



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 102 OF 2013

NIMAI GHOSH & ORS.

APPELLANT(S)

VERSUS

THE STATE OF BIHAR (NOW JHARKHAND)

RESPONDENT(S)

J U D G M E N T

J.K. Maheshwari, J.

1. Challenging the findings recorded by High Court of Jharkhand in judgment dated 02.08.2012 passed in Government Appeal (DB) No. 31 of 1998, convicting the appellants for the charges under Section 302/34 of Indian Penal Code, 1860 (in short '**IPC**') and Section 27 of the Arms Act, 1959, by setting-aside the judgment of acquittal dated 02.04.1998 of Additional Sessions Judge, Pakur, in Sessions Trial No. 148 of 1990, the present appeal has been preferred by the accused-appellants.

2. The necessary facts in brief are, P.S. Case No. 127/89 was registered by Shyama Ram, A.S.I., the Investigating Officer (PW-11) on the basis of *fardbeyan* of Janmejy Ghosh (PW-8, informant and son of deceased) on 09.07.1989 at 05.30 a.m. The incident allegedly took place on 08.07.1989 at around 4 p.m., in which one Manmohan Ghosh (father of the informant) was murdered. The P.S. Case was registered against six accused persons namely (i) Nimai Ghosh; (ii) Sonachand Ghosh; (iii) Sambal Ghosh; (iv) Gaya Nath Ghosh; (v) Shridhar Ghosh and (vi) Sachin Ghosh. After investigation, challan was filed against all accused persons. The prosecution was unable to prove the case beyond reasonable doubt leading to acquittal of all the accused persons. On filing appeal by the State, the High Court dismissed the same qua three accused persons sustaining their acquittal, however, by partly allowing the appeal qua other three accused persons namely (i) Nimai Ghosh; (ii) Sonachand Ghosh and (iii) Sambal Ghosh, they have been convicted for the offences as charged, hence, this appeal.

3. As per case of prosecution, on 08.07.1989 at

about 3 p.m., the deceased Manmohan Ghosh accompanied with his son Janmejy Ghosh (PW-8), Megh Nath Ghosh (PW-5, nephew of deceased on maternal side) and Shankar Ghosh (PW-2, nephew of deceased on paternal side), started on bicycles from village Malaypur to visit Pakur, where the house of the deceased was under construction. Around 4 p.m., when they reached the railway bridge near village Dadpur, Janmejy Ghosh saw Nimai Ghosh and Sonachand Ghosh (appellants-accused) came from eastern side of the railway under bridge. Co-accused Gaya Nath Ghosh, Shridhar Ghosh, Sachin Ghosh and Sambal Ghosh also came from the western side of the bridge. Accused Nimai Ghosh and Sonachand Ghosh were armed with pistol and they forcibly dragged the deceased under the railway track, where Nimai Ghosh fired on the back of the deceased, as a result of which deceased fell down and started bleeding. Co-accused Sonachand Ghosh shot second fire with intention to kill him. In the meantime, while the deceased was bleeding and withering, Sambal Ghosh assailed him by means of knife, as such the deceased succumbed to the

injuries. As further alleged, the entire incident was witnessed by Janmejy Ghosh (PW-8), Megh Nath Ghosh (PW-5) and Shankar Ghosh (PW-2) and when alarm was raised by them, accused persons threatened to kill them. Fearing the same, they could not save the deceased. Thereafter, the accused persons left the place and moved towards Purab Jheel. The motive for the incident attributed in the *fardebayan* is of previous enmity and prior litigation of deceased with accused Gaya Nath.

4. On 09.07.1989, the next day of incident, at around 5.30 a.m., the Investigating Officer (PW-11) reached the place of scene and recorded the statement of Janmejy Ghosh (PW-8). Later, the investigation was carried out by Dinanath Ram (PW-10). The post-mortem was conducted by Dr. S.K. Gupta (PW-1) on 09.07.1989, wherein following injuries were found -

- (i) One injury having one inch diameter round shape with burnt periphery on the angle of left scapula entrance wound;
- (ii) One injury to the continuation of injury no. 01 on the left side of the chest, triangular shaped 4" above medial 5"

lateral 6' forming a cavity fracturing a bone spanning ribs and puncturing the lungs, aorta, heart and surrounding structure exit;

- (iii) One injury on the back by the X ride of the vertible columns 2" above the waist 1/2" x 1/2" with lacerated margins;
- (iv) One incised wound on the left side on neck 2" x 1/4" x muscle deep;
- (v) One incised wound on the face by the right side of the nose 1/2" x 1/6";
- (vi) One incised wound on left iliac crest 1 and 1/2" x 1/4" x skin deep.

Out of these, injury nos. 1 and 2 were of firearms and other injuries except injury no. 3 were incised. Injury No. 3 was a lacerated wound on the left side of the vertical column above neck. As opined, the cause of death was due to injury no. 1 and 2 leading to massive intra thorax hemorrhage and shock. After completion of investigation, the charge-sheet was filed, and the case was committed to the Court of Sessions for trial.

5. The charges for offence under Section 302/34 of IPC read with Section 27 of the Arms Act were framed.

The accused persons abjured the guilt and demanded trial taking defence of false implication because of previous enmity and pending litigation. The prosecution examined Shankar Ghosh (PW-2), Megh Nath Ghosh (PW-5) and Janmejy Ghosh (PW-8) as eyewitnesses. The prosecution further examined Manjur Rahman (PW-4), Mahadev Ghosh (PW-6), Saidul Rahman (PW-9) as chance witnesses. On due appreciation of material placed on record, the trial Court was of the opinion that in the facts of the case, testimonies of the witnesses cannot be believed and moreover, material contradictions qua injuries and the weapon possessed by the accused persons are there. Neither the recovery of the weapon has been made out, nor any ballistic or scientific evidence connecting overt act of the accused persons is on record. The trial Court also found that the conduct of the eyewitnesses is absolutely doubtful as none of them intimated the police about the incident that took place at about 4 p.m. on 08.07.1989. PW-11 stated that he got intimation about the occurrence over phone by someone, however, no clear proof has come in this

regard in the testimony. In such situation, the trial Court was of the opinion that the testimonies of eyewitnesses or chance witnesses are not worthy to be relied upon for proving the guilt of the accused persons, in particular looking to the previous enmity and the litigation pending between deceased and co-accused Gaya Nath Ghosh. As such, all the accused persons were acquitted from the charges because the prosecution failed to prove the case against them.

6. On filing appeal before the High Court, it was partly allowed qua Nimai Ghosh, Sonachand Ghosh and Sambal Ghosh. The High Court by the impugned judgment convicted all the appellants for the charges under Sections 302/34 of IPC and further convicted accused Nimai Ghosh and Sonachand Ghosh for charge under Section 27 of the Arms Act, *inter-alia* observing that the defence to disprove the charge cannot be believed when the testimonies of the eyewitnesses are consistent with respect to the incident, corroborated by the statements of chance witnesses. The High Court, believing the testimonies of those witnesses, set-aside the judgment of acquittal of trial Court so

far as the appellants are concerned, noting that active role of the appellants in commission of offence by shooting from the firearm namely pistol and other weapon, i.e., knife has been specifically proved and corroborated by medical evidence. Challenging the said findings as recorded by the High Court, the appellants have preferred this appeal.

7. Mr. Jayesh Gaurav, learned counsel appearing on behalf of appellants submits that the incident took place on 8th July 1989, at around 4 p.m. in an open place where the deceased accompanying his son, maternal nephew and paternal nephew were going towards village Pakur on bicycles. The other three persons were following the deceased from behind. It is surprising that at the first instance, when only two persons came at the place of the incident who dragged off the deceased, the alleged eyewitness who were deceased's own son and close relatives were not in a position to stop two persons and save the deceased. The other four accused persons later came from another direction. Therefore, the testimonies of those witnesses were not worthy to be relied upon for

conviction of accused persons, in particular when there has been no recovery of the weapon from them. It is also not on record that the weapon (pistol) allegedly used by two accused persons, namely, Nimai Ghosh and Sonachand Ghosh was the same and the third accused Sambal Ghosh used knife. In absence of recovery of those weapons, the incident itself is doubtful, and the charges as alleged under Section 27 of the Arms Act cannot be proved. It is further contended that in absence of recovery, no scientific/ballistic investigation has been carried out and trial Court in such absence has rightly disbelieved the testimonies of those witnesses and recorded the finding that in absence of recovery of weapon and ballistic report, recovered empty bullet cover cannot be connected with the incident and the guilt of the appellants cannot be proved, in particular, when there is a previous enmity and litigation pending between them. It is said that the High Court committed grave error in setting aside those findings without any plausible reasons and grounds, therefore, the judgment of conviction by the

High Court deserves to be set-aside.

8. *Per contra*, learned counsel Mr. Sujeet Kumar Chaubey representing the State has strenuously argued in support of the findings of the High Court, *inter-alia* stating that the testimonies by the eyewitnesses have been fully corroborated by chance witnesses and the entire incident cannot be disbelieved on the testimony of the defence witnesses who merely heard the gun shot and arrived at the place of incident. It was further urged that the High Court has rightly set-aside the judgment of acquittal so far as the appellants are concerned, therefore, the interference in this appeal is not warranted.

9. After having considered the submissions made and on perusal of the material placed on record, it emerges that Janmejaya Ghosh (PW-8) is the son of the deceased, Shankar Ghosh (PW-2) is the paternal nephew and Megh Nath Ghosh (PW-5) is the maternal nephew of the deceased. All three along with the deceased were going to Pakur on bicycles. On reaching the place of occurrence, deceased was dragged off by accused Nimai

Ghosh and Sonachand Ghosh and was shot by firearm from the back side by Nimai Ghosh. It is further submitted that another shot thereafter was fired Sonachand Ghosh. However, as per the testimony of doctor S.K. Gupta (PW-1), out of the six injuries, only one firearm injury was found with an entry and exit wound. Therefore, the allegation in the testimonies of eyewitnesses of having taken two shots of firearm on the body of the deceased is suspicious. The deceased was going along with his son and two other relatives and these three persons, who were eyewitnesses, were frightened because of the incident and threatening by the accused person. The said conduct of the witnesses has been questioned in the facts of the case. In addition, the place of incident is not a place where the deceased/accused were residing, though 5-6 kms (as deposed by PW-11) far from village Malaypur, i.e., from where they started. The normal conduct of the son and other two nephews should have been to immediately report the incident to the nearest police station, however, in the present case no information was furnished by them for

approximately 14 hours. All the eyewitnesses left the place of the occurrence after some time and later came back without intimating the other family members and villagers.

10. Given the circumstances, before assessing the witnesses' testimony to determine the appellants' guilt, it is imperative to consider as to how and in what manner a witness's testimony may be deemed credible or otherwise in support of the prosecution's case. In this regard, reference is made judgment of this Court in case of '**Alil Mollah and Anr. Vs. State of West Bengal**'¹, wherein this Court while allowing the appeal against concurrent conviction for offence under Section 302/24 of IPC based on testimony of solitary eyewitness, observed in paragraph 7 as thus:

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"7. On his own showing PW 3 was an employee of the deceased. He was present, according to his testimony, when the deceased was assaulted by the appellants. He admits that after committing the crime the appellants and their associates fled away. The witness, however, not only did not raise any alarm when his master was being assaulted, he did not go near his employer even after the assailants had

¹ (1996) 5 SCC 369

fled away to see the condition in which the employer was after having suffered the assault. According to him he got frightened and fled away to his home. He also admitted in his cross-examination that neither at his home nor in the village did he disclose what he had seen in the evening of 4-2-1982 to anyone. Though in the morning of the following day, the witness went to the brick-fields of the deceased-employer and many of his co-employees were also present there, he admitted that he did not disclose the occurrence to anyone of them and went on to concede that even to the Manager of the brick-fields he gave the information about the occurrence only 2-3 days after the occurrence. His statement was recorded by the police on the next day in the afternoon. This conduct of the witness that he did not tell anyone about the occurrence till the next day appears to be rather unnatural and creates an impression that he had not witnessed the occurrence. The witness however tried to take shelter on the plea that he was 'frightened' and therefore till he appeared before the police, he did not pick up courage to inform anyone either in the village or in the brick-fields regarding the occurrence. This plea does not impress us."

As noted, this Court disbelieved the evidence of this eyewitness due to his unnatural conduct who did not tell about occurrence to anyone despite his presence at the place of occurrence. His plea of fear was also discarded.

11. In the case of **'Gopal Singh Vs. State of Madhya**

Pradesh², relating to double murder, this Court allowed the appeal against conviction by High Court, which had set-aside the judgment of acquittal by trial Court for offences under Section 302/34 of IPC, and disbelieved the testimony of eyewitness Feran Singh (PW-5) noting as thus:-

"25. We also find that the High Court has accepted the statement of Feran Singh, PW 5 as the eyewitness of the incident ignoring the fact that his behaviour was unnatural as he claimed to have rushed to the village but had still not conveyed the information about the incident to his parents and others present there and had chosen to disappear for a couple of hours on the specious and unacceptable plea that he feared for his own safety."

In the above case also, this Court observed that behaviour of the eyewitness is unnatural since after the incident, he rushed to the village, however, did not convey any information either to the villagers or his parents and other persons present. He disappeared from the spot merely on the pretext of fear and to save himself.

12. Similarly, in '**Shivasharanappa and Others Vs.**

² (2010) 6 SCC 407

State of Karnataka^{3'}, this Court in an appeal against conviction by the High Court, which had set-aside the judgment of acquittal by the trial Court primarily for offences under Section 302/149 of IPC, while allowing the appeal, disbelieved the testimony of the daughter (PW-9) who is said to be eyewitness and *inter-alia* observed as thus:-

"22. Thus, the behaviour of the witnesses or their reactions would differ from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses would be unrealistic but the court cannot be oblivious of the fact that even taking into account the unpredictability of human conduct and lack of uniformity in human reaction, whether in the circumstances of the case, the behaviour is acceptably natural allowing the variations. If the behaviour is absolutely unnatural, the testimony of the witness may not deserve credence and acceptance.

23. In the case at hand, PW 9 was given a threat when her mother was forcibly taken away but she had the courage to walk in the night to her grandmother who was in her mid-fifties. After coming to know about the incident, it defies commonsense that the mother would not tell her other daughter and the son-in-law about the kidnapping of the deceased by her mother-in-law. It is interesting to note that the High Court has ascribed the reason that PW 7 possibly wanted to save the reputation of the deceased daughter and that is why she did not inform the other daughter and son-in-law. That apart, the fear factor has also been

³ (2013) 5 SCC 705 - 07.05.2013

taken into consideration. Definitely, there would have been fear because, as alleged, the mother-in-law had forcibly taken away the deceased, but it is totally contrary to normal behaviour that she would have maintained a sphinx-like silence and not informed others. It is also worthy to note that she did not tell it to anyone for almost two days and it has not been explained why she had thought it apt to search for her daughter without even informing anyone else in the family or in the village or without going to the police station. In view of the obtaining fact situation, in our considered opinion, the learned trial Judge was absolutely justified in treating the conduct of the said witnesses unnatural and, therefore, felt that it was unsafe to convict the accused persons on the basis of their testimony. It was a plausible view and there were no compelling circumstances requiring a reversal of the judgment of acquittal. True it is, the powers of the appellate court in an appeal against acquittal are extensive and plenary in nature to review and reconsider the evidence and interfere with the acquittal, but then the court should find an absolute assurance of the guilt on the basis of the evidence on record and not that it can take one more possible or a different view."

The Court as noted above, while taking into consideration the fear factor, weighed in the conduct of the daughter who is said to be the eyewitness of the incident in remaining silent and not informing others, and concluded that it is contrary to normal human behaviour.

13. In yet another instance in the case of '**Lahu Kamlakar Patil and Another Vs. State of Maharashtra**'⁴, wherein this Court seized of an appeal against concurrent conviction primarily for offences under Section 302/149 of IPC, had the occasion to deal with human conduct and reaction and observed as under:-

"26. From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is likely to be discarded.

27. Keeping in mind the aforesaid, we shall proceed to scrutinise the evidence of PW 2. As is evincible from his deposition, on seeing the assault he got scared, ran away from the hotel and hid himself behind the pipes till early morning. He went home, changed his

⁴ (2013) 6 SCC 417 - 14.12.2012

clothes and rushed to Pune [Ed.: Since the case has been tried by the Additional Sessions Judge, Raigad, Alibag, it would seem that the incident took place in Alibag, Raigad, which is about 300 km from Pune.]. He did not mention about the incident to his family members. He left for Pune and the reason for the same was also not stated to his family members. He did not try to contact the police from his residence which he could have. After his arrival at Pune, he did not mention about the incident in his sister-in-law's house. After coming back from Pune, on the third day of the occurrence, his wife informed him that the police had come and that Bhau, who had accompanied him, was dead. It is interesting to note that in the statement under Section 161 of the Code, PW 2 had not stated that he was hiding himself out of fear or he was scared of the police. In the said statement, the fact that he was informed by his wife that Bhau was dead was also not mentioned. One thing is clear from his testimony that on seeing the incident, he was scared and frightened and ran away from the hotel. He was frightened and hid himself behind the pipes throughout the night and left for home the next morning. But his conduct not to inform his wife or any family member and leaving for Pune and not telling anyone there defies normal human behaviour. He has also not stated anywhere that he was so scared that even after he reached home, he did not go to the police station which was hardly at any distance from his house. There is nothing in his testimony that he was under any kind of fear or shock when he arrived at his house. It is also surprising that he had not told his family members and he went to Pune without disclosing the reason and after he arrived from Pune and on being informed by his wife that his companion Bhau had died, he went to the police station. We are not oblivious of the fact that certain witnesses in certain circumstances may

be frightened and behave in a different manner and due to that, they may make themselves available to the police belatedly and their examination gets delayed. But in the case at hand, regard being had to the evidence brought on record and, especially, non-mentioning of any kind of explanation for rushing away to Pune, the said factors make the veracity of his version doubtful. His evidence cannot be treated as so trustworthy and unimpeachable to record a conviction against the appellants. The learned trial court as well as the High Court has made an endeavour to connect the links and inject theories like fear, behavioural pattern, tallying of injuries inflicted on the deceased with the post-mortem report and convicted the appellants. In the absence of any kind of clinching evidence to connect the appellants with the crime, we are disposed to think that it would not be appropriate to sustain the conviction."

In the facts as discussed, the conduct of the eyewitness in the facts of the case was found highly improbable vis-à-vis normal human conduct out of fear who has witnessed an incident as after the incident, this witness without reporting the same to anyone, left the place to visit Pune making his testimony doubtful.

14. Assistance may also be drawn from the judgment of this Court in '**Amar Singh Vs. State (NCT of**

Delhi)⁵, wherein this Court yet again while dealing with an appeal against concurrent conviction for offences under Section 302/34 of IPC based on testimony of sole eyewitness PW-1, found his conduct to be unnatural and inconsistent with the ordinary course of human nature. The consideration as made by the Court is reproduced for ready reference as under:

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“20. The assailants were only armed with hockey sticks and a knife and not with any firearms. It seems very unnatural that two brothers present on the spot will not even make slightest attempt to intervene and try to save the other brother being assaulted, merely on the threat extended by the assailants armed with hockey sticks and a knife. This unnatural conduct totally against natural human behaviour casts a serious doubt of shadow on the presence of eyewitness on the spot at the time of occurrence. Moreover, the facts stated by PW 1 Parminder Singh in this regard, as already discussed above, have not been corroborated by the other brother Amar Singh PW 11.

21. The other unnatural conduct of two brothers PW 1 and PW 11 just after the incident again makes their presence on the spot extremely doubtful. There was a medical clinic of Doctor Bhardwaj just nearby the place of incident and the first endeavour of the two brothers would have been to take injured brother to the clinic for immediate medical aid or try and get some medical aid

⁵ (2020) 19 SCC 165

from the clinic of Doctor Bhardwaj. Admittedly, according to the statement of Parminder Singh PW 1 PCR van arrived after about 15 minutes. During this period no effort was made to either take the injured brother to the clinic or to call Doctor Bhardwaj for some first aid. This is totally against normal human behaviour.

22. Further no effort is alleged to have been made to either shift the injured to any hospital or even inform the police. It is highly unnatural that two real brothers made no efforts to save the life of third brother who was severely injured if they were present at the place of the incident. The PCR van is stated to have arrived after 15 minutes on the basis of information given by some unknown person regarding a person lying injured in front of Qumayun Hotel. PW 20 lady constable Renu in her evidence stated that on the fateful night she was posted at PCR van when at about 10.27 p.m. an unknown person made a call to inform that one man was lying unconscious near Qumayun Hotel, Defence Colony which was registered as DD No. 493. It was on the information given by an unknown, the PCR van reached at the site of the incident and shifted the injured to Aioms where he was declared brought dead.

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24. This in itself casts serious doubts of shadow on the prosecution story that two brothers of the deceased, namely, Parminder Singh PW 1 and Amar Singh PW 11 were present on the spot and accompanied the injured in PCR van to Aioms. Had it been so, naturally, they would have given the name of the deceased and their own names which would have been recorded in the MLC Ext. PW 17/A at the first instance. Doctor Romesh Lal PW 17/A who prepared the MLC stated in his evidence that one dead body was brought in the casualty of Aioms by Head Constable Dharam Singh having multiple sharp

deep injuries all over the body and he prepared the MLC PW 17/A.

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32. *The conviction of the appellants rests on the oral testimony of PW 1 who was produced as eyewitness of the murder of the deceased. Both the learned Sessions Judge, as well as the High Court have placed reliance on the evidence of PW 1 and ordinarily this Court could be reluctant to disturb the concurrent view but since there are inherent improbabilities in the prosecution story and the conduct of eyewitness is inconsistent with ordinary course of human nature we do not think it would be safe to convict the appellants upon the uncorroborated testimony of the sole eyewitness. Similar view has been taken by a three-Judge Bench of this Court in Selvaraj v. State of T.N. [Selvaraj v. State of T.N., (1976) 4 SCC 343 : 1976 SCC (Cri) 620] wherein on an appreciation of evidence the prosecution story was found highly improbable and inconsistent of ordinary course of human nature, concurrent findings of guilt recorded by the two courts below was set aside."*

As discussed, the Court noted that brothers of the deceased have not attempted to save him though indicating their presence as eyewitness on the place of occurrence. In addition, they did not bring the deceased to the medical clinic which was situated nearby and admittedly, the deceased was brought to the doctor by a constable. This creates a doubt about the presence of eyewitness on the spot and also the

natural conduct of any prudent person whose brother has been killed.

15. Further, in the case of '**Narendrasinh Keshubhai Zala Vs. State of Gujarat**⁶', this Court addressing an appeal arising out of concurrent conviction for offence under Section 302/34 of IPC based on testimony of sole eyewitness (PW-3), examined his conduct and in paragraph 13 observed as under:-

"13. Further, PW 3's credit stands impeached in the cross-examination part of his testimony. The witness is an adult, mature and worldly wise. He is aged 24 years and runs a grocery shop. He is not illiterate, yet he chose to not take any action, even to save the life of his friend. His explanation that he went home and slept is uninspiring in confidence for the incident took place in his presence and in close proximity of habitation, more specifically at a short distance i.e. just 3-4 minutes of walking distance from the Police Headquarters where constables are posted round the clock. He left his friend profusely bleeding on the spot but did not seek any help and immediately did not report the incident to the family members of the deceased whose house he visited only the following day at around 8.00-9.00 a.m. His conduct of going off to sleep, having seen his friend being murdered right before his eyes and then not visiting the hospital forthwith is quite unnatural. Also he did not inform the incident to his parents. It was only when the police interrogated him that he named the

⁶ (2023) 18 SCC 783

accused. His testimony is not free from embellishments, nor is not corroborated by any other evidence. Also, he admits not to have any information of any monetary transactions between the accused and the deceased."

16. In view of the foregoing, it can safely be observed that, as a general rule, to prove the case of the prosecution, the testimony of eyewitness primarily ought to be considered and be relied upon to prove the guilt of the accused. It is trite to say that the testimony of the eyewitness must be trustworthy, free from any kind of blemish and of sterling character to prove the incident, whereby the case of the prosecution may be proved beyond reasonable doubt. It is also settled that the quality of evidence brought to prove the guilt is a relevant factor and not the quality of the witnesses. The testimony of those witnesses either proves the case as alleged by the prosecution or otherwise. Sometimes, the testimony of the eyewitness is found unbelievable and can be discarded. To adjudge the credibility of the said testimony, relevant factor would be the conduct of the witness indicating the natural reaction comparable to a prudent man, making

the conduct of witness realistic. The said factors shall be based upon parameters which have been discussed in the judgment hereinabove.

17. At the cost of repetition and to prove those parameters it can be observed that if a friend or relative is accompanying the deceased at the time of incident, action taken by the witness is a relevant factor to save him. Moreover, in addition, at the time of incident and immediately after commission of the offence, what steps were taken by the eyewitness to save the life of the deceased. Whether the eyewitness left the place of occurrence and returned the place of incident simpliciter without furnishing information to the police or intimating the relatives/friends/near dear ones becomes relevant. In case, the eyewitness does not convey any information about the incident to anyone which is not expected from a prudent man, his conduct does not appear to be natural of a human being. The time of furnishing information to the police at the earliest by eyewitness is one of the relevant factors to dislodge the plea of belated FIR, therefore, the conduct of an

eyewitness should be reflected like a real image in a mirror, thereby making his testimony reliable to prove the guilt of the accused.

18. In the context of the above said principles, reverting to the facts of the present case, the allegation of commission of murder as alleged against the appellants is required to be analyzed on the anvil of testimonies of eyewitnesses and whether they have proved the same to bring home the guilt of the accused. In this regard, as per testimony of Janmejy Ghosh - son of the deceased (PW-8), who at the time of incident was behind deceased on a bicycle along with two cousin brothers, in his examination in chief, except to narrate the incident and the allegation of exhortation by Gaya Nath Ghosh, has merely said that when they tried to raise voice, the accused persons threatened to kill them. This witness has not reported the incident to the police. After the incident and staying there for some time, he visited his village Malaypur where except to communicate the same to Bridaban Ghosh (PW-7, Sarpanch), he has not informed about incident to

anyone. However, PW-7 in his testimony has not deposed or accepted that any information was furnished by PW-8. Furthermore, it is highly improbable that deceased's son on reaching home did not inform his mother, sister and brothers about the incident and returned to the place of occurrence after some time without intimating the police.

19. Likewise, in the statement of other eyewitness Shankar Ghosh (PW-2), paternal nephew of deceased, similar allegations were made by prosecution against the appellants, though he also did not make any attempt to save the deceased uncle and returned to his village without furnishing any information to the police. Further, at one place, he states that on the next day he had not reached the place of occurrence, though in the latter part of the testimony it is said that in the evening he has visited the place of occurrence, and his statement was recorded in the morning on the next day. Lastly, this witness does not know about the chance witness and does not mention them in his testimony.

20. The third eyewitness is Megh Nath Ghosh (PW-5), cousin of two other witnesses and maternal nephew of the deceased. He has also deposed alike two other witnesses. He does not have any knowledge that anyone had gone to the police station to report the incident. The said witness did not convey the incident to anyone on returning home. As such all the three eyewitnesses are unable to say who were the chance witnesses at the time of incident and saw the commission of crime by the accused persons. In absence thereof, the testimonies of the chance witnesses, howsoever supporting the allegation, cannot be relied upon. It is to be observed that once the eyewitnesses do not recognize the presence of the chance witnesses at the time of occurrence, then their testimonies are unrealistic and concocted.

21. After perusal of the record, it is seen that in support of the prosecution allegations and the testimonies of the eyewitnesses or chance witnesses, the allegations were of assault by means of firearm and knife. Those allegations were corroborated by the injuries received by deceased as per the statement of

doctor S.K. Gupta (PW-1). In this regard, if the testimony of eyewitness is worthy to rely on, its corroboration by medical evidence along with seizure report reflecting the weapon used in the commission of offence becomes highly relevant. It is pertinent here to mention that in the present case, neither the pistol nor the knife was recovered or seized. From the spot of occurrence, merely one bullet cover along with blood-stained soil was seized by PW-11. As per the testimony of the doctor in his cross-examination, it is specifically admitted by him that injury nos. 1 and 2 have been caused by single shot firearm, meaning thereby, the firearm was used only once, not twice. Injury no. 1 is of entry wound and injury no. 2 is of exit wound. Therefore, it appears that prosecution has concocted the story of causing firearm injury on the deceased by Sonachand Ghosh using firearm by taking the second shot. In absence of recovery of the weapon used in commission of the offence either by pistol or knife and its ballistic as well as scientific examination through FSL, corroboration of the allegations as per the testimony

of eyewitness is not possible. Moreover, the bullet cover which was recovered and seized by the police at the place of incident cannot be tallied with the weapon.

22. Further, if we examine the testimony of first investigating officer Shyama Ram (PW-11), wherein he has deposed that information was received through telephonic message, however in the cross-examination of second investigating officer Dina Nath Ram (PW-10) to whom investigation was later carried forward to, he has specifically mentioned that no telephone was installed in the police station. As such, how and in what manner PW-11 received the information of the incident that occurred at 4 pm and reached the place of incident is unexplained. Similarly, in the testimony of PW-11, it is stated that he has deputed two chowkidars namely, Kishori Ram and Badal Rajbanshi at the place of occurrence, who stayed in the night, but their statements have not been recorded for reasons not explained.

23. Lastly, upon examining the records, it is

evident that following the entire incident, Janmejy Ghosh (PW-8), along with his relatives and police chowkidars, remained at the scene of the occurrence with the deceased's body throughout the night. According to the cross-examination of PW-11, he arrived at the scene on the night of the incident to see the body and assigned two chowkidars to guard the same. Despite his presence, neither PW-8 nor any other relatives lodged FIR. Notably, PW-11 also failed to record any *fardbeyan* from those present at the site. At this point, it is pertinent to note that no explanation has been brought either by this witness, any family member, or other eyewitnesses for the delay in lodging the FIR. Curiously, the witnesses' testimony remains completely silent on why the deceased's body was not taken to the nearest hospital and why it was kept at the site overnight. This conduct raises serious questions, especially considering that PW-8, a key eyewitness, allegedly witnessed the brutal murder of his own father. Given these circumstances, it is perplexing and surprising as to why he refrained from reporting the incident

immediately and bringing the deceased to the nearest hospital. Such inaction undermines the credibility of the prosecution's narrative, as any reasonable person faced with the murder of a close family member would typically inform the police without delay. This kind of passive conduct runs contrary with the natural behavior expected of a prudent person in such grave and distressing circumstances.

24. In view of the foregoing facts, in our considered opinion prosecution has miserably failed to prove the allegations of the commission of murder of Manmohan Ghosh by the appellants Nimai Ghosh, Sonachand Ghosh and Sambal Ghosh. Therefore, the findings as recorded by the High Court are not based on due appreciation of records but on misreading of evidence which cannot be sustained and is hereby set-aside. Accordingly, this appeal is allowed, and the impugned judgment stands set aside. The order of the Trial Court stands restored.

25. Since the accused persons have been exempted from surrendering as per order dated 23.11.2012, as

such in view of their acquittal from the charges, they are not required to surrender. Pending application(s), if any, shall stand disposed of.

....., J.
[J.K. MAHESHWARI]

....., J.
[ARAVIND KUMAR]

New Delhi;
January 23, 2025.