



2026:AHC:38535-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1279 of 1987

Jaggu Kol and another

.....Appellant(s)

Versus

State of U.P

.....Respondent(s)

Counsel for Appellant(s)	: Ashish Kumar, Rajesh Kumar Vishwakarma, S.p. Singh
Counsel for Respondent(s)	: A.G.A.

Court No. - 48

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

Per: Hon'ble Chandra Dhari Singh, J.

1. The instant Criminal Appeal has been preferred by the accused-appellants- Jaggu Kol and Shankar against a judgment and order dated 31.03.1987 passed by Additional Sessions Judge, Mirzapur in Sessions Trial No. 251 of 1986 arising out of Case Crime No. 151 of 1986, under Section 302 I.P.C., Police Station Lalganj, District Mirzapur, convicting and sentencing the appellants as under:-

Accused-appellant Jaggu Kol

(a) Imprisonment for life for the offence under Section 302 read with 34 I.P.C.

(b) Rigorous imprisonment of five years' and a fine of Rs. 1,000/- for the offence under Section 394 I.P.C. and in default of payment of fine, he shall further undergo for rigorous imprisonment for a period of one year.

Accused-appellant Shankar @ Sheo Shankar

(a) Imprisonment for life for the offence under Section 302 I.P.C.

(b) Rigorous imprisonment for a period of five years' and a fine of Rs. 1,000/- for the offence under Section 394 I.P.C. and in default of payment of fine, he shall further undergo for rigorous imprisonment for a period of one year.

However, all the sentences awarded to both the appellants have been directed to run concurrently.

Brief Facts

2. In nutshell, the case of the prosecution as set up in the first information report is that a written report was filed by Kanhaiya Lal Kol son of Lalai Kol, resident of Village Godar Kala, Police Station Lalganj, District Mirzapur stating *inter-alia* that on 07.08.1986 he was returning home via road going from Duwar Kalan to Dadri. As soon as he reached the eastern road of his village at about 04:30 P.M., he saw that three persons namely Radhe Kol, Jaggu Kol and Shankar Kol were standing and talking among themselves. Thereafter, he proceeded to north of the

Dhesur tree situated on the western side of the road. After that he took the footpath (pakdandi) and proceeded towards his village. As soon as he reached the eastern side near the pond, he heard a sound of firing. He immediately returned back and saw that Jaggu Kol and Shankar Kol have shot the injured Radhe Kol near the eastern side of the road. On hearing the sound of firing, Premlal, Chhotkau Kurmi and Ludhar Kol reached at the spot and they saw that Jaggu Kol and Shankar Kol were dragging Radhe Kol (who was in an injured condition). Seeing them, the accused persons left Radhe Kol near the bush and ran away towards the north side of the forest. When they approached to Radhe Kol, they saw that he had a gunshot wound on his left shoulder and was bleeding profusely. He groaned, hiccuped and died. The aforesaid written report was marked Ext.Ka.1.

3. On the basis of aforesaid written report filed by Kanhaiya Lal Kol (hereinafter referred to as 'informant'), the First Information Report was lodged at Case Crime No. 151 of 1986, under Section 302 I.P.C., Police Station Lalganj, District Mirzapur, which was marked as Ext.Ka.9. The said information has been endorsed in G.D. vide report no. 5 by Constable Moharir Chandrika Sharma, which was marked as Ext.Ka.10.

4. After registration of the F.I.R., the law set into motion and investigation of the case was entrusted to S.H.O. Rampratap Arya

(PW-6). He in his deposition has stated that on 08.08.1986, he was posted as Station House Officer at Police Station Lalganj. He recorded the statement of the informant. Thereafter he reached at the place of occurrence at 07:30 am and found the dead body of Radhe Kol (hereinafter referred to as 'deceased') lying near the bushes. The deceased was wearing kurta-pajama. Upon search of his clothes, a sum of Rs. 200/- was recovered from the right pocket of his kurta. A sack about 50 steps north of the dead body was found containing 10 kilograms of paddy and wood. He took him in his possession, marked them as Ext.Ka.5 and handed over to Rangila Lal (uncle of the deceased). He took the dead body in his possession and conducted the inquest proceedings, which was marked as Ext.Ka.6. He prepared photo lash, challan lash, letter to R.I., letter for post-mortem and took the clothes of the deceased, which was marked as Ext.Ka.11 to Ext.Ka.15. He sealed the dead body and prepared sample seal, which was marked as Ext.Ka.16. Thereafter he handed over the dead body of the deceased in a sealed cover to Constable Ram Dev and Sant Prasad for post-mortem. He inspected the spot and prepared the site-plan, which was marked as Ext.Ka.17. Blood stained soil and plain soil were took into possession, seized and marked as Ext.Ka.2. An empty cartridge was found lying towards the north of the dead body, which was marked as Ext.ka.3. He also recorded the statement of witnesses namely Premlal and Rangilal.

Search of the accused was conducted but they were not found. On 09.08.1986, he received an information that the accused persons were present at the tri-junction road to village Nardagahna. He, along with other police personnel, reached at the said place, the accused seeing them attempted to flee but were apprehended. Upon interrogation, accused Shankar told that he had a country-made pistol which was used in the commission of crime and could get it recovered. Accused Jaggu disclosed that he could get the bicycle of the deceased recovered. Thereafter, accused Shankar led us to his house situated in the southern side of the village. He opened the lock of the southern room, removed mud from the eastern wall and took out one country-made pistol and cartridge, which were wrapped in a paper. The said pistol and cartridge were sealed, recovery memo was prepared and the same was marked as Ext.Ka.7. Thereafter accused Jaggu led us to his house, where bicycle was recovered. He had also prepared a site-plan of the place of recovery, which was marked as Ext.Ka.18.

5. After culmination of investigation, the investigating officer submitted charge-sheet against the accused appellants, namely, Jaggu Kol and Shankar @ Sheo Shankar, which was marked as Ext.Ka.20.

6. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as Sessions Trial No. 251 of 1986. Learned Additional Sessions Judge, Mirzapur vide order dated 09.12.1986 framed charges against the accused appellant Jaggu Kol for the offence under Section 302 r/w Section 34 I.P.C. and Section 394 I.P.C. whereas accused-appellant Shankar for the offence under Section 302 and 394 I.P.C. The aforesaid charges were read over and explained to them in Hindi, whereby they pleaded not guilty and claimed to be tried.

7. To bring home the guilt of the accused-appellants beyond the hilt, the prosecution has examined as many as six prosecution witnesses, out of whom Premlal Tiwari (PW-1), Kanhaiya (PW-2), Rangilal (PW-4) and Ramlakhan (PW-5) are witnesses of fact whereas Dr. Chandra Prakash (PW-3) and S.H.O. Rampratap Arya (PW-6) are formal witnesses.

8. Premlal Tiwari (PW-1) in his deposition has stated that on 07.08.1986 at about 04:30 PM after attending the call of nature, he heard a sound of a gunshot followed by Kanhaiya Kol's cries and he followed it's direction. Chhotkau Kunvi, who was shooting birds in his field, also reached there. Laudhar Kol had also arrived on his bicycle. Upon reaching there, they saw that accused-appellants Jaggu Kol and Shankar were assaulting a man and

dragging him into the bushes. Jaggu was holding his hands whereas Shankar was holding his feet. As soon as they raised an alarm, the accused persons hid the deceased into the bush and ran away from the place of incident on a bicycle. They have not chased the accused persons as they were having pistol (*katta*). Thereafter, they reached to the injured person, who groaned, hiccuped and died. Blood was oozing from his left shoulder. Laudher Kol, upon seeing the deceased, started crying and said '*he is my nephew Radhe*'. Jaggu and Shankar are residents of village Nadighana. Jaggu's in-law's house is in his village. Both the accused persons are friends.

9. Kanhaiya (PW-2/informant) in his deposition has stated that on the day of incident when he was returning to his house, he saw that Shankar, Jaggu and Radhe were talking to each other. He knew Radhe as he was from Village Kota, four-five miles from his village. Seeing them talking to each other, he headed towards his village and after some time, he heard a sound of gunshot from the north-east direction. Hearing the sound of gunshot, he immediately ran towards the direction of gunshot and saw that Shankar and Jaggu were dragging Radhe to the east side of the road. Thereafter, he along with Premlal Tiwari, Laudhar Kol and Chhotkau reached there. Seeing them, the accused persons ran away from the place of incident on two bicycles which were parked there. They have not chased the accused persons as they

were carrying pistol. Thereafter they went to the deceased who groaned, hiccuped and died. Thereafter, he went to the village Majra to call Pradhan. After the written report was prepared, he along with Kheladi Vishwakarma, Lalata Kohar, Sukhdev and Punjabi Kol went to Lalganj police station and gave the same to the Inspector.

10. Dr. Chandra Prakash (PW-3) in his deposition has stated that on 09.08.1986, he was posted Senior Orthopedic at District Hospital, Mirzapur. At about 04:00 PM, he he conducted the post-mortem on the cadaver of the deceased. As per post-mortem, following ante-mortem injuries were found:-

"Gunshot wound 2.0cm x 2.5cm x cavity deep on the upper and anterior part of the left shoulder joint. Wound was directly medially and downwards. Margins are inverted and charred. The surrounding skin in an area of 1.0cm round the wound is also blacked and charred. On cut the underlying tissue and muscle lacerated and rib fractured. The lung left upper lobe was badly lacerated and the wadding caps and pellets metallic 27 found in the upper lobe of left lung cavity of left side full of clotted blood about 400 ml."

The deceased was aged about 25 years and had died two days' before. Rigor-mortis passed off from both upper and lower limbs. Blisters was present all over body. Hairs of his head are falling out easily. Green discolouration of of skin at some place.

On internal examination, it was found that the first rib of left side was fractured. Pleura was lacerated on the left side. The left

lungs was lacerated and metallic pellets twenty-seven in number and wadding cap one in number were found in upper lobe of left lung. Clotted blood was present in left lobe. The stomach contained digested rice and dal. The small intestine contained gasses and fecal matters.

As per the opinion of doctor, the cause of death of the deceased-Radhe was "*shock and haemorrhage as a result of ante-mortem injury*".

11. Rangilal (PW-4) in his deposition has stated that at the midnight of the day of incident, uncle (mama) of the deceased had informed him about the incident. He was informed that some miscreants had killed Radhe (deceased) and thrown his dead body in the forest. He also stated that about two days ago, Radhe left on a bicycle for his sister's house in Jamohara. He was also a witness of inquest proceedings and the investigating officer had handed over the same to him.

12. Ram Lakhan (PW-5) in his deposition has stated that while he along with Chandu Lal were in a search of paddy seeds, the police office of police station Lalganj along with a constable, who were holding two mens, stopped them and asked for to accompany them as these two accused can recover some goods. One of the accused took us to his house located in the south of Nadgahna Village. The room was locked from the outside. The

accused dig a hole on the eastern side of the wall with his hands and took out a pistol and a live cartridge wrapped in a plastic sheet. Thereafter another accused Jaggu took us to his house where as bicycle was recovered.

13. The evidence of S.H.O. Rampratap Arya (PW-6) has already been discussed above.

14. After the closure of prosecution evidence, the statements of the accused-appellants namely Jaggu Kol and Shankar @ Sheo Shankar have been recorded under Section 313 Cr.P.C., who denied the charges levelled against them.

15. Learned Additional Sessions Judge, Mirzapur after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

16. Hence, the instant appeal.

Arguments on behalf of Accused-Appellants

17. Mr. Rajesh Kumar Vishwakarma, learned counsel appearing on behalf of the appellant submitted that the prosecution has miserably failed to prove the motive for committing the murder of the deceased.

18. It is next submitted that the alleged incident took place on 07.08.1986 at 04:30 PM whereas the First Information Report of

the said incident was lodged on 08.08.1986 at about 04:00 AM, after delay of about 12 hours without any plausible explanation.

19. It is also submitted that from the perusal of evidence of Premlal Tiwari (PW-1) and Kanhaiya (PW-2/informant), it is clear that they are not the eye-witnesses of the incident in question as they have not seen that who had fired the deceased, as such, their testimonies falsifies the prosecution story.

20. So far as the recovered weapon (pistol/katta) and cartridge is concerned, it cannot be said that the alleged fire was made by from the same pistol, which has been recovered, as the investigating officer has deliberately did not get the ballistic report of the same to establish the fact that whether the recovered weapon was used in the commission of crime or not, hence, the prosecution story cannot be relied upon. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of **Sukhwant Singh vs. State of Punjab**¹.

21. There is no evidence on record or any circumstantial evidence on the basis of which it can be said that there was a common intention to both the appellants to commit the murder of the deceased-Radhe as there is no implication of Section 34 I.P.C.

22. It is lastly submitted that the accused-appellants were arrested on 09.08.1986 and were granted bail on 07.11.1989.

¹ AIR 1995 SC 1601

They have incarcerated in jail for more than three years' for an offence that prosecution could not even prove. As of today, the appellants are old aged person and are unable to perform their routine work independently. The prosecution has failed to bring home the guilt of the appellants beyond reasonable doubt.

Arguments on behalf of Respondents-State

23. *Per-contra*, Mr. S.K. Ojha, learned Additional Government Advocate-Ist vehemently opposed the aforesaid contentions of learned counsel for the appellants and submitted that the prosecution has proved its case beyond reasonable doubt, which is also evident from the depositions of Premlal Tiwari (PW-1) and Kanhaiya (PW-2/informant).

24. It is next submitted that there is no contradiction in the statement of Premlal (PW-1) and Kanhaiya (PW-2). It is further submitted that the opinion of the doctor is also matches with the prosecution story.

25. It is lastly submitted that since the prosecution has proved its case beyond reasonable doubt and complete the entire chain of evidence, the trial court has rightly convicted the accused appellants. There is no error in the impugned judgment and order, therefore, the instant criminal appeal is devoid of merit and is liable to be dismissed.

Analysis and Conclusion

26. Heard Mr. Rajesh Kumr Vishwakarma, learned counsel for the appellant, Mr. S.K. Ojha, learned Additional Government Advocate-Ist for the State of U.P. and perused the documents on record.

27. In this case, the occurrence had taken place on 07.08.1986 at about 04:30 PM, but the F.I.R. was lodged on 08.08.1986 at 04:00 AM i.e. about 12 hours after the occurrence. Premlal Tiwari (PW-1) and Kanhaiya (PW-2) have explained the delay in preparing the report at 01:00 PM. Thereafter, Kanhaiya (PW-2) went to police station in the night as stated by him. The way to police station passes through jungle and river. It was night and therefore, he would have taken atleast three hours in covering the distance of 10 miles in the night.

28. PW-1, Premlal Tiwari stated and admitted that he had not seen as to who fired pistol shot. PW-2 Kanhaiya Lal states that when he reached near lake, he heard sound of fire and rushed towards the spot where he observed the accused taking the deceased towards bushes. He had also not seen the occurrence as who fired pistol shot to the deceased. There is no direct evidence on record to connect the accused with the commission of crime.

29. It is well settled that where there is no direct evidence connecting the accused-appellant with the commission of the offence and no witness had seen the accused-appellant committing the murder of the deceased, the case of the prosecution rests entirely on circumstantial evidence. In such circumstances, the law mandates that each incriminating circumstance relied upon must be firmly established and the chain of circumstances must be so complete as to unerringly point towards the guilt of the accused and exclude every possible hypothesis consistent with his innocence. Suspicion, however strong, cannot take the place of proof, and if the circumstances proved do not form a continuous and cogent chain leading only to the conclusion that the accused-appellant is alone the author of the crime, the benefit of doubt must necessarily enure to the appellant.

30. In **Sharad Birdhichand Sarda Vs. State of Maharashtra**², the Supreme Court has framed five golden principles for the circumstantial evidence, which are as under;

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

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

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

² AIR (1984) (SC) 1622

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

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

31. In **State of U.P. Vs. Ashok Kumar Srivastava**³, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in the favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

32. In the case of **Hanumant Govind Nargundkar v. State of M.P.**⁴, the Supreme Court has observed as under:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

3 (1992) CrLJ 1104

4 AIR 1952 SC 343

33. In the case of **Padala Veera Reddy v. State of A.P.**⁵, the Supreme Court has opined as under:

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

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

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

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

34. In the case of **C. Chenga Reddy & Ors. v. State of A.P.**⁶, the Supreme Court while considering a case of conviction based on the circumstantial evidence, held as under:

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

⁵ 1989 Supp (2) SCC 706

⁶ (1996) 10 SCC 193

35. In the case of **Ramreddy Rajesh Khanna Reddy v. State of A.P.**⁷, the Supreme Court again considered the case of conviction based on circumstantial evidence and held as under:

"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence."

36. In the case of **Sattatiya v. State of Maharashtra**⁸, the Supreme Court held as under:

"10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances." This Court further observed in the aforesaid decision that:

"17. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the

7 (2006) 10 SCC 172

8 (2008) 3 SCC 210

concurrent findings recorded by the trial court and the High Court--Bharat v. State of M.P., (2003) 3 SCC 106. "

37. In the case of **State of Goa v. Pandurang Mohite**⁹, the Supreme Court has reiterated the settled law that where a conviction rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

38. The decision in **Sharad Birdichand Sarda (Supra)** has recently been followed by the Supreme Court in catena of judgement including **Laxman Prasad alias Laxman Vs. State of Madhya Pradesh**¹⁰, and **R. Sreenivasa Vs. State of Karnataka**¹¹.

39. An "*unbroken chain of safe custody*" for the recovered weapon and sample packets must be proved by the prosecution. Failure to do so leads to the acquittal of the accused.

40. The Supreme Court in the case of **Sukhwant Singh vs. State of Punjab**¹², has observed as under:

9 (2008) 16 SCC 714

10 2023 (3) SCC (Cri) 27

11 (2024) 17 SCC 426

12 AIR 1995 SC 1601

"There is yet another infirmity in this case. We find that whereas an empty had been recovered by PW6, ASI Raghbir Singh from the spot and a pistol along with some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution, for reasons best known to it, did not send the recovered empty and the seized pistol to the ballistic expert for the examination and expert opinion. Comparison could have provided link evidence between the crime and the accused. This again is an omission on the part of the prosecution for which no explanation has been furnished either in the trial court or before us. It hardly needs to be emphasised that in cases where injuries are caused by fire arms, the opinion of the Ballistic Expert. is of a considerable importance where both the fire arm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent."

41. The Supreme Court in the case of **Pankaj vs. State of Rajasthan**¹³, has held that *"when the genesis and the manner of the incident is doubtful, the accused cannot be convicted."* It also referred to **Bhagwan Sahai vs. State of Rajasthan**¹⁴, which states that once the prosecution is found to have suppressed the origin of the occurrence, the only proper course is to grant the benefit of doubt.

42. In the case of **State of U.P. vs. Kishore Gopal Das**¹⁵, the Supreme Court has succinctly explained the concept "reasonable doubt", which is as under:

".....There is an unmistakable subjective-element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common-sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused-persons is not to be eroded,

13 (2016) 16 SCC 192

14 AIR 2016 SC 2714

15 AIR 1988 SC 2154

at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice."

43. In the case of **Ramakant Rai vs. Madan Rai and Others**¹⁶, the Supreme Court has held as under:

"24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common-sense. It must grow out of the evidence in the case."

44. The aforesaid judgment has recently been followed by the Supreme Court in the case of **Goverdhan and Another vs. State of Chhattisgarh**¹⁷ wherein, the Court has held as under:-

"20. As per Section 3 of the Indian Evidence Act, 1872, a fact can be said to have been proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act up on the supposition that it exists. The court undertakes this exercise of examining whether the facts alleged including the particular criminal acts attributed to the accused are proved or not.

21. It is also to be noted that the law does not contemplate stitching the pieces of evidence in a watertight manner, for the standard of proof in a criminal case is not proof beyond all doubts but only beyond reasonable doubt. In other words, if a clear picture emerges on piecing together all evidence which indicates beyond reasonable doubt of the role played by the accused in the perpetration of the crime, the court holds the accused criminally liable and punishes them under the provisions of the penal code, in contradistinction to the

16 (2003) 12 SCC 395

17 (2025) 3 SCC 378

requirement of proof based on the preponderance of probabilities as in case of civil proceedings.

22. It will be relevant to discuss, at this juncture, what is meant by "reasonable doubt". It means that such doubt must be free from suppositional speculation. It must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or amerey possible doubt, but a fair doubt based upon reason and common sense."

45. The Supreme Court in the case of **Jitendra Kumar Mishra @ Jittu vs. State of Madhya Pradesh**¹⁸, has held as under :

"We are conscious of the fact that the appellate court should be slow in interfering with the conviction recorded by the courts below but where the evidence on record indicates the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and that a plausible view, different from the one expressed by the courts below can be taken, the appellate court should not shy away in giving the benefit of doubt to the accused persons."

46. The recovered pistol (Ex.Ka.7) was not sent to ballistic expert for comparison with the fired cartridges recovered from the spot, therefore, it is not established that fatal shot was fired from the same pistol which was recovered. The recovery of the said pistol on the pointing out of accused Shankar @ Sheo Shankar after a day of occurrence is doubtful. The evidence adduced by the prosecution regarding the manner of occurrence and complicity of accused as well as recovery are not worth to be relied upon. None of the witness had seen any accused person firing gunshot upon the deceased. PW-2 Kanhaiya had only seen the accused persons talking with the deceased person and after

18 2024 INSC 20

few minutes, the other witnesses heard the sound of firing and rushed to the spot immediately, therefore, there is no eye witness of the occurrence and the entire case of the prosecution is based upon circumstantial evidence.

47. When we evaluate the testimony of Premlal Tiwari (PW-1) and Kanhaiya (PW-2/informant) carefully and with due caution, as is required in the facts of the case, we find that their testimony do not inspire our confidence to sustain the conviction. The evidence produced by the prosecution has neither quality nor credibility and it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home guilt of the appellants. We, therefore, conclude that prosecution has failed to prove its case "*beyond reasonable doubt*" against the appellants.

48. This Court has decided the present criminal appeal on its merits and held as above. Even otherwise, it deserves to be noticed that occurrence in the present case is more than four decades old. The appellants have remained in jail for more than three years.

49. Accordingly, the judgment and order dated 31.03.1987 passed by Additional Sessions Judge, Mirzapur is hereby set aside.

The appellants are acquitted of all the charges levelled against him.

50. Consequently, for all the foregoing reasons, the instant criminal appeal is **allowed**.

51. The appellants—Jaggu Kol and Shankar @ Sheo Shankar are already on bail. His bail bonds shall stand discharged.

52. The trial court record be sent back.

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

February 02, 2026

Saurabh