

(2023) 06 DEL CK 0118
In the Delhi High Court
Case No : Criminal Appeal No. 804 Of 2019

Satender Solanki

APPELLANT

Vs

State (Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 26-06-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307
Code Of Criminal Procedure, 1973 — Section 161, 421

Citation : (2023) 06 DEL CK 0118

Hon'ble Judges : Mukta Gupta, J; Poonam A. Bamba, J

Bench : Division Bench

Advocate : K.K. Manan, Ajit Singh, Manveen Dhanjal, Uditi Bali, Jatin Singh, Shubhi Gupta, Arijeet Singh

Final Decision : Allowed

Judgement

Poonam A. Bamba, J

1.0. Vide this appeal, the appellant is assailing the judgment dated 29.04.2019 ("impugned judgment" in short) passed by Ld. ASJ-02, Fast Track Court (FTC), New Delhi District, Patiala House Courts, New Delhi, whereby the appellant was convicted for the offences punishable under Section 302/307 read with Section 34 Indian Penal Code, 1860 ("IPC" in short), in FIR/crime no. 317/1997, Police Station Civil Lines, Meerut, UP ; and order on sentence dated 07.05.2019, whereby the appellant was sentenced to undergo rigorous imprisonment for life and fine of Rs. 25,000/-, in default of payment of fine to undergo simple imprisonment for one year for the offence under Section 302 IPC ; the appellant was also sentenced to rigorous imprisonment for life and fine of Rs. 25,000/- in default of payment of fine to undergo simple imprisonment for one year for the offence under Section 307 IPC. The appellant was also directed to pay compensation of Rs. 5 Lacs each to the LRs of the deceased/injured-his dependents, recoverable in the manner as provided in Section 421 Cr.PC

2.0. Briefly stating, the prosecution case is, that on 24.06.1997, one Inder Pal

Dhaka along with Ashok Kumar was travelling in a Maruti car bearing registration number UP 15E-7042 from his residence to University. At about 10.00 am, when they reached near the Green Nursery (next to Suri Nursing Home), complainant Amarpal Singh Dhaka (PW-1), elder brother of Inder Pal Dhaka and advocate by profession, saw his brother coming from front side. On seeing them, PW-1 Inder Pal Dhaka had stopped his car. Suddenly, Satender Solanki/the appellant and his brother Billu, sons of Krishan Singh @ Kishan Chand, resident of Village Jiwana Guliyan, P.S. Binaoli, District Meerut, came on a scooter and both of them started firing on Inderpal Dhaka, due to which he received many bullet injuries. When Ashok Kumar objected to it, the appellant also fired at Ashok Kumar, which hit him on his hip. Out of fear, said Ashok Kumar hid himself in front of the seat. After firing, the assailants said "kaam ho gaya hai jaldi bhag jao" and ran away. Thereafter, the complainant Amarpal Singh Dhaka with the help the persons gathered at the spot, took both the injured namely Ashok Kumar and his brother Inderpal Singh to Suri Nursing Home, where the doctors declared Inderpal Dhaka as brought dead. Thereafter, injured Ashok Kumar was got admitted in Medical College, Meerut, where he was treated and discharged on 30.06.1997. PW-1 Amarpal Singh Dhaka made a written complaint (Ex. K-1) on the basis of the which, present FIR (Ex. K-7) came to the registered at PS Civil Lines, Meerut, UP and investigation was assigned to PW-11A Ins. Prakash Chand Pathak, Inspector, PS Civil Lines, UP.

2.1. After assignment of the investigation, PW-11/A Ins. Prakash Chand visited the spot and got prepared the panchayatnama/inquest report through Ct. Yogender Kumar. PW-11A found Maruti car of the injured/deceased stationed on the right side of the road. One empty cartridge was found near the road on the right side of the Maruti car and four empty cartridges were found on the left side and the same were lifted, sealed and seized. Said car was also seized. Postmortem of the dead body was conducted by PW-2 Dr. M.C. Gulecha, CMO, P.L. Sharma Hospital, Meerut, who vide post-mortem report (Ex. K-3) reported and opined as under :

"Inder Pal Singh Daka S/o Sh. Jile Singh r/o Dhikauli, PS Chandi Nagar, District Meerut.

..... dated: 24.06.97, time: 05:40 PM

General Age: about 42 years

Estimated time after the death: about ½ Day

A - Internal Examination

(Head and Neck)

1. Bones of the scalp or skull: NAD

2. THOREX

A. Walls, Ribs, Cartilages: Described fracture of 6th rib on left side anteriorly 7th

rib on right side of axillary line

D. Right Lung: lacerated middle lobe

E. Left Lung: lacerated middle lobe

I. Additional Specific Details: Contains 2 litre of blood, one bullet recovered from left side [of] anterior chest wall and one bullet recovered from left side [of] chest axillary line.

[A]Sealed envelope contains 04 metal bullets, 02 metal chips, sent to the SSP Meerut through SSP, Meerut through (.. .sic...) P.L. Sharma Hospital Meerut.

Sd/- (Illegible)

24.06.97

3. Abdomen

1. Walls: Described one big bullet recovered from anterior abdomen wall under injury No. 12.

2. Peritoneum: lacerated

3. Cavity: Contains 600ml of blood mixed with food material

.....

6. Stomach and its contents: Lacerated

7. Small Intestine and its contents: Lacerated

8. Large Intestine and its contents: Lacerated

9. Gall Bladder and Liver with weight: Lacerated pale full weight 1200gms

Ante Mortem Injuries

(1)Firearm wound of entrance 1cm x 1cm x bone deep on outer aspect of right upper arm 9 cm below top of shoulder, Bone under the Injury fractured and two small metallic chips recovered from the wound.

(2)Firearm wound of entrance 1cm x 1cm x muscle deep on back and outer aspect of right upper arm 6 cm above elbow joint.

(3)Firearm wound of exit 1.5 cm x 1.5 cm x through and through with Injury no(2) on inner aspect of right arm 11 cm below axilla.

(4)Firearm wound of entrance 1.5 cm x 1.5 cm x cavity deep on right side chest 12 cm below the mid axillary line.

(5) Firearm wound of entrance .75 x 1 cm x skin deep on right side abdomen 2 cm above iliac.

(6) Firearm wound of exit 1 cm x 1.5 cm x through and through with injury no.

(5) 2.5 cm behind injury no. (5).

(7) Firearm wound of entrance 1 cm x 1 cm x muscle deep on rightside abdomen 19 cm away umbilicus at 9'o clock position.

(8) Firearm wound of exit 1.25 cm x 1.25 cm x through and throughwith Injury no. (7) 5 cm behind injury no. (7).

(9) Firearm wound of entrance 1 cm x 1 cm x cavity deep on backright side 9 cm above hip bone 3 cm away from back bone.

(10) Firearm wound of entrance 1 cm x 1 cm x cavity deep on left sideabdomen 12 cm away umbilicus at 2'o clock position.

(11) Firearm wound of exit 1.5 cm x 1.5 cm x cavity deep on right sideabdomen 8 cm above hip bone in mid axillary line.

(12) Firearm wound of entrance 1 cm x 1 cm x cavity deep on left sideabdomen 6 cm above hip bone and 8 cm away from umbilicus at 5'o clock position.

(13) Firearm wound of entrance 1 cm x 1 cm x muscle deep on leftside chest 5 cm away from left nipple at 3'o clock position

(14) Firearm wound of exit 1 cm x 1 cm x through and through withinjury no.

(13) 3 cm inner to injury no. (13).

(15) Firearm wound of entrance 1 cm x 1 cm x muscle deep on leftforearm front outer 8 cm below elbow joint.

(16) Firearm wound of exit 1.25 cm x 1 cm x through and through withInjury no.

(15) on left forearm inner and front 8.5 cm below elbowjoint.

(17) Firearm wound of entrance 1 cm x 1 cm x muscle deep on front ofleft forearm 6 cm above wrist. A metallic bullet recovered from wound.

Death due to shock and haemorrhage as result of ante mortem injuries

Place: Meerut

Date: 24.06.97

Sd/-(Gulecha)

(In English)

(M.C. Gulecha)

Medical Officer"

2.2. On 27.06.1997, site plan (naksha Nazri) was prepared by PW-11/A at the instance of the complainant. In July 1997, further investigation was transferred to SSI Ram Babu (PW-8). On 16.07.1997, injured Ashok came to the Police Station Civil Lines and gave account of the incident by way of affidavit (Ex. K-10)

with his photograph affixed on it and his statement was recorded. On 22.07.1997, PW-8 recorded the statement of complainant Sh. Amarpal Singh. On 09.10.1997, further investigation was handed over to PW-5 B.K. Bhati, SOC-Incharge, who recorded statement of injured Ashok Kumar. On 12.11.1997, statement of complainant Amarpal Singh was recorded, wherein he stated that Satender Solanki and Harender @ Billu had killed his brother Inderpal Singh Dhaka. Accused persons could not be apprehended despite efforts and issuance of NBWs/Process u/Ss 82/83 Cr.P.C. Only on 29.12.1997, at about 1.30 pm, accused Harender @ Billoo was arrested and a pistol of .30 bore with magazine and seven live cartridges were recovered from him, which were seized vide seizure memo (Ex. K-6). Lastly, the investigation was carried out by PW-4 SSI Lala Ram Sharma, who after coming to know about surrender of the appellant before the Ld. CJM, Meerut on 23.01.1998, recorded statement of the appellant on 27.01.1998 in jail after taking permission from the court concerned. After completion of investigation, charge sheet against the accused persons namely Satender Solanki (appellant) and Harender @ Billoo (since deceased) for the offences under Sections 302/307 IPC was filed before the concerned court.

2.3. The appellant and his co-accused Harender @ Billoo (since deceased) were charged for offences punishable under Sections 302/307/34 IPC.

3.0. In order to prove its case, the prosecution examined 19 witnesses. The appellant also examined two defence witnesses namely DW-1 Mr. Bhupinder Singh and DW-2 Rampal.

4.0. Learned Senior Counsel for the appellant argued that the injured Ashok Kumar, the actual eye witness as per the prosecution story, was not examined. Testimony of PW-1 Amarpal Singh Dhaka, so called eye witness of the prosecution not only suffers from material inconsistencies, but is also at variance with other documents on record i.e., the complaint (Ex. K-1) as well as MLC of the injured (Ex. K-4). Same clearly show that PW-1 was not at the spot. It was submitted that PW-1 Amarpal Singh Dhaka stated that on seeing his brother's car, he waved and asked him to stop. Whereas, the injured Ashok Kumar vide his affidavit Ex. K/10 dated 01.07.1997 stated that they had stopped the car after seeing the car of PW-1 Amarpal. Learned Senior Counsel also submitted that if the complainant/PW-1 was standing in close proximity, he too would have sustained injuries, but he has suffered none. He further argued that the medical evidence also does not support the ocular evidence of PW-1, which further show that he is not an eye-witness. Same also makes PW-1's presence at the spot highly doubtful. Further, PW-1 is the real brother of the deceased, hence an interested witness. Thus, his testimony is hardly trustworthy and can not be read. In support, reliance was placed upon the judgment of the Hon'ble Supreme Court in Mahavir Singh vs State of Madhya Pradesh(2016) 10 SCC 220.

4.1 Learned Senior Counsel also argued that though the site plan has been purportedly prepared at the instance of the complainant, it does not indicate Suri Nursing Home ; nor does it specify the location from where the empty cartridges

were seized by the IO. Neither does it bear the signatures of PW-1 though it was made at his instance. Had PW-1 been present at the spot, his signatures should have been on site plan, seizure memo of the empty cartridges recovered from the spot and on Panchayatnama, but the same are missing. Moreover, the car was not photographed by the police. It was PW-1/complainant who got the car photographed through PW-19 and gave the same to the IO PW-4 Lala Ram who simply attached the same with the charge sheet filed on the same day.

4.2. Learned Senior Counsel further argued that it has come in the testimony of PW-2 Dr. M.C. Gulecha that blackening and tattooing around the wound occur when the victim is shot from a distance within 6 ft. Whereas in the instant case, there is no blackening/tattooing over any injury, thus showing that the injuries were caused from a distance beyond 6 ft and the same itself belies the testimony of sole eye witness PW-1.

4.3. Ld. Senior counsel also argued that as per PW-1, the distance between his car and that of the deceased was just 3-3.5-4 meters and he saw the incident. But he did not give either the description of the assailants or of their vehicles either in the FIR or in his statement under Section 161 Cr.P.C recorded on 27.06.1996, though PW-1 knew the appellant. He disclosed the names of the assailants after a delay of more than 23 days in his statement recorded on 22.07.1997 by the IO and only after the injured Ashok Kumar mentioned their names in his affidavit (Ex. K-10) on 16.07.1997. Even Ashok Kumar disclosed the names of the assailants after a delay of more than 23 days and no efforts were made to record Ashok Kumar's statement. PW-8 SSI Ram Babu Singh in his cross examination stated that Ashok Kumar in his statement had told him that he has informed PW-1 that two persons who had fired at the deceased were Satender Solanki and Billu and that he knew them. Moreover, Ashok Kumar, a material witness was deliberately withheld and was not examined. Learned Senior Counsel further argued that as per PW-1, the deceased was taken to Suri Nursing Home by pushing the car, in which he was lying. Thus, the car had been moved from the spot to Suri Nursing home. Whereas, PW-11A Prakash Chand Pathak stated that he found the empty cartridges near the vehicle meaning thereby that the car was never pushed to Suri Nursing Home as claimed by the complainant PW-1.

4.4 Learned Senior Counsel also argued that had the deceased been shot inside the car from the windows of the car, he would have suffered bullet injuries on the upper part of his body. Whereas, all the bullet injuries suffered by the deceased were below the shoulders ; Injuries were majorly in the front lower portion of the body i.e., chest, abdomen and wrist. Even injured Ashok Kumar sustained injury on his hip region which is highly improbable, if he was sitting in the car. Further, as per post mortem report, six exit wounds were suffered by the deceased. In view of the same, some bullets should have pierced the car seats. But neither was there any bullet mark nor blood was found inside the car.

4.5. Ld. Counsel also argued that although, the statements u/S. 161 Cr.PC of Dr.

Suri of Suri Nursing Home and that of Mishri Lal, who attended to the deceased in the nursing home, were recorded, they were not cited/examined as witness. Even other witnesses SI Suresh Rawat and Ct. Yogender were not examined. Same itself creates doubt about the prosecution case and in support, reliance was placed on the judgment of Hon^{ble} Supreme Court in Prabhat @ Bhai Narayan Wagh & Others Versus State of Maharashtra (2013) 10 SCC 395.

4.6 It was further argued that PW-1 did not disclose the assailants' name in his complaint. The appellant surrendered before the Learned CJM on 23.01.1998 and was directly sent to the judicial custody. Thereafter, the Investigating Officer (IO) moved an application on 27.01.1998 before the court for TIP of the appellant and prayed that he be kept in muffled face. Thereafter, an application for police custody remand was filed by the IO to record the appellant's statement which was dismissed on 03.02.1998. Meanwhile, the court vide order dated 28.01.1998 directed conducting of the TIP proceedings on 31.01.1998. But the appellant's production was ordered before the court by Learned CJM on 29.1.1998 and while the appellant was produced, PW-1 moved an application (Ex. K-2) stating that as the appellant has been produced without muffle despite the order of the court to be produced in muffled face, he has identified him as one of the assailants. It was vehemently argued that no judicial TIP of the appellant was conducted and the required procedure for conducting TIP was maliciously frustrated by PW-1 by moving an application before CJM, Meerut Remand Court which was not even maintainable; and the said application was simply marked to the IO without any observations or comment. Whereafter no TIP was conducted. The same thus vitiates such identification of the appellant and in support, reliance by Ld. Senior Counsel was placed on the judgment in Amrik Singh vs State of Punjab (2020) 9 SCC 402.

4.7 Learned Senior Counsel also argued that Maruti Car bearing no. UP-15E-7042 was not in the name of the deceased Inder Pal Dhaka, though PW-1 stated that his brother was going in his car. Further, the crucial piece of evidence i.e., the aforesaid car and five empty cartridges recovered from the spot, were not sent to FSL for examination. Even cartridges recovered from the spot and bullet fragments extracted during post-mortem from the body of the deceased were not sent to FSL for examination/comparison. Even the pistol recovered from Harender @ Billu (since deceased) was not sent to FSL for opinion/ballistic report whether the cartridges found at the spot could have been fired from the said pistol. Also, no independent witness to the seizure of the car and empty cartridges recovered from the spot, was joined even though number of persons were present at the place of incident.

4.8 Learned Senior counsel also argued that prosecution has failed to prove the motive for the assailants/appellant to kill the deceased. The appellant had no enmity either with the deceased Inder Pal Singh Dhaka or with the injured Ashok Kumar ; he has been a victim of political rivalry. Rather, in the testimonies of PW-1 Amarpal Singh Dhaka, PW11A PC Pathak and PW-8 SSI Ram Babu Singh, it

has come on record that the deceased had various criminal cases pending against him and as per testimony of PW-4 SSI Lala Ram Sharma, even a reward do Rs. 50,000/- had been announced by the UP Government for apprehension of the deceased.

4.9 Learned Senior counsel further argued that as per the complainant, he left his house at Jagriti Vihar at 10 am and had seen his brother being shot; he took his brother to Suri Nursing Home by pushing the car in which he was lying ; and thereafter, the deceased was shifted to a stretcher to be taken the inside the nursing home. He also met Tarun Kumar, Advocate at Suri Nursing Home, to whom he dictated the complaint and then he went to the police station Civil Lines, which is at a distance of about 1 ¼ kms. Further, as per memo of Suri Nursing Home, the injured Ashok Kumar was present at the Nursing Home till 10:45 am and was taken by the complainant from there to Meerut Medical College which bears the time of 12:40 pm. In view of these facts, it is highly improbable that after all this, the complainant would have reached the police station for the FIR to be registered at 10:25 am. Same clearly shows that the FIR was ante timed. Further, the complainant misused/abused the state machinery and the investigation was biased and tainted. The complainant got the case transferred twice and used every trick to delay the matter.

5.0. Per contra, the Id. Prosecutor argued that the prosecution has been able to prove its case beyond reasonable doubt in view of the cogent and reliable testimony of PW-1/complainant Amarpal Singh Dhaka, the sole eye witness, who has narrated the entire incident as witnessed by him. PW-1 has categorically stated that it was the appellant who along with his associate, fired at the complainant, which fact has also been corroborated by PW-2 Dr. M.C. Gulecha, who conducted post-mortem. Further, PW-1 stood the test of cross-examination as he precisely answered every question put to him. Despite his extensive cross-examination, he could give time, distance, direction etc. asked from him, which only an eye-witness can give so consistently. Same also shows that on that fateful day, PW-1 followed his daily routine on the day of incident. His description of the incident of 24.06.1999 regarding where did he see his brother, where he stopped his car and how the assailants fired indiscriminately, clearly show that PW-1 witnessed the incident.

5.1. Id. Prosecutor further argued that in view of enormity of the incident, there was no occasion for PW-1 to inquire regarding the identity of the assailants from Ashok, who himself had been shot at. Further, after seeing his co-traveller being indiscriminately shot, injured Ashok was in utter shock and fear of his own life, which explains non-disclosing of the names of the assailants.

5.2. Id. Prosecutor also argued that the Investigating Officer deliberately and intentionally left the loopholes in the investigation to help the appellant. They did not record the statement of the injured/eye-witness. Further, in a case of murder, where the victim died of gun-shot wounds, the IO failed to seek ballistic examination report. Not only this, no official photographer was called to

photograph the spot and the car, in which the murder took place. The Investigating Officer did not even send the exhibits, i.e. car, recovered cartridges/bullets from the spot, seized pistol and the live cartridges recovered from the co-accused Harender @ Billu, to the FSL/ballistic expert for examination and for obtaining opinion regarding weapon of offence. Further, instead of providing protection to the injured/witness, IO chose rather not to examine the crucial witness.

5.3. Ld. prosecutor argued that the power and influence of the appellant and his active connivance with the investigating agency is also evident from the appellant's cross-examination of PW-1 where he was asked whether he was aware that in 1994, the appellant was mukhy sanyojak of Mulayam Singh's rally when he was Chief Minister of UP ; and that in 1994, the appellant was State Secretary of UP in Samajwadi Party. In response to which, PW-1 stated that only during investigation, he came to know that the appellant was a party worker of Samajwadi Party and had contested election of MLA twice from Barnaava Vidhan Sabha. Ld. Prosecutor submitted that from the same, amount of influence the appellant yielded in the area, is evident.

5.4. Ld. Prosecutor further argued that ocular testimony of PW-1 is duly corroborated by the medical evidence. She stated that diagram of the dead body Ex. K19 depicts the entry and exit wounds on the body of the deceased, which establishes that the bullets were fired from the left and the right side of the front windows of the Maruti Car, as has come in the testimony of PW-1 She also stated that entry wounds no. 2, 13 and 15 have corresponding exit wounds no. 3, 14 and 16, which is possible only, if a person is shot from the sides and not from the front. Further, all the injuries were above or at the abdominal area and below the neck, which also establish that the deceased was in sitting posture inside the Maruti car and that is why, he did not suffer any injury on leg and head. She also submitted that it is not the case of the prosecution that the deceased was fired from within a distance of 6 feet and therefore, absence of tattooing or blackening is of no consequence. She also argued that as per Modi's jurisprudence, no blackening is found if the fire arm is discharged from the distance of more than 4 feet. Moreover, these signs may be absent even when the weapon is pressed tightly against the skin of the body. Further, blackening could have been on clothes or on the glass of the window of the car. But IO deliberately did not send the car and clothes of the deceased to the FSL, which is a glaring lapse in the investigation.

5.5. Ld. Prosecutor also argued that conduct of the appellant evading arrest after the incident, is also relevant. PW-5 has categorically stated that houses of both the accused were repeatedly raided, but their whereabouts could not be traced. On 24.12.1997, proceedings u/s 82/83 Cr.P.C were initiated, but without any success. On 31.12.1997 and 08.01.1998 again, raids were conducted on the appellant's house and proceedings u/s 82/83 Cr.P.C were initiated, but the appellant could not be apprehended. The appellant later surrendered. Convict

Harender @ Billoo was arrested on 29.12.1997 along with a factory-made pistol containing 7 live cartridges and he could only be arrested after encounter, wherein two police officers got injured.

5.6. Ld. prosecutor further argued that plea of alibi sought to be taken by the appellant that he was present at Dayanand Nursing Home between 9.30 am to 11.00 am on 24.06.1997 fell flat despite examination of two witnesses in defence i.e. DW-1 Mr. Bhupinder Singh and DW-2 Rampal as they could not produce any medical document/prescription of the doctor to establish presence of the appellant at Dayanand Nursing Home. Neither was any doctor nor the staff of the said nursing home was examined by the appellant.

5.7. Ld. prosecutor also argued that motive for killing the deceased is clearly made out from the suggestions put to PW-1 in cross-examination. It was suggested to PW-1 that the appellant has been falsely implicated as the appellant had opposed the deceased in Assembly Elections and supported Madan Bhaiya because of which, the deceased had lost assembly election. Further, the appellant in his statement u/s 313 Cr.P.C (Q.16) has stated that he has been falsely implicated due to political rivalry. Same clearly points towards the political rivalry between the deceased and the appellant and show a motive on the part of the appellant to kill the deceased. Even otherwise, non-proving of motive does not render the prosecution case unreliable and reliance in support was placed on the judgment of Hon"ble Supreme Court in "Shivaji Genu Mohite vs. The State of Maharashtra, AIR 1973 SC 55".

5.8. Ld. prosecutor further submitted that much was argued by the learned defence counsel that neither injured Ashok nor Tarun, who scribed PW-1's complaint were examined. She submitted that injured Ashok was cited as a witness in the list of witnesses filed along with the charge sheet, but he could not be traced despite repeated efforts as is reflected in the order of the Ld. Trial Court dated 22.11.2004. Further, PW-1 had moved an application before the Ld. Trial Court requesting for calling Tarun Kumar Dhaka as a prosecution witness, but the said request was declined by the court on 05.03.2005.

5.9. Ld. prosecutor also submitted that as far as non-naming of the assailants is concerned, PW-1 in his cross-examination has denied that he knew the appellant and the co-accused Harender since prior to the incident. She also argued that had PW-1 wanted to implicate the appellant, he could have easily named the appellant in the beginning in the FIR itself. She further submitted that prosecution has been able to prove its case beyond reasonable doubt and the appellant has rightly been convicted by the Ld. Trial Court.

6.0. We have duly considered the submissions made by both the sides and have carefully perused the record.

7.0. Conviction of the appellant is based on the sole testimony of eye-witness Amarpal Singh Dhaka/PW-1, brother of the deceased. There is no other circumstantial or forensic evidence to connect the appellant to the crime.

Therefore, the testimony of PW-1 calls for careful scrutiny. Complainant/PW-1 deposed that on 24.06.1997 at about 10:00 am he was going to District Court, Meerut from his house at Jagriti Vihar and after having crossed the Jail Chungi, when he reached near Phulwari Nursery before Suri Nursing Home, he saw his brother coming from the opposite direction in his Maruti Car no. UP 15E 7042. He signalled his brother to stop and accordingly, his brother parked his car on the road side ; and he/PW-1 also parked his car on the road side. While he was alighting from his car, he saw one scooter and one Maruti car coming to a halt near the car of his brother. Two persons who were on the scooter, came from behind and started firing towards his brother Inderpal from their respective weapons from the front window of the car. The persons sitting in the car then said to those two assailants "Kam Ho Gaya Hai Chalo Bhag Lo". Two assailants on the scooter and the others in the Maruti Car then fled towards the jail chungi/toll. PW-1 further stated that he rushed towards his brother's car and saw that his brother had sustained multiple gun shots ; he also saw Ashok, a resident of Dhikauli, who was on the seat adjoining the driver's seat had also sustained a bullet injury. With the help of passersby who had gathered near the spot, he took his brother Inderpal to the nearby Suri Nursing Home, where his brother was declared as "brought dead". He also stated that he got the report (Ex. K-1) regarding the incident written through one Tarun Kumar and lodged the same in the police station. He then returned to Nursing Home and took the injured Ashok to Medical college, Meerut, where he was got admitted and his X-ray etc., was got done. He then returned to Suri Nursing Home, where he was informed that body of his brother/deceased has been taken by police to Medical College for post-mortem. After post-mortem, he took body of his brother to village Dhikauli, PS Chandi Nagar, where it was cremated. Thereafter, he came to P.S. Civil Lines on 27.6.97 and gave his statement to the Inspector and got inspected the place of incident.

8.0. Vide testimonies of PW-1 and PW-11A, it has come on record that the deceased as well as the appellant were in active politics in U.P. and fought elections against each other. PW-1 did not name the assailants in his complaint/report Ex. K-1 or thereafter on 27.06.1997, when he made statement to the police. PW-1 deposed that after lodging of report, on 21.07.1997, he was informed by injured Ashok Kumar that he had identified the assailants as Harender @ Billu and Satender Solanki. PW-1 did not even give any description whatsoever, of the assailants, who were seen by him, viz. their built, height, complexion, age, how they looked or the clothes they were wearing etc. Further, nothing has come on record, whether any investigation was carried out with respect to the persons, who were in the Maruti car and who asked the assailants on the scooter to flee after the incident. There is also nothing on record to show whether the scooter on which the assailants came or the car which accompanied them, was identified or seized or whether any investigation in that respect was carried out or not.

9.0. As per his deposition, PW-1 took his brother/the deceased to Suri Nursing

Home. With the help of public persons, he got the car in which the deceased was lying, pushed till Suri Nursing Home, which was at a distance of 50 to 60 yards from the spot. On reaching there, with the help of passersby and the staff, he removed his brother from the car seat to the stretcher and took him to the emergency room. In his cross-examination, PW-1 stated that he remained in the Suri Nursing Home for 8 to 10 minutes and doctors declared his brother dead within 2-3 minutes. Thus effectively, PW-1 remained in the hospital for about 5 minutes after his brother was declared dead. As per PW-1, he got the report/complaint (Ex. K-1) written through Tarun Kumar, advocate, who was at Nursing home. It is not possible that full one page complaint could be dictated by PW-1 and then hand written/scribed by Tarun Kumar, advocate within 5 minutes, for PW-1 to leave within 8 to 10 minutes of his arriving in the nursing home. As per PW-1, PS Civil Lines, Meerut, where he got the FIR registered, is at a distance of about 1-1/4 km from the Nursing home.

9.1. It is noted that the FIR (Ex. K-7) was registered at 10.25 hours. It is highly improbable that, after the happening of the incident a little while after 10.00 am, when the PW-1 was passing by the spot, taking of his brother to the Suri Nursing Home by pushing the car from the spot, shifting him on the stretcher and then taking him inside the Nursing Home and the deceased being examined by the doctor and then being declared dead and thereafter, PW-1 dictating the complaint to be recorded by Tarun Kumar, advocate and then carrying the same to the police station for recording of the FIR, it would have been possible for PW-1 to reach the police station and get registered the FIR, in a short span of 25 minutes i.e. at 10.25 am. Same creates doubt that the FIR (Ex.K-7) was registered at 10.25 am.

9.2. It is also noted that that neither did the police make any inquiry from the scribe Tarun Kumar, advocate nor was he produced as a witness, who could have confirmed about the presence of PW-1 at the nursing home, soon after the incident. Further, neither was any medical record of Suri Nursing Home produced nor was the doctor from the said Nursing home, who examined the deceased, was produced as witness. Said record/witness could also have thrown light on the details of the person who brought the deceased to Suri Nursing Home and the time at which the injured was brought.

9.3. It is also significant to note that after the deceased was declared brought dead, Panchayatnama (Ex. K-9) was prepared at Suri Nursing Home at 1.40 pm on 24.06.1997, but it does not record presence/bear signatures of PW-1. Panchayatnama shows that 5 panchas namely Jaswant Singh, Mahipal, Ranpal Singh, Rampal Singh, Jiypal Singh, all residents of village Dhikoli, PS Chandi Nagar, Meerut, had joined in the said examination and signed the panchayatnama. Surprisingly PW-1, who as per his own version, was present in Suri Nursing Home, was not part of the panchayatnama proceedings. PW-1 has admitted in his cross-examination that panchayatnama was not filled in his presence and he does not know who all were present and signed the same and

the time of its preparation. It has come in the cross-examination of one of the panchas namely Jiypal Singh (PW-7), that his village is about 40 to 45 kilometers from Meerut and all the panchas, who are witnesses to this panchayatnama, are residents of village Dhikoli, Meerut; and that they had arrived at Suri Nursing Home on receipt of information from PS Chandi Nagar, which is at a distance of about 3 km from their village. On receipt of the said information, they hired a tempo and reached Meerut and on reaching Meerut, they visited Suri Nursing Home at about 1.00 pm and waited there for about 45 minutes and that panchayatnama was filled there. Thereafter, they accompanied the dead body to the Medical College. This witness also stated that he knows Ashok son of Jagvir of his village, but he did not meet injured Ashok in medical college. Though he came to know that Ashok had also received gun-shot in the incident.

9.3.1. As per PW-1 himself and as per the MLC of the injured Ashok (Ex. K-4), Ashok was brought to Medical College at 12.40 pm. PW-1 in his cross-examination, stated that from Medical College, he returned to Suri Nursing Home within 20 to 25 minutes. Thus, as per his own version, PW-1 would have returned to Suri Nursing Home by 1:00/1:05 pm and the panchayatnama shows the time of its recording at 1.40 pm at Suri Nursing Home. But PW-1 was not part of/available for the inquest proceedings of his own brother where the panchas from his own village, which is located at about 40-45 km, reached Suri Nursing home and joined in panchayatnama proceedings. Rather PW-1 stated that after admitting injured Ashok, when he returned to Suri Nursing home, he came to know that body of his deceased brother had been sent to Medical College for post-mortem. Same shows his arrival at Suri Nursing Home later than even recording of Panchayatnama i.e. after 1.40 pm. In view of these facts, the only evidence/document brought on record by the prosecution to show the presence of PW-1 is medical record of the injured Ashok Kumar of Medical college, Meerut (Ex. K-5). PW-3 Dr. B.K. Sharma, Medical Officer, Medical College, Meerut, deposed that on 26.06.1997, he conducted medical examination of injured Ashok Kumar, aged 33 years s/o Jagveer r/o Village Dhikoli, PS Chandigar, District Meerut, at 12.40 am (pm). He also deposed that general condition of the patient was normal and he was conscious. He was kept under observation and general surgeon and orthopedic surgeon were informed. He further stated that the police was informed. Ex. K-5 mentions that police was informed.

9.3.2. In his cross-examination, PW-3 stated that the injured was brought by Amarpal Singh Dhaka s/o Jile Singh r/o Jagriti Vihar, Meerut and not by the police personnel. PW-3 also stated that no FIR was shown to him at that time either by the injured or by Amarpal Singh Dhaka. He could not recollect whether he had asked for FIR from either of them. Though he stated that they do ask for the same in a medico-legal case.

9.3.3. Though the FIR shows time of registration as 10.25 am and it has come in the testimony of PW-1 that he had the copy of the FIR. It has remained

unexplained as to why copy of the same or details thereof were not provided by PW-1, (who accompanied the injured) to the doctor (PW-3). Same creates doubt about the FIR having been registered by that time.

10.0. It is also noteworthy that Panchayatnama (Ex. K-9) does not mention crime number and the Sections under which the same was registered, though, it was prepared at 1.40 pm i.e. much after the recorded time of registration of FIR at 10.25 am. PW-11A IO Ins. Prakash Chand Pathak in his cross-examination, admitted that FIR number and the offences have been left blank in the column meant for the same. But he further stated that the same have been mentioned on the next page. On pointing out, PW-11A admitted that FIR number and Section 302 IPC on page 2 of the panchayatnama (Ex. K-9) are written with a different pen, but tried to explain the same by stating that the same was so written in order to draw the attention of the officer. Said explanation can hardly be bought. More so as admittedly though the FIR number is mentioned on second page, it only records Section 302 IPC and does not mention Section 307 IPC, despite the fact that the FIR was registered under Sections 302 & 307 IPC. As per PW-11 A, he was having a copy of complaint and FIR when he arrived at the spot and had the same with him even at the time, when panchayatnama was prepared. In view of the same, there was all the more no reason for not filling up of the particulars of FIR. Hence, no explanation much less cogent explanation has come on record for not mentioning the details of the FIR i.e. its number and the offences under which the same was registered in the relevant column ; and rather, incomplete details were mentioned on the next page that too in a different ink. Same clearly shows that the said details on page 2 were filled in later. These facts also create serious doubt about the existence/registration of the FIR till 1.40 pm, when the panchayatnama was prepared.

11.0. The above facts and circumstances when considered in entirety, create doubt about the presence of PW-1 either at the spot or at Suri Nursing Home soon after the incident. Further, in view of the above, vide Ex. K-5, presence of PW-1 has come on record for the first time at 12.40 pm on the date of incident. Same when considered in conjunction with the fact that PW-1 did not give any description of the assailants in his complaint/report (Ex. K-3) on which FIR came to be registered, strengthens the doubt about PW-1's presence at the spot and being an eye-witness. The star witness of the prosecution i.e. injured Ashok was surprisingly not examined by the prosecution. Rather, it has come in the testimony of IO/PW-11A Ins. Prakash Chand Pathak that the injured was not joined in investigation till the time investigation remained with him. Thus, identification of the appellant as one of the assailants by PW-1 is hardly of any consequence. In *Udayakumar v. State of Tamil Nadu* 2023 SCC OnLine SC 283, the Hon'ble Supreme Court, noticing inter alia, that the complainant, who first reported the matter to the police gave no description of the assailants in the FIR, set aside the judgment of conviction. Further in *Amrik Singh's case* (supra) (relied upon by the appellant), where in the FIR, the complainant merely stated that the accused were three young persons, out of which, two were clean shaven

and the one Sikh (sardar), aged about 30-32 years, who had tied thathi ; and no further description was given ; and nothing had been mentioned that he had earlier seen the accused and will be able to identify the accused ; and in cross-examination, the complainant denied that the accused were known to him earlier ; and identified the accused for the first time in the court, the Hon"ble Supreme Court noted that conducting of the TIP was necessitated and observed in para 18 as under :

"18... The aforesaid was not disclosed in the FIR. Even in the cross-examination as admitted by PW-1 he did not disclose any description of the accused. At this stage, it is to be noted that PW-1 has specifically and categorically admitted in the cross-examination that it is incorrect that the accused were known earlier. He disclosed only the age of the accused. In that view of the matter conducting of TIP was necessitated and therefore, in the facts and circumstances of the case, it is not safe to convict the accused solely on their identification by PW-1 for the first time in the Court."

11.1. As noted above, in the instant case, even PW-1 gave no description whatsoever, of the assailants ; he also stated in cross-examination that he did not know the assailants earlier.

12.0. It is also noted that PW-1 in his cross-examination has stated that car UP-15E-7042, in which his deceased brother was coming, was not registered in his brother"s name and may be of professor P.N. Singhal. He also stated that his brother and Prof. P.N. Singhal used to exchange their cars, but he was not aware how many days prior to the incident, his brother/deceased had taken the said car from Prof. P.N. Singhal. He further stated that he did not know whether the car was in the name of Prof. P.N. Singhal or in the name of his family members. Admittedly, vide testimony of IO/PW-5 Sh. B.K. Bhati, SOC-Incharge, it has come on record that no inquiry/ investigation was carried out with respect to the said car, in which the deceased was allegedly shot dead.

12.1. It is also noteworthy that as per the post-mortem report, there were 17 gun-shot injuries of entry and exit wounds, on the body of the deceased, which would have resulted in profuse bleeding. Whereas PW-1 in his cross-examination stated that not much blood was oozing out of his brother"s (deceased) body at that time. It is unbelievable that a person who was shot at indiscriminately and had suffered as many as 17 injuries, not much blood oozed out from his wounds. PW-1 also stated that he did not notice any blood in the car. He further stated that he did not notice whether there was any blood on the seat where the injured Ashok was seated in the car ; blood oozing out from the body might have dropped in the car and on its seat. It is seen that the photographs of the car Ex. 18 to Ex. 20 (negatives (Ex. 15 to Ex. 17) [which were taken at the instance of PW-1 through photographer PW-19] do not show any blood stains in the car. Nor does any bullet mark is seen on the car seats except a small hole, which could not definitely be stated to be bullet mark.

12.1.1. About these photographs, it needs to be noted that PW-19 Raj Kumar, the photographer, deposed that in summers in 6th and 7th month of 1997, an Inspector took him to Police Station Civil Lines, Meerut and on his instructions, he had taken three photographs of a Maruti car parked in the police station. He could not recollect the number of that car. He stated that he had handed over the photographs of the same to the same Inspector along with negatives after about 8 days and then identified those photographs as Ex. 18, 19 and 20 and their negatives as Ex. 15, 16 and 17. PW-19 also stated that there was a bullet mark adjacent to the driver seat, but in his cross-examination, he stated that the Inspector had told him that the mark seen on the outer surface of the seat cover was a bullet mark. He also deposed that the shop, in which he worked as a photographer, is in the name of Smt. Suman Sirohi wife of Advocate Jagpal Singh Sirohi, in which Satish Kumar Sharma, Advocate was also a partner. To the contrary, PW-4 SSI Lala Ram Sharma, the last IO of the case, in his cross-examination stated that he was associated with investigation from 26.01.1998 to 15.04.1998 and that he had received the photographs and negatives of the car no. UP 15E-7042 from the plaintiff of the case/PW-1 Amarpal Singh in Meerut Court as recorded at page no. 48 in the diary ; and that he had filed the charge sheet on the same day. PW-4 further stated that he had not recorded any separate statement of PW-1 regarding handing over of the photographs and their negatives, but PW-1 had told him that he had got prepared the said photographs and their negatives from Pawan Photo Studio, West Court, Meerut. He also stated that he did not record the statement of either the owner or the employee of the said studio, who prepared those photographs and negatives. It is noteworthy that PW-4 further stated that neither did he see the car during investigation conducted by him nor did he ask PW-1 to produce it. In view of the same, these photographs are hardly of any consequence. Rather, the testimony of PW-4 exposes the sorry state of affairs and the manner in which the investigation in the case was carried out and also points towards the interference/influence of PW-1 on the investigation.

12.2. It is seen that the above car was not even forensically examined. Though, PW-11A Ins. Prakash Chand Pathak, the first IO stated that the said car was seized from the right side of the road, there is no memo to show seizure of the car involved in the incident and the same being taken into possession. Even the empty cartridges which were seized from the spot and those which were recovered from the body of the deceased during postmortem ; and the live cartridges recovered from pistol recovered from the Harender @ Billu, were not sent for forensic examination and comparison to find whether they were fired from the same pistol. Even the pistol recovered from the possession of accused Harender @ Billo (since deceased), was not sent for forensic examination and for opinion whether the shots/cartridges recovered from the body of the deceased and found at the spot, were fired from the said pistol, so as to find out whether it was the weapon used in the commission of crime, in the present case.

13.0. It is also significant to note that no blood was lifted either from the spot or

from the car. Even the site plan without scale (Ex. K/21) stated to have been prepared on 27.06.1997 at the instance of PW-1 does not bear PW-1's signatures. Even, no plausible explanation has come forth in the IO/PW-11A's testimony regarding preparation of the site plan after three days in such a heinous offence. These facts create further doubt about the presence of PW-1 at the spot at the time of incident.

14.0. PW-1 was a chance witness. In view of the above, the prosecution has failed to place on record any evidence to prove beyond reasonable doubt, the presence of PW-1 at the spot at the time of incident. Rather, the best evidence in this regard of injured/eye-witness and *res gestae* evidence of Tarun Kumar, who scribed the complaint (Ex. K-1) soon after the incident and even the medical record of Suri Nursing Home and the doctor who examined the deceased, which could have proved the presence of PW-1 at the time of incident, was not produced/examined.

15.0. It would also not be out of place to mention here that the fact that the deceased was involved in many cases of murder etc. of different police stations : and that the State Government had announced a reward of Rs. 50,000/- on the deceased for getting him arrested, has come on record vide testimony/cross-examination of PW-4 SSI Lala Ram Sharma. Further, PW-1 himself has deposed that his brother/deceased had contested assembly election as an independent candidate against Madan Bhaiya. Even PW-11A deposed that during investigation, he had recorded in his diary about enmity of the deceased with Madan Bhaiya and Sushil Moonch. Thus, argument of the learned counsel for the complainant/Id. Prosecutor that it was the appellant, who (alone) had harboured enmity against the deceased to commit the crime, does not lie.

16.0. In view of the foregoing discussion, the prosecution has failed to prove its case beyond reasonable doubt. Thus, conviction of the appellant for the offences punishable under Sections 302/307 IPC, cannot be sustained. The impugned judgment of conviction and order on sentence are accordingly set aside.

17.0. The appeal is allowed.

18.0. Concerned Superintendent Jail is directed to release the appellant forthwith if not required in any other case.

19.0. Copy of the judgment be uploaded on the website and be sent to the Superintendent Jail for updation of record, intimation to the appellant and necessary action.