

A PAWAN KUMAR @ MONU MITTAL

v.

STATE OF UTTAR PRADESH & ANR.

B (Criminal Appeal No.2194 of 2011 etc.)

MARCH 11, 2015.

**[SUDHANSU JYOTI MUKHOPADHAYA AND
C N.V. RAMANA, JJ.]**

Penal Code, 1860 – ss. 302/149, 404, 148, 201, 212, 411 – Murder – Sales officer of Indian Oil Corporation on inspection of petrol pump of accused no. 1 found irregularities in the dispensation of fuel – Sales and supplies to the petrol pump suspended, which were later restored on payment of fine – Month later, sales officer being suspicious again inspected the petrol pump of the accused – However, the next day sales officer found dead – Car of A-7 and A-4 intercepted by police constable while they were transporting the dead body of sales officer to dispose it of – Confessional statement made by A-7 and A-4 to the constable about commission of crime and involvement of other accused – On basis thereof, arrest of the accused and recoveries made at their instance – Conviction and sentence of all the accused under the various provisions of Penal Code – However, the High Court modified death sentence of accused no. 1 to life imprisonment while upholding the order of conviction and sentence of A-2, A-4, A-5, A-7, A-8 and acquitting A-3 and A-6 – Interference with – Held: Not called for – Motive behind the brutal murder of the deceased trustworthy – Nexus between the accused

H

PAWAN KUMAR @ MONU MITTAL v. STATE OF 877
UTTAR PRADESH

to do away with the deceased as well as their participation in the crime established beyond reasonable doubt – Place of incident was proved – Evidence on record trustworthy and consistent, pointing to the guilt of the accused – Minor discrepancies in the evidence of the witnesses would not come in the way of the other strong circumstantial evidence, cumulatively taken together, forming a complete chain of events – Thus, the evidence adduced by the prosecution clearly proved the chain of events connecting the accused to the guilt of the commission of the offence – Arms Act – s. 25, 30.

Evidence Act, 1872 – ss. 25, 27 – Confession made by accused before the police – Admissibility of – Held: Statements made by an accused before police official which amount to confession is barred u/s. 25 – However, in view of s. 27 whatever information given by the accused in consequence of which a fact is discovered only would be admissible in the evidence, whether such information amounts to confession or not – On facts, confession given by the accused is not the basis for the courts below to convict the accused, but it is only a source of information to put the criminal law into motion – Thus, the accused cannot take shelter u/s. 25.

Dismissing the appeals, the Court

HELD: 1.1 The statements made by an accused before police official which amount to confession is barred under Section 25 of the Evidence Act. This prohibition is, however, lifted to some extent by Section 27 of the Act whereby, whatever information given by the accused in consequence of which a fact is discovered only would be admissible in the evidence, whether such information amounts to confession or not. The basic idea embedded under Section 27 of the

A Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. The “fact discovered” as envisaged under Section 27 of the Evidence Act embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. [Paras 25, 26, 27] [898-F-G; 899-B-F]

D 1.2 In the instant case, accused Nos. 4 and 7 disclosed the names of their co-accused at whose instance various incriminating materials including pistols, cartridges, bullets, blood stained articles were recovered. Simply denying their role without proper explanation as to the knowledge about those incriminating material would justify the presumption drawn by the courts below to the involvement of the accused in the crime. The confession given by the accused is not the basis for the courts below to convict the accused, but it is only a source of information to put the criminal law into motion. Hence, the accused cannot take shelter under Section 25 of the Evidence Act. [Para 28] [899-F-H; 900-A]

G 1.3 The motive behind the brutal murder of the deceased as brought forward by the prosecution is trustworthy in the light of material available on record. Considering the evidence on record, there is no doubt that the accused No.1 bore grudge and with the

H

assistance of other accused, murdered the deceased. A
On the fateful day, the deceased visited the petrol pump
of accused No.1, where he was brutally murdered, is
evident from the evidence of PW 4, Manager of a Petrol
Pump, P.W.5 and P.W.8. [Para 29] [900-B-C, F-G; 901-C-
D] B

1.4 The findings by the courts below that the
accused conspired to commit the offence of murder of
the deceased is accepted. The nexus between the
accused to do away with the deceased, has been C
established by the prosecution beyond all reasonable
doubt. On facts, the nexus between the accused as well
as their participation in the crime is well established
beyond reasonable doubt and there is nothing on
record to suggest that the accused were unnecessarily D
implicated by the police. [Para 30] [901-F-G; 902-F]

1.5 The recovery of bullets from the tank of the
Automobiles Company and from behind their petrol
pump along with blood stained cloth cumulatively E
establish the place of incident to be the Automobiles
Company. Merely because all the bullets fired from the
gun did not hit the target and were not recovered from
the scene of offence, is no ground to conclude that the
incident did not take place. [Para 31] [903-B-D] F

1.6 As regards the allegation of contradictions in
the statements of prosecution witnesses, no major
contradictions are found which require attention and
consideration. In the instant case, the evidence on G
record is trustworthy and consistent, and there is only
one view, which points to the guilt of the accused.
Minor discrepancies in the evidence of the witnesses
as pointed out by the accused should not come in the
way of the other strong circumstantial evidence, H

A cumulatively taken together, forms a complete chain of events, pointing towards the guilt of the accused in the commission of the crime. [Para 32] [903-D-E, G-H; 904-A-B]

B 1.7 In cases where the direct evidence is scarce, the burden of proving the case of prosecution is bestowed upon motive and circumstantial evidence. It is the chain of events that acquires prime importance in such cases. In the instant case, the evidence adduced by the prosecution clearly proves the chain of events connecting the accused to the guilt of the commission of the offence. The entire evidence brought on record by the prosecution, is not only convincing, but is also trustworthy. Even if the confession of accused Nos. 4 and 7 made before PW 1 and PW 2, which is barred by Section 25 of the Evidence Act, is not taken into account, the other evidence on record adduced by the prosecution, is sufficient to hold the accused guilty of the offence. [Para 33] [904-B-C, F-H]

E 1.8 Where a case 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 other person. In the instant case, on scrutiny of evidence on record, the prosecution had established beyond reasonable doubt the complete chain of events which points at the guilt of the accused. Thus, in the light thereof, the prosecution succeeded in proving its case against the accused beyond all reasonable doubt. [Paras 34,35] [905-A-C]

H *State of Maharashtra Vs. Damu* 2000 (3) SCR 880: (2000) 6 SCC 269; *Rammi Vs. State of M.P.* 1999 (3) Suppl. SCR 1:(1999) 8 SCC 649; *Bodhraj Vs. State of J & K* 2002 (2) Suppl. SCR 67:(2002) 8 SCC 45 – relied on.

PAWAN KUMAR @ MONU MITTAL v. STATE OF 881
UTTAR PRADESH

Aghnoo Nagesia Vs. State of Bihar (1966) 1 SCR 134; A
State of Punjab Vs. Barkat Ram (1962) 3 SCR 338; Mani
Vs. State of Tamilnadu 2008 (1) SCR 228:(2009) 17 SCC
273; Dalbir Kaur v. State of Punjab 1977 (1) SCR
280:(1976) 4 SCC 158; Shivnarayan Laxminarayan Joshi
v. State of Maharashtra (1980) 2 SCC 465 – referred to. B

Case Law Reference

(1966) 1 SCR 134	referred to.	Para 8	
(1962) 3 SCR 338	referred to.	Para 8	C
2008 (1) SCR 228	referred to.	Para 15	
1977 (1) SCR 280	referred to.	Paras 22, 24	
(1980) 2 SCC 465	referred to.	Paras 22, 24	D
2000 (3) SCR 880	relied on.	Para 26	
1999 (3) Suppl. SCR 1	relied on	Para 32	
2002 (2) Suppl. SCR 67	relied on	Para 33	E

CRIMINAL APPELLATE JURISDICTION : Criminal
Appeal No. 2194 of 2011 etc.

From the Judgment and Order dated 11.12.2009 of the
High Court of Judicature at Allahabad (Lucknow Bench) F
Lucknow in Criminal Appeal No. 1250 of 2007.

With

Crl. A. Nos. 2195-2196, 2198, 2199 & 2200 of 2011. G

S. K. Agarwal, P. C. Aggarwal, Jitendra Sarin, Pradeep
Aggarwal, Ram Niwas, Sarad Kumar Singhania, Ruchi
Kohli, Lal Pratap Singh, Nirmal Goenka, Nidhi Jaswal,
Anirudh Sharma, Mahesh Srivastava, Vaibhav M. H

A Srivastava, P. N. Puri, Shivam Sharma, Gautam Awasthi for
the Appellant.

Gaurav Bhatia, AAG, Kunal Verma, Kamini Jaiswal,
Shilpi Dey, Pragati Neekhara, Utkarsh Jaiswal for the
B Respondents.

The Judgment of the Court was delivered by

C **N.V. RAMANA, J.** 1. These appeals are directed
against a common impugned judgment dated 11th February,
2009 of the High court of Allahabad, Lucknow Bench, by
which the appeals of the appellants herein who are accused
of murdering one Manjunath, were dismissed.

D 2. Material facts of the case as per prosecution are that
the father of appellant Monu Mittal (Accused No. 1) was the
owner of a petrol pump namely M/s Mittal Automobiles
situated at Gola, District Lakhimpur Kheri, Uttar Pradesh.
The deceased Manjunath was working as a Sales Officer
with the Indian Oil Corporation (IOC) at Gola. On
E 13.9.2005, the deceased inspected the petrol pump of
Accused No. 1 and on finding some irregularities, the sales
and supplies of the petrol pump were suspended by the IOC
at his instance. However, the same were restored on 19th
F October, 2005 after the payment of fine of Rs.75,000/- by
the owner of the petrol pump. Again on 19th November,
2005, the deceased, being suspicious of malpractices still
being carried on by Accused No. 1, inspected the said petrol
pump.

G 3. On 20.11.2005, when the Head Constable (Ram
Bhawan Singh) of P.S. Mahaoli, District Sitapur. along with
Constable Asha Ram (PW2) and Driver Braj Kishore was
on patrol duty on the National Highway, at about 8.00 am,
H one Maruti Car bearing No. UP 51 E 5176 was coming from

the direction of Maigaljanj and upon seeing the police jeep, A
the Maruti Car suddenly turned back and tried to drive away
from that place. On suspicion, the Maruti Car was chased
and intercepted at about 8.30 am near Green Gold Dhaba.
One Vivek Sharma (Appellant - Accused No. 7) was driving B
the car accompanied by another appellant Rakesh Kumar
Anand (Appellant-Accused No.4) who was sitting on the
back seat besides a blood stained dead body of S.
Manjunath (deceased). On interrogation, both accused Nos. C
4 & 7 confessed that the deceased was shot dead by
Pawan Kumar alias Monu Mittal (Accused No.1), Devesh
Agnihotri (Accused No. 2), Sanjay Awasthi (Accused No.3),
Lala Giri (Accused No.5), Harish Mishra (Accused No.6) at
M/S Mittal Automobiles and they were carrying the dead
body of the deceased in his car, to dispose of the same at D
an unknown place. Both the accused Nos. 4 & 7 were taken
into custody and a recovery memo (Ext. Ka-1) was prepared
and a case against all the accused under Sections
147,148,149,302 and Section 201 read with Section 34,
IPC, was registered on 20.11.2005. E

4. Mr. P.N. Saxena, Sub-Inspector took up the
investigation and in the presence of Dhan Raj Sahani (PW
3, landlord of the deceased) conducted inquest. He
collected blood stained seat covers and door mats (Ext. Ka- F
9) from the Maruti Car besides several other belongings of
the deceased, prepared site plan (Ext. Ka-8) and sent the
dead body for post mortem. Thereafter, he transferred the
investigation to P.S. Gola, and Parmesh Shukla, G
SHO(PW21) who took up further investigation, arrested
Shivkesh Giri @ Lala Giri (Accused No. 5) on 22.11.2005.
He also recovered a wet blood stained cloth from behind
the Petrol Pump which was allegedly used in cleaning the
murder spot at the instance of Accused no 5. Three
cartridges of 32 bore (Ext. Ka-16) were also recovered from H

A behind the Petrol Pump on his pointing. Based on the
confession of Lala Giri (Accused No. 5), he arrested the
other accused Pawan Kumar, Sanjay Awasthi, Rajesh
Verma and Harish Mishra at 6.50 p.m. near railway crossing
in a car bearing number UP 31 F4629. A revolver was
B recovered from accused Rajesh Verma, owner of the car
and a Pistol was recovered from accused Pawan Kumar
(Ext Ka-17). On 23.11.2005 at 8:30 am, the IO recovered
the car of accused Pawan Kumar, his blood stained pant
from Punerbhoo forest, Kheri. The IO also recovered three
C empty cartridges from the diesel tank of the Petrol Pump
on 24.11.2005 at 9:30 am on pointing of Accused No. 1
Monu Mittal. Accused No.2 - Devesh Agnihotri was also
arrested on the same day at 6:00 pm by TN Tripathi, Sub-
D Inspector (PW 19) from Bheera and at his instance, four
empty cartridges (Ext. Ka-20) fired from the revolver of
accused No. 8 - Rajesh Verma were recovered from the
house of one Jitendra Mishra uncle of Sanjay Awasthi (A-
3).

E 5. After investigation, the IO submitted charge sheet,
and the case was committed for trial. The trial court framed
charges against all the accused u/s 147, 148, 302 r/w 149,
201 and 120 B, IPC. Additional charges u/s 404 and 411
of IPC, Section 30 of the Arms Act were framed against
F accused No. 1 - Pawan Kumar, charges u/s 212 IPC and
Sections 25/30 of the Arms Act were framed against
accused No.8 - Rajesh Verma. Also charges under Section
411, IPC were framed against accused No.7 - Vivek Sharma
and Accused No. 4 - Rakesh Kumar Anand.
G

H 6. The Trial Court convicted and sentenced the accused
No.1 - Pawan Kumar @ Monu Mittal to death for offences
u/s 302 r/w 149, IPC and to pay a fine of Rs 10,000/-, in
default to undergo simple imprisonment (SI) for one year.

PAWAN KUMAR @ MONU MITTAL v. STATE OF 885
UTTAR PRADESH [N.V. RAMANA, J.]

He was also sentenced to 2 years RI and to pay a fine of Rs. 5000/-, in default 3 months SI for the offence u/s 404, IPC and 6 months imprisonment u/s 30 of the Arms Act, 2 years RI and to pay a fine of Rs 5000/- u/s 404, IPC and in default to undergo 3 months S.I. The other accused, namely accused No.2 - Devesh Agnihotri, accused No.3 - Sanjay Awasthi, accused No. 4 - Rakesh Kumar Anand, accused No. 5 - Shivkesh Giri @ Lalla Giri, accused No. 6 - Harish Mishra, accused No. 7 - Vivek Sharma and accused No. 8 - Rajesh Verma were also convicted u/s 302 r/w Section 149, IPC and sentenced to suffer life imprisonment. They were further sentenced to suffer one year RI u/s 148, 5 years RI u/s 201, IPC, 5 years RI u/s 120 B IPC. Accused No.8 - Rajesh Verma was also convicted u/s 212, IPC and sentenced to 3 years RI and to pay a fine of Rs 5,000/-, in default to undergo 6 months SI u/s 25 of the Arms Act and sentenced to 1 year RI and to pay a fine of Rs 1,000/-, in default to suffer SI for 3 months and 6 months RI u/s 30 of the Arms Act. Accused Rakesh Anand, Vivek Sharma and Pawan Kumar were also sentenced to 2 years RI u/s 411 IPC. All the sentences were, however, directed to run concurrently.

7. Aggrieved thereby, the accused—appellants preferred appeals before the High Court. The High Court by the impugned judgment dated 11.12.2009 partly allowed the appeal of Pawan Kumar (Accused No. 1) and modified his death sentence to life imprisonment u/s 302 r/w 149 but upheld the convictions for the other offences they are charged with. The appeals of the accused Devesh Agnihotri (A-2), Rakesh Anand (A-4), Shivkesh Giri @ Lalla Giri (A-5), Vivek Sharma (A-7) and Rajesh Verma (A-8) were, however, dismissed by the High Court. The appeals of other co-accused Harish Mishra (A-6) and Sanjay Awasthi (A-3) were allowed giving them benefit of doubt and acquitted

A them of all charges. Against the said judgment passed by the High Court, Accused Nos. 1, 2, 4, 5, 7 & 8 filed the present appeals before this Court.

8. Learned Counsel appearing for the appellants argued that the Courts below have committed a grave error in convicting and sentencing the appellants on the very evidence by which it acquitted the co-accused Harish Mishra and Sanjay Awasthi of all the charges. The High Court relied solely on the confessional statements of the accused/ appellants made to the police which is inadmissible in evidence under Section 25 of the Indian Evidence Act. Taking support from a decision of this Court in *Aghnoo Nagesia Vs. State of Bihar*, (1966) 1 SCR 134, learned counsel submitted that "a confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when the accused was free and not in police custody, as also a confession made before any investigation has begun". Unfortunately, the High Court has not considered Section 25 of the Evidence Act in its true spirit and erred in holding that the confessional statement of accused given to the police officer is admissible, because the same was not made to the Investigating Officer but to some other police officer. Taking support from a decision of this Court in *State of Punjab Vs. Barkat Ram*, (1962) 3 SCR 338, learned counsel submitted that the confession made to any member of the police, of whatever rank and at whatever time, is inadmissible in evidence as per Section 25 of the Evidence Act.

9. The learned counsel further submitted that the impugned judgement is based only on conjectures and surmises and not on any cogent and reliable evidence. There were no eyewitness to the occurrence and the case

of prosecution is based solely on the circumstantial evidence. The prosecution has completely failed to prove the chain of events linking the accused appellants to the commission of offence. There is no direct witness or incriminating evidence against the appellants to establish the motive of the accused to kill the deceased. The courts below have ignored the fact that neither the Ballistic Report (Ext. 61) nor the Serological Reports (Exts. Ka-60, 62, 62A) support the case of prosecution. In the ballistic report, no special characteristics were found and no conclusive opinion was given that the shots were fired from the gun of the accused. The Ballistic Expert (Ext. Ka-61) clearly mentioned in the report that "the individual characteristics are absent" for giving a definite opinion. In the absence of a firm expert opinion, it cannot be conclusively held that the bullets recovered from near and around the scene of offence were fired from the gun of accused No .1 Pawan Kumar.

10. It is the contention of the learned counsel that according to the Serological Report (Ext. Ka-60), no blood was found on the cloth recovered from behind the petrol pump which was allegedly used to clean the site of crime as also the pant of the accused No. 1 (Exts. Ka-62 & 62A) Pawan Kumar allegedly recovered from his car. Another crucial loophole that is evident from the prosecution story is that the body of the deceased was stained with blood, but no blood stains were reported to be found on the clothes of accused No. 7 - Vivek Sharma and accused No. 4 - Rakesh Kumar Anand who were allegedly carrying the dead body of the deceased in his car to dispose of the same. Also another dubious circumstance sought to be proved by the prosecution is that when the car in which accused No.7 - Vivek Sharma and accused No.4 - Rakesh Kumar Anand, were carrying the dead body of the deceased was

A intercepted, P.W.3 – Dhanraj Sahni, landlord of the
deceased appeared from the crowd and recognized the
dead body. Learned counsel submitted that the landlord
was living far away from the site where the accused were
B apprehended, and no reason is given by the prosecution
for his presence at the spot where the car carrying the dead
body of the deceased was intercepted. This casts a doubt
on the prosecution story about the presence of the landlord
at that point of time.

C 11. The learned counsel strenuously contends that
another aspect that probablises the factum of manipulation
of the case by the prosecution to implicate the appellants
into the crime is that according to the prosecution case, in
all, eleven bullets were fired at the deceased, but according
D to the post-mortem report (Ext. Ka-14), the deceased had
suffered six firearm injuries, out of which there were two exit
wounds on his body and four bullets were recovered from
his body. There was no explanation coming forward from
the prosecution as regards not finding the other bullets. It
E is not possible to imagine that other seven bullets did not
hit anywhere at the place of incident. This fact clearly
establishes that the prosecution manipulated the
investigation. The prosecution thus totally failed to prove
F the place of occurrence and the recoveries alleged to have
been made from the scene of offence were planted for the
purpose of the case.

12. Learned counsel further submitted that the Courts
below have utterly failed to take into account the important
G material contradictions before convicting the appellants. PW
21 - Parmesh Kumar Shukla, SHO was said to have taken
control of the case on the evening of 20th November, 2005
and he came to know about the place of incident only on
H 21st November, 2005 seems improbable. The same stood

fortified by the fact that as per Rojanama (GD No. 38 dated 21-11-2005) he had visited the alleged place of occurrence i.e. petrol pump on 21.11.2005. Whereas in his deposition before the Trial Court he denied to have gone there on 21-11-2005 and he further stated that he went to the place of occurrence for the first time only on 22-11-2005 in the afternoon. It is, therefore, clear that the investigations are tainted, vital and material portion has been deliberately concealed. The deposition of PW 21 visiting the place of occurrence on 22-11-2005 ought to have been rejected by the Courts below. Once a material portion of the evidence of I.O. is found to be false, no reliance could be placed on his statement. Such material contradictions would not only cast a doubt on his evidence, but discredits the entire case of prosecution. Another discrepancy in the prosecution story pointed out by the learned counsel is that as per prosecution, accused No.5- Lalla Giri was arrested by PW 21 on 22-11-2005 from Railway Station, whereas on 21-11-2005 at about 3.15 p.m. mother of Lalla Giri (A-5) had sent a telegram (Ext. Kha-2) to the DIG, Lucknow complaining therein that her son has been wrongfully confined by the PS Gola since 20-11-2005. This uncontroverted fact belies his arrest and thus the recoveries allegedly made at his instance cannot be relied upon.

13. Learned counsel further contended that the Courts below have wrongly attributed the motive for the crime inasmuch as M/S Mittal Automobiles was sealed by the deceased owing to alleged malpractices. It is admitted fact that apart from Mittal Automobiles one more petrol pump L.D Service Station was inspected by the deceased on the same day and samples taken were found to be adulterated, but no investigation was carried out in this regard. In fact, no adulteration was detected from the samples collected from M/S Mittal Automobiles. As a matter of fact, Weights

A and Measurement Department conducted test of HSD (1150
litrs.) from June, 2005 to 13.9.2005. Though the entries were
made in the Daily Stock Register of M/S Mittal Automobiles,
no corresponding entry was made in the main stock register
B which resulted in stock variation which led to the sealing of
the petrol pump. When M/S Mittal Automobiles clarified the
same by reply dated 18-10-2005, the petrol pump was
restored. The fine of Rs.75,000/- was paid in respect of
technical defaults in order to ensure that the supply is
restored. Hence, the motive part advanced by the
C prosecution is not proved and the Courts below have erred
in not appreciating this fact.

14. Learned counsel appearing for Accused No. 2 -
Devesh Agnihotri submitted that the appellant was wrongly
D implicated in the crime. The appellant has no previous
association with the prime accused Monu Mittal. The
appellant—accused No. 2 was not even present at the
scene of crime at the relevant time as he was attending
marriage of his brother in law in District Etah which is far
E away from the place of occurrence. Moreover, there is no
incriminating evidence against accused No. 2.

15. On behalf of Accused No. 5-Lalla Giri it is
specifically argued that he has been wrongly convicted by
F the Trial Court merely because he was an ex-employee of
Pawan Kumar @ Monu Mittal (Accused No.1). Mere
recovery of empty cartridges at the instance of this
appellant—accused is of no consequence when there is no
evidence linking his participation in the crime. Moreover, the
G recovery of empty cartridges at the place of occurrence itself
is highly doubtful as they can easily be destroyed. In support
of the argument that in the absence of any link evidence,
the appellant cannot be convicted under Section 302, IPC
learned counsel relied on Mani Vs. State of Tamilnadu
H (2009) 17 SCC 273. Learned counsel further argued that

PAWAN KUMAR @ MONU MITTAL v. STATE OF 891
UTTAR PRADESH [N.V. RAMANA, J.]

at the most the case against the appellant cannot be beyond Section 201, IPC for which the maximum sentence is 10 years. The appellant has already undergone about 9 ½ years imprisonment. A

16. Learned counsel appearing for Accused No.4- Rakesh Anand and Accused No.7- Vivek Sharma submitted that the prosecution has failed to complete the chain of events qua Accused Nos. 4 and 7 to bring home their culpability. Both the courts below have gravely erred in holding that the dead body of the deceased was recovered from the possession of these appellants on 20.11.2005 at 8.00 am. As per prosecution, at the time of their arrest, the dead body of the deceased was bleeding, but admittedly no blood was found on their clothes. No weapon, driving licence, money etc. were found from their possession. No relation between these two accused and other accused has been proved. Moreover, there was no examination of any independent witness to support the story of prosecution that the dead body of the deceased was recovered from the possession of these two accused. Allegedly, there was a mob of about 100 to 150 people at that point of time, but no independent witness has been examined to prove the prosecution story, and in the absence of any independent witness being examined, the confession statement and consequent recovery, cannot be believed. Learned counsel therefore submitted that it is in the interest of justice, the appeals be allowed, as otherwise, the appellants would suffer irreparable injustice, loss and injury. B C D E F

17. Learned counsel appearing on behalf of Accused No. 8 -Rajesh Verma argued that the appellant was merely an employee of an Urban Co- operative Bank and had no previous enmity or motive to kill the deceased as he had no interests in the business of Petrol Pump. His name G H

A neither figured in the confessional statement of the accused
nor in the F.I.R. According to the prosecution, the licensed
revolver of Accused No. 8 was recovered on 22-11-2005,
but it was not even sealed at the spot despite the I.O. having
B specific knowledge about its use. There was no specific
evidence to establish the date, time and place of it being
sealed. Only the oral assertion of I.O. that the weapon was
sealed a couple of days later by him, shows the possibility
of revolver or bullet being changed, thereby wrongly
C implicating the accused in the crime. There was also no
evidence of conspiracy against this appellant nor was any
evidence to establish the intention, knowledge or prior
meeting of the appellant with the other accused to commit
the crime. The I.O. in the cross examination admitted that
D the appellant neither used his revolver nor was present at
the time of occurrence. There is also no absolute evidence
of appellant giving his revolver to the prime accused. The
appellant was an active worker of a political party and his
political rivals being inimical towards him he was falsely
E implicated, but the Courts below have failed to take into
consideration this aspect.

18. Learned counsel appearing for all the accused—
appellants strongly contended that the Courts below have
F committed grave error in convicting and sentencing the
accused. The impugned judgment is not based on the true
principles of law. It is not only gravely erroneous, but also
against the material available on record. The alleged
circumstances do not form a complete chain of events
G linking the accused to the commission of the crime, and the
incriminating circumstances having not been proved by the
prosecution, in accordance with law, the impugned judgment
is, liable to be set aside.

H 19. Mr. Gaurav Bhatia, learned Additional Advocate

PAWAN KUMAR @ MONU MITTAL v. STATE OF 893
UTTAR PRADESH [N.V. RAMANA, J.]

General appearing for the State, on the other hand, supported the impugned judgment and submitted that this is an unfortunate case where an Officer of the Indian Oil Corporation was brutally murdered by the accused for honestly carrying out his duties. This incident has shocked the entire nation and has shaken the confidence of thousands of aspiring officers. He submitted that Accused No. 1 Pawan Kumar @ Monu Mittal had developed grudge against the deceased because he inspected the petrol pump run by him on 13.9.2005 and pointed out certain irregularities, and on his intimation to IOC (Ext. Ka-34), the sales and supplies of the pump were suspended. The supplies were, however, restored only after payment of fine on 19th October, 2005. The deceased again visited the petrol pump of the accused on 19th November, 2005 for inspection and thereafter he was not seen alive.

20. The learned AAG, on behalf of the prosecution, submitted that the incriminating articles including empty cartridges (Ext. 13) fired from the licensed pistol of Accused No. 1, blood stained earth (Ext. Ka 60) recovered from the petrol pump of Accused No. 1 and on his pointing out, the mobile instrument of the deceased was recovered from the forest (Ext. Ka 21). The Ballistic Expert in his report clearly mentioned that the bullets found in the body of the deceased were fired from the licensed pistol of Accused No. 1. The irregularities committed by the petrol pump were writ large inasmuch as certain important documents and other materials which were necessarily required to be kept in the show room were not found, when the police along with IOC official and official of Weights and Measurements Department inspected. Moreover, some articles used for tampering of the seals of the machines and tank were found.

21. Learned AAG contended that the involvement of

A accused Rakesh Anand (Accused No.4) and Vivek Sharma (Accused No.7) has been proved beyond all reasonable doubt as they were caught by patrolling police officials PW1- Head Constable Ram Bhawan, PW2 - Constable Asha Ram while they were carrying the dead body of the deceased in his car. This fact is corroborated by the independent witness Dhanraj Sahni-PW3, the landlord of the deceased. Accused No. 2 - Devesh Agnihotri's involvement is evident from the confession of the co-accused, namely accused No.7 - Vivek Sharma and accused No.4 - Rakesh Kumar Anand and also by accused No.8 - Rajesh Verma, who confessed that his revolver was used by accused No. 2 - Devesh Agnihotri for the commission of crime. After his arrest, he confessed to the commission of the crime and also led to the recovery of four empty cartridges shot from the revolver of accused No. 8 - Rajesh Verma. Also accused No.2 - Devesh Agnihotri along with accused No.4 - Rakesh Kumar Anand were earlier charge sheeted for an offence u/s 307 IPC in 1998 which is sufficient to establish their nexus. Accused No.5 - Lalla Giri's involvement came to light from the confession made by accused No.7 - Vivek Sharma (A-7) and accused No.4 - Rakesh Kumar Anand, at whose instance accused No.5 - Lalla Giri was arrested on 22.11.2005, from the Railway Station while he was trying to abscond. Accused No.5 – Lalla Giri, led to the recovery of three cartridges from behind the petrol pump and three more from the tank of the petrol pump. This clearly explains that accused No.5 – Lalla Giri, has played an active role in the conspiracy in and commission of the crime. Accused No.8 - Rajesh Verma was arrested along with Accused No. 1 - Pawan Kumar and other accused when he was taking them in his car on 22.11.2005 and a revolver with two live and four missing cartridges were recovered from his possession. Those four cartridges were recovered at the instance of accused No.2 - Devesh Agnihotri. Thus, in the

light of confessional statements of the accused and the recoveries made at their instance, their involvement in the crime is established by the prosecution beyond all reasonable doubt. Therefore, no interference is warranted with the concurrent findings of fact arrived at by the Trial Court as well as the High Court, upon appreciation of entire evidence on record.

22. Learned AAG, placing reliance on *Dalbir Kaur v. State of Punjab* (1976) 4 SCC 158 and *Shivnarayan Laxminarayan Joshi v. State of Maharashtra* (1980) 2 SCC 465 finally submitted that when the cumulative effect of the evidence against the accused persons is sufficiently convincing for the trial court as well as the High Court to have come to the conclusion that the offence with which the accused were charged were established against them beyond all reasonable doubt, unless there is substantial question of law involved, this Court should refrain from interfering with the concurrent findings of fact given by the Courts below.

23. We have heard learned counsel for the parties at length and carefully perused the material on record.

24. The contention of the learned Additional Advocate General for the State that in view of the concurrent findings on facts recorded by the trial Court and confirmed by the High Court, this Court should not interfere with such findings, unless there is substantial question of law involved. Before dealing with the above contention, it is appropriate to refer to the judgments in *Dalbir Kaur v. State of Punjab* (1976) 4 SCC 158 and *Shivnarayan Laxminarayan Joshi v. State of Maharashtra* (1980) 2 SCC 465, wherein this Court laid down the guidelines.

In *Dalbir Kaur* (supra) it was held as under:

A "8. Thus the principles governing interference by this Court in a criminal appeal by special leave may be summarised as follows:

B (1) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence;

C (2) that the Court will not normally enter into a reappraisal or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is
D totally inconsistent with the medical evidence and so on;

E (3) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court;

F (4) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudice or injustice to the accused;

G (5) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence.

H It is very difficult to lay down a rule of universal application, but the principles mentioned above and those adumbrated in the authorities of this Court cited

PAWAN KUMAR @ MONU MITTAL v. STATE OF 897
UTTAR PRADESH [N.V. RAMANA, J.]

supra provide sufficient guidelines for this Court to A
decide criminal appeals by special leave. Thus in a
criminal appeal by special leave, this Court at the
hearing examines the evidence and the judgment of the
High Court with the limited purpose of determining
whether or not the High Court has followed the B
principles enunciated above. Where the Court finds
that the High Court has committed no violation of the
various principles laid down by this Court and has made
a correct approach and has not ignored or overlooked C
striking features in the evidence which demolish the
prosecution case, the findings of fact arrived at by the
High Court on an appreciation of the evidence in the
circumstances of the case would not be disturbed.

9. Much time, energy and expense could be saved if D
the principles enunciated above are strictly adhered to
by counsel for the parties and they confine their
arguments within the four corners of those principles
and they cooperate in this sound and subtle judicial
method without transgressing the limits imposed by the E
decisions of this Court on its power to interfere with the
concurrent findings of fact."

In Shivnarayan Laxminarayan Joshi (supra), it was F
held as under:

"...On a perusal of the record and judgment of the High
Court we are clearly of the opinion that these appeals
are concluded by findings of facts. It is well settled that
this Court in special leave will not interfere with G
concurrent findings of facts unless the findings are
vitiating by a grave error of law or by an error which
leads to serious and substantial miscarriage of justice.
After a perusal of the judgment of the courts below we
find ourselves in complete agreement with the view H

A taken by the High Court and are unable to find any special circumstances which require our interference with the order passed by the High Court.”

B Therefore, what has to be appreciated in these appeals is whether any findings are vitiated by grave error of law or by an error which leads to serious and substantial miscarriage of justice, warranting interference of this Court.

C 25. Coming to the facts of this case, there are no direct eye-witnesses to the incident. The entire case of the prosecution is based on the circumstantial evidence. The FIR came to be registered, based on the confessional statement of accused No.7 – Vivek Sharma and accused No.4 – Rakesh Kumar Anand, made to the Head Constable D - Ram Bhawan Singh - PW1. They confessed before P.W.1 about the commission of the crime and involvement of the other accused, when he along with another police constable intercepted the car, while they were transporting the dead body of the deceased to dispose it of. Based on the E confession statement made by them about the commission of the crime and involvement of other accused, the accused were arrested and recoveries were made at their instance. The contention that is put forth on behalf of the appellants is that the confession made to the police is not admissible F in evidence, as per Section 25 of the Evidence Act. It is settled principle of law that statements made by an accused before police official which amount to confession is barred under Section 25 of the Indian Evidence Act. This prohibition is, however, lifted to some extent by Section 27 which reads G thus:

H **27. How much of information received from accused may be proved.**—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any

PAWAN KUMAR @ MONU MITTAL v. STATE OF 899
UTTAR PRADESH [N.V. RAMANA, J.]

offence, in the custody of a police officer, so much of A
such information, whether it amounts to a confession
or not, as relates distinctly to the fact thereby
discovered, may be proved.

26. In the light of Section 27 of the Evidence Act, B
whatever information given by the accused in consequence
of which a fact is discovered only would be admissible in
the evidence, whether such information amounts to
confession or not. The basic idea embedded under Section C
27 of the Evidence Act is the doctrine of confirmation by
subsequent events. The doctrine is founded on the principle
that if any fact is discovered in a search made on the
strength of any information obtained from a prisoner, such
a discovery is a guarantee that the information supplied by
the prisoner is true. The information might be confessional D
or non-inculpatory in nature, but if it results in discovery of
a fact it becomes a reliable information [See: State of
Maharashtra Vs. Damu, (2000) 6 SJC 269.

27. The "fact discovered" as envisaged under Section E
27 of the Evidence Act embraces the place from which the
object was produced, the knowledge of the accused as to
it, but the information given must relate distinctly to that
effect.

28. In the present case, Accused Nos. 4 & 7 disclosed F
the names of their co-accused at whose instance various
incriminating materials including pistols, cartridges, bullets,
blood stained articles were recovered. Simply denying their
role without proper explanation as to the knowledge about G
those incriminating material would justify the presumption
drawn by the Courts below to the involvement of the
accused in the crime. The confession given by the accused
is not the basis for the courts below to convict the accused,
but it is only a source of information to put the criminal law H

A into motion. Hence, the accused cannot take shelter under Section 25 of the Evidence Act.

29. The next contention of the appellants is that the prosecution could not prove the motive of the accused for the commission of the offence. We feel that the motive behind the brutal murder of the deceased as brought forward by the prosecution is trustworthy in the light of material available on record. Considering the evidence on record, there is no doubt in our mind that the deceased-
B Manjunath had inspected M/S Mittal Automobiles on 13.9.2005 and on finding irregularities, he had reported the same to the IOC and at his instance, the sales and supplies to the Pump of accused No.1 were suspended [Ex Ka-34].
C The IOC thereafter issued a show cause notice to the father of Accused No.1. In reply, his father had admitted that the pump was being managed by his son Pawan Kumar Mittal (Exts. 29 & 30). The record shows that accused No.1 was made to pay a fine of Rs 50000/- vide DD No.083226, dated 17.10.2005 and another Rs 25000/- vide DD no. 083227, dated 17.10.2005 [Exts. Ka 29-30]. Though, the sales and supplies were resumed on 19-10-2005, the deceased had again inspected the pump on 19.11.2005, a day before he was found dead. Suspecting that the deceased would again give report to IOC alleging irregularities in the supplies, in which event, he would either be called upon to pay fine or may render his licence suspended, accused No.1 bore grudge and with the assistance of other accused, murdered the deceased. The fact that on the fateful day, the deceased visited the petrol bunk of accused No.1, where he was brutally murdered, is evident from the evidence of PW 4 – Ashok Kumar Agarwal, Manager of M/S Agrawal Brothers Petrol Pump, who in his evidence deposed that the Accused No. 1 was inquiring about the location and
D
E
F
G
H movement of the deceased prior to the alleged incident on

PAWAN KUMAR @ MONU MITTAL v. STATE OF 901
UTTAR PRADESH [N.V. RAMANA, J.]

19th November, 2005. P.W.5 – Anurag Agarwal of M/s. A
Agarwal Brothers and P.W.8 – Ramesh Chandra Pandey,
Manager of M/s. Alankar Hotel, also deposed that the
deceased was in Gola on the day of incident. P.W.5 also
deposed that the deceased left for M/s. Mittal Automobiles
from his pump at 9.30 pm. P.W.17 – R.K. Justi, the B
immediate senior officer of the deceased deposed that the
deceased had gone to M/s. Mittal Automobiles for inspection
on 19.11.2005. He further deposed that in his presence,
three cartridges were recovered from the tank of M/s. Mittal C
Automobiles. This evidence clearly shows that on the
fateful day, the deceased went to M/s. Mittal Automobiles,
and thereafter, he was found dead. Considering the fact
that at the instance of the deceased, IOC imposed fine on
accused No.1 for the irregularities found in the dispensation D
of fuel, which lead to his paying up fine, there is every
possibility of accused No.1 bearing grudge against the
deceased, when the deceased visited his bunk on
19.11.2005, suspecting that the deceased would again
inspect the bunk and report the irregularities, in which event E
he may end up either paying fine or it will result in his licence
being cancelled, accused No.1 with the assistance of other
accused, had conspired to do away with the deceased, and
accordingly killed him.

30. We are in full agreement with the Courts below that F
the accused conspired to commit the offence of murder of
the deceased. The nexus between the accused to do away
with the deceased, has been established by the prosecution
beyond all reasonable doubt. Accused No.1- Pawan Kumar G
@ Monu Mittal, being the owner/in-charge of pump where
the incident took place, is an interested party in the crime
to do away with the deceased, because at his instance, the
supplies were suspended and only upon paying fine, the
supplies were restored. Accused No.4 - Rakesh Anand and H

A Accused No.7 - Vivek Sharma, were caught by P.W.1 –
Head Constable and another police constable, while they
were trying to dispose of the dead body of the deceased in
his own car. They confessed about the involvement of
accused No.5 – Lalla Giri. Lalla Giri (A-5) is an ex-
B employee of Pawan Kumar (A-1), and at his instance, three
bullets were recovered from the petrol pump, which proves
his presence at the spot and the time of occurrence.
C Accused no.2 - Devesh Agnihotri's involvement is
ascertained by the fact that he had led to the recovery of
four cartridges from the house of maternal uncle of Sanjay
Awasthi. Devesh Agnihotri (A-2) was earlier tried for a case
under Section 307 IPC along with Accused no.4 - Rakesh
Anand, which proves his previous association with the
D conspirators, though cannot be a basis for the conviction.
At the instance of Accused No. 2 - Devesh Agnihotri,
Accused No.8 - Rajesh Verma was arrested with Accused
No. 1 – Monu Mittal, while he was taking him in his own
car, which proves his association with the main accused.
E At the time of his arrest, a revolver with two live cartridges
was recovered. A rifle (Ext. Ka-18) belonging to Accused
No.1 - Pawan Kumar @ Monu Mittal, was also recovered
from the house of Accused No.8 - Rajesh Verma. Thus the
nexus between the accused as well as their participation
F in the crime is well established beyond reasonable doubt
and we find nothing on record to suggest that the accused
were unnecessarily implicated by the police.

G 31: There is also no doubt in our mind as regards the
place of incident. An effort has been made by the learned
counsel appearing for the accused to raise doubts over the
same on the ground that the number of bullets used in the
crime is not proportionate to the number of bullets hitting
the deceased. It came on record in the evidence of PW-5
H – Anurag Agrawal of M/s Aggarwal Brothers Petrol Pump

that the deceased had informed him at 9.30 p.m. on 19.11.2005 that from there he was going to M/S Mittal Automobiles, to take his measuring instruments which he had forgotten there. The recovery of bullets from the tank of M/S Mittal Automobiles and from behind their petrol pump along with blood stained cloth cumulatively establish the place of incident to be M/S Mittal Automobiles. In every case of gun firing, it is not required that each and every bullet should hit the target. There may be attempts by the deceased or the victim to save himself from the raining bullets, and in which case, the bullets may not hit the target. Merely because all the bullets fired from the gun did not hit the target and were not recovered from the scene of offence, is no ground to conclude that the incident did not take place.

32. As regards the allegation of contradictions in the statements of prosecution witnesses, we do not find any major contradictions which require our attention and consideration. When a witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence [See: Rammi Vs. State of M.P., (1999) 8 SCC 649]. There is no doubt that when two views are possible, the one which favours the accused should be taken and the accused should be acquitted by giving the benefit of doubt. But in the instant case, the evidence on record is trustworthy and consistent, and there is only one view, which points to the guilt of the accused. Though the learned counsel for the appellants sought to point out minor discrepancies in the evidence of the witnesses, but in the light of the above judgment of the

A court, we are of the considered opinion that such minor discrepancies should not come in the way of the other strong circumstantial evidence, cumulatively taken together, forms a complete chain of events, pointing towards the guilt of the accused in the commission of the crime.

B

33. In cases where the direct evidence is scarce, the burden of proving the case of prosecution is bestowed upon motive and circumstantial evidence. It is the chain of events that acquires prime importance in such cases. B e f o r e analysing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed [See: ***Bodhraj Vs. State of J&K***, (2002) 8 SCC 45]. In the case on hand, the evidence adduced by the prosecution as discussed above, clearly proves the chain of events connecting the accused to the guilt of the commission of the offence. The entire evidence brought on record by the prosecution, is not only convincing, but is also trustworthy. Even if the confession of accused Nos. 4 and 7 made before PW 1 and PW 2, which is barred by Section 25 of the Evidence Act, is not taken into account, the other evidence on record adduced by the prosecution, is sufficient to hold the accused guilty of the offence.

H

PAWAN KUMAR @ MONU MITTAL v. STATE OF 905
UTTAR PRADESH [N.V. RAMANA, J.]

34. This Court has been consistently taking the view that where a case 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 other person. In the present case, on scrutiny of evidence on record, we are convinced that the prosecution had established beyond reasonable doubt the complete chain of events which points at the guilt of the accused.

35. Thus, in the light of above circumstances coupled with the complete chain of events, this Court has no manner of doubt to hold that the prosecution has succeeded in proving its case against the accused beyond all reasonable doubt.

36. Taking the entire case in its totality, we do not find any merit in these appeals requiring our interference. Resultantly, the appeals fail and are dismissed.

Nidhi Jain

Appeals dismissed.