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2026:AHC:130161-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1002 of 1988

Udai Kumar

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	A.rathore, P.k.singh, Prashant Kumar Singh
Counsel for Respondent(s)	:	A.G.A.

Court No. - 2

HON'BLE J.J. MUNIR, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

This criminal appeal has been filed against the judgment and order dated 28.04.1988 passed by learned Illrd Additional Sessions Judge, Kanpur Dehat in Session Trial No. 24 of 1985, arising out of Case Crime No. 183 of 1982, under Sections 120B, 147, 302/149 IPC, Police Station Mangalpur, District Kanpur Dehat. By the impugned order, learned Additional Sessions Judge has convicted and sentenced the accused-appellants Udai Kumar, Dharmraj and Basant Singh to undergo one year's rigorous imprisonment under Section 147 IPC and to undergo life

149 IPC. All the sentences awarded to the accused-appellants to run concurrently.

2. In nutshell, the prosecution case is that on 15.10.1982, the informant got a first information report lodged against the unknown assailants alleging inter alia that his tube-well and flour mill were situated in the north-west direction of village Mangalpur and his son Krishna Aadhar @ Chhote aged about 25 years used to manage affairs of the aforesaid tube-well and flour mill. Last night too, as usual, after having dinner at around 09:30 PM, his son Krishna Aadhar @ Chhote went to sleep on the tube-well. Today he did not return home till around 08:00 A.M. and he did not pay much attention to this because sometimes he used to return home later due to being busy with agricultural work. Today at around 08:15 A.M., Shri Ramautar Pandey of his village came and informed him that the body of his son Krishna Aadhar @ Chhote was lying on the tube-well. Someone had killed him. He went to the tubewell and saw his son lying dead on a cot in a pool of blood.

3. On 15.10.1982, informant Ramadhar Tyagi (PW-6) lodged the first information report, Ext. K-1. After a lapse of four months, on 15.02.1983, the informant again submitted a written report, Ext. K-2, at Police Station Mangalpur, District Kanpur Dehat. In the second written report, Ext.K-2 dated 15.02.1983, informant Ramadhar Tyagi (PW-6) has stated that today he had gone at the police station at 11 AM and gave information to the Office Incharge, Head Constable and one Inspector Mishra Ji, to this effect that murderer, Udai Krishna Chaubey, of my son is immediately coming to caste his vote. Please you arrest him.

as servant at Etawah, get the murderer freed from his grip. This happened before 50 persons. On the day of murder, at his instance, Udai Shankar was arrested and kept in custody. Today, again in broad daylight, due to the carelessness of the police and without any assistance to me, he escaped. He think it proper that this information be written.

4. On written report, Ext.K-1, as given by Ramadhar Tyagi (PW-6) at police station Mangalpur, a case was registered under Section 302 IPC against unknown person at Case Crime No. 183 of 1982.

5. Investigating Officer started investigation of the case. He came to village Mangalpur and inspected the place of occurrence. Investigating Officer prepared site plan and has also taken bloodstained soil and plain soil from the ground below the cot, upon which the deceased was sleeping at the time of occurrence and prepared recovery memo as Ext.K-9. Apart from this, Investigating Officer also collected bloodstained soil and plain soil from the east direction of the cot, upon which dead-body of the deceased was lying and prepared fard baramadgi/recovery memo, Ext.K-10. Apart from this, Investigating Officer has also taken and collected part of the bloodstained *kathri (mattress)* of blue colour, half part of the quilt that covered with bloodstains, bloodstained rope of the cot, *bloodstained maroon-coloured checked loincloth (tahmad)*, yellow colour pillow of *khadi* having flower of yellow and red colour with bloodstains, bloodstained red colour of bellbottom paint, light blue full-sleeve shirt with a printed (chhitdar) pattern and bloodstained shoes plastic delite 7 number. Investigating Officer prepared *fard baramadgi/recovery* memo as

6. A *panchayatnama* of the dead body of the deceased, Krishna Aadhar @ Chhote was prepared and his dead body was sent for conducting post mortem. The post mortem of the dead body of the deceased, Krishna Aadhar @ Chhote, was conducted. Thereafter, the Investigating Officer investigated the case, recorded the statement of the prosecution witnesses. After completing all the formalities of the investigation, he submitted charge-sheet against the accused Dharam Raj Singh, Bhanu Pratap Singh, Basant Singh and Raja Ram Kanjar under Sections 302, 147, 149 IPC. The Investigating Officer also submitted charge-sheet against Udai Kumar Chaubey @ Udai Chaubey under Section 302 IPC. He also submitted charge-sheet against the accused Govardhan Singh under Sections 302, 120B IPC.

7. Since the case was exclusively triable by the Court of Session, hence learned concerned Magistrate committed the case to the Court of Session for trial.

8. By the Trial Court, charge was framed against accused Govardhan Singh under Section 302 read with Section 120B IPC, against the accused Dharmraj Singh, Basant Singh, Rajaram and Udai Kumar under Sections 147, 148 and 302 read with Section 149 IPC. Charge was read over to the accused persons and they denied of the charge and claimed trial.

9. For substantiating the charge levelled against the accused persons, prosecution produced Shyam Bihari (PW-1), Bafati (PW-2), Atar Singh (PW-3), Yaqoob Khan (PW-4), Rajendra Prasad (PW-5), informant Ramadhar Tyagi (PW-6), Rampal Rawat (PW-7), Dr. Hari Das Verma (PW-8) and Ram Singh (PW-9). Prosecution also relied on documentary evidence such as

Ext.K-12, post mortem report, Ext.K-17, panchayatnama, Ext.K-4 and charge-sheets, Ext.K-13, 14 and 15.

10. After adducing all oral evidences and examination of prosecution witnesses, accused persons were examined under Section 313 Cr.P.C. In their statement under Section 313 Cr.P.C., they denied the allegations and stated that they were falsely implicated in this case due to enmity and village rivalry. Defence also adduced Jagat Prakash (DW-1) as defence witness in their support.

11. Learned Trial Court, after perusing and appreciating all the evidence as available on record, has passed judgment and order of conviction, in which the Trial Court held the accused-appellants guilty under Section 302, 149 and 148 IPC. The Trial Court convicted and sentenced the accused persons, namely, Udai Kumar Chaubey, Dharam Raj Singh, Basant Singh and Rajaram. Aggrieved by the judgment and order of conviction dated 28.04.1988, accused persons preferred this criminal appeal before this Court.

12. Vide order dated 06.01.2026, the instant criminal appeal is declared to have abated so far as the accused-appellant nos. 1, 2 and 4, namely, Udai Kumar, Dharamraj and Raja Ram are concerned. The appeal survives for adjudication only so far as the accused-appellant no. 3 Basant Kumar is concerned.

13. We have heard the arguments of Mr. Prashant Kumar Singh, learned Counsel for the appellant and Mr. Anil Kumar Mishra, learned Additional Government Advocate for the State. We have also gone through the documentary as well as oral

appellant was named in this case. Place of occurrence was at the tube-well having flour mill with it, which is situated towards north-west direction at a distance of three furlongs from Mangalpur. Occurrence happened at midnight. No person has seen the commission of crime with his or her own eyes. No evidence of last seen together was adduced by the prosecution. Apart from this, no circumstantial evidence was adduced by the prosecution from which a chain of circumstantial evidence could be completed and accused persons could be implicated for commission of the crime.

15. It was further submitted by learned Counsel for the appellant that from the place of occurrence, no material, objects or things, such as, murder weapon or any other object of this nature were recovered by the Investigating Officer, from which accused-appellant could be connected with the commission of crime. It was also argued by learned Counsel for the accused-appellant that after a long delay of 3-4 months, second Investigating Officer recorded the statements of the prosecution witnesses, and the prosecution tried to plant and project prosecution witnesses in this case to support their case. It is next argued that the Trial Court only on the ground of enmity, doubt, suspicion and village rivalry held the accused-appellant guilty and convicted him on the basis of conjectures and surmises.

16. Learned Counsel for the accused-appellant also submitted that all the prosecution witnesses, who were adduced by the prosecution have not seen any happening of occurrence or coming of the accused persons at the night of 14/15.10.1982 from the tube-well of the informant Ramadhar Tyagi (PW-6), but the learned Trial Court wrongly and against the law relied upon the

commission of the crime. Thus, it was submitted by learned Counsel for the appellant that the judgment and order of conviction passed by the learned Trial Court is totally against the evidence as available on record and also against the settled principles of law of evidence. Therefore, the judgment and order of conviction and sentence dated 28.04.1988 is liable to be set aside and the criminal appeal filed by the accused-appellant deserves to be allowed.

17. Per contra, learned Additional Government Advocate representing the State submitted that the Trial Court in this case rightly and in legal prospective appreciated the evidence. The Trial Court perusing the evidence as available on record and believing the evidence of the prosecution witnesses and enmity and rivalry found the accused-appellant guilty for commission of the crime. It was also submitted that long driven enmity and rivalry between the informant Ramadhar Tyagi (PW-6) and the deceased Krishna Aadhar @ Chhote on one side and accused persons on other side were prevailing and continuing among them. The accused-appellants regarded the deceased, Krishna Aadhar @ Chhote, as a hurdle in their way, because he had started objecting to and opposing every illegal and arbitrary act of the accused persons. Consequently, for this reason, the accused persons hatched a conspiracy and planned to eliminate the said hurdle, Krishna Aadhar @ Chhote, forever.

18. Learned A.G.A. further submitted that the Trial Court in proper and legal manner appreciated and evaluated the prosecution evidence and when the Trial Court found that the prosecution was able to prove its case beyond reasonable doubt

19. In view of the above arguments of learned Counsel for the parties, it is clear that in written report, Ext.K-1, no accused-appellant or any other person has been named for commission of the crime. After four months of the incident dated 14/15.10.1982, a second written report, Ext.K-2, dated 15.02.1983 was filed at the police station. In the second written report, Ext.K-2, informant Ramadhar Tyagi (PW-6) expresses doubt about the accused-appellant Udai Krishna Chaubey that he committed murder of his son Krishna Aadhar @ Chhote. The prosecution adduced total seven prosecution witnesses of facts.

20. Shyam Bihari, Pradhan (PW-1) was adduced as prosecution witness. In his examination-in-chief, this witness submitted that "the accused Udai Chaubey, Basant Singh, Dharam Raj Singh, Bhanu Pratap Singh and Raja Ram committed murder of Krishna Aadhar @ Chhote at his tube-well." On the point of enmity, this witness stated that before the election, accused Govardhan Singh was the village Pradhan. Govardhan Singh had contested elections against me and he lost. Ramadhar Tyagi, father of the deceased, helped me in the election and opposed accused Govardhan Singh. Regarding another enmity, this witness stated that in village Mangalpur, there was a pond and a market was also organised. These were properties of Gaon Samaj. Accused Govardhan Singh, after taking some money from Udai Chaubey, auctioned the pond and market in his favour. Udai Chaubey made Basant and Dharmraj Singh partners in this pond and market. Thereafter, Ramadhar Tyagi filed an application before Sub Divisional Magistrate and the auction was cancelled. Later, Naib Tehsildar auctioned it again and Krishna Aadhar Tyagi persuaded

building, in which a hospital was running. Accused Govardhan Singh began to receive rent from the State Government on the ground that he is the owner of this building. When this fact came to the knowledge of Tyagi Ji and deceased Krishna Aadhar, they began to pursue and on their persuasion, the Government stopped paying rent of the building to accused Govardhan Singh. This was also a reason for enmity between accused Govardhan Singh and deceased Krishna Aadhar and informant Ramadhar Tyagi. From perusal of the evidence of this witness, it appears that this witness has stated that "at evening, before the murder of the deceased, I came to know that at the flour mill of Jageshwar, accused Basant, Dharmraj and Udai were talking, and they were saying the name of Pradhan and they were saying that this hurdle must be removed. I had told this fact to Islam Sheikh and Ramadhar Tyagi. Upon this, Islam Sheikh cautioned me that I need not to go here and there because Govardhan Singh was enraged due to his defeat in the election. Thereafter, today in the morning, it came to be known from the public that Krishna Aadhar @ Chhote was murdered. About two months prior to the murder, the accused Udai Kumar, Basant, Bhanu Pratap Singh, and Dharamraj were demanding money from Sitaram Chikwa for consuming liquor. At that time, Krishna Aadhar @ Chhote reached there and said that this poor person shall not give them money. On this point, an altercation took place between Udai Kumar Chaubey and Krishna Aadhar. Udai Kumar Chaubey has taken a vow that if he is truly of his father's blood, he will kill Krishna Aadhar. This witness also stated that Govardhan Singh was involved in this murder."

that accused were preparing and planning to kill him. This fact was informed to me by Atar Singh in the evening at 4-5 P.M. At the same night, Krishna Aadhar was murdered. He had told this fact to his friends. He had also told this fact to Ramadhar Tyagi on the same day at 6-7 PM. He had also told this fact on the same evening at 5 P.M. to Islam at his workshop and to Ramadhar at his home. He had not told the name of Atar Singh to daroga because he has not asked him.

22. From the evidence of this witness, it appears that the prosecution tried to adduce this witness as a prosecution witness in this case. However, from the evidence of this witness, as referred to above, it is amply clear that this witness is a planted and projected witness. From the evidence of this witness, it appears that this witness came to know this fact that a planning of murder was being hatched by the accused persons. According to this witness, he told this fact to Ramadhar Tyagi, father of the deceased Krishna Aadhar @ Chhote, on the same evening. On the same night, when the deceased Krishna Aadhar @ Chhote was murdered, if we believe the statement of this witness that this witness is truly stating the fact before the Court then a question arises that if this witness really told the hatching of the planning of murder by the accused persons and this witness told this facts to the informant Ramadhar Tyagi (PW-6) and Islam, then in this situation, name of the accused persons surely and certainly must have been written by the informant Ramadhar Tyagi (PW-6) in his written report, Ext.K-1 but we find that in written report, Ext.K-1, he has not named any person as an accused. From this fact, it is clear that this witness is concealing the real facts about the case

point of view, we cannot believe the testimony of this witness as there is no truth in the statement of this witness that could inspire confidence that the evidence of this witness could be believed as reliable and trustworthy.

23. Prosecution produced Bafati as PW-2. This witness in his examination-in-chief has stated that "I came to know about the murder after 15-20 days. Eight days before the murder, Udai Kumar Chaubey and Basant Singh, both present in Court, came to me at 08:00 P.M. Udai Kumar said to me that Govardhan Singh is calling. Govardhan Singh is also present in the Court. I had gone to Govardhan Singh. He was sitting in a room. He said to me that Chhote was very harassing. Market and pond had gone. Pradhani had also gone. Building of Rs. 50,000/- was also about to go. He also said that he had helped me. Now how much I will help him. I had asked him what is the work. Then Govardhan told that Chhote was very much harassing. Udai Chaubey is ready. You also be ready. Whatever money is required, he will spend. He also said that after leaving this place by us, you kill Chhote. I said that I have never done such work nor shall do. Then Udai Kumar Chaubey stated that he would carry out such an act, and once the hurdle in their way was removed, they would be exonerated from the matter. After that I went from there then again when I began to move, he said that I do not tell this fact to any person and keep this fact to myself. Upon this, I assured him that I would keep this fact to myself alone. At the time of this talk, accused Dharmraj, Basant, and Udai Kumar were also present in the room. This conversation took place before them."

24. In his cross-examination, this witness has stated that "this

Officer had taken his statement after 5-6 months of the murder. When he was returning from the market, in front of the police station, Daroga had called him. Daroga said that Udai Chaubey had told all the facts. You also tell the correct facts, otherwise he will keep him in prison. Due to fear and pressure, he started telling the Daroga. Daroga had not told him what facts were told by Udai Chaubey. At the time of occurrence, he was not in the village. Before seven days, he went away and returned after eight days." This witness also stated in his cross-examination that he had not told this fact to the father of Krishna Aadhar.

25. Thus, from perusal of the evidence of this witness, it is clear that this witness was also projected and planted by the prosecution to support the prosecution story. Surprisingly, this witness was called upon by Govardhan Singh in his room and asked to commit murder of Krishna Aadhar @ Chhote. All other accused persons were also present in the same room. According to this witness, he refused to commit murder, but before this witness, in the same room, Udai Kumar Chaubey said that he would do such work, but in spite of this fact, this witness had not told this fact to Ramadhar Tyagi, father of the deceased. This witness also did not tell this fact to the police or any other persons. This witness clearly stated that before seven days of the happening of the incident, he had gone for trading of animals and returned after eight days of the incident. How can, in this situation, the evidence of this witness be believed and relied upon? Thus, from perusal of the evidence of this witness, it is clear that this witness is narrating a concocted, fabricated and false story in the Court, and tried unsuccessfully to falsely implicate the accused-

26. Atar Singh was produced as PW-3 by the prosecution. This witness has stated that "on the date of murder, I was returning at about 4 o'clock from Dilbal. Then, on the way, at Mangalpur, I stopped at the flour mill of Jageshwar. At this flour mill, wheat is being ground and oil is also extracted. This flour mill has three doors on three sides, with one door opening towards the east, where the road is situated. I stood at the north wall inside the flour mill. Outside the flour mill, a cot was attached on the same wall. On this cot, Udai, Dharmraj, Basant Singh, Bhanu Pratap @ Dullan, present in Court, were sitting. Rajaram Kanjar, the accused present in Court, was also sitting on the floor. There were many holes in this wall, so that sound can be heard from the other side, and visibility was also clear. I heard the conversation of these persons. They were talking by saying pradhan-pradhan. They were saying that Pradhani had gone. The pond of fish and market had also gone. The building of the hospital was also became disputed. Due to this, we felt embarrassed, so finish this hurdle. After that accused Udai Chaubey present in the Court had given money to Raja Ram Kanjar to bring liquor. Raja Ram brought liquor. Then all those people began to eat and drink. I had went away. I told this fact on the same day to Shyama Pradhan. On the next date, I came to know that murder of Krishna Aadhar @ Chhote took place."

27. From perusal of the cross-examination of this witness, Atar Singh (PW-3), we find that this witness has stated that he told the plan of hatching conspiracy of murder to Shyama Pradhan on the same day. According to this witness, Pradhan at that time, said him to go to mill and he also went to report. Before this, he had

the Court that in the room of Jageshwar's flour mill, accused persons were talking among themselves and hatching a plan for murder of Shyama Pradhan but this witness also surprisingly told this fact on the same day to Shyama Pradhan, who did not inform the police. This witness also did not inform the police. According to the statement of this witness, Daroga took his statement after four months of the incident. It is unbelievable that this witness heard a so-called conspiracy and plan prepared by the accused persons at Jageshwar's flour mill, situated on the roadside, where many people used to come for grinding wheat and extracting mustard oil. It is totally unbelievable that any accused would not hatch a plan and conspiracy to murder at such a public place. Culprits usually prepares and hatches plans in secrecy at a hidden place where ingress and egress are restricted. If this witness really heard the conversation about hatching a plan for murder of Shyama Pradhan, he was duty-bound to inform the police and other responsible persons maintaining law and order but he did not state this fact to the police. He told this fact to the Daroga after four months of the murder. Thus, from appreciation of the statement of this witness, it is clear that this witness is also adduced by the prosecution as a projected and planted witness to support the prosecution case with concoction and fabrication. The evidence of this witness cannot be believed for the conviction of the accused-appellant. The testimony of this witness is totally hypothetical, who tried to narrate an artificial story. Due to this reason, evidence of this witness is wholly unreliable.

28. Next witness produced by the prosecution is Yaqoob Khan (PW-4). This witness has stated in his examination-in-chief that

direction of tubewell of Tyagi ji, which was on the north side. I, by turning on my torch, saw that Udai Shankar had a *lathi* in his hand, Rajaram had a *khanta*. Apart from them, Dharamraj Singh, Basant Singh, and Bhanu Pratap Singh were also present there, but I had not seen anything in their hands. When I asked them where they were going, accused Udai Chaubey replied that they were going to irrigate their field. At that time, the tubewell was running, and the rice crop was being irrigated. I himself was suffering from loose motion for the last 2-4 days. My health was not well and I returned home. In the morning, it was known that Chhote, son of Tyagi Ji, had been murdered at the tubewell. Subsequently, I fell ill for a month, and during this period, I informed the visitors who came to see me about this incident. Chhote, son of Tyagi ji, was a gentleman and had no enmity with anyone, but the accused persons had enmity with Tyagi ji and his son over the pond and *tehbazari* of market.”

29. From perusal of the cross-examination of this witness, it is evident that he had stated that after four months of the incident, he was called to the police station by daroga and his statement was recorded. During these four months, he had not met any policeman, nor had he gone to the police station due to fear. He met Tyagi ji, the father of the deceased, after 3-4 months of the incident. Thus, from the perusal of the evidence of prosecution witness Yaqoob Khan, it appears that this witness was also produced by the prosecution as a projected and planted witness, as this witness stated in his evidence that he had seen the accused persons going towards the tubewell of the deceased, armed with *lathi* and *khanta* and on the same night, Krishnadhar

Then this witness stated all the facts after four months to the Investigating Officer. This factual position and conduct of this witness make the evidence of this witness highly doubtful and suspicious. It is clear that this witness was projected and planted later, after four months of the incident, to implicate the accused-appellant, when no clue about the real culprits of the crime came to the police. In other words, when the police and Investigating Officer could not trace the real culprits, then this witness and other prosecution witnesses purposely and thoughtfully were planted and projected as prosecution witnesses to work out the case. We find no truthfulness or any element in the statement of this witness which could be believed as an evidence to hold the accused guilty for commission of crime, therefore, evidence of this witness is also wholly unreliable.

30. In the same way and style, prosecution witness Rajendra Prasad (PW-5) has also stated in his evidence that “about four years ago, at night, Chhote, son of Tyagi ji, was murdered at tubewell. At that night, I was at my home. My mother was suffering from stomach pain. That day, Harnarayan Gupta was also present with me. When pain of my mother increased, then at about 01:30 AM, I and Harnarayan Gupta were going to bring a doctor then after passing through the market, when they reached between the tamarind tree, then few people were coming from the side of the tubewell of Tyagi ji. When I turned on my torch then I saw that people of the village, Udai Shankar with a *lathi*, Rajaram with a *khanta*, Dharmraj Singh, Basant Singh and Dullan Singh are coming. I had seen these people in the light of the torch then Harnarayan asked that from where they were coming and Udai

except the people of the village. I also stated that ex-pradhan Govardhan Singh had enmity in respect of tehbazari and auction of the market, pond and rent of the hospital building.”

31. In his cross-examination, this witness stated that “the Investigating Officer took his statement after four months of the incident, at the police station at around 08:00 AM. In his cross-examination, this witness has stated that he had received the information about the murder the next day at 12 noon in Derapur and he did not go to the place of incident as he was 10 miles away. He met Ramadhar Tyagi at the police station on the next day at sunset. He did not disclose this fact to anyone. At that time, dead body of the deceased was kept out of police station. He had not talked with Ramadhar Tyagi at that time. He had not told the fact of night at that day to any person. He had not disclosed the fact of incident at his home and outside after 2-4 days. Thereafter, Ramadhar Tyagi also got to know this fact. After two months of the incident, Ramadhar Tyagi had asked him then he told him all the facts. Udai Kumar had not given intimidation to kill the deceased Chhote before him. He had only heard this.”

32. From perusal of the evidence of the prosecution witness Rajendra Prasad (PW-5), it becomes clear that this witness has also seen the accused persons coming from the direction of the tubewell of Tyagi Ji. The next morning, Krishnadhar @ Chhote was found murdered at the tubewell, but this witness has not told this fact to any person. Even this witness has not told this fact that in the night of murder, he had seen accused persons coming from the tubewell of Tyagi Ji. If this witness had really seen the accused persons in the night of incident coming from the side of

statement of this witness was recorded by the Investigating Officer at the police station then only at police station after four months from the date of incident this witness narrated the above story to the Investigating Officer. From the above facts, it is clear that this witness is telling wrong facts and presenting in the Court a fabricated, artificial, and concocted prosecution story, so that accused-appellant could be implicated for commission of the crime. Upon perusal of the whole evidence of this witness, we find that the evidence of this witness is wholly unreliable since evidence of this witness is not found according to the settled principles of law of evidence.

33. The prosecution produced informant Ramadhar Tyagi (PW-6). From perusal of the statement of this witness, it is clear that at the time of recording the evidence, Shyam Bihari was the pradhan of village Mangalpur, and before him, accused Govardhan Singh was the pradhan from 1952 till the last elections. Regarding enmity with the accused-appellant, this witness stated the same facts as was stated by the prosecution witness Shyam Bihari, Pradhan (PW-1). He stated in his examination-in-chief that his son Chhote had no enmity with anyone, except the accused-appellants. He also stated that after 4-6 days of the incident, he began to know that how his son was murdered and within few days, it was known that in this murder, Dharmraj, Basant, Dullan, Rajaram and Udai Chaubey had their hands. Root cause of this incident was Govardhan Singh.

34. In his cross-examination, this witness has stated that on the date of reporting the incident, Investigating Officer has interrogated him and has taken his statement. Statement had

@ Chote was given to him by Ramauatar Pandey next morning at about 08:00 AM. Receiving this information about murder of his son, he deputed his wife to supervise the dead body of the deceased son and he went to the police station and has written himself about the fact of murder and filed written report, Ext.K-1, at police station Mangalpur without naming any person as accused for commission of the crime. In other words, this witness filed written report, Ext.K-1, against unknown person, in which no accused nor any other person was named as accused either as suspect or responsible for commission of the crime.

35. From perusal of the evidence of this witness, it also emerges that after upon hearing hearsay evidence and rumour from people, this witness after four months from the date of murder of his son dated 14/15.10.1982 has written and filed a second written report, Ext.K-2, at police station Mangalpur. In the second written report, Ext.K-2, this witness stated that murder of his son was committed by Udai Chaubey. From the evidence of this witness, it is clear that for four months, this witness was not knowing the name of any culprit, who was responsible for commission of the crime. This witness had only given information about the incident at police station Mangalpur. Whatever has been stated by this witness in his evidence was based on only hearsay evidence and rumor as prevalent in the village. In his evidence, this witness stated those facts which were not stated by this witness to the Investigating Officer in his statement under Section 161 Cr.P.C. It is also clear from the evidence of this witness that this witness in the Court at the time of recording his evidence totally improved and has given a new fact and story which was

report Ext.K-1, which was filed at police station Mangalpur on 15.10.1982. Thus, from perusal of the evidence of this witness, we find that there is no truthfulness in the evidence of this witness which could be believed as fully reliable. The evidence of this witness is found fully unreliable and not believable from any point of view of law of evidence.

36. From perusal of the evidence of PW-7 Rampal Rawat, who was the first Investigating Officer of the case, it is clear that from the statement of this witness as given in his cross-examination that second Investigating Officer Jaid Naqvi had recorded the statement of informant on 12.01.1983. He also recorded the statements of witness Shyam Bihari and Sitaram on 12.01.1983. On 27.01.1983, again statements of informant Ramadhar Tyagi and Mohd. Islam were recorded by the second Investigating Officer on 11.02.1983. Statements of witness Rajendra Prasad, Harnarayan Gupta, Yaqoob Khan and Dr. Rama Shankar Srivastava were recorded. From the evidence of this witness, it is clear that after this, on 17.02.1983, copy of second written report, Ext.K-2, has been given to the informant and thereafter he was inquired. On the same day, statement of Atar Singh, Chhote Lal, Ram Sewak and Shri Ram had been taken. From the statement of this witness, it is clear that the statement of Bafati was taken on 02.04.1983. Thereafter, new Investigating Officer Om Prakash Ojha has taken the statement of Bafati on 02.08.1983. In his cross-examination by the defence, this witness has admitted that witness Shyam Bihari had made major improvement in his evidence in the Court. This witness has also confirmed that witness Yaqoob had not told to Naqvi about the fact of easing

perusal of the evidence of prosecution witness Investigating Officer Rampal Rawat (PW-7), it is clear that all witnesses of the prosecution had given information about the fact of murder of the deceased at police station after four months of the incident. All the prosecution witnesses called by the Investigating Officer at police station and statement of all of them were recorded at police station Mangalpur. From the evidence of this witness, this fact also emerged that prosecution witnesses have improved their evidence in the Court. They have changed their statement during recording of their statement in the Court from what they had stated at the time of recording their evidence by Investigating Officer under Section 161 Cr.P.C. From the evidence of Investigating Officer Rampal Rawat (PW-7), it is also amply clear that evidence of the prosecution witness and their story as narrated by them are highly suspicious and doubtful.

38. Thus, from perusal and appreciation of the evidence, documentary and oral, as adduced by the prosecution, it is clear that in the written report, Ext.K-1, dated 15.10.1982 and second written report, Ext.K-2, dated 15.02.1983 which was filed after four months of the incident dated 15.10.1982, it is apparent on the face of record that in the first written report, informant Ramadhar Tyagi (PW-6) has not named any accused-appellant for commission of the crime. Informant Ramadhar Tyagi (PW-6) has not named any other persons upon whom he could express his doubt and suspicion for the alleged commission of the crime. Written report, Ext.K-1, was lodged by Ramadhar Tyagi (PW-6) against unknown person for murder of his son. Apart from this, informant Ramadhar Tyagi (PW-6) has not stated any enmity and

Ext.K-1, dated 15.10.1982 and second written report, Ext.K-2, dated 15.02.1983, no enmity or cause of the village rivalry has been stated by the informant Ramadhar Tyagi (PW-6).

39. From perusal of the recovery memo, such as, bloodstained cloths, rope, Ext.K-12, and recovery memo of torch and transistor from the place of occurrence by the Investigating Officer Rampal Rawat (PW-7), it is amply clear that those materials, things and objects, whichever recovered from the place of occurrence, were belongings of the deceased Krishna Aadhar @ Chhote. In other words, all recovered materials, objects and articles belonged to the deceased Krishna Aadhar @ Chhote. Meaning thereby that, Investigating Officers in this case could not collect from the place of occurrence any such type of material, object, thing and article that could be related with the accused-appellant in this case. It is also noteworthy that Investigating Officer in this case could not recover weapon of murder neither from the place of occurrence nor from the custody or possession of the accused-appellant.

40. From perusal and appreciation of the oral evidence of prosecution witnesses, such as, Shyam Bihari (PW-1), Bafati (PW-2), Atar Singh (PW-3), Yaqoob Khan (PW-4), Rajendra Prasad (PW-5) and Ramadhar (PW-6), we find that all these prosecution witnesses have not seen the happening of the incident with their own eyes. These prosecution witnesses were also not the witnesses of last seen together. When Investigating Officer of the case was unable to trace out the real culprits, who committed this heinous crime, then to work out this murder case, Investigating Officers after three-four months from the date of occurrence called the prosecution witnesses at the police station

these prosecution witnesses, it is clear that these prosecution witnesses have not stated whatever they saw or observed before the happening of the occurrence to any other person or to informant of the case Ramadhar Tyagi (PW-6) or even they have not given information or stated to the police about their observations and those suspicious facts. Thus, from perusal of the statement of these prosecution witnesses, it is amply clear that prosecution later on, with full consideration and afterthought, planted and projected these prosecution witnesses with a view to support the prosecution case. However, these prosecution witnesses could not stand in their cross-examination by the defence and they accepted in a clear-cut way that they have not stated whatever they observed or seen before the happening of this incident on 14-15.10.1982 to any other person including informant Ramadhar Tyagi (PW-6) or to any other persons or policemen.

41. However, when we had gone through the judgment and order of conviction of learned Trial Court dated 28.04.1988, we find that at page nos. 8, 9 and 10, Trial Court relied on the evidence of prosecution witness Yaqoob Khan (PW-4) and Rajendra Prasad (PW-5) and only on the ground of enmity based its observation on the evidence of Yaqoob Khan (PW-4) and Rajendra Prasad (PW-5) and held the accused-appellant guilty for commission of the crime. When we have gone through the finding and observations of learned Trial Court, we find that learned Trial Court only perused the examination-in-chief of the prosecution witnesses and the Trial Court has not considered the cross-examination of the prosecution witnesses and neglected the

the ground of enmity and village rivalry held the accused-appellant guilty for commission of the crime. There is no evidence of this kind either direct or circumstantial on the basis of which accused-appellant could be held guilty for commission of the crime but learned Trial Court only on the ground of enmity and village rivalry against the settled principles of law of evidence wrongly relying on the evidence of prosecution witnesses held the accused-appellant guilty for commission of the said crime.

42. Hon'ble Supreme Court in the case of **Sushil and others v. State of Uttar Pradesh, 1995 SSC (Cri.) 388** and in the case of **State of Punjab v. Sucha Singh, (2003) 3 SCC 153**, has held that;

“enmity is a double edged weapon which cut both ways. It may constitute motive for the commission of the crime and at the same time it may also provide a motive for false implication.”

Therefore, only on the basis of enmity, the accused-appellant cannot be connected with the crime and held guilty for commission of the crime. For holding guilty any person for commission of any crime, full proof evidence either circumstantial or direct or last seen together must be present so cogently that accused persons could be connected with the crime on the basis of that evidence. Thus, it is evident from the evidence that prosecution only on the ground of enmities and village rivalry falsely implicated the accused-appellant in this case for commission of the crime.

43. From perusal of the evidence of prosecution, observation and finding of the Trial Court, it is clear that prosecution witnesses

the crime against the settled principles of law of evidence. It is settled principle of law that doubt and suspicion, however, so strong cannot take the place of evidence. Heinous the crime, stricter the proof of evidence. In other words, where an allegation of commission of a heinous offence has been levelled against the accused-appellant, then in this situation, greater would be burden of proof upon the prosecution to prove its case with strict and by wholly reliable evidence whether it may be direct or indirect. However, in the present case in hand, learned Trial Court also based its finding and reasoning against the accused-appellant on the ground of doubt and suspicion.

44. Hon'ble Supreme Court in the case of **Sujit Biswas v. State of Assam, (2013) 12 SCC 406** has also held in para 13 that;

“13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the

evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.”

45. Hon’ble Supreme Court in the case of **Babu v. State of Kerala, (2010) 9 SCC 189** has held in para 27 that;

“27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction.”

46. Hon’ble Supreme Court in the case of **State of Odisha v. Banabihari Mohapatra and another, Special Leave Petition (Criminal) No. 1156 of 2021; decided on 12.02.2021**, has held that;

“it is well settled by a plethora of judicial pronouncement of this Court that suspicion, however, strong cannot take place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt.”

47. From perusal of the postmortem report, Ext.K-17, of deceased Krishna Aadhar @ Chhote in the evidence of Dr. Hari

- 2. Lacerated wounds 4 cm x 2 cm x bone deep on the face about 2 cm away from right eye.*
- 3. Lacerated wounds 8 cm x 2 cm x bone deep on the frontal bone on head about 1-1/2 cm away from right eyebrow.*
- 4. Lacerated wound 2-1/2 cm x 1 cm x bone deep on the frontal bone about 3-1/2 cm away from right eye.*
- 5. Lacerated wound 1 cm x 1/2 cm x bone deep on the face 8 cm away from right eye.*
- 6. Multiple contusions with abrasion 10 cm x 7 cm on the face on right side.*
- 7. Contusion 6-1/2 cm x 1/2 cm right shoulder joint.*
- 8. Contusion 4-1/2 cm x 1-1/2 cm on the bicep muscular region left upper of about 9 cm away from left elbow joint.*

48. Thus, from perusal of the injury report, Ext.K-17, it is clear that ante mortem injuries were found on the body of the deceased Krishna Aadhar @ Chhote and his murder was committed by assaulting on his vital part of the body as on head. Due to this fatal injuries, Krishna Aadhar @ Chhote has died at the spot but the prosecution is totally unsuccessful to prove this fact that these injuries were caused by the accused-appellant.

49. Prosecution was unsuccessful to adduce and produce any incriminating material, objects, things or articles from the place of occurrence or from the possession of the accused-appellant by which accused persons could be connected with the commission of the crime on this ground. Prosecution was fully unsuccessful to produce any reliable oral or circumstantial evidence against the

village rivalry and on the ground of doubt and suspicion without being evidence in this respect only on the ground of conjectures and surmises wrongly appreciated the evidence and against the settled principles of law held the accused-appellant guilty for commission of the crime.

50. From perusal of the whole evidence, judgment and order of conviction of the learned Trial Court, we are of the view that it is a case of no evidence, therefore, in view of the above discussions and observations, we find that finding and reasoning as given by the Trial Court is not sustainable in the eyes of law. We, therefore, inclined to set aside the finding and reasoning given by the learned Trial Court. Thus, the criminal appeal of the accused-appellant deserves to be allowed.

51. The criminal appeal is **allowed**. Accordingly, we set aside the impugned judgment and order dated 28.04.1988 of conviction and sentence passed against the accused-appellant by learned Trial Court in Session Trial No. 24 of 1985 arising out of Case Crime No. 183 of 1982, under Sections 120B, 147, 302/149 IPC, police station Mangalpur, district Kanpur Dehat. The appellant is acquitted of the charge under Sections 147 and 302/149 IPC. The appellant Basant Singh is on bail. He need not surrender. His bail bonds are cancelled and sureties stand discharged. However, he shall comply with the provisions of Section 437-A Cr.P.C.

52. Let a copy of this judgment be sent to the learned Trial Court forthwith along with the Trial Court record for compliance.