
Girish Gupta and Another Vs State

Criminal Appeal No. 1752 of 1982

Court: Allahabad High Court

Date of Decision: Oct. 12, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 313, 374(2)#Penal Code, 1860 (IPC)
â€” Section 302, 34, 376, 506

Citation: (2013) 1 ALJ 742 : (2013) CriLJ 983

Hon'ble Judges: Vinod Prasad, J; Surendra Kumar, J

Bench: Division Bench

Advocate: Satish Trivedi, Navin Sinha, Ajay Kumar Pandey, Manish Tiwary, A.K. Awasthi and
S.B. Singh Amicus Curiae, for the Appellant;

Final Decision: Dismissed

Judgement

Surendra Kumar, J.

Heard Sri. S.B. Singh, learned amicus curiae and Sri. Satish Trivedi learned Senior Counsel assisted by Sri. Ajay

Kumar Pandey, Sri. Manish Tiwary, learned counsel for the appellant Ashok and rest of the two appellants and Smt. Raj Laxmi
Sinha, learned

AGA for the respondent State. The appellant Girish Gupta son of Raja Ram and his nephew Virendra Gupta son of Rameshwar
Dayal, have

preferred criminal appeal No. 1752 of 1982 and appellant Ashok alias Chhuttoo son of Damodar has preferred criminal appeal No.
1719 of 1982

u/s 374(2) of the Code of Criminal Procedure, 1973 against judgment and order dated 19.7.1982 passed by IV Additional Sessions
Judge,

Bareilly, in Session Trial No. 306 of 1981 State v. Girish Gupta and another and Session Trial No. 324 of 1981 State v. Ashok alias
Chhuttoo,

u/s 302 read with Section 34 IPC, Police Station Qila, District Bareilly, whereby the appellant Girish Gupta has been convicted u/s
302 IPC

whereas appellants Virendra Gupta and Ashok alias Chhuttoo have been convicted u/s 302 read with Section 34 IPC and all of
them have been

sentenced to undergo imprisonment for life.

2. The unfolded background facts giving rise to these appeals as are discernible from the written report (Ext. Ka-2), Chik FIR (Ext. Ka-14) and

deposition of fact witnesses during session trials are that the deceased Jagdish Prasad aged about 55 years, Tara Chand and Mukat Prasad

(Agarwal) first informant as well as PW-2 are real brothers being sons of Ram Swaroop. The deceased Jagdish Prasad was the eldest and Mukat

Prasad (Agarwal) first informant PW-2 was the youngest brother. The first informant Mukat Prasad (Agarwal) PW-2 was a clerk of Sri. Uma

Shanker Agarwal, Advocate in sales tax. PW-2 used to work in his office since 9:00 a.m. to 10:00 a.m. and thereafter from 1:00 p.m. to 3:00

p.m. PW-2 had also factory of plastic work etc. in Mohalla Garhaiya. The deceased Jagdish Prasad was also one of the partners in the said

factory. The wife of the deceased Jagdish Prasad had left him about twenty years ago prior to the present incident. The deceased Jagdish Prasad

used to remain in the said factory very often. Tara Chand used to reside at Bharat Gali. The co-accused Virendra Gupta resided at Patwa Gali

which was adjacent to Mohalla Bharat Gali. The accused persons Girish Gupta and his nephew Virendra Gupta were resident of Patwa Gali which

was adjacent to Mohalla Bharat Gali whereas the accused Ashok alias Chhuttoo and the first informant PW-2 used to reside at Bharat Gali. The

accused Ashok alias Chhuttoo was brother-in-law (equal status) Saddhu of Tara Chand. Tara Chand had kept sister-in-law of the accused Ashok

alias Chhuttoo after the death of his first wife and the accused Ashok alias Chhuttoo used to oppose the meeting of his sister-in-law with Tara

Chand which led to the enmity between them. On 4.3.1981, nine days prior to the present incident, the accused Ashok alias Chhuttoo threatened

Tara Chand with life regarding which Tara Chand sent a telegram to the Circle Officer, City. Besides this, the accused Ashok alias Chhuttoo was

friend of the main accused Girish Gupta.

3. The deceased Jagdish Prasad was a social worker. On 27.2.1981, the accused Virendra Gupta and his companion (non-appellant) had

committed rape on Km. Madhu Sharma daughter of Master Har Swaroop Sharma and the first information report of the rape case was not

registered by the police. The deceased being social worker took the matter of lodging of the first information report of the rape case and ran pillar

to post to get the first information report of the rape case lodged and he also helped father of the victim girl in getting the first information report

lodged on 12.3.1981. Thus the first information report of the rape case was lodged on 12.3.1981, the deceased played active role and helped the

family members of the victim girl in lodging thereof.

4. Since the deceased actively participated in the act of lodging the first information report of the rape case and pursued the matter of rape, which

was disliked by the accused Girish Gupta and his nephew Virendra Gupta. The incident of the rape had occurred fifteen days prior to the murder

of the deceased and the first information report of the rape case was lodged on 12.3.1981 i.e. previous day of murder of the deceased. The

deceased Jagdish Prasad was threatened with life by the accused Girish Gupta and his three companions on 7.3.1981 around 12:00 noon who

came at the factory of the deceased being armed with hockey sticks and this fact was told by the deceased to his brother Mukat Prasad (Agrawal)

when the latter came to the factory on 7.3.1981. The first information report regarding the life threat was lodged at Police Station Qila, on

7.3.1981 itself which is Ext. Ka-10. The police submitted charge sheet in rape case on 12.4.1981 against the accused Virendra Gupta and others

named in the FIR. On 13.3.1981 all the accused (appellants herein) came to the deceased Jagdish Prasad warning him to take back or withdraw

the rape case otherwise face its consequences. The deceased Jagdish Prasad did not succumb to the pressure or threat of the accused persons.

Thereafter, on the same day that is 13.3.1981 at 6:00 p.m., Tara Chand, brother of the deceased, brought meals for his brother Jagdish Prasad at

the factory and the deceased Jagdish Prasad took his meals. Thereafter Tara Chand, brother of the deceased left for his home while the first

informant PW-2 along with the deceased Jagdish Prasad came out of the factory for lodging the report against the accused persons regarding the

incident of threat. The deceased Jagdish Prasad asked his brother Tara Chand to take betel for their mother. The deceased Jagdish Prasad

reached the betel shop of Babu Ram, while the first informant Mukat Prasad (Agrawal) and Tara Chand stood in a nearby lane. Hari Om PW-1

was coming from side of Bara Bazar. In the meantime, the accused Girish Gupta armed with revolver/Tamancha, Virendra Gupta and Ashok alias

Chhuttoo armed with knives came from side of Bara Bazar and accosted the deceased Jagdish Prasad warning to teach him a lesson for taking

interest in the rape case and getting the first information report of the rape case lodged against them.

5. Seeing the aggressive and violent postures of the appellants, the deceased Jagdish Prasad tried to flee towards the south, just then the accused

Girish Gupta fired a shot from his revolver/Tamancha which hit on the back of head of the deceased Jagdish Prasad, who fell down after sustaining

firearm injury in the head. The first informant PW-2 Mukat Prasad (Agrawal) and Hari Om PW-1 raised alarm chasing the accused persons who

could not be apprehended as they had fled away towards Mohalla Garhaiya. Mukat Prasad (Agrawal), Hari Om and Tara Chand reached the

scene of occurrence. Jagdish Prasad in critical condition was lying, blood was oozing out from his injury and blood had also fallen at that place.

Jagdish Prasad was taken to the hospital by his brother Tara Chand on a rickshaw. The first informant Mukat Prasad (Agrawal) had reached Civil

Hospital, Bareilly after winding up the work of the factory where Jagdish Prasad was admitted in emergency ward on 13.3.1981 at 7:45 p.m.

Jagdish Prasad as per Bed Head Ticket Ext. Ka-11, was admitted in the emergency ward and entry regarding injury of the injured Jagdish Prasad

in the local register was made vide Ext. Ka-12 and the deceased Jagdish Prasad died in emergency ward on the same day namely on 13.3.1981 at

9:22 p.m.

6. Mukat Prasad (Agarwal) PW-2 who is real brother of the deceased, scribed the written report (Ext. Ka-2) of the incident of murder in the

Hospital itself and carried the same to the Police Station Qila where he handed it over at the Police Station Qila, District Bareilly. The first

information report of the incident of murder was lodged by PW-2 against these three accused persons (appellants herein) at Crime No. 142 of

1981, u/s 302 IPC on 13.3.1981 at 10:30 p.m. within three hours of the incident. The distance of the Police Station Qila from the place of the

incident was around one furlong. In the promptly lodged first information report, details of the incident, weapons used by the accused persons

were clearly mentioned by PW-2.

7. Head Muharrir, Mohd. Hanif PW-10 prepared the first information report Ext. Ka-14 on the basis of the written report Ext. Ka-2 in his hand

writing and under his signature and made entry thereof in G.D. vide Ext. Ka-15. He sent the first information report/special report of the incident

vide G.D. Rapat No. 4, Time 1:35 a.m. Ext. Ka-16 through Constable Jogendra Singh. Constable Jogendra Singh who was despatched to carry

the special report, came back at Police Station on 14.3.1981 at 7:10 a.m. and his arrival was entered in GD. Ext. Ka-17. Entries were made in

GD Ext. Ka-16 and Ext. Ka-17 by Manak Chand and Prem Chand respectively. PW-10 clearly denied that the first information report was

lodged ante timed.

8. S.I. Chandan Giri Goswami PW-6 who was posted as Sub Inspector at Police Station Kotwali, Bareilly received death memo regarding death

of the deceased Jagdish Prasad on 13.3.1981 at 11:00 p.m. The death memo was brought at the Police Station from District Hospital, Bareilly by

Nanhey Lal Jamadar. PW-6 left Police Station, after making entry of the death memo, by making entry of his departure in GD. Ext. Ka-6 for

conducting inquest on the dead body. Since sufficient light was not available at night, PW-6 conducted inquest on the dead body on 14.3.1981 at

9:00 a.m. and prepared inquest report Ext. Ka-7 in the presence of the reputed five Panches. He also prepared other papers namely Chalannash

and Photonash (Ext. Ka-8 and Ext. Ka-9) and thereafter sealed the dead body in the piece of cloth and handed it over to the Constables Prabhu

Nath and Ramesh Chandra to carry the dead body for post-mortem examination.

9. The investigation of the murder case was entrusted to S.I. Sayeedul Hasan PW-11. The first information report of the incident was registered in

his presence and he recorded statements of the first informant, Mukat Prasad (Agarwal) and Mohd. Hanif at Police Station and then proceeded to

the place of the incident. PW-11 reached the place of the incident, collected blood stained earth (Ext. 11) and plain earth (Ext. 12) from there and

sealed in separate pots vide memo Ext. Ka-20. The Investigating Officer tried to apprehend the accused persons named in the first information

report but they could not be apprehended. He inspected the place of the incident at the pointing out of the witnesses including Hari Om PW-1 and

prepared site plan Ext, Ka-21. He arrested two accused persons Girish Gupta and Virendra Gupta on 15.3.1981 and admitted them at Police

Station vide G.D. entry Ext. Ka-22.

10. S.I. Sayeedul Hasan PW-11 during cross-examination clearly deposed that he did not know the accused Girish Gupta prior to this incident

and he was posted at Police Station only five to six months prior to the present incident. During investigation, it was learnt that two constables were

passing through the place of the incident at the relevant time. Thereafter he reached at the scene of the occurrence within one and half hour of the

lodging of the first information report. The Investigating Officer candidly deposed that the fact of chasing of the accused persons by two policemen

was itself mentioned in the first information report but they succeeded in fleeing away.

11. Rest part of the investigation was performed by Police Inspector Bhoop Singh PW-12 w.e.f. 24.3.1981 by the order of the Circle Officer

City. Second Investigating Officer PW-12 recorded statements of Afzal Ahmad PW-3 on 10.5.1981, Har Swaroop Sharma on 28.5.1981 and

other witnesses on the subsequent dates. PW-12 after completing investigation laid charge sheet (Ext. Ka-23) against the accused persons.

12. Dr. Ravi Mehra PW-4 was posted at District Hospital, Bareilly, on 14.3.1981. He performed post mortem examination on the dead body of

Jagdish Prasad at 12:15 p.m. on that date. According to him, the deceased was about 55 years old and the body was well built and rigor mortis

was present on the upper and lower limbs. He found the following ante mortem injury on the body of the deceased:--

A gun shot lacerated wound 3 cm. x 2 cm. x brain cavity deep on the left side back of the head, 8 cm. behind the left ear. Margins inverted.

Blackening present.

Upon internal examination of the body of the deceased, he found the left temporal and occipital bones to be fractured under the injury, membranes

of the brain were lacerated with clotted blood. Six pieces of pellets were removed from the brain cavity. The clotted blood was present therein.

The death of the deceased was due to shock and haemorrhage as a result of ante mortem injury. The doctor has proved post mortem examination

report Ext. Ka-3.

13. Dr. M.C. Sharma PW-8 who was posted at District Hospital on 13.3.1981 medically examined Jagdish Prasad between 8:00 p.m. to 9:00

p.m. His condition was very critical and he was unconscious and pulse beats were irregular, blood pressure could not be recorded and he was

hardly breathing. There was big wound in his head with bleeding and his condition was continued to be critical till 9:15 p.m. He proved description

on the bed head ticket in his hand writing which is Ext. Ka-12.

14. Constable Parmanand PW-13 proved Chik FIR of the rape case registered at Crime No. 85 of 1981 vide Ext. Ka-24. Entry in G.D.

regarding rape case vide Ext. Ka-25 was also proved. According to the evidence of PW-13, rape case was registered at Crime No. 85 of 1981

giving rise to Session Trial No. 288 of 1982 State v. Virendra Gupta and others u/s 376 IPC which was then proceeding in the Court of III

Additional Sessions Judge, Bareilly.

15. The accused Girish Gupta was charged u/s 302 IPC and remaining two accused persons Virendra Gupta and Ashok alias Chhuttoo were

charged u/s 302 read with Section 34 IPC. Charges were read over and explained to the accused persons. They denied the charges and pleaded

not guilty and claimed to be tried on the said charges.

16. The prosecution in order to discharge the burden placed upon it and also to prove the charges levelled against the accused persons, examined

Hari Om PW-1, Mukat Prasad (Agarwal) first informant PW-2, Afzal Ahmad PW-3 and Babu Ram PW-9 as eyewitnesses. Formal evidences of

Dr. Ravi Mehra PW-4 to prove post mortem report of the deceased, Dr. Rajiv Agarwal PW-7 and Dr. M.C. Sharma PW-8 to prove critical

condition of the deceased Jagdish Prasad and his admission in the emergency ward at District Hospital Bareilly and his death due to injury, were

examined.

17. The prosecution also examined Constable Manak Chand PW-5 who proved that on 7.3.1981 at 6:32 p.m., Jagdish Prasad gave a written

report Ext. Ka-10 at the Police Station and the same was entered in G.D. vide Ext. Ka-5. The prosecution also examined S.I. Chandan Singh

Goswami PW-6 who conducted inquest and prepared inquest report Ext. Ka-7 and other papers and sent the dead body for post mortem in a

sealed condition. Head Constable Mohd. Hanif PW-10 was also examined to prove Chik FIR Ext. Ka-14 which was prepared on the basis of the

written report (Ext. Ka-2) of PW-2 and G.D. entry of the present incident was made vide Ext. Ka-15. He also proved G.D. entry Ext. Ka-16

whereby the special report of the incident was sent to the officer concerned. The prosecution further examined S.I. Sayeedul Hasan, the first

Investigating Officer PW-11 and Inspector Bhoop Singh (second Investigating Officer) PW-12 who proved the evidences collected during

investigation. The statements of the witnesses u/s 161 Cr. P.C. were recorded by the Investigating Officers promptly without any delay and

investigation was also conducted promptly, effectively and impartially. Constable Parmanand PW-13 was also examined by the prosecution to

prove Chik FIR and G.D. entry of the rape case.

18. In the statement recorded u/s 313 Cr. P.C., the accused persons denied the prosecution story showing their ignorance and pleaded their false

implication. The accused Girish Gupta also stated that he made complaint against Phulauriya, Ex. Circle Officer City, who was transferred on his

complaint and police of Bareilly was displeased with him (accused). Since the deceased Jagdish Prasad and Mukat Prasad (Agarwal) were

leaders, and they were not on talking terms with him (accused) hence they in collusion with the police, falsely implicated him.

19. The accused Virendra Gupta stated that the accused Girish Gupta is his uncle. He has been falsely implicated due to his relationship with Girish

Gupta.

20. The accused Ashok alias Chhuttoo also stated that he has been falsely implicated because Tara Chand real brother of the deceased had kept

his sister-in-law. According to Ashok alias Chhuttoo, he had gone to Mathura and other places along with his children before the incident and on

returning to his house when he came to know about attachment of the property, he surrendered in the Court. No defence evidence was adduced

on behalf of the accused persons.

21. Before arriving at any conclusion, perusal of the evidences of eye-witness is necessary. As stated hereinabove, the prosecution examined Hari

Om PW-1, Mukat Prasad (Agarwal) PW-2, Afzal Ahmad PW-3, Babu Ram, betel vendor PW-9 in ocular testimonies.

22. The topography of the place of the incident is Bara Bazar road which runs from the east to the west from Qutub Khana to Qila. A road turns

towards Mohalla Garhaiya on the southern side from the aforesaid road which runs from the north to the south. The shop of betel vendor Babu

Ram PW-9 is situated towards the east of the said passage. An electric pole is situated at turn of the passage which goes from Bara Bazar to

Mohalla Garhaiya. An electric pole is also there in front of the factory of the first informant Mukat Prasad (Agarwal) on the north eastern point.

One more electric pole exists about 20 or 25 paces towards the southern side of the shop of Babu Ram betel vendor. There were electric tube

lights on all these three electric poles which were burning at the time of the occurrence. Electric lights were also burning at the shop of Dukh Haran

Lal and Babu Ram and electric bulb was also burning on the eastern door of the factory of the first informant Mukat Prasad (Agarwal). Mohalla

Sahukara is situated about two furlongs away from the place of the Occurrence. Km. Madhu Sharma used to reside in Mohalla Garhaiya where

factory of the first informant was situated.

23. According to the testimony of Hari Om PW-1, he being clerk/Munim at Firm Kumar Traders, Siyaganj, Bareilly, owned by Lala Om Prakash,

used to visit shops at Bareilly Bazar for taking orders for supplying Ghee, Oil, Sugar and Pulses and also for collecting money. He knew since

previously all the three accused persons who were resident of Patwa Gali where this witness had some relatives. The accused Girish Gupta and

Virendra Gupta were resident of Mohalla Patwa Gali whereas third accused was resident of Mohalla Bharat Gali and both Mohallas were

adjoining. Since one of the relatives of the witness also resided in the same Mohalla Patwa Gali, he was very much familiar to the accused persons

prior to this incident. Because of being clerk, PW-1 also knew the deceased and his both brothers Mukat Prasad (Agarwal) and Tara Chand who

were resident of Mohalla Bharat Gali. Thus PW-1 was familiar since before with brothers of the deceased as well as the accused persons. On the

day of the incident i.e. 13.3.1981 around 7:30 p.m., the witness was going to the shop of Lala Dukh Haran situated in Mohalla Garhaiya from

Bara Bazar. When the witness reached five to seven steps inside Gali/street from Bara Bazar, the accused Jagdish Gupta armed with Tamancha,

Virendera Gupta and Ashok alias Chhuttoo armed with knives came from the side of Bara Bazar and the deceased Jagdish Prasad was standing at

the betel shop of Babu Ram PW-9 just in front of this PW-1. Mukat Prasad (Agarwal) PW-2 and Tara Chand brother of Mukat Prasad

(Agarwal) were also standing towards the west of the betel shop and when the accused Girish Gupta addressing to the deceased Jagdish Prasad

uttered that the deceased Jagdish Prasad be killed as he was taking interest and doing Pairvi in the case of recently committed rape, then Girish

Gupta immediately fired shot with his Tamancha at him which hit back portion of the head of the deceased, as a result of hit of fire shot, the

deceased Jagdish Prasad fell down profusely bleeding. PW-1 raised cries which attracted these witnesses when the accused persons ran away

who could not be apprehended despite being chased. The deceased Jagdish Prasad who was lying in critical condition was taken by his brother

Tara Chand on the rickshaw to the Hospital for treatment. This witness further deposed that there was light of electricity inside Gali/street and also

on the electric poles erected in the street. The electric light was also available at the betel shop of Babu Ram. At the factory of the deceased

Jagdish Prasad, electric bulbs were spreading light. The deceased came in touch with this PW-1 in the year 1974-75 when the deceased used to

run biscuits manufacturing unit. Mukat Prasad (Agarwal) PW-2 became familiar to this PW-1 as Mukat Prasad (Agarwal) was clerk of Sri. Uma

Shanker Agarwal who was an Advocate in sales tax. In this way, PW-1 was very well known to Mukat Prasad (Agarwal) PW-2. This PW-1

clearly deposed that shops of Babu Ram and Dukh Haran Lai and other shops were opened at the time of the incident and all the shopkeepers had

rushed to the place of the incident. Two police constables were also present at the time of the incident. All the persons including the witness ran

after the accused persons. When Jagdish Prasad was hit by the fire shot, he was standing but he fell down on the road immediately after being hit

by the fire shot. The shop of Babu Ram PW-9 was 10-15 steps away from the main entrance of the factory of the deceased Jagdish Prasad.

Mukat Prasad (Agarwal) PW-2 and Tara Chand were standing 15-20 steps away from turning point of the street.

24. Hari Om PW-1 had denied the defence suggestion that he was not present at the spot at the time of the incident and he had not witnessed the

incident and deposed in favour of the prosecution on account of being partner of the deceased Jagdish Prasad. Thus nothing could be elicited from

cross-examination of this PW-1 so as to create any dent in the prosecution story or make the story suspicious.

25. The evidence of Hari Om PW-1 is fully supported by the site plan Ext. Ka-21 of the place of the incident. As per site plan Ext. Ka-21, main

entrance of the factory/Karkhana was just in front of the betel shop of Babu Ram PW-9 and the deceased after coming out of the factory was

standing at point "A" which was just near the betel shop and all the accused persons with their respective weapons were standing at point "B" just

at a distance of three steps from point "A". The accused Girish Gupta fired shot from a distance of three steps at the deceased Jagdish Prasad,

who sustained firearm injury on the back of head. At point "C" of the site plan, the first informant Mukat Prasad (Agarwal) and Tara Chand were

standing which was nine steps away from the place the deceased Jagdish Prasad was standing. This PW-1 at the relevant time was standing at

point "D" of the site plan which was ten steps away from the place of the deceased Jagdish Prasad. There was sufficient light of electricity on the

shops and electric poles of the street. Blood was found by the Investigating Officer as per the site plan on point "A" the place of the incident.

26. Mukat Prasad (Agarwal) PW-2 is brother of the deceased Jagdish Prasad and is an eyewitness of the incident. He repeated the prosecution

story in his examination-in-chief as narrated by him in the written FIR Ext. Ka-2. His evidence is that he was clerk of Sri. Uma Shanker Agarwal,

Advocate, dealing with sales tax matters where he used to work for certain period. He also had partnership with his brother deceased Jagdish

Prasad in plastic and crockery decoration factory situated at Mohalla Garhaiya. The wife of his deceased brother Jagdish Prasad had left her

Sasural 19-20 years ago and started living at her parents' place. PW-2 had two other brothers namely Jagdish Prasad and Tara Chand and they

were residing in Mohalla Bharat Gali. At that time the accused Girish Gupta and his nephew Virendra Gupta used to reside at Patwa Gali and third

accused Ashok alias Chhuttoo used to reside in Bharat Gali. Both localities Patwa Gali and Bharat Gali were adjoining. He knew the accused

persons prior to this incident. PW-2 clearly admitted in his evidence that the first wife of his brother Tara Chand was mentally retarded and

thereafter she died. Tara Chand after death of his first wife had kept real sister-in-law of the accused Ashok alias Chhuttoo. The accused Ashok

alias Chhuttoo was annoyed to Tara Chand because he (Tara Chand) was living with Ram Kishori sister-in-law of the accused Ashok alias

Chhuttoo, which fact caused enmity between Tara Chand, brother of the deceased Jagdish Prasad and the accused Ashok alias Chhuttoo.

27. According to Mukat Prasad (Agarwal) PW-2, it was on 4.3.1981 when the accused Ashok alias Chhuttoo threatened to kill Tara Chand, in

regard to which Tara Chand sent a telegram to Dy. Superintendent of Police, on 4.3.1981. Certified copy of the telegram is Ext. 1. PW-2 also

admitted that the accused Ashok alias Chhuttoo was previously friend of the co-accused Girish Gupta. The deceased Jagdish Prasad was a social

worker. The accused Virendra Gupta along with his companions had raped Km. Mathu Sharma, daughter of Master Har Swaroop Sharma on

27.2.1981 and when the first information report of the rape case could not be lodged, the deceased being social worker took up the matter and

ran from pillar to post then the first information report of the incident of the rape was lodged on 12.3.1981. This act of the deceased Jagdish

Prasad was disliked by the accused persons.

28. According to the testimony of Mukat Prasad (Agarwal) PW-2, on 7.3.1981 around 12:00 noon when the deceased Jagdish Prasad was at his

factory, the accused Girish Gupta along with three companions each armed with hockey/stick came at the gate of that factory situated at Garhaiya.

The accused Girish Gupta alone entered inside the factory when he was intercepted by the mechanic Afzal Ahmad, the accused Girish Gupta

asked about the deceased Jagdish Prasad and Mukat Prasad (Agarwal) PW-2. When Afzal Ahmad told that both of them had gone to Kutchery,

the accused Girish Gupta uttered that he would come again in the evening and then he would shoot the deceased Jagdish Prasad dead as he was

provoking the father of the rape victim. The written report of the incident dated 7.3.1981 Ext. Ka-10 was given by the deceased Jagdish Prasad at

the Police Station Qila on 7.3.1981 itself. Carbon copy of Ext. Ka-10 is Ext. Ka-4. On the basis of the written report Ext. Ka-10, the incident

was reported as non-cognizable report No. 131 dated 7.3.1981 u/s 506, IPC. The non-cognizable report is Ext. Ka-5.

29. Further testimony of Mukat Prasad (Agarwal) PW-2 is that as a result of the effective persuasion of the rape case by the deceased Jagdish

Prasad, the first information report of the rape case was registered against the accused Virendra Gupta and others at the Police Station concerned

on 12.3.1981 namely one day prior to the murder of the deceased Jagdish Prasad. All the named accused persons including the appellant Virendra

Gupta were arrested in the rape case. On 13.3.1981 around 5:00 p.m., the accused persons came to the deceased Jagdish Prasad to compel him

to withdraw the rape case otherwise face consequences including danger to his life. PW-2 just at 5:00 p.m. asked his brother deceased Jagdish

Prasad to give a report at the Police Station, the deceased Jagdish Prasad told that the report would be lodged after closing the factory. It was on

13.3.1981 around 6:30 p.m. when Tara Chand, younger brother of the deceased had brought meal for the deceased Jagdish Prasad at the said

factory which was taken by the deceased. On the same day i.e. 13.3.1981 on 7:30 p.m. when Tara Chand was to go back to his house, the

deceased asked him to wait for a minute. The deceased Jagdish Prasad and PW-2 came out of the gate of the factory for lodging report of the

threat incident which took place on the same day at 5:00 p.m. by which the deceased Jagdish Prasad was compelled to withdraw the rape case

and when the deceased was going to betel shop of Babu Ram to bring betel for his mother, the accused Girish Gupta armed with Tamancha,

Virendra Gupta and Ashok alias Chhuttoo armed with knives came from side of Bara Bazar and asked the deceased to stop. As soon as the

deceased saw towards the accused persons, he tried to run away to save his life but the accused Girish Gupta fired shot from his Tamancha/pistol

at the deceased Jagdish Prasad which hit on the back portion of the head of the deceased Jagdish Prasad. The witnesses Tara Chand, Hari Om

PW-1, PW-2 and others tried to chase the accused persons but they successfully ran away from the place of the occurrence towards Garhaiya.

The deceased Jagdish Prasad in critical condition was taken by his brother Tara Chand on rickshaw to the hospital where he was admitted. An

attempt has been made to castigate the character of the deceased suggesting PW-2 that the deceased was fond of sodomy and was in company of

many boys.

30. Mukat Prasad (Agarwal) PW-2 during cross-examination made it clear that when he and other witness were chasing the accused persons, two

policemen also appeared there. The policemen also tried to unsuccessfully chase the accused persons. The District Hospital was 3-4 furlongs away

from the place of the incident. It is clear from testimony of PW-2 that the accused Girish Gupta fired at the deceased when the deceased was just

in front of the betel shop of Babu Ram and shot was fired from a distance of about two steps. PW-2 had deposed regarding the accused Ashok

alias Chhuttoo that Ram Kishori, elder sister-in-law of the accused Ashok alias Chhuttoo was kept by Tara Chand, who is real brother of the

deceased Jagdish Prasad, several years prior to this incident and Ram Kishori started living separate from Tara Chand for about one year.

31. Afzal Ahmad PW-3 was a mechanic at the aforesaid factory of the deceased Jagdish Prasad which was in partnership with PW-2. He has

supported the fact that on 7.3.1981 around 12:00 noon, the accused Girish Gupta along with three boys armed with hockeys came at the gate of

the factory of the deceased and asked about him and they threatened to kill him as the deceased was abetting father of the victim of rape for

registering the rape case against Virendra Gupta and others.

32. Babu Ram PW-9 is owner of the betel shop, in front of which, the deceased was shot dead by the accused Girish Gupta when two accused

persons Virendra Gupta and Ashok alias Chhuttoo armed with knives were present there. PW-9 completely supported the prosecution version

and stated that when he heard the fire shot on 13.3.1981 around 7:15 p.m. or 7:30 p.m. he was present at his betel shop and immediately saw that

Jagdish Prasad was bleeding from his head, blood was trickling down on the road and these three accused persons were running towards the

south immediately after the incident. PW-9 knew since previously the deceased Jagdish Prasad who had a factory in front of his shop.

33. In this case, all the aforesaid eye-witnesses testified the incident of murder and supported the prosecution story as narrated in the written report

Ext. Ka-2 given by Mukat Prasad (Agarwal) PW-2.

34. Before analyzing and reaching any conclusion, it is pertinent to deal with the contentions raised by the learned counsel for the rival parties. At

the very outset of the argument, learned AGA submitted that the appellant Virendra Gupta son of Rameshwar Dayal and others have been

convicted and sentenced in the rape case by the Court of Session. The first information report of the rape case was lodged by Master Har

Swaroop Sharma, father of the victim girl Km. Madhu Sharma against the appellant Virendra Kumar (Gupta), Sudhir Gupta, Krishna Kant alias

Pappu and Umesh Chand on 12.3.1981 at 10:25 p.m. at Crime No. 85 of 1981 u/s 376 IPC after fifteen days of the rape incident which took

place on 27.2.1981. Chik FIR of the rape case and G.D. entry thereof are Ext. Ka-24 and Ext. Ka-25 respectively. The fact that the accused

Virendra Gupta and others have been convicted and sentenced in the rape case has also been admitted by the learned counsel for the appellants. It

is thus evident that the appellant Virendra Gupta is a previous convict. The rape case was the genesis of the present murder case. The murder of

Jagdish Prasad was committed by the accused Girish Gupta by firing a shot from Pistol/Tamancha at the deceased Jagdish Prasad.

35. The first contention of the learned counsel for the appellant is that the first informant Mukat Prasad (Agarwal) PW-2 is real brother of the

deceased Jagdish Prasad. Afzal Ahmad PW-3 was a mechanic at the said factory of the deceased as well as PW-2. They, being relative and

interested witnesses, are untruthful and unreliable and it is not safe to act upon their testimonies.

36. Learned AGA per contra contended that in the case of related or interested and, partisan witness, law requires cautious, careful and deep

scrutiny of the testimonies of such witnesses and if testimonies are found to be truthful, creditworthy and reliable, the same can be acted upon by

the Court. We agree with the contentions of the learned AGA on this point.

37. After careful and deep scrutiny of evidences of eye-witnesses and also considering testimonies of Hari Om PW-1 and betel shop owner Babu

Ram PW-9, we find that the testimonies of the eye-witnesses are truthful and reliable. PW-1 and PW-9 are independent witnesses having no

interest or concern in this matter. Testimonies of the independent witnesses also inspire confidence. The presence of the eye-witnesses namely Hari

Om PW-1, Mukut Prasad (Agarwal) PW-2, Babu Ram PW-9 on the date, time and place of the incident is established and proved from all angles

considering the facts and circumstances of the case.

38. On the point of interested witnesses, the Hon"ble Supreme Court in State of U.P. Vs. Jagdeo and Others, observed that only on the ground of

interested or related witnesses, their evidence cannot be discarded. Most of the times eye witnesses happen to be family members or close

associates because unless a crime is committed near a public place, strangers are not likely to be present at the time of occurrence.

39. In *Mst. Dalbir Kaur and Others Vs. State of Punjab*, following observations were made:--

(i) Interested witness:--Relatives who are natural witnesses are not interested witnesses and their testimony can be relied upon.

The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused is somehow or the other is

convicted either because he had some animus with the accused or for some other reason. In the reported case the incident took place at mid night

inside the house, the only natural witnesses who could be present to see the assault were the persons present in the house at that time. No outsider

can be expected to have come at that time because the attack was sudden. Moreover a close relative who is a very natural witness cannot be

regarded as an interested witness.

40. In *Gyasuddin Khan @ Md. Gyasuddin Khan Vs. The State of Bihar*, it was observed by the Hon"ble Apex Court that when accused caused

death by firing gun shots, it is not reasonable to expect from the eye witnesses that the scared eye witnesses would be able to give a meticulous and

precise account of details of shots that landed on the deceased.

41. Hon"ble Supreme Court in *Waman and Others Vs. State of Maharashtra*, has observed in paragraph No. 9 which reads as follows:

In *Balraje @ Trimbak Vs. State of Maharashtra*, this Court held that mere fact that the witnesses were related to the deceased cannot be a

ground to discard their evidence. It was further held that when the eye-witnesses are stated to be interested and inimically disposed towards the

accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or

otherwise of the evidence has to be weighed pragmatically and the Court would be required to analyse the evidence of related witnesses and those

witnesses who are inimically disposed toward the accused. After saying so, this Court held that if after careful analysis and scrutiny of their

evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

42. It has been further observed in *Waman and Others Vs. State of Maharashtra*, that relationship cannot be a factor to affect the credibility of a

witness. The evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence. The plea relating to

relatives" evidence remains without any substance in case the evidence has credence and it can be relied upon. In such a case the defence has to

lay foundation if plea of false implication is made and the Court has to analyse evidence of related witnesses carefully to find out whether it is

cogent and credible. The same view has been reiterated in *State of U.P. Vs. Naresh and Others*, .

43. Hon^{ble} Supreme Court in the case of Waman and Others Vs. State of Maharashtra, has reiterated that if evidence of eye-witnesses is found

to be trustworthy and corroborated, certain contradictions minor in nature and not related to major overt act attributed to each accused would not

discard their testimony more so when all prosecution witnesses, hailing from agricultural family and are villagers, cannot be expected to state minute

details in their earlier statements and before Court.

44. Hon^{ble} Supreme Court in the case of State of U.P. Vs. Paras Nath Singh and Others, held that there is no rule that even straight forward

evidence of relationship of the deceased needs corroboration for sustaining conviction. In absence of the circumstances showing the witnesses as

inclined to falsely involve the accused, their being related to the deceased is innocuous.

45. Hon^{ble} Supreme Court reiterated the same view in the case of State of Orissa Vs. Domana Majhi and Others, observing that there is no rule

either of law or prudence that family members of the deceased in a murder case are incompetent witnesses. There may be case where only family

members will be witnesses to the occurrence and their evidence is not rejected merely on the ground of interestedness.

46. Hon^{ble} Supreme Court in the case of State of Uttar Pradesh Vs. Sughar Singh and Others, also held that he being a partisan witness, his

testimony has to be viewed with great caution to what by itself cannot be sufficient ground to reject it unless the same is found to be untruthful by

reason of other infirmities. Close relation would be the last person to screen real culprits and falsely implicate the innocent persons and hence mere

fact of relationship, far from being foundation of the criticism of evidence is often a sure guarantee of truth.

47. Hon^{ble} Supreme Court in the case of Hari Obula Reddy and Others Vs. The State of Andhra Pradesh, held that the interested evidence is

not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting the sworn testimony, nor is it an

invariable rule that the interested evidence can never form the basis of conviction unless corroborated to material extent in material particulars by

independent witness. All that is necessary is that the evidence of the interested witness should be subjected to careful scrutiny and accepted with

caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable and it may, by itself is sufficient, in the

circumstances of the particular case, to base a conviction thereon. A witness may be called "interested" only when he or she derives some benefit

from the result of litigation in the decree in a civil case or in seeing an accused person punished as has been held in the case of State of Rajasthan

Vs. Smt. Kalki and Another, .

48. On considering the aforesaid decisions, we are of the view that the testimonies of the said eye-witness cannot be discarded and the incident is

fully supported by two independent eye-witnesses and is further supported by medical evidence. The contention of the learned counsel for the

appellants fails and is, accordingly, repelled.

49. Learned counsel for the appellants has further contended that several shopkeepers and passerby on the road were also present but they were

not examined by the prosecution.

50. In the case in hand, two independent witnesses PW-1 and PW-9 were examined by the prosecution and multiplicity of the witnesses regarding

the same fact was of no use. This contention of the learned counsel for the appellants also lacks merit and is rejected.

51. Learned counsel for the appellants has further contended that the first information report of the incident was lodged ante timed. This contention

of the learned counsel for the appellants is also not borne out from the evidence on record. The incident of murder occurred on 13.3.1981 at 7:30

p.m., the first information report thereof was lodged on 13.3.1981 at 10:30 p.m. against the three accused persons showing their specific role with

weapons held by them and used by them during commission of the incident. The deceased was in critical condition and he was admitted in the

emergency ward and succumbed to the injury on the same day at 9:22 p.m. in the hospital. Thereafter, the first information report by the first

informant PW-2 was lodged. There cannot be said to be any inordinate delay in lodging the first information report. Although there is no delay but

the delay, if any, is well explained by the eyewitnesses including the first informant Mukat Prasad (Agarwal) PW-2. The contention of the learned

counsel for the appellants regarding ante timing of the FIR is also rejected.

52. One more contention of the learned counsel for the appellants is that there was no motive for the accused persons to commit murder of the

deceased.

53. Learned AGA taking us through the evidences of both oral and documentary contended that the deceased Jagdish Prasad being social worker

ran from pillar to post for helping family member of the rape victim in lodging of the first information report. The incident of rape occurred on

27.2.1981 and after running from pillar to post, the first information report of rape case was lodged on 12.3.1981, namely, one day prior to the

said murder. Not only this, the deceased Jagdish Prasad was repeatedly threatened by the two appellants Girish Gupta and his nephew Virendra

Gupta and was compelled not to pursue the rape case and withdraw the same and when the deceased Jagdish Prasad did not succumb to their

request, he was done to death by them. The accused Girish Gupta fired shot from his Pistol/Tamancha at the deceased Jagdish Prasad who died

sustaining firearm injury on the back portion of his head. Injury proved fatal and the deceased had to pay price of his social duty by losing his life.

The accused Virendra Gupta armed with knife, along with his uncle Girish Gupta, was also present at the time of the incident and the deceased

was murdered at the behest of the accused Virendra Gupta. Since the accused Virendra Gupta was an accused in the rape case, he tried his best

through his uncle Girish Gupta to give threat to the deceased and also compelled him to withdraw the rape case. The victim of the rape case also

supported her rape theory in the Court of Session and the rape case ended in conviction of the accused Virendra Gupta and others named in the

first information report of the rape case. It is evident from evidence on record that two accused persons Girish Gupta and Virendra Gupta had very

strong motive to annihilate the deceased Jagdish Prasad and due to that motive, the deceased Jagdish Gupta was murdered by them.

54. Hon^{ble} Supreme Court in the case of Gosu Jairami Reddy and Another Vs. State of A.P., has recently observed in paragraph No. 13 that it

is settled by a series of decisions of the Apex Court that in cases based on eye-witness account of the incident proof or absence of a motive is not

of any significant consequence. If a motive is proved it supports the prosecution version. But existence or otherwise of a motive plays a significant

role in cases based on circumstantial evidence.

55. Hon^{ble} Supreme Court in the case of Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, had observed regarding motive that

proof of motive satisfies the judicial mind about the likelihood of the authorship but its absence only demands deeper forensic search and cannot

undo the effect of evidence otherwise sufficient. Motives of men are often subjective, submerged and unamenable to easy proof that Courts have

to go without clear evidence thereon if other clinching evidence exists.

56. Hon^{ble} Supreme Court in the case of Atmaram and Others Vs. State of Madhya Pradesh, has recently observed that the motive for

commission of the offence which, of course, is not an essential but is a relevant consideration.

57. Sri. Satish Trivedi, learned Senior Counsel arguing for the appellant Ashok alias Chhuttoo highlighted the facts narrated in the first information

report and evidences given by the eyewitnesses. Sri. Trivedi has contended that the appellant Ashok alias Chhuttoo was resident of Bharat Gali.

Tara Chand, real brother of the deceased Jagdish Prasad was also resident of Bharat Gali. The appellant Ashok alias Chhuttoo and Tara Chand

were married to real sisters hence they were brother-in-laws (equal status - Saddhu). It is evident on record that the first wife of Tara Chand had

died thereafter he kept sister-in-law Ram Kishori of the appellant Ashok alias Chhuttoo at his house as concubine. The appellant Ashok alias

Chhuttoo was against illicit relationship of Tara Chand and Ram Kishori. Thus there was some difference between the appellant Ashok alias

Chhuttoo and Tara Chand, real brother of the deceased Jagdish Prasad prior to this incident as Tara Chand had kept Ram Kishori without legal

marriage to which the appellant Ashok alias Chhuttoo always objected.

58. Throwing light on this aspect of the case and taking us through evidence on record, Sri. Trivedi has meekly submitted that if the appellant

Ashok alias Chhuttoo had some motive, the motive was against Tara Chand and not against the deceased Jagdish Prasad who was real brother of

Tara Chand. In other word, the appellant Ashok alias Chhuttoo had no concern at all with the deceased Jagdish Prasad. Since the appellant

Ashok alias Chhuttoo and Tara Chand were resident of the same Mohalla Bharat Gali and they were Saddhu, there were minor differences

between them as the appellant Ashok alias Chhuttoo always asked his sister-in-law to reside with Tara Chand only after legal marriage. It is also

evident on record that one year back to the present incident of the murder of the deceased Jagdish Prasad, Ram Kishori and Tara Chand started

living separately and the relationship between them had already come to an end. The motive of the appellants Girish Gupta and his nephew

Virendra Gupta was very strong against the deceased Jagdish Prasad. The appellant Virendra Gupta was involved in the aforesaid rape case and

since the first information report was not registered by the police, the deceased Jagdish Prasad being familiar with the family of the rape victim

helped in lodging the first information report of the rape case and had to actively participate for lodging the first information report of the rape case

and ultimately the deceased Jagdish Prasad became successful in getting the first information report of the rape case lodged at the Police Station

concerned on 12.3.1981, namely one day prior to the murder of the deceased Jagdish Prasad. Since the appellant Ashok alias Chhuttoo was not

even remotely involved in the rape case along with co-appellant Virendra Gupta, the appellant Ashok alias Chhuttoo had no occasion to nurture

any grudge with the deceased.

59. Sri. Trivedi invited our attention to the first information report/NCR Ext. Ka-5 lodged on 7.3.1981, according to which on 7.3.1981 around

12:00 noon, the appellant Girish Gupta along with his three companions armed with sticks reached the factory of the deceased Jagdish Prasad and

extended life threat to the deceased. In that incident, the appellant Ashok alias Chhuttoo did not accompany the appellant Girish Gupta. It can be

clearly stated that the appellant Ashok alias Chhuttoo did not give life threat to the deceased Jagdish Prasad on 7.3.1981.

60. According to the prosecution case, the deceased was playing active role in lodging the first information report of the rape case and also in the

proceeding of the rape case which was going on against the appellant Virendra Gupta. The appellant Ashok alias Chhuttoo had no concern even

remotely with that rape case. There is no evidence on record showing direct nexus of the two appellants Girish Gupta and Virendra Gupta with

third appellant Ashok alias Chhuttoo.

61. According to Sri. Trivedi, since the appellant Ashok alias Chhuttoo was resident of the same Mohalla Bharat Gali where Tara Chand was

residing, it was very natural for him to use that Bharat Gali and because of his presence at the relevant time, it cannot be inferred that he

accompanied other appellants to extend any life threat to the deceased Jagdish Prasad. No overact was allegedly committed by the appellant

Ashok alias Chhuttoo for annihilating the deceased Jagdish Prasad.

62. According to the evidence of Afzal Ahmad PW-3 who was a mechanic at the factory of the deceased at the relevant time that is 7.3.1981

around 12:00 noon when PW-3 was present at the said factory, the appellant Girish Gupta along with three companions came at the gate of the

factory, Girish Gupta went inside the factory and gave life threat addressing to the deceased Jagdish Prasad in the presence of PW-3 in case he

did not withdraw himself from the rape case. If the appellant Ashok alias Chhuttoo was present at the gate of the factory on 7.3.1981 around

12:00 noon, it was only the appellant Girish Gupta who went inside the factory when the deceased Jagdish Prasad was not present there and life

threat was given by the appellant Girish Gupta in the presence of PW-3. It was the appellant Girish Gupta who asked PW-3 to tell the deceased

Jagdish Prasad that Jagdish Prasad would be killed. It emerges from evidence on record that the deceased Jagdish Prasad had no grievance

against the appellant Ashok alias Chhuttoo. If there was no strong motive for the appellant Ashok alias Chhuttoo against the deceased Jagdish

Prasad then there was no reason for the appellant Ashok alias Chhuttoo to go to the place of the incident and participate in the commission of

murder of the deceased Jagdish Prasad with remaining two appellants. The appellant Ashok alias Chhuttoo had only a grievance against Tara

Chand, real brother of the deceased regarding his sister-in-law who was residing with Tara Chand without legal marriage. Since the appellant

Ashok alias Chhuttoo was not involved in the rape case and was not named in the first information report of the rape case, there was no occasion

for him to participate with remaining two co-appellants in the present murder case.

63. A careful and cautious scrutiny of the whole evidence on record makes involvement of the appellant Ashok alias Chhuttoo in the incident of

murder suspicious and doubtful. The prosecution has not been able to prove the said offence against the appellant Ashok alias Chhuttoo beyond a

shadow of reasonable doubt and it is not safe to rely upon the aforesaid testimonies and uphold the conviction of the appellant Ashok alias

Chhuttoo. The appellant Ashok alias Chhuttoo is entitled to the benefit of doubt as evidences against him are not fully proved showing his

complicity in the commission of the murder of the deceased Jagdish Prasad. In the circumstances, Criminal Appeal No. 1719 of 1982 filed by

Ashok alias Chhuttoo is allowed and his conviction and sentence recorded vide impugned judgment and order are set aside. He is acquitted of the

charge u/s 302 read with Section 34 IPC. The bail bonds and surety bonds of the appellant Ashok alias Chhuttoo are discharged. He need not

surrender before the Court concerned and is set at liberty.

64. So far as the appellants Girish Gupta and Virendra Gupta are concerned, in view of the above meticulous analysis of the whole evidence

available on record, we do not find any ground, on the basis of which we may reach conclusion that any of the findings recorded by the trial Court

in their respects is improbable or does not require affirmation. We do not see any cogent reason to interfere with the judgment and order dated

19.7.1982 passed by IV Additional Sessions Judge, Bareilly, recording conviction and sentence in respect of the appellants Girish Gupta and

Virendra Gupta. Consequently, the impugned judgment and order in their respects is hereby affirmed. Criminal Appeal No. 1752 of 1982 filed by

Girish Gupta and Virendra Gupta lacks merit and is, accordingly dismissed.

65. Since the appeal is dismissed, the bail bonds and surety bonds of the appellants Girish Gupta and Virendra Gupta are cancelled. The

appellants Girish Gupta and Virendra Gupta are directed to surrender before the trial Court immediately to serve out the remaining part of the

sentence awarded to them. If they fail to surrender forthwith, the trial Court is directed to get the appellants Girish Gupta and Virendra Gupta

arrested and send them to jail for serving out remaining part of their sentence awarded by the trial Court by means of the impugned judgment and

order dated 19.7.1982. Let a copy of this order be sent to the trial Court forthwith for compliance.