A STATE OF MADHYA PRADESH

v.

CHHAAKKI LAL AND ANOTHER

(Criminal Appeal Nos.21-22 of 2011)

B SEPTEMBER 26, 2018

[R. BANUMATHI AND VINEET SARAN, JJ.]

Penal Code, 1860 – s.302 – Appeal against acquittal – Case of the prosecution that accused no.1 and 2 shot dead PW-1's daughter and three other relatives while they were going along with PW-1 towards the fields to cut crop – Trial court held the accused persons guilty u/s.302 – High Court acquitted the accused persons – On appeal, held: It is the case where four people were murdered in broad day light – One of the deceased, PW-1's grandson was a child of three years – High Court did not appreciate the evidence of PW-1, the sole eye witness in proper perspective and erred in disbelieving her version on the contradictions which are not material – Version of PW-1 is corroborated by the medical evidence and the evidence of ballistic expert – In an appeal against acquittal, the appellate court would not ordinarily interfere with the order of acquittal, but where the approach of the High Court suffers from serious infirmity, Supreme court can reappreciate the evidence and reasonings upon which the order of acquittal is based – Judgment of the High Court suffers from serious infirmity – Judgment of the trial court restored – Trial court holding the case to be one of the 'rarest of rare cases' awarded death penalty to the accused persons – However, occurrence was of the year 2006 and moreover, the appeal against accused no.2 has abated due to his death – Considering the facts and circumstances of the case and the passage of time, award of death penalty is not warranted and imposition of life sentence upon accused no.1 would meet the ends of justice – Evidence Act – ss.27 and 134.

FIR – Contents of – Held: FIR is not an encyclopaedia which is expected to contain all the minute details of the prosecution case – It may be sufficient if the broad effects of the prosecution case are stated in the FIR.

Allowing the appeals, the Court A

HELD: 1.1 It is the case where four people were murdered in the broad day light. One of the deceased was a child of three years of age. The prosecution case revolves around the solitary testimony of eye-witness PW-1 which was accepted by the trial court as trustworthy. While reversing the verdict of conviction, B **the High Court held that the evidence of PW-1 is fraught with inconsistencies and hence, her evidence is not reliable. Of course, there is a slight improvement in the version of PW-1 before the court but the circumstance under which Complaint (Ex.-P1) was recorded has to be seen. PW-1 had lost her four kith and kin. At** C **the time when Complaint was recorded, PW-1 must have been grief-stricken and under mental trauma and she might have stated that she heard four-five gun shots and then saw the dead bodies of 'GB' (PW-1's daughter) and 'GS' (son of *jeth* of PW-1's daughter) and then the accused came near 'P' (PW-1's daughter-in-law) and child 'R' (PW-1's grandson) and fired at them.** D **[Paras 10, 12 and 14] 192-A, F-G; 193-C-D]**

1.2 In his evidence, PW-3 stated that the dead bodies of 'GB' and 'GS' were found close to each other and that dead bodies of 'P' and 'R' were at a distance of 25-30 feet away from the dead bodies of 'GB' and 'GS'. In his statement, Investigating Officer E **(PW-13) stated that dead body of 'P' was at a distance of about fifty yards from the dead bodies of 'GB' and 'GS' and that was mentioned by him in the Site Plan (Ex.-P24). After referring to the Site Plan, the evidence of PW-3 and PW-13-IO, the trial court pointed out that the place where 'P' and 'R' were shot and dead** F **bodies of 'GB' and 'GS' were found, were at a short distance of about fifty yards. The trial court observed that since the distance was not far away, case of the prosecution that 'GS', 'GB', 'P' and 'R' were all shot by the accused in the course of the same transaction is established by the oral evidence of PW-1 and also by the Site Plan. After referring to the evidence of PW-13-** G **Investigating Officer and Site Plan, when the trial court had recorded that the firing of all the four deceased were in the course of the same transaction, the High Court ought not to have doubted the version of PW-1 on the slight improvement made in her evidence. [Paras 17, 18] [194-D-G]**

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1.3 FIR is not an encyclopaedia which is expected to contain all the minute details of the prosecution case, it may be sufficient if the broad effects of the prosecution case are stated in the FIR. In this case, firing by accused no.1 at child 'R' was stated in the FIR and the omission of minute detail that accused no.1 jumped on the abdomen of child 'R' cannot be regarded as fatal to the prosecution case. The effect of the occurrence on the mind of an old woman like PW-1 cannot be measured in yardstick. Being grief-stricken because of the death of her four kith and kin, it may not have occurred to her to narrate all the minute details of the occurrence. The non-mention of accused no.1 throwing the child 'R' on the ground and jumping on his abdomen due to which the intestine came out cannot be regarded as fatal to the prosecution case. Further, when there is proper explanation for the delay, the prosecution case cannot be doubted on the ground that there was delay in registration of FIR. In this case, the delay in FIR was properly explained and the same is not fatal to the prosecution case. [Para 19, 25] [195-C-E; 198-B-C]

1.4 PW-1 was a rustic villager and also aged. After seeing her own daughter and daughter in law and grandson being put to death, she must have been under tremendous shock. She was deposing in the court after some time. Naturally, there are bound to be variations from her earlier version. The trial court which had the opportunity to observe the demeanour of the witnesses found that the evidence of PWs is credible and trustworthy. While so, the High Court ought not to have recorded a finding raising doubts about the credibility of PW-1. Unless the appreciation of evidence by the trial court was vitiated by serious error, the findings recorded by the trial court ought not to have been interfered by the High Court. The High Court erred in doubting the testimony of PW-1. It would be unreasonable to contend that merely because PW-1 is related to the deceased and that there were contradictions in her evidence, her evidence has to be discarded. Discrepancies which do not shake the credibility of the witness and the basic version of the prosecution case are to be discarded. If the evidence of the witness as a whole contains the ring of truth, the evidence cannot be doubted. [Paras 20-22] [195-F-G; 196-A-C]

Prithu alias Prithi Chand and Another v. State of Himachal Pradesh **(2009) 11 SCC 588 : [2009] 2 SCR 765 - relied on.**

State of U.P. v. M.K. Anthony **(1985) 1 SCC 505 – referred to.**

1.5 So far as the place of occurrence is concerned, the evidence of PW-1 is amply corroborated by other evidence. It is not the number; but the quality of the evidence that matters. In terms of Section 134 of the Evidence Act, "*no particular number of witnesses shall in any case be required for the proof of any fact*". [Para 23] 196-G; 197-A]

Prithipal Singh and Others v. State of Punjab and Another **(2012) 1 SCC 10 – relied on.**

Sudip Kumar Sen alias Biltu v. State of West Bengal and Others **(2016) 3 SCC 26 – referred to.**

1.6 The opinion of the Ballistic expert that the fired *kartoos* was fired by 0.315 bore *katta*/desi pistol (Ex.-A4) recovered from accused no.1 and the opinion that live *kartoos* (Ex.-EB1 and EB2) were fired from 12 bore gun (Ex.-A3) recovered from accused no.2 amply proves the involvement of the complicity of the accused in the occurrence thereby corroborating the evidence of PW-1. [Para 27] [199-G-H]

2. In an appeal against acquittal, the appellate court would not ordinarily interfere with the order of acquittal. But where the approach of the High Court suffers from serious infirmity, this court can reappreciate the evidence and reasonings upon which the order of acquittal is based. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of the innocent. The High Court erred in doubting the version of PW-1, the sole eye witness whose evidence is corroborated by the medical evidence and the evidence of ballistic expert. The High Court did not appreciate the evidence of PW-1 in proper perspective and erred in disbelieving her version on the contradictions which are not material. Where the evidence has not been properly analysed or the High court has acted on surmises and findings of the impugned

judgment is unreasonable, it is the duty of the appellate court to set right the wrong. The order of acquittal by the High court cannot be sustained and the judgment of the trial court is to be restored. [Paras 35, 36] [202-B-D; E, F]

3. After convicting the accused persons under Section 302 IPC, the trial court held that the case would be one of the 'rarest of rare cases' and awarded death penalty. The occurrence was of the year 2006 and moreover, the appeal against accused no.2 has been abated due to his passing away. Therefore, considering the facts and circumstances of the case and the passage of time, awarding of death penalty is not warranted and imposing sentence of life imprisonment upon the respondent/accused no.1 would meet the ends of justice. The accused no.1 is sentenced to undergo imprisonment for life. [Paras 37, 38] [202-F-G; 203-B]

Nankaunoo v. State of Uttar Pradesh **(2016) 3 SCC 317 : [2016] 4 SCR 627 ;** *V.K. Mishra and Another v. State of Uttarakhand and Another* **(2015) 9 SCC 588 : [2015] 8 SCR 1 – relied on.**

Case Law Reference

[2009] 2 SCR 765	**relied on**	**Para 22**
(1985) 1 SCC 505	**referred to**	**Para 22**
(2012) 1 SCC 10	**relied on**	**Para 23**
(2016) 3 SCC 26	**referred to**	**Para 23**
[2016] 4 SCR 627	**relied on**	**Para 33**
[2015] 8 SCR 1	**relied on**	**Para 34**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 21-22 of 2011.

From the Judgment and Order dated 13.08.2008 of the High Court of Judicature of Madhya Pradesh at Gwalior in Criminal Appeal No. 254 of 2008 and Criminal Death Reference No. 2 of 2008

WITH

Criminal Appeal Nos.23-24 of 2011.

Ms. Bansuri Swarj, Ms. Swarupama Chaturvedi, B. N. Dubey, Ms. Devika Gulati, Ms. Vaishali Verma Rahul Chitnis, Aaditya A. Pande, Chander Shekhar Ashri, P. K. Sharma, Uday Prakash Yadav, Sujit Kumar Jha, Ramjee Pandey, Pradeep Kumar Dubey, Advs. for the appearing parties. A

The Judgment of the Court was delivered by B

R. BANUMATHI, J. 1. These appeals arise out of the judgment of the High court of Madhya Pradesh in Criminal Death Reference No.2 of 2008 in and by which the High Court has allowed the appeal filed by the respondents-accused thereby acquitting the respondents-accused under Section 302 IPC and setting aside the death penalty awarded to the respondents/accused and his son accused Akhilesh by the trial court. C

2. During the pendency of these appeals, respondent No.2-Akhilesh had died and by the order dated 28.02.2017, the appeal against respondent No.2 was dismissed as abated. D

3. Briefly stated case of the prosecution is that on 20.02.2006 at about 12.00-12.30 p.m., Kesar Bai (PW-1), her daughter-in-law deceased Phoolwati and grandson Rinku aged three years were going towards the field to cut the mustard crop. Deceased Ganeshi Bai who was the daughter of Kesar Bai (PW-1) and deceased Ganga Singh who was the son of the *jeth* of Ganeshi Bai were little ahead to them. As soon as Kesar Bai reached near Madhawala Danda on the public way, she heard the sound of four to five gun-shots fired and saw the accused firing at Ganga Singh and Ganeshi Bai. Thereafter, accused Chhaakki Lal and his son Akhilesh carrying the guns came towards them from the front side. Chhaakki Lal told Kesar Bai (PW-1) that they have already killed her daughter, Ganeshi Bai and Ganga Singh and now the turn is hers. Chhaakki Lal-accused No.1 then fired at Phoolwati in her abdomen, the second fire was fired by Akhilesh-accused No.2 at Rinku. Then accused-Chhaakki Lal jumped on the child Rinku due to which the intestines of Rinku tossed out because of the impact and as a result, he died on the spot. Kesar Bai (PW-1) challenged the accused persons and said 'what are you waiting for, kill me now'. Chhaakki Lal is said to have replied that he would not kill her as she will die automatically after looking at these incidents. Complaint - Dehati Nalishi (Ex. P-1) was recorded on 20.02.2006 and after initial investigation, FIR was registered under Section E F G H

A 302 IPC read with Section 34 IPC and Sections 25, 27, 29 and 30 of the Arms Act against both the accused persons (Ex. P-25-26).

4. Dr. S.K. Singh Niranjan (PW-6) conducted post-mortem on the dead bodies of all the four deceased namely Phoolwati, Rinku Singh, Ganeshi Bai and Ganga Singh and noted the injuries and issued B post-mortem certificates. Accused Chhaakki Lal and Akhilesh were arrested on 26.02.2006. Based on the disclosure statement of Chhaakki Lal-accused No.1, a *katta* had been seized *vide* seizure memo Ex. P-20. Based on the disclosure statement of Akhilesh-accused No.2, a 12 bore gun along with two live cartridges of 12 bore was seized from Akhilesh. Also a gun licence of accused-Chhaakki Lal had been seized C from Akhilesh *vide* seizure memo Ex. P-21**.** According to the FSL reports (Exts. P-31, P-32 and P-33), the fired *kartoos* Ex.EC-1 to Ex.EC-4 had been fired by pistol Ex. A-4, the two live kartoos Ex. LR-1 and LR-2 could be fired by 12 bore gun/*bandook* (Ex. A-3), Exs. EB-1 and EB-2 was fired by rifle weapon. Ex.-EB-3 can be part of Ex.-EB-2.

D 5. To bring home the guilt of the accused, prosecution has examined PW-1 to PW-13 and exhibited number of documents. The accused were questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances and the accused denied all of them. Accused in their defence stated that deceased Ganga Singh was a person of criminal E character who was also in collusion with dacoits and engaged in theft and snatching. The accused persons have stated that due to previous enmity, they have been falsely implicated. Upon consideration of evidence of Kesar Bai (PW-1) and other evidence adduced by the prosecution, the trial court held accused Nos.1 and 2 guilty under Section 302 IPC read with Section 34 IPC. The trial court held that the case F would come under the category of 'rarest of rare cases' and awarded death penalty to both the accused persons apart from imposing a fine of Rs.5,000/- each**.** In appeal, the High court allowed the appeal preferred by the accused. The High Court found that the evidence of sole eye witness Kesar Bai (PW-1) is not reliable and that the same is full of G contradictions and omissions. The High Court held that Kesar Bai (PW-1) is not a reliable witness and on those findings reversed the verdict of conviction and acquitted the accused persons.

6. Heard learned counsel for the State of Madhya Pradesh and learned counsel for the respondents/accused. Learned counsel for the

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State of Madhya Pradesh submitted that the evidence of Kesar Bai (PW-1) was credible and acceptable and the same was supported by other evidence and circumstances and the High Court erred in disbelieving the evidence of Kesar Bai (PW-1). It was further contended that the delay in sending the weapons for examination to Forensic Science Laboratory on 19.04.2006 which were recovered on 01.03.2006 was a mistake/omission on the part of B.L. Dhanele - Investigating Officer (PW-13) and the benefit of such omission cannot be given to the accused. It was urged that the High court was wrong in believing the story of the defence to the effect that all the four deceased were killed by the dacoits as the deceased Ganga Singh had illegal relations with the dacoits and the High court has failed to see that the story of the defence was without any basis.

7. Contention of the respondent/accused is that Kesar Bai (PW-1) is not an honest and trustworthy witness because there are lot of improvements on important aspects in her court depositions on vital aspects. Assailing the evidence of Kesar Bai (PW-1), the learned counsel *inter alia* made the following submissions:-

- In her court deposition, Kesar Bai (PW-1) claimed that she had witnessed the murder of Ganga Singh and Ganeshi Bai whereas in the police complaint, she stated that she heard four to five gun shots and thereafter when she reached there, she saw the respondents/accused Chhaakki Lal and Akhilesh proceeding towards them;
- Improved version of Kesar Bai (PW-1) as to the overt act attributed to Chhaakki Lal that he threw Rinku on the ground and jumped upon his abdomen region as a result of which his intestines came out did not find place in the FIR.

8. The learned counsel appearing for the respondents-accused submitted that the evidence of sole witness Kesar Bai (PW-1) could not have formed the basis for conviction and the High Court has rightly discarded the evidence of Kesar Bai (PW-1) and has rightly set aside the conviction and acquitted the accused.

9. We have carefully considered the rival contentions and perused the impugned judgment, evidence and materials placed on record. The point falling for consideration is whether the High court was right in

A reversing the verdict of conviction of the respondents-accused and acquitting them from the charges under Section 302 IPC.

10. It is the case where four people were murdered in the broad day light. One of the deceased - Rinku was a child of three years of age. Case of the prosecution is based upon the sole testimony of Kesar Bai
B (PW-1). In her evidence, Kesar Bai (PW-1) has stated that Ganga Singh and Ganeshi Bai had gone ahead for cutting the neem tree and that she (PW-1), her daughter-in-law Phoolwati and grandson Rinku were following them. Kesar Bai (PW-1) stated that when they reached at Madhawala Danda, Ganga Singh was at a distance of 10-15 feet and that she saw accused Chhaakki Lal and Akhilesh firing gun-shot at Ganga
C Singh and thereafter firing gun-shot at Ganeshi Bai. Then accused-Chhaakki Lal and Akhilesh came towards Phoolwati and Chhaakki Lal fired the bullet in the abdomen of Phoolwati. Akhilesh also fired at Phoolwati. Akhilesh fired at Rinku and Chhaakki Lal had thrown Rinku on the ground. Chhaakki Lal also fired at Rinku. Chhaakki Lal climbed
D over Rinku and jumped, due to which, his intestines came out. When Kesar Bai (PW-1) told them to kill her also by firing, Chhaakki Lal replied that they would not kill her and that she had to see all these things and then she would die automatically.

11. Thakurdas (PW-2) who is Village Chowkidar stated that he
E had heard about the incident from Kesar Bai (PW-1) and gone to the place of the incident and saw the dead bodies of Ganga Singh, Ganeshi Bai, Phoolwati and Rinku. Thakurdas (PW-2) stated that when he reached the village, Kesar Bai (PW-1) was weeping and she told him that Chhaakki Lal and his son Akhilesh had committed all the four murders when they were going towards the field.

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12. The prosecution case revolves around the solitary testimony of eye-witness Kesar Bai (PW-1) which was accepted by the trial court as trustworthy. While reversing the verdict of conviction, the High Court held that the evidence of Kesar Bai (PW-1) is fraught with inconsistencies and hence, her evidence is not reliable. The High court pointed out that
G the evidence of Kesar Bai (PW-1) is exaggerated and that accused-Chhaakki Lal fired at Rinku is totally missing in her statement (Ex.-P1). The High Court also pointed out further inconsistencies.

13. In her evidence before the court, Kesar Bai (PW-1) stated that when she and her daughter-in-law Phoolwati and grandson Rinku

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reached near Madhawala Danda, other deceased persons namely Ganeshi Bai and Ganga Singh were only ten paces away from them and that she saw both the accused firing at Ganga Singh and Ganeshi Bai and thereafter the accused came towards her. In Dehati Nalishi-complaint (Ex.-P1), Kesar Bai (PW-1) stated that she heard four-five gun shots and then saw the accused coming towards her telling that they have killed Ganeshi Bai and Ganga Singh and then fired at Phoolwati and child Rinku. The High Court held that in the version of Kesar Bai (PW-1) before the court, there is a material improvement and that the evidence of Kesar Bai (PW-1) is not reliable.

14. Of course, there is a slight improvement in the version of Kesar Bai (PW-1) before the court but the circumstance under which Dehati Nalishi-complaint (Ex.-P1) was recorded has to be seen. Kesar Bai (PW-1) has lost her four kith and kin. At the time when Dehati Nalishi-complaint (Ex.-P1) was recorded, Kesar Bai (PW-1) must have been grief-stricken and under mental trauma and she might have stated that she heard four-five gun shots and then saw the dead bodies of Ganga Singh and Ganeshi Bai and then the accused came near Phoolwati and child Rinku and fired at them.

15. Learned counsel for the respondent/accused submitted that in her cross-examination, Kesar Bai (PW-1) stated about one assailant Kailash and also named in *Dehati Nalishi* and the said Kailash was detained by the police for one or two days after the incident but later let off by the police because of the pressure. It was submitted that mention of another assailant Kailash by Kesar Bai (PW-1) raises serious doubts about the prosecution case. Ex.-P1-Dehati Nalishi was an earliest one lodged on the date of incident on 20.02.2006 at 05.15 pm. Name of Kailash is not mentioned in Ex.-P1-Dehati Nalishi. FIR (Ex.-P25-26) also does not contain the name of alleged assailant Kailash. Since name of Kailash was not mentioned either in the Dehati Nalishi or FIR, the answers elicited from Kesar Bai (PW-1) in the cross-examination regarding Kailash does not affect her credibility. It is also pertinent to point out that in her cross-examination, though Kesar Bai (PW-1) had stated that Kailash was taken to police custody after two to three days of complaint, Kesar Bai (PW-1) stated that she cannot say that whether police had taken Kailash to custody in connection with her case or other case.

A 16. Though much arguments are advanced regarding the alleged involvement of Kailash and that he was taken to custody, the entire argument advanced qua one Kailash is based upon certain answers elicited from Kesar Bai (PW-1). The Investigating Officer has also denied that he has brought Kailash and one Ardaman and kept them in custody for 4-5 days. He has also denied that based on the statement of B Kesar Bai (PW-1), he kept their guns. Investigating Officer has denied that he released both Kailash and Ardaman due to some pressure and falsely involved respondents/accused. Investigating Officer has also denied that Kesar Bai (PW-1) had told him that Kailash and Ardaman had done the incident through dacoits. Investigating Officer has also C denied that Kesar Bai (PW-1) had named Kailash and Ardaman in her statement and the same was not written by him. In the light of categorical denial by the investigation, there is no merit in the contention of the respondent/accused as to the alleged involvement of Kailash.

17. In his evidence, Ram Naresh (PW-3) stated that the dead D bodies of Ganeshi Bai and Ganga Singh were found close to each other and that dead bodies of Phoolwati and Rinku were at a distance of 25-30 feet away from the dead bodies of Ganeshi Bai and Ganga Singh. In his statement, B.L. Dhanele - Investigating Officer (PW-13) has stated that dead body of Phoolwati was at a distance of about fifty yards from the dead bodies of Ganeshi Bai and Ganga Singh and that has been E mentioned by him in the Site Plan (Ex.-P24).

18. After referring to the Site Plan (Ex.-P24) and the evidence of Ram Naresh (PW-3) and PW-13-IO, the trial court pointed out that the place where Phoolwati and Rinku were shot and dead bodies of Ganeshi Bai and Ganga Singh were found, were at a short distance of about fifty F yards. The trial court observed that since the distance was not far away, case of the prosecution that Ganga Singh, Ganeshi Bai, Phoolwati and Rinku were all shot by the accused in the course of the same transaction is established by the oral evidence of Kesar Bai (PW-1) and also by the Site Plan (Ex.-P24). After referring to the evidence of G PW-13-Investigating Officer and Site Plan (Ex.-P24), when the trial court has recorded that the firing of all the four deceased were in the course of the same transaction, the High Court ought not to have doubted the version of Kesar Bai (PW-1) on the slight improvement made in her evidence. For the sake of arguments, even assuming that PW-1 could

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not have seen the firing at Ganeshi Bai and Ganga Singh, her evidence is to be accepted to the extent of the occurrence of firing at deceased Phoolwati and child Rinku. In her statement Kesar Bai (PW-1) has stated that after gun shot fired at deceased Rinku, accused-Chhaakki Lal threw the child Rinku on the ground and also jumped on his abdomen, as a result of which intestines came out. The learned counsel for the respondents-accused submitted that Chhaakki Lal jumping on the abdomen of the child Rinku was not mentioned in Dehati Nalishi (Ex.P.1) and FIR and this material omission suggests that Kesar Bai (PW-1) exaggerated her version about throwing of child Rinku on the floor and jumping on his abdominal region.

19. FIR is not an encyclopaedia which is expected to contain all the minute details of the prosecution case, it may be sufficient if the broad effects of the prosecution case are stated in the FIR. In this case, firing by accused-Chhaakki Lal at child Rinku was stated in the FIR and the omission of minute detail that Chhaakki Lal jumped on the abdomen of child Rinku cannot be regarded as fatal to the prosecution case. As discussed earlier, the effect of the occurrence on the mind of an old woman like Kesar Bai (PW-1) cannot be measured in yardstick. Being grief-stricken because of the death of her four kith and kin, it may not have occurred to Kesar Bai (PW-1) to narrate all the minute details of the occurrence. The non-mention of accused-Chhaakki Lal throwing the child Rinku on the ground and jumping on his abdomen due to which the intestine came out cannot be regarded as fatal to the prosecution case.

20. The High Court acquitted the accused merely on the ground that the evidence of Kesar Bai (PW-1) is fraught with contradictions. Kesar Bai (PW-1) was a rustic villager and also aged. After seeing her own daughter and daughter in law and grandson being put to death, she must have been under tremendous shock. Kesar Bai (PW-1) was deposing in the court after some time. Naturally, there are bound to be variations from her earlier version. The trial court which had the opportunity to observe the demeanour of the witnesses found that the evidence of PWs is credible and trustworthy. While so, the High Court ought not to have recorded a finding raising doubts about the credibility of Kesar Bai (PW-1).

21. The trial court had the opportunity of seeing and observing the demeanour of the witnesses and the views of the trial court as to the credibility of the witnesses is entitled to great weight. Unless the appreciation of evidence by the trial court was vitiated by serious error, the findings recorded by the trial court ought not to have been interfered by the High Court.

22. In our considered view, the High court erred in doubting the testimony of Kesar Bai (PW-1). It would be unreasonable to contend that merely because Kesar Bai (PW-1) is related to the deceased and that there were contradictions in her evidence, her evidence has to be discarded. Discrepancies which do not shake the credibility of the witness and the basic version of the prosecution case are to be discarded. If the evidence of the witness as a whole contains the ring of truth, the evidence cannot be doubted. In ***Prithu alias Prithi Chand and Another v. State of Himachal Pradesh*** (2009) 11 SCC 588, it was held as under:-

> **"14.** In *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat* (1983) 3 SCC 217, it was observed that undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the root of the matter and shake the basic version of the prosecution witnesses. A witness cannot be expected to possess a photographic memory and to recall the details of an incident verbatim. Ordinarily, it so happens that a witness is overtaken by events. A witness could not have anticipated the occurrence which very often has an element of surprise. The mental faculties cannot, therefore, be expected to be attuned to absorb all the details. Thus, minor discrepancies were bound to occur in the statement of witnesses."

The same principle was reiterated in ***State of U.P. v. M.K. Anthony*** (1985) 1 SCC 505.

23. The High court proceeded on the footing that the evidence of Kesar Bai (PW-1) being the solitary witness is not reliable to base the conviction unless corroborated in material particulars. As discussed above, so far as the place of occurrence is concerned, the evidence of PW-1 is amply corroborated by other evidence. It is fairly well settled that it is not the number; but the quality of the evidence that matters. In terms of Section 134 of the Evidence Act, "*no particular number of witnesses*

shall in any case be required for the proof of any fact". The test whether the evidence has a ring of truth is cogent and trustworthy. In ***Prithipal Singh and Others v. State of Punjab and Another*** (2012) 1 SCC 10, it was held as under:-

> "49. This court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence."

The same principle was reiterated in ***Sudip Kumar Sen alias Biltu v. State of West Bengal and others*** (2016) 3 SCC 26.

24. The version of the prosecution was doubted by the High Court on the ground that FIR was registered after much delay. As per Dehati Nalishi-complaint (Ex.-P1), time of incident was at about 12.00-12.30 pm on 20.02.2006 and Dehati Nalishi-complaint (Ex.-P1) was written at 05.15 pm on the same day. PW-13-IO stated that on 20.02.2006, he was on duty at Health Mela in Senwdha and on receipt of information from SDO Smt. Rekha Singh, he reached the place of occurrence and wrote Dehati Nalishi-complaint (Ex.-P1). After the inquest and the preliminary investigation like preparation of spot map, seizure etc. on 20.02.2006, FIR was registered on 21.02.2006 at about 02.00 pm. Ramveer (PW-8), son of Kesar Bai (PW-1) was not present in the village and that he had gone to see his sister. When all the family members of PW-1 were killed and her son Ramveer (PW-8) away from the village, it cannot be accepted from Kesar Bai (PW-1) a seventy

A years old rural woman to leave the dead bodies of family members at the spot and go to the police station situated at a distance of ten kilometres to lodge the complaint. As pointed out by the trial court, the delay in registration of FIR has been properly explained.

25. Delay in setting the law in motion by lodging the complaint or B registration of FIR is normally viewed by courts with suspicion because there is possibility of concoction of the case against the accused. But when there is proper explanation for the delay, the prosecution case cannot be doubted on the ground that there was delay in registration of FIR. In this case, the delay in FIR has been properly explained and the same is not fatal to the prosecution case.

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26. The High Court referred to the evidence of Mewalal (PW-11) who in his cross-examination has stated that he saw PW-1 weeping at 08.00-09.00 am and that PW-1 told him that accused persons have killed Ganga Singh, Ganeshi Bai, Phoolwati and Rinku. Be it noted that Mewalal (PW-11) in his chief-examination stated that at about 12.00-12.30 pm, D when he was present at his home in village Ruhera, he heard the firing sound of five-six gun shots and that PW-1, mother-in-law of Phoolwati passed from the passage crying and saying that the accused Chhaakki Lal and Akhilesh had committed the murder of her daughter-in-law Phoolwati, her grandson Rinku, Ganeshi Bai and Ganga Singh in E Mandawali Dang. Resiling from his version in the chief-examination, in cross-examination, PW-11 stated that at about 08.00-09.00 am, when he was in his house, PW-1 came to his house saying that accused Chhaakki Lal and Akhilesh have committed murder of her daughter-in-law Phoolwati, her grandson Rinku, Ganeshi Bai and Ganga Singh. The learned counsel appearing on behalf of the respondent/accused submitted F that the prosecution has not treated PW-11 hostile and the statement of PW-11 in his cross-examination throws serious doubts about the time and the manner of occurrence. Of course, PW-11 was not treated hostile; but his prevaricating version stood in the cross-examination neither affects his version in the chief-examination nor does it affect the prosecution G case. The High court was not right in doubting the prosecution case and the trustworthiness of Kesar Bai (PW-1) based on the evidence of an infirm witness like PW-11.

27. The accused were arrested on 26.02.2006 and on the basis of the disclosure statement recorded under Section 27 of the Evidence H Act, on 01.03.2006, one 0.315 bore *katta*/desi pistol (Ex.-A4) was seized

at the instance of accused Chhaakki Lal vide seizure memo Ex.-P20. One 12 bore gun (Ex.-A3) along with two live cartridges (Ex.-EB1 and EB2) and a gun licence of accused Chhaakki Lal have been seized under seizure memo Ex.-P21 from accused Akhilesh. One petal *khoka* of 0.315 bore (Ex.-P8) was recovered from the dead body of Phoolwati. Two fired cartridges of 0.315 bore (Ex.-P7) were found near the dead bodies of deceased Ganeshi Bai and Ganga Singh respectively. In Ex.-P32 and Ex.-P33, the Ballistic expert opined that the fired *kartoos* (Ex.-EC1 to EC4) have been fired from 0.315 bore *katta*/desi pistol (Ex.-A4). Likewise, in Ex.-P32 and Ex.-P33, the Ballistic expert opined that the two live *kartoos* (Ex.-LR1 and LR2) could have been fired from 12 bore gun (Ex.-A3). The opinion of the Ballistic expert tallying with the arms recovered from the accused is seen from the following:-

Accused	**Fired at**	**Arm recovered**	**Opinion of Ballistic report**
Chhaakki Lal (A1)	Phoolwati	315 bore *katta* (Ex. A4) – Desi Pistol seized under Ex. P20	According to the FSL reports (Ex.-P31, P32 and P33), the fired *kartoos* (Ex.-EC1 to Ex.-EC4) has been fired by 0.315 bore *katta,* a desi pistol (Ex. A4). EB-2 bullet recovered from the body of Ganga Singh was fired from 0.315 bore *katta* (Ex. A4). **EB-3 can be part of EB-2.**
Akhilesh (A2)	Rinku	12 bore gun (Ex.-A3) and two live cartridges (EB1 + EB2) seized under Ex. P21	According to the FSL reports (Ex. P31, P32 and P33), two live *kartoos* (Ex.-LR1 and LR2) could be fired by 12 bore gun (Ex.-A3). Ex.-EB-1 is fired by 12 bore gun (Ex.-A3) which was found from the dead body of Rinku.

The opinion of the Ballistic expert that the fired *kartoos* has been fired by 0.315 bore *katta*/desi pistol (Ex.-A4) recovered from accused Chhaakki Lal and the opinion that live *kartoos* (Ex.-EB1 and EB2) were fired from 12 bore gun (Ex.-A3) recovered from accused Akhilesh amply proves the involvement of the complicity of the accused in the occurrence thereby corroborating the evidence of PW-1.

28. As pointed out earlier, country made pistol of 315 bore was recovered from Chhaakki Lal on 01.03.2006 (seizure memo Ex.-P20) and 12 bore gun was recovered from Akhilesh (Ex.-P21). Contention of the learned counsel for the respondent is that Ex.-P20 refers to recovery of 315 bore *katta* whereas the FSL report (Ex.-P32) speaks about the examination of country made pistol of 0.315 bore. Further contention of the respondent/accused is that it has not been explained as to how country made pistol of 315 bore has been transformed into 0.315 bore during FSL report (Ex.-P32).

29. Of course, in Ex.-P20, it is stated that 315 bore *katta* was recovered from Chhaakki Lal and the same is also mentioned in the sanction order under the Arms Act (Ex.-P14). No doubt, in FSL report (Ex.-P32), the gun which was examined by the ballistic expert is stated as 0.315 bore *katta*. There seems to be no variation in the pistol which was seized by the police and the one that was examined by the ballistic expert. The difference seems to be only in the description of *315 bore katta* and *0.315 bore katta*. Investigating Officer who seized the weapon and the one who wrote Ex.-P20 are not ballistic experts and are only laymen in so far as the examination of guns/pistol. Any slight variation in the description of *katta* recovered from Chhaakki Lal does not make it a different *katta* from the one which was examined by the ballistic expert (0.315 bore *katta*).

30. Contention of the respondent/accused is that the FSL Report does not say anything about the use of rifle by any of the assailants. It was submitted that EB-1 and EB-2 cannot be fired by a country made pistol of 0.315 bore or a gun of 12 bore and that EB-1 and EB-2 must have been fired from some other big size gun. It was submitted that Kesar Bai (PW-1) has named one Kailash in her cross-examination that the said Kailash was kept in custody for about four to six days and the possibility that the gun recovered from Kailash was planted on Chhaakki Lal cannot be ruled out. It was further submitted that country made pistol examined by the FSL must have been recovered only from Kailash and the discrepancies between the recovery and the FSL report has not been properly explained.

31. It appears that there is no 315 bore gun but only 0.315 bore gun. The description given by the police that the recovered gun from Chhaakki Lal was 315 bore gun is only a mistaken description.

32. Investigating Officer has stated that Kesar Bai (PW-1) told in her statement recorded by him that the accused used big guns. Kesar Bai (PW-1) being a rustic village woman may not have been in a position to give proper description of the gun; the accused cannot take advantage of the answers elicited from Kesar Bai (PW-1) that "***the accused persons were holding big size gun***" as it was only a manner of description by a rustic villager like Kesar Bai (PW-1). The contention of the respondents that only "big sized gun" stated by Kesar Bai (PW-1) could have been the gun of Kailash who was taken to custody by the police along with his gun and later released. This contention does not merit acceptance. Investigation Officer has categorically denied that the big guns were of Kailash and Ardaman. Investigating Officer has also denied that because of pressure he did not implicate Kailash and Ardaman and falsely implicated the accused.

33. For reversing the verdict of conviction, the High Court has pointed out that there was delay in sending the seized gun and pistol (recovered on 01.03.2006) which was sent to the FSL only on 19.04.2006. The High Court has doubted the case of prosecution by observing that apart from delay in sending the seized guns/pistol, there is no material showing as to where the seized weapons were kept during the period from 01.03.2006 to 19.04.2006. Such delay in sending the recovered weapons to FSL could only be an omission or lapse on the part of the Investigating Officer. Such omissions or lapses in the investigation cannot be a ground to discard the prosecution case which is otherwise credible and cogent. In***Nankaunoo v. State of Uttar Pradesh*** (2016) 3 SCC 317, it was held as under:-

> "9. ……Any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined dehors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice".

34. In ***V.K. Mishra and Another v. State of Uttarakhand and Another*** (2015) 9 SCC 588, it was held as under:-

> **"38.** The investigating officer is not obliged to anticipate all possible defences and investigate in that angle. In any event, any omission on the part of the investigating officer cannot go against the

prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such omissions".

35. We are conscious that in an appeal against acquittal, the appellate court would not ordinarily interfere with the order of acquittal. But where the approach of the High Court suffers from serious infirmity, this court can reappreciate the evidence and reasonings upon which the order of acquittal is based. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of the innocent. Upon reappreciation of the evidence and the reasonings of the trial court and the High Court, in our considered view, the judgment of the High Court suffers from serious infirmity. The High Court erred in doubting the version of PW-1-the sole eye witness whose evidence is corroborated by the medical evidence and the evidence of ballistic expert. The High Court did not appreciate the evidence of PW-1 in proper perspective and erred in disbelieving her version on the contradictions which are not material. The High court erred in rejecting the credible evidence of Kesar Bai (PW-1), which in our considered view resulted in serious miscarriage of justice, where four persons were murdered.

36. Where the evidence has not been properly analysed or the High court has acted on surmises and findings of the impugned judgment is unreasonable, it is the duty of the appellate court to set right the wrong. In the instant case, the High court has ignored the credible evidence of Kesar Bai (PW-1) and unnecessarily laid emphasis on the minor contradictions and omissions. However, the order of acquittal by the High court cannot be sustained and the judgment of the trial court is to be restored.

37. After convicting the accused Chhaakki Lal and Akhilesh under Section 302 IPC, the trial court held that the case would be one of the 'rarest of rare cases' and awarded death penalty. The occurrence was of the year 2006 and moreover, the appeal against second accused – Akhilesh has been abated due to his passing away. Therefore, considering the facts and circumstances of the case and the passage of time, we are of the view that awarding of death penalty is not warranted and imposing sentence of life imprisonment upon the respondents/accused Chhaakki Lal would meet the ends of justice.

38. In the result, the impugned judgment is set aside and these appeals are allowed. The judgment of the trial court convicting the respondent/accused Chhaakki Lal under Section 302 IPC is restored and the respondent/accused is sentenced to undergo imprisonment for life. The respondent/accused Chhaakki Lal shall surrender himself forthwith within a week to serve the remaining sentence failing which he shall be taken into custody.

Divya Pandey Appeals allowed.