REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 2194 OF 2011

Pawan Kumar @ Monu Mittal ... APPELLANT

Vs.

State of Uttar Pradesh & Anr. ... RESPONDENTS

WITH

Criminal Appeal Nos. 2195-2196 OF 2011

Rakesh Anand and Anr. ... APPELLANTS

Vs.

State of Uttar Pradesh & Anr. ... RESPONDENTS

Criminal Appeal No. 2198 OF 2011

Shiv Kesh Giri @ Lalla ... APPELLANT

Vs.

State of Uttar Pradesh ... RESPONDENT

Criminal Appeal No. 2199/2011

Devesh Agnihotri ... APPELLANT

Vs.

State of Uttar Pradesh ... RESPONDENT

Criminal Appeal No. 2200/2011

Rajesh Verma ... APPELLANT

Vs.

State of Uttar Pradesh ... RESPONDENT

JUDGMENT

N.V. RAMANA, J.

These appeals are directed against a common impugned judgment dated 11th February, 2009 of the High court of Allahabad, Lucknow Bench, by which the appeals of the appellants herein who are accused of murdering one Manjunath, were dismissed.

2. Material facts of the case as per prosecution are that the father of appellant Monu Mittal (Accused No. 1) was the owner of a petrol pump namely M/s Mittal Automobiles situated at Gola, District Lakhimpur Kheri, Uttar Pradesh. The deceased Manjunath was working as a Sales Officer with the Indian Oil Corporation (IOC) at Gola. On 13.9.2005, the deceased inspected the petrol pump of Accused No. 1 and on finding some irregularities, the sales and supplies of the petrol pump were suspended by the IOC at his instance. However, the same were restored on 19th October, 2005 after the payment of fine of Rs.75,000/- by the owner of the petrol pump. Again on 19th November, 2005, the deceased, being suspicious of malpractices still being carried on by Accused No. 1, inspected the said petrol pump.

3. On 20.11.2005, when the Head Constable (Ram Bhawan Singh) of P.S. Mahaoli, District Sitapur, along with Constable Asha Ram (PW2) and Driver Braj Kishore was on patrol duty on the National Highway, at about 8.00 am, one Maruti Car bearing No. UP 51 E 5176 was coming from the direction of Maigalganj and upon seeing the police jeep, the Maruti Car suddenly turned back and tried to drive away from that place. On suspicion, the Maruti Car was chased and intercepted at about 8.30 am near Green Gold Dhaba. One Vivek Sharma (Appellant - Accused No. 7) was driving the car accompanied by another appellant Rakesh Kumar Anand (Appellant-Accused No.4) who was sitting on the back seat besides a blood stained dead body of S. Manjunath (deceased). On interrogation, both accused Nos. 4 & 7 confessed that the deceased was shot dead by Pawan Kumar alias Monu Mittal (Accused No.1), Devesh Agnihotri (Accused No. 2), Sanjay Awasthi (Accused No.3), Lala Giri (Accused No.5), Harish Mishra (Accused No.6) at M/S Mittal Automobiles and they were carrying the dead body of the deceased in his car, to dispose of the same at an unknown place. Both the accused Nos. 4 & 7 were taken into custody and a recovery memo (Ext. Ka-1) was prepared and a case against all the accused under Sections 147,148,149,302 and Section 201 read with Section 34, IPC, was registered on 20.11.2005.

4. Mr. P.N. Saxena, Sub-Inspector took up the investigation and in the presence of Dhan Raj Sahani (PW 3, landlord of the deceased) conducted inquest. He collected blood stained seat covers and door mats (Ext. Ka-9) from the Maruti Car besides several other belongings of the deceased, prepared site plan (Ext. Ka-8) and sent the dead body for post mortem. Thereafter, he transferred the investigation to P.S. Gola, and Parmesh Shukla, SHO(PW21) who took up further investigation, arrested Shivkesh Giri @ Lala Giri (Accused No. 5) on 22.11.2005. He also recovered a wet blood stained cloth from behind the Petrol Pump which was allegedly used in cleaning the murder spot at the instance of Accused no 5. Three cartridges of 32 bore (Ext. Ka-16) were also recovered from behind the Petrol Pump on his pointing. Based on the confession of Lala Giri (Accused No. 5), he arrested the other accused Pawan Kumar, Sanjay Awasthi, Rajesh Verma and Harish Mishra at 6.50 p.m. near railway crossing in a car bearing number UP 31 F4629. A revolver was recovered from accused Rajesh Verma, owner of the car and a Pistol was recovered from accused Pawan Kumar (Ext Ka-17). On 23.11.2005 at 8:30 am, the IO recovered the car of accused Pawan Kumar, his blood stained pant from Punerbhoo forest, Kheri. The IO also recovered three empty cartridges from the diesel tank of the Petrol Pump on 24.11.2005 at 9:30 am on pointing of Accused No. 1

Monu Mittal. Accused No.2 - Devesh Agnihotri was also arrested on the same day at 6:00 pm by TN Tripathi, Sub-Inspector (PW 19) from Bheera and at his instance, four empty cartridges (Ext. Ka-20) fired from the revolver of accused No. 8 - Rajesh Verma were recovered from the house of one Jitendra Mishra uncle of Sanjay Awasthi (A-3).

5. After investigation, the IO submitted charge sheet, and the case was committed for trial. The trial court framed charges against all the accused u/s 147,148, 302 r/w 149, 201 and 120 B, IPC. Additional charges u/s 404 and 411 of IPC, Section 30 of the Arms Act were framed against accused No. 1 - Pawan Kumar, charges u/s 212 IPC and Sections 25/30 of the Arms Act were framed against accused No.8 - Rajesh Verma. Also charges under Section 411, IPC were framed against accused No.7 - Vivek Sharma and Accused No. 4 - Rakesh Kumar Anand.

6. The Trial Court convicted and sentenced the accused No.1 - Pawan Kumar @ Monu Mittal to death for offences u/s 302 r/w 149, IPC and to pay a fine of Rs 10,000/-, in default to undergo simple imprisonment (SI) for one year. He was also sentenced to 2 years RI and to pay a fine of Rs. 5000/-, in default 3 months SI for the offence u/s 404, IPC and 6 months imprisonment u/s 30 of the Arms Act, 2 years RI and to pay a fine of Rs 5000/- u/s 404, IPC and in default to

undergo 3 months S.I. The other accused, namely accused No.2 - Devesh Agnihotri, accused No.3 - Sanjay Awasthi, accused No. 4 - Rakesh Kumar Anand, accused No. 5 - Shivkesh Giri @ Lalla Giri, accused No. 6 - Harish Mishra, accused No. 7 - Vivek Sharma and accused No. 8 - Rajesh Verma were also convicted u/s 302 r/w Section 149, IPC and sentenced to suffer life imprisonment. They were further sentenced to suffer one year RI u/s 148, 5 years RI u/s 201, IPC, 5 years RI u/s 120 B IPC. Accused No.8 - Rajesh Verma was also convicted u/s 212, IPC and sentenced to 3 years RI and to pay a fine of Rs 5,000/-, in default to undergo 6 months SI u/s 25 of the Arms Act and sentenced to 1 year RI and to pay a fine of Rs 1,000/-, in default to suffer SI for 3 months and 6 months RI u/s 30 of the Arms Act. Accused Rakesh Anand, Vivek Sharma and Pawan Kumar were also sentenced to 2 years RI u/s 411 IPC. All the sentences were, however, directed to run concurrently.

7. Aggrieved thereby, the accused—appellants preferred appeals before the High Court. The High Court by the impugned judgment dated 11.12.2009 partly allowed the appeal of Pawan Kumar (Accused No. 1) and modified his death sentence to life imprisonment u/s 302 r/w 149 but upheld the convictions for the other offences they are charged with. The appeals of the accused Devesh Agnihotri

(A-2), Rakesh Anand (A-4), Shivkesh Giri @ Lalla Giri (A-5), Vivek Sharma (A-7) and Rajesh Verma (A-8) were, however, dismissed by the High Court. The appeals of other co-accused Harish Mishra (A-6) and Sanjay Awasthi (A-3) were allowed giving them benefit of doubt and acquitted them of all charges. Against the said judgment passed by the High Court, Accused Nos. 1, 2, 4, 5, 7 & 8 filed the present appeals before this Court.

8. Learned Counsel appearing for the appellants argued that the Courts below have committed a grave error in convicting and sentencing the appellants on the very evidence by which it acquitted the co-accused Harish Mishra and Sanjay Awasthi of all the charges. The High Court relied solely on the confessional statements of the accused/appellants made to the police which is inadmissible in evidence under Section 25 of the Indian Evidence Act. Taking support from a decision of this Court in ***Aghnoo Nagesia*** Vs. ***State of Bihar,*** **(1966) 1 SCR 134,** learned counsel submitted that "a confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when the accused was free and not in police custody, as also a confession made before any investigation has begun". Unfortunately, the High Court has not considered Section 25 of the Evidence Act in

its true spirit and erred in holding that the confessional statement of accused given to the police officer is admissible, because the same was not made to the Investigating Officer but to some other police officer. Taking support from a decision of this Court in ***State of Punjab*** Vs. ***Barkat Ram,*** **(1962) 3 SCR 338**, learned counsel submitted that the confession made to any member of the police, of whatever rank and at whatever time, is inadmissible in evidence as per Section 25 of the Evidence Act.

9. The learned counsel further submitted that the impugned judgement is based only on conjectures and surmises and not on any cogent and reliable evidence. There were no eyewitness to the occurrence and the case of prosecution is based solely on the circumstantial evidence. The prosecution has completely failed to prove the chain of events linking the accused appellants to the commission of offence. There is no direct witness or incriminating evidence against the appellants to establish the motive of the accused to kill the deceased. The courts below have ignored the fact that neither the Ballistic Report (Ext. 61) nor the Serological Reports (Exts. Ka-60, 62, 62A) support the case of prosecution. In the ballistic report, no special characteristics were found and no conclusive opinion was given that the shots were fired from the gun of the

accused. The Ballistic Expert (Ext. Ka-61) clearly mentioned in the report that “the individual characteristics are absent” for giving a definite opinion. In the absence of a firm expert opinion, it cannot be conclusively held that the bullets recovered from near and around the scene of offence were fired from the gun of accused No .1 Pawan Kumar.

10. It is the contention of the learned counsel that according to the Serological Report (Ext. Ka-60), no blood was found on the cloth recovered from behind the petrol pump which was allegedly used to clean the site of crime as also the pant of the accused No. 1 (Exts. Ka-62 & 62A) Pawan Kumar allegedly recovered from his car. Another crucial loophole that is evident from the prosecution story is that the body of the deceased was stained with blood, but no blood stains were reported to be found on the clothes of accused No. 7 - Vivek Sharma and accused No. 4 - Rakesh Kumar Anand who were allegedly carrying the dead body of the deceased in his car to dispose of the same. Also another dubious circumstance sought to be proved by the prosecution is that when the car in which accused No.7 – Vivek Sharma and accused No.4 – Rakesh Kumar Anand, were carrying the dead body of the deceased was intercepted, P.W.3 – Dhanraj Sahni, landlord of the deceased appeared from the crowd

and recognized the dead body. Learned counsel submitted that the landlord was living far away from the site where the accused were apprehended, and no reason is given by the prosecution for his presence at the spot where the car carrying the dead body of the deceased was intercepted. This casts a doubt on the prosecution story about the presence of the landlord at that point of time.

11. The learned counsel strenuously contends that another aspect that probablises the factum of manipulation of the case by the prosecution to implicate the appellants into the crime is that according to the prosecution case, in all, eleven bullets were fired at the deceased, but according to the post-mortem report (Ext. Ka-14), the deceased had suffered six firearm injuries, out of which there were two exit wounds on his body and four bullets were recovered from his body. There was no explanation coming forward from the prosecution as regards not finding the other bullets. It is not possible to imagine that other seven bullets did not hit anywhere at the place of incident. This fact clearly establishes that the prosecution manipulated the investigation. The prosecution thus totally failed to prove the place of occurrence and the recoveries alleged to have been made from the scene of offence were planted for the purpose of the case.

12. Learned counsel further submitted that the Courts below have utterly failed to take into account the important material contradictions before convicting the appellants. PW 21 - Parmesh Kumar Shukla, SHO was said to have taken control of the case on the evening of 20th November, 2005 and he came to know about the place of incident only on 21st November, 2005 seems improbable. The same stood fortified by the fact that as per Rojanama (GD No. 38 dated 21-11-2005) he had visited the alleged place of occurrence i.e. petrol pump on 21.11.2005. Whereas in his deposition before the Trial Court he denied to have gone there on 21-11-2005 and he further stated that he went to the place of occurrence for the first time only on 22-11-2005 in the afternoon. It is, therefore, clear that the investigations are tainted, vital and material portion has been deliberately concealed. The deposition of PW 21 visiting the place of occurrence on 22-11-2005 ought to have been rejected by the Courts below. Once a material portion of the evidence of I.O. is found to be false, no reliance could be placed on his statement. Such material contradictions would not only cast a doubt on his evidence, but discredits the entire case of prosecution. Another discrepancy in the prosecution story pointed out by the learned counsel is that as per prosecution, accused No.5- Lalla Giri was arrested by PW 21 on 22-11-2005 from Railway Station, whereas on 21-11-2005 at about

3.15 p.m. mother of Lalla Giri (A-5) had sent a telegram (Ext. Kha-2) to the DIG, Lucknow complaining therein that her son has been wrongfully confined by the PS Gola since 20-11-2005. This uncontroverted fact belies his arrest and thus the recoveries allegedly made at his instance cannot be relied upon.

13. Learned counsel further contended that the Courts below have wrongly attributed the motive for the crime inasmuch as M/S Mittal Automobiles was sealed by the deceased owing to alleged malpractices. It is admitted fact that apart from Mittal Automobiles one more petrol pump L.D Service Station was inspected by the deceased on the same day and samples taken were found to be adulterated, but no investigation was carried out in this regard. In fact, no adulteration was detected from the samples collected from M/S Mittal Automobiles. As a matter of fact, Weights and Measurement Department conducted test of HSD (1150 ltrs.) from June, 2005 to 13.9.2005. Though the entries were made in the Daily Stock Register of M/S Mittal Automobiles, no corresponding entry was made in the main stock register which resulted in stock variation which led to the sealing of the petrol pump. When M/S Mittal Automobiles clarified the same by reply dated 18-10-2005, the petrol pump was restored. The fine of Rs.75,000/- was paid in respect of technical defaults in order

to ensure that the supply is restored. Hence, the motive part advanced by the prosecution is not proved and the Courts below have erred in not appreciating this fact.

14. Learned counsel appearing for Accused No. 2 - Devesh Agnihotri submitted that the appellant was wrongly implicated in the crime. The appellant has no previous association with the prime accused Monu Mittal. The appellant—accused No. 2 was not even present at the scene of crime at the relevant time as he was attending marriage of his brother in law in District Etah which is far away from the place of occurrence. Moreover, there is no incriminating evidence against accused No. 2.

15. On behalf of Accused No. 5-Lalla Giri it is specifically argued that he has been wrongly convicted by the Trial Court merely because he was an ex-employee of Pawan Kumar @ Monu Mittal (Accused No.1). Mere recovery of empty cartridges at the instance of this appellant—accused is of no consequence when there is no evidence linking his participation in the crime. Moreover, the recovery of empty cartridges at the place of occurrence itself is highly doubtful as they can easily be destroyed. In support of the argument that in the absence of any link evidence, the appellant cannot be convicted under Section 302, IPC learned counsel relied on ***Mani*** Vs. ***State of***

Tamilnadu (2009) 17 SCC 273. Learned counsel further argued that at the most the case against the appellant cannot be beyond Section 201, IPC for which the maximum sentence is 10 years. The appellant has already undergone about 9 ½ years imprisonment.

16. Learned counsel appearing for Accused No.4- Rakesh Anand and Accused No.7- Vivek Sharma submitted that the prosecution has failed to complete the chain of events qua Accused Nos. 4 and 7 to bring home their culpability. Both the courts below have gravely erred in holding that the dead body of the deceased was recovered from the possession of these appellants on 20.11.20005 at 8.00 am. As per prosecution, at the time of their arrest, the dead body of the deceased was bleeding, but admittedly no blood was found on their clothes. No weapon, driving licence, money etc. were found from their possession. No relation between these two accused and other accused has been proved. Moreover, there was no examination of any independent witness to support the story of prosecution that the dead body of the deceased was recovered from the possession of these two accused. Allegedly, there was a mob of about 100 to 150 people at that point of time, but no independent witness has been examined to prove the prosecution story, and in the absence of any independent witness being examined, the confession statement and

consequent recovery, cannot be believed. Learned counsel therefore submitted that it is in the interest of justice, the appeals be allowed, as otherwise, the appellants would suffer irreparable injustice, loss and injury.

17. Learned counsel appearing on behalf of Accused No. 8 -Rajesh Verma argued that the appellant was merely an employee of an Urban Co- operative Bank and had no previous enmity or motive to kill the deceased as he had no interests in the business of Petrol Pump. His name neither figured in the confessional statement of the accused nor in the F.I.R. According to the prosecution, the licensed revolver of Accused No. 8 was recovered on 22-11-2005, but it was not even sealed at the spot despite the I.O. having specific knowledge about its use. There was no specific evidence to establish the date, time and place of it being sealed. Only the oral assertion of I.O. that the weapon was sealed a couple of days later by him, shows the possibility of revolver or bullet being changed, thereby wrongly implicating the accused in the crime. There was also no evidence of conspiracy against this appellant nor was any evidence to establish the intention, knowledge or prior meeting of the appellant with the other accused to commit the crime. The I.O. in the cross examination admitted that the appellant neither used his revolver nor was present

at the time of occurrence. There is also no absolute evidence of appellant giving his revolver to the prime accused. The appellant was an active worker of a political party and his political rivals being inimical towards him he was falsely implicated, but the Courts below have failed to take into consideration this aspect.

18. Learned counsel appearing for all the accused—appellants strongly contended that the Courts below have committed grave error in convicting and sentencing the accused. The impugned judgment is not based on the true principles of law. It is not only gravely erroneous, but also against the material available on record. The alleged circumstances do not form a complete chain of events linking the accused to the commission of the crime, and the incriminating circumstances having not been proved by the prosecution, in accordance with law, the impugned judgment is, liable to be set aside.

19. Mr. Gaurav Bhatia, learned Additional Advocate General appearing for the State, on the other hand, supported the impugned judgment and submitted that this is an unfortunate case where an Officer of the Indian Oil Corporation was brutally murdered by the accused for honestly carrying out his duties. This incident has shocked the entire nation and has shaken the confidence of

thousands of aspiring officers. He submitted that Accused No. 1 Pawan Kumar @ Monu Mittal had developed grudge against the deceased because he inspected the petrol pump run by him on 13.9.2005 and pointed out certain irregularities, and on his intimation to IOC (Ext. Ka-34), the sales and supplies of the pump were suspended. The supplies were, however, restored only after payment of fine on 19th October, 2005. The deceased again visited the petrol pump of the accused on 19th November, 2005 for inspection and thereafter he was not seen alive.

20. The learned AAG, on behalf of the prosecution, submitted that the incriminating articles including empty cartridges (Ext. 13) fired from the licensed pistol of Accused No. 1, blood stained earth (Ext. Ka 60) recovered from the petrol pump of Accused No. 1 and on his pointing out, the mobile instrument of the deceased was recovered from the forest (Ext. Ka 21). The Ballistic Expert in his report clearly mentioned that the bullets found in the body of the deceased were fired from the licensed pistol of Accused No. 1. The irregularities committed by the petrol pump were writ large inasmuch as certain important documents and other materials which were necessarily required to be kept in the show room were not found, when the police along with IOC official and official of Weights and Measurements

Department inspected. Moreover, some articles used for tampering of the seals of the machines and tank were found.

21. Learned AAG contended that the involvement of accused Rakesh Anand (Accused No.4) and Vivek Sharma (Accused No.7) has been proved beyond all reasonable doubt as they were caught by patrolling police officials PW1-Head Constable Ram Bhawan, PW2 - Constable Asha Ram while they were carrying the dead body of the deceased in his car. This fact is corroborated by the independent witness Dhanraj Sahni-PW3, the landlord of the deceased. Accused No. 2 - Devesh Agnihotri's involvement is evident from the confession of the co-accused, namely accused No.7 - Vivek Sharma and accused No.4 - Rakesh Kumar Anand and also by accused No.8 - Rajesh Verma, who confessed that his revolver was used by accused No. 2 - Devesh Agnihotri for the commission of crime. After his arrest, he confessed to the commission of the crime and also led to the recovery of four empty cartridges shot from the revolver of accused No. 8 - Rajesh Verma. Also accused No.2 - Devesh Agnihotri along with accused No.4 - Rakesh Kumar Anand were earlier charge sheeted for an offence u/s 307 IPC in 1998 which is sufficient to establish their nexus. Accused No.5 - Lalla Giri's involvement came to light from the confession made by accused No.7 - Vivek Sharma

(A-7) and accused No.4 - Rakesh Kumar Anand, at whose instance accused No.5 - Lalla Giri was arrested on 22.11.2005, from the Railway Station while he was trying to abscond. Accused No.5 – Lalla Giri, led to the recovery of three cartridges from behind the petrol pump and three more from the tank of the petrol pump. This clearly explains that accused No.5 – Lalla Giri, has played an active role in the conspiracy in and commission of the crime. Accused No.8 - Rajesh Verma was arrested along with Accused No. 1 - Pawan Kumar and other accused when he was taking them in his car on 22.11.2005 and a revolver with two live and four missing cartridges were recovered from his possession. Those four cartridges were recovered at the instance of accused No.2 - Devesh Agnihotri. Thus, in the light of confessional statements of the accused and the recoveries made at their instance, their involvement in the crime is established by the prosecution beyond all reasonable doubt. Therefore, no interference is warranted with the concurrent findings of fact arrived at by the Trial Court as well as the High Court, upon appreciation of entire evidence on record.

22. Learned AAG, placing reliance on ***Dalbir Kaur v. State of Punjab*** **(1976) 4 SCC 158** and ***Shivnarayan Laxminarayan Joshi v. State of Maharashtra*** **(1980) 2 SCC 465** finally submitted that

when the cumulative effect of the evidence against the accused persons is sufficiently convincing for the trial court as well as the High Court to have come to the conclusion that the offence with which the accused were charged were established against them beyond all reasonable doubt, unless there is substantial question of law involved, this Court should refrain from interfering with the concurrent findings of fact given by the Courts below.

23. We have heard learned counsel for the parties at length and carefully perused the material on record.

24. The contention of the learned Additional Advocate General for the State that in view of the concurrent findings on facts recorded by the trial Court and confirmed by the High Court, this Court should not interfere with such findings, unless there is substantial question of law involved. Before dealing with the above contention, it is appropriate to refer to the judgments in ***Dalbir Kaur v. State of Punjab*** **(1976) 4 SCC 158** and ***Shivnarayan Laxminarayan Joshi v. State of Maharashtra*** **(1980) 2 SCC 465,** wherein this Court laid down the guidelines.

In ***Dalbir Kaur*** (supra) it was held as under:

"8. Thus the principles governing interference by this Court in a criminal appeal by special leave may be summarised as follows:

(1) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence;

(2) that the Court will not normally enter into a reappraisement or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence and so on;

(3) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court;

(4) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudice or injustice to the accused;

(5) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence.

It is very difficult to lay down a rule of universal application, but the principles mentioned above and those adumbrated in the authorities of this Court cited supra provide sufficient guidelines for this Court to decide criminal appeals by special leave. Thus in a criminal appeal by special leave, this Court at the hearing examines the evidence and the judgment of the High Court with the limited

purpose of determining whether or not the High Court has followed the principles enunciated above. Where the Court finds that the High Court has committed no violation of the various principles laid down by this Court and has made a correct approach and has not ignored or overlooked striking features in the evidence which demolish the prosecution case, the findings of fact arrived at by the High Court on an appreciation of the evidence in the circumstances of the case would not be disturbed.

9. Much time, energy and expense could be saved if the principles enunciated above are strictly adhered to by counsel for the parties and they confine their arguments within the four corners of those principles and they cooperate in this sound and subtle judicial method without transgressing the limits imposed by the decisions of this Court on its power to interfere with the concurrent findings of fact."

In ***Shivnarayan Laxminarayan Joshi*** (supra), it was held as under:

"...On a perusal of the record and judgment of the High Court we are clearly of the opinion that these appeals are concluded by findings of facts. It is well settled that this Court in special leave will not interfere with concurrent findings of facts unless the findings are vitiated by a grave error of law or by an error which leads to serious and substantial miscarriage of justice. After a perusal of the judgment of the courts below we find ourselves in complete agreement with the view taken by the High Court and are unable to find any special circumstances which require our interference with the order passed by the High Court."

Therefore, what has to be appreciated in these appeals is whether any findings are vitiated by grave error of law or by an error which leads to serious and substantial miscarriage of justice, warranting interference of this Court.

25. Coming to the facts of this case, there are no direct eye-witnesses to the incident. The entire case of the prosecution is based on the circumstantial evidence. The FIR came to be registered, based on the confessional statement of accused No.7 – Vivek Sharma and accused No.4 – Rakesh Kumar Anand, made to the Head Constable - Ram Bhawan Singh - PW1. They confessed before P.W.1 about the commission of the crime and involvement of the other accused, when he along with another police constable intercepted the car, while they were transporting the dead body of the deceased to dispose it of. Based on the confession statement made by them about the commission of the crime and involvement of other accused, the accused were arrested and recoveries were made at their instance. The contention that is put forth on behalf of the appellants is that the confession made to the police is not admissible in evidence, as per Section 25 of the Evidence Act. It is settled principle of law that statements made by an accused before police official which amount to confession is barred under Section 25 of the

Indian Evidence Act. This prohibition is, however, lifted to some extent by Section 27 which reads thus:

> 27. **How much of information received from accused may be proved**.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

26. In the light of Section 27 of the Evidence Act, whatever information given by the accused in consequence of which a fact is discovered only would be admissible in the evidence, whether such information amounts to confession or not. The basic idea embedded under Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information [See: ***State of Maharashtra*** Vs. ***Damu***, (2000) 6 SCC 269**.**

27. The "fact discovered" as envisaged under Section 27 of the Evidence Act embraces the place from which the object was

produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.

28. In the present case, Accused Nos. 4 & 7 disclosed the names of their co-accused at whose instance various incriminating materials including pistols, cartridges, bullets, blood stained articles were recovered. Simply denying their role without proper explanation as to the knowledge about those incriminating material would justify the presumption drawn by the Courts below to the involvement of the accused in the crime. The confession given by the accused is not the basis for the courts below to convict the accused, but it is only a source of information to put the criminal law into motion. Hence, the accused cannot take shelter under Section 25 of the Evidence Act.

29. The next contention of the appellants is that the prosecution could not prove the motive of the accused for the commission of the offence. We feel that the motive behind the brutal murder of the deceased as brought forward by the prosecution is trustworthy in the light of material available on record. Considering the evidence on record, there is no doubt in our mind that the deceased-Manjunath had inspected M/S Mittal Automobiles on 13.9.2005 and on finding irregularities, he had reported the same to the IOC and at his instance, the sales and supplies to the Pump of accused No.1 were

suspended [Ex Ka-34]. The IOC thereafter issued a show cause notice to the father of Accused No.1. In reply, his father had admitted that the pump was being managed by his son Pawan Kumar Mittal (Exts. 29 & 30). The record shows that accused No.1 was made to pay a fine of Rs 50000/- vide DD No.083226, dated 17.10.2005 and another Rs 25000/- vide DD no. 083227, dated 17.10.2005 [Exts. Ka 29-30]. Though, the sales and supplies were resumed on 19-10-2005, the deceased had again inspected the pump on 19.11.2005, a day before he was found dead. Suspecting that the deceased would again give report to IOC alleging irregularities in the supplies, in which event, he would either be called upon to pay fine or may render his licence suspended, accused No.1 bore grudge and with the assistance of other accused, murdered the deceased. The fact that on the fateful day, the deceased visited the petrol bunk of accused No.1, where he was brutally murdered, is evident from the evidence of PW 4 – Ashok Kumar Agarwal, Manager of M/S Agrawal Brothers Petrol Pump, who in his evidence deposed that the Accused No. 1 was inquiring about the location and movement of the deceased prior to the alleged incident on 19th November, 2005. P.W.5 – Anurag Agarwal of M/s. Agarwal Brothers and P.W.8 – Ramesh Chandra Pandey, Manager of M/s. Alankar Hotel, also deposed that the deceased was in Gola on the day of incident.

P.W.5 also deposed that the deceased left for M/s. Mittal Automobiles from his pump at 9.30 pm. P.W.17 – R.K. Justi, the immediate senior officer of the deceased deposed that the deceased had gone to M/s. Mittal Automobiles for inspection on 19.11.2005. He further deposed that in his presence, three cartridges were recovered from the tank of M/s. Mittal Automobiles. This evidence clearly shows that on the fateful day, the deceased went to M/s. Mittal Automobiles, and thereafter, he was found dead. Considering the fact that at the instance of the deceased, IOC imposed fine on accused No.1 for the irregularities found in the dispensation of fuel, which lead to his paying up fine, there is every possibility of accused No.1 bearing grudge against the deceased, when the deceased visited his bunk on 19.11.2005, suspecting that the deceased would again inspect the bunk and report the irregularities, in which event he may end up either paying fine or it will result in his licence being cancelled, accused No.1 with the assistance of other accused, had conspired to do away with the deceased, and accordingly killed him.

30. We are in full agreement with the Courts below that the accused conspired to commit the offence of murder of the deceased. The nexus between the accused to do away with the deceased, has been established by the prosecution beyond all reasonable doubt.

Accused No.1- Pawan Kumar @ Monu Mittal, being the owner/in-charge of pump where the incident took place, is an interested party in the crime to do away with the deceased, because at his instance, the supplies were suspended and only upon paying fine, the supplies were restored. Accused No.4 - Rakesh Anand and Accused No.7 - Vivek Sharma, were caught by P.W.1 – Head Constable and another police constable, while they were trying to dispose of the dead body of the deceased in his own car. They confessed about the involvement of accused No.5 – Lalla Giri. Lalla Giri (A-5) is an ex-employee of Pawan Kumar (A-1), and at his instance, three bullets were recovered from the petrol pump, which proves his presence at the spot and the time of occurrence. Accused no.2 - Devesh Agnihotri's involvement is ascertained by the fact that he had led to the recovery of four cartridges from the house of maternal uncle of Sanjay Awasthi. Devesh Agnihotri (A-2) was earlier tried for a case under Section 307 IPC along with Accused no.4 - Rakesh Anand, which proves his previous association with the conspirators, though cannot be a basis for the conviction. At the instance of Accused No. 2 - Devesh Agnihotri, Accused No.8 - Rajesh Verma was arrested with Accused No. 1 – Monu Mittal, while he was taking him in his own car, which proves his association with the main accused. At the time of his arrest, a revolver with two live cartridges was recovered. A rifle

(Ext. Ka-18) belonging to Accused No.1 - Pawan Kumar @ Monu Mittal, was also recovered from the house of Accused No.8 - Rajesh Verma. Thus the nexus between the accused as well as their participation in the crime is well established beyond reasonable doubt and we find nothing on record to suggest that the accused were unnecessarily implicated by the police.

31. There is also no doubt in our mind as regards the place of incident. An effort has been made by the learned counsel appearing for the accused to raise doubts over the same on the ground that the number of bullets used in the crime is not proportionate to the number of bullets hitting the deceased. It came on record in the evidence of PW-5 – Anurag Agrawal of M/s Aggarwal Brothers Petrol Pump that the deceased had informed him at 9.30 p.m. on 19.11.2005 that from there he was going to M/S Mittal Automobiles, to take his measuring instruments which he had forgotten there. The recovery of bullets from the tank of M/S Mittal Automobiles and from behind their petrol pump along with blood stained cloth cumulatively establish the place of incident to be M/S Mittal Automobiles. In every case of gun firing, it is not required that each and every bullet should hit the target. There may be attempts by the deceased or the victim to save himself from the raining bullets, and in which case, the bullets may not hit the

target. Merely because all the bullets fired from the gun did not hit the target and were not recovered from the scene of offence, is no ground to conclude that the incident did not take place.

32. As regards the allegation of contradictions in the statements of prosecution witnesses, we do not find any major contradictions which require our attention and consideration. When a witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence [See: ***Rammi*** Vs. ***State of M.P***., (1999) 8 SCC 649]. There is no doubt that when two views are possible, the one which favours the accused should be taken and the accused should be acquitted by giving the benefit of doubt. But in the instant case, the evidence on record is trustworthy and consistent, and there is only one view, which points to the guilt of the accused. Though the learned counsel for the appellants sought to point out minor discrepancies in the evidence of the witnesses, but in the light of the above judgment of the court, we are of the considered opinion that such minor discrepancies should not come in the way of the other strong

circumstantial evidence, cumulatively taken together, forms a complete chain of events, pointing towards the guilt of the accused in the commission of the crime.

33. In cases where the direct evidence is scarce, the burden of proving the case of prosecution is bestowed upon motive and circumstantial evidence. It is the chain of events that acquires prime importance in such cases. Before analysing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed [See: ***Bodhraj*** Vs. ***State of J&K***, (2002) 8 SCC 45]. In the case on hand, the evidence adduced by the prosecution as discussed above, clearly proves the

chain of events connecting the accused to the guilt of the commission of the offence. The entire evidence brought on record by the prosecution, is not only convincing, but is also trustworthy. Even if the confession of accused Nos. 4 and 7 made before PW 1 and PW 2, which is barred by Section 25 of the Evidence Act, is not taken into account, the other evidence on record adduced by the prosecution, is sufficient to hold the accused guilty of the offence.

34. This Court has been consistently taking the view that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. In the present case, on scrutiny of evidence on record, we are convinced that the prosecution had established beyond reasonable doubt the complete chain of events which points at the guilt of the accused.

35. Thus, in the light of above circumstances coupled with the complete chain of events, this Court has no manner of doubt to hold that the prosecution has succeeded in proving its case against the accused beyond all reasonable doubt.

36. Taking the entire case in its totality, we do not find any merit in these appeals requiring our interference. Resultantly, the appeals fail and are dismissed.

……..……...J.
(SUDHANSU JYOTI MUKHOPADHAYA)

……...……J.
(N.V. RAMANA)

NEW DELHI
MARCH 11, 2015