



2026:AHC:8236-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

JAIL APPEAL No. - 787 of 2016

Naresh Chaudhary

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Dharmendra Kumar Chaubey, From Jail, Himansu Rai A.c., Pravin Kumar Tiwari
Counsel for Respondent(s)	: A.G.A.

Court No. - 48

**HON'BLE CHANDRA DHARI SINGH, J.
HON'BLE DEVENDRA SINGH-I, J.**

Per: Hon'ble Chandra Dhari Singh, J.

1. The instant Criminal Appeal has been sent from jail by the accused-appellant, Naresh Chaudhary against a judgment dated 27.07.2015 and order dated 30.07.2015 passed by the Additional Sessions Judge, Court No. 2, Ghaziabad in Sessions Trial No. 1999 of 2009 arising out of Case Crime No. 971 of 2009, under Section 302 I.P.C., Police Station Vijaynagar, district Ghaziabad, whereby the learned Judge convicted and sentenced the appellant to imprisonment for life and a fine of Rs. 25,000/- and in default of payment of fine, the appellant was further directed to undergo imprisonment of two years.

Brief Facts

2. In nutshell, the case of the prosecution as set up in the first information report is that a written report was filed by Preeti Chaudhary, daughter of Naresh Chaudhary, resident of Lane No. 1, 36/4 Krishna Nagar Bagu, Ghaziabad that in the night intervening 2/3.09.2009 her mother-Meera Chaudhary (herein after referred to as “the deceased”) has been strangled to death by her father-Naresh Chaudhary (hereinafter referred to as “the accused-appellant”) by *Lungi*. It is mentioned in the report that at about 9:30 PM, when her mother came to house after finishing her duties, an altercation took place between the deceased and the accused-appellant. Thereafter, the deceased cooked food and after having dinner, she went to the roof for sleeping, whereas the accused-appellant stayed with the children at downstairs. The F.I.R. further alleged that when the informant suddenly woke up in the midnight, she found the accused-appellant missing. She thought that he (accused-appellant) went to upstairs, where deceased was sleeping. The F.I.R. further alleges that in the next morning, when her brother, namely, Amit went to the roof in search of her mother (deceased), he saw that the deceased was lying dead. On an alarm being raised by her brother, she went upstairs and saw that her mother (deceased) was strangled to death by the same *Lungi*, which was worn by her father last night. She also saw that some bangles and *mangalsutra* of her mother were also broken and scattered.

3. On the basis of the aforesaid report, the First Information Report was lodged at Case Crime No. 971 of 2009, under Section 302 I.P.C., Police Station Vijay Nagar, District Ghaziabad, which was marked as Ext. Ka-5.

4. After registration of the aforesaid case, the law set into motion and investigation of the case was entrusted to S.I. Dalchand Tiwari, PW-7, who copied the F.I.R. and GD in the case diary and recorded the statement of the first informant. He also inspected the spot along with the first informant and collected *Lungi*, broken bangles, one hair clip and prepared recovery memo thereof, which was marked as Ext.Ka-5. He also recorded the statement of Chik writer of the F.I.R. Constable Rameshwar Tyagi, PW-6 and made a search of the accused-appellant. On 09.09.2009, he recorded the statement of the accused in *Kutchery*, who confessed to his crime. He also copied the post-mortem report in the case diary, recorded the statement of the first informant and witnesses of inquest. He also recorded the statement of Ankit Chaudhary. He also prepared site plan, which was marked as Ext.Ka-6. Thereafter, this witness has been transferred and investigation of the case was entrusted to Station House Officer Sudhir Kumar Tyagi, PW-8.

5. S.O. Sudhir Kumar Tyagi, PW-8, in his examination-in-chief, which was recorded on 06.11.2012, deposed that on 02.10.2009, he was entrusted the investigation of pending case crime No. 971 of 2009, under Section 302 I.P.C. On 09.10.2009, he started the investigation and recorded the statement of brothers of the deceased, namely, Virendra

Kumar and Vinod Kumar. On 13.10.2009, he recorded the statement of Dr. Rajpal Singh, who conducted post-mortem examination on the cadaver of the deceased. After culmination of investigation, he submitted charge sheet No. 996 of 2009, dated 13.10.2009 against the appellant under Section 302 I.P.C., which has been marked as Ext.Ka-7.

6. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 1999 of 2009. Learned Additional District and Sessions Judge, Court No. 8, Ghaziabad framed the charges against the accused under Section 302 I.P.C., which was read over and explained to the accused, who pleaded not guilty and claimed to be tried.

7. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as nine witnesses, out of whom PW-1 Hari Om Gautam, PW-2 Kumari Preeti Chaudhary and PW-4 Amit are witnesses of facts, whereas, PW-5 Vinod Kumar is the witness of inquest. Remaining witnesses namely PW-3 Dr. Raj Pal Singh, PW-6 Constable Rameshwar Tyagi, PW-7 S.I. Dalchand Tiwari, PW-8 S.H.O. Sudhir Kumar Tyagi and PW-9 S.I. Rajendra Kumar Verma are formal one.

8. After the closure of prosecution evidence, the statement of the accused-Naresh Chaudhary has been recorded under Section 313 Cr.P.C., who denied the charges levelled against him. However, he produced two

witnesses in his defence namely DW-1 Smt. Kanti Devi and DW-2 Jagveer Singh.

9. DW-1, Smt Kanti Devi deposed that the relation between the accused and the deceased was very much cordial. Whenever she visited their house, they used to discuss the family affairs with her. About four years ago, she received an information from the house of Naresh that Smt. Meera, the deceased, who was sleeping over the roof, has been killed by some unknown person. When she went to the house of Naresh, she was told that the dead body has been taken away to Hathras, the maternal house of the deceased. Children of the deceased told her that the deceased was strangled to death by some unknown person.

10. DW-2, Jagveer Singh deposed that he is employed in Gurugram Haripal from where he used to visit to his cousin-the appellant. On 01.09.2009, he visited the house of the accused and the deceased and stayed there in the night. He never seen any quarrel between them. Both accused and the deceased were happy with their children. On 03.09.2009, he received an information that Meera, the deceased has been done to death by some unknown person while sleeping over the roof.

11. Learned Additional Sessions Judge, Court No. Ghaziabad after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

12. Hence, this appeal.

Submissions of learned counsel for the appellant

13. Mr. Dharmendra Kumar Chaubey, learned counsel appearing on behalf of accused-appellant vehemently submitted that the entire prosecution case is based upon circumstantial evidence and there is no eye-witness in this case. It is next submitted that after plain reading of deposition of Hariom Gautam (PW-1); Km. Preeti Chaudhary (PW-2) and Amit (PW-4), there are several contradictions in their statement. Learned counsel for the appellant, while reading the deposition of Hariom Gautam (PW-1), pointed out that in examination-in-chief of PW-1, it is stated that he had informed the police about the death of the deceased, whereas he, in his cross-examination, has stated that his neighbours had informed the police about the incident. It is further stated that Km. Preeti Chaudhary (PW-2) in her examination-in-chief as well as cross-examination has also not established the motive behind the incident. As per the deposition of PW-2, a quarrel took place between the deceased and accused-appellant due to a reason that the accused-appellant had taken money from the groom's side as her marriage was fixed in their family, therefore, her mother (deceased) was upset from the aforesaid conduct of the accused-appellant. It is also vehemently submitted that Amit (PW-4), in his examination-in-chief, has given some other reason to establish the motive behind the murder of the deceased. PW-4, in his deposition, has stated that as the accused-appellant did not

want his wife (deceased) to work in Sahara and due to that reason, they regularly quarrel with each other.

14. Learned counsel appearing on behalf of the accused-appellant next contended that after reading the depositions of all the aforesaid three prosecution witnesses of the facts, motive to the accused-appellant has not been assigned by any of them which supports the prosecution story that the accused-appellant had committed the murder of the deceased. In support of his submission, he has also referred the depositions of Smt. Kanti Devi (DW-1) & Jagveer Singh (DW-2) and submitted that Km. Preeti Chaudhary (PW-2) had informed them that someone else had committed the murder of the deceased by entering into the house from the stairs which can be accessed from outside.

15. Learned counsel for the appellant has also placed reliance upon the site plan (Ext.Ka.6) and submitted that there are stairs from the outside of the house, by which anyone can easily access into the house, therefore, there is high chance that someone else might have committed the murder of the deceased.

16. Learned counsel for the appellant next submitted that the entire case of the prosecution is based upon circumstantial evidence. After perusing the entire evidence on record, the prosecution has miserably failed to complete the chain of circumstantial evidence. The trial court, while passing the impugned judgment and order, had mechanically appreciated the evidence and convicted the accused-appellant for the

offence punishable under Section 302 I.P.C. without appreciating all the contradictions, as pointed above.

17. Learned counsel for the appellant next submitted that if the case of the prosecution is based upon the circumstantial evidence, the entire chain of circumstantial evidence must be completed and if the chain breaks, in any manner, the benefit of doubt will go to the accused. In support of this submission, he has placed reliance upon the judgment of the Supreme Court in the case of *Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116*.

18. Learned counsel for the accused-appellant lastly submitted that in view of the aforesaid facts and circumstances and law laid down by Hon'ble Supreme Court, the prosecution has miserably failed to make out any case against the accused-appellant, therefore, the instant criminal appeal may be allowed by setting aside the order of the trial court.

Submissions of learned counsel for the A.G.A.

19. Mr. S.K. Ojha, learned Additional Government Advocate, appearing on behalf of the State vehemently opposed the instant criminal appeal and submitted that the learned trial court, while convicting and sentencing the appellant for the offence punishable under Section 302 I.P.C., has not committed any error or illegality. The learned trial court after considering the deposition of the ocular evidences and other documentary evidences, reached on a conclusion that there are no major contradictions in the statement of the prosecution witnesses. It is further

submitted that the ocular evidences and the documentary evidences support each other. It is further submitted that at the time of incident, accused-appellant was in the house and after having dinner, he went downstairs whereas the deceased went to upstairs to sleep. Km. Preeti Chaudhary (PW-2), in her deposition, has categorically deposed that when she awake in the mid-night, she did not find her father, however in the morning, when her brother had raised an alarm, she reached upstairs and saw that her mother was strangulated by the same *lungi*, which was worn by her father last night.

20. It is also submitted by learned A.G.A. that the stairs, which was shown in the site-plan (Ext.Ka.6) to reach at the first floor of the house, was situated from outside of the house and there is a separate entry for the landlord, who lives at the ground floor of the house. However, there were no stairs from the outside of the house to reach to the roof of the house, where the deceased was murdered.

21. Learned A.G.A. next submits that there is no force in the argument of learned counsel for the appellant that some outsider might have committed the murder of the deceased by accessing the outside stairs. It is also submitted that the *lungi* which was worn by the accused-appellant by which the deceased was strangulated, there is no suggestion available on record not even in the statement under Section 313 Cr.P.C. of the accused-appellant that how the same *lungi* which was worn by him in the night, the deceased was strangulated. It is also submitted that it is an admitted fact that the accused-appellant was present at the night and fled

away from the house after committing the murder of his own wife and surrendered before the Court on 09.09.2009, after six days of the alleged incident.

22. Learned counsel appearing on behalf of State further submitted that the trial court while passing the judgment has also noted that there are minor contradictions in the statement of the prosecution witnesses, but it has also given the explanation for that reason as the witnesses were examined after a gap of more than 2-1/2 years from the date of occurrence. Accordingly, such kind of minor contradictions, which have been pointed out by the learned counsel for the appellant, cannot be fatal to the prosecution story to be disbelieved. Learned A.G.A. further submitted that after taking into consideration the ocular evidence and documentary evidence, the prosecution has successfully completed the entire chain of circumstantial evidence. There is no illegality in the impugned order, the instant appeal is devoid of merit, and deserves to be dismissed.

Analysis and Conclusion

23. Heard Mr. Dharmendra Kumar Chaubey, learned counsel for the accused-appellant and Mr. S.K. Ojha, learned Additional Government Advocate appearing on behalf of the State of U.P.

24. The case of the prosecution is entirely based on the circumstantial evidence. In a case based on circumstantial evidence, settled law is that the circumstances from which the conclusion of guilt is drawn should be

fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete forming a chain and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally in consistent with his evidence. It has been consistently laid down by the Hon'ble Apex Court that where a case rests on circumstantial evidence, the inference of the guilt can be justified only when all the incriminating facts and circumstances are found to be in compatible with the innocence of the accused or guilt of any other person.

25. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, Supra, (relied upon by the learned counsel for the appellant), the Hon'ble Apex Court has framed five golden principles for the circumstantial evidence, which are as under:

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(iii) The circumstances should be of conclusive nature and tendency

(iv) They should exclude every possible hypothesis except the one to be proved and,

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

26. In *State of U.P. Vs. Ashok Kumar Srivastava*, (1992) 2 SCC 86., it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably

capable of two inferences, the one in the favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

27. In the case of ***Padala Veera Reddy v. State of A.P.***, 1989 Supp (2) SCC 706, Hon'ble Apex Court opined as under:

"10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

*(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See ***Gambhir v. State of Maharashtra***, (1982) 2 SCC 351)"*

28. In the case of ***C. Chenga Reddy & Ors. v. State of A.P.***, (1996) 10 SCC 193, Hon'ble Apex Court while considering a case of conviction based on the circumstantial evidence, held as under:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles

and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."

29. In the case of **State of Goa v. Pandurang Mohite**, (2008) 16 SCC 714, Hon'ble Apex Court reiterated the settled law that where a conviction rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

30. The decision in **Sharad Birdichand Sarda (Supra)** has recently been followed by Hon'ble Supreme Court in catena of judgments including **Laxman Prasad alias Laxman vs. State of Madhya Pradesh**, 2023 (3) SCC (Cri) 27 and **R. Sreenivasa vs. State of Karnataka (2024) 17 SCC 426**.

31. In the light of the above pronouncements of Hon'ble Apex Court, we shall not consider whether in the present case, the prosecution succeeded in establishing the chain of the circumstances leading to an inescapable conclusion that the accused-appellant has committed the crime.

32. We have perused the entire evidence on record i.e. ocular evidence as well as documentary evidence for proper adjudication of the case. The relevant portion of deposition of the prosecution witnesses of Hariom

Gautam (PW-1), Km. Preeti Chaudhary (PW-2) and Amit (PW-4) are extracted herein below :-

PW-1, who is the landlord of the house in question, in his examination-in-chief, which was recorded on 24.12.2010, deposed that he has two storied house. He lives in the lower portion of the house, whereas in the upper portion of the house Naresh Chaudhary (accused-appellant) live on rent along with his wife and three children. At 5:30 AM on 03.09.2009, on the shriek of children of Naresh Chaudhary (accused-appellant) when he along with other persons of the vicinity went on the upper portion of house, he saw Meera Devi lying dead, whereas accused Naresh Chaudhary fled away. Thereafter, he informed the police by dialling 100. Police on reaching the spot to sealed the dead body and conducted inquest. He also put his signature on the inquest report.

PW-2, Kumari Preeti Chaudhary is the first informant and daughter of the deceased, in her examination-in-chief, deposed that she lives in Vijaynagar along with his family. In the night intervening 02.3.2009, she along her brother was sleeping in the lower portion of the house, whereas her mother and father were on the upper portion of the house. Her father Naresh Chaudhary strangled her mother to death by *Lungi*. She she woke up in the morning and went upstairs, she found her mother lying beneath the cot on the roof and *Lungi* was stuck in her neck, which her father was wearing. Her mother has been done to death by her father. This witness further deposed that her father used to quarrel with her mother. Her father has arranged her marriage with some person and took

certain money from him, but her mother did not like this, due to which her father used to quarrel with her mother, due to that reason he strangled her mother to death by Lungi and fled away. Handkerchief was stuffed in the mouth of her mother, bangles and Mangalsutra were broken. This witness also deposed that report of the incident was lodged by her, which she proved as Ext. Ka-2.

PW-4 Amit, who is the son of the deceased and appellant. As he was minor on the date of his deposition, the Court, in order to ascertain his mental condition, asked certain questions and on being satisfied about his mental conditions, allowed the ADGC to get his statement recorded. PW-4, Amit in his examination-in-chief deposed that the incident in question took place on 02.9.2029. On that date, her mother, who was working in a company, returned home at 09:30 PM. Altercation took place between his mother and father. Thereafter, his mother went on the roof to sleep. His father also went on the roof. Thereafter, what happened, he does not know. In the morning when he went on the roof, he did not find his mother. Thereafter, when he went on the roof along with his sister, his mother was lying besides the cot and her neck was tied with Lungi of his father. She was dead. On his shrieks, neighbours arrived. Police also arrived thereafter. This witness further deposed that his father used to quarrel with his mother every day. He was a drunkard. Earlier he was employed, but later on he left the job. After his father left the job, her mother started working. After the death of his mother, his father fled away.

33. PW-3, Dr. Rajpal Singh, in his examination-in-chief deposed that on 03.09.2009 he was posted at M.M.G. Hospital Ghaziabad as Physician. He was assigned the duty of post mortem. He conducted the autopsy on the cadaver of the deceased and found the following ante mortem injuries:

“Abrasion, contusion and ligature mark 30 cm x 3.5 cm all over neck. Traverse position 8 cm below right ear, 8 cm below left ear and 7 cm below chin. Under the skin, blood was present. Trachea rings and hyoid bone were also fractured.”

On internal examination, doctor noted that both the lungs were congested, gall bladder congested and ½ full, spleen and kidneys were congested.

34. In the opinion of the doctor, the cause of death of the deceased was asphyxia as a result of ante-mortem injuries (strangulation). He proved his post mortem report as Ext. Ka-3.

35. In the post-mortem report, time of strangulation (between 2/3.09.2009) has also been stated by the Dr. Rajpal Singh, therefore, the first chain of circumstantial evidence is completed that there is no dispute in date and time of the alleged incident.

36. Secondly, after going through the deposition of Hariom Gautam (PW-1), who is a landlord of the accused-appellant as well as deceased, it is established that he lives on the ground floor of the house and on the alarm raised by the daughter and son of the deceased, he went upstairs on the roof and saw the dead body of the deceased lying behind the cot.

Thereafter, he informed the police. The police reached the place of incident and considering the written report (Ext. Ka-2) of Km. Preeti Chaudhary (PW-2), F.I.R. was lodged on 03.09.2009 against the accused-appellant, as such, there is no delay in lodging the F.I.R. The second chain has also been completed.

37. Thirdly, Km. Preeti Chaudhary (PW-2), in her deposition, has clearly stated that after having dinner, her mother went upstairs for sleeping, whereas her father stayed back on the first floor with the children. When she woke up in the midnight, she did not find her father and in the next morning, when her brother reached to the roof of house, he raised the alarm whereby she also went to the roof of the house and saw that her mother was lying dead and strangled by the same *lungi* which was worn by her father last night. There was no explanation with regard to the aforesaid facts, not even in the statement of the accused-appellant under Section 313 Cr.P.C., therefore, the third chain of circumstances is also completed.

38. It is an admitted fact and not denied by the accused-appellant that on 02.09.2009 at 09:30 pm, the accused-appellant had dinner with his wife and children and thereafter, he fled away and only surrendered on 09.09.2009 in the Court. If he was not guilty for committing the aforesaid offence, why he fled away from the house and in this regard, no explanation has been tendered by the accused-appellant even in his statement under Section 313 Cr.P.C., therefore, this chain has also been completed.

39. It is also an admitted fact that there are certain minor contradictions in the statement of the prosecution witnesses but such kind of minor contradictions cannot negate the prosecution story. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the Court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go the heart of the matter and shake the basis version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.

40. In **State represented by Inspector of Police Vs. Saravanam and another** (2008) 17 SCC 587, Hon'ble Supreme Court held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility

of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.

41. In **State of U.P. Vs. M.K. Anthony**, (1985)1 SCC 505, Hon'ble Supreme Court held as under:

“While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.”

42. Taking into consideration the aforesaid reasons and after going through the entire records, we do not find any reason to interfere with the judgment of the trial court as the learned trial court has not committed any error or illegality in the impugned order convicting the

accused-appellant for the offence under Section 302 I.P.C. and sentencing him, as stated above.

43. The instant criminal appeal from jail is devoid of merit, and is accordingly, *dismissed*.

44. The appellant-Naresh Chaudhary is on bail. His bail bond is cancelled and sureties are discharged. He is directed to surrender before the court concerned forthwith to serve out the remaining sentence awarded by the Trial Court.

45. Office is directed to send a copy of this judgment along with record of this case to the court concerned/learned Sessions Judge, Ghaziabad forthwith for immediate compliance and compliance report be submitted to this Court.

(Devendra Singh-I,J.) (Chandra Dhari Singh,J.)

January 13, 2026

Saurabh