



2026:AHC:130093-DB

Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 142 of 1988

Kedar and others

.....Appellants

Versus

State

.....Respondent

Counsel for the Appellants	: M.S. Khan, Raj Karan Yadav, Ramesh Chandra Yadav
Counsel for the Respondent	: A.G.A.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE CHAWAN PRAKASH, J.
(Delivered by Hon'ble J.J. Munir, J.)

1. Three men, Kedar, Bahadur and Chunubad, stood their trial before Mr. Sanwal Singh, the then 1st Additional Sessions Judge, Banda, in Sessions Trial No.51 of 1987, under Sections 148, 364, 302 and 201 of the Indian Penal Code, 1860 (for short, 'IPC'), Police Station Kamasin, District Banda. All three of them were found guilty of the offences punishable under Sections 148, 364, 302 and 201 IPC and sentenced to life imprisonment for the offence punishable under Section 302 IPC. They were awarded term sentences on other counts, a moreful detail whereof will shortly be given.

a.m. and tendered an oral information that to the west of his village, close by the barn (*khalihan*) of one Bhujbal, a half burnt dead body was lying. The aforesaid information was registered as Village Chowkidar's information vide G.D. No.10 dated 12.06.1986. The G.D. entry aforesaid was got thumb marked by the Village Chowkidar and has been exhibited as Ex. *Ka-2*. Sub-Inspector Ran Bahadur Singh, who was posted at the police station, was entrusted with the investigation of this case on the basis of the G.D. Entry. He set about the place of occurrence along with Constables Babu Lal and Krishna Pal Singh, arriving there by 12.30. p.m.

3. Upon reaching Village Itwan, S.I. Ran Bahadur Singh found the dead body lying in the grove of one Nandan, where a large crowd had gathered. He inspected the dead body and appointed *panch* witnesses. Inquest proceedings were duly held. An inquest report was drawn up, which is marked as Ex. *Ka-3*. The Investigating Officer then prepared a photo lash, *challan* lash, two reports on the spot, which he duly signed. The dead body was sealed and handed over to the constables for conveying it for the purpose of undertaking an autopsy. The Investigating Officer inspected the place of occurrence and drew up a site-plan, marked as Ex. *Ka-8*.

4. There was ash around the dead body and the I.O. collected the ash. He drew up a recovery memo of the ash, marked it as Ex. *Ka-9*, and secured the signatures of witnesses on this memo. The collected ash was sealed in a separate box. During the proceedings of the inquest, the Investigating Officer came across two eye witnesses, Rajesh and Mohan, and took down their

account of the occurrence, and how it all happened. Another eyewitness, Bhola's statement was also taken down by the Police under Section 161 Cr.P.C. He corroborated Rajesh's version and it is largely on this twin version, coming from ocular testimony, that the prosecution case against the appellants is built.

5. The prosecution would have it that the three appellants, besides Santosh, an absconder, and some others, bore animosity against the deceased, Sahendrapal. The cause was trivial. Santosh and the appellants, besides some others, would damage Sahendrapal's crop with the indiscreet minding of their cattle. Sahendrapal would object to the damage to his crops that the cattle did. His protest would make the appellants and Santosh feel ill. This brewing ill-feeling in Santosh's mind had reached such a level that about a month and a half before the occurrence, he had opened fire intending to shoot Shahendrapal. On the 11th of June, 1986 at about 4.00 p.m., Sahendrapal was present at his brick-kiln, which he had set up in his Village Ranipur. The three appellants, besides Santosh, Shiv Pujan and three unknown men, all armed with lethal weapons, alighted at Sahendrapal's brick-kiln. They abducted Sahendrapal at gun point, a fact witnessed by the latter's cousin Bhola son of Har Prasad. Bhola rushed to the village *abadi* and informed Rajesh, besides others, of this occurrence. These men, that is to say, Bhola and Rajesh, besides other natives of the village, gave the abducting party a chase, and on way near Dubaria Purva, they met them. Entreaties were made to Santosh and the other abductors to spare Sahendrapal. They refused. Instead, the abductors held out threats of death to the men, who had gone after the abducting party to save

at 6 o'clock in the evening, where there was a barn. There, the abductors opened fire, shooting two rounds, one of which found target and proved fatal. Next, they placed dried *arhar* plants on the victim's dead body and Kedar ignited it. The dead body was burnt. The prosecution say that on account of fear, Rajesh and Bhola, besides others, who witnessed the evil deed, could not offer any resistance, particularly after they were threatened with death. They were much scared not only because of the assailants' threats, but the demonstration of their abominable intentions.

6. On the 12th of June, 1986 at 10.50 hours, when the Village Chowkidar informed the Police of P.S. Pahadi and they arrived there, information reached the two eye-witnesses Rajesh and Bhola about the occurrence. Upon coming to know that the Police had reached the spot, at about 1.00 p.m., they proceeded to the place of occurrence and disclosed all facts that were within their knowledge and whatever they had witnessed. They also disclosed the fact to the Police that the dead body was of Sahendrapal. Here, it must be mentioned that there was turf fight between Police Station Pahadi and Police Station Kamasin, in consequence of which the Police of P.S. Pahadi sent all the papers to P.S. Kamasin because it was in the local limits of that police station, where the abduction had been committed and trouble started.

7. Autopsy on the deceased's cadaver was undertaken by Dr. S.N. Misra on 13.06.1986. The investigation in the other police station was taken up by Ram Autar Singh, who was the Station Officer of P.S. Kamasin. After investigation, a charge-sheet was submitted against the three appellants and Santosh

were furnished copies of the relevant prosecution papers as provided under Section 207 Cr.P.C.

9. Pending trial, Santosh absconded and all processes, including those under Sections 82 and 83 Cr.P.C., failed to ensure his arrest. The efforts to arrest him proved abortive and futile. This case was, therefore, separated and the sessions trial proceeded against the three appellants, to wit, Kedar, Bahadur and Chunubad.

10. The sessions trial, therefore, from which the present appeal arises, is the one which proceeded against Kedar, Bahadur and Chunubad.

11. The charges were framed, carrying four counts, against the three appellants on 28.11.1987 by Mr. Sanwal Singh, the then 1st Additional Sessions Judge, Banda. The accused were charged for offences punishable under Sections 148, 364, 302 and 201 IPC. The appellants pleaded not guilty and claimed trial.

12. The prosecution examined the following witnesses in support of their case:

1. PW-1 – Dr. S.N. Misra, Chief Medical Officer, Hardoi, the then Superintendent, District Combined Hospital, Karwi, Banda, who conducted postmortem of the deceased Sahendrapal,

2. PW-2 – S.I. Ran Bahadur Singh, the then Sub-Inspector posted at P.S. Pahadi, District Banda, who commenced investigation of the case,

3. PW-3 – Rajesh, a witness of fact and nephew of the deceased, Sahendrapal,

4. PW-4 – Bhola, also a witness of fact, cousin of the

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1	Ex. Ka-1	Postmortem Report of the deceased Sahendrapal dated 13.06.1986, proved by PW-1, Dr. S.N. Misra
2	Ex. Ka-2	Carbon copy of GD Entry No.10 Time 10/10.50 hours dated 12.06.1986, proved by PW-2, S.I. Ran Bahadur
3	Ex. Ka-3	Inquest report dated 12.06.1986, proved by PW-2, S.I. Ran Bahadur
4	Ex. Ka-4	Photo Lash dated 12.06.1986, proved by PW-2, S.I. Ran Bahadur
5	Ex. Ka-5	Challan Lash (Police Form 13) dated 12.06.1986, proved by PW-2, S.I. Ran Bahadur
6	Ex. Ka-6	Letter to the M.O./ In-charge, Government Combined Hospital, Banda dated 13.06.1986, proved by PW-2, S.I. Ran Bahadur
7	Ex. Ka-7	Report sending the dead body of Sahendrapal for postmortem dated 13.06.1986, proved by PW-2, S.I. Ran Bahadur
8	Ex. Ka-8	Site-plan of the place of occurrence, proved by PW-2, S.I. Ran Bahadur
9	Ex. Ka-9	Memo regarding taking possession of sample of ash, proved by PW-2, S.I. Ran Bahadur
10	Ex. Ka-10	Memo of sample seal dated 12.06.1986, proved by PW-2, S.I. Ran Bahadur
11	Ex. Ka-11	Letter to the Civil Surgeon, Karwi, Banda dated 13.06.1986, proved by PW-5, S.I. Ram Autar Singh
12	Ex. Ka-12	Report – P.S. Kamasin to S.O., P.S. Pahadi dated 13.06.1986, proved by PW-5, S.I. Ram Autar Singh
13	Ex. Ka-13	GD Entry No.23 Time 19.30 hours dated 15.06.1986, proved by PW-5, S.I. Ram Autar Singh
14	Ex. Ka-14	Site-plan of the place of occurrence dated 16.06.1986, proved by PW-5, S.I. Ram Autar Singh
15	Ex. Ka-15	Charge sheet dated 24.08.1986, proved by PW-5, S.I. Ram Autar Singh
16	Material Ex. 1	Ash taken from the place of occurrence

14. After the prosecution evidence was over, the statements of the accused, now the convicted appellants, were all recorded under Section 313 Cr.P.C. on 11.01.1988, i.e., for all the three appellants. The appellants did not enter defence or lead evidence.

15. The learned Trial Judge convicted and sentenced the appellants in the following manner:

16. Aggrieved by the impugned judgment and order dated 12.01.1988, the three convicts, Kedar, Bahadur and Chunubad preferred the instant appeal.

17. Pending this appeal, out of the three appellants, Kedar and Bahadur passed away and this appeal survives to be heard at the instance of the third appellant, Chunubad alone and now, the sole appellant, who shall hereinafter be referred to as 'the appellant'.

18. Heard Mr. Raj Kumar Yadav, learned Counsel for the appellant in support of this appeal and Mr. Shashi Shekhar Tiwari, learned A.G.A. along with Mr. K. K. Nishad, learned State Law Officer for the State.

19. There are no particulars of the date, time and place of occurrence available from the first informant's version because all that is there for the sake of a first information report is an oral information from the Village Chowkidar and recorded as G.D. Entry No.10 at 10.50 hours on 12.06.1986 at P.S. Kamasin. All that this entry records is that the Village Chowkidar informed that to the west of the village in the jungle, where one Bhujbal's barn is situate, a half burnt body of a man was lying there. There is, therefore, no first informant's account to judge the worth of whatever the eye-witnesses have told the Police in their statements under Section 161 Cr.P.C., and, particularly what they have testified in Court. The earliest eye-witness account of the occurrence, shedding light on the date, time and place of occurrence, would, therefore, figure from the statements under Section 161 Cr.P.C., which the prosecution witnesses have given to the Police and recorded by them. There are two eye-witnesses,

safety of their homes. The following morning, when acting on the Chowkidar's information, the Police arrived at the place of occurrence and the two witnesses learnt of the Police's presence, they emerged from safety and reached over to the Police at the scene of crime and narrated facts what constitutes the eye-witness account. The occurrence took place to the west of Village Itwan in Nandan's grove, where a barn is located. It was about 6.00 p.m. The abductors, which included the three original appellants, including the appellant, besides Shiv Pujan, Santosh and the three unknown men, made the deceased Sahendrapal stand in the grove, open to the view of this eye-witness and others. Next, out of the eight assailants, Santosh shot the deceased dead. Thus, according to this witness, the date of occurrence is 11.06.1986, the time 6.00 p.m. and the place was Nandan's grove to the west of Village Itwan, where a barn is located. If indeed this is the date, time and place of occurrence, is a matter which would entirely depend upon the fact if the eye-witness account is believed to be true and also the witnesses, who have described it upon the Police's arrival, are indeed believed about their presence at the scene of crime, when it was committed. If the eye-witnesses' presence is not believed or their testimony not accepted or found doubtful, the precise date, time and place of occurrence would largely remain unknown. Of course, the date and time of occurrence can still be ascertained from the medico-legal evidence, approximately though.

20. According to the testimony of PW-3, Rajesh, on 11.06.1986 at about 4 o'clock in the evening, he was at home when Bhola (PW-4) came over to his place and informed him that

Bhola (PW-4), Mahesh, Raj Karan and other residents of the village proceeded to the place of movement of the offenders. The witness says that he met the offenders to the east of Dukia Purva. They were holding Sahendrapal captive with his hands tied behind his back. PW-3 says that he and his companions beseeched the offenders, including the appellant to let off Sahendrapal. They did not relent, and instead, threatened the witness and the other rescuers with similar violence. The offenders then proceeded towards Itwan and the witness and his companions followed them. Once the offenders had reached Nandan's grove, located to the west of Village Itwan, they halted by a barn there. The witness says that he and his companions stood at a distance of 150 feet. At that time, it was 6 o'clock in the evening. The offenders made Sahendrapal stand on one side and Santosh fired twice, targeting Sahendrapal. The first shot hit Sahendrapal and he collapsed. The witness says that, in his opinion, he died as he collapsed. Next, the appellants, Kedar, Bahadur and Chunubad, besides Shiv Pujan, placed wood from *arahar* plants on the body and Kedar set it afire. After Sahendrapal's body was consumed by flames, the witness along with the others, struck by fear, returned home.

21. Before these witnesses returned and soon after the dead body was consumed by flames, the offenders warned the witness and all those present that if they report the matter to the Police, the same fate would await them. The witness identified the three original appellants in this appeal, including the appellant, who were all present in Court, as the accused. Shiv Pujan and Santosh were of course offenders and not before the Court, and

chastise them. This was the only animosity between the offenders and the victim. It is also said by PW-3 that a month antedating the occurrence, Santosh was grazing his animals in Sahendrapal's field and upon being asked not to do so, he had threatened Sahendrapal. It is also said that prior to the last mentioned event, Santosh had attempted to shoot Sahendrapal and opened fire.

22. In the cross-examination of this witness (PW-3), it appears that there has been a history of previous crimes between the victim and the witnesses' family, on one hand, and that of the offenders, on the other. There have been convictions and acquittals and while no judgments about the fact have been brought on record, but in the cross-examination, PW-3 has not testified any kind of a denial to this history of crime between parties, which may make the facts suggested, ones that are false or moonshine. To the contrary, the suggestions about the history of crimes, the prosecutions, convictions and acquittals, have not been denied by PW-3 with the degree of firmness, on bases whereof the facts and suggestions can be discarded as products of falsehood, imagination or a mere contrivance of the cross-examiner to dislodge the prosecution. Regarding the history of this litigation, which is suggestive of an entrenched animosity between parties, the cross-examination of PW-3, that is in point, must be quoted for better appreciation. It reads:

"मेरे बाबा का नाम चंद्रपाल सिंह है। मेरे पिता के कोई सगा भाई नहीं है। मेरे बाबा चंद्रपाल व हर प्रसाद दो ही सगे भाई थे। हर प्रसाद का लड़का भोला गवाह है। ददन जो मृतक सहेंद्रपाल के बाप थे मेरे बाबा के सगे भाई नहीं थे बल्कि चाचा जात भाई थे।

संतोष के बाप बाबू लाल का कतल हुआ था। मैं नहीं जानता कि उस कतल में चंद्रपाल को फांसी व रामफल मुखिया, बछराज व इंद्रपाल को काला पानी की सजा हुई थी। जगमोहन व चंद्रपाल का भी कतल हुआ था। रामफल के पिता जगमोहन हैं जो चंद्रपाल के चाचा जात भाई हैं। मैं निश्चित नहीं हूँ कि

Sahendrapal's brick-kiln, then under construction. The witness says that the deceased Sahendrapal was his cousin. The eight offenders alighted at Sahendrapal's 'under construction' brick-kiln. They were Shiv Pujan, Santosh, Kedar, Chunubad, Bahadur and three unknown men. They were all armed with guns. All of them surrounded Sahendrapal, tied him up and marched off with him. The witness says that he rushed towards the village and told Rajesh, Mahesh, Raj Karan and others in the village. All of them left the village in pursuit of the offenders, who had gone towards Dubaria Purva. Following the route that offenders had taken, the rescuing party reached the victim and the offenders and beseeched the latter to set the victim free. The offenders are said to have told the rescuing party to return back, or else they would be killed. The rescuing party did not return, but kept following the offenders until they had reached a place near Itwan, which was Nandan's grove. There were two trees there. The deceased was made to stand between them. The offenders moved away and Sahendrapal was left alone standing there. Santosh shot him. Sahendrapal collapsed. There was a second shot fired too. Later, Kedar placed wood over Sahendrapal's body and all the offenders set it afire. The witness and others, who had accompanied him, were told that if they did not go away, they too would meet the same fate. It was thereupon that this witness and the others returned to the village and were hiding there. It was upon the arrival of the Police that they reached the scene of crime and got their statements recorded. It is also said by this witness in his examination-in-chief that Sahendrapal's fields would be caused to be grazed by Santosh. Sahendrapal would chastise him. Piqued

24. In his cross-examination, PW-4 has described the history of crime, prosecution and punishment between parties as follows:

“संतोष के बाप बाबू लाल का कतल हुआ उसमें चंद्रपाल रामपाल धनपाल व बच्छराज पर कतल का मुकदमा चला या नहीं जानता कि उसमें चंद्रपाल को फांसी तथा बाकी को आजीवन कारावास हुआ और उसमें बहादुर मुलजिमान गवाह Police की तरफ दी थी फिर कहा कि नहीं पता कि गवाही दी या नहीं।

रामपाल के बाप जगमोहन व रामपाल के चचा जात भाई चंद्रपाल का कतल हुआ। इसमें बहादुर (Sic) बलवन्त दयाल व महावीर व शिवपूजन व भैयादीन पकड़े गये थे। यह लोग जजी से बरी हो गये।”

25. This is more or less the same history of crime, animosity, prosecution, trial and punishment as that given out by PW-3. It is true that the allegations of these crimes, the involvement of the parties' ancestors or punishment, has not been unequivocally acknowledged nor documents produced by either side to prove facts, but the denial is virtually an admission. So far as PW-4 is concerned, it is on a quivering and vacillating note. A suggestion of this kind if false, would have brought out a stout denial. Far from being that the denial in substance, admits the history of crime and prosecution between parties, albeit behind the veil of a guarded denial. Now, it is not disputed that the deceased Sahendrapal and the two eye-witnesses, PW-3 and PW-4, are related by blood. There is a history of crime, that is to say, murders being committed between the families of the two witnesses and the deceased, on one hand, and the offenders, including the appellant here, on the other. Chandrapal was PW-3 Rajesh's grandfather. He had a brother of full blood by the name Har Prasad. PW-4 Bhola is Har Prasad's son. Therefore, PW-3 Rajesh and PW-4 Bhola are collaterals, one degree removed, whereas the deceased Sahendrapal's father Daddan was a collateral of Chandrapal, making Sahendrapal a second cousin of Bhola in the same generation and Rajesh's second cousin once removed.

would of itself not make the two eye-witnesses interested witnesses, as it is called.

26. We notice that the dispute between the deceased and the offenders, as said by both the witnesses in their examination-in-chief to be one over damage to the deceased's crops, does not appear to be the bone of contention. The animosity between the families of the deceased, which includes the two eye-witnesses, on one hand, and that of the offenders, including the appellant, run far deeper. As already remarked, there was a suggestion given to PW-3 during his cross-examination that the principal accused Santosh's father Babulal was murdered. This witness has halfheartedly denied the suggestion that in Babulal's murder, Chandrapal received the death sentence, whereas Ramphal Mukhia, Bachhraj and Indrapal were sentenced to transportation for life. Chandrapal too was murdered along with Jagmohan. Jagmohan was a first cousin to Chandrapal. Again, to the suggestion that the three appellants, that is to say, the two deceased and the one surviving, were accused in the murders of Chandrapal and Jagmohan. PW-3 has said that he is not sure if the three appellants were accused in Chandrapal's and Jahmohan's murder. He was also not sure if along with the other co-accused, they were acquitted in the said crime.

27. These facts show that Chandrapal, whose collateral's son was the deceased Sahendrapal, was apparently involved in the murder of the principal accused Santosh's father, Babulal. On the other hand, PW-3's grandfather Chandrapal and PW-4's father's brother too were murdered and the three appellants before the Court are said to have been involved in the said crime. They were

witnesses'. The interested or the non-partisan character of the witnesses arises from the animosity between parties owing to the criminal cases lodged against each other. The interest springs from feelings of vengeance and malice. Now, all that is required while evaluating the testimony of an interested witness is that it should be carefully scrutinized and not accepted at the face value to found a conviction. Sagacity requires that the testimony of a partisan witness, albeit consistent, should be corroborated about its veracity, if nothing else from a searching look to circumstances that may verify its truthfulness. If there is evidence *aliunde* available bearing on the point, corroboration in the more classical way may be sought from that other evidence, that may assure the Court that the interested witness is not lying after all.

29. In this case, when one looks to those circumstances or corroborating evidence, it is at once clear that although PW-3 and PW-4, according to their own saying, were not the only eye-witnesses and had with them others from the village, some of whom are mentioned in PW-3's evidence as Mahesh and Raj Karan, none of these independent witnesses have been examined by the prosecution. If one of these independent witnesses from the village, who had gone along with PW-3 and PW-4 to save Sahendrapal, had been examined, the necessary corroborative evidence would have been forthcoming.

30. There is no principle by which the prosecution can be compelled to produce particular witnesses or an adverse inference drawn against them on account of non-production of one or more witnesses, who may have some material testimony to offer. It is on principle for the prosecution to prove their case.

been produced, the Court would be within its rights in raising a presumption that if those material witnesses were produced, their testimony would have gone against the prosecution.

31. Here, the two witnesses, who were produced, offer testimony that did not suffer from any inherent flaw, but it was classically a case where their evidence is one that can be said to be tainted by malice and animosity, coming down from the previous history of crime and litigation between parties. As already remarked, their testimony required, therefore, corroboration of some kind for the Court to be satisfied of its truth and dependability. In this case, independent witnesses being available, who had accompanied PW-3 and PW-4 in the rescue mission, that is to say, Mahesh and Raj Karan, whose statements were recorded by the Police under Section 161 Cr.P.C., there is no reason why at least one of them was not produced by the prosecution. Not only one of these or both witnesses, if examined, would have either corroborated the testimony of PW-3 or belied it, enabling the Court to get to the truth of the matter, the prosecution, in choosing not to produce these independent witnesses and resting their case on the rather unreliable testimony of interested witnesses, to wit, PW-3 and PW-4 alone, have placed themselves in a position, where the Court would feel unsafe to rely on the uncorroborated testimony of these witnesses. The Court would also be compelled to draw a presumption that if the independent witnesses Mahesh and Raj Karan had been examined, their testimony would have gone against the prosecution. For the principle that in the facts of a particular case, non-production of a witness may lead to an

"53. Though, there is no rule by which the prosecution can be obliged to produce all witnesses, who might have seen or known the occurrence first hand, it is yet to be seen if the evidence produced by the prosecution is insufficient or unsatisfactory, and there remain one or more witnesses, who could but have not been produced, what effect the non-production have on the prosecution. This is a matter, which has to be judged on the facts of each case. If there is sterling evidence of one or two witnesses, the prosecution cannot be blamed for not producing three more, whose evidence may be as sterling as those chosen by the prosecution to appear in the dock. The defence nor the Court can compel the prosecution to multiply witnesses, where those already there, can testify their case sufficiently. However, if the prosecution evidence is shaky or deficient and there still remain one or more witnesses, who could shed light on the case, non-production of such a witness, may well lead to an adverse inference against the prosecution to the effect that if produced, he would not have supported the prosecution. In this connection, the following remarks of the Supreme Court in **Khatari Hemraj Amulakh v. State of Gujarat, (1972) 3 SCC 671** is relevant, where it has been remarked:

"10. According to the statement of Dharamshi recorded in Gujrati, his tailoring shop is near the house of the accused. On the day of occurrence at about 10 a.m. Dharamshi saw the accused sitting on a stone opposite his (Dharamshi's) shop. The accused appeared to be in a state of excitement. He was looking to the ground and was not speaking with any one. After sitting like that for about an hour, the accused met Shiv Lal whose shop is also nearby. Thereafter, the accused went inside his house. Dharamshi later on that day learnt of the murder of Thakari deceased. Accordingly however, to the English record of the statement of Dharamshi, the accused after sitting on the stone for about an hour in a state of excitement met Shiv Lal. The accused and Shiv Lal then went together to the house of the accused. The learned judges of the High Court relied upon the Gujrati version of the statement of Dharamshi and accepting that to be correct, came to the conclusion that the accused was alone with Thakari deceased at the time of the present occurrence. In this connection, we find that though Dharamshi has deposed in court that the accused was in a state of excitement, Dharamshi made no mention of the accused being in the state of excitement in his statement recorded by the police. It would thus appear that Dharamshi has tried to improve upon his police statement. Shiv Lal, with whom the accused was closetted, according to the Gujrati version of Dharamshi's statement, and who also went along with the accused inside the house

shortly before the occurrence is missing in this case. In any case we do not find it safe to act upon the uncorroborated statement of Dharamshi."

(emphasis by Court)

54. Stating the wider principle regarding such cases is the authority of the Supreme Court in **Joginder Singh v. State of Haryana, (2014) 11 SCC 335**. In **Joginder Singh (supra)**, it was held:

"37. At this juncture, we may note with profit another aspect that has been highlighted by the learned counsel for the respondent. The prosecution has not examined Chander, husband of the deceased, a relevant eyewitness, Bala, Murti and Bimla, three other injured witnesses. No explanation has been given by the prosecution. Though there have been certain suggestions to PW 16 in the cross-examination, but his answer is evasive. It is well settled in law that non-examination of the material witness is not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution. (See *State of H.P. v. Gian Chand* [(2001) 6 SCC 71: 2001 SCC (Cri) 980].)

38. In this context, we may also note with profit a passage from *Takhaji Hiraji v. Thakore Kubersing Chamansing* [(2001) 6 SCC 145: 2001 SCC (Cri) 1070]: (SCC p. 155, para 19)

"19. ... It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-

examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."

39. Recently in *Manjit Singh v. State of Punjab* [(2013) 12 SCC 746: (2014) 4 SCC (Cri) 531], this Court, after referring to earlier decisions, has opined thus: (SCC p. 757, para 24)

"24. ... it is quite clear that it is not the number and quantity but the quality that is material. It is the duty of the Court to consider the trustworthiness of evidence on record which inspires confidence and the same has to be accepted and acted upon and in such a situation no adverse inference should be drawn from the fact of non-examination of other witnesses. That apart, it is also to be seen whether such non-examination of a witness would carry the matter further so as to affect the evidence of other witnesses and if the evidence of a witness is really not essential to the unfolding of the prosecution case, it cannot be considered a material witness (see *State of U.P. v. Iftikhar Khan* [(1973) 1 SCC 512: 1973 SCC (Cri) 384])."

40. In the case at hand, non-examination of the material witnesses is of significance. It is so because PW 11 is really an interested witness though the High Court has not agreed with the same. It appears from the material brought on record that he had an axe to grind against the appellant. That apart, Chander, who was present from the beginning, would have been in a position to disclose more clearly about the genesis of the occurrence. He is the husband of the deceased and we find no reason why the prosecution had withheld the said witness. Similarly, the other three witnesses who are said to be injured witnesses when available should have come and deposed. Therefore, in the obtaining factual matrix that their non-examination gains significance."

55. Here, we have already noticed that the two injured witnesses, PW-2 and PW-4 have taken contradictory stands regarding the fact, if the assailants did come up to the rooftop in order to commit assault and PW-2 is vacillating on the issue, the medico-legal evidence places in doubt the otherwise firm stand of PW-4 that all the accused had their feet on the ground and shot the deceased and the injured at the rooftop. All this has led to a shaky prosecution case, as already remarked. In this case, there are three injured witnesses, that is to say, Bodha, Rajkumari and Jaggo,

circumstances, non-examination of the three eye-witnesses, or at least one or more of them, leads us to draw an adverse inference against the prosecution that if produced, these eye-witnesses would not have supported the prosecution, leading to further doubt about the veracity of the prosecution case."

32. We are still minded to see if there are any other circumstances that may lend the necessary assurance to the account of PW-3 and PW-4. Unfortunately, there are none. To the contrary, what we notice is that there are circumstances to suggest that PW-3 and PW-4 did not see the occurrence at all.

33. The foremost circumstance that is suggestive of the absence of these witnesses is that these witnesses along with two other men from the village, who are named, that is to say, Mahesh and Raj Karan, besides a number of other residents of the village had chased and attempted a rescue. When their entreaties failed and they were threatened by the gun wielding offenders, including the appellants, to go away, else they too would be done to death, they did not relent in their pursuit and went after the offenders through a considerable distance, may be a kilometer or more, till they reached Nandan's grove. They followed the offenders at a distance of 100-150 paces and watched them from this distance commit the crime in cold blood. It is very odd behaviour for both the rescuers and the offenders that one would follow armed men after being threatened with death and the armed offenders permitting the witnesses and the other rescuers to follow them and then commit the crime in their presence. If one were to accept the version that the entreaties were refused and the offenders, including the appellants, threatened the witnesses and others in the party with death, asking them to go away, they would have

believe that they would muster the courage after receiving death threats from gun wielding men, who were carrying out an abduction, to follow them until the scene of crime, and then wait until time that they witnessed the crime. This account of the two witnesses is rather incredible to believe, making their presence doubtful on the scene of crime.

34. There is another aspect to it. As experience dictates, crimes of this kind are generally not committed where an eye-witness or witnesses would be left to go alive, make statements to the Police and testify against the offenders. If indeed PW-3 and PW-4 along with their companions had followed the offenders and witnessed the crime, with the offenders not forcing them to go away earlier, after committing the murder, the offenders in normal circumstances, would have eliminated the witnesses too. On the own showing of PW-3 and PW-4, there were eight men, all armed with guns. The evidence also shows that there was prior animosity between parties with the history of crime. If indeed the witnesses, PW-3 and PW-4, had seen the offenders, including the appellant, commit this gory crime, there is no way the offenders would have stopped at their initial target and not eliminated these witnesses and their companions too. This is another circumstance, which makes the presence of these witnesses and their testimony unbelievable.

35. The last of the circumstance that makes the presence of these witnesses doubtful at the scene of the crime is that the brave hearts that they were in going after the offenders across a considerable distance until they had witnessed the crime, suddenly turned into very scared men, who hid in the safety of

offenders would have gone far away after committing the crime. There is no earthly reason why after witnessing a gory murder of a blood relative, these two witnesses, PW-3 and PW-4, would not seek the help of other residents of the village, and in the company of strong numbers, make it to the police station at the earliest to lodge an FIR.

36. The crime was admittedly reported by the Village Chowkidar and registered as a Chowkidar's entry in the G.D. of the police station, carrying a non-discript version, where the half burnt dead body alone was reported to the Police. It is for this reason that this is all that is for an FIR account. These eye-witnesses did not, all through the night, report what they had personally witnessed in the company of two other named men and some other residents of the village as well. PW-3 and PW-4 gave their first statements to the Police after the Police arrived the next morning, acting on the Village Chowkidar's G.D. Entry, reporting the presence of a half burnt body in Nandan's grove. Therefore, the account of these two witnesses apparently springs from tainted sources, be it animosity, malice or whatever the vitiating hue of their untruthful intentions. We are, therefore, of opinion that PW-3 and PW-4 were not present at the scene of crime and their testimony is of no worth. The manner of occurrence, of course, also becomes more of an imaginary story, the two eye-witnesses having been held to be not present at the scene of crime.

37. It is trite law that it is the prosecution, who bear the burden to prove their case beyond all reasonable doubts. Of course, the words are of thoughtful expression, when it is said 'beyond all reasonable doubt'. The principle that the benefit of doubt has to

reasonable doubt. It hardly need be gainsaid that in the principle that we mention the words 'reasonable doubt' have hold special significance, which has already been explained and need not detain us for a longer time. It is also a well regarded principle that weakness of the defence cannot be capitalized upon by the prosecution to bring home the guilt. They must prove their case by their own evidence. For the principle, reference may be made to **Datar Singh v. State of Punjab, (1975) 4 SCC 272**, where it has been remarked:

"3. It is often difficult for courts of law to arrive at the real truth in criminal cases. The judicial process can only operate on the firm foundations of actual and credible evidence on record. Mere suspicion or suspicious circumstances cannot relieve the prosecution of its primary duty of proving its case against an accused person beyond reasonable doubt. Courts of justice cannot be swayed by sentiment or prejudice against a person accused of the very reprehensible crime of patricide., They cannot even act on some conviction that an accused person has committed a crime unless his offence is proved by satisfactory evidence of it on record. If the pieces of evidence on which the prosecution chooses to rest its case are so brittle that they crumble when subjected to close and critical examination so that the whole superstructure built on such insecure foundations collapses, proof of some incriminating circumstances, which might have given support to merely defective evidence cannot avert a failure of the prosecution case."

38. The principle is too well settled to brook doubt and reference in this connection may also be made to the authorities enunciated in **Gahnu Mahto v. State of Bihar, 2023 SCC OnLine Jhar 45**, **Ballu v. State of M.P., (2024) 12 SCC 202**, **State of Chhattisgarh v. Ashok Bhoi, 2025 SCC OnLine SC 487**, and **Manikantan v. State of Kerala, 2025 SCC OnLine Ker 4239**.

39. In this case, since we have disbelieved the presence of the witnesses at the scene of crime, the entire edifice of the

Chunubad is entitled to be extended the benefit of doubt and acquitted of the charges.

40. In the result, the appeal succeeds and is **allowed**. The impugned judgment and order passed by the learned Additional Sessions Judge is hereby **set aside** and the appellant Chunubad **acquitted** of the charges. He is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.

41. The appellant, **Chunubad**, shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

42. Let the lower court records be returned to the Trial Court forthwith.

(Chawan Prakash,J.) (J.J. Munir,J.)

July 01, 2026

Anoop