constable PW-8 as the tractor trolley on which it was sent broke down on the way and it took some time in repairing the vehicle.

7. The recovery memo prepared on 26.11.2002 states that Sanju son of Raghubir was arrested along with Nannu and Chhailu and while under arrest he was interrogated about the weapon of assault, and he stated that he had killed Tinku alias Gyanendra Kumar with a country made pistol which he had hidden in the sugarcane field. He was ready to be taken to the sugarcane field where he would hand over the hidden weapon to the police personnel. Consequently, he was taken to the sugarcane field by the police and on the way they also contacted Ramesh Chandra son of Ram Lautan and Ram Bhajan, son of Teji, resident of village Jakaria Hishampur as independent witnesses. Other accused Chhailu and Nannu were left in the police jeep on the Chak Road and the accused Sanju along with independent witnesses Ramesh Chandra and Ram Bhajan were taken to the

Sugarcane field . He was released from custody, and he quickly went to the South western corner of the sugarcane field and took out country made pistol from under the grass where it was hidden. One live .12 bore cartridge was also handed over. A description of the country made pistol/ Tamancha is given in the recovery memo in detail. It was taken from the hands of Sanju and opened and one spent cartridge with its percussion cap missing, was found stuck in the barrel of the countrymade pistol. Sanju confessed before independent witnesses to have killed Tinku with the same weapon and he was made aware of the provisions of section 50 of the Cr.P.C. and also told that it amounted to an offence also, under Section 25 (1-B) of the Arms Act. The weapon was sealed in front of independent witnesses and recovery memo prepared. Such recovery memo was also signed by Ram Bhajan and Ramesh Chandra along with Police personnel including Station House Officer concerned.

8. The Investigating Officer also recorded the statement of many witnesses and prepared site plan and submitted Charge-sheet against accused persons under Sections 147, 148, 302/149 I.P.C.

9. The Trial Court framed charges against the appellants under Sections 147, 148, 302/149 I.P.C. and the appellant Sanju has been charged under Section 25(1-B) of the Arms Act along with fine also. The Appellants denied the same and claimed trial.

10. The prosecution in order to prove its case presented PW-1/Ram Naresh, PW-2/Brajesh Dixit, PW-3/Rinku @ Atul, PW-4/Dr. R.A.L. Gupta, PW-5/Anoop Kumar (Pharmacist P.H.S.,

Machhrehtha), PW-6/Dr. S.P. Singh, PW-7/Abdul Haleem Khan, the I.O. and PW-8/ Hiralal Constable 422, and apart from above witnesses have also relied on documentary evidence example F.I.R., Inquest Report, Post Mortem Report, Site Plan etc.

11. In Criminal Appeal No.1578 of 2004, Shri Nagendra Mohan Advocate appearing on behalf of the five appellants argued that the prosecution witness PW-1 Kallu, Alias Narendra Kumar was a resident of another village Bhadebhar and he could not have been present on the spot at the time of attack on Tinku. It has been submitted that the story set up by PW-1 that although his father had owned a tractor but it was out of order and therefore he had walked all the way to village Jakaria Hisampur to the house of Ram Naresh Dixit the informant, to ask for tractor to plough his field in Bhadebhar in the afternoon of 14.11.2002, and having been told by the mother of Tinku that Tinku had gone out with the tractor to the field of Ram Bhajan Maurya in village Bhadebhar and his having gone in search of Ram Naresh Dixit to his agricultural field, and having been told by him also that Tinku was ploughing the field of Ram Bhajan Maurya, then going together with Ram Naresh Dixit and Chhotelal to the field of Ram Bhajan Maurya and finding Tinku having already left the place after finishing work and then following the tractor on foot with Ram Naresh Dixit and Rinku, (his other son) accompanying him; as hard to believe.

12. It has been argued that there were two other tractors in village Bhadebar, but PW-1 chose to walk to another village to ask for a tractor from Tinku. It has also been argued that PW-1 had ulterior motive in implicating Sanju as Sanju's mother was the informant in a Criminal Case No.138 of 1991 in which PW-1's brother was an accused.

13. It has also been argued that Ram Naresh Dixit PW-2, the informant being the father of the deceased was a related and interested witness who could not be believed. It has been argued that Ram Naresh Dixit was supposed to be at Block Research Centre at Machhrehta for training every day with effect from 12.11.2002, up to 20.11.2002.

14. On 14.11.2002, as is evident from the Attendance Register produced by DW-1 and DW-2, the informant had signed in both meetings and he could not have been present at 5 p.m. when the alleged attack on Tinku took place in village Bhadebhar. It has been argued that PW-1 had drawn his salary for the entire month of November from Primary School in which he was working as Assistant Teacher. PW-2 was educated and had also worked as an Advocate for seven to eight years before he was appointed as an Assistant Teacher in Primary School in Village Keasara in 1996. His son Tinku was educated and also married but had strained matrimonial relations and his wife who had stopped living with him and he had an affair with his cousin, daughter of Budha Sagar, the deceased and also the deceased was not of good character and there were other persons in the village who were

inimical to him as he had been a candidate for Gram Pradhan elections where he had lost to one Shailendra.

15. It has also been argued that both alleged eye witnesses had given a different account of the attack allegedly carried out by the appellants on the deceased. It had been stated by both the witnesses had stated that while Tinku was driving the tractor on the Chak Road and had reached the Arhar field of Naimish, the appellants all of a sudden had come out of Arhar field armed with firearms and knives. Initially Chhailu and Shatrughan had opened fire on Tinku while he was driving the tractor. Such gunshots did not meet their target and thereafter Tinku got down from the tractor and started running towards the Arhar field but he fell down because his Lungi/Tahamad got entangled in his legs. He got up and started running towards Sugarcane field of Balli, the assailants caught hold of him, and Sanju aimed his Tamancha on his chest and fired at close range. Tinku fell to the ground and was attacked indiscriminately with knives held by other appellants on his face and neck. He died instantly.

16. It has been argued that such a story is belied by medical evidence as the doctor PW-5 Mahendra Pratap had stated that Injury No.5 on the back of the deceased could also have been caused by firearm pellets as tattooing was visible. PW-1 and PW-2 had only stated about one Firearm injury being caused to the deceased by Sanju, whereas there was another injury caused by pellets on the back. Had the prosecution witnesses seen the

incident as described by them, they would have noticed Injury No.5 having been caused also in the attack.

17. It has also been argued that the tractor on which Tinku was seated when attacked may have had gunshot marks on it, but it was not seized by the Investigating Officer and produced before the Court. Hence the story regarding initial gunshots being fired by Chhailu and Shatrughan, which missed their target, also appears to be a concocted story.

18. It has also been argued that besides the clothes worn by the deceased during Panchayatnama being prepared, the Investigating Officer had found another set of clothes, that is a T-shirt, one Angochha and one pair of Hawaii Chappal and a single slipper which were also sealed and produced as exhibits before the Trial Court and no explanation for the same could be given by the prosecution.

19. It has been argued that the accused Parmanand was arrested on 25.11.2002, and that Sanju, Nannu and Chhailu were all arrested on 26.11.2002 by the S.H.O. and taken to the scene of crime. It is alleged in the recovery memo prepared by the second Investigating Officer that Sanju on Enquiry revealed that he had hidden the weapon of assault, the country made pistol in the sugarcane field and can help the police party to recover the same. It's alleged that he was released near the sugarcane field and he walked 80 paces and took out the pistol from under the grass where he had hidden it. It has been argued that such a recovery memo was not adequately proved and false evidence was relied

by the Trial Court. It has also been argued that Ramesh Chandra Dixit, the alleged independent witness of the recovery of weapon of attack is the real brother of Ram Naresh Dixit, the informant.

20. It has been argued that from the statements of PW-1 and PW-2, it appears that when they were following the tractor being driven by Tinku, they were accompanied by one Chhote Lal also, but he was not produced as an independent witness. It has also been argued that Tinku was alleged to have been ploughing the field of Ram Bhajan Maurya but Ram Bhajan Maurya did not own any field. He was a tenant of one other villager by the name of Deputy. Ram Bhajan Maurya also was not produced as a prosecution witness as he may not have supported the case set up by PW-1 and PW-2.

21. It has also been argued that the motive for the alleged attack by the appellants is also very weak. As all the appellants belong to the same family and they could not have conspired and come together and murdered the deceased only because Sanju owed Rs.7000/- as sugarcane conveyance for use of Tinku's tractor. It has been argued that Sanju and Nannu are sons of Raghubir, Shatrughan and Chhailu are sons of Ramdutt brother of Raghubir, Parmanand is uncle of Sanju. Hari Shankar the appellant in the connected appeal, is also uncle of Sanju.

22. It has been further argued that PW-2 had stated that he maintained a diary of accounts regarding his dues which were pending against several persons in the village relating to supply of sugarcane to the Sugar Mill and also relating to use of tractor by

Tinku in other villagers' fields. Such diary was not produced at the initial stage either before the first Investigating Officer or before the second Investigating Officer but during trial, an application was moved and additional evidence in the form of the alleged diary in the handwriting of PW-2 was produced in Court which has been relied upon to allege that Rs.7000/- was due against Sanju which Tinku had repeatedly asked him to return, which led to altercation and animosity between the applicants and Tinku.

23. It has also been argued by Shri Nagendra Mohan that the site plan prepared by the first Investigating Officer on 15.11.2002 of the scene of crime does not show the field of Ram Bhajan Maurya. It also does not show any tractor standing on the Chak Road, it also does not show other pieces of Clothing and footwear recovered from near the body of the deceased in the sugarcane field deliberately.

24. It has also been argued that the murder allegedly took place at 5:00 PM on 14.11.2002. The inquest report was prepared at 11:45 PM and the body sealed and sent on a tractor trolley to the District Hospital Sitapur the same night, but it reached the next day at around 10:15 AM to the police lines and in the afternoon to the hospital whereas the District Hospital was only 30 kms. away from the alleged scene of crime. It has been argued that Tinku was murdered somewhere else by some unknown assailants, and his body was placed in the sugarcane field of Balli, son of Chhiddan with the collusion of the police and inquest report prepared by the police party in the presence of interested

witnesses and the body of the deceased was actually sent to the mortuary only on the morning of 15.11.2002.

25. While adopting the arguments made by Shi Nagendra Mohan, counsel for the five appellants in Criminal Appeal No.1578 of 2004, Sri Arun Sinha has argued further that as is evident from a perusal of the written report of the attack prepared by PW-2 on 14.11.2002, which became the basis of the FIR lodged at 7:10 PM at P.S. Machhreta, there is no exact description of the illegal fire arms being carried by the assailants. There is a general description of "*Aslahe*" without mentioning whether it was SBBL or DBBL or Katta or Tamancha or Addhi being used by the appellants. .

26. It has been argued that if the appellants were carrying fire arms as well as knives, it is not clear as to why they used knives to attack the deceased instead of all of them shooting him down at the first instance.

27. Shri Arun Sinha, who appears for the appellant Hari Shankar in Criminal Appeal No.1917 of 2004 has argued that it has been alleged by PW-1 and PW-2 that appellants were hiding in the field of Naimish and ambushed Tinku while he was going on a tractor on the Chak Road, but such story is doubtful because if the assailants who were six in number and were heavily armed with firearms, and knives they could not be said to have waited till the PW-1 and PW-2, along with Chhote Lal and Rinku came within a few paces to attack Tinku at a time when such attackers could have been seen by such alleged eye witnesses killing Tinku in the

presence of his father and his brother and Kallu and Chhote Lal could have been postponed to some other day by the appellants.

28. It has also been argued that the tractor being used by Tinku had a passenger seat available on it and all four persons could have easily sat on the tractor and travelled together to their village, but they chose to walk on foot and follow the tractor so that they could witness the attack being made by the appellants from a safe distance. The story seems highly improbable. It has also been argued that four witnesses were walking just 15 paces behind the tractor yet when the appellants started firing upon the tractor, none of such witnesses got injured. Also, it is quite unbelievable that a person who is driving a tractor on being attacked, would get down from the tractor and run on foot towards the same field where the assailants were hiding. Tinku could have easily escaped by speeding away in his tractor towards his village.

29. Sri Arun Sinha has placed emphasis on two alleged love letters of Tinku written to one Poonam his cousin and daughter of Buddhi Sagar, and it has been alleged that the manner of attack, disfiguring the face of the deceased, showed that there was extreme hatred towards the victim which could only be caused by annoyance at such an affair and it has been suggested that it was a case of honour killing by the family of Buddhi Sagar and Buddhi Sagar was inimical to Hari Shankar the appellant because Hari Shankar had lodged one Non-Cognizable Report (NCR) against Buddhi Sagar in the year 2000. It has been argued by Shri Arun Sinha that PW-2 deliberately withheld a vital piece of evidence

and denied possession of any paper having handwriting of the deceased Tinku so that his handwriting could not be matched with the two letters produced during trial alleged to have been written by him to his cousin.

30. It has also been argued on the basis of statement of PW-5 Dr. Mahendr Pratap, who conducted the postmortem that Injury No.1 and Injury No.5 could have been caused by two different firearms and that PW-1 and PW-2 have not stated anything about the second injury caused by another firearm namely Injury No.5 on the back of the deceased. Even the inquest report and evidence of PW-3 alleged witness of Panchayat does not speak of the second firearm injury on the back of the deceased.

31. It has also been argued by Shri Arun Sinha that PW-2, the father of the deceased neither touched nor picked up the deceased in his arms on his death. His clothes were not stained with blood. He left the body of deceased in the presence of other villagers, including PW-1 and went to lodge FIR at the police station concerned. Such behaviour is unnatural. The Trial Court has considered this argument raised by the defence counsel and has found no substance in it. As on the basis of experience it has been stated that it is difficult to gauge the mental condition and emotional status of a father whose young son is killed before his own eyes.

32. Sri Rishad Murtaza on behalf of the complainant has stated that where there is a case of direct evidence and eyewitness accounts are trustworthy and reliable The question of motive

becomes secondary. Crimes are committed on the flimsiest of motives. It has been stated that all the appellants have criminal antecedents and their subsequent conduct also is blame worthy. It has been argued that the informant Ram Naresh Dixit, father of the deceased was run over by the appellants in a deliberate accident caused by a Marshal Car for which Case Crime No.42 of 2007 is pending. It has also been argued that the younger brother of the deceased Atul @ Rinku was also grievously hurt for which Case Crime No.56 of 2007 has been registered under Sections 307 & 504 IPC and on conviction and sentenced to 10 years rigorous imprisonment, Sanju, Nannu and Chhailu approached this Court and the appeal was partly allowed by judgment and order dated 17.12.2013. The conviction was not set aside but the accused were awarded seven years imprisonment instead in the bail orders granted to the three convicted appellants during the pendency of appeal these persons had been forbidden to enter the victim's village. Also in Case Crime No.1137 of 2009 under Sections 302, 149 and 120-B I.P.C. Ram Naresh Dixit, the father of the deceased was shot and killed by the accused Sanju, Chhailu, Shatrughan and Parmanand. The appellants were convicted and sentenced for life imprisonment by the order of the Sessions Judge dated 30.10.2014, and the Criminal Appeals are pending before this Court. To sum up, the appellants initially killed Tinku in 2002, then after being released on bail, they tried to kill the first informant, the father of the deceased Ram Naresh Dixit. Then in 2007, they tried to kill the brother of the deceased Rinku

@ Atul, and were finally successful in eliminating the father of the diseased Ram Naresh Dixit, the first informant in the present appeal. The appellants have insured that no male member of the family is left to contest this appeal. Only the widow of Tinku and widow of the informant are alive with their other children.

33. It has been argued that Rs.7000/- in the year 2002 was a substantial sum of money as the salary of an Assistant Teacher in a basic school at the time was Rs.6500/- per month. Now after 20 years such salary has risen to Rs.80,000/- per month looking to the cost of living. It has been argued that the counsel for the appellants have pressed certain grounds only to challenge the impugned judgment and order of the Additional District and Session Judge.

34. PW-2 had also explained from his diary that earlier Rs.5000/- was given in cash to Sanju for his sisters wedding and later on Rs.2000/- became due because of use of tractor by him as such Rs.7000/- were due for more than one year, and Tinku had repeatedly asked for such money to be returned and in the morning of 12.11.2002, when he had again made such demand from Sanju, Sanju felt annoyed and had stated that Tinku was insulting him repeatedly in public and he would teach a lesson to him soon.

35. The counsel for the Appellants have argued that medical evidence does not corroborate ocular evidence and that Injury No.5 could have been caused by another firearm as deposed by PW-5 Dr Mahendra Pratap, it has not been noticed in the inquest

report and has also not been mentioned as such by any of the eyewitnesses.

36. It has been submitted in response to such argument that inquest report was prepared the same night in the light of a Petromax. There were several villagers and the Sub-Inspector and several Constables present, and when the dead body was examined only Abrasions/Scratches/ Kharoanch and Neelgu Nishan were found in a small area of 7 cm. into 6 cm. below the scapula. Such abrasions could have been caused due to falling on sugarcane stubs present in the field even on being harvested. Such fresh abrasions with passage of time and with the body lying for a long time on its back changed colour to blue black and have been incorrectly referred to as tattooing /blackening at the time of postmortem. The Medical Officer PW-5, had only given an opinion on the basis of note made in the Post Mortem Report, which opinion was given on a specific suggestion being made to him. It has been mentioned that the deceased was wearing a vest and a shirt and an experienced policeman like a Sub-Inspector or even a police constable who had gone to conduct the inquest would have certainly noticed pellet marks if they were present on such clothing. Even at the time of postmortem, when the body was dissected, no pellets could be recovered from underneath such abrasions. Only fire arm wound of entry that is Injury No.1 had resulted in 28 pellets being found in the thoracic cavity of the deceased with his ribs and sternum, fractured, and his pleura, lungs, heart and aorta lacerated.

37. It has also been argued that whenever there is contradiction between ocular and medical evidence, it is settled law that ocular evidence would prevail over opinion given by a doctor. But in this case, the nature of injuries as stated by the eye witnesses, PW-1 and PW-2 is completely corroborated by the Post Mortem Report, Exhibit-7 and the Enquiry Report Exhibit-8. The copies of the site plan of the scene of crime Exhibit Ka-17, and the site plan prepared regarding recovery of countrymade pistol Exhibit Ka-6 were duly proved and the manner in which the crime was committed is completely corroborated by the version of the first informant in the written report and the testimony of PW-1 Kallu and PW-2 Ram Naresh Dixit.

38. The blood stained soil and clothes that were recovered, were sent to the Forensic Science Laboratory, and the Serological Report has found the presence of human blood on them. The Forensic Science Laboratory has also proved that the bullets recovered from the place of crime were indeed fired from the weapon, which was recovered on the pointing out of Sanju.

39. It has also been argued that the tractor, which Tinku was driving was of HMT – Zetre make which had a footrest only on the left side and as is evident from the site map, when the tractor was coming on the Chakk Road from the field of Ram Bhajan Maurya the appellants had attacked by opening fire coming out of their place of hiding in the Sugarcane field. Tinku, being only 19 years old and an inexperienced young man may have been taken by surprise and lost his nerve, and instead of using his presence of

mind to speed away with the tractor, got down and started running on foot. Such behaviour on the part of a young man, cannot be said to be improbable.

40. With regard to the argument raised regarding non-production of an independent witness like Chhote Lal, Section 154 of the Evidence Act has been pointed out and it has been argued that it is not necessary for the prosecution to produce a number of witnesses as the quality of evidence given by a witness is more important than the quantity of such witnesses.

41. It has also been argued that the relatives/father of the victim would not spare the actual culprit and falsely implicate someone else only at the instigation of an unrelated person. It has been submitted that Buddhi Sagar was the paternal cousin of Ram Naresh Dixit. He had political rivalry with the deceased Tinku because both Tinku and Buddhi Sagar were candidates in Gram Pradhan elections. Only because they were fraternal cousins Buddhi Sagar could not have persuaded and instigated Ram Naresh Dixit to falsely implicate the appellants. It has also been argued that it has come out in the statement of PW-2 that Tinku and Sanju were otherwise on very cordial terms and that PW-2 had stood surety for Sanju in a criminal case which was pending at the time, and he had not withdrawn himself from being surety of Sanju even during trial in the instant case of murder of his son. All the convicted appellants are closely related to each other and have committed several crimes together, before the murder of Tinku and even after such murder.

42. With regard to the argument raised regarding presence of another set of clothing, that is one T-shirt, one Angochha and three slippers in the field where the body of the deceased was found lying. It has been submitted that during evidence being recorded of PW-6, he had stated clearly that such clothing and footwear was found at a distance from the body of the deceased in the Arhar field of Naimish, in which Arhar of about two arms in height was standing and the witnesses, therefore could not notice such clothing. It has been clearly stated by PW-6 in his statement at Page-106 of the paper book that in three footwear that was recovered, there was no ladies slipper/Chappal. Moreover, the Investigating Officer, Vashist Narayan Dubey, had not shown sufficient care and diligence and did not make any effort to find out from the villagers present at the time of preparing the inquest report with regard to the ownership of the same. Such clothes could have been of any of such villagers or even that of the appellants as they were hiding in the same field and not specifically of the alleged girlfriend of Tinku, who actually was only a 10 year old child. A false suggestion has been made of an affair of Tinku with his paternal cousin who was only a 10 year old girl.

43. It has also been argued that PW-2 had admitted that he had gone for BRC Training to Machhreta Centre which was only 5 kms. away from his home on his bicycle and having left the training early at 4:00 PM, had reached his house within 15 minutes, and then proceeded towards his own field where workers were tending sugarcane.

44. It has also been argued that Hari Shankar, the appellant in Criminal Appeal No.1917 of 2004 has a long history of criminal cases even prior to Case Crime No.267/2002, he was convicted and sentenced to life imprisonment by judgment and order dated 19.03.1996, in Case Crime No.171 of 1990 under Sections 302, 147, 148, 149 and 452 I.P.C.

45. During the course of appeal, Hari Shankar was released by the State on remission by order dated 29.11.2019 as he had concealed his criminal history. His remission was challenged in Writ Petition No.24795 of 2020 and has been cancelled by this Court by its order dated 24.05.2022. Besides criminal cases relating to the family of the deceased namely Case Crime Nos.267 of 2002, 42 of 2007, 56 of 2007, and 1137 of 2009, the appellants have been implicated in several other criminal cases relating to Sections 302, 323, 504, 506, 452 and Sections 147, 148 and 149 IPC and Gangster Act and Goonda Act have also been invoked against some of the convicted appellants.

46. In response to the argument regarding Tractor not being seized as case property, Sri Rishad Murtaza has pointed out Page -73 of the paper book where during cross-examination of the prosecution witness, it has come out that the tractor kept standing on the Chak Road till 11:00 PM in the night when PW-2 was allowed to take it away to his house by the first Investigating Officer who on examination had found no pellet marks on it.

47. It has been argued that Ram Bhajjan Maurya's field has not been shown in the site plan because it was almost 500 meters

away from the place of the incident and the tractor had been coming on the Chak Road from such field when the appellants attacked Tinku near the field of Naimish and killed him in the field of Balli. As such only the Chakk Road and its surrounding fields were noticed in the site plan by the Investigating Officer.

48. The counsel for the complainant has also pointed out Paragraphs 22 to 30 of the judgment impugned where the Trial Court has considered each of the arguments raised by the counsel for the appellants herein at the time of trial and has countered the same and given very plausible and reasoned findings which ought not to be disturbed as they cannot be said to be perverse.

49. Shri S. P. Singh, learned A.G.A.-1 has supported the case of the prosecution and has pointed out the post-mortem report with regard to Injury No.5, which only mentions multiple circular abrasions and blackening caused due to postmortem staining on the back of the body. The learned A.G.A.-1 has placed before this Court relevant Extract of Chapter 24, of Modi's Medical Jurisprudence and has read out the observations of the author on Abrasions, which he described as injuries involving loss of the superficial epithelial layer of the skin and they do not leave a scar on healing. For an abrasion to occur, there must be pressure of an object and it should move on the skin to form an abrasion. Such abrasion can be produced by a blow, or a fall or a slide on a rough surface or being dragged in a vehicle accident, by scratching or grazing with fingernails, horns, by teeth bites, or by friction and pressure of strings or loops tied round the neck or other parts of

the body. Abrasions vary in size and shape and bleed very slightly. These blunt impact injuries are hardly of any significance from the point of view of loss of life, but medico legally, they are of great importance. Abrasions resulting from friction against a rough surface during a fall are mostly found in bony parts and are usually associated with contusions. The shape and pattern may indicate the type of surface on which the victim may have been impacted or dragged. It has been argued by the learned A.G.A.-1 that the Post Mortem Report alone should be relied upon and not the doctors opinion which is merely an opinion on the basis of suggestion given by the counsel for the accused to him.

50. It has also been argued by the counsel for the State-Respondents that it is not necessary for a particular witness to react in a particular manner on seeing a criminal offence taking place, therefore, the argument of the counsel for the appellants that the reaction of PW-2, the informant was unnatural deserves to be rejected, more so when no attempt was made during the course of trial to make a suggestion to informant regarding his alleged conduct on the death of his son, giving him opportunity to explain his alleged insensitivity in not trying to save his son or embracing his dead body after the appellants had left the scene of crime. The reaction or conduct of an eyewitness cannot be gauged or predicted beforehand. He has placed reliance upon judgement rendered by the Supreme Court in the case of ***State of Karnataka Versus K. Yarappa Reddy reported in 1999 Volume 8 SCC 715***, where the Supreme Court placing reliance upon

another judgment rendered in ***Rana Pratap Versus State of Haryana reported in 1983 Volume 3 SC 327***, and ***Appa Bhai Versus State of Gujarat reported in 1988 Supplement SCC 241***, has observed in Paragraph-26 as under: –

“26. Criminal courts should not expect a set reaction from any witness on seeing an incident like murder. If five persons witness one incident, there could be five different types of reactions from each of them. It is neither a tutored impact nor a structured reaction which the witness can make . It is fallacious to suggest that prosecution witness – – would have done this or that on seeing the incident. Unless the reaction demonstrated by an eye witness is so improbable or so inconceivable from any human being fitted in such a situation, it is unfair to dub his reaction as unnatural.”

51. The learned A.G.A.-1 has also placed reliance upon judgment rendered by the Supreme Court in the case of ***State of Himachal Pradesh Versus Mast Ram reported in 2004 Volume 8 SCC 660*** and Para-11 where it was observed that even though the two prosecution witnesses were related to the deceased, their presence on the fateful day at the scene of crime had been properly explained, the two eye witnesses were subjected to lengthy cross examination, but nothing could be elicited to doubt the creditworthiness of their testimony, only because the prosecution witnesses are relatives. It cannot be a ground to believe their testimony if otherwise, it inspired confidence. The law on this point is well settled that the testimony of a relative witness cannot be disbelieved on the ground of relationship. The only requirement is to examine the testimony with caution.

52. The learned A.G.A.-1 has also placed reliance upon judgment rendered by the Supreme Court in ***Hari Singh M.***

Vasava Versus State of Gujarat reported in 2002 Volume 3

SCC 475. The Supreme Court observed that where the testimony of the eye witness was corroborated by medical evidence and the FIR was lodged with sufficient details, it could not be disbelieved only because the eye witness did not intervene to save the victims
It was observed as under: –

“8. merely because PW2 did not intervene at the time when the appellant was inflicting knife blows on the person of the deceased, cannot be a ground to discard his testimony. Only because the eye witness fails to intervene to save the deceased, cannot be made a ground to reject his testimony, particularly when he is not asked as to what Restrained or refrained him from intervening to save the deceased. In the instant case, the nature of injuries inflicted on the person of the deceased and the weapon of offence. The appellant was having in his hand is indicative of the state of mind of PW2, which obviously prevented him from intervening.”

53. Having heard the learned counsel for the parties, we have examined the judgement of the Trial Court. The learned Trial Court has considered the argument regarding diary of accounts produced by PW-2 on 21.08.2003 by way of an application during the course of trial, that the same was a forged document. The Trial Court at internal Page nos. 9 and 10 has considered in detail the submissions made by PW-2 in his statement at Page-10 to Page-21 with regard to various questions asked on behalf of the accused appellants. The Trial Court has considered the detailed submissions made during cross-examination of PW-2 with regard to various entries made in blue and black ink with different pens on various pages in the diary and then has compared the

statement initially given by PW-2 in his written report regarding annoyance of Sanju at repeated requests made by Tinku to pay up his dues with regard to conveying sugarcane to the mill. The Trial Court also considered PW-1 statement that at the time of attacking the deceased, Sanju was repeatedly abusing Tinku and saying that he was asking for his money every day and therefore today he was giving back his dues to him. The Trial Court has come to a conclusion that PW-2 was educated and working as Teacher and in the diary there were several entries with regard to dues owed by other villagers also, and the defence had not produced a single witness from amongst such villagers to say that they did not owe any money as tractor charges to PW-2 or his son. We find the reasoning given by the Trial Court to be come to the conclusion that could have been wrong by any prudent person and such reasoning cannot be said to be perverse.

54. The Trial Court has also considered at internal Page-10 the statement of Sanju under Section 313 of the Cr.P.C., where in he alleged that the accused had enmity with Buddhi Sagar Pradhan since long and the deceased Tinku had an illicit affair with Buddhi Sagar's daughter and Buddhi Sagar had instigated PW-2 to falsely implicate the accused. The Trial Court has considered two alleged love letters written by the deceased to the daughter of Buddhi Sagar and produced during trial and numbered as Paper Nos.48 Kha-2 and 48 Kha-3; but not proved and therefore not marked as exhibits.

PW-2 had stated at Page-6 that his son Tinku had fought Pradhani elections in which Buddhi Sagar was one of the candidates. Both Tinku and Buddhi Sagar had lost and one Shailendra Kumar had won. Buddhi Sagar had been Pradhan twice Before the last such Gram Pradhan election and it is unlikely that after Tinku had contested the last election against Buddhi Sagar, there would have been good and cordial relations amongst Buddhi Sagar and PW-2 and his children, and it is highly unlikely that at the instigation of Buddhi Sagar PW-2 would have falsely implicated the accused. The Trial Court has also considered the allegation regarding alleged affair of the deceased with the daughter of Buddhi Sagar, and the allegation that Buddhi Sagar may have been instrumental in murdering Tinku because of annoyance at such relation. The Trial Court after considering the argument raised by the defence Counsel in this regard has compared the same with the statement made by Sanju under section 313 of Cr.P.C. it was observed that it is highly unlikely that even after political rivalry between Tinku and Buddhi Sagar and Buddhi Sagar annoyance with Tinku over the alleged affair with his minor daughter, PW-2 could have been instigated by Buddhi Sagar to falsely implicate Sanju. Sanju had not accused Buddhi Sagar of murdering Tinku or being instrumental in his murder at any point of time. No cross-examination in this regard was also done by the defence counsel of any of the prosecution witnesses. The Trial Court after considering all evidence and

weighing the statements made initially by the accused under section 313 of the Cr.P.C. and the suggestion made by the defence counsel during argument has come to the conclusion that such argument has no force and has rejected the same.

55. We have considered the observations made by the Trial Court in this regard and also the argument raised by the learned counsel for the respondent that Poonam, the daughter of Buddhi Sagar and cousin of Tinku was only 10 years old at the time and there is no probability of her having any illicit relationship at this age and thus we do not find any reason to set aside the finding given by the Trial Court in this regard.

56. The Trial Court has also considered the argument raised by the learned Counsel for the appellants that the First Information Report had been lodged with delay. The Trial Court after considering all documentary evidence and the distance between the scene of crime and the Police Station concerned had taken into account, also, the statement given by the official witnesses regarding entries made in the General Diary on 14.11.2002 and again on 15.11.2002, the information sent by the SHO to the Circle Officer concerned on 14.11.2002 itself at 09:45 PM through one Ashok Kumar Tiwari constable. The Trial Court after considering all evidence in this regard has come to the conclusion that the time of the incident as mentioned in the written report that is 5:00 PM and the time when the FIR was lodged in the police

station concerned on 7:10 PM, the report sent to the Circle Officer at 9:45 PM had been duly established and there was no inordinate delay as the FIR was lodged within two hours of the incident and had been written by PW-7, the Moharrir Shivkumar Singh as given in Chik FIR Exhibit K-20 and GD Entries filed as Exhibit K-21.

57. We do not find the conclusion arrived at by the Trial Court perverse and against the material evidence on record.

58. The Trial Court has also considered from Paragraph-23 onwards, the argument raised by the defence regarding the alleged contradiction between the description of the assault by the appellants as given by PW-1 and PW-2, the eye witnesses, and Medical Legal Report/ Post Mortem Report and evidence of Dr. Mahendra Pratap, who had conducted the autopsy. The Trial Court has discussed in great detail, the description given by PW-1 and PW-2 by referring to several pages of their statement and compared the same with the Post Mortem Report Exhibit Ka-2. He has also considered the opinion of Medical Officer that Injury No.5 may also have been caused by a firearm. However, after comparing the statements made by PW-1 and PW-2 and the Post Mortem Report, which only mentioned circular abrasions in a small area of 7 cm x 6 cm below the scapula on the back of the deceased, the Trial Court has also considered the law in this regard as settled by the Supreme Court in ***State of U.P. Versus Harbans Sahai*** and in ***Gangadhar Behera Versus***

State of Orissa — and observed that where eye witness account is trustworthy the opinion of the doctor, conducting the postmortem is only corroborative and not decisive and not final being only an opinion.

59. We have examined the Post Mortem Report. Exhibit Ka-7 relied upon by the counsel for the parties. The counsel for the appellants have stressed that in the opinion of the Doctor Injury No.5, which describes multiple circular abrasions with tattooing present in an area of 7 cm x 6 cm (2.7 inches 2.6 inches) on the back 14 inches below angle of left scapula; could have been caused by pellets, whereas the respondent counsel has stressed that the deceased on being attacked fell in a sugarcane field, and the marks on his back have been caused by sugarcane stubs left in the field after harvesting to promote next year's harvest.

60. We have also noticed the firearm wound of entry- Injury No.1 being 2 cms. x 2 cms., cavity, deep on the front of the chest below the sternum notch whose margins were inverted and lacerated and blackening were present all around the wound with the direction of the firearm wound from front to back. During post mortem, not only were 28 deformed pellets recovered, but also a power wad of plastic recovered. These fortified the contention of PW-1 and PW-2, that Sanju aimed the pistol close to the chest of the deceased and fired at close range. The retrieved pellets with wad were sent for forensic examination along with the 12 bore countrymade pistol and one live cartridge, and one spent cartridge of the same bore with percussion cap missing. The Forensics

Science Laboratory, Mahanagar Lucknow, had in its report dated 24.07.2003, after examination of the pistol and its barrel had found fouling matter present in the form of lead nitrate and had matched the 12 bore spent cartridge and found that the same had been fired from the countrymade pistol.

61. We have also examined the notes submitted by the learned counsel for the respondent with regard to the nature of discolouration of abrasion/bruises caused by hard objects. Initially, such bruises are red in colour, which turned to blue and black with passage of time. We are of the opinion that Injury No.5 must have been caused by falling on sugarcane stubs and not by pellets. The appellants' contention regarding marks of tattooing caused by pellet injuries cannot be taken to be true as the deceased was wearing a vest and a shirt on his upper body with Lungi on his lower limbs. A countrymade pistol being fired from a distance cannot cause much penetration of pellets in two layers of clothing, the clothes of the deceased recovered during post mortem did not have any pellet marks on them.

62. Injury Nos.2 & 3 were incised wounds on the face and the neck and back of skull which were most probably caused by indiscriminate stabbing by the appellants with their knives. Injury No.4 was an incised wound, 6.5 cm x 2.5 cm bone deep over inner aspect of left palm, including the base of left thumb, which was caused most probably when Tinku tried to ward off the knife blows with his hand.

63. The doctor had found the sternum and ribs fractured, the right and left side of pleura lacerated, the larynx, trachea, and bronchial cavity lacerated, both lungs, lacerated, and pericardium, and heart also lacerated along with the Aorta with the entire thoracic cavity containing about 2 Ltrs. of liquid and clotted blood. This corroborated the eye witnesses account regarding deceased being shot with pistol at close range.

64. We do not find the conclusion arrived at by the Trial Court in any way perverse or liable to be interfered with, taking into account the words used in the Post Mortem and also taking into account the suggestion being given to the doctor by the defence counsel in response to which he made such a statement.

65. The Trial Court has also considered the argument raised regarding the distance of the firearm used by Sanju as described in the statements of PW-1 and PW-2 and description of Injury No.1 as mentioned in the Post Mortem Report. The Trial Court has compared the medical opinion with the eye witness account and then come to a conclusion that the Post Mortem Report had clearly stated that the wound on the chest cavity was a wound of entry with inverted and lacerated boundaries with blackening also being present, and it led to fracture of ribs, sternal notch and laceration of Pleura, Lungs, Heart and Aorta and the amount of damage it had caused in the thoracic cavity and came to a conclusion that

the witness account could not be said to be in any way contradictory to the Post Mortem Report.

66. We do not find any perversity or legal infirmity in appreciation of evidence of PW-1, PW-2 and PW-5 and documentary evidence of Post Mortem Report, and Serological Report submitted by the Forensic Science Laboratory. The Trial Court has also considered the argument that was raised by the defence that the Inquest Report does not have details of FIR said to have already been lodged at 7:10 PM at Police Station. Machhreta. The Trial Court after looking into the evidence of the official witnesses and documentary evidence produced for example, the information sent to the Circle Officer, the challan of the dead body, the photo lash, the letter sent to the Chief Medical Officer and the statement given by PW-7 who had proved beyond doubt that GD entries, the Chik FIR, etc. In Paragraph-26 and has come to the conclusion that there was no discrepancy as alleged in the enquiry report.

67. The Trial Court in Paragraph-27 onwards of its judgment has also considered the argument raised by the defence regarding the time of death of the victim and the amount of food present in the stomach and the medical opinion expressed by PW-5 in this regard. It has rejected and we find rightly so, the argument as made by the counsel for the appellants that the deceased may have died at some other

time on 14.11.2002 than the one indicated by PW-1 and PW-2.

68. The learned Trial Court has also considered the argument raised by the defence regarding recovery of another set of clothing, that is one T-shirt, one Angaucha, and three slippers from the scene of crime, and the suggestion that somebody else was also present on the scene, the identity of whom has been deliberately withheld. The Trial Court considered the evidence of PW-6. The First Investigating Officer Vashist Narayan Dubey had observed that he made no attempt to find out from the villagers present at the time inquest report was prepared as to whose clothing and footwear it was; the Investigating Officer had not made any query in this regard to any of the witnesses and therefore there was no reason for the witnesses to give any information on their own. The second Investigating Officer PW-4 Ramakrishna Ram also admitted that he had not asked the informant or any other witnesses about it. The carelessness on the part of the Investigating Officer cannot be allowed to weaken the case of the prosecution. During cross-examination, PW-6 had proved the collection of blood stained soil and plain soil from the scene of crime and also considered the Forensic Science Laboratory Report regarding human blood being found on it. It had also come out from the evidence of the official witnesses that the footwear that was recovered could not be said to belong to any female. The Trial

Court has observed that only because another set of clothing was found at a little distance from the place where the body of the deceased was found, it cannot be said that somebody else had murdered the victim at some other place and then brought the body into the sugarcane field, where it was eventually found lying. There was no suggestion in this regard made by any of the appellants or the defence counsel. We do not find any infirmity in such a conclusion having been drawn by the Trial Court.

69. Trial Court has also considered the argument regarding the tractor which Tinku was driving, having not been taken into custody as case property. After considering the evidence of the Investigating Officer and also the site plan and the evidence of other prosecution witnesses, the Trial Court has relied upon the evidence of the first Investigating Officer PW-6 to come to the conclusion that there was no gunshot mark on the tractor, nor any blood was found on it. Therefore, the Investigating Officer had found it unnecessary to seize it. We do not find any infirmity in the consideration of such argument by the Trial Court in Paragraph-29 of the judgment impugned. The learned Trial Court has also considered the argument raised by the defence that the recovery of pistol made on the pointing out of Sanju is false and had not been proved in accordance with the provisions of Section 27 of the Indian Evidence Act. The Court considered the evidence of the second Investigating Officer, Ramakrishna Ram, who had

arrested Sanju, Chhailu and Nannu on 26.11.2002, the site plan prepared of the place of recovery of the weapon of assault filed as Exhibit-6 and again as Exhibit-17 and evidence of PW-3, Ramesh Chand Dixit and the report of the Forensic Science Laboratory, which had stated clearly that the spent 12 Bore cartridge had been fired from the country made pistol, so recovered. The evidence of the Investigating Officer and other official witnesses was considered and compared with that of PW-3 and the Trial Court observed that there was no contradiction in their statements and it could not be said that only because Ramesh Chand Dixit was the paternal uncle of Tinku, his evidence was doubtful

70. We have examined carefully the findings given by the Trial Court and compared the same with the evidence available in the Trial Court record, and we find no legal infirmity in the appreciation of such evidence by the Trial Court.

71. The Trial Court has also considered from Paragraph-31 onwards, the argument raised by the Counsel for the defence that PW-1, Kallu Alias Narendra Kumar is a chance witness and PW-2 the informant is a related witness and it was highly doubtful that any of them was present at the scene of crime on 14.11.2002. The Trial Court has considered the evidence produced by DW-1 Kanhaiya Lal Maurya Incharge of BRC Training College Machhreta and of DW-2 Ramakant Assistant Teacher attached with the office of the Assistant Basic

Shiksha Adhikari Mata Sitapur. The Trial Court has considered in detail, the entries made in the Attendance Register kept at BRC Centre for the training taking into account the fact that PW-2 had stated that he had gone for training to BRC on 14.11.2002 but had returned after 4 PM and had gone to his field thereafter to supervise workers there, and also his statement regarding being absent from training in the days following the murder of his son that is from 15.11.2002, the Trial Court found that PW-2 had been shown as present even on 15.11.2002, when postmortem was being performed on his sons body and thereafter and such signatures/initials made in the Attendance Register appeared to be forged. The Trial Court also considered the evidence of DW-2 who brought the the salary voucher of PW-2 of November 2002, and observed that in case PW-2 had not attended training or his Primary School but had received salary for such period, it was open for the Authorities to proceed against him for recovery of such salary, but it could not be said only on the basis of such entries made in the Attendance Register and in other official documents that PW-2 had remained present in BRC on 14th November and 15th November 2002 and was not present at the scene of crime.

72. The Trial Court has considered in detail the two judgments cited by the defence counsel to impeach the evidence of PW-1 and PW-2, and then compared the facts of such cases with the instant case where it was evident that the

Attendance Register maintained at BRC, Machhreta had apparently doubtful entries in it and thereafter observed that even though PW-2 is the father of the deceased and admittedly related witness, it would not automatically lead the court to discard his evidence. The settled law in such cases was to examine the evidence with greater diligence and caution. On carefully examining the evidence given by PW-2 in his initial statement under Section 161 Cr.P.C., and his statement under Section 164 Cr.P.C. and his cross examination, the Trial Court has observed that despite attempt being made to hassle this witness by repeated and prolonged cross-examination, the defence could not in any way show any material contradiction in such evidence. On the other hand, the evidence of both PW-1 and PW-2 with regard to their presence at the scene of crime, when the appellant attacked the deceased had been explained in a most natural and cogent manner and the evidence of both the witnesses did not have any such contradictions which could be pointed out by the defence counsel to lead the Trial Court into discarding the same. We have gone through the detailed consideration made by the Trial Court in Paragraphs 31, 32 and 33 and we do not find any infirmity in the same.

73. PW-1 has explained why he went to Tinku's house to hire the tractor to plough his field as he has always been doing so in the past, and Tinku was his schoolmate before he dropped out of school several years ago. PW-1 had also stated that he

had been summoned by the Investigating Officer on the next day that is 15.11.2002 to give his statement under Section 161 Cr.P.C. because when other villagers had arrived on the sea, he had left for his home on 14th evening and was not present when the police party arrived to conduct the inquest. With regard to PW-1 enmity with Hari Shankar PW-1 has stated before the Trial Court that only one NCR was lodged by him against Hari Shankar in which no further proceedings took place as compromise had occurred between the parties on 18.03.2000.

74. The Trial Court has also considered the argument raised by the defence counsel regarding PW-1 Kallu Alias Narendra Kumar, being a chance witness and being inimical to the accused Hari Shankar and therefore not worthy of reliance. The Trial Court has considered the Examination-in-chief and cross-examination of such witness by the defence Counsel and also the distance between Village Bhadebhar and Village, Jakaria Hisampur and the distance of the agricultural fields of Ram Bhajan Maurya, that of PW-2 and has rightly come to a conclusion that PW-1 cannot be said to have given false evidence as his presence at the scene of crime had been properly explained. Evidence of PW-1 was found entirely trustworthy and natural, not only with regard to the explanation of his presence at the time of the offence but also with regard to his description of the manner in which the attack was made upon the deceased by the appellants.

75. The Trial Court has also considered certain discrepancies in the statement of PW-1 with regard to NCR No.39/2000 being lodged under Sections 323 and 504 IPC against Hari Shankar. However, such discrepancies were not of such nature as would lead the Trial Court to disbelieve PW-1 entirely and discard his evidence.

76. Much emphasis has been placed by the counsel for the appellant on the site plan prepared on 15.11.2002 by the first Investigating Officer Sub-Inspector Mr. Vashist Narayan Dubey. We have carefully examined the site plan and the places marked thereon regarding the location of the tractor at Place-B, the Place-E from which the witnesses watched the incident, the Place-C where Tinku fell on his Lungi being entangled in his legs, and the Place-D to which he ran i.e. the Sugarcane field of Balli son of Chhiddan where he was ultimately caught and attacked by the assailants. We find no discrepancy in the site plan as tried to be projected by the Counsel for the appellants.

77. The Trial Court after considering the entire case set up by the Defence in Paragraph-21 onwards upto Paragraph-37 of the judgment impugned, has given a very logical and plausible conclusion in later part of his judgment, which we have gone through carefully and find no legal infirmity therein.

78. It is settled law that the judgment of the Trial Court should not be interfered with unless the Appellate Court is of a positive opinion that the judgment is perverse and that it had to be reversed for substantial and compelling reasons.

79. Perusal of the evidence produced by the prosecution before the trial court, would reveal that P.W.-1/Kallu @ Narendra Kumar is an eye witness of the incident. He has given detailed account of the incident and has also stated minute points in order to canvass the manner in which the incident had occurred. Specific role of assault has been assigned to all the accused persons. P.W.-2/Ram Naresh Dixit is an eye witness of the incident. He has also given detailed account of the incident in his in-chief-examination. Despite being cross-examined at length, we did not find any infirmity in the evidence of these witnesses.

80. It is to be recalled that when a witness is being cross-examined at length, he is bound to be overawed by the environment of the Court and also by the lengthy cross-examination and may resile here and there but the same may not be sufficient to disbelieve his evidence.

81. P.W.-3-Ramesh Chand is not an eye witness of the incident but is a witness of the recovery of firearm at the instance of appellant Sanju. The other witnesses are official witnesses. Much emphasis appears to have been given by learned counsel for the appellants on the insufficiency of motive and it has been submitted that non-payment of some thousands of rupees may not be sufficient to commit the murder. The law with regard to the motive is now no more *res integra* and the motive recedes in the background when the case of the prosecution is based on direct evidence of eye witnesses. How the mind of an assailant works may not be proved by the prosecution. In villages the villagers are

divided on party lines especially when they belong to the faction associated with 'Pradhan' and his opponent, therefore, the motive may not be an important circumstance to doubt the otherwise reliable and trustworthy evidence of the two prosecution eye witnesses. Likewise if any irregularity has been committed by the investigating officer, the same may also not be sufficient to doubt the case of the prosecution.

82. Having considered all the evidence available on record, we find the testimony of P.W.-1/Kallu @ Narendra Kumar and P.W.-2/Ram Naresh Dixit unimpeachable. The two eye witnesses are reliable and claimed to have seen the incident their account of the same is trustworthy and in the considered opinion of this Court, may be acted upon. Therefore, no illegality has been committed by the trial court in accepting their testimony. The evidence of these two prosecution witnesses is, also, corroborated by the recovery of weapon in presence of P.W.-3/Ramesh Chand and other police witnesses. There is no contradiction between the oral account of the incident given by P.W.-1/Kallu @ Narendra Kumar and P.W.-2/Ram Naresh Dixit and the medical evidence, as given by the P.W.-5/ Dr. Mahendra Pratap, which corroborates the evidence of these two factual witnesses. The conduct of all the accused persons coming together and committing the incident and thereafter fleeing away together would sufficiently demonstrate that they were acting in a pre-consulted plan and the common intention was to eliminate the deceased. Thus, the trial court has not committed any illegality in convicting the accused

persons/appellants for committing the murder of the deceased Gyanendra Kumar @ Tinku.

83. Hence, for the reasons mentioned herein-above, we do not find any illegality in the judgment and order of the trial court. Therefore, the appeal appears to be without force and is ***dismissed*** as such.

84. All the appellants appear to be in jail. They need not to surrender anywhere unless they are wanted in any other criminal case. They are directed to serve out the sentence as ordered by the trial court.

85. A copy of this order along with the record of the trial court be immediately sent to the trial court for compliance.

Order date: 22.01.2025

N.PAL