



Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3822 of 2022

Tejveer

.....Appellant

Versus

State of U.P.

.....Respondent

Counsel for the appellant	:	Hemant Sharma, Omvir Singh Rajpoot, Saurabh Kumar
Counsel for the respondent	:	G.A.

Along with :

Criminal Appeal No. 5320 of 2021:

1. Nanakram and another
State of U.P.

Versus

Court No. - 44

HON'BLE J.J. MUNIR, J.
HON'BLE NALIN KUMAR SRIVASTAVA, J.

(Delivered by Hon'ble J.J. Munir, J.)

1. By this judgment, we propose to decide the present criminal appeal and the connected Criminal Appeal No.5320 of 2021, both of which arise out of a judgment and order of Ms. Deepika Tiwari, the then Additional Sessions Judge, FTC-I, Bulandshahr dated 25.10.2021 in Sessions Trial No.644 of 2019, State v. Tejveer and others. By the said judgment and order, the learned Trial Judge has convicted the appellants in both the appeals for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short, 'IPC') and sentenced each of them to suffer imprisonment for life, besides ordering them to pay a fine of Rs.10,000/- each. In default of payment of fine, the appellant in

default has been directed to undergo further rigorous imprisonment for a period of two years. At the same time, all the appellants have been acquitted of the charges under Sections 304-B, 498-A IPC and Section 3/4 of the Dowry Prohibition Act, 1961 (for short, 'DP Act'). It is the conviction and sentence that each of the appellants challenge in the present appeal.

2. A First Information Report ('FIR' in short) was lodged by Chokhelal son of Kamal Singh, a resident of Chauganpur, Police Station Harduaganj, District Aligarh on 30.07.2019 at 5:45 p.m. with Police Station Ramghat, District Bulandshahr, saying that he had got married two of his daughters, Mamta and Chandrawati, to two brothers, Tejveer and Rakesh, both sons of Nanakram, a resident of Village Gangagarh, Police Station Ramghat, District Bulandshahr. He reported in his written first information that today, i.e. on 30.07.2019, his younger daughter, Chandrawati, called him over telephone to say that her sister, Mamta, had been given poison by Tejveer son of Nanakram, Rama daughter of Nanakram, Munni wife of Nanakram and Nanakram son of Kishori Lal, besides others, after conspiring amongst themselves, on account of demand of dowry and her sister not being able to bear a child. Chokhelal said that immediately upon receipt of this information, all family members reached Gangagarh by car, but by that time, the poison had overtaken the body. It is also said in the FIR that the informant's daughter, Mamta, told him that her mother-in-law, father-in-law, husband and sister-in-law (*Nanad*) had forcibly made her drink poison. The informant added that they were rushing Mamta for medical aid to the hospital, when on way at Atarauli, she died. The FIR requested necessary action in the matter and added that Mamta's dead body was with the informant in the vehicle parked in front of Police Station Ramghat.

3. On the basis of the said case, Crime No.106 of 2019, under Sections 498-A, 304-B IPC and Section 3/4 of the DP Act, P.S.

Ramghat, District Bulandshahr, was registered against the three appellants, besides Rama daughter of Nanakram.

4. An inquest was done on 30.07.2019 jointly by Sub-Inspector Chandrapal Singh from Police Station Ramghat, District Bulandshahr and Manoj Kumar Singh, Sub-Divisional Magistrate, Dibai, District Bulandshahr, in the presence of *panch* witnesses. An autopsy for the deceased followed, which was carried out on 31.07.2019. The following ante-mortem injuries were noticed:

“(1) Puncture wound size 0.3x0.3cm on right side supra clavicular area present mid clavicular region.

(2) Puncture wound size 0.3x0.3cm on right side neck 3cm above from right medial end of clavicle bone.

(3) Cotton swab with Licoplast tape present on right Dorsal Part of hand just below right wrist joint.

(4) Cotton swab with Licoplast tape present on right lower limb just on calf muscle.

(5) Injury No.(1) and (2) on exploration subclavicular region was found punctured and internal jugular vein was found punctured respectively.”

5. The autopsy doctor remarked that no opinion can be given (as to cause of death) and the viscera were preserved for chemical and forensic examination. In the opinion of the doctor, the cause of death could not be ascertained and, therefore, viscera were preserved for chemical, toxicological and forensic analysis.

6. There is a report from the Forensic Science Laboratory, Ghaziabad dated 08.08.2019, which opines that the viscera received in five parts showed presence of Organochloro Insecticide.

7. The Circle Officer, Debai, Bulandshahr, who investigated the crime, submitted a charge-sheet against the three appellants, but exculpated Rama, the deceased's sister-in-law, finding it to be a case of false implication for her.

8. The learned Chief Judicial Magistrate, Bulandshahr took cognizance on 02.12.2019 and summoned the accused. They appeared before the Court, whereupon the learned Magistrate furnished them copies of the relevant prosecution papers under Section 207 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). Thereafter, the case was committed to the Court of Sessions for trial, also on 02.12.2019, by Mr. Sumit Premi, the then Chief Judicial Magistrate, Bulandshahr.

9. Four charges were framed by Ms. Shweta Verma, the learned Additional Sessions Judge, FTC-I, Bulandshahr *vide* order dated 06.01.2020. The appellants were charged under Section 498-A IPC on the first count, Section 304-B IPC on the second count and Sections 3 and 4 of the DP Act on the third and fourth counts, respectively. An alternate charge was framed under Section 302/ 34 IPC. The appellants pleaded not guilty and claimed trial. The appellants stood their trial before Ms. Deepika Tiwari, who heard all the evidence in this case. The trial commenced on 21.10.2020.

10. In order to prove their case, the prosecution have examined the following witnesses:

- (1) PW-1, Chokhelal, the informant and the father of the deceased;
- (2) PW-2, Chandrawati, another witness of fact and sister of the deceased;
- (3) PW-3, Omwati, mother of the deceased;
- (4) PW-4, Banti Singh, brother of the deceased;
- (5) PW-5, Dr. Ajay Kumar, conducted autopsy;
- (6) PW-6, Lady Constable Ritu, got registered the *check* FIR; and,
- (7) CO Vikram Singh, Investigating Officer of the case, who drew up a site-plan and submitted the charge-sheet.

11. The prosecution have relied upon the following documentary evidence:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1	Ex. Ka-1	Written report dated 30.07.2019 lodged with the Police Station Ramghat, District Bulandshahr and proved by PW-1, Chokhelal
2	Ex. Ka-2	Postmortem Report of the deceased, Mamta, dated 31.07.2019, proved by PW-5, Dr. Ajay Kumar
3	Ex. Ka-3	Check FIR dated 30.07.2019, proved by PW-6, Lady Constable Ritu
4	Ex. Ka-4	Carbon copy of the G.D. Entry No.30, Time 17.45, dated 30.07.2019 relating to Crime No.106 of 2019, proved by PW-6, Lady Constable Ritu
5	Ex. Ka-5	Site-plan of the place of incident dated 02.08.2019, proved by PW-7, CO Vikram Singh
6	Ex. Ka-6	Charge-sheet, proved by PW-7, CO Vikram Singh
7	Ex. Ka-7	Panchayatnama (inquest report) dated 30.07.2019
8	Ex. Ka-8	Challan Nash of the dead body
9	Ex. Ka-9	Photo corpse
10	Ex. Ka-10	Letter to CMO
11	Ex. Ka-11	Sample seal
12	Ex. Ka-12	FSL Report dated 26.09.2019

12. The learned Trial Judge, *vide* judgment and order dated 25.10.2021, convicted and sentenced the appellants, as specified earlier.

13. Aggrieved by the impugned judgment and order, Criminal Appeal No.3822 of 2022 has been preferred by the appellant, Tejveer, whereas Criminal Appeal No.5320 of 2021 by the appellants, Nanakram and Munni.

14. We have heard Criminal Appeal No.3822 of 2022 as the leading appeal as both the appeals arise out of a common judgment and order passed by the Trial Judge and relate to the same crime as well.

15. Heard Mr. Santosh Kumar Rai, Mr. Hemant Sharma and Mr. Omvir Singh Rajpoot, learned Counsel for the appellants in support of both the appeals and Mr. Rahul Asthana, learned Additional Government Advocate, appearing on behalf of the State.

16. Upon hearing learned Counsel for the parties, we find that there is no cavil that the Trial Court has acquitted the appellants of charges under Sections 304-B, 498-A IPC and Section 3/4 of the DP Act but convicted them on the alternate charge under Section 302/34 IPC and sentenced them, accordingly. It is this conviction and sentence, which the appellants assail before us.

17. The conviction being one for an offence punishable under Section 302/34 IPC, it is the prosecution, who have to establish the case beyond reasonable doubt.

18. This is a case, where apparently, all the four prosecution witnesses of fact have turned hostile and refused to support their version before the Police, at the time of registration of the crime, and in subsequent statements made before the Police, during investigation. There are two features of this case, which must be borne in mind; one commonplace, and, the other, not so common, if not rare. The oft-occurring feature or challenge that this case carries is the fact that the deceased died within the four corners of her matrimonial home, where the appellants were in control of all affairs. This is commonplace because in any Indian home, except in certain places in the country, it is the wife, who, upon marriage, leaves her home and settles down with her husband or/ and in-laws in their home. Therefore, if an unnatural death or a death by violence is the fate of the wife in her matrimonial home, after the prosecution have established the basic facts about the wife's death, which is unnatural or the result of a crime, burden falls upon the shoulders of the deceased's husband and his relatives, with whom she resided, to explain how the unnatural death happened.

19. The uncommon feature of this case is that in most such cases, a wife, who dies in her matrimonial home an unnatural death, has no witness to tell her story, for the obvious reason that her husband and in-laws, tied as they are together, with a thread

of common interest, would not come forward to testify against their own kin and expose them to the consequences of being punished for a heinous offence; but not so here. Here, the uncommon feature, of which we have spoken of, is that in the confines of her matrimonial home, the deceased had a sister of full-blood as an eye-witness to everything that befell her. This happened because the two sisters were married to two brothers of full-blood. The testimony of this witness, who is undoubtedly an eye-witness, would have carried great weight, if she had treaded the path of idealism, spoken forthrightly and truthfully. But, it seems that she has not and fallen victim to the very mundane consideration of saving her in-laws, who are also in-laws to her sister. She is married in the same home and if convicted, the ones who would suffer the penalties of law, would be her husband's parents and next of kin. It is perhaps this consideration, which has made this uncommon eye-witness speak some falsehood and other half truths in her dock evidence. Of course, like other witnesses, she too has been got declared hostile by the prosecution and cross-examined. If indeed, the witnesses, including the deceased's sister, PW-2, Chandrawati, have spoken falsehood and half truths, we would shortly scrutinize in this judgment.

20. The genesis of the crime shows that the informant and PW-1, Chokhelal, the deceased's father, received information on 30.07.2019 over phone from his younger daughter, Chandrawati, to the effect that her sister, Mamta, had been poisoned by her husband Tejveer, sister-in-law Rama, mother-in-law Munni and father-in-law Nanakram on account of unmet demand for dowry and her failure to bear a child. The FIR, lodged after the deceased had expired, shows that upon receipt of the aforesaid information, the informant along with all the family members, drove to the deceased's matrimonial home in their car, only to find that the poison had spread in the whole of her body. It is also said in the

FIR by the informant that his daughter Mamta (later on deceased) told him that her mother-in-law, father-in-law, husband and sister-in-law (*nanad*) had forced her to consume poison. Upon learning the said fact, the informant started of with his daughter to the hospital to seek medical aid, but unfortunately she expired, when they had reached Atrauli. It is after her death that the first informant reported the crime to the Police.

21. This stand of the informant and the deceased's other family members, who are the witnesses here, remained consistent during investigation.

22. PW-1, the deceased's father and the first informant, turned hostile in the dock and did not support the prosecution. About the incident, he has said in his examination-in-chief that on 30.07.2019, he received information from his younger daughter Chandrawati that Mamta had died. When he, along with other family members, reached the deceased's in-laws' home, Mamta was already dead. He dictated the FIR to Banti Singh, a boy from his village (when, in fact, Banti Singh is his son) and handed it over at Police Station Ramghat. The written information that he dictated is on record, which bore his signatures. He has proved it. He has further on said in his examination-in-chief that he had no knowledge of the fact that his daughter Mamta had been poisoned to death by her husband Tejveer, mother-in-law Munni and father-in-law Nanakram. It was at this stage that the witness was prayed to be declared hostile and upon grant of that prayer, he was cross-examined by the prosecution.

23. It is noteworthy that in the FIR, this witness has categorically said that he had received a phone call from his younger daughter Chandrawati, informing him that Mamta had been poisoned by her husband, mother-in-law and father-in-law, also specifying the issues that led them to commit the evil deed. He has next said in the FIR that when he along with the family reached Mamta's

place, the poison had overtaken the body, but Mamta told him that her mother-in-law, father-in-law, husband and sister-in-law had forcibly made her drink poison. He immediately rushed his daughter to the hospital, but she passed away while they were still at Atrauli.

24. Now, the contents of this FIR, the witness has affirmed and proved in his examination-in-chief, but spoken contrariwise about the incident in his dock evidence. It is indeed unbelievable that if the witness has affirmed the contents of the FIR, where it is said that Mamta was alive, when he reached her and told him that she had been forced to consume poison by the appellants, how could this witness say in his dock evidence that when he reached Mamta's place, she was already dead and that he did not know if the appellants had poisoned her. He has not said anywhere that he lodged the FIR under some misconception of fact or out of some motivation, setting forth false facts there. An FIR has a special importance in any criminal trial. Though, it is not substantive evidence, it is the earliest account of the occurrence, and, therefore, regarded as most truthful, free from embellishment, afterthought, design or manipulation. It is for this reason that the weight given to an FIR is lost or much lessened, if it is shown not to be prompt under the circumstances and one lodged after an unexplained delay, with possible pre-meditation.

25. In this connection, reference may be made to the authority of the Supreme Court in **Jai Prakash Singh v. State of Bihar and another, (2012) 4 SCC 379**, where it has been held:

"12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the 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 the eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR,

it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question. (Vide *Thulia Kali v. State of T.N.* [(1972) 3 SCC 393 : 1972 SCC (Cri) 543 : AIR 1973 SC 501] , *State of Punjab v. Surja Ram* [1995 Supp (3) SCC 419 : 1995 SCC (Cri) 937 : AIR 1995 SC 2413] , *Girish Yadav v. State of M.P.* [(1996) 8 SCC 186 : 1996 SCC (Cri) 552] and *Takdir Samsuddin Sheikh v. State of Gujarat* [(2011) 10 SCC 158 : (2012) 1 SCC (Cri) 218 : AIR 2012 SC 37] .)"

26. Apparently, this witness has spoken falsehood and concealed truth from the Court, which nevertheless peeps from behind all the armour of his false testimony. In his cross-examination, PW-1 has stated:

"घटना के समय मेरी बेटी चन्द्रवती पत्नी राकेश भी अपनी ससुराल ग्राम गंगागढ़ में थी। मुलजिमान गंगागढ़ में एक ही मकान में रहते हैं और वही एक ही खाते पीते हैं। मैं घटना की बावत बोलता गया था और तहरीर बन्टी लिखता गया। तहरीर बन्टी सिंह ने लिखने के बाद मुझे पढ़कर सुनायी थी फिर मैंने तहरीर पर अपने हस्ताक्षर किये थे। तहरीर में बन्टी सिंह ने वही लिखा था जो मैंने बोला था।"

यह कहना गलत है कि जब हम लोग सूचना पर अपनी बेटी ममता की ससुराल पहुंचे तो उस समय तक ममता जीवित हो। यह भी कहना गलत है कि ममता ने मुझे व मेरे अन्य परिवारी जन को मेरी छोटी बेटी चन्द्रवती की मौजूदगी में यह बताया हो कि "मुझे मेरी सास, ससुर, पति व ननद ने जबरन जहर पिला दिया है।" यह कहना भी कहना गलत है कि हम उपचार के लिये ममता को अलीगढ़ ले जा रहे थे तो रास्ते में अतरौली पर ममता ने दम तोड़ दिया हो और ममता की मृत्यु हो गयी हो।

यह कहना भी गलत है कि दिनांक 30.7.19 को मेरी पुत्री ममता को अतिरिक्त दहेज की मांग पूर्ण न होने के कारण मुलजिमान तेजवीर नानकराम, मुन्नी ने मिलकर एकराय मशवरा होकर ममता को जहर देकर मार दिया हो।

यह कहना भी गलत है कि मुलजिमान से मिलकर उन्हें बचाने के लिये आज मैं झूठी गवाही दे रहा हूं और सही बात को छिपा रहा हूं।

मैंने आज से पहले कहीं पर भी किसी को भी या किसी पुलिस अधिकारी को या किसी प्रशासनिक अधिकारी को यह नहीं बताया कि मेरी बेटी ममता की हत्या (जहर देकर) मुलजिमान तेजवीर, नानराम व मुन्नी देवी व रामा ने नहीं की। यह बात आज मैं पहली बार कह रहा हूं।

यह बात सही है कि अब हमारा इस मुकदमे के मुलजिमान तेजवीर आदि से फैसला हो गया है।

यह कहना सही है कि मुलजिमान से फैसला हो जाने के कारण मुलजिमान के पक्ष में गवाही दे रहा हूं।

यह बात सही है कि मृतका ममता के साथ घटना ससुराल में हुई थी और मृत्यु रास्ते में हुई थी।"

(emphasis by Court)

27. If we look to the cross-examination of this witness, his stand, in the early part of it, is affirmative of his examination-in-chief that Mamta was already dead when the informant and other members of his family reached there and that she did not die on way to Aligarh at Atrauli, while being conveyed there for treatment. He has also affirmed the fact, in the earlier part of his cross-examination, that Mamta never told him that her mother-in-law, father-in-law, husband and sister-in-law had forced her to consume poison. However, in the later part of his cross-examination, this witness has clearly acknowledged the fact that it is correct to say that while the occurrence took place at the house of the deceased's in-laws, she died on way. In the early part of his cross-examination, this witness has affirmed the fact that the FIR was scribed spontaneously by Banti Singh on his dictation and that it bore his signatures. He has also acknowledged the fact that the written information carries only those facts, which he had dictated to Banti Singh. The FIR clearly says the fact that when the informant reached Mamta's place, she told him that her mother-in-law, father-in-law, husband and sister-in-law had made her forcibly drink poison and that they rushed her to hospital, but she died on way at Atrauli.

28. It is next to be noticed that this witness has clearly acknowledged in his cross-examination that he had earlier, at no point of time, told any police or administrative officer that the appellants had not poisoned the deceased. The clincher figures in the cross-examination, where this witness acknowledges that he had spoken in his dock evidence exculpatory, because he had compromised with the appellants.

29. It is not the law that a prosecution witness, who turns hostile, makes his evidence nugatory. Even if a prosecution

witness goes hostile, or for that matter, a defence witness, he/ she retains his character as a prosecution or a defence witness. The character or orientation of a witness never changes. Therefore, the testimony of a prosecution witness, who turns hostile, is not to be rejected altogether or discounted from record. Rather, it can still be considered for such relevant portions of it, as supports the prosecution, or may be in some measure, the defence too. After all, the object of a trial, where the witnesses testify whether they remain faithful or turn hostile to the side by whom they are called, is to determine the truth of it all and render justice as accurately as can be.

30. All that the Court has to do, in a case where the witness has turned hostile, is to approach his evidence with a certain degree of caution in the sense that before acting upon it, corroboration must be sought from other evidence. This issue has been examined in profound detail by the Supreme Court in **K.P. Tamilmaran v. State by Deputy Superintendent of Police, 2025 SCC OnLine SC 958**, where it has been held:

"18. When a witness, produced on behalf of prosecution, deposes against the prosecution version and goes against his/her own previously recorded statements, the prosecution can request the Court to declare such a witness as hostile and seek permission from the Court to cross-examine its own witness. This is the procedure followed in a Trial, as we all know. In the present case, there are as many as fifty-one prosecution witnesses and it is also a fact that many of them have turned hostile by turning against their earlier statements made before the police under section 161 CrPC, and even before the Magistrate under section 164 CrPC, in some cases. This phenomenon is not new, in fact it is sadly a common occurrence in our criminal Courts today, much to the despair and frustration of the prosecution. This case, therefore, is no exception. Despite this, however, there are witnesses in the present case, especially PW-1, PW-2, PW-3, PW-15 and PW-49, whose evidence, in the form of their testimonies before the Court, is more than sufficient to convict the present appellants. A word here about the evidentiary value of a so-called hostile witness.

19. The Indian Evidence Act, 1872 (hereinafter 'Evidence Act') allows a party, with the leave of the Court, to cross-examine its own witness. Section 154 of the Evidence Act originally read as follows:

"154. Question by party to his own witness The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party."

20. The Calcutta High Court, in *Khijiruddin Sonar v. Emperor*, 1925 SCC OnLine Cal 259, while interpreting Section 154 of the Evidence Act, held that "When a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution under the provisions of Section 154 of the Evidence Act, the result of that course being permitted is to discredit that witness altogether and not merely to get rid of a part of his testimony".

21. But this judgment in *Khijiruddin* was overruled by a five-Judge bench of the Calcutta High Court in *Praphullakumar Sarkar v. Emperor*, 1931 SCC OnLine Cal 7. The High Court was answering a reference from a Division Bench regarding the specific question of whether the testimony of a witness, who was cross-examined by the party which produced him/her, should be discarded totally, partially, or not discarded at all. Chief Justice Rankin, speaking for three other Judges and himself, answered the reference in the following terms:

"24. In my opinion, the fact that a witness is dealt with under Section 154 of the Evidence Act, even when under that Section he is "cross-examined" to credit, in no way warrants a direction to the jury that they are bound in law to place no reliance on his evidence, or that the party who called and cross-examined him can take no advantage from any part of his evidence. There is, moreover, no rule of law that if a jury thinks that a witness has been discredited on one point they may not give credit to him on another. The rule of law is that it is for the jury to say.

Of the seven questions stated by the Division Bench I propose that we should answer four, viz.—

(3) whether the evidence of a witness treated as "hostile" must be rejected in whole or in part;

(4) whether it must be rejected so far as it is in favour of the party calling the witness;

(5) whether it must be rejected so far as it is in favour of the opposite party.

These three questions I would answer in the negative.

(6) Whether the whole of the evidence so far as it affects both parties favourably or unfavourably, must go to the jury for what it is worth.

25. To this question, I would be content to answer "yes", ..."

22. Justice Buckland, in the above case, in his concurring opinion holds that there is no law which states that the evidence of a witness, who has been cross-examined by its party, should be entirely rejected. In his opinion, it is for the jury (or the Judge) to form an opinion regarding the value of the testimony of such a witness.

23. All the same, later this Court in *Jagir Singh v. State (Delhi)*, (1975) 3 SCC 562 held to the contrary and

approved the decision of the Calcutta High Court in *Khijiruddin*. This is what was said in *Jagir Singh* by Justice Bhagwati:

"7. Now, it is apparent from the judgment of the High Court that the conviction of the appellant rested entirely on the evidence of Pritam Singh (P.W. 10) and Sajjan Singh (P.W. 13). Swaran Singh (P.W. 11) was also examined on behalf of the prosecution but his evidence is of no help to the prosecution because he went back on the story of the prosecution and was permitted to be cross-examined on behalf of the prosecution. It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit that witness altogether and not merely to get rid of a part of his testimony. See *Khijiruddin v. Emperor*...."

24. However, it is to be noted that *Jagir Singh* does not refer to the five-Judge Bench decision of the Calcutta High Court in *Praphullakumar Sarkar*.

25. But then in a subsequent decision (of which Justice Bhagwati was also a part) i.e., *Sat Paul v. Delhi Administration*, (1976) 1 SCC 727, it was held differently. Justice Sarkaria, speaking for the Bench, clarified the earlier judgment in *Jagir Singh*, and held that what has been held in *Jagir Singh* would only be applicable where a witness through cross-examination by the party which calls it, is totally discredited. It is only in such a situation that the Court, as matter of prudence, discards his/her evidence in its entirety.

26. As a general rule, the testimony of a witness who has been cross-examined by the party which produced him/her will not stand totally discredited, and it is for the Court to consider what value should be attached to this testimony. After referring to a series of judgments on this point, the Court in *Sat Paul* held as follows:

"52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto.

53. It was in the context of such a case, where, as a result of the cross-examination by the Public, Prosecutor, the prosecution witness concerned stood discredited altogether, that this Court in *Jagir Singh v. State (Delhi Admn.)* with the aforesaid rule of

caution – which is not to be treated as a rule of law – in mind, said that the evidence of such a witness is to be rejected en bloc.”

(Emphasis Provided)

27. An examination of the cases referred above shows that there can be no doubt about the fact that the evidence of a witness, who has been cross-examined by the side which produced him/her, cannot be totally discarded [Also see : *Neeraj Dutta v. State (NCT of Delhi)*, (2023) 4 SCC 731].

28. It may also be worthwhile to mention here that by the Criminal Law Amendment Act of 2005, sub-section 2 was added to section 154 of the Evidence Act. The amended section 154 of the Evidence Act now reads as under:

154. Question by party to his own witness. – (1) *The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.*

(2) *Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.*

(Emphasis Provided)

29. By way of the above amendment, the position which had been reiterated by this Court has now come in the statute itself.

30. The word 'hostile' or 'hostile witness' has not been used anywhere in the Evidence Act. The logic behind this exclusion seems to be that the declaration of witness as 'hostile witness' carries a specific significance under the English law, from where this term has been derived, where liberty is only granted to a side to cross-examine its own witness when such declaration of 'hostility' is made. The position in India is different and here it is left to the discretion of the Court to allow a party to cross-examine its own witness, regardless of a declaration of 'hostility'. This has been explained by this Court in *Sat Paul*:

“38. To steer clear of the controversy over the meaning of the terms “hostile” witness, “adverse” witness, “unfavourable” witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared “adverse” or “hostile”. Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in *Baikuntha Nath v. Prasannamoyi*, [AIR 1922 PC 409 : 72 IC 286]). The discretion conferred by Section 154 on the court is unqualified and untrammelled and is apart from any question of “hostility”. It is to be liberally exercised whenever the court from the witnesses demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent

statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as "declared hostile", "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English Courts."

(Emphasis Provided)

31. The phrase 'hostile witness' is commonly used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term 'hostile witness' in our judgment. We do it for pragmatic reasons. Some words like 'hostile witness' in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase 'hostile witness' has come to be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared 'hostile'. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of 'hostility'. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of 'hostility' or not, one thing is clear that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence.

32. This can be understood from another aspect. We shall now refer to the definition of the term 'evidence' given under Section 3 of the Evidence Act. It reads as follows:

"Evidence" - "Evidence" means and includes-

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such document are called documentary evidence."

(Emphasis Provided)

33. The statements made by a witness in Court, including in cross-examination, either conducted by the opposite party or by the party who produced the witness, would come under the definition of 'evidence' under Section 3 of the Evidence Act, since this evidence has come before the Court with its permission. Moreover, there is no specific bar under the Evidence Act which mandates that such evidence has to be discarded. Thus, it would form part of the entire evidence which the Court can examine while arriving at its decision, and it is for the Court to

determine what value has to be given to that piece of evidence or how such evidence has to be used in a given case.

34. Viewed from a different perspective, the rejection of the entire testimony of a prosecution witness, who has been cross-examined by the prosecution, would not only harm the case of the prosecution but perhaps also of the defence in a given case. This is because as the law stands today, the benefit of the testimony of such witness can be taken by both the prosecution and the defence, allowing them to use it to build their case [See : *Paulmeli v. State of T.N.*, (2014) 13 SCC 90, *Ramesh Harijan v. State of U.P.*, (2012) 5 SCC 777]. In any case, ultimately, it will be the cause of justice that will suffer if the testimony of such witness is totally discarded. It is, therefore, rightly left to the discretion of the Court to test the evidentiary value of such a testimony.

35. Here, we may also take note of Section 155 of the Evidence Act which allows a party, with permission of the Court, to impeach the credibility of its own witness as per the procedure laid down therein.

36. It is though trite and much overstated but the maxim "*falsus in uno, falsus in omnibus*", is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record. This Court in *Bhajju v. State of Madhya Pradesh*, (2012) 4 SCC 327 discussed the worth of the evidence of a hostile witness in the following words:

"36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence..."

If part of the evidence of a hostile witness corroborates with other reliable evidence, then that part of the evidence is admissible. Once a prosecution witness has been declared hostile and then cross-examined by the prosecution, then it is for the Court to evaluate the veracity of the testimony. There can be several reasons for a witness to turn hostile and the court must also look into these factors while evaluating the evidence given by a hostile witness. It is an uncomfortable reality in our criminal Courts for a prosecution witness to turn hostile. But then the purpose of a Trial Court is to go to the truth of the matter. Whatever evidence is there before the Court must be examined, tested, corroborated (whenever necessary), before a verdict can be finally given."

31. The facts that we have noticed in the testimony of this witness clearly show that Mamta was alive when PW-1 and the other family members reached her in-laws' place. These also show that Mamta had spoken about the appellants, forcing her to

imbibe poison. This witness went back on this position in his dock evidence and said that Mamta was dead, when they reached her in-laws' place. His stand about the fact in his examination-in-chief is belied by a clear acknowledgment at the tail-end of his cross-examination, where he says that the occurrence had taken place at the house of Mamta's in-laws, but she died on way. Later on, when this witness has said candidly that he was speaking in favour of the appellants, because he had compromised with them, makes the picture vivid that the whole of his exculpatory stance in the dock evidence is founded on the edifice of falsehood. The truth, however, has still been spoken by this witness by affirming the contents of the FIR and admitting that Mamta was alive when the witness and other members of her family reached her in-laws and that she died on way. The affirmation of the contents of the FIR, together with admission of the fact that Mamta was alive and died on way, clearly shows that according to this witness, Mamta had conveyed the fact about her being poisoned, when this witness reached her matrimonial home. If we were to take the evidence of this witness cursorily on its face value, ignoring the gory truth that clearly comes out, we would be permitting falsehood resorted to by this witness, in consequence of a compromise with the appellants, that is admittedly there on account of whatever be the motivation, to overshadow truth and permit a gruesome murderer to go unpunished.

32. The next that we consider is the testimony of PW-2, who is the star witness in this case. She is the deceased's sister and an inmate of the same house, where the crime was committed. She is an eye-witness.

33. The FIR recites the fact that this witness, who was undoubtedly present at the scene of crime, had seen the occurrence and communicated the fact to her father over telephone that Mamta was forced to consume poison by her

husband, father-in-law, mother-in-law and sister-in-law. She has spoken exculpatory in her dock evidence, that is to say, in her examination-in-chief. It is to be noticed that during investigation, this witness stood by the prosecution case that it was the appellants, who forced the deceased to partake of poison, that resulted in her death, later. She went back on all the facts regarding the crime, that she witnessed, while testifying in Court. PW-2, apart from generally saying that her sister was never subjected to cruelty, physical or mental, in connection with demand for dowry, has specifically denied the fact that her sister was done to death by her in-laws by forcing her to consume poison. The brief and relevant part of the testimony of PW-2, recorded in her examination-in-chief on 21.10.2020, reads:

"घटना दिनांक 30.7.2019 की है। मेरी बहन की मृत्यु हो गयी थी। मेरी बहन को जबरन जहर खिलाकर तेजवीर नानकराम व मुन्नी देवी ने नहीं मारा।"

(emphasis by Court)

34. In her cross-examination, this witness has stated:

"मेरी ससुराल में खेती का कार्य होता है। खेती में लगाने के लिये कोई दवा घर पर नहीं लाते हैं। ममता के साथ हुई घटना की सूचना फोन पर अपने पिता जी को दी थी।

मैंने अपने पिताजी को फोन पर बताया था कि ममता की तबीयत खराब है आप आ जाओ। मेरी सूचना पर मेरे पिताजी आदि परिवारीजन मेरे मायके से ससुराल गंगागढ़ आ गये थे और ममता को इलाज हेतु अलीगढ़ अस्पताल ले जा रहे थे कि रास्ते में अतरौली के पास ममता ने दम तोड़ दिया।

यह कहना गलत है कि मैंने ममता के साथ घटित घटना का सारा हाल अपने मायके वालों को बताया हो। यह कहना भी गलत है कि मेरी बहन ममता को उसके पति तेजवीर, ससुर नानकराम, सास मुन्नीदेवी ने अतिरिक्त दहेज की मांग पूरी न होने के कारण जबरन जहर पिलाया हो जिससे ममता की मृत्यु हो गयी।

मेरी बहन का दाह संस्कार मायके चौगानपुर में हुआ था। मैं अपनी ससुराल में अपने पति राकेश, ससुर नानकराम व सास श्रीमती मुन्नी के साथ रह रही हूँ और अपनी ससुराल से ही गवाही देने आयी है।

ससुर नानकराम व सास मुन्नी देवी के साथ आयी हूँ। मेरे ससुर आज मुझे वकील साहब के चेम्बर पर ले गये थे। मुझे वकील साहब ने यह नहीं बताया कि क्या गवाही देनी है।

यह बात सही है कि इस मुकदमा के मुलजिमान से फैसला हो गया है। यह बात गलत है कि मुलजिमान से फैसला हो जाने के कारण मैं आज अपना बयान बदल रही हूँ।

घटना सुबह के करीब 9-10 बजे की है। जब तक मेरे मायके वाले आये उस समय मेरी ससुराल में मेरा कोई ससुराल वाला मौजूद नहीं था और मैंने ममता की तबीयत खराब होने की बावत सूचना ससुराल वालों की दी और न ही ममता का किसी डाक्टर से इलाज कराया।

मेरी बहन मृतका ममता शादी के बाद से ही बीमार रहती थी। पता नहीं उसे क्या बीमारी थी। ममता को छोटे मोटे डाक्टर को दिखाया था किस डाक्टर को दिखाया था नाम नहीं पता है। डाक्टर को अतरौली व जरगवा दिखाया था। उसके इलाज का पर्चा न मेरे पास है और न साथ लायी हूँ।

आज से पहले किसी भी पुलिस अधिकारी प्रशासनिक अधिकारी या किसी भी व्यक्ति से लिखित में अथवा मौखिक रूप से यह नहीं बताया कि ममता की हत्या के मुकदमे में मेरे ससुराल वाले निर्दोष हैं। आज प्रथम बार यह बात न्यायालय में बता रही हूँ।"

(emphasis by Court)

35. This witness has, no doubt, resiled from her stand and statements made to the Police under Section 161 Cr.P.C., but considering her testimony to understand if any part thereof supports the prosecution, or the truth of whatever happened, one has to bear in mind that PW-2, if she saw the occurrence, as reported over telephone to the first informant and narrated to the Police, presents a conflict of interest, best described by what is popularly called, 'caught between the devil and the deep blue sea'. On one hand, if she had seen the occurrence in the manner described to the first informant or the Police, she would have before her the higher and the noble cause of assisting justice, requiring her to speak inculpatory against her in-laws, and, on the other, being married to the other brother in the same family as her sister, the instinct and personal interest to save her in-laws from the harsh punishment of the law, that would affect her husband, and, may be, herself.

36. A careful look at the testimony of PW-2 shows that in her examination-in-chief, she has said that the incident is one dated 30.07.2019. Her sister died. Her sister was not forced to ingest poison and killed by Tejveer, Nanakram and Munni Devi. Now, this statement, figuring in the examination-in-chief, is an oddity in itself. It goes beyond saying that during the examination-in-chief, though evidence is led by the party producing the witness, in this

case, the prosecution, there are no leading questions or suggestions put to a witness. It is but obvious that the learned Counsel on behalf of the State would never have asked PW-2, if the deceased was killed by her husband, father-in-law and mother-in-law by forcing her to ingest poison. That kind of a question or suggestion would never have been allowed by the Court. All that would have been asked of this witness is how did the deceased die. She has not said a word about how Mamta died. Instead, she has come up with an exculpatory statement for her in-laws that they did not kill her sister by forcing her to consume poison. This kind of a stand in the examination-in-chief is suggestive of tutoring and pre-meditation.

37. In her cross-examination, the witness has acknowledged that she communicated the 'occurrence' regarding Mamta over telephone to her father. What was communicated to the father, has been scripted in the FIR, that was written on his dictation and later registered. The contents of the FIR have been proved by PW-2. However, much contrary to what the first informant reported in the FIR, the witness has said that she told her father that Mamta was unwell and that he should come over to their place. She has also said in her cross-examination that on her information, her family came over to her place and they were taking Mamta to the Aligarh Hospital for treatment, but she died on way at Atrauli. She has further said in her cross-examination that it is correct to say that in this case, a compromise has been reached with the appellants. She has further said in her cross-examination that the 'occurrence' took place between 9-10 a.m., but curiously, does not say what the occurrence was. She goes on to say that by the time her parents arrived, no one from her in-laws was present there. She has further said that she had intimated her in-laws that Mamta was unwell, but they had not taken her to a doctor for treatment.

38. The witness has also said that Mamta would stay sick after marriage and she does not know what her ailment was. The deceased would consult sundry doctors, but she does not know their names. Doctors at Atrauli and Jargavan were consulted. The witness also said that she does not have any prescription relating to the deceased. Most importantly, this witness has said in her cross-examination that prior to her testimony being recorded in Court, she had never given an oral statement or informed in writing any administrative officer that her in-laws were innocent, so far as Mamta's murder case is concerned. She has categorically then said that it is for the first time that she is speaking exculpatory in Court.

39. If the evidence of this witness is read as a whole in the context of how the prosecution began and what their case was, the foremost, that is obvious from her testimony, is that she is deposing not to speak the truth, but to save her in-laws. It is for this reason that in her examination-in-chief, she has testified unprovoked and out of context to the effect that her sister was not forced to consume poison by Tejveer, Nanakram and Munni Devi. The fact that throughout her evidence, this witness has spoken the word 'occurrence' regarding whatever befell her sister, shows that she acknowledges the fact that some incident in the nature of a crime happened. If one were to take the testimony of PW-2 on the face value, where she has said that Mamta was sick and it is that fact which she conveyed to her father, there was no occasion to describe Mamta's 'sickness' as an 'occurrence'.

40. The word 'occurrence' is not a onetime slip. She has mentioned the word at least twice affirmatively and contextually, suggestive of reference to a crime. She has disclosed the fact that she has read up to Class-VIII and her testimony has been recorded in Hindi, as reproduced hereinabove. The word employed for occurrence in Hindi is '*Ghatna*' and the most telltale

description of whatever happened being, as already noticed, where she says '*ghatna subah ke 9-10 baje ki hai*'. If Mamta had fallen sick in between 9-10 in the morning, no person speaking chaste Hindi or vernacular, would describe it as '*ghatna*' (occurrence). This description by the witness is telltale of truth, the substance of which is hidden and eclipsed by falsehood induced by self-interest, self-preservation, the future of the family, where the witness is married and the like; all pragmatic considerations of an ordinary person, not possessed of an extraordinary or saintly character.

41. This conclusion of ours is fortified by the fact that she has also said in her cross-examination that it is true that a compromise has been reached with the appellants. If Mamta had just been sick and died in consequence, there is a possibility, as learned Counsel for the appellants argued, that the case was lodged motivatedly by the deceased's father to extort money and the compromise spoken of has to be seen in that context. If this were so, the defence would have certainly put suitable questions to PW-1 about the context in which the allegations were made, in response to which, the invariable stand would be that the FIR was lodged under some misconception or misleading influence.

42. There is no earthly reason why the first informant would refer to a specific information from PW-2 about the deceased being forced to ingest poison by her in-laws and husband, and then report to the Police that he found his daughter dying by poison, whom he rushed to hospital, but could not succeed as she died on way. The fact that the FIR was lodged with allegations to the above effect; the fact that in the testimony of PW-2, whatever happened to the deceased, is mentioned as an occurrence without anything said about a sudden onset of sickness; the fact that so much part of the first information version is affirmed by this witness that Mamta was being rushed to hospital located at

Aligarh by the first informant and not her in-laws, when she died on way at Atrauli; the fact that the testimony of PW-2 discloses that a compromise has been reached between parties; the fact that PW-2 has said in her testimony that the occurrence happened in the morning at about 9-10 o'clock and when her parents arrived, the in-laws were away; the fact that Mamta was not taken to the hospital by her husband or in-laws, if she was unwell, which this witness has clearly said; the fact that PW-2 is elusive about the kind or nature of the disease Mamta suffered from, which she has cited in her cross-examination in order to show the cause of death; and, the fact that PW-2 has clearly acknowledged that never in the past did she tell any administrative officer, either orally or in writing, that her in-laws were innocent, clearly bring on record facts that point unmistakably to the appellants' guilt.

43. The exculpatory part of the witness' testimony, though bold and affirmative, does not inspire confidence with the Court in the face of facts noticed above, which are damning, besides others to be noticed later in this judgment.

44. We may now consider the testimony of PW-3, who too has tried to exculpate. PW-3 is Mamta's mother. She never spoke exculpatory before the Police during investigation, but did so for the first time in her dock evidence. In her examination-in-chief, this witness has stated:

"दिनांक 30/7/2019 को मेरी बेटी ममता की मृत्यु हो गयी, जिसकी खबर हमें मेरी छोटी बेटी चन्द्रवती ने फोन पर दी थी। मुझे नहीं पता कि मेरी बेटी ममता को जहर देकर किसने मारा। मेरी बेटी के पति तेजवीर ससुर नानकराम सास श्रीमती मुन्नी देवी ने मेरी बेटी को जहर देकर नहीं मारा। यह लोग निर्दोष है।"

(emphasis by Court)

45. In her cross-examination, PW-3 has testified:

"घटना की खबर सुनकर मैं व मेरे परिवार वाले अपनी बेटियों की ससुराल गंगागढ़ गये थे। गंगागढ़ में जाकर हमने देखा कि मेरी बेटी ममता की तबीयत ज्यादा खराब थी। थोड़ा-2 बोल पा रही थी। हमारी अपनी छोटी बेटी चन्द्रवती से बातचीत हुई तो रोने

धोने लगी। मेरी बेटी के ससुराल वाले घर पर मौजूद थे। हमें देखकर वहाँ से चले गये। फिर हम लोग बेटी ममता को इलाज के लिए अलीगढ़ अस्पताल ले जा रहे थे कि अतरौली के पास उसने दम तोड़ दिया।

यह बात सही है कि इस घटना के बाबत मेरे पति ने मेरी बेटी ममता के पति सास ससुर व ननद के खिलाफ मुकदमा लिखाया था। यह बात सही है कि मुल्जिमान से हमारा समझौता हो गया हो। यह बात गलत है कि फैसला हो जाने के कारण मैं बयान बदल रही हूँ। मेरी बेटी बीमार नहीं रहती थी और ठीक ठाक थी। मेरी बेटी के साथ जो भी घटना घटी वह उसकी ससुराल में घटी थी। घटना के समय मैं मौजूद नहीं थी। इसलिये मैं नहीं बता सकती कि उसको जहर देकर किसने मारा था। यह भी नहीं बता सकती कि उसके पति सास ससुर व ननद ने जहर दिया था या अपने स्वयं खाया था। मुझे इस बात की जानकारी है कि मेरी बेटी का पति इस मुकदमा में काफी दिनों से जेल में है और मेरी बेटी के सास ससुर भी जेल गये थे लेकिन मैंने आज तक किसी पुलिस अधिकारी प्रशासनिक अधिकारी या किसी व्यक्ति को यह बात लिखित या मौखिक रूप से कभी किसी को नहीं बतायी कि मेरी बेटी के ससुराल वाले इस मुकदमे के मुल्जिमान कतई निर्दोष है। उन्होंने मेरी बेटी को जहर देकर नहीं मारा। आज मैं यह बात सर्वप्रथम कह रही हूँ। यह बात सही है कि इस मुकदमा के मुल्जिमान ने जब न्यायालय में जमानत प्रार्थना पत्र प्रस्तुत किये थे तो मेरे पति ने जमानत का अपने अधिवक्ता से विरोध करवाया था।

घटना के समय मेरी बेटी चन्द्रवती घटनास्थल पर मौजूद थी जिसने घटना अपनी आँखों से देखी थी तथा हमें सूचित किया था। यह कहना गलत है कि चन्द्रवती के भविष्य की खातिर हम लोगों ने उसके ससुराल वालों से इस मुकदमा में फैसला ना लिया हो और आज मैं मुल्जिमान को बचाने के लिए उनसे मिलकर कानूनी सलाह मशवरा से झूठी गवाही दे रही हूँ और सही बात को छिपा रही हूँ।"

(emphasis by Court)

46. Upon cross-examination by the defence, PW-3 stated:

"मेरी बेटी ममता अक्सर बीमार रहती थी। दवाई चलती रहती थी मेरी बेटी ममता का इलाज उसके ससुरालवालों द्वारा कराया जाता था। मेरी बेटी ममता गुस्सैल व चिड़चिढ़े स्वभाव की थी जरा-2 सी बातों पर मरने को तैयार हो जाती थी। शादी से पहले भी कई बार उसने आत्महत्या का प्रयास किया था।"

47. The testimony of this witness is, by no means, mystifying, as suggested by the learned Counsel for the appellants, which creates doubt about the prosecution case. It reveals more than it hides. It is a crude attempt by PW-3 to defeat justice in the interest of her other daughter, who is married in the appellants' family to the other son. This appears to be the motive that has driven the deceased's family into compromising with the appellants, that is to say, compromise to say falsehood in Court and save the appellants from law's punishment.

48. We have carefully looked into the testimony of PW-3. Like PW-2, her examination-in-chief starts with a telltale banner that

the witness is telling falsehood to save the appellants. This witness has said that she did not know who poisoned her daughter Mamta to death. She then says that Mamta was not poisoned by her husband Tejveer, father-in-law Nanakram and mother-in-law Munni Devi. These persons are innocent. Now, as in the case of PW-2, no one would have put a leading question to this witness or given her a suggestion of the kind, inviting her to say that the appellants were innocent. The tone and tenor of her examination-in-chief shows that she was motivated to speak falsehood in the appellants' favour and save them from punishment.

49. This witness has said in her cross-examination that upon receiving news of the occurrence from her daughter's in-laws' place, the family proceeded to Gangagarh. There, they saw that Mamta was very unwell. She could speak feebly. The deceased's in-laws were present, but upon seeing the parents and the deceased's family members, they went away. Thereupon, the witness says that they (Mamta's parents and family) were conveying her to the Aligarh hospital, when she died on way at Atrauli.

50. These facts show that some violence or crime happened, affecting Mamta, and it was not that she was just unwell as attempted to be shown by this prosecution witness. Else, there was no reason to describe whatever befell Mamta in the words, '*ghatna ki khabar sunkar mai va mere parivar vaale.....*'. The testimony of PW-3 is recorded in Hindi, which she speaks. No Hindi speaking person would, by any stretch of imagination, describe a disease as an occurrence (*ghatna*). It is only a crime, that is described in these words. This part of the witness' testimony is very relevant to the prosecution, which we are bound to take note of.

51. The further telltale fact is that Mamta's in-laws turned face and left, though there, when they saw her parents and family arrive. This, by no means, is a natural reaction, if their daughter-in-law was unwell and her parents had come to seek her welfare. This reaction is telltale of a belligerent mind and a guilty conscience, full of hatred for the dying victim. If the deceased was ill, as the appellants urge, on account of which she died, there was no reason for the informant and his family, as PW-3 says, to rush her to a hospital at Aligarh for medical aid. If Mamta was sick, her in-laws would have taken her to hospital, or at least, accompanied Mamta's parents to Aligarh for the purpose of treatment. This was not so at all.

52. The further telltale fact in PW-3's testimony is that she acknowledges that the informant had compromised with the appellants. There is nothing said what the compromise was about and in what circumstances was it entered into. It also does not disclose what was the consideration for the compromise and what the informants were supposed to do in terms of the compromise between parties. Obviously, the compromise was to save the appellants from laws' punishment, the possible consideration for the informant being that their other daughter was still married and staying in the appellants' family. A conviction for the appellants, if this witness and the other family members of Mamta, who have testified exculpatory, spoke truth, would have spelt doom for the other daughter's marriage and ruined her matrimonial life. There could be some other consideration as well, which we do not wish to embark upon to inquire, but of this we are sure that the witness in ostensibly saying that the appellants were innocent and did not poison her daughter to death, is speaking falsehood. The facts that that she has otherwise said clearly indicate that it was the appellants, who committed the crime that she has described as an 'occurrence', leading the deceased's family to rush to her in-laws and endeavour to reach her to hospital.

53. A further look at this witness' evidence in her cross-examination shows that she repeatedly refers to whatever happened to her daughter as an occurrence (*ghatna*) and says that when the occurrence happened, she was not present there. She has gone to the extent of saying that she does not know who poisoned her to death. She has further testified that she could not say if her daughter's husband, father-in-law, mother-in-law or sister-in-law gave her poison or she consumed it herself. It is then said by this witness that she knows that her daughter's husband is in jail in connection with this case and her father-in-law and mother-in-law too went to jail. PW-3 then says in her cross-examination that she has never said it to a police or an administrative officer, either in writing or orally, that the appellants were utterly innocent, and that they had not poisoned her daughter. She also acknowledged that it was for the first time that she was speaking exculpatory in her dock evidence. The most telltale piece of testimony, that comes from this witness is to the effect that it was correct that the appellants, when they applied for bail, the witness's husband, that is to say, PW-1 got the bail plea opposed through his Counsel. This part of the evidence of PW-3 makes it vivid, as already said by us differently, that she is speaking exculpatory for formality's sake, motivated by the so-called compromise between parties. Else, the facts that she has testified to are not at all consistent with the appellants' innocence.

54. PW-3 has acknowledged in this part of her cross-examination the fact that her daughter was poisoned to death. She did not know whether her husband or in-laws poisoned her or she consumed it herself. This testimony makes it vivid that the feeble attempt by other witnesses, either to remain elusive about how Mamta died, or say that she died on account of some ailment, is palpably false. PW-3 clearly shows that she was aware that Mamta died on account of poisoning. She has endeavoured to salvage the situation for the appellants by saying that she did

not know who poisoned Mamta, whether it was her husband or in-laws, or she consumed it herself.

55. It would also be apposite to notice the testimony of the fourth witness of fact, that is to say, PW-4 Banti Singh, the deceased's brother. In his examination-in-chief, PW-4 has testified to the following effect:

"मेरी बहन ममता की मृत्यु 30.7.2019 को जहर पीने से हो गयी। घटना की सूचना हमें मेरी छोटी बहन चन्द्रवती ने मेरे पिता को दी थी। मेरी बहन को उसके पति तेजवीर, सास मुन्नी देवी व ससुर नानकराम व ननद रामा ने जबरन जहर नहीं दिया। और न ही जहर देकर मेरी बहन को मारा।"

(emphasis by Court)

56. The witness was declared hostile and cross-examined by the prosecution. In his cross-examination, PW-4 has stated thus:

"घटना की खबर सुनकर हम सभी लोग अपनी बहनो की ससुराल ग्राम गंगागढ़ पहुँचे थे। घटना का सारा हाल चन्द्रवती ने हम लोगो को बता दिया था। फिर हम लोग ममता को इलाज के लिए अलीगढ़ ले जा रहे थे कि रास्ते मे मेरी बहन ममता ने दम तोड़ दिया। रास्ते मे भी हमारी ममता व चन्द्रवती से घटना की बाबत बाते होती गयी थी।"

ममता की मृत्यु के बाद इस घटना की रिपोर्ट मेरे पिता चोखेलाल ने मुझसे बोल-2 कर लिखायी थी। जो मेरे पिता ने बोला था वही मैंने तहरीर में लिख दिया था। फिर मैंने तहरीर अपने पिता को पढ़कर सुनायी तब मेरे पिता के उस पर अपने हस्ताक्षर कर थाना रामघाट पर दी थी। वह असल तहरीर आज पत्रावली पर प्रदर्शक-1 के रूप मे उपलब्ध है जो मेरे लेख मे है।

यह बात सही है कि घटना के समय मेरी छोटी बहन चन्द्रवती मौजूद थी और उसने सारी घटना देखी थी। यह सही है कि मुल्जिमान से हमारा राजीनामा हो गया है लेकिन राजीनामा के कारण आज मैं झूठी गवाही देकर बयान दे रहा हूँ यह गलत है।

मुझे इस बात की जानकारी है कि इस मुकदमा में मेरे बहनोई तेजवीर जेल में है और मेरी बहन के सास ससुर भी जेल गये थे।

यह सही है कि मैंने आज तक कही भी किसी भी आला अधिकारी या व्यक्ति को यह नहीं बताया कि मेरी बहन के ससुरावाले इस मुकदमा में निर्दोष है। आज मैं सर्वप्रथम यह बात न्यायालय में कह रहा हूँ।"

(emphasis by Court)

57. This witness too has come out with that odd piece of testimony in his examination-in-chief, where, not led by a cross-examiner or under any kind of a suggestion, he has spoken *impromptu* that the husband, mother-in-law and father-in-law of his deceased sister did not forcibly make her ingest poison, nor did they kill her that way. As already said earlier in relation to the testimony of another witness, no one could have led PW-4 to speak exculpatory about the appellants in the manner he has done in his examination-in-chief. In the examination-in-chief, though evidence is led by the party producing the witness, the prosecution in this case, no leading questions are permissible to be put to one's own witness. The learned Counsel for the State, therefore, would never have asked PW-4 if the deceased was killed by her husband, father-in-law and mother-in-law by forcing her to consume poison. That kind of a question would never have been allowed by the Court. All that would have been asked of this witness by the prosecution is how did Mamta die. If it were a forthright case of a false prosecution, where the witness did not support, he would not speak inculpatory facts, but say whatever he knew of the circumstances attending his sister's death. There would never be in the examination-in-chief an odd assertion of the kind that her husband or the mother-in-law and the father-in-law did not kill her. This could have happened if PW-4 was tutored and motivated to speak in this fashion, which is apparently the case here.

58. In his cross-examination, PW-4 has endorsed the fact that Mamta was alive when her parents and brother etc. reached her in-laws' place. She was being conveyed to Aligarh, when she died on the way. This falsifies the informant's case that Mamta was already dead when her family reached her in-laws. This witness had particularly said that on way to the hospital, the family had communications with Mamta and Chandrawati about the occurrence. Now, in the next lap of his cross-examination, this

witness has said that he scribed the FIR on the dictation of his father, where there are definitive allegations against the in-laws of forcing the deceased to consume poison. The witness has also testified to the fact that he read out the FIR that had been dictated to him and after hearing its contents, his father appended his signature and handed it over to Police Station Ramghat. This witness too looked into the contents of the FIR, Ex. *Ka-1*, and affirmed it to be the same document.

59. PW-4 has further on said that his younger sister, Chandrawati, was present when the occurrence took place and she saw it all happen before her eyes. It is further said by this witness that it is trite to say that the informant's side had compromised with the appellants, but he also said that it is not on this account that he was falsely testifying in their favour. The last part of this witness's cross-examination that sheds lights on the case is, where the witness says like others, that before the commencement of trial, he had never revealed the fact to any higher officer (a reference to the Police or administrative officers perhaps) that the appellants were innocent and had no involvement in his sister's case. This witness, PW-4, was also cross-examined by the defence, where he has spoken thus:

"मैं घटना के समय घटनास्थल पर मौजूद नहीं हूँ। मैंने कोई घटना नहीं देखी है। सुनी हुई बातों के आधार पर ही मैं गवाही दे रहा हूँ। मेरी बहन अक्सर बीमार रहती थी। और बीमारी के कारण वह चिढ़ चिढ़े स्वभाव की हो गयी थी। काफी दवाई गोली खाती थी। बीमारी का इलाज मेरी बहन के ससुरालवालों द्वारा कराया जाता था। अधिक बीमार रहने के कारण वह डिप्रेशन में रहने लगी।

हमारी बहन के ससुरालीजन के घर पर खेती का कार्य होता है। घर पर कीटनाशक दवाई खेती में लगाने हेतु रखी रहती है। बीमारी से तंग आकर और बच्चा पैदा न होने के कारण मेरी बहन ने स्वयं घर पर रखी कीटनाशक दवायी पी और उसकी उससे मृत्यु हो गयी।"

60. This witness is admittedly not an inmate or a native of the house, where the deceased lived with her in-laws and her sister. Also, it is not in dispute that he did not see the occurrence that led to Mamta's death, which had happened within the four-corners of her matrimonial home. The occurrence had been seen

by the deceased's and this witness's sister, PW-2, also married in the same home to a brother of Mamta's husband. PW-4 is, therefore, a witness of whatever he saw upon reaching his sister's in-laws after receipt of the SOS call that PW-2 put through to her father, PW-1. Therefore, his testimony is relevant about the fact that the deceased was alive when her family, comprising her parents and brother reached her matrimonial home.

61. It is also relevant about anything that the deceased said about the cause and circumstances of her death, before she died on way to the hospital. After hearing all what the deceased shared with the family while at her in-laws' place or on way, as also whatever they heard from this witness' other sister, PW-1 dictated an FIR, which this witness scribed and has testified to the fact that he scribed it accurately. The contents of the FIR are inculpatory and speak about a precise case of Mamta's in-laws, forcing her to consume poison. This witness, therefore, further establishes the accuracy of the FIR version. PW-4, particularly, endorses the fact that the informant and his family had compromised with the appellants. The mere assertion that he was not telling falsehood in Court because of the compromise, cannot be accepted on his word.

62. The totality of circumstances have to be seen. The stance in the FIR, which this witness had scribed and also proved in Court, the statements to the Police, which includes this witness' statement and the changed stand in Court, are suggestive of some extraneous consideration, working in the mind of this witness to resile from the prosecution case. The fact that this witness acknowledged that he never told any higher officer about the fact that Mamta's in-laws were innocent, shows the dock evidence of this witness to be a pure afterthought and the result of some unholy bargain between the informant and the appellants. In the case of this witness also, one finds a pointed endorsement of

the prosecution case, which the witness is trying to hide in his quest for some other goal, that clearly detracts from serving the cause of justice.

63. The following inculpatory facts emerge from this witness' testimony: the witness along with his parents rushed to Mamta's in-laws' place upon hearing from his younger sister, what he describes as an occurrence; *secondly*, the fact that Mamta was alive when this witness along with the first informant and his mother reached her in-laws' place; *thirdly*, the fact that Mamta spoke to this witness, the informant and other family members at her in-laws' place and also on way to hospital before she died, about the incident; *fourthly*, the fact that this witness' other sister, Chandrawati, also an inmate of the same house, spoke about the circumstances of the occurrence to this witness and other members of the family at her in-laws' place and on way, while taking Mamta to the hospital; *fifthly*, the fact that this witness affirmed the contents of the FIR, which he scribed on his father's dictation; *sixthly*, the fact that the FIR carries robust allegations about the appellants' committing the offence in the manner described there; *seventhly*, the fact that the witness acknowledged that a compromise between the informant and the appellants had taken place; and, *eighthly*, the fact that this witness has stated that he never informed any higher officer that Mamta's in-laws were innocent, though he knew that her husband was in jail and the father-in-law and the mother-in-law had been to jail.

64. There is an added piece of evidence that this witness has attempted to offer, when cross-examined by the appellants. He has been apparently cross-examined to realize the full fruits of the compromise. In his cross-examination by the appellants, he has introduced the case about Mamta committing suicide by consuming some insecticide kept at home, on account of being

frustrated with her ailment and the fact that she could not bear a child. Now, this is not a defence, which the appellants have offered in their testimony under Section 313 Cr.P.C. At no stage of proceedings, this case has been taken by the appellants. The cross-examination of PW-4 by the appellants while, on the one hand, cannot be regarded as their defence, but, on the other, it shows that the witness was deliberately endeavouring to save the appellants from the penalties of law on account of the compromise between parties. This fact further works to establish the appellants' complicity, rather than save them from the consequences of the offence.

65. It would be relevant here to take note of the testimony of the autopsy doctor, who has testified as PW-5, with necessary reference to the autopsy report, Ex. *Ka-2*, and the report from the Forensic Science Laboratory regarding their findings about the preserved viscera sent to them for analysis. PW-5, Dr. Ajay Kumar, who carried out the postmortem examination, has testified in his examination-in-chief as follows:

"विसरा संरक्षित करने हेतु अमाशय, छोटी आंत, यकृत, पित्ताशय गुर्दा प्लीहा के टुकड़े लेकर संग्रहित किया गया।

शव विच्छेदन के पश्चात शव विच्छेदन आख्या, वस्त्र, विसरा 6 जार सील मोहर कर शव को लाये सिपाही रिचा के सुपुर्द किया गया था। पोस्टमार्टम रिपोर्ट मेरे द्वारा मेरे लेख व हस्ताक्षर मे तैयार की गयी थी। जिस पर डा० अनुराग यादव के भी हस्ताक्षर अंकित है। शव विच्छेदन रिपोर्ट सं. 689/2019 प्रपत्र सं. 9A/1 ता 9A / 3 के रूप मे पत्रावली पर शामिल है। पोस्ट मार्टम रिपोर्ट पर प्रदर्श क 2 डाला गया।

मृतका की मृत्यु कीटनाशक दवाई के सेवन से होना सम्भावित है। इस सम्बन्ध मे पत्रावली पर विधि विज्ञान प्रयोगशाला गाजियाबाद उत्तर प्रदेश की रिपोर्ट उपलब्ध है।
मृतका की मृत्यु दिनांक 30.7.2019 को होना सम्भव है।"

(emphasis by Court)

66. PW-5, in the relevant part of his cross-examination, has stated:

"P.M. के लिए आया शव सील बन्द था सील मैने देखी थी ठीक थी चोट नं. 1,2,3,4 मृतका के इलाज के दौरान इनजेक्शन वगैरा देने से आना सम्भव है। चोट नं. 3 व 4 जो टेप लगी मैने देखी है वह भी इलाज के दौरान आना सम्भव है। इन चोटो के अलावा

शरीर पर अन्य कोई चोट नहीं थी। मृतका के शरीर पर जो चोटें थी वह डाक्टरी इलाज कराने के दौरान आती हैं।

जो मृत्यु का सम्भावित समय लिखा 3/4 दिन लिखा है उसमें से 12 से 18 घंटे का अन्तराल दोनों तरफ हो सकता है।"

67. A reading of the doctor's examination-in-chief shows that with reference to the report submitted by the Forensic Science Laboratory, he has opined that it is probable that the deceased died on account of consumption of the chemical insecticide reported by the FSL. It is also opined by the doctor in his examination-in-chief that it was possible for the deceased to have died on 30.07.2019. In his cross-examination, the doctor was not at all questioned if the deceased did not die of poisoning. Rather, it appears that various injuries that were found on her dead body, were subject matter of a searching cross-examination to elicit opinion if those could have been the cause of her death. The doctor's cross-examination shows that the injuries, that have been noticed on the deceased's body, were said to have been the possible outcome of medical treatment. Not much weight can be attributed to it, because the deceased did not apparently receive any medical attention while with her in-laws and died on way to a hospital at Aligarh, where she was being conveyed by her parents and family. It has to be noticed that neither in the autopsy report nor in his testimony in the dock, the doctor has attributed any of the ante-mortem injuries as the cause of Mamta's death. The cross-examination reveals that the doctor has indeed not been subjected to a more rigorous cross-examination to ascertain the cause, the nature and the effect of the ante-mortem injuries that he noticed on the deceased's body. At the same time, he was not much challenged about his opinion that the deceased died of poisoning from the insecticide, that was opined to be possible due to organochloro insecticide. The postmortem report, according to its apparent tenor, does not attribute Mamta's death to any of the ante-mortem injuries. In the absence of any facts elicited during the doctor's cross-examination by the appellants, there is little

doubt that the cause of Mamta's death was poisoning due to the organochloro insecticide.

68. We may pause here to remark that there is no case, at any stage, by the appellants that Mamta consumed poison of her own, committing suicide. This is not their case in the statement under Section 313 Cr.P.C. Rather, their defence is that the deceased would stay ill and sought treatment from sundry doctors. She would stay perplexed about it. It was urged by the learned Counsel for the appellants that the defence clearly shows that the deceased committed suicide, because she was distressed by disease. We are afraid that, that is not the case at all. If the appellants had to take a case that the deceased committed suicide, they had to clearly state the fact and enumerate the circumstances, in which she died by suicide. In the absence of a case of suicide coming forth from the defence, a mere assertion in the background of a compromise between parties that the witness did not know if Mamta was poisoned by her husband and in-laws or consumed the poison herself, would not avail the appellants. The evidence of all the four witnesses of fact and the medico-legal evidence put together, distinctly carry inculpatory facts, which at least prove the prosecution case beyond doubt to the extent that the appellants would be obliged to discharge their evidential burden about the fact as to how Mamta died.

69. It hardly needs gainsaying that before evidential burden about the fact as to how Mamta died is discharged, the necessary explanation should have been furnished about it by the appellants, as already remarked, in their statements under Section 313 Cr.P.C. Relieving the appellants from the rigours of that requirement and to ensure a fair trial, that would lead to a just decision, the minimum, that can be said about the appellants' obligation, is to introduce some kind of evidence about the fact as to how Mamta died. Else, the inculpatory part of the testimony of

PW-1 to PW-4 and the medico-legal evidence, comprising the postmortem report, Ex. *Ka-2*, the FSL Report, bearing Ex. *Ka-12*, and the testimony of PW-5 for reasons hereinbefore given, would prove the prosecution case beyond reasonable doubt.

70. On the other hand, if the appellants had led some evidence about the circumstances leading to Mamta's death, consistent with their innocence, this Court would be bound to consider the evidence led by the prosecution together with the evidence led by the appellants in order to conclude, if indeed the prosecution have proved their case beyond reasonable doubt. Why this is so, shall be considered next.

71. While in a criminal prosecution, the burden of proof in the sense of establishing the entire case beyond reasonable doubt rests on the prosecution, once the prosecution adduces sufficient evidence to establish the case by that standard, if unrebutted, evidential burden shifts on the defence to adduce some evidence to dispel the prosecution. If evidential burden by way of leading some evidence to exculpate is not discharged, the Court may accept the evidence offered by the prosecution, where on the unrebutted view of it, the prosecution case is established beyond reasonable doubt. *Onus probandi* or the burden of proof envisaged under Section 102 of the Indian Evidence Act, 1872 is a burden much different from that under Section 101. Whereas Section 101 speaks of burden in the sense of an obligation upon the party to prove the case as a whole by whatever standard of proof applicable, depending upon the nature of proceedings, evidential burden is either the initial obligation or one shifted during trial by the other-side's evidence upon a party to lead evidence and put it in scales, which would then oblige the Court to judge on a consideration of all evidence if the party, bearing the burden of proof under Section 101, has discharged it and established their case or failed. If, however, the initial evidential

burden or one shifted during trial is not discharged at all, there is no occasion for the Court to judge much, as the party in default of evidential burden would fail on account of their inability to produce some evidence.

72. This is not a case of failure to discharge burden to prove facts, specially within the appellants' knowledge envisaged under Section 106 of the Evidence Act. It is a case with a little difference. Section 106 would be attracted if there were no witness other than the appellants' family members to see the occurrence. Here, there was an eye untainted by familial bondage to see and speak the truth in PW-2, the deceased's sister. She has, however, been influenced by extraneous considerations of a compromise, but nevertheless testified to facts that are sufficiently inculpatory and put together with the evidence of other witnesses as also the medico-legal evidence, prove the prosecution beyond reasonable doubt, unless the appellants adduced evidence to render their guilt improbable. The appellants have not done so; not even offered an explanation about the inculpatory facts and evidence appearing against them.

73. The above conclusions of ours are fortified by the remarks of the Supreme Court in **State of Madhya Pradesh v. Balveer Singh, (2025) 8 SCC 545**, which, though a case in which Section 106 of the Evidence Act was attracted, analyzed principles on wider ground, including the one which applies here. In **Balveer Singh (supra)**, it has been observed by the Supreme Court:

"88. To recapitulate the foregoing: What lies at the bottom of the various rules shifting the *evidential burden* or burden of introducing evidence in proof of one's case as opposed to the *persuasive burden* or burden of proof i.e. of proving all the issues remaining with the prosecution and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is therefore for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But

the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams—Proof of Guilt, Ch. 7, p. 127 and following) and the interesting discussion—Para 527 negative averments and Para 528 — “require affirmative counter-evidence” at p. 438 and foil, of *Kenny's Outlines of Criminal Law*, 17th Edn. 1958.

89. But Section 106 has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only to the accused but also to others, if they happened to be present when it took place. The intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived. Therefore, if the prosecution has established that the character and circumstance of an act suggest that it was done with a particular intention, then under Illustration (a) to this section, it may be assumed that he had that intention, unless he proves the contrary.

90. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with countervailing evidence, if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise therefrom. Although not legally

required to produce evidence on his own behalf, the accused may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution [see: *Balvir Singh v. State of Uttarakhand* [*Balvir Singh v. State of Uttarakhand*, (2023) 16 SCC 575] and *Anees v. State (NCT of Delhi)* [*Anees v. State (NCT of Delhi)*, (2024) 15 SCC 48 : 2024 SCC OnLine SC 757 : 2024 INSC 368] .]

(emphasis by Court)

74. We would now proceed to examine if in the present case, we disregard the testimony of all the witnesses, including the eye-witness, who had attempted to speak exculpatory and been declared at least formally hostile and cross-examined by the prosecution, can we still consider the case as one based on circumstantial evidence and evaluate the worth of the prosecution case accordingly.

75. In a Bench decision of this Court in **State of U.P. v. Vijay Prakash Sharma, 2024 (12) ADJ 256 (DB) (LB)**, it was remarked:

"**28.** Before we proceed further, it would be apposite to remind ourselves that this is a case where eye-witnesses, namely, P.W.1-Uday Swaroop Bhardwaj, who is informant of the case, his friend P.W.2-Rajeev Dixit and his watchman P.W.3-Bharat, did not support the prosecution version of murder of two persons, namely, Krishna Kumar Gupta and his son Kapil Gupta and all of them turned hostile. Prosecution seeks to bring home the charge levelled on the appellants by relying on certain circumstances. No doubt the conviction can be based on circumstantial evidence inspite of hostility of eye-witnesses, provided such circumstantial evidence stood the well-settled test reiterated by the Apex Court by a catena of pronouncements time and again for sustaining conviction of accused. In this connection, we may refer the case of *Paramjeet Singh @ Pamma v. State of Uttrakhand*, (2010) 10 SCC 439, wherein all the seven eye-witnesses have turned hostile, it was observed by the Apex Court that the case is to be decided keeping in mind that as all the eye-witnesses turned hostile, it remained a case of circumstantial evidence."

76. Now, the law regarding circumstantial evidence is settled way beyond doubt and the standard is exacting. A case founded

on circumstantial evidence is required to be established by the prosecution in the manner that the inculpatory circumstances should form so complete a chain as to exclude any other hypothesis, but one leading to the inference of guilt for the accused. Reference in this connection may be made to **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**.

77. We have already examined the evidence appearing in this case in one form or the other and it would be a fruitless exercise to go through it over and over again for all the details of it.

78. Keeping aside the testimony of the eye-witness, who saw the occurrence, to wit, PW-2, the following circumstances are well established on the basis of evidence on record: the fact that the deceased suffered some injury while in her matrimonial home; the fact that the occurrence relating to the injury was serious and alarming enough to make her younger sister, PW-2, put a phone call through to her father, PW-1, asking him to come over to the deceased's in-laws; the fact that when the deceased's father and other family members reached her in-laws, she was utterly sick and in such state of health, that PW-1 and other family members thought that they ought rush her to a hospital at Aligarh from her native village in District Bulandshahr; the fact that notwithstanding the precarious condition of her health, the deceased's in-laws did not take her to hospital or call medical aid; the fact that the deceased's in-laws, upon seeing her father and family arrive, left their house and went away; the fact that while being conveyed to the hospital at Aligarh from her in-laws' village in District Bulandshahr, the deceased passed away at Atrauli; the fact that immediately upon the deceased passing away, the first informant, PW-1, lodged an FIR with the Police, mentioning the deceased's words while alive to the effect that she had been forced to ingest poison by her husband, mother-in-law, father-in-law and sister-in-law; the fact that in the autopsy report, the doctor found the brain congested, besides the small intestine, the large intestine, the

liver, including the gallbladder and the spleen congested, but not being able to ascertain the cause of death, preserved the viscera for histopathological examination; the fact that in the report from the Forensic Science Laboratory, it was found upon an examination of the viscera that there was organochloro insecticide poison present; the fact that the deceased clearly died an unnatural death in consequence of some injury sustained in her matrimonial home, where the cause of death opined is poisoning; the fact that the appellants in their statements under Section 313 Cr.P.C. or at any other stage, including investigation or their cross-examination, have not come up with a plausible explanation about circumstances, consistent both with the deceased's death and their innocence or non-involvement; and, the fact that the deceased's last rites were performed at her matrimonial home and not her in-laws, which would inevitably have been the case, if her death was natural and free from blemish for the appellants.

79. All these circumstances put together are well established on record and not in doubt or the realm of infirmity of any kind about their existence. The circumstances considered together form a complete chain that exclude any other possibility, except that of the appellants' guilt, in our considered opinion. However, as remarked earlier, upon establishment of these circumstances, the prosecution definitively shifted burden upon the appellants to produce evidence under Section 102 of the Evidence Act, that could still demonstrate their innocence, consistent with these circumstances. If the appellants had produced some evidence to demonstrate their innocence, pitted against these circumstances appearing against them, we would have to consider the totality of the picture to draw our conclusions, if the prosecution have been successful in establishing their case beyond all reasonable doubt. Since no evidence or even a case in defence to these circumstances has been put forward by the appellants, the prosecution's burden must be held discharged and the case

against the appellants proved beyond all reasonable doubt. The conclusion, therefore, is that both on the basis of evidence of witnesses, notwithstanding their hostility, and ignoring that evidence, by the circumstances alone, the prosecution have successfully established their case against the appellants beyond all reasonable doubt. The Trial Judge has more or less reached the same conclusion for her own reasons, which may be slightly different than ours. However, we must remark that we do not agree with the learned Trial Judge that this is a case, where Section 106 of the Evidence Act could be invoked at all. Therefore, we agree with the conclusions that the learned Trial Judge has reached as also broadly, her reasoning to reach those conclusions.

80. In the result, these appeals fail and are **dismissed**.

81. In Criminal Appeal No.5320 of 2021, Nanakram and Munni are on bail. They will surrender within **four weeks** of date before the learned Chief Judicial Magistrate, Bulandshahr in order to serve the sentences awarded to them. Their bail bonds shall stand cancelled and sureties discharged.

82. Let this order be communicated to the learned Trial Judge as well as the learned Chief Judicial Magistrate, Bulandshahr by the Registrar (Compliance).

83. Let the Trial Court record be sent down at once.

(Nalin Kumar Srivastava,J.) (J.J. Munir,J.)

January 20, 2026

Anoop