



2026:AHC-LKO:40363-DB

Reserved on 27.02.2026

Delivered on 05.06.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

JAIL APPEAL No. - 1060 of 2018

Puttan Pasi

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Jail Appeal, Amresh Kumar, Dinesh Kumar, Lok Pati Yadav, Mayank Tiwari, Pramod Kumar Pandey, Sanjay Kumar Verma, Uday Pratap Singh, Vinod Kumar Singh
Counsel for Respondent(s)	: Govt. Advocate,

Court No. - 9

**HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.**

1. Heard Sri Uday Pratap Singh, learned counsel for the appellant and Sri Bipul Kumar Singh, learned State Counsel for the State-respondent.

2. This jail appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") against the judgment and conviction order dated 05.04.2018 passed by the Additional Sessions Judge, Court No.4, Barabanki in Sessions Trial No.66 of 2015, arising out of Case Crime No.238 of 2014, Police Station- Tikaitnagar, District- Barabanki, whereby the appellant has been convicted for the offence under Section 452 IPC and sentenced

for three years' rigorous imprisonment with fine of Rs.5,000/- and in default of payment of fine, six months' additional rigorous imprisonment and the appellant has also been convicted under Section 302 IPC and sentenced for life imprisonment with fine of Rs.5,000/- and in default of payment of fine, one year's additional rigorous imprisonment.

CASE OF THE PROSECUTION

3. As per the prosecution's story, as narrated in the FIR, the informant Smt. Takdeera, wife of Ram Naresh Rawat, is the real sister of one Smt. Gomta, who was married to the present appellant. The present appellant used to torture his wife i.e. Smt. Gomta and therefore, she shifted from her matrimonial home and as such was living with her parents. The present appellant was allegedly suspicious that the informant's daughter, namely, Kanchana had instigated Smt. Gomta not to live with the appellant and to shift to her parents home.

4. On the fateful night dated 18.11.2014 at about 11:00 PM, the present appellant came to the house and started hot confrontation with the daughter of the informant, namely, Kanchana, saying that you people had instigated his wife not to live with him and to live with her parents. On that, the daughter of the informant, Kanchana, told the appellant that he was a drunkard and used to beat his wife, so she was not living with him. On such a reply, the present appellant stabbed Kanchana, who was aged about 19 years, with a knife; as a result thereof, she succumbed to such injuries. Hearing the cry of injured Kanchana, the complainant reached the spot and, seeing her daughter in an injured condition, she started crying loudly.

5. Having heard the cry of the complainant, her cousin Jeth- Ram Sajeevan, son of Chanda, Lutawan and Indal (family members) reached the spot. They saw the appellant is in the house of the complainant, and seeing those persons, the appellant ran away and they could not catch hold the present appellant. Thereafter, villagers and family members of the complainant called the Ambulance to get the injured Kanchana to the

hospital, but the Doctors declared her dead when she arrived at the hospital.

PROCEEDINGS BEFORE THE TRIAL COURT

6. In the aforesaid background, complainant lodged an FIR the following morning at 7:30 AM. The post-mortem examination was conducted on 19th November 2014 between 3:00 PM and 3:50 PM, which recorded three ante-mortem injuries, and the cause of death was opined to be shock and hemorrhage resulting therefrom.

7. The appellant was arrested on 20th November 2014, and a blood-stained knife was recovered from the thatched roof of his house pursuant to his disclosure.

8. Consequent thereto, charges under Sections 302 and 452 IPC were framed against him on 9th November 2015.

9. Notably, to prove the charges against the appellant, the prosecution examined the following witnesses: -

PW-1	Smt. Takdeera	Informant
PW-2	Ram Sajeevan	Witness
PW-3	Dr. S.P. Yadav	Doctor who conducted the post-mortem
PW-4	Shyam Singh Yadav	Retired Head Constable; posted at PS Tikaitnagar, District Barabanki at the time
PW-5	Anil Kumar Singh	Constable Moharrir; posted at PS Tikaitnagar, District Barabanki
PW-6	Jagdish Prasad Gangwar	Investigating Officer; then Police Inspector, PS Tikaitnagar, District Barabanki
PW-7	Ramesh Pratap	Constable (CP 198); posted at PS

	Singh	Tikaitnagar, District Barabanki
PW-8	Ram Naresh	Witness of the recovery of weapon (knife)

10. Apart from the aforesaid oral evidence, the prosecution has also relied on the following documentary evidence, to substantiate its case: -

(i)	Written Report	Exhibit-1
(ii)	Report of Post-Mortem Examination	Exhibit-2
(iii)	First Information Report	Exhibit-3
(iv)	Inquest Report	Exhibit-5
(v)	Site Plan	Exhibit-12
(vi)	Recovery Report	Exhibit-13
(vii)	Recovery Report	Exhibit-14
(viii)	Recovery Report	Exhibit-15
(ix)	Charge Sheet	Exhibit-16
(x)	Site Plan	Exhibit-17
(xi)	Forensic Report	Exhibit-20

11. During trial, the complainant deposed as PW-1, and Ram Sajeevan, the complainant's brother-in-law, was examined as PW-2. PW-3 (Dr. S.P. Yadav) was examined as a medical expert, who conducted the post-mortem of the deceased. PW-8 (Ram Narayan) was examined as witness of the recovery of knife. However, other individuals named as witnesses in the FIR, namely, Lutawan, Indal, and Turri, were not examined. Upon completion of evidence, statement of accused was recorded under Section 313 Cr.P.C. and thereafter, the Trial Court, by the impugned judgment dated 5th April 2018, held the appellant guilty of the offences charged & sentenced to life imprisonment.

SUBMISSIONS ON BEHALF OF THE PARTIES AND
DISCUSSION

12. The learned counsel for the appellant has laid the grounds of challenge primarily on (i) deficiencies in the prosecution's narrative and delay in reporting; (ii) unexplained delay in lodging the FIR; (iii) conviction is based on suspicion in absence of established motive; (iv) suppression and withholding of material witnesses; (v) failure to examine independent witnesses; (vi) only interested witnesses were examined; (vii) contradictions between medical evidence and prosecution's version; (viii) medical evidence inconsistent with ocular testimony; (ix) doubtful and legally defective recovery; (x) recovery not proved in accordance with law and non-recovery of the alleged torch.

13. Therefore, learned counsel for the appellant has submitted that the appellant's conviction is wholly unsustainable in law and on facts and the appellant is entitled to the benefit of doubt. An alternative argument has been advanced by the learned counsel for the appellant that at any rate, the appellant may be convicted under Section 304 IPC and not under Section 302 IPC.

14. Learned counsel for the appellant has further submitted that unexplained delay in FIR renders prosecution version doubtful. The alleged incident occurred at 11:00 PM on 18th November 2014, yet the FIR was lodged at 7:30 AM on 19th November 2014, after a delay of approximately 8.5 hours. This substantial gap, when the police station was situated a mere 11 kilometers from the crime scene, raises an immediate red flag regarding the authenticity and spontaneity of the prosecution version. Such delay provides opportunity for deliberation, consultation, and tailoring of evidence, which fatally undermines the evidentiary value of the entire prosecution case.

15. According to the learned counsel, the prosecution has failed to record any explanation for the delay in lodging the FIR itself. The complainant has not stated in the FIR why she waited for 8.5 hours to report a murder of her daughter. In the absence of any explanation, the delay must be treated as "unexplained," attracting the principle that such delay is fatal to the prosecution case. He referred to a judgment of the Division Bench of this Court in re; **Munna v. State of U.P. & 7 Ors, Criminal Appeal U/S 372 Cr.P.C. No. 543 of 2022**, wherein dismissing the appeal it was observed that no plausible explanation has been offered as to why the FIR was lodged on the next day after enormous delay. The learned counsel has also referred to the judgment of the Apex Court on the question of delay in lodging the FIR and its impact upon the prosecution theory in the case of **Thulia Kali v. The State of Tamil Nadu, (1972) 3 SCC 393**, wherein it was observed as under:-

“12. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained....”

16. Therefore, submission of learned counsel for the appellant is that 8.5 hours delay provided ample time for the complainant to consult with others, concoct a false story, and coordinate evidence. According to him, the police station being only 11 kilometers away makes the delay even more inexplicable. Even accounting for night-time travel constraints, reaching the police station and lodging an FIR would not reasonably exceed 1-2 hours. The prosecution has failed to explain why the complainant waited till morning when immediate action was both

feasible and imperative. This failure to explain the delay in light of the short distance renders the prosecution version inherently doubtful.

17. Further, according to the learned counsel, the prosecution has not produced any independent witness who can corroborate that the complainant made any immediate report or attempt to report the incident promptly. The absence of any contemporaneous or near-contemporaneous disclosure to any person other than the police further strengthens the inference that the delay was utilized to fabricate a version of events that implicated the appellant falsely. He has relied on the judgment of the Hon'ble Supreme Court in the case of **Dilawar Singh v. State of Delhi, (2007) 12 SCC 641**, wherein at paragraphs no.9 & 12 it was held as under:-

"9. In criminal trial one of the cardinal principles for the court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the court at the earliest instance. That is why if there is delay in either coming before the police or before the court, the courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case.

12. The complainant has attempted to explain the delay by stating that the matter was reported to the police but the police did not take any action. Such statement can hardly be taken to have explained the delay. It is the simplest of things to contend that the police, though report had been lodged with it, had not taken any steps. But it has to be established by calling for the necessary records from the police to substantiate that in fact a report with the police had been lodged and that the police failed to take up the case."

18. The learned counsel has vehemently argued that an FIR is valuable as a contemporaneous record of the first information received. When it is lodged after an unexplained delay of 8.5 hours, its evidentiary value as corroborative evidence is substantially diminished. It cannot safely be used to corroborate the testimony of the complainant (PW-1) when the delay itself casts doubt on whether the version recorded is a

spontaneous account or a deliberated narrative prepared overnight. He has strenuously submitted that the burden lies squarely on the prosecution to explain the delay with cogent, convincing reasons. Since the prosecution has failed to discharge this burden, the absence of any explanation is fatal and must be resolved in favour of the accused by applying the principle of benefit of doubt.

19. Thus, according to the learned counsel, the cumulative effect of the 8.5 hours unexplained delay, the short distance to the police station, the gravity of the crime, and the complete absence of any recorded explanation creates a reasonable doubt about the genuineness of the prosecution case. This doubt is not merely technical but substantive, touching the very root of the prosecution's narrative. The appellant is, therefore, entitled to the benefit of doubt on this ground alone, warranting acquittal.

20. Further submission of learned counsel for the appellant is that the accused has no motive to have killed the victim. As per the allegation, there was a dispute between the appellant and his wife Gomta, and the deceased is the daughter of Gomta's sister. Therefore, there is no occasion for the accused- appellant to have killed the deceased. The prosecution has conspicuously failed to establish any credible motive for the appellant to have committed the murder of the deceased, and the alleged motive is entirely insufficient to explain why the appellant would have murdered a relative of his wife with whom he had a matrimonial dispute.

21. The learned counsel in order to buttress his submission relied on the judgment of the Apex Court in re; **Shivaji Genu Mohite v. The State of Maharashtra, (1973) 3 SCC 219**, which laid down the foundational principle that "suspicion, however grave, cannot take the place of proof." The prosecution must prove the chain of events so completely that it leaves no conclusion consistent with the innocence of the accused. Relevant extract of para-6 of the aforesaid case, which has been relied by him, reads as under:-

"6. Then, what we are left with are the suspicious circumstances that the dead body appears to have been hurriedly burnt at an unusual place with ornaments on its person and the accused are falsely denying their connection with the cremation. But then in view of the medical opinion and the opinion of the Chemical Analyser and the absence of motive, all that could be said is that those circumstances would create a suspicion; but suspicion, is no evidence...."

22. This principle, according to the learned counsel, assumes particular significance in the present case where the prosecution's entire case rests on pure conjecture without any evidentiary foundation for motive. The learned counsel has highlighted the factual matrix, which reveals that the alleged dispute was matrimonial in nature, confined between the appellant and his wife Gomta, the deceased being merely a collateral relative, a niece of Gomta, there could not be any rational nexus between a domestic dispute with a spouse and the extreme act of murdering a relative of that spouse. He has submitted that the prosecution has not adduced any evidence of specific animosity, prior threats, or any incident of aggression directed specifically toward the deceased. There is complete absence of any prior transaction between the appellant and the deceased that could give rise to homicidal intent, therefore, the prosecution's theory of motive collapses into mere speculation.

23. According to the learned counsel, the prosecution's attempt to rely on vague assertions of "previous enmity" without specifying dates, incidents, or particulars further demonstrates the speculative nature of its case. Generalized allegations of enmity cannot substitute for specific, proved facts establishing a motive proximate to the date of the incident. The appellant's denial of the allegations and assertion of false implication due to previous enmity remains un rebutted by any concrete evidence, leaving the prosecution's motive theory in the realm of conjecture. When the foundational element of motive is unproved, the superstructure of circumstantial evidence erected upon it cannot stand, and the appellant is entitled to acquittal on this ground alone.

24. Further submission of learned counsel for the appellant is that there is failure on the part of the prosecution to examine independent witness, therefore, the prosecution case suffers from a grave and incurable defect arising from its failure to examine any independent witness, despite the existence and specific naming of such witnesses in the FIR itself. According to the prosecution, persons such as Lutawan, Indal and Turri were present at or immediately after the occurrence; however, none of them were examined before the Trial Court, nor is there any explanation on record for withholding these natural witnesses. This omission assumes particular significance because the case involves a homicidal incident allegedly committed in or near a residential setting where independent villagers were available, yet the entire prosecution story rests solely on the testimony of closely related and interested witnesses.

25. According to the learned counsel, It is settled law that while the evidence of related or interested witnesses is not to be discarded merely on the ground of relationship, the Court must subject such evidence to heightened scrutiny and look for independent corroboration, particularly where animosity or the possibility of false implication cannot be ruled out. In the case of **Masalti and Others v. State of U.P., 1964 SCC OnLine SC 30**, the Hon'ble Supreme Court in paras-14 & 16 held as under:-

“14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.

16. ... but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident.....”

26. It has been submitted that in the present case, the complainant (PW-1) is the mother of the deceased, and PW 2, Ram Sajeevan, is the complainant's brother-in-law. Both are admittedly interested witnesses with an obvious emotional and familial stake in the outcome of the trial. Their testimony, therefore, required corroboration from neutral, disinterested persons, who were present or arrived immediately after the incident. However, despite naming Lutawan, Indal and Turri in the FIR as persons, who allegedly came to the spot, the prosecution chose not to examine any of them. No reason, such as death, untraceability, hostility, or irrelevance has been recorded to justify this omission. This silence is telling and must weigh heavily against the prosecution.

27. The learned counsel thereafter relied on the legal position regarding withholding of material witnesses which has been articulated by the Hon'ble Supreme Court in para-19 in re; **Takhaji Hiraji v. Thakore Kubersing Chamansing and others**, (2001) 6 SCC 145, which reads as under:-

“19. if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced.”

28. The learned counsel has further elaborated that the principle of suppression or withholding of witnesses is not confined to a narrow category of cases; it is a broad evidentiary rule that where the best available evidence is withheld, the Court may presume that it would have been unfavourable to the party withholding it. Section 114(g) of the Evidence Act embodies this common law presumption; when a party

fails to produce evidence that is in its power and possession, and which it would naturally be expected to produce, the Court may presume that such evidence would, if produced, have gone against that party. Applied to criminal trials, this means that where the prosecution abstains from examining natural, independent witnesses, the Court may infer that their testimony would not have supported the prosecution narrative and might even have aided the defence.

29. Learned counsel for the appellant has further submitted that only interested witnesses have been examined. The prosecution has primarily relied on the testimony of the complainant (PW-1), the mother of the deceased, supported only by PW-2, her brother-in-law, both of whom are closely related and hence interested witnesses, while no independent witness named in the FIR (Lutawan, Indal and Turri) was examined.

30. Further submission is that there are contradictions between medical evidence and the prosecution version inasmuch as medical evidence is inconsistent with ocular testimony as the post-mortem report unequivocally records only three ante-mortem injuries, whereas PW-1 deposed that appellant inflicted 5-6 knife blows. This material contradiction between unimpeachable medical science and interested ocular testimony goes to the very root of the prosecution case. He relied on the judgment of the Apex Court in re; **Ram Narain Singh v. State of Punjab, (1975) 4 SCC 497**, which has acquitted where medical findings rendered eyewitness account impossible, in the following words:-

"10. Finally, there is the evidence of Mohinder Singh, PW 16 who deposed in very clear terms that it was about 8.00 or 8.30 p.m. when he was present in his house when Joginder Singh came there and informed him that Jaggar Singh had fired at Surjit Singh but the shot had not hit him and thereafter Ram Narain Singh had shot dead Teja Singh and that Mal Singh and Hakam Singh had injured Surjit Singh. This also places the occurrence between 8.00 to 8.30 p.m. The cumulative effect of all these circumstances unmistakably point out to the conclusion that the occurrence really took place at 8.00 p.m. and if that is so, then there is no evidence on the record to show how the appellants could have been identified by the witnesses."

31. According to the learned counsel for the appellant, multiple knife blows on vital areas produce multiple distinct injuries/lacerations. Few injuries against repeated stabbing claim is fatal contradiction. The prosecution has no explanation why 5-6 blows yielded only 3 injuries. He has submitted that it is a well-settled proposition that medical evidence, particularly on technical matters concerning the nature, number and dimensions of injuries, must prevail where it conflicts with inherently improbable ocular assertions. The learned counsel has relied on ***Pruthiviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala, 2021 SCC OnLine SC 493***, wherein the Apex Court held as under:-

"17. Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW 2 and PW 10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. In the present case, we find no inconsistency between the ocular and medical evidence. The High Court grossly erred in appreciation of evidence by holding that Muddamal No. 5 was a simple iron rod without noticing the evidence that it had a sharp turn edge."

32. Thus, it has been submitted by the learned counsel that the core contradiction, when considered cumulatively with the unexplained delay in lodging the FIR, the withholding of material witnesses, and the doubtful nature of the alleged recovery, creates a manifest and unassailable cloud of reasonable doubt. A conviction resting upon such infirm foundations is perverse and cannot withstand judicial scrutiny. According to him, the ratios laid down by the Hon'ble Supreme Court in **Ram Narain** (supra), apply with full force to the present matter. In light of these binding precedents, the prosecution case fails to meet the threshold of proof beyond reasonable doubt. The appellant is, therefore, entitled to the benefit of doubt, and an order of acquittal is the only legally sustainable consequence.

33. Learned counsel for the appellant has next submitted that recovery is not proved in accordance with law as blood-stained knife recovered

from thatched roof of appellant's house which is an open place accessible to all. According to him, the Hon'ble Supreme Court consistently held that recoveries from rooftops/open places lack credibility as anyone could plant articles. He relied on the judgment in the case of **Pulukuri Kottaya v. Emperor (1947) PC**, wherein Bombay High Court held as under:-

"9. Fact discovered embraces place from which object produced and accused's knowledge of such place. Information must distinctly relate to discovery....."

34. Further submission is that recovery memo fails to prove distinct nexus between disclosure and knife location. Mere production is insufficient the learned counsel for the appellant has submitted that since no FSL report links blood stained knife to deceased, the Recovery alone cannot sustain conviction. He also relied on the judgment rendered in the case of **Govind v. State of Haryana, 2025 SCC OnLine SC 2456**, wherein the Hon'ble Supreme Court held that even where a recovered weapon matches the FSL report, the recovery is unreliable if effected from an accessible location without independent attestation or an unbroken chain of custody. According to the learned counsel a recovery from an open or commonly accessible locality breaks the evidentiary link. The present case suffers from the same infirmity, rendering the alleged recovery inadmissible and unreliable.

35. Further submission of learned counsel for the appellant is that the recovery was admittedly conducted without associating a single independent witness, in complete deviation from well-established procedure. Reliance on stock police witnesses renders the recovery inherently doubtful. He has relied on the judgment of the Hon'ble Supreme Court, in the case of **Mani v. State of Tamil Nadu, (2009) 17 SCC 273**, which held as under:-

26. alleged bloodstains were found belonged exclusively or was possessed exclusively by the appellant, we have further pointed out that the discovery was absolutely farcical. There is one other very relevant factor ignored by both

the courts that the prosecution never made any attempts to prove that the clothes belonged to the appellants. There is literally no evidence to suggest anything to that effect.....

31. We would therefore accept the plea of the accused raised by the defence counsel that this is clearly a case for benefit of doubt. We would therefore chose to grant the benefit of doubt to the accused holding that the prosecution has not been able to prove its case beyond the reasonable doubt. We therefore, allow the appeal. Accordingly the appeal is allowed. Impugned judgments and conviction are set aside. The accused be set to liberty forthwith unless required in any other case.”

36. Further submission of learned counsel for the appellant on the point of non-recovery of the alleged torch is that both the FIR and prosecution witnesses assert that the assailants arrived at 11:00 PM on a pitch-dark night carrying torches, yet, not a single torch was seized, recovered, or produced during trial. The Investigating Officer did not record, describe, or preserve any illumination device. This omission severely undermines the prosecution's narrative of a night-time incident and suggests embellishment or fabrication.

37. According to the learned counsel, where the prosecution withholds material evidence that ought to be produced, especially objects central to the reconstruction of the scene, the Court is bound to draw an adverse inference that such evidence, if produced, would have contradicted the prosecution case. The non-production of torches deprives the prosecution of essential corroboration regarding visibility, presence, and bloodstains at the alleged scene.

38. Therefore, learned counsel for the appellants prays that this Court may be pleased to allow this appeal and set aside the conviction and sentence dated 5th April 2018 passed by the Trial Court against the appellant. That the appellant be acquitted of all charges framed under Sections 302 and 452 of IPC on the aforesaid grounds.

39. Alternatively, it has been argued that in case this Court arrives that the appellant has committed the offence, the same cannot be categorized as ‘murder’, punishable under Section 302 IPC, as the same was without any intention or premeditated mind of the appellant. He further relied on

the factual matrix of the present case to submit that the crime, if at all, was committed in a spur of moment and as such, the offence committed would be punishable under Section 304 IPC and not under Section 302 IPC.

40. *Per contra*, Sri Bipul Kumar Singh, learned State Counsel, has submitted that this is a case where the eye witness account is none other than the mother of the deceased as well as family members of the deceased and the weapon used to commit the murder has been recovered on the pointing out of the present appellant, therefore, learned Trial Court committed no error in awarding life imprisonment to the present appellant. Therefore, the learned counsel has stated that the prosecution's case has been established on the basis of evidence of P.W.1- Smt. Takdeera, who is the mother of the deceased Kanchana and also the informant in this case. She is the most important witness and is an eye witness and has been examined as Prosecution Witness No.1. The appellant-accused was married to the sister of P.W.1, namely Gomta and he blamed P.W.1 and her daughter Kanchana (deceased) for his wife's estrangement. On the fateful night, the appellant-accused came and started quarreling and hurling abuses at P.W.1 and her daughter accusing them of being responsible for his wife's leaving him. When P.W.1 stopped him from abusing, he stabbed Kanchana with a knife in Kanchana's chest and further inflicted injuries. The Learned Trial Judge, in his judgment, has stated that the defence failed to cross-examine P.W.1. Hence the testimony of P.W.1 remains unchallenged.

41. The learned counsel for the State has relied on the judgment of the Apex Court in re; **State of U.P. v. Nahar Singh (Dead) And Others, (1998) 3 SCC 561**, wherein it has been held as under:-

"13. It may be noted here that that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that

provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

- (1) to test his veracity,*
- (2) to discover who he is and what is his position in life, or*
- (3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.*

14. The oft-quoted observation of Lord Herschell, L.C. in Browne v. Dunn [(1893) 6 R 67] clearly elucidates the principle underlying those provisions. It reads thus:

“I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses.”

This aspect was unfortunately missed by the High Court when it came to the conclusion that explanation for the delay is not at all convincing. This reason is, therefore, far from convincing.”

42. The learned counsel also relied on the judgment of the Apex Court in re; **Velu Pillai Padakalingam v. Paramanandam Yesudasan**, AIR 1954 TC 152, wherein it has been held as under:-

“The learned Munsiff did not advert to this circumstance nor did he consider the consequence of the omission of the plaintiff to cross-examine, defendant 1 on this point. The trial of a cause is aimed at arriving at the truth of the conflicting cases that are presented before the court. Every witness entering the box does so as a witness of truth. Cross-examination is a powerful and valuable weapon for the purpose of testing the veracity of a witness and the accuracy and completeness of his story.” (Per Hanworth, M.R., cited with approval by Sankey. L.C., in — ‘Mechanical

and General Inventions Co. v. Austin Motor Co., 1935 AC 346 at p. 360 (A).

The extent of its effectiveness no doubt depends upon the dexterity of the wielder of the weapon, but every cross-examiner should and can if he is careful, indicate in cross-examination, whichever part of the evidence given in examination-in-chief is challenged and an omission to do so would lead to the inference that the evidence is accepted subject of course to its being assailed as inherently improbable. This is the rule in America, England and in this country as is clear from the following authorities.

“Opportunity of Cross-examination as equivalent to Actual Cross-examination—

The doctrine requiring a testing of testimonial statements by cross-examination had always been understood as requiring, not necessarily an actual cross-examination, but merely an opportunity to exercise the right to cross-examine if desired. The reason is that, wherever the opponent has declined to avail himself of the offered opportunity, it must be supposed to have been because he believed that the testimony could not or need not be disputed at all or be shaken by cross-examination. In having the opportunity and still declining, he has had all the benefit that could be expected from the cross-examination of that witness. This doctrine is perfectly well-settled.” Wigmore on Evidence Vol. II, paragraph 1371:

“As a rule a party should put to each of his opponent's witnesses in turn so much of his own case as concerns that particular witness or in which he had a share, e.g., if the witness has deposed to a conversation, the opposing counsel should indicate how much he accepts of such version, or suggest to the witness a different one. If he asks no question he will in England, though not perhaps in Ireland, generally be taken to accept the witness's account. ‘Flanagan v. Foby’, (1918) 2 Ir. R. 361, 383-9, (C.A.)(B); — ‘Browne v. Dunn’, (1893) 6 R. 67, 76-7, (H.L.)(C).”

“Moreover, where it is intended to suggest that the witness is not speaking the truth upon a particular point his attention must first be directed to the fact by cross-examination, so that he may have an opportunity of explanation; and this probably applies to all cases in which it is proposed to impeach the witness's credit. Such questions are rendered by statute a condition precedent to proof of a previous contradictory statement by the witness. Failure to cross-examine, however, will not always amount to an acceptance to the witness's testimony, e.g., if the witness has had notice to the contrary beforehand, or the story is itself of an incredible or romancing character, or the abstention arises from mere motives of delicacy as where young children are called as witnesses for their parents in divorce cases, or when counsel indicates that he is merely sustaining

for convenience, e.g., to save time and where several witnesses are called to the same point it is not always necessary to cross-examine them all,” Phipson on evidence, 9th Edn. 1952, pp. 497 & 498.”

“This much counsel is bound to do, when cross-examining; he must put to each of his opponent's witnesses, in turn, so much of his own case as concerns that particular witnesses or in which that witness had any share. Thus, if the plaintiff has deposed to a conversation with the defendant, it is the duty of the counsel for the defendant to indicate by his cross-examination of the plaintiff how much of the plaintiff's version of the conversation he accepts, and how much he disputes, and to suggest what the defendant's version will be. If he asks no question as to it, he will be taken to accept the plaintiff's account in its entirety.” Odger's Pleading & Practice, 13th Edn., p. 261.”

“It cannot be too strongly emphasized that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be accepted unless of course there are any inherent improbabilities.....” per Wort, J., in — ‘Karnidan Sarda v. Sailaja Kanta’, AIR 1940 Pat 683 at p. 685 (D).”

43. In view of the above dictums, the learned counsel for the State has submitted that it was clear that the learned Trial Court has rightly taken the view that Ramsajeevan, has been examined as the Prosecution Witness No.2 (PW-2), who has stated in his testimony that he reached at the spot when P.W.1 raised alarm. He was carrying a torch and in its light he saw the accused running away after committing the offence. Defence has taken the plea that the torch carried by P.W.2 was not seized by the Investigating Officer and no recovery memo was prepared. In this regard the learned counsel for the State relied on the judgment of the Apex Court in re; **Hari Singh v. State of U.P., (2010) 13 SCC 756**, wherein it has been held as under:-

“11. It is true, that as per the evidence on record, the night of the murder was a moonless one but we have no reason to doubt the testimony of the eyewitnesses when they say that they had identified the accused in the torchlight, more particularly as both the parties belonged to the same village and were well known to each other. We are of the opinion that merely because the torch had not been taken into possession by

the ASI would not mean that the statements of the eyewitnesses were not credible."

44. Further, the Apex Court in re; ***Dalbir Singh v. State of Haryana, (2008) 11 SCC 425*** has held as under:-

"10. The stand of the appellant that in a dark night recognition would not have been possible from voice, is clearly untenable. In a dark night ocular identification may be difficult in some cases but if a person is acquainted and closely related to another, from the manner of speech, gait and voice, identification is possible.

11. In Anwar Hussain v. State of U.P. [(1982) 1 SCC 491: 1982 SCC (Cri) 263 : AIR 1981 SC 2072] it was observed that even if there is insufficient light, a witness can identify a person, with whom he is fairly acquainted or is in intimate terms, from his voice, gait, features, etc. Therefore, there is nothing to discard the evidence of PW 8 so far as his claim to have recognised the appellant is concerned."

45. Thus, according to the learned counsel for the State, both P.W.1 and P.W.2 have deposed that lantern was burning, which was also clear from the site plan which has been prepared and proved by P.W.6. The appellant-accused was the husband of informant's sister and also lived nearby in the same village. Also P.W.2 along with two other persons tried to get hold of the appellant-accused but could not succeed as the appellant-accused threatened to kill them if they tried to come near him. From the testimony of P.W.1 it is also clear that initially a verbal altercation took place between the accused and the informant after which the appellant-accused attacked the deceased. In view of the above the identity of the appellant-accused is conclusively established.

46. It has been next submitted by the learned counsel for the State that on the basis of the disclosure statement of the appellant-accused, the knife used in the commission of the crime was recovered at the instance of the appellant-accused from a "chhappar" in the house of the appellant-accused, which had been duly proved by P.W.6, P.W.7 and P.W.8. As per the FSL report human blood was found on the knife and other objects recovered from the place of incidence. As per the essential ingredients of

Section 27 of the Indian Evidence Act which are (i) the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information, (ii) only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused and (iii) the discovery of the facts must relate to the commission of such offence, the recovery of the murder weapon has been duly proved by the prosecution.

47. Dr. Shiv Prasad Yadav has been examined as PW-3. He has proved the ante mortem injuries on the deceased's body which could have been caused by the knife recovered.

48. Therefore, the learned State Counsel has stated that in the present case, the prosecution has established the guilt of the appellant beyond reasonable doubt. The Learned Trial Court has rightly convicted and sentenced the appellant under sections 302 and 452 IPC. Hence, the instant appeal may be dismissed by this Hon'ble Court.

DISCUSSION & FINDINGS

49. Having considered the submissions of learned counsel for the parties and perused the case laws so cited and the material available on record, we find that the prosecution in order to bring home the charges levelled against the Appellant has examined almost eight witnesses and exhibited eleven number of documents. Apparently, the case is based entirely on the testimony of two ocular witnesses, namely PW1(Smt. Takdeera) and PW2(Ram Sajeewan). The medical expert being PW3(Dr. S.P. Yadav) has supported the injuries inflicted and PW8(Ram Naresh) has supported the recovery of weapon of crime.

50. The learned Counsel for the Appellant has attacked the conviction order of the Ld. Trial Court broadly on the ground that (i) there had been an inordinate delay in lodging the FIR, (ii) conviction is solely based on

related witnesses and independent witnesses named in the FIR have not been not examined, (iii) there is no motive to commit the crime, (iv) the Recovery of knife (weapon of crime) is doubtful, (v) Contradiction and discrepancy in the eye-witness account and the medical evidence, (vi) there is no recovery of torch, which is the only source of light, which makes the identification of the accused/ appellant doubtful and (vii) an alternative argument has been submitted that in any case, if the conviction is upheld at any rate the same cannot be under section 302 IPC as there is no premeditated intention to murder and the accused can be convicted under 304 IPC and not 302 IPC.

51. This court prefers to deal with each of these argument in seriatim. As regards the contention of the learned Counsel for the Appellant that there had been a delay of 8.5 hours in lodging of the FIR, which according to him is fatal to the prosecution story, this court finds that the timing of the incident and the lodging of the FIR is important than the duration of delay. Admittedly, it is on record that the time of incident is 11 PM in the night of 18.11.2014 and the lodging of FIR is 7:30 AM in the morning of 19.11.2014. It has also come on record that the distance of the Police station is 11 KM from the place of incidence. Apparently, it seems that the learned Counsel is missing the most important factor that the place of crime incidence is rural village, wherein apparently even the electricity was also not available. Further, we have to understand that any delay in lodging the FIR, per se, cannot be a good ground to doubt the case of the prosecution. The Court has to see in a given case the possible cause of the delay and whether the delay is attributable to any effort to concoct a version. In the present case, no doubt, there is a delay in lodging the FIR, but we do not find any ground to doubt the version of the prosecution merely on the ground of delay in lodging the FIR. It is to be seen that the incident had occurred in the night at 11 PM in a rural village. In a scenario of commotion and confusion, we do not find anything amiss in the delay in lodging the FIR in the given situation immediately in the first hour of the morning on the very next day at 7:30 A.M. Further, we are of the view that the prosecution has been able to prove its case

beyond reasonable doubt on the strength of the testimonies of the eye-witnesses and other witnesses produced by the prosecution. Hence, we are not inclined to accept the argument of the appellants regarding delay in lodging the FIR as fatal to the case of the prosecution. The Apex Court in the case of **Ravinder Kumar vs. State of Punjab, 2001(7) SCC 690**, has held as under:-

“13. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquility of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.

15. We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the

mere delay in lodging the FIR. (Vide Zahoor v. State of U.P. [1991 Supp (1) SCC 372 : 1991 SCC (Cri) 678] , Tara Singh v. State of Punjab [1991 Supp (1) SCC 536 : 1991 SCC (Cri) 710] and Jamna v. State of U.P. [1994 Supp (1) SCC 185 : 1994 SCC (Cri) 348]) In Tara Singh [1991 Supp (1) SCC 536 : 1991 SCC (Cri) 710] the Court made the following observations: (SCC p. 541, para 4)

4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report.”

52. Further, we find that recently the Hon’ble Supreme Court in the case of **Hari Prasad @ Kishan Sahu V/s State of Chhattisgarh**, 2023 INSC 986, after discussing the law on the subject, went on to hold authoritatively that;

“10. Of course, the delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution. The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of prosecution.”

(emphasis supplied)

53. Keeping in view the present facts & circumstances, which has come on record, we are unable to agree to the argument of the learned Counsel. Further, we find that the said ground has been taken belatedly at the Appellate stage and no question in this regard was even suggested to the witnesses during their cross-examination by the appellant during the trial. As a matter of fact, & records, the appellant chose not to even cross- examine the PW1, notwithstanding opportunity granted to him and as such the deposition remained unchallenged and as such in view of

the prevailing law of the land has to be believed. It may be seen that the Hon'ble Supreme Court in the case of **Nahar Singh** (supra) having faced with a similar proposition has observed as follows:

“13. It may be noted here that that part of the statement of PW-1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of delay, the evidence PW-1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provisions is enlarged by Section 146 of the Evidence Act by a allowing a witness to be questioned:

(1) to test his veracity.

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

14. The oft quoted observation of Lord Herschell, L.C. in Browne vs. Dunn [(1893) 6 The Reports 67] clearly elucidates the principle underlying those provisions.

It reads thus:

I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses.

This aspect was unfortunately missed by the High Court when it came to the conclusion that explanation for the delay

is not at all convincing. This reason is, therefore, far from convincing.”

54. Thus, we have no doubt in our mind that the delay in lodging of FIR is not fatal to the prosecution story in the present facts and circumstances and there is no evidence of any embellishment proved on record. Learned Counsel has also failed to elaborate as to how the delay has in any manner caused any prejudice to the Appellant.

55. The next point raised by the learned counsel for the Appellant is relating to conviction being solely based on related witnesses and independent witnesses named in the FIR have not being examined. At the very outset, it must be understood that it is altogether a wrong understanding on the part of the learned counsel for the Appellant that the appellant has been convicted solely on the basis of statement of related witness. First and foremost, the Appellant had been convicted by the learned Trial court on the cogent evidence brought on record in the form of oral testimony of the witnesses and the documentary evidence of material brought on record. Further, no doubt both PW1 & PW2 are related witnesses of the deceased as being the mother and Uncle, but it has also to be understood that both of them are ocular witnesses of the incident, which happened at 11 PM in the night inside the house of the deceased, wherein the mother was sleeping and the uncle rushed from the vicinity immediately hearing the cry of the mother. The place and the timing of incident is of paramount significance as one cannot expect any independent witness to be present at 11 PM in the night inside the house. In view of this court, the learned counsel is mistakenly using the concept of related witnesses and interested witnesses as one and the same, which is technically wrong. Related witness is someone who has a connection to the victim. The Hon'ble Apex Court in **Jarnail Singh vs. State of Punjab, (2011) 3 SCC 521**, clarified that a presumption in law is available to the extent that normally a related witness would not testify falsely against an innocent person because they want to see the true culprits punished. This court cannot be oblivious to the fact that an evidence of a related witness cannot be immediately rejected merely

because he or she is close relative. According to this court, the witness's relationship cannot be utilised to determine the validity and reliability of the testimony. The credibility of a related witness is unaffected by their affiliation with either party, and the only caveat being that the court should proceed with care when deciding the admissibility of its evidence, relying only on the facts.

56. The appellants had also contended that the PW-1 is an interested witness and her testimony may not be believable. In this regard, it must be noted that PW-1, the mother of the deceased though was related to the victim cannot by any stretch of imagination be said to be an interested witness. As to who is an “interested witness” and the “related witness”, it has been succinctly explained by the Apex Court in the case of **Mohd. Rojali Ali Vs. The State of Assam, (2019) 19 SCC 567**, wherein it was held that:

“13. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between “interested” and “related” witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] ; Amit v. State of U.P. [Amit v. State of U.P., (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590] ; and Gangabhavani v. Rayapati Venkat Reddy [Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182]). Recently, this difference was reiterated in Ganapathiv. State of T.N. [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793] , in the following terms, by referring to the three-Judge Bench decision in State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] : (Ganapathi case [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793] , SCC p. 555, para 14)

“14. “Related” is not equivalent to “interested”. A witness may be called “interested” only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing

an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"."

14. *In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab [Dalip Singh v. State of Punjab, (1953) 2 SCC 36 : 1954 SCR 145 : AIR 1953 SC 364 : 1953 Cri LJ 1465], wherein this Court observed: (AIR p. 366, para 26)*

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person."

15. *In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in Jayabalan v. State (UT of Pondicherry) [Jayabalan v. State (UT of Pondicherry), (2010) 1 SCC 199 : (2010) 2 SCC (Cri) 966] : (SCC p. 213, para 23)*

"23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

57. Both PW1 & PW2 may be related but are not interested witnesses by any stretch of imagination. As far as the evidentiary value of a related person is concerned, the law stands settled that a close relative of a murdered persons are most reluctant to spare the real assailant and falsely involve another person in place of the assailant. The Hon'ble

Apex Court in **Khurshid Ahmed Vs State of Jammu & Kashmir, (2018) 7 SCC 429**, on this aspect of the law has justified in the following words:

“ 31. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reasons to shield actual culprit and false implicate the accused (see Harbans Kaur V/s State of Haryana)”

58. Keeping in view the aforesaid binding precedent, we are of the view that, the evidence of PW1 & PW-2, both being a hapless, rustic, illiterate villagers visited with the shock and tragedy of murder of a young girl of 19 years being fatally assaulted by the Appellant before their own eyes, have withstood intensive cross examination and judicial scrutiny. Although PW1 was not cross-examined but her deposition is as per the complaint lodged by her. PW2 has withstood the test of cross examination and gave replies which were natural and not elusive, giving sign of truthfulness of the said witness. We, therefore, have no hesitation to hold that testimonies of both PW1 & PW2 are trustworthy and reliable. Their evidence finds corroboration with the medical evidence and evidence of the Investigating Officer and other official witnesses.

59. As regards non-production of independent witnesses named in the FIR i.e Lutawan, Indal and Turri is concerned, if a fact has been proved by a reliable and credible evidence of an eye-witness, there is no legal requirement to examine any other witness to support that fact. There is no such law that the testimony of an eye-witness cannot be relied upon unless it is corroborated by some independent witness. Corroboration is a rule of caution and not a mandatory requirement. It is well settled that conviction can be based on the testimony of sole eye-witness, if the same inspires confidence. If the testimony of an eye-witness is clear, cogent and credible, such testimony cannot be disbelieved on the ground that it has not been corroborated by any independent witness. It is the quality and not the quantity of the evidence, which matters. In the case of

Gulam Sarbar vs. State of Bihar, 2014 (3) SCC 401, the Hon'ble Supreme Court has held that:

"In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eyewitness, if the same inspires confidence. (Vide Vadivelu Thevar v. State of Madras [AIR 1957 SC 614 : 1957 Cri LJ 1000] , Kunju v. State of T.N. [(2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331] , Bipin Kumar Mondal v. State of W.B. [(2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150 : AIR 2010 SC 3638] , Mahesh v. State of M.P. [(2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783] , Prithipal Singh v. State of Punjab [(2012) 1 SCC 10 : (2012) 1 SCC (Cri) 1] and Kishan Chand v. State of Haryana [(2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807 : JT (2013) 1 SC 222])"

60. From the above stated facts and case law it is apparent that conviction can be based even on the testimony of a sole eye witness, if the same inspires confidence. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. In view of the above, the contention of the learned counsel that Lutawan, Indal and Turri were not examined and is fatal to the prosecution story has no force and the conviction cannot be set aside on the ground that there is no independent witness to support the case of the prosecution.

61. The next ground to challenge the judgment of the Id. Trial court as is made out from the submission of the learned Counsel for the Appellant is that there is no motive to commit the crime. This court finds that PW1 & PW2 have clearly stated in their deposition that it was the suspicion of the Appellant that the deceased and PW1 had got the Appellant's wife

shifted from her matrimonial home to her parental home. The Appellant held responsible for the said fact and there had been a quarrel between the deceased, PW1 on the one hand and the Appellant on the other hand on that fateful night. Further, it must be understood that proof of motive is not *sine qua non* in a case of murder, which has been proved on the basis of ocular witnesses. However, in a case based purely on circumstantial evidence, motive assumes significance and would provide an important corroborative link in the chain of incriminating circumstances. According to this court, motive effaces into insignificance once there are direct ocular evidence on record. The Supreme court in the case of **Chandan v. State (NCT of Delhi)**, (2024) 6 SCC 799, held as under:

“The argument of the defence that the prosecution has not been able to establish any motive on the accused for committing this dastardly act is in fact true, but since this is a case of eye-witness where there is nothing to discredit the eye-witness, the motive itself is of little relevance. It would be necessary to mention some of the leading cases on this aspect which are as under:

In Shivaji Genu Mohite v. State of Maharashtra, AIR 1973 SC 55, it was held that it is a well-settled principle in criminal jurisprudence that when ocular testimony inspires the confidence of the court, the prosecution is not required to establish motive. Mere absence of motive would not impinge on the testimony of a reliable eye-witness. Motive is an important factor for consideration in a case of circumstantial evidence. But when there is direct eye witness, motive is not significant. This is what was held:

“In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy” The principle that the lack

or absence of motive is inconsequential when direct evidence establishes the crime has been reiterated by this Court in Bikau Pandey v. State of Bihar, (2003) 12 SCC 616; Rajagopal v. Muthupandi, (2017) 11 SCC 120; Yogesh Singh v. Mahabeer Singh, (2017) 11 SCC 195.

62. Thus, we hold that motive may be a necessary factor in cases based purely on circumstantial evidence, however motive fades away in cases wherein it is based on ocular witness account, which is the present case herein.

63. The next ground submitted by the learned counsel for the appellant is alleged contradiction and discrepancy in the eye-witness account and the medical evidence. It has been the submission of the learned Counsel that the eye-witness, namely PW1 has stated in her deposition that there were 5-6 knife blows, whereas the post-mortem report says that there were only three injuries. The Ld. Counsel has vehemently argued that this discrepancy being fatal, the Appellant is entitled for acquittal. First & foremost, it must be understood that the incident narrated by the eye-witness is of 11 PM in the night at a village, wherein people are generally half-sleep and the witness is a villager. In the aforesaid background, when we examine the said discrepancy, it appears to be minor contradiction, which does not go to the root of the controversy. According to us, the basic foundation of culpability of the Appellant is not shaken in any manner by the said minor contradiction in the version of the eye-witness with that of the post mortem report. It must also be understood that the said eyewitnesses were subjected to intense trauma during the said violent incidents, which could had led to minor lapses in her recollection of specific details. In this case, the testimony of the eyewitnesses was consistent on the critical facts: the presence of the accused at the scene, his involvement in the attack, and the victim being attacked with knife. Her testimony remained unshaken and were supported by other evidence. It has been consistently laid down by the Apex court that once there is a version of eyewitness and the same inspires confidence of the court it will be sufficient to prove the guilt of

the accused. A profitable reference can be made to the decision of the Hon'ble Supreme Court in the case of **Pruthviraj Jayantibhai Vanol vs Dinesh Dayabhai Vala and Ors., (2022) 18 SCC 683**, wherein it was laid down that:

“17. Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW-2 and PW-10 is unimpeachable. **It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved.**”

(Emphasis supplied)

64. Hence, a conviction can be based upon the version put forth by the eyewitness and the medical evidence must be considered only for the purpose of corroboration of the ocular evidence. It is a well-established principle of law that minor contradictions or inconsistencies in testimony do not necessarily render it unreliable, as long as the core facts remain intact. The role of the court is to discern the truth by considering the evidence in its totality and not by isolating individual inconsistencies to discredit an entire narrative. According to this court, when direct evidence, such as eyewitness testimony, is credible and reliable, it must be given due weight unless there are compelling reasons to disbelieve it. In this case, the eyewitnesses were independent and had no motive to falsely implicate the accused. Their testimony was consistent with the overall circumstances of the case and was corroborated by the medical evidence to a large extent and as such the mere minor discrepancy in the same cannot be fatal to the prosecution story.

65. The next ground submitted by the learned counsel for the appellant is relating to the Recovery of knife (weapon of crime) being doubtful. We find from the evidence on record that the recovery has been made on the pointing of the Appellant from the chappar/roof adjoining to his house and has been exhibited as ka-15. The said recovery has been witnessed by PW-8 (Ram Naresh), who supported the said recovery and

withstood the intense cross- examination. The only ground taken by the Appellant is that the knife was recovered from an open area. In this regard, it is available in the evidences itself that the knife was recovered proximate to the incident and merely after one day after lodging of the FIR from the chappar/roof, adjoining to his house, which cannot be said to be an open area in the sense that it being accessible to the public at large. The chappar/roof was very much under the control of the appellant and the place cannot be doubted, when read along with other incriminating material found against the Appellant.

66. The last ground taken by the Appellant for allowing the present Appeal is as to there is no recovery of torch, which is the only source of light, which makes the identification of the accused/ appellant doubtful. We are of the view that similar identical ground had been taken by the Appellant before the Ld. Trial court. We find the learned Trial court after considering the oral testimony of the witness as well as the evidence on record has returned a well-reasoned finding, which this court wishes to quote for the sake of inclusivity in the present Judgment. The Ld. Trial court held as follows:

“33. बचाव पक्ष के विद्वान अधिवक्ता की तरफ से तर्क किया गया है कि कथित घटना रात 11 बजे की है, घटनास्थल पर समुचित प्रकाश न होने तथा अभियोजन द्वारा घटनास्थल पर कथित लालटेन का प्रकाश होने के सम्बन्ध में साक्ष्य विश्वसनीय नहीं है, अतः अभियोजन द्वारा प्रस्तुत साक्ष्य विश्वसनीय नहीं माना जा सकता है। उक्त तर्क के विरुद्ध अभियोजन पक्ष की तरफ से तर्क किया गया है कि घटनास्थल पर लालटेन जल रही थी तथा घटनास्थल पर अभियोजन साक्षी संख्या-2 रामसजीवन टार्च लेकर गया था जिनकी रोशनी में उसने अभियुक्त को देखा व पहचाना तथा पकड़ने का प्रयास किया। अभियोजन साक्षी संख्या-2 रामसजीवन ने अपने जिज्ञा में स्वीकार किया है कि अभियुक्त पुत्तन का घर उसके से दो तीन मकान बाद है। वादिनी मुकदमा अभियोजन साक्षी संख्या-1 श्रीमती तकदीरा के मुख्य बयान के अनुसार उसके शोर पर तत्काल सजीवन व लुटावन आ गये थे, जो उसके घर के सामने ही रहते हैं। अभियुक्त पड़ोस का है जिसकी पहचान उक्त प्रकाश में की जा सकती थी। अभियोजन की तरफ से अपने तर्कों के समर्थन में माननीय उच्चतम न्यायालय द्वारा निर्णीत न्याय दृष्टांत 2001 Supreme Court Cases (Cri) 1546 RAM GULAM CHAUDHARY AND OTHERS-VS-STATE OF BIHAR प्रस्तुत किया गया है, के मामले में माननीय उच्चतम न्यायालय द्वारा यह अभिमत व्यक्त किया गया है कि ऐसे व्यक्ति जिनसे साक्षीगण पूर्व से परिचित रहे हों, उनकी आवाज, चलने की चाल आदि से उनकी पहचान अंधेरे में भी की जानी सम्भाव्य होती है। ऐसे साक्षीगण जो अभियुक्त को पूर्व से जान व पहचान रहे हों, उनके द्वारा अंधेरे में भी पहचानने

में कोई असुविधा नहीं होती है। उक्त साक्षियों के साक्ष्य को अविश्वसनीय माने जाने का युक्तिसंगत। आधार नहीं होता है। प्रस्तुत मामले में वादिनी मुकदमा श्रीमती तकदीरा व साक्षी रामसजीवन का घर आमने सामने है तथा अभियुक्त पुत्तन का घर साक्षी रामसजीवन के घर के दो तीन मकान बाद है। अर्थात् वादिनी मुकदमा के मकान के निकट ही अभियुक्त पुत्तन का मकान है, अतः उपरोक्त विवेचन उपरांत न्यायालय इस मत की है कि बचाव पक्ष के उक्त तर्क का लाभ प्राप्त नहीं होता है।

34-बचाव पक्ष द्वारा तर्क प्रस्तुत किया गया कि अभियोजन साक्षी संख्या-2 रामसजीवन द्वारा जिस टार्च से घटना देखी गयी है, उसे विवेचक द्वारा कब्जे में नहीं लिया गया है न ही उसकी कोई फर्द तैयार की गयी है, इस प्रकार घटनास्थल पर टार्च की रोशनी में अभियुक्त को देखने का कथन विश्वसनीय नहीं है। विवेचक द्वारा विवेचना त्रुटिपूर्ण रूप से की गयी है अतः अभियुक्त इसका लाभ प्राप्त करने का अधिकारी है।

इस संदर्भ में अभियोजन साक्षी संख्या-2 रामसजीवन का मुख्य बयान महत्वपूर्ण हो जाता है। अभियोजन साक्षी संख्या-2 रामसजीवन ने बचाव पक्ष द्वारा जिरह किये जाने पर कथन किया है कि-

"जिस टार्च से मैंने घटना देखी थी, वह टार्च मेरे घर पर है, दरोगा जी द्वारा वह टार्च सीलमोहर नहीं की गयी थी, मैंने वह टार्च दरोगा जी को नहीं दिखाया था और न ही टार्च के सम्बन्ध में दरोगा जी को बताया था, दरोगा जी ने कैसे लिख लिया मुझे नहीं पता, मैंने टार्च वाली बात दरोगा जी को बयान में नहीं बतायी है फिर कहा कि दरोगा जी के पूछने पर मैंने टार्च के बारे में दरोगा जी को बताया था।"

35-विवेचक द्वारा यदि कोई त्रुटि की गयी है जो इस स्तर की नहीं है कि जिससे अभियोजन कथानक झूठा व बनावटी साबित हो तथा तथ्य के अभियोजन साक्षियों का कथन अस्वाभाविक, असहज व संदिग्ध प्रतीत हो तब तक विवेचना की त्रुटि के आधार पर अभियोजन कथानक दूषित नहीं हो जाता है। माननीय उच्चतम न्यायालय द्वारा निर्णीत न्यायवृष्टान्त स्टेट आफ कर्नाटका बत्ताम के० यरप्पा रेड्डी ए० आई० आर० 2000 सुप्रीम कोर्ट 185 के वाद में तथा माननीय इलाहाबाद उच्च न्यायालय द्वारा न्यायदृष्टान्त गोपाल बनाम स्टेट आफ यूपी 1999 (1) जे० आई० सी०, 858 इलाहाबाद में अवधारित किया गया है कि विवेचना आपराधिक विचारण में एक मात्र समीक्षा का विषय नहीं है यदि विवेचना अविधिक हो तथा संदिग्ध हो, परन्तु शेष साक्षियों के साक्ष्य की समीक्षा से अभियोजन कथानक साबित होता है तो विवेचनाधिकारी के गलती के कारण अभियोजन कथानक दूषित नहीं हो जाता है। हेमा बनाम स्टेट [2013 ए०सी०सी० 1 (एस० सी०)] के वाद में माननीय उच्चतम न्यायालय द्वारा स्पष्ट रूप से अवधारित किया गया है कि विवेचना में आयी कमी मात्र के आधार पर अभियोजन कथानक दूषित नहीं होता है, यदि अन्य अभियोजन साक्षी विश्वसनीय व सन्देह रहित हैं तो अभियोजन साक्ष्य पर विश्वास किया जा सकता है। CRIMINAL APPEAL NO. 1482 OF 2013 YOGESH SINGH Versus MAHABEER SINGH & OR निर्णीत दिनांक October 20, 2016 व C. Muniappan and Others vs. State of Tamil Nadu, (2010) 9 SCC 567, के मामले में माननीय उच्चतम न्यायालय द्वारा अभिमत व्यक्त किया गया है-

"There may be highly defective investigation in a case. However, it is to be examined as to whether there is

any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth.

Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation."

उपरोक्त विवेचना तथा निर्णयज विधियों के आलोक में इस तथ्य को दृष्टिगत रखते हुये कि मामला प्रत्यक्ष साक्ष्य पर आधारित तथा समर्थित है अतः बचाव पक्ष को उक्त तर्क का मामले में कोई लाभप्राप्त नहीं होता है।"

67. In the present case, we are satisfied that in the facts and circumstances as evident from the records, the Prosecution has been able to establish its case beyond all reasonable doubts that the appellant was responsible for the death of the deceased for which he was convicted. We do not see any glaring illegality or perversity in the findings arrived at the trial court causing any grave miscarriage of justice to the appellants. The judgments relied by the learned counsel for the Appellant is distinguishable on facts and circumstances by the present case.

68. However, in spite of our finding that the appellants had assaulted the deceased with knife causing the death of the deceased, we have noted that the death of the deceased was not pre-mediated. It has not been established clearly through evidence nor the reasoning of the Learned Trial court that it was premeditated and the assault was pre-planned with the intention to kill the deceased. The fact remains that on account of some altercation of the informant and her daughter (since deceased) with the appellant who is a close relative, the appellant in a grave and sudden provocation and, at the spur of moment and in a raise of anger,

stabbed through knife on a vital part of the deceased, which was sufficient to cause fatal injury and likely caused death also.

69. However, it is established beyond reasonable doubt that the appellant had caused the death of the deceased fully knowing that the bodily injuries caused by the appellants were likely to cause death as the appellant was armed with a knife, we are inclined to convert the conviction of the appellants from Section 302 IPC to Part I of Section 304. Accordingly, we convict the appellants under Part I of Section 304 IPC. This aspect has been considered by the Apex Court in the case of **Major Singh v. State of Punjab & Another, [2022] 6 S.C.R. 800**, and relevant paragraphs are 12 to 18, which are being reproduced hereunder:-

“12. The prosecution has established that the death of the deceased was homicidal. As per the post mortem report, the deceased had suffered eight injuries. Dr. Aman Kapoor (PW 2) states in the report that the main injury was on the head and both the eye witnesses Sukhraj Singh (PW 3) and Charanjit Singh (PW4) have claimed the appellant had hit their father on his head with a 'Bahi'. The recovery of 'Bahi', i.e. the weapon used to cause the fatal injury to the deceased was recovered by police only after the appellant had confessed about the place of hiding.

13. We are, thus, satisfied that the prosecution has, beyond reasonable doubt, established the occurrence in the manner as set up. The deceased died due to the injury caused by accused. The only question which requires our consideration is with regard to whether the case falls within the ambit of culpable homicide amounting to murder punishable under section 302 IPC as has been held by High Court or it was culpable homicide not amounting to murder punishable under section 304 IPC, as has been pleaded by the counsel for the appellant in the alternative.

*14. Distinction between whether an offence is culpable homicide amounting to murder or culpable homicide not amounting to murder has been dealt by this Court recently in the case of **Mohd. Rafiq vs. State of Madhya Pradesh, (2021) 10 SCC 706**, after taking into consideration earlier judgments on the point. The Court held that even though it is difficult to distinguish whether the punishment for offence would fall under section 302 or section 304 of IPC, there is a subtle distinction of degree of intention and knowledge involved in both the crimes. Relevant paragraphs of the judgment are reproduced below:*

"Para 11 The question of whether in a given case, a homicide is murder, punishable under Section 302 IPC, or culpable homicide, of either description, punishable under Section 304 IPC has engaged the attention of courts in this country for over one and a half century, since the enactment of the IPC; a welter of case law, on this aspect exists, including perhaps several hundred rulings by this court. The use of the term "likely" in several places in respect of culpable homicide, highlights the element of uncertainty that the act of the accused may or may not have killed the person. Section 300 IPC which defines murder, however refrains from the use of the term likely, which reveals absence of ambiguity left on behalf of the accused. The accused is for sure that his act will definitely cause death. It is often difficult to distinguish between culpable homicide and murder as both, involve death. Yet, there is a subtle distinction of intention and knowledge involved in both the crimes. This difference lies in the degree of the act. There is a very wide variance of degree of intention and knowledge among both the crimes.

Para 12- The decision in State of Andhra Pradesh v. Rayavarapu Punnayya & Anr. notes the important distinction between the two provisions, and their differing, but subtle distinction. The court pertinently pointed out that:

12. In the scheme of the Penal Code, "culpable homicide" is genus and murder its specie. All murder is "culpable homicide" but not viceversa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

13. The academic distinction between "murder" and "culpable homicide not amounting to murder" has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true

scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300;

Para 13 The considerations that should weigh with courts, in discerning whether an act is punishable as murder, or culpable homicide, not amounting to murder, were outlined in Pulicherla Nagaraju @ Nagaraja Reddy v State of Andhra Pradesh. This court observed that:

"29. Therefore, the Court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances; (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of

circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

15. Intention plays a vital role in criminal jurisprudence. An offence may not be said to be committed if the prosecution fails to prove the intention to commit that crime. Intention is pivotal to decide whether the accused has committed culpable homicide amounting to murder or culpable homicide not amounting to murder. Along with intention, knowledge and the degree of crime, i.e. how the deceased was killed, plays an important role in deciding.

16. In the present case, the appellant had no intention to kill his uncle. Lack of intention can easily be seen through the acts committed by the appellant. He was furious about getting yelled by his uncle a day before, which acted as a provocation for the accused. The appellant was armed with a wooden leg of the cot in his hand which cannot be termed as a dangerous weapon. He had given a single blow to the deceased and therefore it cannot be said that the appellant had intention of killing the deceased who was his own uncle. Maybe he wanted to punish his uncle for the reprimand, he received the previous day. Further it cannot be said that the appellant had the knowledge that the deceased would die through a single blow.

17. We are thus of the opinion that the deceased is not liable to be convicted under section 302 IPC but would be liable to be convicted under section 304 Part II IPC.

18. The appellant was arrested on 09.08.1998 and was released on 13.07.2001 after the acquittal by the Trial Court. He again surrendered after the conviction by the High Court on 04.10.2014. He has already undergone more than eight years of incarceration. His sentence shall be reduced from life imprisonment to period already undergone. The fine imposed by the High Court would remain as it is."

70. Having convicted the appellants under Part I of Section 304 IPC, the next consideration is the quantum of punishment that may be imposed on him. Under Part I of Section 304 IPC, whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of

causing death, or of causing such bodily injury as is likely to cause death.

71. In the present case, the appellant was arrested on 20.11.2014 and since then, he is in jail, therefore, his actual period of incarceration of the present appellant is 11 years 06 months and 15 days and if the period of remission is included, it would be more than 13 years.

72. We are in full agreement with the findings and observations of the Apex Court in re; **Major Singh** (supra), therefore, keeping the totality of facts and circumstances of the present case as well as the evidence and material brought on record, we find it appropriate that the interest of justice would be served, if the sentence of the appellant is reduced from life imprisonment to the period already undergone and the fine imposed by the learned Trial Court shall remain intact.

73. Accordingly, the appeal is **Partly Allowed**. The judgment of the learned Trial Court is modified to the following extent:

(i) Conviction and sentence of the appellant under Section 452 IPC is upheld.

(ii) The conviction and sentence of life imprisonment under Section 302 IPC is set aside.

(iii) The appellant is convicted under Section 304 Part-I of IPC.

(iv) The appellant is awarded sentence of the period already undergone and the fine already imposed by the learned Trial Court shall remain as it is and the same shall be given to the family members of the deceased.

74. As the appeal itself has been decided, the bail application has become infructuous and it is disposed of accordingly. All pending applications are **disposed of** in terms of this judgment.

75. The trial court record, along with copy of this judgment and order, shall be transmitted to the court concerned for compliance.

76. The appellant shall be released from custody forthwith, if he is not wanted in any other criminal case, upon his executing a personal bond under the provision of Section 437-A Cr.P.C., containing an undertaking to appear before the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal. The bond shall remain in force for a period of six months.

(Abdhesh Kumar Chaudhary,J.) (Rajesh Singh Chauhan,J.)

June 05, 2026

RBS/-