

A.F.R.

Reserved on 21.03.2022.

Delivered on 29.06.2022

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW**

Court No. - 1

Case :- CRIMINAL APPEAL No. - 2262 of 2009

Appellant :- Bhagwati Singh @ Pappu

Respondent :- State of U.P.

Counsel for Appellant :- Mr. Piyush Asthana.

Counsel for Respondent :- Government Advocate, Mr. Shreesh Chandra counsel for the C.B.I.

Hon'ble Ramesh Sinha, J.

Hon'ble Mrs. Saroj Yadav, J.

(The judgment is pronounced in terms of Chapter VII Sub-rule (2) of Rule (1) of the Allahabad High Court Rules, 1952 by Hon'ble Ramesh Sinha, J.)

(Per Mrs. Saroj Yadav, J. for the Bench)

1. This Criminal Appeal has been filed by the convict/appellant Bhagwati Singh @ Pappu against the judgment and order dated 22.08.2009 passed by Additional Sessions Judge Court No.1, Lucknow in Sessions Trial No.293 of 1989 State Vs. Bhagwati Singh alias Pappu and another, arising out of Case Crime No.302/34 Indian Penal Code, 1860 (in short I.P.C.) and Sections 25/27 of the Arms Act, Police Station Hazratganj, District Lucknow whereby the trial court convicted and sentenced the convict/appellant under Section 302/34 of I.P.C., with life

imprisonment coupled with a fine of Rs.40,000/- and in default of payment of fine further rigorous imprisonment of three months. The trial court further convicted and sentenced the convict/appellant under Section 27 of the Arms Act with five years rigorous imprisonment coupled with a fine of Rs.10,000/- and in default of payment of fine further imprisonment of one month.

2. This appeal relates to a very unfortunate and despicable crime, wherein the miscreants silenced the life of an eight time National Badminton Champion Syed Modi, who represented India in various international championships. The facts necessary for disposal of this appeal in short are as under:-

(i) A First Information Report (in short FIR) was lodged by the complainant- Nirmal Singh Saini, Regional Sports Officer, K.D. Singh Babu, Stadium Lucknow on 28.07.1988 presenting a written report Exhibit Ka-1, wherein it was stated that on 28.07.1988 Mr. Syed Modi came to play badminton in the badminton hall at about 4:30 P.M. He (complainant) was also present in the stadium. After playing, at about 7:45 P.M. he was going back on his scooter, somebody fired upon him with an intention to kill him, at the north gate of stadium. One Prem Chand Yadav who was working in the canteen on the gate, came to him raising alarm and told that two

persons were running in a white colour Maruti Car after firing upon Syed Modi. The complainant, his colleague Mr. K.H. Jackey, many other players of the stadium and two police personnel who were on duty at the time, came out, but by that time the miscreants had fled away by white Maruti Car. The miscreants were seen while firing upon Syed Modi by Prem Chandra Yadav, Smt. Quaiser (Panwali), Rickshaw Puller and many other persons sitting in the canteen, in the electric light who were present on the spot. He (complainant), Ravi Verma and two police personnel carried Syed Modi in injured condition to Medical College where doctor declared him dead.

(ii) The FIR was registered on 28.07.1988 at about 20:50 hours against two unknown assailants. The investigation of the case started and initially Sri Rajveer Singh Tyagi incharge of Police Station Hazratganj started investigation, conducted the inquest of the dead body of Syed Modi and prepared the necessary papers including the 'Panchayatnama' and sent the dead body to the mortuary of Medical College, Lucknow alongwith a letter to the C.M.O. for conducting the postmortem examination of the corpse.

(iii) The postmortem was conducted on 29.07.1988 at 10:15 AM by a panel of three doctors and they prepared the postmortem

report. While the investigation of the case was going on, the State Government recommended that investigation be made by the Central Bureau of Investigation (in short CBI). The Department of Personnel and Training, Government of India vide notification No.228/23/88-AVD. II dated 02.8.88 handed over the investigation of the case to the CBI. The CBI registered it as Crime No.RC-2(S)/88 SIV.V/SIC. II/SIU.V. After investigation CBI came to the conclusion that Sanjay Singh, Ameeta Kulkarni Modi, Akhilesh Singh, Amar Bahadur Singh, Bhagwati Singh alias Pappu, Jitendra Singh alias Tinku and Balai Singh were the miscreants who were behind the commission of murder of Syed Modi. The CBI submitted chargesheet against all these persons under Section 120-B I.P.C. and Section 120-B read with Section 302 of I.P.C., against Sanjay Singh, Ameeta Kulkarni Modi, Akhilesh Singh, Amar Bahadur Singh, Jitendra Singh alias Tinku and Balai Singh for the offences punishable under Section 302 read with Section 34 of I.P.C., against the accused Amar Bahadur Singh, Bhagwati Singh alias Pappu, Jitendra Singh alias Tinku and Balai Singh and for the offences punishable under Section 25/27 of the Arms Act against the accused Amar Bahadur Singh and for offences punishable under Section 27 of the Arms Act against Bhagwati Singh alias Pappu and for offence punishable under Section 25 of the Arms Act against accused Balai Singh. The required sanction

for prosecution under Arms Act of accused persons Amar Bahadur Singh and Balai Singh was taken by the Investigating Officer from District Magistrate, Lucknow.

(iv) The CBI after collecting the oral and documentary evidence submitted the Chargesheet No.2 of 1988, Exhibit Ka-5, wherein the Investigating Officer Mr. D.P. Singh, Deputy Superintendent of Police SIC-II CBI/SP New Delhi noted as under:-

“A case Crime No.722/88 was registered at Police Station Hazratganj, Lucknow on 28.07.1988 regarding the murder of Syed Modi near the gate of K.D. Singh Babu, Stadium Lucknow. The investigation of this case was transferred to the Central Bureau of Investigation (DSPE) by the Central Government vide Notification No.228/23/AVD. II dated 2.8.1988 of the Department of Personnel & Training, Government of India New Delhi on the the request of the Government of U.P. It was entrusted to the undersigned. The following facts and circumstances have emerged during the course of investigation:-

Shri Syed Modi, the deceased belonged the lower middle class family of Sardar Nagar, Gorakhpur, (U.P).. His father expired when he was a child. He was brought up by his elder brothers his family did not own any landed property. He joined N.E. Railways as a Welfare Inspector in the year 1979. His appointment was out of the sports quota. He was National Badminton

Champion for eight years and represented India in various International Championships. He was promoted as Sports Superintendent in 1984 at Lucknow and was subsequently promoted as Senior Welfare Superintendent in NE, Railways, Lucknow, the post which he was holding at the time of his murder on 28.07.1988.

Sanjay Singh is the adopted son of late Shri Rananjay Singh, former Raja of Amethi, District Sultanpur (U.P.). He was elected to U.P. Assembly from the Amethi constituency in the elections held in 1980 and 1985. He was Minister in U.P. Government from 22.07.1982 to 22.08.1987 for Forests, Diary, Fisheries, Yuva Kalyan, Transport etc. The portfolio of sports was also allotted to him, from 09.02.1984 to 12.03.1985. He was the Chairman of Pradeshik Co-operative Dairy Federation Ltd. (PCDF), Lucknow during the period July 1984 to August, 1987, except for a brief period of five days in July, 1985.

Ameeta Kulkarni Modi, is the daughter of Shri M.V.Kulkarni, General Manager (Technical), Maharashtra State Textiles Corporation, Bombay. Her mother Smt. Pushplata Kulkarni was a Lecturer in Junior College level in Wilson College, Bombay. Ameeta Kulkarni was brought up and educated in Bombay upto B.A. Part-I and then she did her B.A. Final privately as a teacher candidate from Lucknow University in the year 1983-84, although she was already in Government Service in Clerical Grade in the Railways at Bombay during that period. She joined the Central Railways,

Bombay as Sr. Clerk and later on worked as Head Clerk in the Pay-Scale of Rs.425-700 from Sept. 1981 till 31.03.1985. She came to Lucknow in Feb. 1984 for appearing in B.A. Examination of Lucknow University and since then continues to stay at Lucknow. She gave one month's notice vide her letter dated 16.03.1985 to the Central Railway, Bombay. Her resignation was accepted with effect from 01.04.1985. She was earlier interviewed on 09.03.1985 for the post of Manager Grade-III in PCDF Lucknow. She was subsequently appointed as Marketing Manager, Grade-III in PCDF, Lucknow w.e.f. 9.4.1985 in the Pay Scale of Rs.1250-2050 against a post in the sports quota created for the first time in PCDF at the behest of Sanjay Singh.

Akhilesh Singh is the son of Late Ravindra Nath Singh @ Dhunni Singh R/o village Lalupur Chauhan, District Rae Bareli. Ravindra Nath Singh had been a big landlord and contractor. Akhilesh Singh has a criminal record and is presently involved in a number of crimes along with other members of his gang, some of whom are co-accused in this crime. Previously, he too had business interest in various constructions firms owned/controlled by members of his family. His interest has been transferred in the name of his wife of late. A number of vehicles have remained at his disposal from time to time.

Amar Bahadur Singh, S/o Chand Ram R/o Pindari Khurd, District Rae Bareli, Bhagwati Singh @ Pappu S/O Sukhpal Singh, R/O Paharpur Kason, District Rae Bareli, Jitender Singh @ Tinku S/o Bajrang Bahadur

Singh, R/o Kodras Buzrag, District Rae Bareli and Balai Singh, S/o Nankau Singh, R/o House No.566/28, Jai Prakash Nagar, Alambagh Area, PS Krishna Nagar, Lucknow, permanent address: Village Jhaua Sarkhi, P.S. Harchandpur, District Rae Bareli, all come from average agriculturist families. All the four have criminal history. They all are associated with Akhilesh Singh, accused.

Syed Modi, the deceased, came into contact with Ameeta Kulkarni when both had gone to Beijing (China) for participating in the 3rd International Asian Invitation Chairmanship in the year 1978. Ameeta Kulkarni was engaged to Syed Modi in the year 1982. Sanjay Singh came into contact with Ameeta Kulkarni in the year 1983, when she had come to Lucknow.

During investigation, it has transpired that Ameeta Kulkarni started having positive leanings toward accused Sanjay Singh from the beginning of 1984 in spite of her engagement with Syed Modi. The friendship of Ameeta Kulkarni with Sanjay Singh developed into infatuation with each other and it caused so much alarm to Syed Modi that he was continuously perturbed. Smt. Pushplata Kulkarni, mother of accused Ameeta advised her and Sanjay Singh, accused to gain the confidence of Modi to such an extent that it should make him trust Ameeta even to the extent that her relationship with Sanjay Singh be acceptable to him. She further advised Sanjay Singh and Ameeta Modi to learn and use a certain amount of restraint, and check on their emotions. She pointed out that Sanjay Singh

wants to be the Chief Minister and he may have many women in his life but he must not allow his image to be tarnished. He should not shun womankind but should be careful, was her advice to Ameeta and Sanjay Singh. She advised Ameeta Kulkarni to teach Modi to accept her as she was.

Marriage of Syed Modi and Ameeta Kulkarni took place on 14.05.1984 at the residence of Sanjay Singh. Sanjay Singh and his PRO Mohd Alam appended their signatures on the concerned application dated 14.5.1984 as witnesses to the effect that marriage has been solemnized in their presence.

During investigation, it transpired that Sanjay Singh and Ameeta Kulkarni Modi soon after developed and continued extra-marital relations. He got various properties and amenities made available to Modi. Infatuation of Sanjay Singh for Ameeta increased as time passed. Within Lucknow he would ring her up some time ten times a day; coming to Ameeta often twice at night to seek sexual gratification with her consent. He would ring her up when she was at Patiala, Delhi, Bombay etc. from Lucknow and also ring her from outside Lucknow times out of number when she would be in Lucknow. Sanjay Singh spent thousands of rupees to phone Ameeta from all over India. Syed Modi, the deceased resented this relationship. he suspected the infatuation of Sanjay Singh for his wife Ameeta and her most willing participation. They had frequent quarrels over this issue. Ameeta Modi wrote passionate love letters to Sanjay Singh. She wrote that " I am only yours

as far as I am concerned mentally though physically I may be someone elses'.....life is going to be tough for me, its gonna to be some test. I only hope and pray that God gives me strength, to remain yours come what way." In another letter, she wrote, "I love you but there are many many restrictions in this blind love of mine. I can never forget the fact, however, hard I try, that we are both married to two different individuals and our first duties are towards them. It is all easy to say but I know, we can't leave them, however, we might want to be one. I guess we will have to find a via-media to this." Then again, "please tell me can you wait even if it means a year or more?. Let me also prepare myself because if I have to be shattered the sooner the better."

Ameeta Kulkarni Modi gave birth to a daughter on 4.02.1988 at Command Hospital, Lucknow. She was got admitted to the Command Hospital, Lucknow through the influence of Sanjay Singh. She had conceived two times earlier but both times she aborted. Syed Modi had suspected that the conception of Ameeta Modi in 1986 was by Sanjay Singh. The facts and circumstances in the case that Syed Modi had repeatedly asked Ameeta to give up Sanjay Singh. He himself was so much in love with Ameeta that inspite of her infidelity and Sanjay's infatuation for her, he never desired separation though he anticipated his own death, if Ameeta continued to carry on her affairs with Sanjay Singh. When Sanjay Singh found that Syed Modi was finally becoming a stumbling block to continuance of his sexual relations

with Ameeta, he disclosed his intentions to silence Syed Modi in his own way.

Sanjay Singh, Smt. Ameet Kulkarni Modi, Akhilesh Singh, Amar Bahadur Singh, Bhagwati Singh @ Pappu, Jitendra Singh @ Tinku and Balai Singh, some time between June, 1988 and 28th July, 1988 were party to a criminal conspiracy, the object of which was to commit the murder of Syed Modi. In pursuance of the said criminal conspiracy, the following acts of commissions and omissions were committed by the accused persons:-

Sanjay Singh and Akhilesh Singh were together in Yatrik Hotel Allahabad in mid June 1988 where Sanjay Singh asked Akhilesh to arrange for the murder of Syed Modi. Thereafter on 20.07.1988 Sanjay Singh met Bhagwati Singh @ Pappu in this regard. This meeting was arranged by Akhilesh Singh at Sanjay Singh's residence. Here Sanjay Singh entrusted the task of killing Syed Modi to Bhagwati Singh alias Pappu. Sanjay Singh then left Lucknow in the night of 20.07.1988 by train and reached Delhi in the morning of 21.07.1988. Sanjay Singh left Delhi in the night of 23.07.1988 and reached Lucknow by train in the morning of 24.07.1988. Sanjay Singh again left Lucknow by train in the night of 25.07.1988 and reached Dehli in the morning of 26.07.1988. He left Delhi by train in night of 28.07.1988 and reached Lucknow in the morning of 29.07.1988. He again left for Delhi on 31.07.1988 and reached Delhi on 01.08.1988 and returned to Lucknow on 03.08.1988.

Akhilesh Singh introduced Bhagwati Singh @ Pappu to Sanjay Singh at the latter's residence on 20.07.1988. He

obtained Maruti Van No. HYG 1959 from Abdul Khalik, brother of Sri Abdul Malik on 20.07.1988 at Lucknow stating that he required it for some important work. He thereafter used it to facilitate the movement of Amar Bahadur Singh, Bhagwati Singh @ Pappu, Jitendra Singh @ Tinku and balai Singh and himself before and after the crime. Efforts were made from telephone number 33745 & 48134 of Sanjay Singh to contact telephone number 2378 at the residence of Akhilesh Singh at village Lalupur Chauhan, district Rae Bareli and also at telephone number 2694 installed at residence of his uncle, Devendra Nath Singh on 25.07.1988. Akhilesh Singh brought his aforesaid men in Maruti Van no. HYG 1959 to Lucknow on 26.07.1988 and arranged for their lodging at 13, Royal Hotel, Lucknow where he used to stay frequently. Akhilesh Singh also provided Enfield .38 revolver no. J 8050 to Amar Bahadur Singh. Akhilesh Singh left Lucknow on 27.07.1988 morning by train to Delhi and reached Delhi the same day. He contacted accused Sanjay Singh on 27.07.1988 at Karnataka Bhavan. He left Delhi on 28.07.1988 and reached Haridwar the same day in the evening. Ashwani Kumar and others had accompanied him. Akhilesh Singh stayed at the house of Ashwani Kumar in Haridwar. Akhilesh Singh tried to contact from phone no. 125 of Ashwani Kumar to telephone number 33745 of Sanjay Singh at Lucknow on 29th, 30th and 31st July, 1988. Akhilesh Singh had a dip in the holy Ganga at Haridwar on hearing of the murder of Syed Modi. He left Haridwar on 31.07.1988 and

reached Meerut on the same day. He reached Delhi on 01.08.1988 and reached Lucknow in the night of 02.08.1988 by air. He stayed in Hotel Clark Awadh, Lucknow till 03.08.1988 morning under a false address. On 28.07.1988 Amar Bahadur Singh accompanied by Bhagwati Singh @ Pappu and Balai Singh went in Maruti Van No.HYG 1959 driven by Jitendra Singh alias Tinku to K.D.Singh Babu, Stadium Lucknow Amar Bahadur Singh @ Pappu took position outside the Northern Gate (near mini swimming pool) of K.D. Singh Babu, Stadium Lucknow with the intention to kill Syed Modi. At about 7:45 PM when Syed Modi came out of the stadium on his scooter, he was fired at by them, as a result of which Syed Modi fell down. Amar Bahadur Singh and Bhagwati Singh ran away from the scene of crime and escaped after getting into the aforesaid Maruti Van which was parked nearby and waiting for them to facilitate their escape.

Jitendra Singh alias Tinku facilitated the movements of accused Bhagwati Singh, Amar Bahadur Singh and Balai Singh by driving Maruti Van No.HYG 1959, as a result of which they were taken to the scene of crime and promptly fled away from the commission of crime.

Balai Singh remained associated before, during and after the commission of crime with the aforesaid associates.

Balai Singh in the company of accused Bhagwati Singh @ Pappu, Amar Bahadur Singh and Jitendra Singh @ Tinku was seen alongwith the said Maruti Van, just after

murder at Paschim Gaon, District Rae Bareli at about 9:00 PM.

Ameeta Kulkarni Modi exhibited unnatural and abnormal conduct before and after the commission of crime, in as much as that she faked illness and on 28.07.1988 did not accompany Syed Modi to the Stadium for practice. On receiving the message about the "accident" of Modi, instead of inquiring about his condition and rushing to hospital, she tried to inform Sanjay Singh over phone. He was then at Delhi. Thereafter, she visited the residence of Sanjay Singh and only thereafter went to the hospital. On the day of burial of Syed Modi, she did not stay with her inlaws but instead stayed in Hotel Marina, Gorakhpur where Sanjay Singh also stayed. She did not attend the "Majlis" Ceremony held on 31.07.1988 at Sardar Nagar, Gorakhpur, at the house of Sri Pyare Bhai Modi's brother. On 02.08.1988 she returned from Gorakhpur to Lucknow and cautioned Abid Hyder, brother of Modi not to divulge anything about her relations with Sanjay Singh to the Investigating Agency. During the mourning period she went about withdrawing very heavy amounts from Banks held in the joint names of Modi and herself, submitting claim papers to LIC, getting LDA plot, measuring about 800 Sq./mts. allotted to Syed Modi, transferred in her name, obtaining compensation and other dues due to Shri Modi amounting to more than Rs.70,000/-.

Syed Modi after falling down as a result of injury sustained by bullets fired at him was rushed to hospital

in a passing Car by Ravi Verma, a Judo Player, Jamal Khan, a handball player, Nirmal Singh Saini, Regional Sports Officer, K.D. Singh Babu Stadium and H.C. Mohd. Yjnis and constable Shiv Charan Mishra.

Dr. G.B.S. Kalra, Casualty Officer of the K.G.M.C. Hospital, Lucknow declared Modi dead on examining him in the hospital. Postmortem was conducted on his body which confirmed his death to be due to shock and hemorrhage caused by fire arms injury. The postmortem conducted reveal that five bullets entered into the body of Syed Modi, out of which 3 bullets passed through and 2 remained embedded which were extracted during the postmortem conducted on the dead body of Syed Modi in K.G.M.C. Hospital, Lucknow on 29.07.1988. Earlier two lead bullets had been recovered by police on 28.07.1988 from the scene of crime.

Akhilesh Singh, Amar Bahadur Singh, Bhagwati Singh alias Pappu and Jitendra Singh alias Tinku were arrested on 16.08.1988, Ameeta Kulkarni Modi was arrested on 21.08.1988, Balai Singh was arrested on 22.08.1988 and Sanjay Singh was arrested on 03.09.1988.

After the arrest, Amar Bahadur Singh, on 16.08.1988 made disclosure statement to the effect that the .38 revolver used in the commission of the crime was hidden by him in a room at 566/28, Jai Prakash Nagar, Lucknow which was used by Balai Singh. As as result of his disclosure recovery of .38 bore revolver No.J8050 was made under Section 27 of the Indian Evidence Act. On 23.08.1988, Balai Singh while in police custody

made a disclosure statement to the effect that one 9 MM Pistol, which was carried by Bhagwati Singh @ Pappu at the time of commission of crime was hidden by him and at his instane the smae bearing No.110872 was recovered on 23.08.1988 from a Mango Grove of Ravindra Nath Singh @ Dhunni Singh, father of accused Akhilesh Singh at village Lalupur Chauhan, District Rae Bareli. This pistol has been found to have been used in the commission of crime registered as Case Crime No.318 of 1987, P.S. Mohanlalganj, Lucknow under Seciton 147, 148, 149, 302, 201 I.P.C.

During the course of investigation, it transpired that the aforesaid .38 revolver was traced to be of defence origin and 9 MM pistol was stolen one from the then Havaladar Babu Ram of ST HQ COY.56 APO on 27.10.1982 at Dehradun for which FIR No.74/82 dated 27.10.1982 was lodged with GRP Dehradun.

During the course of investigation, Akhilesh Singh and Jitendera Singh alias Tinku were put to polygraphic test at CFSL, New Delhi and they admitted their acts of commission and omission and also disclosed about the facts of commission and omission of Amar Bahadur Singh, Bhagwati Singh @ Pappu, Balai Singh and Sanjay Singh.

During the course of investigation the bullets recovered as above i.e. two form the scene of crime and two extracted from the body of Syed Modi during postmortem were sent to ballistic expert alongwith the recovered .38 revolver No.J8050 for expert opinion. The ballistic expert opined that the bullets in question have

been fired from the said .38 revolver. The ballistic expert has also opined that the holes in the t-shirt worn by Modi at the time of murder are corresponding to the wounds described in the postmortem report of deceased Syed Modi and could have been caused by the passage of .38 bullets. It is also opined that the blackening and tattooing observed in the postmortem examination on the five injury wounds indicate close range of firing. 9 MM pistol, which was recovered at the instance of Balai, too were send to the Ballistic expert who on examination found the same in serviceable condition.

After the arrest of accused Amar Bahadur Singh and Bhagwati Singh alias Pappu, they were produced "Baparda" before the Competent Court having jurisdiction in Lucknow and were remanded "Baparda" to the judicial custody where they were put to the test of identification parade before a Magistrate and were identified by Sri Prem Chand, an eye witness to be the assailants who fired at Syed Modi on 28.07.1988.

Akhilesh Singh, Amar Bahadur Singh, Bhagwati Singh @ Pappu, Jitendra Singh @ Tinku and Balai Singh all have past criminal history. Akhilesh Singh and Balai Singh had been/are involved jointly/singly in nearly 20 cases of murder, attempt to murder, extortion, criminal trespass, kidnapping/ abduction, criminal intimidation, Arms Act, U.P. Gangster Act, Exercise Act, U.P. Goonda Control Act etc. Accused Amar Bahadur Singh is involved in a case of attempt to murder and Bhagwati Singh @ Pappu is facing prosecution under Section 25

of Arms Act. Jitendra Singh @ Tinku is involved in a case of criminal intimidation.

During the course of investigation, the searches were conducted at the residence of Ameeta Kulkarni Modi at A-8, Park Road Colony, Lucknow, her parental house at Bombay and at residence of Sanjay Singh at 19 Vikramaditya Marg, Lucknow. As a result of these searches, a diary of 1986, letters written from Patiyala and Lucknow by Ameeta Kulkarni Modi to Sanjay Singh, photographs of Sanjay Singh, Ameeta and her daughter, letters of Syed Modi and letters of Smt. Pushplata Kulkarni were, inter alia, recovered from the residence of Ameeta and her parents. These documents have been referred to the Government Examiner of questioned documents and his opinion is awaited. A letter of Mrs. Garima Singh, telephone diaries, trunk call register etc., were recovered from the residence of Sanjay Singh at Lucknow.

During the course of investigation, besides the above documents, more documents were collected and statement of witnesses were recorded which prove the complicity of the aforesaid accused.

The above facts and circumstances disclose the commission of offences punishable under Section 120 (B) of I.P.C. and under Section 120(B) r/w Section 302 of I.P.C. by Sanjay Singh, Ameeta Kulkarni Modi, Akhilesh Singh, Amar Bahadur Singh, Bhagwati Singh alias Pappu, Jitendra Singh alias Tinku and Balai Singh, offences punishable under Section 302 r/w 34 of I.P.C. by accused Amar Bahadur Singh, Bhagwati Singh

alias Pappu, Jitendra Singh @ Tinku and Balai Singh and offences punishable under Section 25/27 of Arms Act by accused Amar Bahadur Singh, offences punishable under Section 27 of Arms Act by accused Bhagwati Singh alias Pappu and offences punishable under Section 25 of Arms Act against accused Balai Singh.

Orders of sanction issued by District Magistrates, Lucknow and Rae Bareli for prosecution of accused Amar Bahadur Singh and that of Balai Singh under Section 25 of Arms Act respectively are enclosed.

Sanjay Singh, Ameeta Kuklarni Modi and Akhilesh Singh are on bail and the remaining accused Amar Bahadur Singh, Bhagwati Singh @ Pappu, Jitendra Singh @ Tinku and Balai Singh are in judicial custody. It is requested that the aforesaid accused person may be tried according to the provisions of law. "

(v) On the above chargesheet submitted by CBI, the Special Judicial Magistrate,(CBI) Lucknow took cognizance and committed the case to the Court of Sessions for trial on 13.07.1989. The Court of Sessions discharged the accused Sanjay Singh and Ameeta Kulkarni Modi on the application moved under Section 227 of Code of Criminal Procedure, 1973 (in short Cr.P.C.) vide a detailed order dated 17.09.1990 and that order of discharge of Sanjay Singh and Ameeta Kulkarni Modi was upheld first by the High Court and thereafter by the Hon'ble Supreme Court. The

accused Akhilesh Singh filed a writ petition under Section 482 Cr.P.C. bearing Criminal Misc. Case No.37 of 1995 (Akhilesh Singh Vs. State of U.P.) to quash the order of framing charge against him, before the High Court and the High Court vide its order dated 19.08.1986 allowed the petition and the order of framing charge against him by the Sessions Judge, was quashed and the accused Akhilesh Singh was discharged. The order passed in this Misc. Writ Petition under Section 482 Cr.P.C. filed by Akhilesh Singh was not disturbed by the Hon'ble Supreme Court.

(vi) Accused Balai Singh was murdered during the pendency of trial and the trial stood abated against him vide order dated 10.06.1996. The accused Amar Bahadur Singh was also murdered on 28.07.1994 and the case against him also stood abated. Thus only two accused persons were left to be tried before the trial court namely Bhagwati Singh alias Pappu and Jitendra Singh alias Tinku.

(vii) The Sessions Court framed charges against Bhagwati Singh alias Pappu under Section 120-B of I.P.C. and Section 302 of I.P.C. read with Section 34 of I.P.C.. The charge under Section 27 of the Arms Act, 1959 was also framed against Bhagwati and against accused Jitendra Singh alias Tinku charge under Section 120-B,

302 of I.P.C. read with Section 34 of I.P.C. and Section 212 of I.P.C. were framed. Both the accused persons denied the crime and claimed to be tried.

(viii) The prosecution in order to prove the charges framed against the convict/appellant examined the following witnesses:-

1. P.W. 1 Nirmal Singh Saini, informant.
2. P.W. 2 Dr. B.K. Srivastava, the medical officer conducting the postmortem of the body of deceased Syed Modi.
3. P.W.3 Roop Singh, Retired Principal & Scientific Officer & Head of Ballistics Division, CFSL/CBI, New Delhi.
4. P.W. 4 Kishore Chaturvedi, Head Clerk, NER, DRM Office, Lucknow.
5. P.W. 5 Kishan Bahadur, eye witness.
6. P.W. 6 Amol Kumar Saxena, The other doctor who joined P.W.2 in conducting the postmortem.
7. P.W.7 Rajendra Kumar Girdhar, Sr. Manager, Central Bank of India, Defence Colony, New Delhi.
8. P.W.8 Rakesh Kumar Rawat, Deputy General Manager, Allahabad Bank, Divisional Office, Calcutta.
9. P.W.9 Prem Chand Yadav, eye witness.
10. P.W. 10 Mahendra Singh.
11. P.W. 11 Bhagwan Bux Singh.
12. P.W. 12 Mohd. Tahseen Khan, Trust Assistant posted in the office of District Magistrate, Lucknow.
13. P.W. 13 Babu Ram, Retired Army Official.

14. P.W. 14 P.N. Shekar, Inspector in the office of I.G., Zone, Lucknow.

15. P.W. 15 M. K. Bhatt. S.P. CBI, New Delhi.

16. P.W. 16 Smt. Sanjana Gupta, Accountant, NER, Lucknow.

17. P.W. 17 Ashok Singh.

18. P.W. 18 Abdul Khaliq, Owner of Maruti Van No.HYG/1959, said to have been used by the assailants.

19. P.W. 19 Raj Kumar.

20. P.W. 20 Abid Hyder, Elder brother of deceased Syed Modi.

21. P.W. 21 Chetan Ram, Office Superintendent, Personnel Deputy. Head quarter, Central Railway, Bombay.

22. P.W. 22 Ajay Singh

23. P.W. Ram Kesh Yadav.

24. P.W. 24 Surendra Pratap Tiwari, P.A.C. personnel posted in 35th Battalion, Mahanagar, Lucknow.

25. P.W. 25 Jitendra Mohan Srivastava.

26. P.W. 26 B.L.P. Azad, Retired S.P., CBI, New Delhi.

27. P.W. 27 R.S. Dhankar, S.P. CBI, S.C. III, New Delhi.

28. P.W. 28 Vishram Singh Yadav, Retired Inspector, Civil Police.

29. P.W. 29 Dharm Pal Singh Yadav, Retired Superintendent of Police.

(ix) Apart from above oral evidence necessary relevant documents were also proved and exhibited by the prosecution.

(x) Thereafter the statements of the convict/appellant was recorded under Section 313 of Cr.P.C., wherein the convict/appellant denied all the evidence against him and stated that he was not on the spot.

He has also stated that he was identified by witness Prem Chand Yadav during identification parade, at the indication made by Deputy Jailer, Sanjay Sharma. He has admitted the fact that he was rightly recognized by Prem Chand Yadav P.W.9 in the court. He showed unawareness about many facts and stated that witnesses have deposed due to the fact that they were in the custody of CBI, he has also stated that he has been implicated falsely.

(xi) Additional statement under Section 313 Cr.P.C. was also recorded on 22 July, 2009 after recording of evidence again of P.W.9. wherein the convict stated that the witness has deposed falsely.

(xii) Convict/appellant did not adduce any evidence in defence though the opportunity was given.

(xiii) The learned trial court after hearing the evidence of both the sides on the basis of evidence available on record came to the conclusion that P.W.9 Prem Chand Yadav an eyewitness has identified the convict/appellant and the Court found the testimony of P.W.9 Prem Chand Yadav, reliable who had seen the convict/appellant firing upon the deceased Syed Modi and he has no reason to implicate the convict/appellant falsely, in the crime. Since the facts regarding the conspiracy i.e. offence under Section

120-B of I.P.C. was not found proved because two accused persons namely Sanjay Singh and Ameeta Kulkarni Modi were discharged and the order of framing the charge against Akhilesh Singh was also quashed by the High Court in a writ petition filed under Section 482 Cr.P.C. and two other accused persons Amar Bahadur Singh and Balai Singh died/murdered during the pendency of trial. The convict/appellant was identified by the eyewitness P.W.9 Prem Chand Yadav and in the opinion of the trial court i.e. P.W.9 was found trustworthy as regards the commission of murder of deceased Syed Modi by firing upon him alongwith one another person.

(xiv) The learned trial court also concluded that the charge under section 27 of the Arms Act against convict/appellant has also been proved by the prosecution as the disclosure statement of co-accused Balai Singh coupled with the statement of P.W.9 is sufficient to establish that the pistol recovered at the pointing out of Balai Singh was used by the convict Bhagwati Singh alias Pappu in the commission of crime.

(xv) The trial court has observed that even presuming that the bullets fired by this pistol were not recovered, the case of the prosecution that accused Bhagwati Singh fired at Syed Modi who

sustained injuries by such shots cannot be rejected merely on this ground, hence the trial court found and held the convict/appellant guilty under Section 302/34 of I.P.C. and under Section 27 of the Arms Act and punished in the manner as noted herein above in para No.1.

(xvi) Being aggrieved of this conviction and sentence this appeal has been filed.

(3.) Heard Mr. Piyush Asthana, learned counsel for the appellant and Mr. Shreesh Chandra, learned counsel for the C.B.I.

(4.) Learned counsel for the convict/appellant argued that there is no evidence against the convict/appellant. The convict was not named in the FIR, his name allegedly surfaced on the basis of statement of Prem Chand Yadav who after about one month identified the convict in the jail during test identification parade. In fact the witness has identified the convict falsely. There is no motive for the convict/appellant to commit the murder of the deceased. There are contradictions in the statement of witness about the car, as at some places it has been stated that Maruti Car was used while at some places it has been stated that Maruti Van was used. The car was found belonging to one Mr. Akhilesh Singh against whom charges were framed, but the High Court quashed

the charges vide order passed in a writ petition filed under Section 482 Cr.P.C.. The P.W.9 Prem Chand Yadav has said in his examination- in-chief that he came out after hearing the sound of firing, thus it is clear that he did not see who fired upon the deceased. The learned counsel for the appellant has also submitted that the site plan prepared of the spot has not been exhibited. The weapon of the crime was not recovered from the possession of the convict/appellant. The learned trial court has convicted the convict/appellant only on the basis of evidence of a single witness. The convict has been identified only by one witness. Smt. Kaiser Bai (Paanwali) and Rickshaw Puller who were closure to the site of crime were not produced in the evidence and for test identification parade. The learned trial court has committed illegality in not considering the point that P.W.2 Roop Singh, ballistic expert had opined that the bullets said to have been recovered from the spot of occurrence were not found fired by the recovered pistol. Hence the impugned judgment and order should be set-aside. Learned counsel for the convict/appellant relied on following case laws:-

1. Mohanlal Gangaram Gehani Vs. State of Maharashtra. 1982 SCC (Cri.) 334.

2. Wakil Singh and others Vs. State of Bihar. 1981 SCC (Cri.) 634

3. *Dana Yadav alias Dahur and others Vs. State of Bihar. 2002 SCC Online SC 867.*
4. *Sanjeev Kumar etc. Vs. State of Himachal Pradesh. 1999 SCC Online SC 65.*
5. *Hasib Vs. State of Bihar. 1972 (4) SCC 773.*
6. *Shaikh Umar Ahmad Shaikh and another Vs. State of Maharashtra. 1998 SCC (Cri.) 1276.*
7. *Chaman Vs. State of U.P. 1993 SCC (Cri.) 212*
8. *Manzoor Vs. State of U.P. 1982 SCC (Cri.) 356*
and Suleman Vs. State of U.P.
9. *Nathwa and others Vs. State AIR 1951 Alld. 452*
10. *Mohd. Anwar Vs. State of Delhi 2000 SCC (Cri.) 279*
and Tasleem Vs. State of NCT Delhi.
11. *State (Delhi Admn.) Vs. V.C. Shukla and another. 1980 (2) SCC 665.*
12. *Chander Pal Vs. State of Haryana. 2002 SCC Online SC 196.*
13. *Mahendra Pratap Singh Vs. State of U.P. 2009 SCC Online SC 426.*
14. *Prakash Kumar Vs. State of Gujarat. 2005 (2) SCC 409.*
15. *Puran Singh Vs. State of Uttaranchal. 2008 SCC Online SC 94.*
16. *Dilip and others Vs. State of M.P. 2007 (1) SCC (Cri.) 377*
17. *Ganga Tiwari & Another Vs. State of U.P. 2008 SCC Online All. 1889.*

5. Contrary to it, learned counsel appearing for the C.B.I. Mr. Shreesh Chandra, submitted that the deceased was fired upon by the convict/appellant alongwith one another shooter. The convict/appellant was identified by P.W.9 Prem Chandra Yadav, who was the first person who informed the complainant Nirmal Singh Saini about the incident. He knew and recognized the convict/appellant prior to the incident, though not by name but by appearance, as the convict/appellant used to come in the stadium occasionally. He further submitted that there is no dent in the evidence of P.W. 9 made before the trial court about the identification of the convict/appellant and the firing made by him on the deceased. He further submitted that as far as the motive is concerned it loses its importance when there is direct evidence of firing. The weapon used in the crime, though not recovered at the pointing out of the convict/appellant, but at the pointing out of co-accused Balai Singh (murdered during the pendency of trial) who told to the Investigating Officer that the weapon was given to him by Bhagwati Singh, the convict for hiding and he hid the same and the same was recovered at the pointing out of Balai Singh in the presence of witnesses and that recovery has been duly proved by P.W.4 as well as by other witnesses. He further submitted that as far as the site plan is concerned, it was prepared by the Investigating Officer, no question about the site plan was asked on

behalf of the convict/appellant in the trial court. As far as testimony of single witness is concerned, conviction can be made on the basis of sole testimony if the court finds the witness reliable.

6. Learned counsel for the C.B.I. relied upon the following case laws:-

1. *State of M.P. Vs. Ramji Lal Sharma and another 2022 SCC Online SC 282*

2. *Subed Ali and others Vs. State of Assam 2020 SCC Online SC 794*

3. *Gulam Sarwar Vs. State of Bihar 2014 (2) SCC (Cri.) 195*

4. *State of U.P. Vs. Krishna Master 2010 SCC Online SC 832*

5. *Raja Vs. State by Inspector Police (2020) 4 SCC (Cri.) 115*

6. *Mulla & another Vs. State of U.P. 2010 SCC Online SC 264*

6. Considered the rival submissions and perused the original record as well as the record of the appeal and gone through the case laws cited.

7. In the present case the FIR was lodged against unknown persons by the complainant- Nirmal Singh Saini, who was Regional Sports Officer in the Stadium, where the deceased used to come to play badminton. The incident occurred outside the north gate of Stadium. In the FIR it has been mentioned that complainant was informed about the incident by Prem Chand who has been examined as P.W.9. At the time of incident P.W. 9 Prem Chand used to work in the Canteen situated at the gate of the stadium and

at the time of incident he was on work there. Most of the witnesses of facts have turned hostile. P.W.1 the complainant is not an eye witness, he simply lodged the FIR of the incident upon the information given by Prem Chand PW9 and also carried the injured deceased alongwith others including two police personnel to the medical college, where he was declared brought dead.

8. P.W. 9 Prem Chand Yadav is the most important witness of this case and the conviction rests on his evidence. At the time of incident he was working in the canteen situated at the gate of the stadium near the place of incident. This witness has identified the convict/appellant during the test identification parade conducted inside the jail and also before the trial court at the time of giving evidence. The statement of this witness was also recorded by the Investigating Officer who initially investigated the case and subsequently the investigation was handed over to the CBI. The learned trial court has found this witness trust worthy and relied on his statement to hold guilty the convict/appellant. This witness has stated in his examination in chief before the Court recorded on 21.10.2005 that the incident took place about 17/18 years ahead at about 7:00 O'Clock in the evening, P.W.9 was in the tea shop and serving boys were cleaning utensils there. When Modi after playing came out of stadium from the gate then he heard the sound

of firing and saw that two persons were firing on Modi, he saw and recognized both the miscreants. The miscreants after firing ran away in a white Maruti Car towards Shahnazaf (road) there was some darkness on the spot, but there was visibility of a 'big light' (street light). He (witness) rushed inside the stadium and informed to Mr. Saini there. Two police personnel were also there. He called them, thereafter Mr. Saini and police personnel and some other players carried Mr. Modi to hospital in a Maruti Car. He further deposed before the trial court that after one month CBI persons took him inside the jail for identification, there he identified two accused persons and those were Bhagwati Singh alias Pappu and Jitendra Singh alias Tinku, this witnesses has identified Bhagwati Singh in the trial Court during the evidence rightly. This witness has also identified the signature on the documents which was prepared at the time of test identification parade in the jail and proved as exhibit Ka-15. This witness has further submitted that he saw the accused at the time of incident and thereafter in jail at the time of test identification parade and for the third time he has identified the accused Bhagwati Singh in the Court. On the date when examination in chief was recorded i.e. 21.10.2005 the counsel for the accused Bhagwati Singh did not cross examine the witness, the Court closed the evidence, thereafter again on the request of the accused Bhagwati Singh the witness was recalled

and cross examined by the counsel of accused Bhagwati Singh on 01.07.2009. It is pertinent to mention here that the trial court has observed at the end of the statement of witness as follows:-

“The witness is unable to see and his right foot is amputated till the heel. Having regard to the fact that witness was not able to stand independently and move with aid. I directed that the pairokar who brought the witness to stand with him without interfering in the Court’s proceedings”.

9. This observation of the Court shows that when the witness was called again for cross-examination on 01.10.2009 i.e. about four years gap he was not in a condition to see. He stated in the cross examination that his name is Prem Chandra Yadav, he would not be able to recognize the accused now. If his eyesight would recover, then he would be able to recognize. He deposed truly on the prior date. The name of his father is Binda Yadav. The incident about which he has come to depose occurred in the year 1988. Since many years had passed, so he would not be able to tell the date month and day. It was summer. At the time of incident he was in the canteen where he used to work. He used to work in the canteen since 6 O’clock in the morning up to 8:30 PM in the night. He knew the badminton players of the stadium. He also

knew the chaukidars of the stadium, he knew the officers of the stadium and coach Mr. Saini, the badminton player Mohd. Syed Modi Bhandari. When the incident occurred he was inside the canteen and arranging the glasses after washing them. The incident occurred outside the stadium, one another person belonging to the canteen was also there who ran away immediately. The distance of the place of occurrence was 10 paces away from the canteen. There was no door in the canteen where the incident took place. One Rickshaw puller Krishna Bahadur was also there. One lady 'Paanwali' was also there who used to sell 'Paan' outside the stadium. First of all he told about the incident to Mr. Saini and two police personnel. At the time of incident he heard the sound of firing and he immediately went to Mr. Saini and told him about the incident. He has also stated that after the incident police personnel of Hazratganj Police Station took his statement, they carried him in a jeep. When he used to work in the canteen he used to sleep there in the canteen itself, after having meals. In the police station old photographs of the accused persons were shown to him, he went to jail to identify the accused persons and he rightly identified the accused persons in the jail because he saw them at the time of committing murder. When he deposed in the Court previously he deposed truly and identified the accused standing in the dock who was tall and of dark complexion. He rightly identified him. He has

further deposed that Bhagwati Singh used to come stadium prior to the incident. He admitted that on the previous date he told in the Court that he saw Bhagwati Singh first time while firing, second time in jail and third time in the Court. He has further stated that the truth is that he saw Bhagwati Singh prior to the incident also. When Bhagwati Singh used to come in the stadium he doubted that Bhagwati Singh was not a player but he did not complain anywhere about this fact. Since he saw Bhagwati Singh two-three times earlier, so he rightly identified him in the jail. On the asking of the Court this witness has confirmed that he himself saw the persons who killed the deceased by his own eyes. This witness has denied the suggestion made on behalf of the convict that he has identified Bhagwati Singh only on the basis of doubt and on the basis of photograph shown.

10. The perusal of the evidence of PW9 Prem Chand Yadav recorded in the Court shows that this witness remained resolute and undeterred. While most of the witnesses of facts turned hostile he remained unswayed even in the condition when he was recalled on 01.07.2009 after a gap of about four years of recording of his examination-in-chief that too in a condition when he became blind and one of his foot was amputated upto the heel. This witness has again and again reaffirmed that he saw the convict alongwith one

another person firing upon the deceased Syed Modi. Nothing could be brought in his evidence by the defence counsel in cross-examination so as to create doubt on his testimony. This witness stood during his examination-in-chief and also cross examination unswayed, unyielded, and unbended. The direct evidence of this witness is sufficient enough to hold the convict/appellant guilty of committing the murder of Syed Modi.

11. Learned counsel for the convict/appellant drew the attention of this Court towards the case law in *Mohanlal Gangaram Gehani Vs. State of Maharashtra (supra)*, but that case law is of no help because the facts and circumstances are different in the case in hand, the witness knew the convict prior to the incident, though not by his name but by his appearance because he had seen him earlier coming to and going from stadium, so he recognized him while committing the crime.

12. The case law *Wakil Singh and others Vs. State of Bihar (supra)* is also of no help to the appellant because the cited case was a case where the trial court acquitted the accused finding the single identification witness not fit, but here in this case the trial court convicted the convict finding the evidence of P.W.9 reliable.

Hon'ble Apex Court in Raja Vs. State by Inspector Police(supra) has held as under :

" 20. It is neither possible nor prudent to lay down any invariable rule as to the period within which a test identification parade must be held, or the number of witnesses who must correctly identify the accused, to sustain his conviction. These matters must be left to the courts of fact to decide in the facts and circumstances of each case. If a rule is laid down prescribing a period within which the test identification parade must be held, it would only benefit the professional criminals in whose cases the arrests are delayed as the police have no clear clue about their identity, they being persons unknown to the victims. They, therefore, have only to avoid their arrest for the prescribed period to avoid conviction. Similarly, there may be offences which by their very nature may be witnessed by a single witness, such as rape. The offender may be unknown to the victim and the case depends solely on the identification by the victim, who is otherwise found to be truthful and reliable. What justification can be pleaded to contend that such cases must necessarily result in acquittal because of there being only one identifying witness? Prudence therefore demands that these matters must be left to the wisdom of the courts of fact which must consider all aspects of the matter in the light of the evidence on record

before pronouncing upon the acceptability or rejection of such identification."

13. The case law *Dana Yadav alias Dahur and others Vs. State of Bihar (supra)* is also has no application to the facts and circumstances of this case because in that case the witness identified the accused for the first time in Court- belatedly, but herein is not such a situation. The witness saw the miscreants while committing the crime and identified inside the jail and also before the Court.

14. The case law of *Sanjeev Kumar etc. Vs. State of Himachal Pradesh (supra)* is also of no help due to the difference of facts and circumstances of the case, because in the cited case law miscreants was paraded open in the market, but in the present case it is not so.

15. The case law of *Hasib Vs. State of Bihar (supra)* is also of no help because in that case decoits were identified by the Police Inspector, but in the case in hand the independent witness whose presence was very natural at the spot identified the miscreant/convict. Likewise the other case laws cited on this point are also of no help to the convict for the difference in facts and circumstances of the case.

16. In the case law of *Raja Vs. State by Inspector Police (supra)* the Hon'ble Apex Court has held as under:-

"15. It has been accepted by this Court that what is substantive piece of evidence of identification of an accused, is the evidence given during the trial. However, by the time the witnesses normally step into the box to depose, there would be substantial time gap between the date of the incident and the actual examination of the witnesses. If the accused or the suspects were known to the witnesses from before and their identity was never in doubt, the lapse of time may not qualitatively affect the evidence about identification of such accused, but the difficulty may arise if the accused were unknown. In such cases, the question may arise about the correctness of the identification by the witnesses. The lapse of time between the stage when the witnesses had seen the accused during occurrence and the actual examination of the witnesses may be such that the identification by the witnesses for the first time in the box may be difficult for the court to place complete reliance on. In order to lend assurance that the witnesses had, in fact, identified the accused or suspects at the first available opportunity, the TIP which is part of the investigation affords a platform to lend corroboration to the ultimate statements made by the witnesses before the Court. However, what weightage must be given to such TIP is a matter to be considered in the facts and circumstances of each case."

17. The Hon'ble Apex Court in the above case further held as under:-

"21. Lastly in *Malkhansingh v. State of M.P.* (AIR 2003 SC 2669) a three- Judge Bench of this Court of which one of us (B.P. Singh, J.) was a member, after considering various decisions of this Court observed thus:

"7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of [Section 9](#) of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts which establish the identity of the accused persons, are relevant under [Section 9](#) of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in [the Code](#)

of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by [Section 162](#) of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.”

18. In the case of **Mulla and another Vs. State of U.P.** (supra) the Hon'ble Apex Court has held as under:-

" 22. The necessity for holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no

provision for it in the Code and the Indian Evidence Act, 1872. It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution."

19. The Hon'ble Apex Court in the above case has further held as under:-

"31. The identification parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting a test identification parade is two- fold. First is to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence.

32) Therefore, the following principles regarding identification parade emerge: (1) an identification parade ideally must be conducted as soon as possible to avoid any mistake on the part of witnesses; (2) this condition can be revoked if proper explanation justifying the delay is provided; and, (3) the authorities must make sure that the delay does not result in exposure of the

accused which may lead to mistakes on the part of the witnesses."

20. In light of the above principles laid down by the Hon'ble Apex Court we considered the identification of convict/appellant by P.W. 9. From the evidence of P.W.9 it is clear that PW9 knew the convict prior to the incident by appearance but not by name because he used to come in the stadium occasionally. He was the first person who informed the Officer working in the stadium about the incident after witnessing the incident. Thereafter he identified the convict/appellant in jail during the test identification parade, finally he identified the convict/appellant before the trial court while deposing in the case.

21. The counsel for the defence asked again and again about the identification, but the witness remained unyielded, unswayed and unbended. While a question was put by the Court he confirmed that he saw the killer with his own eyes. No motive could be put forward by the defence against this witness, for falsely deposing against the convict.

22. Learned counsel for the convict/appellant vehemently argued that the learned trial court has committed error in holding guilty and sentencing the convict on the basis of testimony of P.W.9 alone. This argument of the defence counsel is not tenable, because it is settled law that conviction can be made on the basis of testimony of a single witness, if the Court finds the testimony reliable.

23. In the case law of Gulam Sarbar Vs. State of Bihar (supra) the Hon'ble Apex Court has held as under:-

"14. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in Probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eye witness, if the same inspires confidence. (Vide: *Vadivelu Thevar & Anr. v. State of Madras*; AIR 1957 SC 614; *Kunju @ Balachandran v. State of Tamil Nadu*, AIR 2008 SC 1381; *Bipin Kumar Mondal v. State of West Bengal* AIR 2010 SC 3638; *Mahesh & Anr. v. State of Madhya Pradesh* (2011) 9 SCC 626; *Prithipal Singh & Ors. v. State of Punjab & Anr.*, (2012) 1 SCC 10; and *Kishan Chand v. State of Haryana* JT 2013(1) SC 222)."

24. Section 134 of the Indian Evidence Act, 1872 (in short Evidence Act) lays down that " No particular number of witnesses shall in any case be required for the proof of any fact". It is the quality of the evidence that matters and not the quantity. If the evidence of a single witness is cogent with ring of truth and the Court considers that reliable and trustworthy then conviction can be made on the basis of testimony of that witness alone.

25. Learned counsel for the convict/appellant further argued that there was no motive to commit the crime for the convict/appellant. This argument of the learned counsel is also feeble because if direct evidence is there then motive loses its importance because nobody can peep into the mind of a miscreant to know for what purpose he/she has committed the offence.

26. In the case of *State of Uttar Pradesh Vs. Kishanpal and others (2008) 16 Supreme Court Cases 73* the Hon'ble Apex Court held as under: -

"The motive may be considered as circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eye-witnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eye-witnesses is not convincing. In the same way, even if there may not be

an apparent motive but if the evidence of eye-witnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

27. Section 118 of the Evidence Act lays down that " all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body, of mind or any other cause of the same kind."

28. The learned counsel for convict/appellant argued that during the cross-examination the witness has stated that due to the blindness he is unable to identify the convict present in the dock, so the identification made by the witness during his examination in chief loses importance, but this argument of the defence does not carry any weight because the witness identified the convict in the jail during the test identification parade, thereafter in the Court during his examination-in-chief. The cross-examination of the witness was not made by the counsel of the convict on that date, thereafter the witness was called again after a gap of about four years. The witness on that day too, in his cross-examination told that he is unable to see due the blindness (as the observation made by the Court in the end of the statement shows). In spite of his inability to see the witness stressed that he correctly identified the convict during his previous statement made in the Court and also confirmed that he saw the killers of Syed Modi by his own eyes.

The testimony of P.W.9 is corroborated by the medical evidence. The P.W. 9 has stated that he saw two persons firing upon the

deceased. The panel of doctors who conducted the postmortem has reported as follows:-

"The body is of strong built and nutrition. Postmortem straining is present in the posterior aspect of the body. Rigor-mortis is present all over the body, bleeding present from mouth and nostrils, its direction is on the right as well as left side of face suggesting that the person was bleeding in lying position after sustaining injuries. Mud is adherent to the clothes and the body at several places suggesting that it could be a bit kachcha wet land where the body had been lying. The body is cold and is kept in ice slab as it was received from ice slab in our presence. The body bearing blood stained sports shirt, white sports nickers and one white underwear. There is no evidence of struggles on clothes. Buttons and respective wholes were intact in the shirt. There are eight holes in the shirt, six in the back portion and two in the front of the shirt. In the front one hole relates to the injury, but the second hole which is situated just adjacent to the first hole, is not related to any injury. A probable diagram of the injuries was also prepared.

The panel of doctors found the following ante-mortem injuries on the dead body :-

(1) Firearm wound of entry, 0.4 cm x 0.8 cm x cavity deep, slightly oval situated on the right side of chest, 11cm above right nipple 7cm medial from apex of axilla, 7cm below mid part of right collar bone. Abraded collar ring is present around wound margins. Blackning and tattooing present around the wound and around the corresponding hole of the shirt. Margins inverted, blood

is adherent to the margins of the wound. The wound is directly corresponding to injury no.2.

(2) Firearm wound of exit 0.8cm x 0.8cm in size situated 22cm below C-7 spine on left side of back of chest, 16.5cm lateral from mid vertebral line. The bullet tract thus formed is directly obliquely downward, backward on the left side. The bullet has pierced through 3rd inter costal space, in front, with pleurae and then spleen. Margins of the wound are everted and blackening and tattooing is not present around the wound and corresponding hole in the shirt.

(3) Firearm wound of entry 1.5cm x 0.7cm x muscle deep, situated 12cm below C-7 spine on the back of chest, on right side in its upper part, 8cm away from mid-vertebral line. Abraded collar ring present around the wound. Margins are inverted, blackening and tattooing is present around the wound and also upon the corresponding hole of the shirt. This wound is directly communicating to injury no.4.

(4) Firearm wound of exit 0.7cm x 0.8cm in size, oval in shape, 4cm lateral to mid vertebral line, 15cm below C-7 spine on the back of chest on right side in its upper part, 5cm below and medial to injury no.3. Margins are everted and irregular. Blackening and tattooing is not present around this wound and corresponding hole of shirt. Bullet tract thus formed is full of haematoma and ecchymosis is present around the tissues.

(5) Firearm wound of entry 0.7cm x 0.7cm x cavity deep, rounded in shape, situated on right side of back of chest, in the lower region, 33cm below C-7 spine on right side,

12 cm away from the vertebral line, 21cm below and lateral to the wound no.4. Margins of the wound are inverted and collar abrasion is present around the margins. Blackening and tattooing is present around the wound and around the corresponding hole in the shirt. This wound is directly communicating to injury no.6.

(6) Firearm wound of exit 1.4cm x 0.5cm in size situated on right side of chest in front of mid lower portion, 19cm below anterior axillary fold 24cm anterior superior iliac spine. Margins are everted. Corresponding hole on the shirt is not present, suggesting the portion of cloth was away from the seat of injury at the time of sustaining it. Thus the direction of the bullet tract thus formed is anteriorly. Liver was found pierced by the bullet.

(7) Firearm wound of entry 0.7 cm x 0.5 cm x cavity deep, situated on the right side back of chest, with lower portion 38 cm below C-7 spine, 5 cm away from mid vertebral line, 8.5 cm below the medial from injury no.5. Collar abrasions present around the wound margins. Blackening and tattooing is not present around this wound and corresponding hole of shirt. Margins inverted. Direction of the wound is upward and Blackening and tattooing is not present around this wound & corresponding hole of shirt. The bullet tract thus formed has pierced the intestine, and bullet was found lodged in the anterior abdominal wall from where it was recovered.

8. Firearm wound of entry 0.7 cm x 0.7 cm in size x cavity deep, situated on left side back of chest within its lower portion, 33 cm below C-7 spine, 19 cm away from

mijdd verebral line and 11 cm below injury No.2. Collar abrasion present around the wound and corresponding hole on the shirt. Spleen and intestine was found pierced by the bullets, which got lodged near to the other bullet in the same area. Therefore, fatty tissues of epigastric were found ecchymosed."

29. This postmortem report has been proved as Exhibit Ka-3.

30. Learned counsel for the defence also argued that the site plan has not been proved and exhibited, so the place of occurrence cannot be deemed as proved. This argument of the defence is also of no importance because the place of occurrence has not been disputed by the defence during the trial and no such defence was put forward by the convict/appellant even in his statement recorded under Section 313 of Cr.P.C.

31. In the statement under Section 313 of Cr.P.C. the convict/appellant has accepted in the answer of question No.11 that P.W. 9 Prem Chandra Yadav had identified him correctly. In the answer of question No.6 this witness has answered that he was not at the spot and he did not dispute the place of occurrence. Thus to sum up in the light of above analysis it is proved that the trial court has committed no error in relying upon the testimony of P.W. 9 supported with medical testimony and the testimony of formal witnesses for holding the convict guilty of killing the deceased Syed Modi.

32. Now comes for consideration the conviction of the convict/appellant under Section 27 of the Arms Act. Learned counsel for the convict/appellant submitted that the recovery of the

alleged fire arm was not made at the pointing out of the convict/appellant, but it was allegedly made at the pointing out of co-accused Balai Singh (now dead). Therefore the conviction of the convict/appellant cannot be made on the basis of that evidence. The evidence available on record shows that co-accused Balai Singh who died during the trial made disclosure statement Exhibit Ka-10 in the presence of independent witness that the pistol used in the murder of Syed Modi alongwith cartridges given to him by Bhagwati Singh, he might get recovered that pistol alongwith cartridges, hidden under earth under a chhapri in a grove of Mango near Purwa of Bhagat Singh. He can point out that. This disclosure statement has also been proved by an independent witness Kishore Chaturvedi, Senior Clerk Welfare Section DRM(P) North East Railway, Lucknow. The recovery memo of the concerned pistol has also been proved by independent witness Kishore Chaturvedi as well as P.W.26 Sri B.L.P. Azad retired Superintendent of Police (CBI). Hence there is no error and discrepancy in the conclusion reached by the trial court in this regard also.

33. Thus to sum up the evidence available on record establishes that the deceased Syed Modi was killed by firing made by convict/appellant alongwith one another accused by using fire arm in contravention of Section 5 of the Arms Act, which is punishable under Section 27 of the Arms Act. Hence, the conviction and sentence of the convict/appellant awarded by the trial court punishable under Section 302/34 of I.P.C. and under Section 27 of the Arms Act is hereby confirmed and upheld.

34. The appeal is *dismissed* accordingly.

35. The appellant is stated to be in jail. He shall serve out the sentence awarded by the trial court.

36. Office is directed to send a copy of this judgement alongwith the lower court record to trial Court concerned for necessary information and compliance forthwith.

(Mrs. Saroj Yadav, J.) (Ramesh Sinha, J.)

Order Date :- 29.06.2022/A.K.Singh