



2026:AHC-LKO:6993-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW

JAIL APPEAL No. - 1377 of 2012

Sobran Lal

..... Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s) : Jail Appeal in Person, Nirmal Singh Yadav,
Smriti

Counsel for Respondent(s) : Government Advocate

Reserved on 31.10.2025

Delivered on 30.01.2026

Court No. – 9

HON'BLE RAJESH SINGH CHAUHAN, J.

HON'BLE ABDHESH KUMAR CHAUDHARY, J.

(Per; Hon'ble Abdhesh Kumar Chaudhary)

1. The present Jail Appeal has been preferred by the **appellant/accused- Sobran Lal** against the common judgment and order dated 04.08.2012 passed by the Special/Additional Sessions

Judge, Lakhimpur Kheri in (i) Sessions Trial No. 854 of 2008 arising out of Crime No. 201 of 2008 (*State V/s Hari Om alias Bantu and Another*), whereby the appellant was convicted and sentenced for the substantive offences under Section 302 I.P.C. for the punishment of life imprisonment along with fine of Rs. 10,000/- and fine stipulation, under Section 307 I.P.C. for 10 years rigorous imprisonment along with fine of Rs. 5,000/- and fine stipulation, under Section 393 I.P.C. for 07 years rigorous imprisonment along with fine of Rs. 3,000/- and fine stipulation, and (ii) Sessions Trial No. 855 of 2008 arising out of Crime No. 203 of 2008 (*State V/s Sobran Lal*), under Section 3/25 Arms Act for 03 years rigorous imprisonment along with fine of Rs. 5,000/- and fine stipulation. All sentences were directed to run concurrently in view of Section 427 of the Code of Criminal Procedure (hereinafter referred as to 'Cr.P.C.').

CASE OF THE PROSECUTION

2. The case of the prosecution as elaborated by the learned Trial Court in the impugned judgment is briefly encapsulated as herein under:
 - 2.1 As per the version of the complainant- Neeraj Kumar Soni (**P.W.-1**), on the day of the incident *i.e.* on 29.02.2008 at 5.30 PM, when he was sitting at his jewellery shop situated on Gulauli Road, two persons riding a motorcycle attempted to rob his elder brother-Manoj Soni and tried to snatch the bag in which his brother was carrying jewellery and cash while returning home.
 - 2.2 On raising alarm, local residents of the neighborhood including Saur Alam (**P.W.-3**), Narendra Kumar Verma (**P.W.-4**), Surendra Chandra Gupta, Sanjay Mishra etc. gathered at the spot and challenged the miscreants. Thereupon, one of the miscreants took out a pistol from his pant and fired at his elder brother-Manoj Soni with intent to kill, which hit his brother on the left

side of his body, causing a fatal gunshot injury. When the informant/complainant tried to save his brother and intervened, the the other miscreant assaulted him with a knife several times with the intent to kill him, causing injury to his shoulder and hands.

- 2.3** Somehow, with the assistance of the neighborhood, both the miscreants were apprehended at the spot with a pistol, live cartridge, empty cartridge, and a knife along with their motorcycle bearing number UP25U3803, chassis No. DSVBME34762.
- 2.4** On being questioned, one of the aforesaid miscreants told his name as Hari Om *alias* Bantu, son of Shriram Sharma, resident of Nai Basti, infront of Power House, G.T Road, Kasba and Police Station Fatehganj East and the other told his name as Sobran Lal Yadav (Appellant), son of Omkar Yadav, resident of Saidpur Manjha, Police Station Fatehganj East, District Bareilly.
- 2.5** Subsequently, his injured brother- Manoj Soni was taken to the Government Hospital at Mohammadi by the neighbours and his younger brother Pankaj Soni (**P.W.-2**), where he was declared dead. The said incident became a cause of terror in the entire neighborhood of Mohammadi, resulting in panic and closure of shops and the entire market in the locality, causing disturbance of public order.
- 2.6** Based on the aforesaid written information (**Exhibit-Ka-1**) given by the complainant- Neeraj Kumar Soni (**P.W.-1**) an F.I.R No. 62/2008 (**Exhibit Ka-14**) under Section 393, 302, 307 I.P.C. was lodged on 29.02.2008 at 18:15 PM relating to the said incident, against (i) Hari Om *alias* Bantu and (ii) Sobran Lal Yadav. The entry regarding the aforesaid F.I.R. was also made in G.D. (**Exhibit Ka-15**). The investigation for the aforesaid

incident was entrusted to Inspector (In-charge)- Devi Dayal Singh (**P.W.-7**).

- 2.7** Based on the above information, the Investigating Officer, Police Station - Incharge Devi Dayal Singh (**P.W.-7**) reached the spot immediately on 29th January, 2008 at 18:35 PM and found that the nearby people were apprehending the said two miscreants.
- 2.8** When Inspector (In-charge) Devi Dayal Singh inquired into the incident, the complainant- Neeraj Kumar Soni (**P.W.-1**), stated that the convict - Sobran Lal (**Appellant**) pulled out a pistol and fired at his brother-Manoj Soni, with the intention of kill him, whereupon his brother fell down. When the complainant attempted to reach and rescue his brother, co-accused Hari Om stabbed him with a knife and inflicted injuries. Upon hearing the commotion, various people gathered at the crime spot, and with their assistance, the complainant- Neeraj Kumar Soni (**P.W.-1**) and others apprehended both Sobran Lal and Hari Om at the scene of occurrence along with a pistol, live cartridges, and a knife. Complainant's brother, Manoj Soni, subsequently succumbed to the gunshot injuries sustained in the incident.
- 2.9** In the presence of witnesses- Narendra Kumar Verma (**P.W.-4**) and Sanjay Kumar, the accused persons Sobran Lal and Hari Om, were arrested at the spot. From the possession of the convict – Sobran Lal, one country-made pistol of .315 bore, one live cartridge, and one empty cartridge, used in the incident, were recovered. From the possession of Hari Om, one country-made pistol of .315 bore, one live cartridge, and a knife, which he picked up from the ground, were recovered. After taking in possession the recovered articles, recovery memo (**Exhibit Ka-3**) was prepared and duly sealed. Thereafter, the recovered items along with the accused persons were brought to and lodged at the concerned police station.

- 2.10** On the basis of the recovery memo, a separate F.I.R. No. 64/2008 (**Exhibit- Ka-20**) was registered at Police Station- Mohammadi on 29.02.2008 at 20:25 PM under Section 3/25 and 4/25 of the Arms Act against both Sobran Lal and Hari Om *alias* Bantu. Corresponding entries regarding registration of Case Crimes were made in the G.D. (**Exhibit Ka-21**) and S.I.-Vijai Singh Solanki (**P.W.-6**) was appointed as the Investigating Officer of the case.
- 2.11** During the course of investigation, the Investigating Officer-Inspector (In-charge)- Devi Dayal Singh (**P.W.-7**) prepared the 'Panchnama' (**Exhibit Ka-2**) and other relevant papers. He also collected samples of blood-stained soil and the plain soil from the place of occurrence and prepared the recovery memo in respect thereof (**Exhibit Ka-4**). In furtherance of the investigation, and on the pointing out of the witnesses, the Investigating Officer prepared the Site plan of the crime-spot (**Exhibit Ka-6**) as well as the site-plan relating to the recovery of arms/pistol from the crime spot (**Exhibit Ka-16**).
- 2.12** Upon completion of the investigation, and after recording the statements of several witnesses under Section 161 Cr.P.C. and collecting various materials and documents, the police submitted a charge-sheet before the Court concerned under Section 302, 307, 393 I.P.C (**Exhibit-Ka-7**). The charge-sheet was accompanied by the post-mortem report of deceased Manoj Soni (**Exhibit-Ka-23**) and the injury report of the Informant/complainant-Neeraj Soni (**Exhibit-Ka-5**). A separate charge-sheet under Sections 3/25 and 4/25 of the Arms Act (**Exhibit-Ka-17**) was also filed against Sobran Lal and Hari Om in connection with the recovery of pistol from their possession.

PROCEEDINGS BEFORE THE TRIAL COURT

- 3.** The Charge-Sheet named two accused persons, namely Sobran Lal (the Appellant) and Hari Om *alias* Bantu. Thereafter, the

case came to be committed to the Sessions Court *vide* order dated 01.10.2008. Charges were framed against the accused-Sobran Lal *vide* order dated 21.01.2009, to which he pleaded not guilty and claimed Trial. It is pertinent to mention here that *vide* an order dated 10.06.2011, due to the continuous abscondence of co-Accused-Hari Om, his Trial was separated, and proceedings were ordered to be initiated against the said Hari Om under Section 82/83 of the Criminal Procedure Code, 1973.

4. The prosecution, in order to prove its case, have examined ten witnesses. The details of the witnesses are given herein below:

P.W.-1	Neeraj Kumar Soni	Complainant/brother of the deceased
P.W.-2	Pankaj Soni	Eye witness
P.W.-3	Saur Alam	Eye witness
P.W.-4	Narendra Kumar Verma	Eye witness
P.W.-5	Dr. S.U.P. Sinha	Posted at the relevant point of time at Primary Health Centre, Mohammadi
P.W.-6	S.I. Vijai Singh	Investigating Officer
P.W.-7	Devi Dayal Singh	Investigating Officer
P.W.-8	Head Constable Sri Ram Chaudhary.	Recorded the statement of the witnesses and proved the Site plan and Charge sheet
P.W.-9	Ramayan Singh	Proved chik report and General Diary.
P.W.-10	Dr. R.R. Agnihotri	Conducted the postmortem of the deceased -Manoj Soni.

- 4.1 In addition to the oral evidence adduced by the prosecution, various documentary exhibits were also proved by the prosecution running from ***Exhibit Ka-1*** to ***Exhibit Ka-23***. The

Forensic Science Laboratory report was also brought on record and forms part of the case file as *Report 71- Ka*.

- 4.2 After the conclusion of the Prosecution Evidence, the statement of the Appellant- Sobran Lal was recorded under Section 313 of the Cr.P.C. on 25.06.2012, wherein he denied the prosecution case in toto. He denied all the allegations, recoveries, and the testimony of the prosecution witnesses, asserting that he and the co-accused had been falsely implicated. He further claimed that the alleged incident has never taken place, contending that he and the other co-accused had already been arrested three days ago, prior to the purported incident.
- 4.3 The appellant- Sobran Lal has not produced any defense witness in support of his defence.
- 4.4 Upon appreciation of the oral and documentary evidence available on record, the learned Trial Court returned a finding that the prosecution had successfully proved the charges beyond reasonable doubt against the Appellant- Sobran Lal Yadav and accordingly convicted the appellant under Sections 302, 393 and 307 I.P.C. read with Section 3/25 of the Arms Act, *vide* the impugned judgment dated 04.08.2012.
- 4.5 On the point of sentencing, despite the plea of mitigation that the Appellant had a dependent 70 years old widow mother, wife and four children, two being daughters, amongst them to support, however, the Ld. Trial Court, considering the gravity of the offence committed and its societal impact, sentenced the Appellant for life imprisonment along with fine stipulation under Section 302 I.P.C. and Rigorous Imprisonment for 10 years with fine stipulation under Section 307 I.P.C, 07 years Rigorous Imprisonment under Section 393 I.P.C along with fine stipulation, and 03 years with fine stipulation under Section 3/25 Arms Act.

PROCEEDINGS BEFORE THIS COURT

5. Being aggrieved by the conviction and sentence, owing to financial constraints, the Appellant preferred the present Jail Appeal, inter alia, on various grounds including, (i) inconsistencies in the statement of the witnesses, (ii) defense of the Appellant that he actually pledged his jewellery with the deceased for some money due to medical reasons, however the deceased did not return him the jewellery inspite of receiving the money and falsely implicated him as someone in the crowd had fired at the deceased causing his death, (iii) Appellant and the other co-accused were beaten and severely hurt by the crowd collected at the jewellery shop, (iv) there are inconsistencies in the statements of P.W.-1 (Neeraj Kuamr), P.W.-2 (Pankaj), P.W.-3 (Saur Alam) and P.W.-4 (Narendra Kr. Verma) in proving the incident, (v) the impugned judgment was not in the interest of justice.

5.1 Initially, the Ld. Counsel for the Appellant stated that the appellant has undergone incarceration for more than 17 years and 8 months and sought bail in the light of dictum of Hon'ble Apex Court in the case of *Saudan Singh Vs. State of U.P.*, reported in *(2023) 17 SCC 446*.

5.2 However, keeping in view the prolonged pendency of the Appeal since 2012 and readiness of the paper book, this Court urged both the parties to address their arguments on the merits of the Appeal. Learned counsel for both sides agreed to address this Court on the merits of the Appeal itself. This Court acknowledges the effort of both Ms. Smriti and Shri S.P. Singh, learned A.G.A., who acceded to the request of this Court and have addressed their arguments on the Appeal itself, on short notice.

5.3 Both the parties were also granted liberty to file their respective written argument/submissions along with the relevant case laws.

SUBMISSION ON BEHALF OF THE PARTIES

6. Heard Ms. Smriti, learned Counsel for the appellant and Sri S.P. Singh, learned Additional Government Advocate (A.G.A.) for the State.
7. Learned Counsel for the appellant has vehemently argued that the impugned conviction is unsustainable, as it suffers from grave factual inconsistencies, evidentiary infirmities, and failure on the part of the prosecution to establish motive or *mens rea* on part of the Appellant. It was argued that the prosecution rests upon interested witness and unreliable testimony, particularly of P.W.-1, who is the eye-witness and the real brother of the deceased, and that the genesis of the entire prosecution version, is inherently doubtful.
8. The next argument preferred by the learned counsel for the appellant is that the prosecution failed to establish any motive for the alleged crime against the appellant. In the absence of proof of motive, especially in a case based on circumstantial and interested evidence, the advantage and benefit of doubt should accrue in favour of the appellant.
9. Drawing attention to contradictions in the prosecution case, learned counsel submitted that although the F.I.R. mentions motorcycle No. UP25U3803 with a specific chassis number claiming to have belonging to the accused; however, later, the prosecution later admitted that the motorcycle was unrelated to the accused, and even the chassis number was not visible on inspection, thereby seriously denting the credibility of the prosecution's case.
10. It was contended that during inquest proceedings, none of the *panch* witnesses attributed any role to the appellant or stated that he had fired upon the deceased. Further discrepancies between the statements of P.W.-1, the Doctor, and the Investigating Officer regarding the clothes worn by the deceased reflect

uncertainty, suggesting that the prosecution has failed to establish even the basic facts.

11. Learned counsel further argued that the charge of robbery remained unproved, as no bag, jewellery, or cash was ever recovered, exhibited or proved through witnesses. It was emphasized that although the Doctor (P.W.-10) claimed recovery of a bullet from the body, neither the bullet nor the relevant X-ray plate was produced before the Court. The absence of ballistic, forensic, and scientific evidence, coupled with uncertainty as to which weapon was used, undermines the prosecution's case. Two country-made pistols were shown to be recorded during trial, and the police themselves could not ascertain which weapon was allegedly used for the murder of the deceased person. Further, the injuries sustained by P.W.-1 were opined by the doctor to be simple and possibly self-inflicted. The Forensic Report on blood-stained soil was inconclusive, and even the Site plan failed to depict the position of the witnesses and accused.
12. Learned Counsel for the appellant further vehemently submitted that the appellant, in his statement under Section 313 Cr.P.C., alleged illegal detention for three days prior to the incident, raising serious doubts on the fairness of investigation. On merits, it has been argued that the essential ingredients of Section 302 I.P.C. are not made out, as the prosecution has failed to establish any motive or *mens rea*.
13. In the alternative, it was contended by the leaned Counsel that even if the prosecution's case is accepted, the incident occurred in a sudden situation without premeditation, and, a single shot was fired out of fear due to a gathering of crowd. The case, at best, would attract Section 304 Part I or II I.P.C. Reliance has been placed on the judgments of the Hon'ble Supreme Court in *Atul Thakur v. State of Himachal Pradesh*, reported in (2018) 2

SCC 496; wherein similar circumstances warranted conversion of conviction from Section 302 to Section 304. Furthermore, reliance has been placed upon several Supreme Court's judgments *i.e. Arvind Sharma Vs State of U.P.*, reported in 2017 (3) JIC 787 All; *Kusha Laxman Waghmare Vs. State of Maharashtra* reported in (2015) 1 SCC (Cri) 100; *State of Andhra Pradesh Vs Rayavarpu Punneya* reported in AIR 1997 SC 45; *Jagroop Singh V/s State of Haryana*, reported in AIR 1981 SC 1552; and *Tukaram & Others V/s State of Maharashtra*, reported in (2011)4 SCC 250; to support her contention of converting the conviction from 302 to 304 I.P.C. Reliance has also been placed upon the judgment of this Court, in the case of *Rahul vs. State of U.P.*, reported in *Neutral Citation No.- 2023:AHC-LKO;69130-DB*; on the similar issue.

14. Lastly, it has been argued that since the prosecution having failed to prove the charges beyond reasonable doubt, therefore, the appellant is entitled to benefit of doubt, which ought to result in acquittal of the appellant; in the alternative, the conviction deserves modification to a lesser offence under Section 304 of the I.P.C.
15. *Per contra*, Shri S.P. Singh, learned Additional Government Advocate (A.G.A.) appearing for the State, supported the impugned judgment and opposed the contentions advanced by learned Counsel for the appellant. He contended that the impugned judgment reflects a proper, careful, and meticulous appreciation of the entire prosecution evidence. It was submitted that the Trial Court correctly evaluated the testimonies of the prosecution witnesses, including their cross-examinations, as well as the investigative material on record, before recording the appellant's conviction. It has been further submitted that the Trial Court duly considered the appellant's statement under Section 313 Cr.P.C. and the defence version in their correct perspective. According to the learned A.G.A., the impugned

judgment is founded on sound and cogent reasoning, wherein the appellant's presence at the spot, along with co-accused, stands conclusively established, and the appellant intentionally fired upon the deceased fully satisfies the ingredients of Section 300 of the I.P.C.

16. Learned Counsel for the State further contended that the act of the appellant does not fall within any of the exceptions to Section 300 I.P.C. It was submitted that the murder was committed in broad daylight in a public market after the appellant failed in his attempt to snatch a bag containing jewellery and cash. The act was deliberate, pre-planned, and wholly unconnected with any claim of self-defense or sudden provocation. It was further urged that the appellant is a habitual offender with acriminal antecedent, having been convicted in Case Crime No. 426/2008 under Section 2/3 of the Uttar Pradesh Gangster and Anti-Social Activities (prevention) Act, 1986 and Case Crime No. 629 of 2007 under Sections 2/3 of the U.P. Gangster Act. His criminal history justifies the Trial Court's observation regarding his dangerous propensity.
17. Learned A.G.A. has further contended that the Trial Court has also rightly observed that the killing of a jeweller in a crowded marketplace created an atmosphere of fear and insecurity among the business community. It was submitted that showing any undue leniency to such an offender would adversely undermine public confidence in the justice system. With regard to the sentence imposed, it was urged that although the Trial Court refrained from awarding the death penalty, it correctly sentenced the appellant to imprisonment for the remainder of his natural life, considering the gravity of the offence and its profound societal impact. The Jail Superintendent's letter dated 05.10.2025 was also relied upon to submit that the benefit of remission is not applicable in such cases.

18. The learned A.G.A. has heavily placed his reliance on the principles laid down by the Hon'ble Supreme Court in the case of *Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka*, reported in (2023) 9 SCC 817; wherein the Apex Court reaffirmed that the Constitutional Courts are empowered to impose a sentence of life imprisonment for a fixed term such as fourteen, thirty or more years, in cases involving heinous offences, particularly where undue leniency would erode public confidence in the justice system.
19. Lastly, learned A.G.A. has submitted that the findings of guilt recorded by the Trial Court are well-supported by cogent and reliable evidence, that the sentence imposed is lawful, justified, and proportionate, and that the present appeal therefore deserves to be dismissed, with the judgment of conviction and sentence passed by the Learned Trial Court being affirmed and upheld.

ANALYSIS AND FINDINGS

20. This Court has heard the learned Counsel for the parties at length and has carefully perused the entire material on record.
21. As per the F.I.R., the incident occurred at about 5:30 PM and the F.I.R. came to be lodged at about 6:25 PM on the same day *i.e* 29.02.2008. As per the version of the said F.I.R., the offence of murder was committed by fire-arms during attempted robbery by snatching of a bag containing jewellery and cash from the deceased by one of the assailant's and when the informant went to save the deceased, he was also attacked by knife, causing him injury by another assailant.
22. P.W.-1(Neeraj Kumar Soni), the informant and injured eyewitness, supporting the prosecution case has stated that on 29.02.2008 at about 5:30 PM, he was sitting in his jewellery shop. Since, it was time for closing the shop, his elder brother-Manoj Soni was leaving for home with jewellery and cash in his bag, when two motorcycle borne assailants, attempted to snatch

the said bag. He and his elder brother-Manoj started shouting, wherein persons from the neighborhood namely Narendra Verma, Suresh Gupta etc. immediately reached and challenged the assailants. On being challenged, one assailant fired upon Manoj Soni causing a fatal injury, hitting him on the left side of his back, due to which he fell on the floor. Thereafter, the informant tried to save his elder brother, however, he was also attacked by the other assailant with a knife with intention to kill. Manoj Soni was immediately taken to the Mohammadi Hospital, wherein he was declared dead. The people present at the crime-spot apprehended both the assailants along with firearms and knife, wherein one of the assailants disclosed his name as Sobran Lal and another Hari Om *alias* Bantu. One .315 bore pistol and one blank cartridge was recovered from Sobran Lal and one Knife and .315 bore pistol and one cartridge stuck in the barrel was recovered from Hari Om. The said P.W.-1 has also stated he had the complaint written by one Gaurav Pathak and lodged the same with the police station and got the Motorcycle recovered to the police from the crime-spot. The said witness has proved the *Tahrir* as '*Exhibit-Ka-1*'.

23. The ocular version of P.W.-1 (Neeraj Kumar Soni) is corroborated by P.W.-2 (Pankaj Soni), P.W.-3 (Saur Alam) and P.W.-4 (Narender Kumar Verma), who are independent shopkeepers from the neighbourhood and witnessed the occurrence.
24. P.W.-5 (Dr. S.U.P Sinha) medically examined P.W.-1 and proved the injury report '*Exhibit-Ka-5*' has stated in his examination-in-chief that he was posted at Primary Health Center, Mohmmaddi on 01.03.2008 and has examined the injured – Neeraj Kumar Soni and found the following injury on his body:

“(1) I/w of size 1 cm x 0.4 cm x muscle deep on (Lt) shoulder region, 3 cm medial to (Lt) Acromion process, margins are clean cut, bright scab present.

- (2) I/w of size 3 cm x 0.5 cm x muscle deep on dorsum of (Lt) hand, 6 cm below the (Lt) wrist joint, margins are clean cut, bright scab present.

Opinion- The above injuries (1) and (2) are simple in nature and are caused by some sharp-edged object. Duration is about 12 hours to 24 hours old.”

25. P.W.-6 (S.I. Vijay Singh) has proved the *Panchnama* as ‘*Exhibit-Ka-2*’ and other contemporaneous police papers prepared immediately after the incident and deposed that Manoj Soni (deceased) was killed around 5:30 PM in the evening on 29.02.2008. After lodging of the F.I.R., he along with the S.H.O.- Devi Dayal Singh and other police officer reached the crime-spot, where there was huge crowd. On the instructions of Devi Dayal Singh he prepared the *Panchama* and other police papers.
26. P.W.-7 (Devi Dayal Singh) is the Investigating Officer of the case and he has deposed that on the *Tehrir* of P.W.-1 (Neeraj Soni) a crime case under Section 302, 393, 307 I.P.C. was registered against the accused Sobran Lal and Hari Om *alias* Bantu and he went to the crime-spot and recorded the statement of P.W.-1 and got the *panchnama* prepared of the deceased. He got the site-plan made on the pointing out of the informant/P.W.-1 and prepared other police documents. He proved the *Panchnama* (*Exhibit-Ka-2*), Site-Plan (*Exhibit-Ka-6*), Recovery memo of the blood stained and plain earth from the crime-spot (*Exhibit Ka-4*), Recovery of fire-arms 315 bore Pistol, *khoka* cartridge, live cartridge, 315 bore pistol (*Exhibit Ka-3*), Charge-sheet (*Exhibit-Ka-7*), One live cartridge, one empty cartridge, pistol and knife, (*Exhibit-1 to 6*). Photos, sample seal, police forms 13 and 33, Letter CMO and R.I. (*Exhibit Ka-8*) and (*Exhibit Ka-13*), chik F.I.R. (*Exhibit Ka-14*) and G.D. (*Exhibit Ka-15*).
27. P.W.-8, H.C. SriRam Chaudhary, presented on behalf of the prosecution, has testified that the investigation of Case No.

64/2008 dated 29.02.2008 was handed over by Sub-Inspector P.K. Srivastava on 01.03.2008. Thereafter, this witness took over the investigation and recorded the statements of the witnesses. Prepared the map. The witness has proved the map *Exhibit Ka-16*, charge sheet *Exhibit Ka-17*, *Exhibit Ka-18*, *Exhibit Ka-19*.

28. P.W.-9, Ramayan Singh, presented on behalf of the prosecution, in his sworn statement, has proved Chik F.I.R. No. 64/2008 (*Exhibit Ka-20*) to be in his own writing and signature and photocopy of G.D. (*Exhibit Ka-21*) as secondary witness and prosecution recommendation (*Exhibit Ka-22*) has also been proved by the said witness.
29. The proximate time of death, as opined by the doctor (P.W.-10/ Dr. R.R. Agnihotri), was approximately half a day prior to the conduct of the post mortem examination. The inquest proceedings were conducted on 29.02.2008 and commenced at about 18:15 PM. In the relevant column of the inquest report describing the cause of death, it was recorded that the deceased had died due to fire-arm injury sustained by him. Upon completion of the inquest, at about 18:30 PM, the body was sent for post-mortem examination to ascertain the exact cause of death.
30. As per the Doctor, examined as P.W.-10, the post-mortem report was prepared in his own handwriting and bears his signature; the same was proved and marked as '*Exhibit-Ka-23*'. In the examination-in-chief, while describing the injuries sustained by the deceased, P.W.-10 opined that the cause of death was '*due to shock & hemorrhage as a result of ante mortem firearms injuries*'. In his cross-examination, he stated that the death might have occurred approximately half a day prior to the post-mortem examination, which was conducted at 6:30 AM in the morning of 01.03.2008. He also confirmed that the death of the deceased

might have occurred around 5:30 PM on the previous evening. He also stated that the bullet recovered from the deceased was not presently in his possession. He further deposed that there was no requirement of writing in the X-Report that the bullet was searched in the body of the deceased after conducting his X-Ray, nor was it necessary to exhibit that X-Ray plate.

31. This Court finds that among the witnesses of fact, P.W.-1 (Neeraj Kumar Soni), who is the real brother of the deceased, is an eyewitness to the incident. He is also an injured witness, having sustained injuries in the same occurrence. His injury report is exhibited *Ka-5* and stands duly proved by P.W.-5 (Dr. S.U.P. Sinha). Further, P.W.-1 is also the informant of the case and has explained that, owing to the injured sustained by him, the written complaint was scribed by one Gaurav Pathak at his instance. In his cross-examination, his testimony remained consistent and unshaken. Although an attempt was made to raise doubt relating to the *factum* of jewellery and money in the bag allegedly sought to be snatched by the convict from the deceased, however this Court finds such doubt to be immaterial, as the prosecution is required to establish not the incident of robbery but an attempt to robbery and death of the deceased-Manoj Soni. In any case, P.W.-2 (Pankaj Soni) in his cross-examination has very well explained that it was he who had lifted the bag containing the jewellery and cash from the crime-spot and took back home and subsequently, when the Investigating Officer sought for the said bag, jewellery and cash, he produced the same, which was thereafter released to him on Superdari.
32. Further, this Court cannot be oblivious to the law that the testimony of the injured witness generally carries significant evidentiary weight and is ordinarily entitled to a higher degree of credence, unless the deposition suffers from substantial discrepancies or contradiction. Upon a careful reading of the

testimony of P.W.-1, this Court does not find any such such material discrepancy. Therefore, the suspicion sought to be raised by the appellant regarding the genesis of the prosecution case is wholly unfounded. The Supreme Court in the case of ***Balu Sudam Khalde & Anr. V/s State of Maharashtra***, reported in ***2023 SCC Online SC 355***; has substantially delineated the treatment ought to be meted to the testimony by an injured eye-witness in the following words:

“26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

33. Further, the testimony of an injured eye witness is kept on a higher pedestal and is accorded a special status in law as injury itself guarantees presence and truthfulness, as held by the Hon'ble Apex Court in ***Abdul Sayeed vs. State of Madhya Pradesh***, reported in ***(2010) 10 SCC 254***; reproduced as follows:

"The law on the point can be summarized to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the

witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

34. In any case, we do not find any substantial discrepancies or contradictions in the deposition of the injured witness with the other ocular witnesses, therefore, this Court is not persuaded by the arguments of the learned counsel for the appellant that the deposition of the injured witness ought not to be believable. Minor discrepancies, if any, are natural and do not affect the core of the prosecution case. Thus this Court finds no reason to doubt P.W.-1.
35. The second ground for not believing and doubting the testimony of the P.W.-1 as argued by the learned Counsel for the Appellant is that the deceased is the real brother of the P.W.-1/informant and he is an interested witness and as such his testimony according to the learned Counsel must be examined with certain circumspection. No doubt, the informant/P.W.-1 is the real brother of the deceased-Manoj Soni, however he is also an injured witness, whose testimony cannot be lightly discarded. The contention that PW-1 is an "interested witness" is misconceived. Further, there is a marked difference between interested witness and related witness as a related witness is not necessarily an interested witness. The law on this aspect is settled by the Hon'ble Supreme Court in ***Md. Rojali Ali v. The State of Assam*** reported in ***AIR 2019 SC 1128***; has held that:

"10. As regards the contention that all the eye-witnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an 'interested' witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki, (1981) 2 SCC 752; Amit v. State of Uttar Pradesh, (2012) 4 SCC 107;

and Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298). Recently, this difference was reiterated in Ganapathi v. State of Tamil Nadu, (2018) 5 SCC 549, in the following terms, by referring to the three-Judge bench decision in State of Rajasthan v. Kalki (supra):

"14. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be "interested" ..."

36. It has to be understood that in criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural, like in the present case. The presence of PW-1, being the younger brother of the deceased and co-owner of the jewellery shop is natural. It was also natural for the deceased to take some jewellery and cash back to his home for safety reasons as the shop used to be closed between 5:30-6 PM in the evening. The timing of the incidence is also 5:30 PM. Nothing incongruence has come on record to the effect that the shop did not belonged to the deceased or the informant or that the closing time of the shop was not 5:30- 6:00 PM or that the shop was closed that day or it was not a shop of jewellery at all. Infact, it is the contrary as not only the site-plan (*Exhibit-Ka-6*) has been proved, but the testimony of the other eye-witness, who are owners of neighboring shops namely PW-2 (Pankaj Soni), PW-3 (Saur Alam) and PW-4 (Narender Kumar Verma) corroborated the testimony of PW-1. In any case, the evidence of such a witness cannot automatically be discarded by labelling the witness as interested. There is no evidence of prior enmity or motive for false implication. Indeed, one of the earliest statements with respect to 'interested witnesses' in criminal cases was made by the Supreme Court in the case of ***Dalip Singh v. State of Punjab*** reported in ***1954 SCR 145***; wherein the Hon'ble Supreme Court has observed:

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

37. In view of the consistent ocular evidence, corroborated by medical and documentary evidence and in light of the above and on a minute and purposeful reading of their testimony, this court finds that P.W.-1/informant (Neeraj Kumar Soni), P.W.-2 (Pankaj Soni), P.W.-3 (Saur Alam) and P.W.-4 (Narender Kumar Verma), are natural, reliable and trustworthy witnesses and they cannot be termed as interested witnesses, nor can their testimonies be discarded merely on the ground of relationship.
38. The next contention advanced by the learned Counsel on behalf of the appellant is that the prosecution failed to establish any motive for the crime, on the part of the appellant. In this regard it has been vehemently argued that since there was an absence of motive, the chain of events could not be completed and as such the appellant ought to have been given the benefit of doubt. This argument is devoid of merit. First and foremost, it has to be understood that the present case rests on direct 'ocular evidence' and not 'circumstantial evidence'. It is well settled that while motive may assume significance in cases based on circumstantial evidence, its absence is not fatal where the prosecution has led reliable and trustworthy eyewitness testimony. Motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is giving this one factor an importance which is not due. Motive operates in the realm of the accused's mind and is often difficult to establish and can seldom be fathomed with any degree of accuracy. Time and again the Courts have held that motive plays an additional link in the chain of circumstances, however, presently the case is absolutely different as it is based

on the account of 'eye witness'. In respect of non-establishment of motive, it has been held by the Hon'ble Supreme Court that motive, is not a *sine qua non*, when there is trustworthy direct evidence regarding commission of a crime. Therefore, failure to establish motive does not dislodge the prosecution case. It is relevant to point out the following paragraphs from the judgment in the case of ***Bipin Kumar Mondal v. State of West Bengal*** reported in **(2010) 12 SCC 91**, which gives an insight to the said understanding of this Court:-

"19. *It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide Hari Shankar v. State of U.P. (1996) 9 SCC 40; Bikau Pandey and Ors. v. State of Bihar (2003) 12 SCC 616; and Abu Thakir and Ors. v. State of Tamil Nadu, (2010) 5 SCC 91).*

20. *In a case relating to circumstantial evidence, motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is giving this one factor an importance which is not due. Motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy. (Vide Ujagar Singh v. State of Punjab, (2007) 13 SCC 90)."*

39. Thus, the submission advanced by the learned Counsel for the appellant that the prosecution has failed to establish the motive for the commission of the murder is devoid of merit. It is a settled principle of criminal jurisprudence that motive is not an essential ingredient of the offence of murder, as grievous crimes are often committed on trivial or sudden considerations. Evidence relating to motive, where available, is generally of a subsidiary nature. The mere existence or non-existence of motive cannot, by itself, either establish or negate the guilt of the accused. The mere fact that the accused had a motive to cause the death of the deceased is not a fact which would dispense with the proof of points that the accused had got a suitable immediate

occasion for committing the crime and of actually committing it. Where there is clear, cogent, and reliable evidence demonstrating that the accused had the immediate opportunity and actually committed the offence, the absence of proof of motive becomes immaterial. The proof of motive is not necessary to sustain a conviction on a murder charge when there is clear evidence and where the prosecution has proved beyond reasonable doubt that the deceased was done to death by the accused in broad daylight and in full public gaze. The failure to prove the motive does not in any manner weaken the prosecution case or vitiate the conviction. In other words, when the facts establishing the charge are clear it is immaterial that the motive has not been proved.

40. The next ground raised by the learned Counsel for the appellant is relating to the mention of motorcycle No. UP25U3803 in the F.I.R. and the subsequent finding during investigation that the said vehicle was not connected with the appellant. In this regard, it is apposite to first appreciate the legal concept and scope of an F.I.R. As a matter of fact, that First Information Report (F.I.R.) is neither defined in the Code of Criminal Procedure, 1973 nor is it expressly used therein, *albeit* Section 154 of the Cr.P.C. refers to the information relating to the commission of a cognizable offence to be given to the officer-in-charge of a police station, which, if given orally, it mandates to be reduced in writing. At this preliminary stage of providing information of a cognizable offence, the law merely mandates only the furnishing of information regarding commission of a cognizable offence. It does not require the informant to disclose the name of the accused or to even to be stated by any eye-witness or exhaustive narration of all facts. Any person can give such an information and the F.I.R. need not be an encyclopedia disclosing all facts and details relating to the offence in precision.

41. It is well settled that the information furnished in the F.I.R. is always subject to verification by the Police and it is the police or the Investigating Officer, who would find out those details during the course of investigation and collect necessary evidence, ascertain correct facts and identify the persons involved. In short, F.I.R. merely sets in motion the investigating machinery so as to enable the police to investigate the offence and take action in accordance with law.
42. Viewed in this backdrop, the mention of wrong number of the motorcycle or the number so provided by the informant in the F.I.R. subsequently found to be unrelated to the accused are meaningless and does not, by itself, affect the veracity of the prosecution case. At best, such a discrepancy may cast a doubt on the veracity on the informant account and can be used to corroborate or contradict the informant's evidence in the Court, but it cannot be elevated to a ground to discard the otherwise cogent and reliable prosecution evidence.
43. In the present case, this Court finds that the *factum* of motorcycle at the crime-spot has been consistently testified by P.W.-1, P.W.-2, P.W.-3, P.W.-4 and P.W.-7 (Investigating Officer). More importantly, the presence of the appellant at the scene of the crime and the use of fire-arms cannot be disputed and stands firmly established through the consistent and categorical testimony of P.W.-1, P.W.-2, P.W.-3 and P.W.-4, who all are eye-witnesses of the incident. Further, P.W.-7 in his testimony has deposed that he has arrested the appellant from the crime-spot and the site-plan has been prepared on his pointing. He has also stated that a motorcycle used in the commission of the crime has been recovered at the crime spot.
44. In these circumstances, there is not a shred of doubt about the presence of the Motorcycle of the appellant at the crime-spot. Whether the motorcycle belonged to the appellant, or whether

the exact registration number mentioned in the F.I.R. was accurate, is wholly meaningless and irrelevant to the core issue involved. Such a discrepancy does not in any manner dilute the prosecution case or effect the culpability of the appellant, as it does not affect the propensity of crime committed by the Appellant. An F.I.R. is not expected to be an encyclopedia of all facts. Its primary object is to set the criminal law in motion. Any discrepancy in the description of a vehicle does not affect the prosecution case, particularly when the presence of the appellant at the scene, along with firearms, stands proved by multiple eyewitnesses and the Investigating Office.

45. The non-mentioning of the name of the appellant as an accused in the inquest proceedings is also immaterial as the *panchnama*/Inquest is relating to the status of the deceased body and the apparent cause of death and not a compendium of facts prior or post lodging of a F.I.R. or to determine the identity of the assailant. As far as the inconsistency in the statement of P.W.-10, Doctor and the Investigating Officer relating to the clothes being worn by the deceased is concerned are normal errors of memory due to lapse of time or mental disposition of a witness and do not affect the core of the prosecution case. Such minor variations are natural and have been held to be insignificant by this Court recently in ***Jitendra Pal Vs State of Uttar Pradesh***, reported as **2025:AHC-LKO:79401-DB**; had an occasion to deal with minor discrepancy in the statement of witnesses recorded in the Court after a periodic lapse of time of occurrence of incident. This Court has held in paragraph no.17 as follows:

“17. No doubt, discrepancies or inconsistencies in prosecution evidence is a short fall from which no criminal case is free. However, this court cannot be oblivious to the fact that while considering the deposition of a witness, this Court has to take into consideration the process in which the facts are perceived and testified by a witness. Time and again, it has been held in a catena of judgments that when an incident occurs, a witness perceives facts according to his intelligence and experience in life and

subsequently when he or she is called upon to recollect those facts, after a long gap of time, his or her memory may help or deter him/her in recollection of those facts and he/she may flounder on the precise time, place and sequence of events. This human process brings discrepancy in the deposition of a witness, which may be termed as normal. The testimony of PW-4 as far as the timing relating to having seen the deceased and the appellant together on the fateful day at 6 PM in the evening is an outcome of such a discrepancy. However, when this discrepancy is weighed and marshalled along with other evidence, which has come on record, it can be safely deduced that both the deceased and the appellant were last seen together on the said fateful day. Further, it cannot be discounted that this kind of discrepancies in time, especially in a village, may occur on account of errors of observation of facts, normal errors of memory due to lapse of time or mental disposition of a witness. These discrepancies are those which are normal and expected of a normal person and cannot be termed as any material discrepancies, which may affect the substratum of the story itself. When the discrepancies, highlighted by the learned Counsel for the appellant are being considered, whether it is relating to the time when PW-4 last saw both the deceased and the appellant together on a motor-cycle or the time-line given by these witness, this court is of the opinion that these are normal and not material discrepancies. Thus, it is concluded that the inconsistencies in the prosecution case, as far as the presence of the appellant during the course of day on the date of incident on 09.03.2015 is immaterial and do not have any impact on the facts, deposed by the witnesses. Thus, the presence of the appellant at Sheetal Kheda on 09.03.2015 stands proved by a co-joint reading of the evidence of PW-2, PW-3 and PW-4 and even the last seen together evidence of PW-4 could not be impeached by the defense, although the said witness was subjected to intense cross-examination.”

(Emphasis Supplied)

46. In view of the above, the inconsistency in the statement of P.W.-1-Doctor and the Investigating Officer relating to the clothes on the body of the deceased at the time of investigation are normal and can be very much expected by a normal person and cannot be termed as any material discrepancies, so as to be failed to the prosecution case.
47. As far as the argument of learned Counsel for the appellant relating to no evidence relating to recovery of bag containing jewellery and cash is concerned is equally untenable. P.W.-2, who is also an eye-witness, who has clearly stated in his cross-examination that he was present at the crime-spot at the time of incident and saw the said bag lying on the ground and some items scattered therein, which he collected and put the same in

the said bag and kept it in his house. He also withstood the extensive cross-examination in stating that these facts were told to the Investigating Officer and even the said Officer, when requisitioned the said bag, it was him, who had produced the said bag before the Investigating Officer and subsequently the said bag was returned to him on *supurdari*. He also stated that the bag was lying about one or one and half feet from the shop. His testimony remained unshaken in cross-examination and sufficiently explains the alleged discrepancy. Thus, as to the suspicion raised by the learned Counsel for the appellant relating to recovery of bag, the same is misconceived and does not hold any water in view of the deposition, which has come on record.

48. The learned Counsel has also raised doubt relating to the bullet, which was recovered from the body, but the same was never produced before the Court, nor any ballistic, forensic, or scientific evidence has been produced to prove the said bullets having been fired from the pistol of the appellant, especially when there were two country-made pistols shown during Trial. First and foremost, it has to be understood that the present case set-up by the prosecution is on the basis of ocular witnesses as the gun-shot was made in public gaze. No doubt the ballistic report or the scientific report plays a very crucial role in pairing and/or patching the bullet with the gun, especially in a case of circumstantial evidence, however in a case of ocular witness, the significance fades to a large extent. It has come on record that the gun-shot was made by the appellant while snatching a bag from the deceased, wherein an alarm was raised by him and PW-1 and various people from the nearby shops rushed to the spot. Thus, it has come on evidence that not only P.W.-1 *i.e.* injured witness, but even P.W.-3 (Saur Alam) and P.W.-4 (Narender Kumar Verma) have witnessed the said incidence of shooting of the deceased by the appellant. Further, it has come on record that it was the public at large, who had apprehended

the appellant and other co-accused (Hari Om) along with the crime-weapon *i.e.* country-made pistol and knife. Therefore, the non-production or absence of the ballistic or forensic report linking the bullets to the weapon used by the appellant is not fatal in the present case. The prosecution case is founded on direct eyewitness account of a shooting in broad daylight, corroborated by medical evidence. In such cases, non-production of ballistic evidence does not make any difference or weaken the prosecution story, particularly when the accused was apprehended at the spot along with firearms immediately after the incident.

49. Learned Counsel for the appellant has vehemently argued that the appellant, in his statement under Section 313 Cr.P.C. has stated that he had also been illegally detained for three days which according to her creates a cloud of suspicion on the fairness of the investigation. No doubt the said statement has been recorded by the appellant in his statement under Section 313 Cr.P.C. however, this Court finds that the learned Trial Court has extensively dealt with that said aspect in the impugned judgment and held that although the appellant were provided adequate opportunity to prove the said aspect, however, they failed to lead any evidence on the said point and the defence story although had been suggested to P.W.-1 in his cross-examination, however, this Court finds that the said witness has not only denied the said suggestion but has also kept the prosecution version intact. Thus, the learned Trial Court in view of the Section 114(g) of the Indian Evidence Act, has rightly drawn an adverse inference against the appellant relating to withholding of the said evidence, if any, by the Appellant.
50. Having heard learned Counsels for the parties and perused the record, as regard to the place of occurrence of the incident and the manner in which the incident had occurred, this Court has no hesitation in holding that they stand conclusively proved from

the consistent testimonies of the prosecution witnesses and other material circumstances and supporting documentary evidence on record. Further, the presence of the injured witness(P.W.-1) and independent eye-witnesses (P.W.-3 and P.W.-4) at the spot is natural and cannot be doubted. Moreover, P.W.-4 has also proved the Inquest report (*Exhibit- Ka-2*) and the recovery memo of country-made pistol and bullets (*Exhibit-Ka-3*). It is proved that the written report (*Exhibit- ka-14*) has been filed by narrating the occurrence, on the dictation of the injured eye-witness (P.W.-1), after the police reached the spot of the occurrence. The occurrence of the incident resulting in the homicidal death of deceased Manoj Soni at the door-step of his shop is fully established and proved beyond doubt. It is also proved that the appellant herein namely Sobran Lal Yadav is the perpetrator of the crime and the death was caused in furtherance to cause robbery by snatching a bag of jewellery and cash from the deceased-Manoj Soni. The written report was lodged promptly on the dictation of P.W.-1 after the police reached the spot. The presence of the appellant at the crime-spot and his role in the incident has not been denied, although he had a different version. All the suggestions given by the defence that it was an accident, are found without any substance and rightly rejected. The defence failed to prove any animosity on record, to show as to why these eye-witness could had deposed against him. After minutely going through the deposition of the witness, this Court is of the view that the gravamen of the case, brought over the record by the witnesses, remained unaffected. The minor inconsistencies in the prosecution case are immaterial and do not have any impact on the facts, deposed by the witnesses. Thus, the culpability of the appellant stands proved beyond reasonable doubt.

51. The next line of argument poised by the learned Counsel for the appellant is in the nature of an alternative argument, wherein she

had tried to buttress that even assuming the prosecution's case to be true, the incident occurred in a sudden situation, and at best, a single shot was fired out of fear due to a gathering crowd and as such according to her, since there is no evidence of premeditation, the present case would, at its highest, fall under Section 304 Part I or II of the I.P.C. Reliance has been placed on the judgment of *Atul Thakur v. State of Himachal Pradesh*, reported in (2018) 2 SCC 496; *Arvind Sharma Vs State of U.P.*, reported in 2017 (3) JIC 787 All; *Kusha Laxman Waghmare Vs. State of Maharashtra* reported in (2015) 1 SCC (Cri) 100; *State of Andhra Pradesh Vs Rayavarpu Punnayya*, reported in AIR 1997 SC 45; *Jagroop Singh V/s State of Haryana*, reported in AIR 1981 SC 1552; and *Tukaram & Others V/s State of Maharashtra*, reported in (2011) 4 SCC 250; to support her contention that the act occurred in a sudden situation and without intention to kill. Reliance has also been placed upon the judgment of this Court, in the case of *Rahul vs. State of U.P.*, reported in *Neutral Citation No.- 2023:AHC-LKO;69130-DB*; on the similar issue.

52. Before, this Court dwells into the aforesaid proposition to determine the culpability of the appellant under Section 302 I.P.C. or 304 I.P.C., it would be pertinent to have a quick glance on the legal principles governing the distinction between the provisions under Sections 302 of the Indian Penal Code on the one hand and culpable homicide not amounting to murder Section 304 Part I and Part II of the Code, on the other.
53. Section 299 and 300 of the Indian Penal Code which deals with the definition of culpable homicide and murder respectively, *inter-alia* states:

299. Culpable homicide. —

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

300. Murder. —

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly)— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

(Thirdly)— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

(Fourthly)— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1. — When culpable homicide is not murder. — Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos: —

(First)— That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly)— That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly)— That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation. — *Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.*

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills. Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2. — Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3. — Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty

as such public servant and without ill-will towards the person whose death is caused.

Exception 4. — Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation. — *It is immaterial in such cases which party offers the provocation or commits the first assault.*

Exception 5. — Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

54. Therefore, in terms of Section 299, 'culpable homicide' is described as an act of causing death: - (i) with the intention of causing death, or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. The concepts of intention and knowledge denote distinct mental states. As is clear from the reading of this provision, the first part of it emphasizes on the expression 'intention' while the latter upon 'knowledge'. Simply stating, 'Intention' denotes about the purpose behind an act (volition), whereas 'Knowledge' signifies about the awareness of the act's likely to effect (Cognition). To simply put, intention relates to purposeful volition, whereas knowledge refers to awareness of the likely consequences. Recently, Hon'ble Supreme Court in ***Nand Kumar @ Nandu Manilal Mudaliar V/s State of Gujarat***, reported in **2025 SCC OnLine SC 2374**; has explained the fine distinction between 'intention' and 'knowledge' in criminal law to mean that in 'intention' the person wanted to cause death, whereas 'knowledge' means the person was aware that his act could likely cause death, even if he did not desire it.

55. As has been noted in various precedents, both these words denote positive mental attitudes of different degrees. The mental

element in ‘culpable homicide’, *i.e.* the mental attitude towards the consequences of conduct is one of intention and knowledge. Once death is caused in any of the above three stated manners, with either intention or knowledge as envisaged under Section 299, the offence amounts to ‘culpable homicide’.

56. Section 300, however, deals with ‘murder’. Though there is no clear definition of ‘murder’ in Section 300 of the Code but as has been held by the Apex Court and reiterated in ***Rampal Singh vs. State of Uttar Pradesh***, reported in **(2012) 8 SCC 289**; ‘culpable homicide’ is the *genus* and ‘murder’ is its *specie* and all ‘murders’ are ‘culpable homicides’ but all ‘culpable homicides’ are not ‘murder’.
57. Dealing with a matter, wherein the question for consideration was whether the offence established by the prosecution against the appellant therein was ‘murder’ or ‘culpable homicide not amounting to murder’, the Apex Court in ***Vineet Kumar Chauhan vs. State of Uttar Pradesh***, reported in **(2007) 14 SCC 660**; after considering its various earlier decisions held that, whenever a Court is confronted with the question whether the offence is ‘murder’ (Punishable under Section 302 I.P.C.) or ‘culpable homicide not amounting to murder’ (Punishable under Section 304 Part I or Part II); on the facts of a case, it will be convenient for it to approach the problem in three stages:-

- (i) the question to be considered, at the first stage, would be whether the accused has done an act by doing which he has caused the death of another;

- (ii) proof of such connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to ‘culpable homicide’ as defined in Section 299. If the answer to this question is *prima facie* found in the

affirmative, the stage for considering the operation of Section 300 I.P.C. is reached;

(iii) the third stage is to determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of ‘murder’ contained in Section 300. If the answer is in the negative the offence would be ‘culpable homicide not amounting to murder’, punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable.

58. Further, if this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be ‘culpable homicide not amounting to murder’, punishable under the first part of Section 304 I.P.C. It was, however, clarified therein that these were only the broad guidelines to facilitate the task of the Court and not cast iron imperative.
59. In guidance to the aforesaid judgment passed by the Hon’ble Supreme Court and principle laid thereby, in the facts of the present case, the first step would be to examine as to whether the appellant had committed an offence punishable under the substantive provisions of Section 300 of the Code, *i.e.* ‘murder’.
60. In treading on the path to find out as to whether the act of the appellant by which the death is caused of the deceased, would fall in any of the four Clauses of Section 300 I.P.C., it may be noted that admittedly both the accused person had come to commit the offence of robbery of the bag containing jewellery and cash from the deceased person. The timing of the occurrence is of considerable significance, as apparently it seems both the assailants were aware of the routine of the deceased, Manoj Soni, particularly the time at which he would collect the jewellery and cash in his bag to take back to his home after

closing his shop. Therefore, the choice of time for executing the robbery is significant and points towards prior planning.

61. The categorical statement of injured eyewitness, P.W.-1, duly corroborated by the other eye-witnesses (P.W.-3 and P.W.-4), establishes that both the appellant and the co-accused attempted to snatch the bag containing jewellery and cash from the deceased. Upon his resistance and scream, which made P.W.-1 to rush at the spot along with P.W.-2, P.W.-3 and P.W.-4, the appellant took out a .315 bore country-made pistol and fired a shot at the deceased, inflicting a fatal injury. Interestingly, the co-accused was also armed with a loaded .315 bore country-made pistol; however, he did not discharge his firearm and merely assaulted P.W.-1 with a knife, causing injuries but not death.
62. The very act of carrying a firearm, coupled with the manner of its use, unmistakably indicates the 'intention' of the appellant to commit the offence of murder and from the overt act of firing at the deceased clearly demonstrates that that the said pistol was not taken by him for intimidating or putting the deceased on threat of bodily injury for committing robbery but was taken by him to cause such bodily injury, as was likely to result in death. The said fact can be understood from a different angle also, in as much as even the co-accused (Hari Om) was carrying .315 bore country-made pistol, however even if he was put on some kind of fear/agony by P.W.-1, he did not fire any gunshot but attacked P.W.-1 with a knife. Thus, the argument that the gun was carried solely for intimidating and was not fired with any premeditated mind is a fallacy and wholly untenable. On a holistic appraisal of the evidence on record, this Court has no hesitation in mind in holding that the Appellant acted with a premeditated intention to commit murder of the deceased, a conclusion that stands firmly supported by the consistent and credible testimony of the various prosecution witnesses brought on record.

63. As per the various suggestive question put by the appellant during the cross examination of P.W.-1, which although had been denied by the said witness, an alternative narrative was sought to be projected, that the co-accused (Hari Om) was in need of some money and the deceased Manoj Soni had lent some money against some jewellery. It was suggested that although the said Hari Om had paid the entire money, however, the deceased-Manoj Soni did not return the pledged jewellery. It was suggested that both of the accused, including the appellant herein, actually had gone to the shop of deceased merely to request the return of the said jewellery.
64. First and foremost, it is to be noted that the said suggestion has been denied by P.W.-1. More importantly, the appellant did not lead any defence evidence to prove the said narrative, which resulted in drawing an adverse inference in terms of Section 114(g) of the Indian Evidence Act against the Appellant. Even otherwise, the said narrative sought to be advanced by the Appellant, instead of aiding his case, reinforces the prosecution version and comes very handy in determining the mental status of the Appellant. This Court is rather amused as to how on earth, when a person would go for requesting to return the jewellery, would go along with two persons and more importantly with two pistol and live bullets. On top of it, if at all, we give the concession that the pistol was carried to threaten the deceased, then it would logically have been carried by Hari Om, who, according to the appellant's own narrative, was the affected party, and not by the appellant herein.
65. The said inference is further fortified by the conduct of Hari Om, who, despite being in possession of a loaded firearm, as evidenced by the recovery memo (*Exhibit ka-3*), did not discharge it and instead attacked the injured witness-PW-1 with his knife. In stark contrast, the Appellant not only carried the pistol but also fired on the deceased causing fatal injury. The

facts of the case clearly establish and prove that the act was neither the result of sudden provocation nor a sudden fight, particularly in the absence of any evidence showing injuries sustained by the Appellant or the co-accused. Consequently, the defence narrative stands wholly discredited and, on the contrary, lends further support to the conclusion that the appellant acted with a deliberate, lethal and culpable intent.

66. The statements of the eye-witnesses are consistent to the effect that when the deceased tried to resist the robbery and was shot from behind near the left shoulder, by the appellant causing the death of the deceased. It is important to note that the kind of weapon being carried *i.e.* the pistol, the place of the body at which the deceased was shot, the position *i.e.* back portion, which meant the deceased might have started running away after seeing the pistol (as he was shot at the back), all these events/points primarily towards a strong indication that the death was caused with a premeditated mind by the appellant, who had come prepared to cause death to the deceased. There was neither any provocation by the deceased as he was resisting the robbery and when showed the pistol, started running away to save himself. Further, the nature of the weapon, the part of the body targeted, and the fact that the deceased was shot while attempting to escape, clearly negate any plea of sudden fight, provocation, or right of private defence. These circumstances unmistakably point to premeditation.
67. In the above circumstances, the act of the appellant of 'culpable homicide' causing the death of the deceased falls under the definition of 'murder', illustration (a), which says, "*A shoots Z with the intention of killing him. Z dies in consequence. A commits murder*". Here, A is the appellant and Z is the deceased-Manoj Soni.

68. This Court, thus, reaches at the answer to the first question that the appellant had committed an offence within the meaning of Section 300 I.P.C., *i.e.*, ‘culpable homicide amounting to murder’, which is punishable under Section 302 of the Code. The possession of the pistol and its subsequent firing, when committing the offence of robbery, was with a premeditated mind.
69. In view of the above discussion, we do not agree with the contentions of the learned Counsel for the appellant that the offence committed by the appellant would fall in the First or Second part of Section 304 I.P.C. and not under Section 302 I.P.C. Having held that the appellant is guilty of the offence under Section 302 I.P.C., we **uphold** the conviction as per the impugned judgment passed by the Learned Trial Court. However, the next question arises as to, whether this Court can reduce the appellant’s sentence and if so, to what extent, as urged by the learned Counsel for the appellant, keeping in view the prayer of leniency in view of the period of incarceration of more than 17 years and the evidence brought on record.
70. This Court in the aforesaid aspect, recently had an opportunity to deal with such a situation, although for an offence under Section 304-B I.P.C. in the case of ***Paras Nath Sahu and Another Vs. State of U.P.*** reported as ***2025:AHC-LKO:83391-DB***; wherein the appellant in that case was awarded with life imprisonment. This Court, while discussing the law on the subject has held herein under:

*“42. The Constitutional Bench of the Hon’ble Supreme Court, in the case of **Union of India v. V. Sriharan**, reported in (2016) 7 SCC 1; was dealing with on the issue, as to whether imprisonment for life in terms of Section 53 read with Section 45 of the I.P.C. means imprisonment for the rest of the life of the convict. The Constitutional Bench after referring to the various precedents, including **Swamy Shraddananda (2) v. State of Karnataka**, reported in (2008) 13 SCC 767; has answered the same in paragraph nos. 104 and 105 of the **V. Sriharan (Supra)**, judgment which is quoted in verbatim herein below:*

"104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."

(emphasis added)

"105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court."

(emphasis added)

43. Furthermore, the Hon'ble Supreme Court in the case of **Shiva Kumar v. State of Karnataka**, reported in (2023) 9 SCC 817; after considering both of the aforementioned judgments of **V. Sriharan (Supra)** and **Swamy Shraddhananda (2) (Supra)**; in paragraph no. 14, has held that:

"14. Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the constitutional courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by "secondly" in Section 53IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433-A Cr.P.C."

(emphasis added)

- 71.** As far as the present case is concerned, considering the aforesaid proposition of law and the overall facts and circumstances, keeping in view the evidence brought on record, by virtue of which the appellant was convicted, we in our considered view

need to weigh a balance between the culpability of the convict on the basis of evidence collected and brought on record on the one hand with the quantum of punishment being inflicted due to the said culpability. No doubt, the crime committed is one of the most heinous crime, the offence is grave and has serious societal impact, having been committed in a busy marketplace, instilling fear among shopkeepers and disturbing public order. Crimes of this nature strike at the foundation of civilized society and ordinarily does not calls for any leniency. However, this Court needs to strike a chord of justice to both the society at large by setting an example and the reformatory right of the individual convict and his apparent responsibilities.

72. This Court finds that, it has come on record that the appellant had fired the gunshot on the shopkeeper in the evening, when most of the shops were open and doing business. However, the gunshot not only put an end to the life of the deceased –Manoj Soni, but also forced other shop-keepers to close their shutter, not because as a matter of protest, but due to the terror and fear, which is not good for the progress of the business or the society at large. Business thrives on peace and safety. If the very safety is under risk, when anybody can come and shoot a gullible shopkeeper or commit robbery or snatch any bag, the peace of the area is bound to be jeopardized and people would be forced to live in a fear of terror. In any case, the said act cannot be accepted in a civilized society.
73. Notwithstanding the above, this Court finds that although the Appellant has been awarded the punishment for natural life imprisonment, however no reason has been given by the learned trial Court for taking such a harsh and drastic step. Moreover, we find that the punishment for natural life ordinary means imprisonment for the entirety of person's life without any remission etc, which is not in commensurate to the recent judgment of the Hon'ble Supreme Court in the case of *Kiran Vs.*

State of Karnataka reported as **2025 INSC 1453**; wherein their Lordships held that “the power of alternate sentencing to cover the hiatus between 14 years and death cannot be applied by the Sessions Court. Hence, the sentence of life imprisonment cannot be directed to be till the end of natural life, by the Sessions Court which direction would be in conflict with the provision of the Cr.P.C”.

74. Keeping in view the overall facts and circumstances of the present case, this Court balancing the gravity of the offence with the principles of proportionality, reformation, and justice and need of the society to live in a peaceful, safe and congenial environment with chance of reformation and integrating the appellant both into the society, this Court is of the considered view that justice would be met, if the appellant is awarded a fixed term of imprisonment in the present facts and circumstances of the case. Accordingly, while maintaining the conviction under Section 302 I.P.C., the maximum sentence of life awarded to the appellant- **Sobran Lal** is reduced to a fixed term of 18 (Eighteen years) Rigorous Imprisonment, without any remission. However, the fine under Section 302 I.P.C. and the punishment and fine under Section 307, 393 of the I.P.C. and under Section 3\25 Arms Act is not being disturbed and are affirmed. The appeal is thus partly allowed to the modification of sentence only and thus being *dismissed*, to that extent.
75. Consequently, the present Appeal of **Sobran Lal** is *partly allowed*. While the conviction of the appellant is affirmed, the sentence of imprisonment for remainder of natural life awarded under Section 302 I.P.C. is modified and being converted to a fixed term of Eighteen Years Rigorous Imprisonment, without any remission, along with the fine as imposed by the learned Trial Court and stipulated in the impugned judgment of conviction and sentence dated 04.08.2012.

76. Having said so, it is directed that the appellant- **Sobran Lal** shall be released only after undergoing the aforesaid sentence of punishment of 18 years, Rigorous Imprisonment, without any remission, under the Trials being (i) Sessions Trial No. 854 of 2008 arising out of Case Crime No. 201 of 2008 (*State V/s Hari Om alias Bantu and Another*) and (ii) Sessions Trial No. 855 of 2008 arising out of Case Crime No. 203 of 2008 (*State V/s Sobran Lal*). The Jail Authorities are accordingly directed to compute the period of custody, extending to the appellant the benefit of Section 427 and 428 Cr.P.C. in accordance with law.
77. There shall be no order as to cost(s).

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

January 30, 2026

Anuj Singh