
(2017) 05 AHC CK 0160
In the Allahabad High Court
Case No : 5927 of 2003

Nand Ram

APPELLANT

Vs

State Of U.P.

RESPONDENT

Date of Decision : 31-05-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#) -
Punishment for murder

Citation : (2017) 05 AHC CK 0160

Hon'ble Judges : Bharat Bhushan, Shailendra Kumar Agrawal

Bench : Division Bench

Advocate : Ram Kishor Gupta, Akhilesh Srivastava, Saksham Srivastava,
Sanjeev Khare, Sushil Kumar Dwivedi, Vijay Bahadur Shivhare

Final Decision : Dismissed

Judgement

1. Appellant Nand Ram has preferred this criminal appeal against the judgment and order dated 12.11.2003 passed in Sessions Trial No. 210 of 2002 (State Vs Nand Ram) arising out of Case Crime No. 21 of 2002, under Section 302 Indian Penal Code (in short I.P.C.), Police Station (in short P. S.) Jaria, District Hamirpur, whereby the appellant was convicted under Section 302 IPC and sentenced to life imprisonment along with a fine of Rs. 10,000/- with default stipulation.

2. The encapsulated facts of the case are that on 24.4.2002 complainant Shivdutt (P.W.-2) had altercation with his brother/accused Nand Ram in his barn ([kfygku] about the damage to his crop of pigeon peas (vjgj nky) upon which the accused appellant Nand Ram is said to have threatened the complainant. Shivdutt (P.W.-2) came back to his residence and was having conversation with his brothers-in-laws Kamlapat and Naveen Chandra (P.W.-3) (wife's brothers) at his door. Suddenly at about 9 pm, appellant Nand Ram, armed with a Banka (a sharp edged weapon akin to sword) arrived there and started abusing and also tried to assault the complainant Shivdutt. Shivdutt ran from that place. His two brothers-in-law and wife Smt. Shashikirti (deceased) also rushed to rescue him

whereupon accused Nand Ram attacked his wife Shashikirti, causing various injuries on the person of deceased Shashikirti. Deceased Shashikirti fell down near the house of Jagat Singh due to these injuries and died.

3. P.W.-2 Shivdutt immediately lodged the First Information Report (in short F.I.R.) (Ex.Ka.-2) at Police Station Jaria at about 12.30am on 25.4.2002, which was registered as Case Crime No. 21 of 2002 under Section 302 I.P.C. The F.I.R. was promptly lodged within three and half hours of the incident at police station Jariya, which was located at a distance of 8 km. from the place of incident.

4. Sub-Inspector S. P. Singh was sent to the place of occurrence, who conducted inquest proceedings and obtained the samples of blood stained earth and simple earth from the spot. Investigation was entrusted to Station House Officer (in short, S.H.O.) Ashok Kumar Singh (P.W.-4). He commenced investigation and recorded statements of witnesses. The assault weapon Banka stated to have been used in the murder of deceased Shashikirti was recovered from the barn ([kfygku) of assailant on 14.5.2002 at the instance of appellant by P.W.-4 in presence of Constable Mohan Lal and Constable Vishambhar. This said sharp edged weapon (Banka) was excavated from ground of barn. Memo of recovery is available on record as Ex-Ka-8. The recovery was made at 6.20 p.m. Recovered articles including clothes of deceased were sent to Forensic Science Laboratory, Agra (Ex. Ka.-12). Investigation was completed and thereafter charge-sheet (Ex. Ka.- 11) was submitted against accused Nand Ram. The Trial Judge framed charge against accused Nand Ram under Section 302 I.P.C. on 23.1.2003. The appellant denied the charge and claimed to be tried.

5. In support of its story, prosecution adduced the evidence of P.W.-1 Dr. K.K. Gupta (conducted postmortem), P.W.-2 Shivdutt (complainant/eye witness), P.W.-3 Naveen Chandra (eye witness), P.W.-4 Sub-Inspector Ashok Kumar Singh (Investigating Officer) and P.W.-5 constable Kishunlal (recorded F.I.R.).

6. Statement of accused under Section 313 Cr.P.C. was recorded, wherein appellant denied the allegation levelled against him and claimed false implication due to unhappiness of his brother, the complainant Shivdutt on account of his acquisition of some property from his father.

7. Appellant was afforded opportunity to adduce evidence but defence did not produce any evidence. Trial Judge on conclusion of trial found the evidence led by the prosecution trustworthy and beyond all reasonable doubt and accordingly held appellant guilty of offence under Section 302 I.P.C. and sentenced him as aforesaid vide the impugned judgment. It is this judgment and order dated 12.11.2003, which is under challenge before this court.

8. Heard Sri Akhilesh Srivastava, learned counsel for appellant, Sri Vijay Bahadur Shivhare, learned counsel for complainant and Sri Ajit Ray, learned counsel for State.

9. Learned counsel for appellant has submitted that no independent witnesses

has been produced by prosecution in support of allegations. Evidence produced by prosecution is riddled with discrepancies and further the presence of P.W.-3 Naveen Chandra is highly doubtful. Learned Counsel for appellant has also argued that investigation was done in cursory manner. There is no independent witness of recovery of assault weapon. He has argued that blood stains were not found on the recovered weapon despite its use in the brutal assassination of deceased Shashikirti.

10. Per contra, learned AGA for State and learned counsel for complainant have submitted that the stated discrepancies are normal and they merely indicate that witnesses were not tutored. They have also argued that absence of witnesses of vicinity does not make the prosecution evidence unreliable otherwise found trustworthy. They have also argued that it is a trend that these days people do not interfere in the matters of others and, therefore, it is very difficult to obtain independent witnesses of vicinity. They have also submitted that there is no reason for complainant to spare the real culprit and falsely implicate his own real brother in the murder of his wife.

11. It is pertinent to point out that in this case the dispute arose between two real brothers. The appellant assaulted his real brother Shivdutt (P.W.-2) initially, who managed to escape while his wife Smt. Shashikirti (deceased) received injuries when she attempted to rescue his husband- Shivdutt.

12. Only two witnesses of fact namely P.W.-2 Shivdutt and P.W.3 Naveen Chandra have been produced by prosecution.

13. P.W.-2 Shivdutt is the husband of deceased while P.W.-3 Naveen Chandra is the brother of deceased.

14. P.W.-2 Shivdutt has reiterated during his testimony that he had some altercation on the day of occurrence with his real brother appellant Nand Ram on account of damage to pigeon peas (vjgj nky) whereupon appellant had extended threat to him. Shivdutt came back to his home from his barn (Khalihan) where his two brothers-in-law of village Amarpura were present. They were having conversations near the door of his residence. Suddenly his brother appellant Nand Ram, armed with a sharp edged weapon arrived at 9 p.m. and assaulted him. He raised alarm and ran in a house to save his life. On hearing his clamor his wife Shashikirti (deceased) came to rescue him whereupon appellant Nand Ram assaulted Shashikirti on her hand and neck and as a result of these injuries Shashikirti fell down near the house of Jagat Singh and died.

15. Meanwhile, Shivdutt escaped and rushed inside the house of one Madhav nephew of village Pradhan and closed the door from inside to prevent the entry of accused Nand Ram and remained confined in the house for some time and thereafter went to the house of Pradhan near by. Veer Singh son of Pradhan accompanied Shivdutt (P.W.-2) towards the corpse of his wife. Shivdutt went to the police station along with village Chaukidar and lodged the FIR (Ex-Ka-2). According to P.W.-2 Shivdutt, incident was witnessed by him and his brothers-in-

law only.

16. Testimony of P.W.-2 Shivdutt has been supported by the evidence of P.W.-3 Naveen Chandra, brother of deceased Shashikirti. This witness has testified that he along with his brother went to the matrimonial home of his sister on 24.4.2002 located in village Kachwankalan for bringing husk (Hkwlk) on bullock-cart. They reached the village Kachwankalan in the late evening and were having conversations with his brother in law Shivdutt who told him about the altercation that he had with his real brother Nand Ram in barn ([kfygku) during the day. Suddenly, at about 9 p.m. the appellant Nand Ram came on the spot. He was holding the "Banka" i.e a sharp edged weapon akin to sword and tried to assault Shivdutt. His wife deceased Shashikirti ran to save his husband. P.W-3 Naveen Chandra and his brother Kamlapati also claimed to have rushed towards Shivdutt. However, they couldn't manage to save his sister who was assaulted by the appellant Nand Ram with Banka. Shashikirti fell down near the house of Jagat Singh and died. This witness has stated that his brother-in-law Shivdutt came back and later on they went to the police station for lodging the FIR along with village Chaukidar. It is stated that Shivdutt and Chaukidar went inside the police station while other person sat outside the police station.

17. Learned counsel for the appellant has submitted that not one independent witness of the vicinity has been produced by the prosecution and that is why prosecution case should be rejected.

18. We are afraid that this argument is not justified. The incident occurred between the two real brothers. These days, people do not want to interfere or get involved in this kind of incidents. In any case, evidence of any witness is considered truthful unless proved contrary. We do not believe that husband of deceased as well as the brother of deceased would spare the real culprit and falsely implicate his own family member merely because of strained relationship.

19. In any case, testimony of witnesses are evaluated on the basis of their quality. If the evidence of eye witness is trustworthy, then the court cannot refuse to accept their evidence merely on the ground that they are related to deceased. We have carefully examined the evidence of P.W.-2 Shivdutt and P.W.-3 Naveen Chandra and we believe that their evidence is natural, credible, in consonance with the normal human conduct and trustworthy. There is nothing on record to prove the otherwise.

20. Learned counsel for the appellant has submitted that the testimony rendered by P.W.-2 Shivdutt and P.W.-3 Naveen Chandra are riddled with the contradiction which create doubt about their presence on the spot at the time of incident.

21. We do not believe that the arguments of learned counsel for the appellant is sustainable, for the simple reason that the contradictions per-se are not detrimental to the prosecution case. It depends on the nature and quality of the contradictions to conclude otherwise. Both the witnesses belong to village and have testified in a normal and simple way. Quality of their evidence indicate that

these witnesses have not been tutored, therefore, minor contradiction in their evidence would not render their evidence unreliable.

22. Learned counsel for the appellant has submitted that P.W.-2 Shivdutt has claimed that he saved himself by entering the residence of Madhav, the nephew of village Pradhan and locked the house from inside in order to prevent the entry of accused appellant and that he remained inside the house for almost one hour. He came back to his residence via home of village Pradhan and subsequently went to the police station for lodging the first information report. This story has been supported by P.W.-3 Naveen Chandra in its broad spectrum. It is pertinent to point out that P.W.-3 Naveen Chandra did not accompany his brother-in-law to the residence of Madhav or village Pradhan. He rushed towards his deceased brother-in-law to save him, however, Shivdutt managed to run faster. Infact deceased Shashikirti also went ahead of him and paid heavy price by becoming the target of assailant's anger.

23. Learned counsel for the appellant has also submitted that P.W.-3 Naveen Chandra has stated that his brother-in-law Shivdutt (sister's husband) entered the house of village pradhan and from that house he came back after 15 minutes of the initial incident, while P.W.-1 Shivdutt himself has stated that he came back after one hour. This difference has been cited as significant contradiction which in the opinion of the learned counsel for the appellant indicates absence of P.W.-3 Naveen Chandra. P.W.-3 Naveen Chandra has also stated that he went with his brother-in-law P.W.-2 Shivdutt to the police station while extract of G.D. (Ex-Ka-14) does not indicate his presence.

24. Submission is that admittedly P.W.-3 Naveen Chandra is owner of agricultural farm of 13-14 bighas while his brother-in-law P.W.-2 Shivdutt owns merely 3-4 bighas of agricultural land yet P.W.-3 Naveen Chandra came with bullock-cart to the residence of Shivdutt for obtaining the husk (Hkwlk). Learned counsel for the appellant has stated that it is inconceivable that owner of large agricultural farm would buy husk from the owner of small agricultural farm.

25. Learned counsel has also drawn the attention of the Court towards the judgment of the Trial Court wherein learned Trial Judge has not relied upon the testimony of P.W.-3 Naveen Chandra on account of aforesaid discrepancies. Learned counsel for the appellant has submitted that testimony of P.W.-3 is not reliable that leaves only one witness namely P.W.-2 Shivdutt whose evidence also consist of serious discrepancies. Therefore, presence of both the witnesses at the time of incident is doubtful. Learned counsel for the appellant has sought acquittal of appellant on this very ground.

26. We are not convinced of this argument of learned counsel for the appellant. We are also not happy to the conclusions drawn by the learned Trial Judge. As far as credibility of P.W.-3 Naveen Chandra is concerned, the discrepancies cited for this conclusion are very minor and has no value altogether. Courts do not accept parrot like repetition of events by witnesses. Fact of the matter is that it is not

even possible for every witness of fact to be a carbon copy of other witnesses. No two person are alike. Their capacity of observation and their mode of description of events are never alike, therefore, minor discrepancies are implicit in the testimonies of witnesses. While appreciating the evidence, the court has to take into consideration whether stated contradictions/omissions have been of such magnitude that they materially affect the prosecution case. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without affecting the core of the prosecution case, should not be made a ground to reject the evidence in its entirety.

27. In *State of Karnataka vs. Suvarnnamma*, (2015) 1 SCC 323, the Hon''ble Supreme Court has dealt in detail and referred to various decisions by observing that much importance cannot be attached to minor discrepancies. Some of the judgments cited in the said case are reproduced as under:-

"*Bharwada Bhoginbhai Hirjibhai Vs State of Gujarat* (1983) 3 SCC 217:

"5.We do not consider it appropriate or permissible to enter upon a reappraisal or re-appreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :

"(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprised. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is

liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment.

The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him -- Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

Appabhai VS State of Gujarat, (1988) Supp. SCC 241

"13.The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J., speaking for this Court in Sohrab Vs State of Madhya Pradesh observed: [SCC p. 756, SCC (Cri) p. 824, para 8] "This Court has held that falsus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered."

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Leela Ram Vs State of Haryana, (1999) 9 SCC 525 "9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties

cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in *State of UP Vs M. K. Anthony*, (1985) 1 SCC 505). In para 10 of the Report, this Court observed:

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals."

10. In a very recent decision in *Rammi Vs State of MP with Bhura Vs State of MP* (1999) 8 SCC 649) this Court observed:

"24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."

In *State of Punjab Vs Jagir Singh*, (1974) 3 SCC 277) held:

"23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is

charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is *ex facie* trustworthy on grounds which are fanciful or in the nature of conjectures."

The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper technicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hyper technical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind."

28. In view of the aforesaid decisions, trivial discrepancies do not render the evidence of prosecution unbelievable, who otherwise, has been found to be a truthful witness.

29. Further argument is that farm owner of 13-14 bighas land went to his brother-in-law for obtaining husk (Hkwlk) who is a owner of 3-4 bighas of agricultural land. This argument also appealed to the learned Trial Judge. But fact remains that this argument has absolutely no value. Owner of 13-14 bighas land is certainly not a big farmer and if owner of such farm sows sugarcane or any other crop which does not produce required husk then he may have to go owner of small farm with whom such produce is available. It depends on the nature of crop each one is harvesting. It is very much possible that big farmer may not be able to produce any husk of his own. Thus, Trial Judge was not correct in taking this argument into consideration. It is pertinent to point out that P.W.-3 Naveen Chandra did not save his sister. P.W.-2 Shivdutt has testified that attack

frightened both the brothers namely Naveen Chandra and his brother Kamlapat to the extent that they were more interested in saving themselves. Infact, P.W.-2 has had some doubt whether the whole incident was witnessed by P.W.-3 Naveen Chandra. This gruesome incident occurred so suddenly that reaction of each person was different. P.W.-2 Shivdutt ran away and tried to save himself. P.W.-3 Naveen Chandra and his brother Kamlapat also ran to save themselves. Only deceased Shashikirti tried to save her husband Shivdutt and became target of assailant. We believe that neither P.W.-2 Shivdutt nor P.W.-3 Naveen Chandra actually counted the time of return of Shivdutt from the residence of Madhav.

30. It is also pertinent to point out that P.W.-2 Shivdutt at the time of incident first ran away then he went inside the house of Madhav and closed the door from inside to prevent the entry of assailant. Even subsequently he first took the help of village Pradhan whose residence was nearby and who eventually sent his son Veer Singh along with Shivdutt. In this scenario precise description of timing of each event was neither possible nor feasible.

31. We believe that initially Shivdutt ran away and subsequently he came back within a reasonable time and thereafter went to the police station to lodge the report FIR (Ex-ka-2), which discloses the presence of Shivdutt at the police station. His presence is also established by the entry made in the GD (Ex-Ka-14) of police station. As far as, non disclosure of presence of P.W.-3 Naveen Chandra at the police station is concerned, the reason for the same has been made clear by P.W.-3 Naveen Chandra himself. He has stated that he went to the police station with Shivdutt for filing the report but remained outside the police station and thereafter did not return back to village Kachchawankalan. They went straight to their own village Amarpura to give information about the incident. This behavior is quite natural and human. We believe that both brothers did accompany Shivdutt to the police station but thereafter went to their own village.

32. It is pertinent to point out that village Amarpura is hardly 8-9 km away from village Kachchawankalan and village Kachchawankalan is 8 km away from the police station. Distances were not significant. Extract of GD mentions only presence of Shivdutt and Village Chowkidar Mohammad. Village Chowkidar has been mentioned by Shivdutt also.

33. Learned counsel for the appellant has also argued that the FIR was ante-timed and that it was ante-timed precisely to create and manipulate the evidence. He has argued that as per prosecution evidence, the Investigating Officer came in the morning at about 8 a.m. on 25.4.2002 while the FIR is shown to have been recorded at 00.30 a.m. on 25.4.2002. At that time inquest proceedings were going on. This fact has been disclosed by P.W.-5 Kishun Lal as well who recorded the FIR (Ex-ka-2) and carved out a chick report (Ex-ka-13) and made entries in GD (Ex-ka-14). He has denied the claim of ante-timing as well. It is pertinent to point out that claim of ante-timing has to be proved by evidence. This claim may be established by the evidence already available on record. Inquest proceedings and documentation done in the wake of inquest

proceedings do obviate the allegations of ante-timing. It is pertinent to point out that inquest report contains crime number and details of the crime. Blood stain earth was lifted from the place of occurrence. Fard (Ex-ka-10) also contains crime number. All these facts negate the claim of ante-timing.

34. Learned counsel for the appellant has argued that no medical examination of P.W.-2 Shivdutt was conducted despite his claim that he received injuries and that it should be treated as a sign of deliberate falsehood. We are not convinced of this argument. Both eye witnesses have testified that Shivdutt was running very fast to save himself. His brother Nandlal was chasing him. Meanwhile he was intercepted by Shashikirti, deceased who received the major injuries on her person. In this process, it is likely that Shivdutt might have received some minor scratches but considering the gravity of subsequent events his medical examination was perhaps not done in heat and intensity of moment. His wife had died. It is clear that Shivdutt did not receive any serious injuries. In an ordinary circumstances, Shivdutt might have gone to doctor but the death of his young wife changed the whole scenario and he possibly became involved in police work as well as in making arrangement for last rites of his wife. We do not think that failure to receive any medical treatment on the part of Shivdutt, makes him an untruthful witness.

35. We are also not convinced of argument of learned counsel for the appellant that medical evidence is inconsistent with the ocular evidence. Prosecution story is that assailant used "Banka" a sharp edged weapon to assault Shashikirti. Banka is a weapon akin to sword. Evidence of P.W.-1 Dr. K.K. Gupta and P.W.-2 Shivdutt affirm this conclusion. Deceased received about half a dozen sharp aged injuries. Doctor has testified that these injuries were sufficient in ordinary course of nature to cause death. A sharp edged weapon was used in the alleged attack and all injuries on the person of deceased were infact caused by sharp edged weapon. There is absolutely no evidence on record to demonstrate any inconsistency between the oral evidence and medical evidence. It has been held in catena of decisions that when the medical evidence is in consonance with the principal part of the oral/ocular evidence thereby supporting the prosecution story, there is no question of ruling out the ocular evidence merely on the ground that there are some inconsistencies or contradictions.

36. In Punjab Singh Vs State of Haryana, AIR 1984 SC 1233, Rammal Samat Vs State of Gujarat, AIR 1993 SC 1676 (para 5), Dharma Vs Nirmal Singh Bittu, AIR 1996 SC 1136 (para 10), and Krishnan Vs State, 2003 (6) SCC 151 (paras 18 and 19), the Apex Court has time and again held that the medical evidence cannot override the ocular evidence about the assault by a particular weapon or a particular part of the weapon when oral evidence is satisfactory to explain that the incident was witnessed by the eye-witnesses. In Krishnan (supra) the Apex Court has observed as under:-

"19. It is trite that where the eye-witnesses" account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted

as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy quality of the trial process. Eye witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness-box; their power of observation etc. then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

37. Learned counsel for the appellant has also drawn our attention towards the forensic lab report. Eleven pieces of materials including "Banka" were sent for forensic lab for forensic examination. This "Banka" was recovered at the instance of appellant. Forensic report says that the items sent for chemical examination including Dhoti, Petticoat, Broken pieces of bangles etc did contain human blood on them. This further re-enforces the prosecution case.

38. We have perused the record. There is nothing on record to show that the conclusions drawn by the trial Judge are not sustainable. It is evident that prosecution has been able to bring home the guilt of accused-appellant by trustworthy and unimpeachable evidence. Learned trial judge has marshalled the facts and evidence adroitly. Sufficient evidence has been placed to establish the guilt of the appellant.

39. In the result, we find that the appellants have rightly been found guilty of offence under Section 302 IPC. We, therefore, affirm the conviction and sentence imposed on the appellant. The appeal is hereby dismissed. Appellant, is on bail, therefore, is directed to surrender immediately. His bail is cancelled and sureties are discharged. Trial court is also directed to get him arrested and send him to jail to serve out the sentence awarded by trial court and affirmed by this judgment.

40. Office will certify this order to the court concerned within 15 days. Trial court shall thereafter communicate compliance of this judgment within a month.