



2026:AHC:173320-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS No. - 461 of 2026

Avika Tandon

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Yash Tandon
Counsel for Respondent(s)	:	Abhishek Mishra, G.A.

Court No. - 46

**HON'BLE RAJEEV MISRA, J.
HON'BLE DR. AJAY KUMAR-II, J.**

(Dictated by Hon'ble Rajeev Misra,J)

1. This appeal, by Avika Tandon, the first informant raises a challenge to the judgement dated 30.4.2026, passed by Sessions Judge, Prayagraj in Sessions Trial No. 1388 of 2022 (State Vs. Bahadur @ Sher Bahadur) under section 302 IPC, P.S. Phaphamau, District- Prayagraj, whereby accused opposite party-1 has been acquitted of the charge framed against him under Section 302 IPC.

2. Perused the record.

3. We have heard Mr. Swetashwa Agarwal, the learned Senior counsel assisted by Mr. Yash Tandon, the learned counsel for appellant, the learned A.G.A. for State/opposite party-1 and Mr. Abhishek Mishra, the learned counsel representing accused/opposite party-2

4. The case in hand has a chequered history. However, the series of events as have unfolded from the date, deceased went out of her home for morning walk and purchase toned milk for stray animals, upto the date of impugned judgement clearly expose the entire case. We shall refer to the said events in the subsequent part of this judgment.

5. The prosecution story unfolds with an event that on 19.04.2022, Dr. Veena Tandon (mother of first informant) returned home at around 08:00 a.m. from her clinic Dr. Veena Tandon was an animal lover, therefore, she

cared for stray animals. She is, thereafter, said to have gone out on foot to purchase toned milk (fat separated from milk) for stray animals. However, she did not return home even up to 10:00 a.m. Accordingly, her daughter Miss Avika Tandon (the first informant) gave a phone call to her mother on her mobile phone but the same was not answered. At this point of time, two policemen arrived at the house of first informant and informed her that her mother has died in a road accident. Upon receipt of this information, first informant arrived at Shivalik Hospital, Phaphamau and saw the dead body of her mother. First informant, thereafter, enquired about the cause of death of her mother. Upon enquiry, one Dr. Anand, who was posted at Shivalik Hospital, disclosed that one unknown person dropped her mother at the hospital and thereafter ran away. He did not disclose, who he was, from where he had brought the lady or what he saw. Thereafter, the first informant/PW-1 gave a written death information report (Fauti Report) dated 19.02.2022 at Police Station-Phaphamau with a prayer that panchayatnama/inquest of the body of deceased be conducted. Accordingly, PW-10 SI Jyoti got the panchayatnama/inquest of the body of deceased conducted on 19.03.2022 (Ext-Ka-2). Subsequent to above, the detailed police scroll was prepared for getting post mortem of the body of deceased conducted. The same have been proved as Ext-Ka-5 to Ext-Ka10.

6. P.W.5 Dr. Santosh Kumar Yadav the autopsy surgeon conducted autopsy on the body of deceased on 22.4.2022. According to this witness, post mortem of the body of deceased commenced at 11:10 am and concluded 11:40 AM. On external examination, Autopsy Surgeon found following ante-mortem injuries on the body of deceased:

""External Injuries

- 1. Lacerated 2 cm x 1 cm along with 18 cm x 8 cm contused swelling was present, which was located on the left side occipital temporal region.**
- 2. Abraded contusion 2 cm x 1 cm was found present on the right side behind the skull.**
- 3. Abraded contusion was present on the right side of the face in the mandible region measuring 2 cm x 1 cm**

7. Upon internal examination the Autopsy Surgeon found following injuries;-

Internal Injuries—

Hematoma was present in the scalp, and the temporal and occipital bones on the left side of the skull were fractured. The membrane was lacerated and hematoma was present. The brain membranes were torn. Hematoma was present in the brain. 150 ml of semi-digested liquid was present in the stomach. The uterus was non-gravid. The spinal canal (ring of the spine) was not opened."

8. In the opinion of Autopsy Surgeon, death of deceased had occurred one day ago at Shivalik Hospital. Cause of death of deceased was suggested by the Autopsy Surgeon as Coma due to anti-mortem head injury. Ultimately, Autopsy Surgeon prepared the post-mortem report of deceased dated 22.04.2022, which is Ext. Ka.-4.

9. Subsequent to above and after an expiry of 8 days from the date of occurrence, first informant, Miss Avika Tandon submitted a written report dated 26.04.2022 at Police Station-Phaphamau, District-Prayagraj. Since the prosecution story is clearly discernible from aforesaid written report dated 26.04.2022, therefore, accordingly, the written report as transcribed in impugned judgement is reproduced herein below:

"उसकी माताजी डा० वीना टण्डन का 19 अप्रैल, 2022 को सुबह जबरदस्ती एक्सीडेंट करके मर्डर किया गया है। 19 अप्रैल को सुबह उसकी माताजी 8.00 एएम पर अपनी क्लीनिक 5-बी आजाद मार्केट, तेलियरगंज, इलाहाबाद से घर आई और कहा कि वह फाफामऊ जा रही हैं, दूध का डोला लेकर सप्रेटा (बिना मलाई का दूध) खरीदने घर से निकलीं। उनकी लम्बी मारनिंग वाक करने की आदत थी। जब वह 10.00 एएम तक वापस नहीं आई तो उसने, उन्हें फोन किया, पर उन्होंने उठाया नहीं। तभी दो पुलिसकर्मी उसके घर आये और बोले कि उसकी माताजी की सड़क हादसे में मृत्यु हो गयी थी, उन्होंने उसकी माताजी की शिवालिक हास्पिटल, फाफामऊ, इलाहाबाद में लेटे हुए मृत अवस्था की तस्वीर दिखायी तो उसने तुरन्त पहचान लिया कि ये उसकी माता जी हैं। वह तुरन्त शिवालिक हास्पिटल, फाफामऊ गयी और अपनी माताजी को वहां मृत पाया। उनके जूते गायब थे, एक मोजा गायब था। शिवालिक हास्पिटल के डा० आनन्द ने बताया कि हास्पिटल के सामने एक आदमी उसकी माताजी को पटक कर भाग गया था। पूछने पर उसने डाक्टर को या उनके कर्मचारियों को यह नहीं बताया कि उसकी माताजी को वह कहां से लाया था और उसने क्या

देखा था। उसकी माताजी की सांसें चल रही थी और डा० आनन्द ने उनके माथे पर पट्टी की थी। पोस्टमार्टम रिपोर्ट के अनुसार उनके शरीर के पूरे बायीं तरफ सामने और सर के पीछे भी गम्भीर चोटें आयी थीं, जिसकी वजह से उनकी मृत्यु हुई। कौन सी गाड़ी उनसे टकराई थी, यह पुलिस को अभी पता करना है। कौन उन्हें लाया और पटक के भागा, उसका नाम भी पुलिस को पता करना है। तेलियरगंज में उसकी माताजी डा० वीना टण्डन, प्रसिद्ध डाक्टर आफ मेडिसिन को सब जानते हैं। तेलियरगंज से लेकर फाफामऊ तक का बीच का पुल पूरी तरह चार पहिया वाहन के आवागमन के लिए बन्द किया गया है। इस कारण उस पुल पर दो पहिया की बहुत भीड़ रहती है और चार पहिया केवल पुलिस और एम्बुलेंस ही उस पुल से गुजर सकती हैं। उसकी माताजी वहीं चन्द्रशेखर आजाद पुल से ही फाफामऊ हमेशा आती जाती थीं। वह रोज सप्रेता दूध लेने टहलते हुए यहां आती थीं। उस पुल पर हादसा होता तो बहुत लोगों को दिखता। उस पुल के बाद जहां सरकारी रोड खत्म होती है, वहां किसी ने उन्हें नहीं देखा। वह चोटिल अवस्था में फाफामऊ में पुल की सीमा खत्म होने के बाद मारी गयी हैं। गाड़ी से टक्कर मार कर और उन्हें उठा कर पास ही शिवालिक हास्पिटल पर पटक कर भाग गये, ताकि कोई उनके प्राण बचा न ले। इसका मतलब कि तेलियरगंज में हादसा नहीं हुआ, वहां सब उन्हें जानते और एक चोटिल औरत को दो पहिया वाहन पर तेलियरगंज से फाफामऊ बिना लोगों के देखे/नोटिस किये हुए नहीं पहुंचाया जा सकता। यह हादसा पुल के बाद हुआ और दूध की दुकानों से पहले। पुलिस कृपया छान बीन करे कि यह कहां हुआ है, फाफामऊ में और किसने किया है ? वह 15-20 साल से सड़क के पशुओं की निशुल्क सेवा करती है। मेरे बहुत सारे सड़क के और घर के पशु (pets) यानि कुत्तों को उस क्षेत्र के मर्डरर बहादुर, जो एक मुसलमान होकर जुम्मू नाम के मुसलमान का मर्डर कर चुका है ने बेरहमी से पशुओं को उसके सामने जान से मारा है। इस बहादुर और उसके स मुसलमानों ने कई बार उसे और उसकी माताजी को जान की धमकी दी है और उन पर हमले भी किये हैं। इन्होंने उसके घर पर पत्थर और ईंटें कई बार बरसाये हैं। इन मुसलमानों का कहना है कि कुत्ते उनके लिए हराम हैं और वे उन दोनों अकेली मां बेटी को इन कुत्तों के साथ जान से मार देंगे। उसे पता है कि अब उसकी माता जी के बाद ये यही लोग उसका मर्डर करने के लिए रुके हैं, क्योंकि इन सबके खिलाफ उसने कई एफ०आई०आर० लिखायी है। इनका धमकी भरा खत भी उसके पास अब भजिसमें इन लोगों ने उसे काट कर उसकी बोटियां कुत्तों को खिलाने की बात कही उस पर श्रीमती मेनका गांधी और एस०एस०पी० के सहयोग से एफ०आई०आर० भी हो चुकी है। इन लोगों ने उसे और उसकी माताजी को कई बार धमकाया और अब उसकी माताजी को जान से मार दिया और अब उसे भी मार देंगे, सिर्फ इसलिए कि वह एक गहन पशु प्रेमी है और उसकी माताजी उसे पूरा सहयोग देती थी। अगर वे दोनों मर गये तो इनके खिलाफ की गयी सारी एफ०आई०आर० खारिज हो जायेगी। एक पढ़े-लिखे पशु प्रेमी होने के कारण किमिनल्स के हाथों उनकी जान नहीं जानी चाहिए।]]."

10. After aforementioned written report was submitted, P.W.-7, Head Constable Sri Narain Pandey, who was posted as Head Clerk at Police Station-Phaphamau entered the said written report dated 26.04.2022 in the

General Diary of Police Station-Phaphamau, as G.D. Entry No. 70 timing 22.24 hours dated 26.04.2022 (Ext. Ka-14). Thereafter on basis of same P.W.7 prepared the check F.I.R dated 26.4.2022 (Ext-Ka-14) which was registered as Case Crime No. 117 of 2022, under section 302 IPC, P.S. Phaphamau, District- Prayagraj. In the aforesaid F.I.R. one Bahadur @ Sher Bahadur was nominated as named accused whereas his companions were also arraigned as accused.

11. Subsequent to the registration of aforementioned F.I.R. P.W.6 Ashish Singh, Station House Officer, Police Station- Phaphamau was appointed as Investigating Officer. On the pointing of first informant, this witness prepared site plan of the place of occurrence (Ext-ka-11). Upon completion of investigation, he submitted the charge-sheet (Ext-Ka-12) whereby named accused Sher Bahadur was charge-sheeted under section 302 IPC.

12. Upon submission of aforementioned charge sheet/police report in terms of Section 173(2) Cr.P.C. the Jurisdictional Magistrate took cognizance upon same. Since offence complained of is triable by the Court of Sessions, therefore, Jurisdictional Magistrate committed the case to the Court of Sessions.

13. Resultantly, Sessions Trial No. 1388 of 2022 (State VS. Bahadur @Sher Bahadur) came to be registered in the Court of Sessions Judge, Prayagraj. Since there was no legal impediment in proceeding with the trial of accused, therefore, concerned Sessions Judge proceeded with the trial. He, accordingly, in compliance of Section 228 Cr.P.C., framed charge against the charge sheeted accused under Section 302 IPC. Charge sheeted accused denied the charges so framed. He pleaded innocence and demanded trial. Resultantly, the trial procedure commenced.

14. Prosecution in discharge of its burden to bring home the charges so framed against charge sheeted accused, adduced the following prosecution witnesses;-

(i). P.W.1- Km. Avika tandon (first informant)

(ii). P.W.2- Aditya Yadav (witness)

(iii). P.W.3- Vikas Yadav (witness)

- (iv). P.W.4- Ajay Gupta (witness)
- (v). P.W.5- Dr. Santosh Kumar Yadav (Autopsy Surgeon)
- (vi). P.W.6- Ashish Singh (Investigating Officer)
- (vii). P.W.7- H.C. Shri Narayan Pandey (scribe of G.D.and F.I.R.),
- (viii). P.W.8- Brajesh Singh ()
- (ix). P.W.9- Dr. Shanshank Shekhar (The Doctor who had attended the deceased at Hospital)
- (x). P.W.10- S.I. Jyoti (This witness prepared the Panchayatnama/inquest of deceased)
- (xi). P.W.11- Naseem Islam (Eye witness of the occurrence)

15. It is apposite to mention here that there is no eye witness of the occurrence. Accordingly, present case is a case based on circumstantial evidence. The statement of PW-2, PW-3, PW-4 and PW-9, who are alleged to be prosecution witnesses of fact were recorded by the Investigating Officer under Section 161 Cr.P.C. It is on the basis of their statements that Investigating Officer identified the place of occurrence and further came to the conclusion that the complicity of named accused Bahadur @ Sher Bahadur is prima-facie apparent in the crime in question. However, PW-2, PW-3, PW-4 and PW-9 in their respective depositions before Court below did not support the prosecution case. Resultantly, the prosecution case was a case of no evidence. At this juncture, the prosecution filed an application under Section 311 Cr.P.C. to summon Naseem Islam as a witness as he was alleged to be an eye-witness of the occurrence. The said application was allowed by Court below. Consequently Naseem Islam was summoned by Court as a prosecution witness. PW-11 Naseem Islma in his deposition before Court below has supported the prosecution. As such, the case in hand got concluded to a case based on direct evidence. However, Court below disbelieved this witness and discarded his deposition.

16. Apart from relying upon the depositions of aforementioned prosecution witnesses, prosecution also filed documentary evidence in proof of its case,

which is tabulated herein under;-

Sl. No.	Exhibits	Details of documents
1.	Ext-Ka-1	Written report dated 22.04.2022 submitted by first informant Miss Avika Tandon at P.S. Phaphamau, District Prayagraj and proved by P.W.1
2.	Ext-Ka-2	Death information report (Fauti- Report) dated 19.04.2022
3.	Ext-Ka-3	Panchayatnama/Inquest report of the body of the deceased conducted on 19.04.2022 prepared by PW-10 Sub Inspector Jyoti and proved by PW-1 Miss Avika Tandon, first informant.
4.	Ext-Ka-4	Post mortem report regarding autopsy conducted on the body of deceased conducted on 22.6.2022 by P.W.5 D.R. Santosh Kumar yadav and proved by P.W.5.
5.	Ext-Ka-5	Letter to C.M.O through R.I.
6.	Ext-Ka-6	Photo lash
7.	Ext-Ka-7	Chalan Nash
8.	Ext-Ka-8	Letter to R.I.
9.	Ext-Ka-9	Letter to C.M.O through P.S.- Phaphamau

10.	Ext-Ka-10	Specimen of seal
11.	Ext-Ka-11	Site plan of the place of occurrence prepared by PW.6 Ashish Singh Investigating Officer and proved by P.W.1
12.	Ext-Ka-12	Charge sheet dated prepared by P.W-6 Ashish Singh Investigating Officer and proved by PW-6
13.	Ext-Ka-13	Check F.I.R submitted by PW-7 Head Constable Sri Narayan and proved by PW-7
14.	Ext-Ka-14	G.D. Entry made by PW-7 Head Constable Sri Narayan and proved by PW-7

17. After prosecution evidence was over, all the adverse and incriminating circumstances were disclosed to accused in question answer form for his version of occurrence as per mandate of Section 313 Cr.P.C. The accused denied all the suggestions put to him one by one by repeatedly saying that it is false. With regard to the deposition of PW-1, it was stated by accused that deposition of PW-1 discloses an imaginary story. Charge framed against him is false and without any basis. PW-2, PW-3 and PW-4 have not deposed against accused, which is correct. The deposition of PW-5 is correct. PW-6 has partially deposed truthfully but the site plan is contrary to the FIR. The deposition of PW-7, PW-9 and PW-10 are correct. With regard to PW-11, it was stated by the accused that he is a purchased witness. He is a hardened criminal. There is old enmity between him and PW-11. False prosecution has been launched due to enmity. It was lastly submitted that accused is innocent and has been falsely implicated. It was, however, stated by the accused that defence evidence shall be led. However, no defence evidence was led by accused nor the deceased himself deposed as a witness. The accused did not come out with his version of occurrence. As such, the only version of the occurrence is the prosecution version.

18. Upon completion of evidence, oral arguments were raised on behalf of parties in support of their respective case. On behalf of prosecution, it was contended that the FIR was lodged with delay but on account of valid

reasons. Therefore, the delay in lodging the FIR shall not be fatal to the prosecution. First informant is a simple lady not well versed with law. The factum of Naseem Islam being an eye witness of occurrence came in the knowledge of first informant at a very late stage. Thereafter, Naseem Islam deposed before Court below and gave an eye witness account of the occurrence. The deceased had sustained injury on her head, which is also corroborated by the deposition of PW-11 Naseem Islam an eye witness. In case, the deceased had died in a road accident, the nature of injuries that would have been sustained by her would be different from the one sustained by the deceased. Present case is purely a case of murder. The accused is guilty of committing the crime in question. As such, he is liable to be convicted.

19. Per contra, on behalf of accused, it was contended that the FIR was lodged with a delay of 7 days. The FIR was been lodged on imaginary and fabricated facts on the basis of suspicion and enmity. During course of trial, PW-11 Naseem Islam was introduced/adduced as an eye witness of the occurrence. However, neither at the time of incident or investigation, he was present. His name does not find mention in the case diary or in the FIR. In the FIR lodged by first informant, the place of incident was firstly shown as Phaphamau, whereas PW-1 the first informant in her cross examination has stated the place of occurrence as Shankarghat. However, in the later part of her examination-in-chief, P.W.-1 has stated that the deceased was murdered near the steps before Chandra Shekhar Azad Bridge. The prosecution witnesses of fact PW-2, PW-3, PW-4 & PW-8 have not supported the prosecution and therefore, they have been declared hostile. Judgment relied upon by the prosecution is not applicable to a hostile witness. According to the Autopsy Surgeon, the death of deceased could have been caused due to head injury sustained by deceased in an accident. There are serious contradictions in the timing of incident as per depositions of PW-1 and PW-11. While PW-1, who is the daughter of deceased and also an inmate of the house of occurrence has stated that the deceased arrived home from her clinic at 08:00 a.m. and thereafter, went on foot to purchase toned milk for stray animals. PW-11 has stated that the incident occurred in between 07:30 a.m to 08:00 a.m. If PW-11 had actually witnessed the occurrence then certainly, he would have informed the first informant, as PW-11 has categorically deposed that he knew the deceased and he has good and hearty

relations with first informant. The enmity between accused and PW-11 is admitted and therefore, PW-11 has deposed to give false deposition. The prosecution has failed to prove the guilt of accused beyond doubt and therefore accused is liable to be acquitted

20. Thereafter, Court below examined and evaluated the prosecution case in the light of evidence on record. To find out the veracity of the prosecution case, Court below assessed the evidence on record under different heads. Having undertaken the aforesaid exercise, Court below came to the conclusion that prosecution has failed to establish the guilt of accused beyond doubt i.e. a reasonable doubt.

21. Accordingly, the Sessions Judge, Prayagraj by means of impugned judgment dated 30.04.2026 acquitted the accused of the charge framed against him.

22. Thus feeling aggrieved by the impugned judgment, first informant Avika Tandon has now approached this Court by means of present appeal.

23. Mr. Swetashwa Agarwal, the learned Senior counsel for appellant in challenge to the impugned judgment raised a solitary submission before us. He contended that it has come in the impugned judgment that there was deep and grave enmity between accused and PW-11. It was on account of above that PW-11 was under fear and therefore, he could not disclose the occurrence either to the police or to the first informant, even though, he was well acquainted with the first informant. Court below instead of accepting the aforesaid explanation offered by P.W.11 regarding his date appeared in the Court and thereafter, relying upon his deposition has simply brushed aside the explanation offered by PW-11 for his late appearance in the trial and further disbelieved him and discarded his testimony. Learned Senior counsel would next submit that ultimate object of criminal trial is to unearth the truth and further to ensure that no culprit goes free. Court below has, however, ignored the aforesaid solemn objective behind criminal trial and acquitted the accused by disbelieving P.W.11 an eye witness resulting in miscarriage of justice. Learned Senior counsel for appellant thus vehemently urged that Court below has failed to exercise its jurisdiction diligently. It has rather exercised its jurisdiction in a cavalier fashion resulting in the impugned judgment, which is unsustainable in law and fact. The learned

Senior counsel for appellant also contended that since the guilt of accused stands duly proved as per the deposition of PW-11, therefore, the impugned judgment be set aside and the appeal be allowed.

24. Per contra, the learned A.G.A. for State-opposite party-1 has vehemently opposed the present appeal. Learned A.G.A. at the very outset, contended before us that it is not the case of appellant that Court below has either ignored any material evidence on record or Court below has misconstrued any material or evidence on record. Upon perusal of the impugned judgment, it is apparent that Court below has considered the entire evidence and material on record. As such, no perversity can be attached to the impugned judgment.

25. It was next contended by the learned A.G.A. that the FIR was lodged by the first informant PW-1 Miss Avika Tandon with a delay of 7 days and on basis of suspicion. As such, the impugned FIR was engineered against accused with a bad motive to falsely implicate him in the crime in question. As such, criminal prosecution of accused is malicious.

26. According to the learned A.G.A., case of prosecution since beginning was one based on circumstantial evidence. As such, there is no eye witness of the occurrence. The place of occurrence was identified by Investigating Officer in the site plan on the basis of statements of PW-2, PW-3, PW-4 and PW-9. The charge sheet/police report was submitted by Investigating Officer on the strength of statements of aforementioned witnesses. However, aforesaid witnesses turned hostile in their respective depositions before Court below. As such, the prosecution case became a case of no evidence.

27. It was on account of above that during the course of trial, prosecution filed an application under Section 311 Cr.P.C. to summon PW-11 as a witness. According to prosecution, PW-11 is an eye witness of the occurrence and his deposition shall be helpful to Court in unearthing the truth. Aforesaid application of prosecution was allowed by the Trial Judge. Accordingly, Naseem Islam was summoned by Court below as a witness. Resultantly, Naseem Islam deposed before Court below as PW-11. Though the objective behind summoning of PW-11 as a prosecution witness was a revered one, however, his deposition was disbelieved by Court below being unworthy of credit and reliance.

28. Court below has assigned cogent reasons for disbelieving and discarding the deposition of PW-11. This prosecution witness of fact (P.W.-11), who was introduced in the trial at a belated stage was held to be unworthy of credit and reliance. The reasons so recorded by Court below are clearly discernible from the impugned judgment. The said reasons are cogent reasons and cannot be brushed aside as being illusionary or superficial.

29. Since beginning prosecution entirely based its case on circumstantial evidence. But having failed to establish all the parameters required to be established in a case based on circumstantial evidence to prove the guilt of an accused, prosecution introduced PW-11 Naseem Islam as an eye witness of the occurrence, whereby the nature of case was changed to a case based on direct evidence. However, Court below disbelieved and discarded PW-11 on account of his unexplained conduct and his sudden appearance in the trial for which, no explanation was offered. Thus the prosecution failed to establish the very story which it set out to prove.

30. On the bedrock of aforesaid submissions, learned A.G.A. thus urged that Court below has not committed an error of law or fact so as to upset the impugned judgment. Conclusion drawn by court below is a natural and logical conclusion deduced upon evaluation of prosecution case in the light of weight of evidence on record. Thus the impugned judgment does not suffer from any perversity either. As such, present appeal is liable to be dismissed.

31. Having heard the learned Senior counsel for appellant, the learned A.G.A. for State-opposite party-1, upon perusal of record and evaluation of rival submissions urged by learned counsel for the parties as noted above, in the light of evidence on record we find that the only point worth consideration in this appeal is; whether Court below has rightly disbelieved PW-11 as being unworthy of credit and reliance. The said question is short but an interesting one. The answer to the said question shall decide the fate of present appeal.

32. The case in hand was basically a case based upon circumstantial evidence. However, during course of investigation, Investigating Officer examined Aditya Yadav (PW-2), Vikas Yadav (PW-3), Ajay Gupta (PW-4) and Brijesh Singh (PW-8). On the basis of their statements recorded under

Section 161 Cr.P.C., some evidence emerged against accused. However, the aforementioned prosecution witnesses of fact turned hostile during course of their depositions before Court below. PW-1, the first informant deposed before Court below and attempted to support the prosecution but she failed to establish the guilt of accused beyond doubt i.e. a reasonable doubt. Neither the place of occurrence nor the manner of occurrence could be established by her nor could she depose the source of knowledge regarding complicity of named accused in the crime in question. Therefore, after all the prosecution witnesses of fact nominated in the charge-sheet had been examined, an application under Section 311 Cr.P.C. was engineered by the prosecution to summon Naseem Islam as a prosecution witness by alleging that he is an eye witness of the occurrence. Thus with the introduction of this witness, present case become a case of direct evidence from circumstantial evidence.

33. In view of above, the veracity of prosecution case/guilt of accused was not to be examined in the light of parameters laid down in the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra 1984 (4) SCC 116***, which remains the locus classicus regarding proof of guilt of an accused in a case based on circumstantial evidence but on the principle; whether the prosecution witness of fact is credible and reliable and therefore, his deposition can be relied upon to decide the guilt of accused.

34. Upon perusal of impugned judgment, we find that PW-11 was not nominated as an eye witness in the FIR. His name did not surface in the statement of first informant and other witnesses examined by Investigating Officer under Section 161 Cr.P.C. During course of trial, prosecution filed an application under Section 311 Cr.P.C. probably alleging therein that one Naseem Islam is aware about the case being an eye witness of the occurrence and therefore, he be summoned. The said application was allowed by Court below. Resultantly, Naseem Islam deposed before Court below as PW-11. Since this witness was not examined by Investigating Officer during course of investigation, therefore, the disclosure made by him in his deposition before Court below shall fall in the category of uninvestigated facts. As such, his deposition is different from an ordinary witness and therefore, needs to be examined with care and caution.

35. PW-11 in his deposition before Court below has narrated a very fanciful story which prima-facie proves the guilt of accused Bahadur @ Sher Bahadur. According to this witness, he is an eye witness of the occurrence. The occurrence in question occurred on 19.04.2022 in between 07:30 p.m. to 08:00 a.m. This witness has further deposed that on 19.04.2022, he had gone out for his morning walk towards Shankarghat on the banks of river Ganges. On his way, he saw that accused Bahadur @ Sher Bahadur was banging the head of Dr. Veena Tandon (deceased) with a pole. He stayed at that particular place for a minute and further saw that immediately after the occurrence, a car came with passengers inside. Out of the said car, two persons came out, put Dr. Veena Tandon inside the car and went in the direction of pantoon bridge speaking loudly that she be taken to hospital. However, he could not identify any of the passengers sitting in the car. Neither any interrogation was made by the police from him nor he gave any information of the incident to any person. He has however, stated that he has enmity with the accused but the accused has already been convicted. However, the credibility and reliability of this witness was clearly exposed in his examination-in-chief. He stated that he was standing at a distance of 10 feet. The accused after committing the crime ran away. A common man took the injured in a car. The car arrived immediately after the occurrence. However, this witness admitted that his relation with Dr. Veena Tandon and Avika Tandon are cordial. The murder of deceased was committed in front of him. However, as he was frightened, therefore, he could not give information of the said occurrence to any person. The deceased was put to death by banging her head with a pole and not by placing bricks and stones in a bag. He believed that Dr. Veena Tandon had died and therefore, in his statement-in-chief, he stated that accused had put her to death. The first informant had herself come to him. How the first informant came to know that he is an eye witness of the occurrence is not known to him. Everyday he goes for a walk but by taking different routes. On the date of incident, he had taken the same route on which, the incident occurred. About 20-25 persons were present at the spot. However, he does not recognize any of them.

36. Upon evaluation of statement-in-chief and examination-in-chief of his witness i.e. P.W.11, Court below discovered the following anomalies in his deposition;-

(i). It is beyond comprehension that if this witness clearly recognized the deceased Dr. Veena Tandon and was deeply acquainted with the first informant Miss Avika Tandon and his relations with her were warm and cordial then why he did not come forward to protect the deceased/nab the accused?

(ii). Immediately after the occurrence when the accused ran away, why this witness did not attempt to take the deceased to hospital?

(iii). Why no information was given by this witness to the police upon happening of the occurrence?

(iv). Why this witness did not inform the first informant about the occurrence?

(v). If the incident had occurred in the manner disclosed by this witness, then even a man of ordinary prudence would go to the police station and inform the police about the same?

(vi). It is evident from the oral and documentary evidence on record that there is grave enmity between the parties on account of which, a murder took place, in which, Bahadur @ Sher Bahadur was convicted and sentenced life imprisonment. Therefore, PW-11 prima-facie appears to have deposed against accused on account of above.

(vii). In view of above discrepancies, emerging in the deposition of PW-11, Court below concluded that considering the behavior and conduct of this witness, his sudden appearance in the trial as an eye witness does not inspire confidence and casts a serious doubt on his credibility. Court below, therefore, disbelieved this witness being unworthy of credit and trust and discarded his testimony.

37. At the time of hearing of present appeal, we specifically invited the attention of learned Senior counsel for appellant to aforementioned inconsistencies and discrepancies in the deposition of PW-11. We further pointed out to the learned Senior counsel for appellant as to how in the light of above, the deposition of PW-11 can be said to be reliable and trustworthy. Learned Senior counsel for appellant, however, only reiterated the submission previously urged by him that since there was enmity between

PW-11 and the accused, therefore, PW-11 could not disclose the manner of occurrence to the first informant or police earlier.

38. The explanation offered by the learned Senior counsel for appellant is totally illusory and deserves to be rejected. Even otherwise, the deposition of PW-11 falls like a house of cards as PW-11 in his deposition has stated the time of occurrence to be 07:30 to 08:00 a.m., whereas PW-1 first informant and daughter of deceased in the written report as well as in her deposition before Court below has stated that the deceased had reached home at 08:00 a.m. from her clinic and thereafter, went on foot to purchase milk. There is no such evidence on record on the basis of which, aforesaid statement occurring in deposition of PW-11 could be doubted. It is thus evident that the deposition of P.W.1 is prima facie against the prosecution case itself.

39. Being the last Court of fact, we have ourselves examined the deposition of PW-1 and PW-11 to find out, if there is some consistency in their depositions regarding the time of occurrence. Since the depositions of these two witnesses regarding the time of occurrence is at variance and there being huge time difference between the two, the subsequent narration in the deposition of PW-11 regarding the manner of occurrence is wholly irrelevant as the deposition of PW-1 regarding the time, deceased left her home i.e. at 08:00 a.m. is more convincing and trustworthy. PW-1 is the daughter and prima-facie the last inmate of the house, who saw the deceased leaving home after 08:00 a.m. Once according to P.W.1 Avika Tandon, the daughter of deceased and also an inmate of the house of deceased has himself stated that the deceased went out of home after 8:00 am, the statement of P.W.11 that occurrence took place between 7:30 am to 8:00 am is prima facie false and therefore, not credit worthy to be relied upon. Thus contradiction appearing in the deposition of P.W.11 makes his presence at the time and place of occurrence extremely doubtful. As such, the manner of occurrence disclosed by the P.W.11 in his deposition is totally irrelevant to decide the guilt of accused. Once P.W.11 has failed to establish his presence at the time and place of occurrence the narration regarding the manner of occurrence occurring in the deposition of P.W.11 is irrelevant and therefore, unworthy of reliance.

40. In view of above, no illegality can be attached to the impugned judgment. The conclusion drawn by Court below is the only logical conclusion, which could be derived from the evidence on record.

41. As a result, the present appeal fails and is liable to be dismissed.

42. It is, accordingly, **dismissed**.

(Dr. Ajay Kumar-II,J.) (Rajeev Misra,J.)

August 13, 2026
Arshad