



2026:AHC:164707-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 5947 of 2016

Amiruddin and 5 others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Zia Naz Zaidi A/c, Ajay Kumar Srivastava, Inder Pal Singh Tomar, Vikrant Gupta, Virendra Kumar Gupta
Counsel for Respondent(s)	: Avadh Pratap Singh Shishodia, G.A.

With

CRIMINAL APPEAL No. - 4796 of 2016

Rizawan

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Kushagra Srivastava, Mohammad Belal, Narendra Deo Rai, Rajeev Giri, Shahrukh
Counsel for Respondent(s)	: G.A.

1. The instant appeal arises out of judgment dated 24.08.2016 rendered by the learned Sessions Court in Sessions Trial No.- 1912 of 2012 (State vs. Amiruddin and others). The F.I.R. which set the criminal proceedings on foot culminating in the impugned judgement was registered as Case Crime No.- 263 of 2012 under Sections 302/149, 147,148, 404 IPC at P.S.- Pilakhuva, District-Hapur.

2. The learned trial court by the impugned judgment has found the accused persons guilty of offences under Sections 302/149 IPC and accordingly sentenced them to life imprisonment for the said offences and also has imposed a fine of Rs. 10,000/-. In default of payment of fine, one year rigorous imprisonment is to follow. The learned trial court has also imposed a punishment of one year rigorous imprisonment upon the accused appellants for offences under Section 147 I.P.C. after finding them guilty on the said count and has further imposed a fine of Rs. 1000/-. Upon default of payment of fine the accused are to undergo three months of rigorous imprisonment. In addition, the trial court held the accused persons guilty of committing an offence under Section 404 IPC and sentenced each of them to undergo rigorous imprisonment for two years and imposed a fine of Rs. 1000/-. Upon default in payment of fine, further punishment of three months of rigorous imprisonment has been imposed. The appellants Amiruddin, Sonu and Karim Khan have been found guilty of an offence under Section 148 IPC

3. The following appellants in the respective appeals are before this Court:

I. Amiruddin, Sonu, Karim Khan, Deva, Manoj and Irfan @ Phanu in Criminal Appeal No. 5947 of 2016.

II. Rizawan in Criminal Appeal No. 4796 of 2016.

4. Both the appeals are being heard together and are being decided by this judgment.

F.I.R.-Prosecution Case

5. Briefly put the prosecution case set out in the F.I.R. is that the first informant's brother Chatar Singh was engaged in the business of property dealing and his office was situated adjacent to the State Veterinary Hospital, Pilkhua at N.H. 24. On the fateful day Chatar Singh had sent his office boy Ankur to speak to the persons carrying out excavation work in the vicinity. When the office boy did not return, Chatar Singh along with first informant and cousin Rampal went to look for the persons who were operating the excavating machine. They found that four persons who were carrying country made pistols lay in wait. Two accused persons discharged their firearms with intent to kill his brother. His brother sustained an injury to his chest and fell to the ground. The first informant and his brother raised an alarm. The four accused persons fled towards the railway line. While escaping they appropriated the mobile phones' of his brother and Ankur. The first informant and others chased the

brother to Saraswati Medical College, Anwarpur and from there left for a higher facility at Ghaziabad. The deceased died before reaching Ghaziabad.

Charge

6. Pursuant to the lodgement of the FIR police investigation was set in motion. A chargesheet was submitted on 09.07.2012.

7. Cognizance of the offences was taken by the learned trial court on 29.08.2012. The following charges were framed by the learned trial court against the accused persons on 06.03.2013 :-

आरोप

मैं, भानुदेव शर्मा, अपर सत्र न्यायाधीश, हापुड़ (गाजियाबाद) एतद्वारा अभियुक्त गण अमीरूद्धीन, रिजवान, सोनू, करीम खां देवा, मनोज व इरफान उर्फ फानू को निम्नलिखित आरोप से आरोपित करता हूँ:-

प्रथमतः:- यह कि दिनांक 22.5.2012 को समय करीब रात्रि 8.00 बजे पशु चिकित्सालय पिलखुवा थाना क्षेत्र पिलखुवा जिला हापुड़ में आपने वादी कृपालसिंह के भाई चतरसिंह की हत्या करने के लिये एकराय होकर एक नाजायज मजमा बनाया। इस प्रकार आपने ऐसा अपराध कारित किया जो भा०दं०सं० की धारा 147 के अधीन दण्डनीय है और मेरे प्रसंज्ञान में है।

द्वितीयतः:- यह कि उपरोक्त दिनांक, समय व स्थान पर आपके द्वारा घातक हथियारों से सुसज्जित होकर उक्त मजमें को अग्रसारित कर ऐसा अपराध कारित किया जो भा०दं०सं० की धारा 148 के अधीन दण्डनीय है और मेरे प्रसंज्ञान में है।

तृतीयतः:- यह कि उपरोक्त दिनांक, समय व स्थान पर आपने सामान्य उद्देश्य की पूर्ति में वादी के भाई चतरसिंह की गोली मारकर हत्या कर दी। इस प्रकार आपने ऐसा अपराध कारित किया जो भा०दं०सं० की धारा 302 सपठित धारा 149 के अधीन दण्डनीय है और मेरे प्रसंज्ञान में है।

चतुर्थतः:- यह कि उपरोक्त दिनांक समय व स्थान पर वादी के भाई चतरसिंह की हत्या करने के बाद आप उसके मोबाईल फोन सैम्संग जिसमें कमशः दो सिम 9358529870 व 9720104961 को भी अपने साथ ले गये। इस प्रकार आपने ऐसा अपराध कारित किया जो भा०दं०सं० की धारा 404 के अधीन दण्डनीय है और मेरे प्रसंज्ञान में है।

अतएव एतद्वारा मैं, आपको आदेशित करता हूँ कि उक्त आरोप के लिये आपका परीक्षण इस

II. Rizawan

III. Sonu

IV. Karim Khan

V. Deva

VI. Manoj

VII. Irfan alias Phanu

9. The accused persons denied the charges and the case went to trial.

Evidences:

10. Prosecution evidence adduced before the trial court is in tabular form hereunder:

Oral Evidence:- List of prosecution witnesses

Prosecution Witnesses

Sr. No.	Witness	Witness No.	Nature of Witness
1.	Kripal	PW-1	First Informant
2.	Ravindra Singh	PW-2	Independent Witness
3.	Ankur Kumar	PW-3	Eye Witness
4.	Deshpal Singh	PW-4	Independent Witness
5.	Jai Mangal Singh	PW-5	Panch Witness
6.	Dr Ashok Kumar	PW-6	Doctor who conducted the post mortem
7.	Dr. Surendra Kumar	PW-7	Witness to Recovery
8.	Head Constable Sarvesh Kumar	PW-8	Head Moharrir/ Author of Chick
9.	Pitampal Singh	PW-9	Inspector (S.O.G) who conducted the arrest
10.	V.K. Yadav	PW-10	Investigating Officer
11.	Amit @ Hari Om	PW-11	Independent

Documentary evidences:

Sr. No.	Document	Proved By	Date	Exhibit
1.	Tehrir	PW-1 Kripal	22.05.2012	Exh. Ka-1
2.	Recovery Memo of blood stained earth	PW-1 Kripal and PW-8 Head Constable Sarvesh Kumar	23.05.2012	Exh.Ka-2
3.	Inquest Report	PW-1 Kripal	23.05.2012	Exh.Ka-3
4.	Post Mortem Report	PW-6 Dr Ashok Kumar	23.05.2012	Exh.Ka-4
5.	Recovery Memo of empty Cartridge	PW-7 Surendra Kumar	06.06.2012	Exh.Ka-5
6.	Chik FIR	PW-8 Head Constable Sarvesh Kumar	22.05.2012	Exh.Ka-6
7.	G.D Entry	PW-8 Head Constable Sarvesh Kumar	22.05.2012	Exh.Ka-7
8.	Site Plan of Place of Incident	PW-10 V.K Yadav	23.05.2012	Exh.Ka-8
9.	Site Plan of place of arrest and recovery murder weapon and other article.	PW-10 V.K Yadav	20.06.2012	Exh.Ka-9
10.	Site Plan of recovery of empty cartridge	PW-10 V.K Yadav	20.06.2012	Exh.Ka-10
11.	FSL Report of blood stained and normal soil	PW-10 V.K Yadav	28.02.2015	Exh.Ka-11
12.	FSL Report on weapons/bullets .	PW-10 V.K Yadav	24.01.2014	Exh.Ka-12(Not in the record)

Time and Place of Incident and Cause of Death**A. Tehrir/written report**

11. PW-1 Kripal Singh in his testimony before the trial court has stated that he dictated the tehrir to Ravi Kumar Tomar who had reduced it to writing. PW-1 had then fixed his signature to the tehrir. The tehrir was tendered at the police station on 22.05.2012 at 10:15 PM. PW-1 identified his signature on the tehrir and proved the same. The tehrir was then marked as Exh. Ka-1.

B. Chik F.I.R.

12. As per the FIR the incident occurred on 22.05.2012 at 20:00 hours, near the State Veterinary Hospital, Pilkhuva, District Hapur. The F.I.R. was got registered by the first informant Kripal Singh/P.W. 1 on 22.05.2012 at 23:00 hours at P.S. Pilkhuva, Hapur. The distance of the police station from the place of incident is 2 km. The F.I.R. was registered as Case Crime No. 263 of 2012 under Section 302 I.P.C.

13. Sarvesh Kumar/Head Constable/ PW-8 deposed before the trial court that he had recorded the chick FIR in his hand writing and then signed the document. PW-8 identified his hand writing and signature on the chick FIR and proved the same. The FIR was thereafter marked as Exh. Ka-6.

14. PW-8 also testified that pursuant to the FIR he recorded the GD

PW-8 thereafter proved the said GD entry No.55 recorded at 23:00 hours on 22.05.2012. The GD entry No. 55 was then marked as Exh. Ka-7.

C. Inquest Report

15. The inquest report was drawn up on 23.05.2012 at about 04:00 A.M. by Sub-Inspector V.S. Rana. The inquest report records that upon registration of the FIR a police party composed of In-charge Inspector V.K. Yadav/Investigating Officer/PW-10 along with V.S. Rana (author of Panchayatnama) and others reached the house of the deceased to conduct the inquest proceedings. The family members of the deceased were grieving.

16. The witnesses to the inquest who were appointed at the site included Kripal Singh/PW-1/first informant, Jai Mangal Singh/PW-5. In the opinion of the witnesses to the inquest the deceased had died of a gunshot injury.

17. It is noteworthy that there is a material distinction in the hand writing recording the opinion of the witnesses and the hand writing elsewhere on the said document. The inquest report dated 23.05.2012 was proved by Kripal Singh/PW-1 and marked as Exh Ka-3. The inquest report was also affirmed by Jai Mangal Singh/PW-5 and Inspector V.K. Yadav/Investigating Officer/PW-10 during their deposition before the trial court.

Movement of the body for Post Mortem:

Recitals in the inquest report state that the body was made over to Constable Man Pal and Constable 45 Nizamuddin for being transported to the mortuary for post mortem.

Cause of death- Post Mortem Report

19. Post mortem proceedings were conducted on 23.05.2012 at about 9:30 AM by Dr. Ashok Kumar /P.W.6.

20. Dr. Ashok Kumar who entered the witness box as P.W.6. P.W.-6 identified his signatures on the post-mortem report and proved the post-mortem report and its contents. The post-mortem report was marked as Exhibit Ka-4.

21. The relevant parts of the post-mortem report depicting ante mortem injuries, cause of death and time of death are extracted hereunder:

Anti Mortem Injuries: 1. Firearm wound of entry- size 2 cm x 2 cm on the left side of front of chest 9 cm away and medial to left nipple at 9'o clock position. Injury chest cavity deep and in between 5th and 6th Intercostal space of chest. 5th and 6th rib on the left side fractured. Blackening present. Margins Inverted.

2. Firearm wound of exit- size 2.5 cm x 2 cm on back of left side chest on inferior border of left scapula and 6 cm away and lateral to left axilla. Injury No. is in continuation of Injury No.1. Margins everted.

Cause of Death- Haemorrhage and shock due to anti-mortem injuries.

Recovery Memos:**(I) Soil Samples**

23. During the course of investigations Inspector V.K. Yadav/Investigating Officer/PW-10 recovered samples of plain earth as well as blood stained earth from the site of the incident at the pointing out of PW 1. The samples were packed into separate boxes and sealed. The recovery memo was reduced to writing by Sub-Inspector/Surendra Kumar/PW-7 on 23.05.2012 at the dictation of In-charge Inspector V.K. Yadav/Investigating Officer/PW-10. PW-1/first informant was witness to the aforesaid recovery proceedings and proved the recovery memo before the trial court. The recovery memo was marked as Exh. Ka-2. The said recovery memo was also affirmed by Surendra Kumar/Sub-Inspector/PW-7 in his testimony before the trial court.

(II) Cartridge

24. P.W.10 stated that the accused persons were arrested on 06.06.2012 by the SOG team .315 bore cartridge was recovered near the railway station at the pointing out of Amiruddin. The P.W.10 dictated the recovery memo which was taken down in writing by the S.I. Surendra Kumar. P.W.10 affixed his signatures to the recovery memo. P.W.10 stated that the recovery memo was already marked as Exh.Ka-5. Later the recovery was affirmed by P.W. 7.

the mobile phone of the deceased was recovered from the person of Amiruddin after he was searched. Deposition of P.W.9 records that he identified his signatures on the recovery memo, and the said document was marked as Exh Ka- 1.

Site Plans

I. Site Plan of the Incident:

26. Inspector V.K. Yadav/I.O./P.W.10 visited the site of the incident and prepared the site plan on 20.06.2012. PW 10 stated that he had dictated the site plan to PW 7 at the site of the incident, who had reduced it to writing. PW 10 identified his signatures on the site plan. After the site plan was proved by P.W.10 it was marked as Ex. Ka-8.

II. Site plan of recovery of cartridge:

27. PW 10/IO stated that the site plan of recovery of cartridge was prepared by Sub-Inspector Surendra Kumar on the dictation of PW 10. PW 10 identified his signatures dated 20.06.2012 and proved the same. The recovery was marked as Exhibit Ka-10.

III. Site Plan of place of recovery of weapon:

28. PW 10 /IO has stated that on 20.06.2012 he inspected the site from where weapon of crime was recovered. The site plan of recovery of weapon of assault was drawn up by SI Surendra Kumar on the dictation of PW 10/ V.K Yadav. PW 7 identified his

FSL Reports

29. FSL report dated 24.01.2014 discloses that a number of arms and ammunitions including the cartridge recovered in the instant case were sent for analysis to the FSL. The FSL report was proved by PW-10 and marked as Exh. Ka- 12.

30. The FSL report dated 28.02.2015 pertains to bloodstained samples of soil and plain earth extracted from the site of the incident.

31. The said FSL report was proved by PW-10 and was marked as Exh. Ka-11.

Material Exhibits:

32. Recovered articles namely both samples of soil from place of incident, recovered cartridge, mobile phones and firearms were not produced before the Court during the trial.

Oral Testimonies:-**P.W.1-Kripal**

33. Kripal Singh/first informant who is the brother of the deceased and the first informant entered the witness box as P.W.1. P.W.1 testified before the trial court that on 22.05.2012 at about 8.00 PM that he was at the office of his brother Chhetra Pal Singh. The office is situated at NH-24 near the Veterinary Hospital. Chatar Singh

were carrying weapons. The other two said this is Chatar Singh and he has mauser (weapon) on him and can kill us. Two accused persons fired at Chatar Singh. Chatar Singh sustained a bullet injury on his chest and fell to the ground. PW-1 and Ram Pal ran for safety. In the meantime, two of the accused persons snatched the mobile phone of his brother.

34. When P.W.1 and Ram Pal raised an alarm, the accused persons ran towards the railway line and escaped. PW-1 and Ram Pal then took his brother to the Saraswati Hospital at Anwarpur, which referred them to a higher facility at Ghaziabad. However, his brother died on the way to Ghaziabad and they returned home. They were able to see the accused persons in torch light as well as in the light of vehicles on NH-24. The body of deceased was lying at his place when he left for the police station to lodge the FIR.

35. According to PW-1 two days after the incident Deshpal and Satyapal met him. PW-1 stated Deshpal and Satyapal told him that while standing at the railway station they saw seven persons coming from the veterinary hospital to the station. The seven persons included Dev, Karim Khan, and Manoj who belong to Chhiddapuri. The accused persons while conversing between themselves revealed the names of other four persons and their respective places of residences'. Out of the said four persons, Amiruddin, Sonu and Rizawan were from Amirpur Nagula while Irfan was from Meerut. The said accused persons were heard saying that they had shot

accused namely Amiruddin, Irfan and Sonu were present in Court while Rizawan was not present.

36. PW 1 stated that he had identified four accused persons namely Amiruddin, Rizawan, Irfan and Sonu at the time of incident. The relevant statement of PW 1 is as follows:

"घटना के समय चारों को मैंने पहचाना था"

P.W.2 -Ravindra Singh

37. Ravindra Singh was introduced by the prosecution as PW-2. PW-2 in his testimony has stated that he knew Chhatar Singh who had contested the Zila Parishad election. On 22.05.2012 at about 08:15 P.M. he along with Desh Pal and Sant Ram were waiting at the railway station Pilkhuva for a train to Delhi. They saw seven persons running from the direction of the District Veterinary Hospital towards the railway station. When the aforesaid persons crossed them they could be heard saying that we have shot Chhatar Singh but could not commit any loot. PW-2 and others tried to stop them to have a word but the accused persons took advantage of the darkness and escaped. The train was coming from the direction of Hapur.

38. PW-2 states that he had prior acquaintance with three accused persons namely Amiruddin, Rizawan and Sonu who belong to Alipur village. Irfan belongs to Dhauladi. Karim Manoj and Deva

Singh and told him about the conversation which the accused persons were having.

39. PW-2 identified the accused persons Amiruddin, Sonu, Manoj, Irfan, Deva and Rizawan. PW-2 further deposed before the trial court that he knows all the accused persons namely, Amiruddin, Sonu, Manoj, Irfan, Deva and Rizawan who are not present in court. PW-2 claims to have strong roots in Chhiddapuri.

40. PW-2 was examined on 04.07.2013. The order-sheet of the trial court discloses that all accused persons were present on 04.07.2013. P.W.2 has identified all the seven accused persons in court. P.W.2 has testified before the trial court that he knows the seven accused persons, namely, Amiruddin, Sonu, Manoj, Irfan, Deva and Rizawan. However, according to PW 2 the accused persons were not present in court.

41. The aforesaid statement of P.W.2 that the accused persons were not present in court thus appears to be a typographical error. It appears that the correct statement was that the accused persons were present in court.

"आज हाजिर अदालत मुलजिम इस समय, अमीरुद्दीन, सोनू, मनोज, इरफान, देवा व रिजवान इस समय हाजिर अदालत नहीं है मैं इन्हे जानता हूँ कि छिदापुरी में मेरी खेती का साक्षीदार बहुत है। इन्हीं लोगो को मैंने दिनांक 22.5.12 को बात करते हुये सुना था।"

42. It is noteworthy that order-sheet of the learned trial court is of 04.07.2013, the date on which the said deposition of P.W.2 was

43. P.W.2 also states that he has farming interests in Chiddapuri, and had heard aforesaid persons making the implicatory conversation on 22.05.2012.

(emphasis supplied)

P.W.3- Ankur Kumar

44. Ankur the office boy of Chatar Singh stepped into the witness box as PW-3. PW-3 testified that he was asked by Chatar Singh to call the persons who were doing excavation work with a JCB machine. When he reached the spot, he found that seven persons had caught hold of the owner of JCB machine and were assaulting the latter. PW 3 states that the said seven persons also thrashed him and snatched his mobile phone. The said persons then detained him. After some time, Chatar Singh, Kripal Singh and Rampal came in search of him. On seeing them one of the accused persons said that he is Chhatar Singh who keeps a weapon on his person and can kill them. The said person also exhorted the others to shoot at Chhatar Singh. Thereafter two persons fired and one bullet hit Chhatar Singh. Chhatar Singh immediately fell to the ground. Kripal Singh and Rampal ran for their safety. He also hid in a tent. The accused persons took Chhatar Singh's mobile phone and ran towards the railway line. He could not recognize the accused persons at the spot. However, he stated that he could recognize them if they came before him.

46. PW-3 then stated that he saw the seven accused persons and stated that the said seven accused persons who were present in Court had committed the offence. The relevant part of the examination of PW-3 is extracted hereunder:

“गवाह ने मुलजिमान को देखकर बताया। वो 7 मुलजिमान हाजिर अदालत है । इन्ही लोगो ने घटना की थी।”

P.W.4-Deshpal Singh

47. Deshpal Singh entered the witness box as P.W.4. He has stated that on 22.05.2012, he was waiting at the platform for the train to Delhi, after purchasing the tickets at 07:45 pm. Later on Satpal, Ravindra and others joined him on the platform. A large crowd was present at the railway station. He saw seven persons coming along the railway track from the direction of the Veterinary Hospital on the other side of the platform. The said persons were on the other side and they jumped the railway track and were running away. The aforesaid persons were heard saying that they had shot at Chatar Singh but could not commit any loot. He knew three of the seven accused persons, namely, Deva, Karim Khan and Manoj. However, he could identify the other four accused persons if he come face to face with them. In the meantime the train arrived and he left for Delhi.

48. On 24.05.2012 he returned from Delhi. He learnt about the murder of Chhatar Singh while having tea after alighting from the bus. Without wasting time he went to Chhatar Singh's elder brother

stated that Deva and Karim Khan belonging to Chiddapuri were not present in the court.

P.W.9- Pitampal Singh

49. Pitampal Singh, S.H.O. Garh Mukteswar, District Hapur testified that on a tip off from an informer that some miscreants were planning a dacoity was received. The police party left for arresting the criminals. As the police party approached the site, they heard the accused persons planning the decoity. The police party thereafter arrested the five accused persons namely, Amiruddin, Karim Khan, Sonu, Rizawan and Deva. Various articles were recovered from the accused persons in the said case of police encounter.

P.W.10- V.K. Yadav

50. The S.I. V.K. Yadav who was the investigation officer entered the witness box as P.W.10. P.W.10 testified that statement of witnesses Bal Kishan, Jai Mangal, Sohan Pal Singh and Ashok Kumar were recorded on 04.06.2012 . Accused Amiruddin, Deva Koli, Rizawan and Sonu were arrested on 06.06.2012 by a SOG team. The accused Irfan and Manoj were arrested on 13.06.2012 and 17.06.2012 respectively in separate police encounters. P.W.10 disclosed the various recoveries made from accused persons at the time of their arrest.

51 Details of Recovered Articles:

empty cartridge

P.W.11- Amit alias Hari Om

52. Amit alias Hari Om, who runs a mobile phone shop was introduced by the prosecution as P.W.11. P.W.11 stated that Chatar Singh had purchased a Samsung mobile from him. P.W.11 identified the original copy of the invoice of the mobile phone and presented a carbon copy of the same. The said document was proved by PW 11 marked as Ex. Ka-14.

P.W.12 -Manoj

53. Manoj who runs a mobile shop was produced by the prosecution as P.W.12. P.W.12 stated that Ankur had purchased a China make mobile phone from his shop. He did not issue any bill, but stated that Ankur had purchased a mobile phone for ₹ 1250/-

Submissions from the Bar:

Arguments on behalf of appellant:

54. Shri Kamal Krishna, learned Senior Counsel assisted by Shri Irfan Chaudhary, learned Counsel/Amicus Curiae, Shri Dharmendra Singhal, learned Senior Counsel assisted by Shri Ashutosh Yadav, learned Counsel/Amicus Curiae and Shri Shivendra Raj Singhal; Shri Vinay Saran, learned Senior Counsel assisted by Shri Pradeep Kumar Mishra, learned Counsel/Amicus Curiae, Ms. Ziya Naaz, learned Counsel/Amicus Curiae Shri Virendra Gupta, learned counsel, Shri Shahrukh, learned counsel, and Shri Abhinav Dwivedi, learned counsel have made

III. Testimonies of PW 1 and PW 3 are beset with contradictions and not liable to be believed.

IV. The identification of accused persons by both sets of prosecution witnesses, namely PW-1 and PW-3 (who claim to be eye-witnesses) and PW-2 and PW-4 (who claim to have heard the accused persons talking about committing the offence) was not in accordance with law and was vitiated.

V. The recovered articles were not produced before the Court.

VI. The FSL report does not support the prosecution case.

VIII. The material exhibits namely mobile phone and the firearm was not produced before the trial court in the instant case. The recovery memo depicting the recovery of mobile phone was also never produced and proved before the trial court in the instant case. The recovery memo of another trial cannot be relied upon in the instant case. PW-9 has referenced Exh. Ka-1 as the recovery memo depicting the recovery of the mobile phone. However the record before this Court Exh. Ka-1 is the tehrir. The recovery memo mentioned in the testimony of PW-9 is not present in the record before this Court.

IX. Photostat copies of the FIR of other cases pending against the appellants registered as Case Crime Nos.- 279/2012, 280/2012, 281/2012, 282/2012 under Sections 399, 402, 307 I.P.C. and Section 25 of Arms Act and the GD entry are in the record before

X. The aforesaid recovery memo or a certified copy thereof is not present in the records before this Court. Recovery memo is not available in the record. Material exhibits were not produced before this Court.

XI. Even if the statement of P.W.9 is taken on its face value the descriptions of the case or the details of the other trials in which the recovery memo/documents were produced have not been disclosed. In absence of the same, it cannot be stated that Fard Ex. Ka-1 was part of the proceedings before the court in the instant trial.

XII. Presence of P.W. 2 and P.W. 4 at the railway station could not be established.

XIII. The prosecution has failed to establish the case beyond reasonable doubt.

XIV. The impugned judgment has misread the evidence and is unsustainable in law.

Submissions on behalf of State:-

55. Shri Rishi Chaddha, learned AGA on behalf of the State, submits as under:

I. The FIR was lodged promptly and was filed within three hours of the incident.

II. The FIR also named three eye-witnesses to the incident.

IV. The accused persons have been identified in court by both sets of prosecution witnesses, namely PW-1 and PW-3, as well as by PW-2 and PW-4.

V. A test identification parade is not substantive evidence. Failure to conduct a test identification parade will not vitiate the trial.

VI. The recovery memo was proved by PW-9 before the trial court. The IMEI No. and the details of the mobile phone depicted in the recovery memo was proved by PW-11.

VII. P.W. 2 and P.W. 4 have stated that they were present at the railway station.

VIII. The judgment has correctly appraised the evidence and is liable to be upheld.

56. The appraisal of evidence in light of the record before this Court and the submissions made by learned counsels for the parties will be made in the following sequence:-

Appraisal of evidence:

57. The submissions of learned counsels for both parties and the evidences will be appraised in the fallowing sequence:-

(I) Credibility of Witnesses :

A (i) Evaluation of reliability of P.W.2 and P.W.4.

58. PW2 and PW4 are critical witnesses for the prosecution

and their inability to commit loot while running from the State Veterinary Hospital towards the railway station. The incriminating conversation was overheard by P.W.2 and P.W.4 while they were waiting at the railway platform to board the train for New Delhi.

60. Under cross-examination P.W.2 has claimed to have heard the accused persons making aforesaid incriminating conversations while standing on the railway platform at a distance of about 5 meters from the accused. P.W.2 admits that there were a number of persons on the railway station. The train was also seen approaching the station at that time. The train arrived just after the accused persons crossed the railway tracks.

61. Similarly, P.W. 4 claims that while standing at the railway station he heard the accused from a distance of about 10 paces making the self-implicatory conversation. Public in large numbers were present at the railway platform. Police personnel were moving around. The arrival of the train could also be heard.

62. The aforesaid testimonies of P.W.2 and P.W.4 are least credible. In fact, the said testimonies invite incredulity and disbelief. According to P.W. 2 and P.W. 4 seven accused persons made the conversations incriminating and identified themselves while crossing a railway line adjacent to a busy and noisy railway station with an approaching train. In this situation it cannot be believed that all seven accused were loudly disclosing their respective identities and shouting out their complicity in the offence, far all on the

circumstances, it was not possible for PW 2 and PW 4 to overhear the incriminating conversation. The testimonies of P.W.2 and P.W.4 cannot be accepted as truthful and reliable version of the incident.

63. Further P.W.2 and P.W.4 have not attributed any specific statements to the respective accused. The vague and generalized statements made by P.W.2 and P.W.4 in respect of incriminating conversations amongst the accused do not inspire any confidence.

64. PW 2 and PW 4 are wholly unreliable witnesses whose testimonies in respective of overhearing the implicatory conversation between the accused at the railway station are unworthy of belief and are completely discarded. The said episode is the sole basis of implication of the accused person. The consequence of the same being disbelieved in its entirety is fatal to the prosecution case.

(ii) Delay in Recording the Statements of PW 2 and PW 4

65. Incharge Inspector V.K. Yadav/ I.O./P.W.10 has testified before the trial court that he recorded the statement of P.W.2-Ravindra Singh and P.W.4-Deshpal Singh on 02.06.2012 i.e. 12 days after the incident. No good cause for such delay has been disclosed by the prosecution. The delay in the recording of the aforesaid statements by the I.O. in the facts of this case irreparably dents the prosecution case.

66. These observations are fortified by the law laid down by the

the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, do not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and reappraise the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt.

**(iii) Presence of P.W. 2 and P.W. 4 at the railway station:
Chance Witnesses**

67. P.W. 2 and P.W. 4 were chance witnesses at the railway station. The presence of P.W. 2 and P.W. 4 at the railway station was not depicted in any of the site plans. P.W. 2 and P.W. 4 could not prove their journey to Delhi and presence at the railway station. No evidence regarding their presence at the platform and travel by train Delhi has been adduced by the prosecution. None of the site plans disclose or identify the presence of the P.W.2 and P.W.4 at the railway station. The prosecution has failed to establish the presence of P.W. 2 and P.W. 4 at the railway station at the given time. This was particularly important since they were chance witnesses. The presence of P.W. 2 and P.W. 4 at the railway station is doubtful. It cannot be ruled out that the P.W. 2 and P.W. 4 were planted witnesses.

witnesses. As per the prosecution case set out in the F.I.R. as well as testimony of P.W.1, there are only four accused persons. However, P.W.3 deposed that there are seven accused persons. According to P.W.3, all seven accused persons had caught hold of him and assaulted him.

69. Furthermore, P.W.3 testified that the seven accused persons had assaulted him and had detained him and the JCB owner. Notably this version of P.W.3 is at variance with the prosecution case set out in the F.I.R. as well as testimony of P.W.1. According to deposition of P.W.1, only four persons were lying in wait when he reached the spot along with the deceased and Ram Pal. Furthermore, P.W.1 has not made any mention of the said Ankur or the JCB owner being assaulted and forcefully detained by the accused persons.

70. P.W.1 as well as P.W.3 have ascribed vague and general roles to the accused persons. The failure of P.W.1 and P.W.3 to state the specific roles to the respective accused persons further impeaches their credibility since they have claimed to be eye witnesses. In this wake, it is not safe to rely on the testimony of P.W.1 and P.W.3 as eye witnesses to convict the accused persons.

II. Identification of accused persons by witnesses:

(i) Identification of the accused persons by PW-2 in court.

71. P.W.2 hails from Chhiddapur. Only three accused belong to the said place. PW-2 did not know the other four accused. No test

seven accused. P.W. 2 could not establish the manner and basis of his acquaintance with the latter set of four accused persons.

73. P.W.2 did not identify the seven accused persons individually before the court. He has simply stated in a generic manner that the named accused were present in court.

74. P.W. 2 did not physically or directly identify each accused individually in the dock during identification. P.W. 2 also did not disclose any special identification marks or distinct features of the accused and the manner in which he had seen the said accused. The learned trial court had also failed to record its satisfaction that the person in the dock was duly identified by P.W. 2.

75. P.W. 2 claimed to have a prior acquaintance with some of the accused persons. The credibility of P.W. 2 would have been enhanced had he given the details of the said accused persons and the manner in which he became acquainted. In the absence of such material facts the theory of prior acquaintance of P.W. 2 stands on a weak ground.

76. The failure to conduct the test identification parade of the aforesaid accused persons would have fatal consequences for the prosecution case.

77. Most importantly PW 2 named seven accused persons, even though PW 1 who was the eye-witness had testified that only four accused persons had committed the offence

79. P.W. 4 testified that he knew only three accused persons. P.W. 4 further stated that he would be able to identify other accused by face. However, the test identification parade of the latter four accused was not got conducted before P.W. 4. In the facts and circumstances of this case the failure to conduct the test identification parade would be fatal to the prosecution case.

80. P.W.4 in one breath stated that all the accused persons were involved in the incident. The relevant deposition is extracted herein under:

"रिज़वान, सोनू ये दोनो अमीपुर नगौला के हैं इरफ़ान जो ग्राम धौलड़ी जिला मेरठ का रहने वाला है एक अमीरुद्दीन ग्राम नगौला का भी था जब ये लोग रेलवे लाइन पर जा रहे थे तब उनके मुँह खुले हुए थे मैं आज उन्हें पहचान सकता हूँ।

अदालत में हाज़िर मुलजिमानो में देवा, करीम खान जो छिदापुरी के रहने वाले हैं की शिनाख्त की, मनोज आज नहीं है जो छिदापुरी का रहने वाला है उसे भी जानता हूँ बाकी लोगो को नाम से नहीं जानता हूँ उन्हें शकल से पहचानता हूँ। ये लोग ये घटना में शामिल थे मेरा दरोगा जी बयान लिया था। "

81. In this manner, P.W.4 only identified Deva and Karim Khan but did not identify other accused persons in court.

82. Surprisingly P.W.4 has disclosed the names of all seven accused persons in court. PW-4 failed to explain how he became aware of the identities of the accused he did not have prior acquaintance with. Clearly PW-4 was tutored to depose against the accused persons, and is not a reliable witness.

83. Further, PW-4 identified the two accused in a generic manner.

P.W. 4 failed to directly and physically point to each accused

trial court had also failed to record its satisfaction that the person in the dock was duly identified by P.W. 4.

84. Lastly while PW-4 named seven accused persons, PW-1 who is an eye-witness had stated that there were only four accused persons who had committed the offence. In this manner the identification of the accused by PW-4 becomes very doubtful and entirely unsafe to rely in support of the prosecution case.

(iii) Identification of accused persons by P.W.1 in court

85. Kripal Singh/PW-1, who is the brother of the deceased claims to be an eye-witness to the incident. P.W.1 stated that he did not know the accused persons before the incident. According to his testimony he had seen four accused persons whom he could recognize if he comes face to face with them. Under cross-examination PW 1 stated that he saw the accused persons for the first time in the court.

86. Five accused persons, namely, Amiruddin, Rizawan, Karim Khan, Sonu and Deva were arrested on 05.06.2012 at about 11:45 P.M. The accused Irfan was arrested on 13.06.2012 while the accused Manoj was arrested on 17.06.2012. Test identification parade of the accused before P.W.1 was never conducted.

87. PW-1 identified three accused persons for the first time in the dock namely, Amiruddin, Irfan and Karim Khan by name and not on the basis of their facial features or any distinct physical attributes. Rizawan was not present when he identified the aforesaid

satisfaction that the respective accused persons standing in the dock was duly identified by P.W. 1.

89. The aforesaid dock identification of the said accused persons for the first time is vitiated in the absence of a prior T.I. parade.

90. Significantly PW-1 had testified that he had seen four accused persons commit the offence. However, he identified seven accused persons in court. PW-1 is a tutored witness and is unreliable, whose identification of the accused is unworthy of reliance.

(iv) Identification of accused persons by P.W. 3 in the court

91. As per the prosecution case, the P.W.3 was an eye witness to the incident. P.W.3 claims to have seen the accused for the first time when the incident occurred. P.W.3 stated that he would be able to identify the accused if he came face to face with them. Admittedly PW 3 had no prior acquaintance with the accused. However, no test identification parade of the accused was got conducted before the P.W.3.

92. PW-3 made a sweeping statement that all seven accused persons are present in the court and that they have committed the offence. PW-3 did not identify any of the accused individually and separately, by physically pointing out the respective accused persons in the dock. Further, the learned trial court also failed to record its satisfaction that the respective accused person standing in the dock was duly identified by P.W. 3.

93. PW-3 identified the seven accused persons for the first time in dock identification before the trial court during the dock

94. The identification of seven accused persons by P.W. 3 in the dock contradicts the testimony of P.W. 1 who is also an eye witness. According to the testimony of P.W. 1 only four persons were involved in the incident. The said contradictions in the testimonies of two eye witness namely P.W. 1 and P.W. 3 are material in nature and discredit the prosecution case.

95. PW-1 under cross-examination has stated that after the incident he had often seen the accused persons in the court. Their faces were not covered. This clearly establishes that no precaution to protect the identity of the accused persons were taken by the prosecution after their arrest, and also on various dates when they were produced before trial court. The prosecution clearly failed to protect the identities of the accused persons when they appeared in the court on various dates. The possibility that P.W.1 and P.W.3 became aware of the identities of the accused persons when the latter appeared in the court cannot ruled out. For the same reasons the argument on behalf of the defence that the P.W. 2 and P.W. 4 became aware of the identities of the accused persons whom they did not know earlier only on account of the fact that such accused persons appeared in the court without any steps being taken by the prosecution to protect their identities.

96. Similarly the failure of the prosecution to conduct the test identification parade of the accused persons before P.W. 1, P.W. 2, P.W. 3 and P.W. 4 also vitiates the prosecution case and renders the dock identification unreliable.

circumstances of this case. The discussion has the benefit of authorities in point.

97. This Court in **Asharfi and Ram Dhani v. State**² held that:

35. CONDITIONS NECESSARY FOR ACCEPTABLE IDENTIFICATION EVIDENCE. The Court is bound to follow the rule that evidence as to the identification of an accused person must be such as to exclude with reasonable certainty the possibility of an innocent person being identified. In the very recent case of *State of Madhya Pradesh v. Manka*¹⁸ a Division Bench of the Madhya Pradesh High Court, after examining some Indian, English and American rulings, held:—

“The evidence of identity must be thoroughly scrutinised, giving benefit of all doubt to the accused; but if after a thorough scrutiny there appears to be nothing on the record to suspect the testimony of the identification witnesses, the Court ought not to fight shy of basing a conviction on such evidence alone, because of the bare possibility that there could be honest though mistaken identification.”

36. With great respect we agree with their Lordships. The following twelve question are apt to arise and must be answered by the Court to its satisfaction before it can accept the evidence:—

- (1) Did the identifier know the accused from before?
- (2) Did he see him between the crime and the test identification?
- (3) was there unnecessary delay in the holding of the test?
- (4) Did the Magistrate take sufficient precautions to ensure that the test was a fair one?
- (5) What was the state of the prevailing light?
- (6) What was the condition of the eye-sight of the identifier?
- (7) What was the state of his mind?
- (8) What opportunity did he have of seeing the offenders?
- (9) What were the errors committed by him?
- (10) was there anything outstanding in the features or conduct of the accused which impressed him?
- (11) How did the identifier fare at other test identifications held in

98. In the case of **Anil and Another v State**³, this Court iterated the well established norms of dock identification:

43. However, keeping in view of the above, we are of the considered view that the Trial Court has to be careful during dock identification of an accused by the witness, in Court, with ensuring at least following precautions :

(1) Essentials of Valid Dock Identification:

- Direct Physical Pointing.
- The witness must clearly and unambiguously point to the accused in the dock.
- This ensures recognition is directed at the actual person present, not merely a name or rank number from the charge sheet.

(2) Precise Descriptive Recording

- The Trial Judge should record the identification with specific noting: > Position: e.g. “second from the left.”
 - > Distinct features: attire, height, facial hair, or other marks used by the witness.
 - > Such detail prevents perfunctory or omnibus identification and strengthens evidentiary reliability.

(3) Judicial Certification of Exactitude

(i) The judge has a proactive duty to endorse in the deposition that identification was made.

(ii) This includes:

- A note that the accused in the dock was identified
- The manner of identification (e.g., “witness pointed towards the second accused”)
- A statement of judicial satisfaction that the person identified is the same accused.

(4) Individualization in Group Offences

(i) In cases of unlawful assembly or multiple accused, identification must not be generic.

(ii) Witnesses must link each accused’s identity in the dock to a specific

(ii) This is a procedural duty of the prosecution, and failure to do so “cuts at the root” of the case.

99. Further in **Kanan v. State of Kerala**⁴, the Supreme Court held as follows:

1....It is well settled that where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T.I. parade to test his powers of observation. The idea of holding T.I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T.I. parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court. In these circumstances, therefore, we feel that it was incumbent on the prosecution in this case to have arranged T.I. parade and got the identification made before the witness was called upon to identify the appellant in the Court.

100. In the case of **Soni v. State of Uttar Pradesh**⁵, the Supreme Court held :

2. After hearing counsel on either side we are satisfied that the conviction of the appellant for the offence of dacoity is difficult to sustain. The conviction rests purely upon his identification by five witnesses, Smt Koori, Pritam Singh, Kewal, Chaitoo and Sinru, but it cannot be forgotten that the identification parade itself was held after a lapse of 42 days from the date of the arrest of the appellant. This delay in holding the identification parade throws a doubt on the genuineness thereof apart from the fact that it is difficult that after lapse of such a long time the witnesses would be remembering the facial expressions of the appellant. If this evidence cannot be relied upon there is no other evidence which can sustain the conviction of the appellant. We therefore allow the appeal and acquit the appellant.

101. Moreover, in the case of **Nazim and Ors V State of Uttarakhand**⁶, it was held that:

41. Both PW-3 and PW-4 thus identified the Appellants for the first time in court. No TIP was conducted, even though PW-3 admitted he had never known the accused earlier. It is well settled that dock identification without a

that the test identification parade was not conducted. All the prosecution witnesses who identified the accused in the Court [...] were not known to the present Appellant. They had not seen the present Appellant prior to the said incident. He was a stranger to both of them.... 18. [...] Under these circumstances, TIP had become necessary particularly when both the accused, who are alleged to have committed this murder were arrested within two days. 19. [...] No explanation whatsoever has been given by the prosecution as to why TIP was not conducted in this case before a Magistrate as it ought to have been done.”

42. The Court further explained that TIP is only part of the investigative process and that the substantive evidence is dock identification; however, where the accused is a stranger to the witness and no TIP is held, courts must exercise extreme caution in accepting such identification. The following paragraph of P. Sasikumar (supra) is indicative of the same: “21. It is well settled that TIP is only a part of police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, is only dock identification that is identification made by witness in court during trial. 23. [...] In cases where an accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting dock identification by such a witness. 24. [...] We are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused.”

102. In the case of **Tukesh Singh and Ors v State of Chhatisgarh**⁷, the Supreme Court held:

21. In a case where there are eyewitnesses, one situation can be that the eyewitness knew the accused before the incident. The eyewitnesses must identify the accused sitting in the dock as the same accused whom they had seen committing the crime. Another situation can be that the eyewitness did not know the accused before the incident. In the normal course, in case of the second situation, it is necessary to hold a Test Identification Parade. If it is not

accused. The eyewitness must identify the accused A, B and C in the Court. Unless this is done, the prosecution cannot establish that the accused are the same persons who are named by the eyewitness in his deposition. If an eyewitness states that “he had seen one accused assaulting the deceased with a sword, another accused assaulting the deceased with a stick and another accused holding the deceased to enable other accused to assault the deceased.” In such a case, the eyewitness must identify the accused in the open Court who, according to him, had assaulted the accused with a stick, who had assaulted the deceased with a sword and who was holding the deceased. Unless the eyewitnesses identify the accused present in the Court, it cannot be said that, based on the testimony of the eyewitnesses, the guilt of the accused has been proved.

103. In the case of **Raj Kumar @ Bheema v. State (NCT of Delhi)**⁸, the Supreme Court held:

52. We may note that the possibility of identification of the accused-appellant by Smt. Indra Prabha Gulati (PW-18) in Court, after a lapse of nearly eight and a half years from the incident, is extremely unlikely. In her testimony, the witness candidly admitted that her distance vision was weak and that she could not see objects at a distance without spectacles. It is also borne out from the record that even at the time of the incident, she was aged about 73 years and was infirm. She was not wearing spectacles at the time of her deposition via video conferencing. In this background, her purported identification of the assailant after such a long lapse of time, that too over video conferencing, does not inspire confidence.

104. In the wake of the preceding discussion the dock identification of the accused persons by P.W. 1 and P.W.3 as well as by PW 2 and PW 4 was done in the teeth of the law consistently laid down by the Supreme Court and this Court. The dock identification of the accused is unreliable. The lack of the proper identification of the accused persons by the respective prosecution witnesses, vitiates the prosecution case.

(III) Recoveries

105. The recovery of .315 bore cartridge was made from accused Amiruddin which is depicted in the recovery memo as Exh. Ka-5. The disclosure statement of Amiruddin as contemplated under Section 27 of the Evidence Act was not recorded prior to the recovery of .315 cartridge.

106. The said recovery is in the teeth of Section 27 of the Evidence Act and the law laid down by the Supreme Court in **Ramanand v. State of U.P.**⁹.

“56. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his bloodstained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the

is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW 2 Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the bloodstained clothes. The second panch witness, namely, Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the bloodstained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.”

107. The Supreme Court in **Anand Jakkappa Pujaari v State of Karnataka**¹⁰ held as under:

“51. The manner of proving a disclosure statement under Section 27 was also explained in *Mohd. Abdul Hafeez v. State of A.P.*, (1983) 1 SCC 143 : 1983 SCC (Cri) 139, which reads thus:— “5.[...] If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person. [...]” (Emphasis supplied)

52. The conditions necessary for the applicability of Section 27 of the Evidence Act are broadly as under:—

1. Discovery of fact in consequence of an information received from accused;
2. Discovery of such fact to be deposed to;
3. The accused must be in police custody when he gave information; and

54. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in *Pulukuri Kotayya v. King Emperor*, 1946 SCC OnLine PC 47, which have become locus classicus, in the following words:

— “10.[...]It is fallacious to treat the “fact discovered” within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that “I will produce a knife concealed in the roof of my house” does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added “with which I stabbed A” these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”

62. Section 27 of the Evidence Act is in the nature of an exception to the general rules contained in the two preceding Sections 25 and 26, respectively. Section 25 makes inadmissible any confession by an accused person to a police officer. Under Section 26, no confession by any person while he is in the custody of a police officer shall be proved against such person unless it be made in the presence of a Magistrate. Section 27 says that such part of the information given by an accused person while in the custody of a police officer may be proved against him as distinctly relates to the fact which is thereby discovered. It therefore makes admissible a confession made while in police custody if the other conditions laid in it are fulfilled. Being an exception to the general rule it has to be strictly construed. Section 27 of the Evidence Act does not permit the admission in evidence of the whole of the confession, but of such portion only of it as can be said to relate distinctly to the fact discovered.

64. The information should directly and distinctly relate to the facts discovered. Where, therefore, a fact has already been discovered any information given in that behalf afterwards cannot be said to lead to the discovery of the fact. There cannot be a re-discovery. Where the information as to the fact said to have been discovered is already in the possession of the police, the information given over again does not actually lead to any discovery so that its discovery over again in consequence of the information given by the accused is rightly inadmissible under Section 27 of the Evidence Act.”

109. Upon analysis of the cartridge recovered in the instant case, the FSL report records that the attributes of 0.315 calibre cartridge were not present in the recovered cartridge.

110. FSL report (Exh Ka 12) does not corroborate the recovery of .315 calibre cartridge, the recovery of which is depicted in Exh Ka-5. The recovered .315 bore cartridge is of no avail to the prosecution case.

B. FSL of soil samples

111. The FSL report as regards the samples of plain soil and bloodstained soil recovered from the site of the inspection dated 28.02.2015 (Exh Ka-11) opines as under:

"दोनों रक्तरणित एवं शादी मिट्टी चि० वस्तु--7 अपने भौतिकीय गुणों (रंग प्रकृति, कणसाइज एवं धनत्व आदि) के साक्ष्य आपस में समान दृष्टिगोचर होती है।"

112. The FSL report does not find the presence of human blood in the sample of bloodstained soil. Furthermore, the FSL report lacks reasons. The FSL report states that the blood-stained soil and plain soil were similar to Material 7 in physical properties. However from the FSL report it is not clear as to what is the Material 7(seven). The particulars of colour, density, size of particles, etc. are not disclosed. The FSL report has simply recorded its ipse dixit which is not supported by any reasons. The FSL report is vague and is of no avail to the prosecution.

113. Another FSL report (30 Ka/2) is available on the original record of trial court regarding presence of human blood on the

प्रदर्शों का विवरण

01-पेन्ट	मृतक अतर सिंह से PM No 751/12
02-शर्ट	
03-बनियान	
04-अण्डरवियर	
05-कलावा	
06-कपडा ताबीज	एक बण्डल में।
07-मिट्टी (खूनालूदा)	घटना स्थल से, एक डिब्बा मे ।
मिट्टी (सादा)	घटना स्थल से, एक डिब्बा मे ।

नोट 1:-वस्तु (5) व (6) को वस्तु (1) कीजेब में रखकर अन्य प्रदर्श के साथ एक सर्व मोहर बण्डल मे वापस लौटाया जस रहा है।

नोट 2-वस्तु (7) की रक्त रंजित व अरंजित मिट्टी के समानता के सम्बन्ध मे रिपोर्ट भौतिक अनुभाग द्वारा अलग से प्रेषित की जाएगी।

परीक्षण परिणाम

वस्तु (1) से (7) के बडे भागो पर रक्त के धब्बे पाए गए।

रक्त के लिये स्पेक्ट्रोमीय परीक्षण प्रयोग में लाया गया।

वस्तु (2) पर सबसे बडे रक्त के धब्बे की लम्बाइ क्रमशः लगभग 40 सेमी थी।

वस्तु (1) से (3) पर मानव रक्त पाया गया।

वस्तु (4) से (7) पर रक्त के धब्बे वियोजित (डिसइन्टीग्रेड) पाये गये ।

वस्तु (1) से (3) पर रक्त के धब्बों के वर्गीकरण के लिये किये गये परीक्षणों से कोई निश्चित परिणाम न निकल सका।

114. The second FSL report is also not backed by reasons and simply records its ipse dixit regarding presence of blood. The report does not disclose the tests carried out on the samples and the basis of the conclusion that blood and disintegrated blood were present

disclose whether disintegrated stains can be a reliable basis for expert evaluation and opinion.

115. The observations made above are supported by long standing authorities in point. The Supreme Court in ***Madan Gopal Kakkar Vs. Naval Dubey: 1992 (3) SCC 204*** while examining the scope and admissibility of a medical expert report held as under:

“34. A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court.”

116. The issue pertaining to expert opinion also arose for consideration before the Supreme Court in ***Ramesh Chandra Agrawal Vs. Regency Hospital Ltd and Others ((2009) 9 SCC 709)***. The well established principles of admissibility of expert evidence were reiterated by the Supreme Court in ***Ramesh Chandra Agrawal(Supra)*** by holding thus:

“16. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the layperson. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific

based on reliable principles, and (iii) that the expert must be qualified in that discipline. (See Errors, Medicine and the Law, Alan Merry and Alexander McCall Smith, 2001 Edn., Cambridge University Press, p. 178.)

19. It is not the province of the expert to act as Judge or Jury. It is stated in *Titli v. Alfred Robert Jones* [AIR 1934 All 273] that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

20. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee* [(2009) 9 SCC 221 : (2009) 10 Scale 675] , SCC p. 249, para 34.)

Credentials of an expert:

18. The importance of the provision has been explained in *State of H.P. v. Jai Lal* [(1999) 7 SCC 280 : 1999 SCC (Cri) 1184] . It is held, that, Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has acquired special knowledge of the subject.

claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him”.

117. This Court while examining admissibility and evaluating the credit of an expert report rendered by the FSL in **Gyanmati @ Sangathiya vs. State of U.P.**¹¹ held as under:

“52. Cases in point consistently hold that the sole purpose of an expert report is to assist the Court to form an opinion in a field which belongs to the domain of experts. After the expert report is upheld by a Court, the same becomes the report and the opinion of the Court. The tests of admissibility of an expert report point are as under:

(A) The credibility and the standing of the expert in the field.

(B) The reasons on which the expert raises his conclusions.

(C) Conclusions

53. The opinion of the expert which is bereft of reasons or does not disclose the basic scientific criteria which has guided the expert to reach the conclusion is of no avail. The purpose of reasons in an expert report is not far to seek. The reasons stated by the expert in support of the conclusions will enable the Court to independently test the correctness of such opinion. For that purpose the Court may also rely on established authorities and protocols in the concerned field and examine the expert report in the perspective offered in such literature. In absence of reasons the Court will not be able to independently come to the conclusion regarding the correctness or otherwise of the experts opinion.”

118. The FSL report of the both sets of soil samples is in the teeth of the law laid down in **Madan Gopal Kakkar** (supra) and **Ramesh Chandra Agrawal** (supra) and **Sangathiya** (supra). Presence of human blood in the soil samples and similarity of both

119. According to the deposition of PW 9, the recovery memo depicting the recovery of the firearm and mobile phone was marked as Exh Ka-1.

120. It is noteworthy Ex. Ka-1 in the instant case is the written report. Ex. Ka-1 as referenced by P.W.9 was never produced before the court in this case. Duly authenticated copy of the recovery memo was also not produced in the present trial._

121. PW-9 has also not given any description of the criminal trial or criminal case in which the said articles were produced and the recovery memo was proved. The prosecution cannot be permitted to rely on the evidence tendered in another criminal case which has not been produced or even properly referenced before the trial court in the instant criminal case.

122. The aforesaid recovered articles namely mobile phone of the deceased and the firearm were never produced and proved in the court.

123. P.W. 11 in his testimony claims that the IMEI number of the said mobile was recorded in the invoice which was marked as Exh. Ka 14. However, the IMEI number reflected in the said invoice was never matched with the mobile of the deceased that was recovered from Amiruddin. The recovery of Samsung make mobile phone which was never produced in Court is of no assistance to the prosecution case.

124. PW-12 also claims to have sold a China made mobile phone to PW-3 Ankur. It is noteworthy that no invoice or details of the said

125. In this wake the prosecution evidence in respect of recovery of mobile phone of the deceased and the firearm used in the offence do not link the appellants with the offence and cannot be used as incriminatory evidence against them.

Judgement of trial court :

126. The impugned judgement overlooked the fact that the credit of P.W. 1 and P.W. 3 was successfully impeached. The mutual contradictions in their statements make them unreliable witnesses. However, the trial court erred in placing reliance on their doubtful testimonies to return the findings of guilt against the appellants. P.W. 2 and P.W. 4 are unreliable witnesses whose presence itself at the railway station is doubtful. Learned trial court was led into error when it believed their testimonies. Learned trial court upheld the dock identification, even though the test identification parade was never conducted. The learned trial court acted in the teeth of law laid down by this Court as well as the Supreme Court. The learned trial court overlooked the fact that recovered articles were not produced in the court. The recoveries were made without adhering to the prerequisites of Section 27 of the Evidence Act. The FSL reports contradicted the recoveries and the recovered articles did not incriminate the appellants. The impugned judgment perversely found that the said recoveries implicated the appellants.

127. The judgment rendered by the learned trial court is perverse and contrary to the evidences in the record. The impugned order dated 24.08.2016 in Sessions Trial No.1912 of 2012 (State Vs.

doubt against the appellants namely Amiruddin, Sonu, Karim Khan, Deva, Manoj, Irfan @ Phanu and Rizawan.

129. The Criminal Appeal is **allowed**.

130. The appellants Amiruddin, Sonu, Karim Khan, Deva, Manoj, Irfan @ Phanu and Rizwan are acquitted of the charges framed against them under Sections 147, 148, 302 r/w 149, 404 of IPC.

131. The appellants Amiruddin, Sonu, Karim Khan, Deva, Manoj and Irfan @ Phanu are in custody, they shall be released forthwith, unless their detention is required in connection with any other case.

132. The appellant Rizwan is on bail, his bail bonds and surety bonds are cancelled and sureties shall stand discharged.

133. Let a copy of this judgment along with the trial court record be transmitted to the court concerned forthwith for necessary compliance and information.

134. Let a copy of this judgment translated in Hindi be served upon the appellants through the Secretary, District Legal Services Authority, Hapur.

(Divesh Chandra Samant,J.) (Ajay Bhanot,J.)

August 6, 2026

Ashish/Vandit