A.F.R.

RESERVED ON 25.07.2025
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HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 787 of 1996

Shailendra Kumar Mishra

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Apul Misra, Km. Laxmi Srivastava, Pradeep Kumar Tripathi, Rashmi Srivastava, Shyam Sunder Mishra
Counsel for Respondent(s)	:	Govt. Advocate

Court No. - 43

HON'BLE SALIL KUMAR RAI, J.
HON'BLE SANDEEP JAIN, J.

(Per : Salil Kumar Rai, J.)

Through judgement dated 26.4.1996 passed by the trial court in Session Trial No. 225 of 1992 arising out of Case Crime No. 546 of 1991 registered under Section 302 IPC at Police Station: Kotwali, District:- Fatehpur. the apellant has been convicted for murder of his wife and sentenced to undergo life imprisonment. My learned Brother affirms the judgement of the trial court. For reasons stated hereinafter, I disagree and acquit the appellant/accused.

The prosecution case, in short, is that Sunita Devi (hereinafter referred to as the 'deceased') was initially married to Vijay Shankar Mishra, the elder brother of the appellant. Vijay Shankar Mishra was employed with the Air Force. From her marriage with Vijay Shankar Mishra the deceased had two sons, namely, Ajay and Abhay. Vijay Shankar Mishra died in an air crash. After the death of Vijay Shankar Mishra, the deceased was given a cheque of Rs.2,00,000/- by the Air Force which was deposited in bank. Subsequently, the

deceased married the appellant and out of the wedlock of the deceased with the appellant, a daughter Soni @ Soniya was born. The deceased also had certain landed properties in her name. The marital relations between the deceased and the appellant were strained because the deceased refused to accede to the continuous demand of the appellant to transfer her money and the landed properties in favour of the appellant. It is alleged that on 26.07.1991 at about 4.45 pm, the appellant again enquired from the deceased as to whether she would transfer her money to the appellant which the deceased refused whereupon the appellant shot her saying that he was killing the deceased because she had refused to transfer her money to the appellant. The injury was fatal. The first information report was lodged by Vijay Krishna Tripathi, the brother of the deceased. It was stated in the FIR that the informant and one Mithilesh, the cousin of the first informant, were going to the house of the deceased when they heard the gunshot. On hearing the gunshot, they ran towards the house of the deceased and chased the appellant, who fled on seeing the first informant and Mithilesh. It was claimed in the FIR that the deceased narrated the whole incident to the first informant. It was further claimed in the FIR that the informant took the deceased to the hospital on a rickshaw where the deceased died. Abhay, Soni and one Amit Kumar (son of the sister of the deceased) are stated to be the eye witnesses of the incident.

The defence case in short is that the gun got accidentally fired due to tussle between the deceased and the appellant. The defence is that one Pradeep, the brother-in-law (‘*Saala’*) of the first informant used to visit the deceased in absence of the appellant. On the fateful day also there was some quarrel between the appellant and the deceased regarding the visits of Pradeep. The appellant was going out to settle scores with Pradeep but the deceased tried to prevent the appellant which resulted in a scuffle between the deceased and the appellant and the gun got accidentally fired in the tussle. It is the case of the defence that the gun was not intentionally fired.

A charge-sheet was filed and the appellant was charged by the trial court for the offence under Section 302 of the Indian Penal Code. The prosecution examined the first informant as PW-1, Kumari Soni as PW-4, Abhay Mishra, as

PW-5, the doctor who conducted the post-mortem as PW-6 and the Investigating Officer of the case as PW-7.

The prosecution case has been stated in detail by P.W.-1. In his evidence the witness reiterated the prosecution case regarding the strained relations between the appellant and the deceased. The witness stated that on the date of incident the appellant told the deceased that he had to go to his village and asked for his clothes and gun. The deceased handed over the gun to the appellant who started arranging his clothes in his brief case. The appellant asked for water and loaded his gun by the time the deceased brought water for the appellant. The appellant again enquired from the deceased as to whether she would transfer her properties and money to him and when the deceased refused, the appellant fired at the deceased saying that he was killing her because she had refused to transfer her properties and money in his favour. It has been stated that the witness and his cousin Mithilesh had seen the appellant aiming at the deceased with his gun and also firing at the deceased. The witness chased the appellant but could not apprehend him. It was claimed by the witness that the deceased narrated the whole incident to the witness. The witness claims to have taken the deceased to the hospital on a rickshaw where the doctor declared her dead after which the witness went back to his home and prepared the first information report.

In his examination-in-chief, PW-1 also reiterated the prosecution case that after the death of her first husband, the deceased was given a cheque of Rs.2,00,000/- by the Air Force. However in his cross-examination the witness admitted that the cheque was not given to the deceased in his presence and also admitted that he was not present when the cheque was deposited in the bank. The witness also denied any knowledge about the accounts of the deceased but admitted that when he saw the pass books of the deceased after the incident he found that there was no balance in the account of the deceased. In his cross examination, the witness admitted that on a plot measuring 12ft. x 50ft. which was purchased by the deceased from one Rajendra Maan Singh, the deceased had constructed a house and that the deceased had also purchased a plot measuring 25ft.x50ft from one Srivastava in which the construction was still incomplete. In his cross-examination, the witness stated that he had gifted three plots admeasuring 50ft. x 50ft., 25ft. x 50ft. and 25ft. x 25ft to the deceased by

getting different sale deeds executed in her name. The witness stated that the sale consideration of the aforesaid three plots were paid by him. The witness admitted that in 1984 he had taken a loan of Rs.20,000/- which was secured by mortgaging the plot of the deceased measuring 50ft.x50ft. The deceased was a guarantor for the aforesaid loan and a notice had been served on the witness because he had defaulted in re-payment of loan. It also comes out from the cross examination of the witness that he had once lodged a first information report against the appellant alleging abduction and murder of Ajay, the eldest son of the deceased, even though Ajay had actually run away from home and gone to Bombay. The other noticeable aspect of the evidence of P.W.-1 is that in his cross-examination, the witness admitted that he never advised the deceased to remarry after the death of her first husband and that he was not informed about the marriage of the deceased with the appellant. The witness did not answer the question put to him in his cross-examination as to whether he was opposed to the marriage of the appellant with the deceased. It also comes out from his cross-examination that the witness had previously been prosecuted under Section 25 of the Arms Act, under The Uttar Pradesh Control Of Goondas Act, 1970 and also under Section 302 of IPC.

The noticeable feature of the testimony of P.W.-1 is that his claim that he and his cousin Mithilesh had seen the appellant aiming and firing at the deceased is different from the FIR version wherein it has been alleged that P.W.-1 and Mithilesh rushed to the house of the deceased on hearing the sound of the gunshot. The witness had also not stated to the Investigating Officer that he and his cousin had seen the appellant aiming his gun and firing at the deceased. In his statement to the Investigating officer the witness stated that he and his cousin were walking to the house of the deceased and rushed towards the house on hearing the sound of gunshot. It is relevant to note that in his statement under Section 161 Cr.P.C., the witness did not state the fact that the appellant had asked for his gun which the deceased gave to the appellant or that the appellant had loaded his gun by the time the deceased fetched water for the appellant. It is also noticeable that the Site plan prepared by the Investigating officer does not mark the presence and position of P.W.-1 and Mithilesh at the place of incident.

At this point, it would be apt to consider the testimony of P.W.-7. In his evidence the Investigating Officer as P.W.-7 stated that at the time of incident the first informant (PW-1) and Mithilesh were not present on the spot when the incident occurred, therefore, their position at the time of incident had not been shown in the site plan. It has been stated by P.W.-7 that P.W.-1 had not told him that the appellant had asked for his gun which the deceased gave to the appellant or that the appellant had loaded his gun by the time the deceased fetched water for the appellant. In his cross-examination, the witness denied that the first informant, i.e., PW-1, had told him that he and Mithilesh had seen the appellant aiming and firing at the deceased with his gun. In his evidence the Investigating officer testified that P.W.-1 told him that he and Mithilesh heard the sound of gunshot when they were walking towards the house of the deceased.

In its judgment the trial court has rejected the evidence of P.W-1 and has held that his testimony was not reliable. The trial court has held that PW-1 was inimical to the appellant and was not an eye-witness of the incident. The trial court has further held that the relationship of PW-1 with the deceased and the appellant was such that his testimony did not inspire confidence. I agree with the opinion of the trial court. It is apparent from the evidence of P.W.1 that he had lodged a false FIR against the appellant alleging abduction and murder of the eldest son of the deceased. The witness did not approve the marriage of the deceased with the appellant. The witness was evidently inimical to the appellant. The witness claims that sale considerations for some of the properties in the name of the deceased were paid by the witness. P.W.-1 had financial interests in the properties registered in the name of the deceased and his interests in the property of the deceased were adverse to the interests of the deceased and the appellant. P.W.-1 is an interested witness. There are also significant improvements in the testimony of P.W.-1. In his evidence the witness claims to have seen the appellant aiming and firing at the deceased. The said claim has neither been made in the FIR nor to the Investigating officer. It has been alleged in the FIR and the witness told the Investigating officer that he and Mithilesh heard the sound of gunshot when they were going to the house of the deceased and then they rushed to the house of the deceased. The presence of P.W.-1 at the place of incident is not proved and his testimony does not inspire confidence.

Kumari Soni @ Soniya, the daughter of the deceased who was examined as PW-4 was six and a half years old at the time of incident. The incident took place on 26.07.1991 and the witness was examined by the trial court on 07.02.1996 on which date, Kumari Soni @ Soniya was stated to be 11 years old.

In her examination in chief, PW-4 stated that at the time of incident she, her brother Abhay, her cousin Amit, the deceased and the appellant were present in the house. It has been stated by the witness that the appellant enquired from the deceased as to whether she would transfer the plots and the house in favour of the appellant which the deceased refused whereupon the appellant shot at the deceased uttering that he was killing her because she had refused to transfer her money to the appellant. The appellant then threw away his gun and ran away. At the same time her maternal uncle, i.e., PW-1, came accompanied by Mithilesh. The witness further stated that P.W.-1 chased the appellant but the appellant was able to escape because the motorcycle of the appellant parked outside obstructed the chase. The witness also stated that the deceased narrated the whole incident to PW-1 when he came back after having failed to apprehend the appellant.

It is relevant to note that in her cross-examination, the witness stated that she did not remember as to whether she had told the Investigating Officer about the fact that PW-1 had chased the appellant but could not catch him because the motorcycle obstructed the chase and after P.W.-1 came back he enquired from the deceased about the incident. It be further noted that in her cross-examination the witness stated that she had told the investigating officer that the deceased narrated the whole incident to P.W.-1. The said statement of the witness is not recorded in the case diary and when the witness was shown her statement recorded under Section 161 Cr.P.C., the witness pleaded ignorance as to why the said statement had not been recorded by the Investigating Officer in the case diary.

The Investigating Officer testifying as P.W.-7 denied that PW-4 had told him that her maternal uncle, i.e., PW-1 had chased the appellant but could not apprehend him because the motorcycle obstructed the chase. The Investigating Officer also denied that PW-4 had told him that the deceased had narrated the whole incident to the informant PW-1.

Abhay Mishra, the son of the deceased was examined as PW-5. The witness was about 11 years old at the time of incident and aged about 15-16 years old on the date he deposed before the trial court. In his evidence, the witness also narrated the incident as narrated by PW-4. It comes out from the cross-examination of the witness that during the investigation, the Investigating officer never sought the documents and the details regarding the bank accounts of the deceased. The witness further stated that whenever the appellant went to his village, the appellant, for security reasons, used to take his gun with him. The other noticeable feature of the evidence of P.W.-5 is that in his evidence the witness stated that after firing, the appellant threw away the gun and fled and at the same time P.W.-1 accompanied by Mithilesh came and chased the appellant but could not catch the appellant because the motorcycle parked outside obstructed the chase. The said statement is not part of the statement recorded under Section 161 Cr.P.C. and in his testimony P.W.-7 denied that during investigation, P.W.-5 had told him that after firing, the appellant threw away the gun and fled and at the same time P.W.-1 accompanied by Mithilesh came and chased the appellant but could not catch the appellant because the motorcycle parked outside obstructed the chase.

In their cross-examinations, both PW-4 and P.W.-5 denied that Pradeep used to come to their home and visited the deceased in absence of the appellant or was the cause of strained marital relations between their parents.

P.W.-4 and P.W.-5 are child witness. It is apparent from the testimony of P.W.-7 that there are major improvements in the testimony of the child witnesses regarding the events immediately after the firing.

Insofar the testimony of a child witness is concerned, as a matter of prudence the courts seek corroboration to such evidence from other dependable evidence on record. It has been observed in various judgements that the evidence of a child witness has to be carefully scrutinized because a child witness of tender age is easily susceptible to tutoring and often lives in a world of make-believe. It was observed by the Supreme Court in ***Arbind Singh v. State of Bihar*** 1995 Supp (4) SCC 416 (Paragraph 3) that it ‘was well settled that a child witness is prone to tutoring and hence the court should look for corroboration particularly

when the evidence betrays traces of tutoring.' In ***State of M.P. Vs. Balveer Singh*** (2025) 8 SCC 545, the Supreme Court held that while appreciating the evidence of a child witness, the courts should rule out the possibility of tutoring. The relevant observations of the Supreme Court are reproduced below:-

> ***"***67.8. *Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard-and-fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.*
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> *67.9.* ***Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring****. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.*
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> *67.10.* ***The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated****. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii)fabrication.*
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> *(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of the Evidence Act.*
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> *(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors has to be established being as under:*
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> ▪ ***Opportunity of tutoring of the child witness in question—whereby certain foundational facts suggesting or demonstrating the probability*** *that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely,* ***or the susceptibility of such witness in falling***

> ***prey to tutoring***. *However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.*
>
> ▪ ***Reasonable likelihood of tutoring—wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated***. *This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or* ***by proving that the witness fell prey to tutoring and was influenced by someone else*** *either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence-lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural****.”***

Both the child witnesses were of very tender age at the time of incident. There is a gap of about four and a half years between the date of incident and the date on which their evidence was recorded. The trial court has held that P.W.-4 and P.W.-5 had been tutored only to corroborate the testimony of P.W.-1. The improvements in the testimony of P.W-4 and P.W-5 corroborate the evidence of P.W-1 and have been made to establish his presence at the time of incident and his claim of being an eye witness of the incident and also the claim of PW-1 that the deceased, immediately before her death, had told the witness about the incident. After the incident P.W.-4 and P.W.-5 were under the guardianship of PW-1 and were staying with his family. I have already held that the testimony of PW-1 can not be relied upon as the witness was inimical to the accused/appellant, was an interested witness and there were major improvements in his testimony. The possibility that P.W.-4 and P.W.-5 were tutored by P.W.-1 and his family cannot be ruled out. As observed earlier, a child witness often lives in a world of make-believe. There is a high probability that because of the time gap between the date of incident and the date of deposition of P.W.-4 and P.W-5 coupled with their tender age, the memory of P.W.-4 and P.W.-5 regarding the event was clouded by the domestic gossips and conversations in the home of PW-1. The trial court has held that the probability of illicit relations between the deceased and Pradeep cannot be ruled out. The trial court has also held that it was on the tutoring of PW-1 that in their evidence P.W.-4 and P.W.-5 concealed the relationship between Pradeep and the deceased and that Pradeep had been visiting the deceased in absence of the appellant. Due weight has to be given to the assessment of evidence by the trial court which had the opportunity to form

an opinion regarding the general tenor of evidence given by P.W.-4 and P.W.-5. The evidence of P.W-4 and P.W-5 ‘betray shades of tutoring’ and requires corroboration from independent evidence.

However, the trial court has held that the defence had not proved its case that the deceased was in illicit relations with Pradeep. The trial court and my Brother have held that the presence of P.W.-4 and P.W.-5 at the place and at the time of incident stands proved. They have also held that the testimony of P.W.-4 and P.W.-5 that the appellant fired at the deceased is corroborated by the admission of the appellant in his statement under Section 313 Cr.P.C. They have also held that the prosecution case that the appellant fired at the deceased with the intention to kill her was proved by the fact that the appellant had loaded his gun while the deceased had gone to fetch water. On the aforesaid reasoning the trial court convicted the appellant under Section 302 I.P.C. My learned Brother has affirmed the conviction. As noted earlier, I disagree.

It is true that the explanation of the appellant corroborates the testimony of PW-4 and PW-5 and supports the prosecution case to the extent that there was some altercation between the appellant and the deceased and the deceased was fatally injured because of firing from the gun of the appellant. *The admission of the appellant under Section 313 Cr.P.C. does not corroborate and prove the prosecution case that the appellant had intentionally fired at the deceased.* The appellant cannot be convicted under Section 302 I.P.C. without the prosecution proving beyond doubt the intention or knowledge in the accused as required under Section 300 I.P.C.

It is the case of the prosecution that the appellant had intentionally fired at the deceased to kill her and while firing at the deceased the appellant said that he was killing her because the deceased had refused to transfer her money to the appellant. The circumstance that while firing the appellant had expressed his intention to kill the deceased was not put to the appellant in his examination under Section 313 Cr.P.C. The circumstance that was put to the appellant in his examination was that the appellant fired at the deceased when she refused to give money to the appellant. The circumstance that was put to the appellant in his examination does not refer to expression of his intention by the

appellant while firing at the deceased. It is settled law that unless the circumstance appearing against the accused is put to him in his examination under Section 313 Cr.P.C., the same cannot be used against him. In this regard it would be apt to reproduce the observations of the Supreme Court in **Ajay Singh v. State of Maharashtra (2007) 12 SCC 341** where the supreme court held that in examination under Section 313, the accused must be questioned separately about each material circumstance which is intended to be used against him. The relevant observations of the Supreme Court are reproduced below:-

> ***"12**. The purpose of Section 313 of the Code is set out in its opening words — "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him". In Hate Singh Bhagat Singh v. State of Madhya Bharat [1951 SCC 1060 : AIR 1953 SC 468] it has been laid down by Bose, J. (AIR p. 469, para 8) that **the statements of the accused persons recorded under Section 313 of the Code "are among the most important matters to be considered at the trial"**.* It was pointed out that : (AIR p. 470, para 8)
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> *"8. … The statements of the accused recorded by the committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box [and that] they have to be received in evidence and treated as evidence and be duly considered at the trial."*
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> *This position remains unaltered even after the insertion of Section 315 in the Code and any statement under Section 313 has to be considered in the same way as if Section 315 is not there.*
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> *13. The object of examination under this section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.*
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> *14. The word "generally" in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to **any particular part or parts of it**. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.*
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> *15. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed:*

> *"30. … **it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. … The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. … Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.**" [Ed. : As observed in Tara Singh v. State, 1951 SCC 903 : AIR 1951 SC 441, pp. 445-46, para 30.]"*

(Emphasis supplied)

Similarly it was observed by the Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116** as follows:-

> ***"**143. Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court viz. Circumstances 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code, 1973 they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of Hate Singh Bhagat Singh v. State of Madhya Pradesh [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933] this Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. **Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 of the old Code (corresponding to Section 313 of the Criminal Procedure Code, 1973), the same cannot be used against him**.*

In **Shamu Balu Chaugule v. State of Maharashtra [(1976) 1 SCC 438 : 1976 SCC (Cri) 56]** this Court held thus: [SCC para 5, p. 440: SCC (Cri) p. 58]

> "***The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him."***

(Emphasis supplied)

In view of the aforesaid judgements, the alleged utterances by the appellant expressing his intention to kill the deceased and the evidence of prosecution to that effect cannot be considered against the appellant.

At this stage it would be apt to refer, in short, to the explanation of the appellant under Section 313 Cr.P.C.

In his statement under Section 313 Cr.P.C., the appellant denied the prosecution case. The appellant denied that after the death of her first husband the deceased was given a cheque of Rs.2,00,000/- by the Air Force but admitted

that the deceased got Rs.1,25,000/- from the Airforce. The appellant denied the allegations regarding any demand made by him on the deceased or that the marital relations between the deceased and the appellant were strained as alleged by the prosecution. The appellant also denied the incident on the fateful day as alleged by the prosecution. In his written statement submitted under Section 313 Cr.P.C., the appellant stated that he had his own business and agricultural holdings and was also in active legal practice, therefore, there was no necessity for the appellant to pressurize the deceased for money. It has been stated that there was no balance in the account of the deceased from six months before the incident. In his written statement, the appellant has stated that some months before the incident, his daughter Soni had told the appellant that Pradeep used to visit the deceased in absence of the appellant and would also lie down on the bed with the deceased and indulged in objectionable activities with the deceased. When the appellant confronted the deceased she denied any such activity but assured the appellant that Pradeep shall not be allowed to visit her again. On the date of incident when the appellant was getting ready to go to the village, Abhay, i.e., PW-5 told the appellant that on that day also, Pradeep had come to meet the deceased when the appellant was not at home and used abusive words for the appellant in front of the deceased. When the appellant confronted the deceased with the aforesaid fact, the deceased initially denied that Pradeep had come to meet her, but subsequently got agitated and retorted that because Pradeep was the brother-in-law of PW-1 he was entitled to visit her on which the appellant also got agitated and decided to settle the dispute with Pradeep before going to the village. The deceased tried to stop the appellant and in the resultant tussle, the gun got accidentally fired injuring the deceased. It has been stated that after the gun got fired accidentally, the appellant became nervous and the gun fell from his hand. The appellant ran out to hire a rickshaw to take the deceased to the hospital, but when he came back the appellant found that PW-1, Mithilesh, and some other persons had gathered at the house and on seeing the appellant they started shouting and chased the appellant. The appellant got scared and fled. It has been emphasized in the written statement that the appellant had not intentionally and knowingly fired the gun but the gun was accidentally fired and the appellant had no intention to kill the deceased. In his written statement, the appellant denied that on the fateful day, there was any quarrel between the

deceased and the appellant regarding money or other properties of the deceased. In his written statement the appellant has stated that after the incident PW-1, i.e., the first informant took over the guardianship of Soni @ Soniya and Abhay, i.e., PW-4 and PW-5 and PW-1 has tutored them to testify against the appellant. It has been emphasized that PW-4 and PW-5 have testified against the appellant because they were scared of PW-1. In his statement under Section 313 Cr.P.C., the appellant stated that the first informant, i.e., Vijay Krishna Tripathi was hostile to the appellant, therefore, has given false evidence.

It would be evident that in his explanation the appellant only admits that the shot was fired from his gun. His explanation is that the gun got accidentally fired in a tussle between the deceased and the appellant when the deceased tried to prevent the appellant from going out to settle scores with Pradeep. As noted earlier, the explanation of the appellant corroborates the testimony of P.W-4 and P.W.-5 to the extent that there was some altercation between the appellant and the deceased and the deceased was fatally injured because of firing from the gun of the appellant. The explanation of the appellant that the gun got accidentally fired because of the tussle can not be rejected if his admission is used as evidence to corroborate the testimony of P.W.-4 and P.W.-5. The admission of an accused and his explanation under Section 313 Cr.P.C. cannot be dissected and the inculpatory part cannot be accepted ignoring the exculpatory part. An admission cannot be split up and part of it used against the accused. An admission must be used either as a whole or not at all.

At this stage it would be relevant to consider the judicial precedents on the use of explanation of the accused under Section 313 Cr.P.C.

In **Nagaraj v. State (2015) 4 SCC 739,** the Supreme Court held that in our legal system the accused is not required to establish his innocence and the significance of the statement under Section 313 Cr.P.C. is that the accused may cast some doubt on the prosecution version. The purpose of Section 313 is not to nail the accused and even if the answers of the accused do not inspire confidence, the burden is still cast on the prosecution to prove its case beyond doubt. In **Nagraj (supra)**, the Supreme court observed as follows:-

> **"***15. In the context of this aspect of the law it has been held by this Court in Parsuram Pandey v. State of Bihar [(2004) 13 SCC 189 : 2005 SCC (Cri)*

*113] that Section 313 CrPC is imperative to enable an accused to explain away any incriminating circumstances proved by the prosecution. It is intended to benefit the accused, its corollary being to benefit the court in reaching its final conclusion; i***ts intention is not to nail the accused, but to comply with the most salutary and fundamental principle of natural justice** *i.e. audi alteram partem, as explained in Asraf Ali v. State of Assam [(2008) 16 SCC 328 : (2010) 4 SCC (Cri) 278] . In Sher Singh v. State of Haryana [(2015) 3 SCC 724 : (2015) 1 SCR 29] this Court has recently clarified that because of the language employed in Section 304-B IPC, which deals with dowry death, the burden of proving innocence shifts to the accused which is in stark contrast and dissonance to a person's right not to incriminate himself. It is only in the backdrop of Section 304-B IPC that an accused must furnish credible evidence which is indicative of his innocence, either under Section 313 CrPC or by examining himself in the witness box or through defence witnesses, as he may be best advised.* **Having made this clarification, refusal to answer any question put to the accused by the court in relation to any evidence that may have been presented against him by the prosecution or the accused giving an evasive or unsatisfactory answer, would not justify the court to return a finding of guilt on this score. Even if it is assumed that his statements do not inspire acceptance, it must not be lost sight of that the burden is cast on the prosecution to prove its case beyond reasonable doubt. Once this burden is met, the statements under Section 313 assume significance to the extent that the accused may cast some incredulity on the prosecution version. It is not the other way around; in our legal system the accused is not required to establish his innocence.** *We say this because we are unable to subscribe to the conclusion of the High Court that the substance of his examination under Section 313 was indicative of his guilt. If no explanation is forthcoming, or is unsatisfactory in quality, the effect will be that the conclusion that may reasonably be arrived at would not be dislodged, and would, therefore, subject to the quality of the defence evidence, seal his guilt.*

*Article 20(3) of the Constitution declares that no person accused of any offence shall be compelled to be a witness against himself. In the case in hand, the High Court was not correct in drawing an adverse inference against the accused because of what he has stated or what he has failed to state in his examination under Section 313 CrPC.**"***

(Emphasis supplied)

In **Hate Singh v. State of Madhya Bharat 1951 SCC OnLine SC 67 t**he Supreme Court observed that the statement under Section 342, old Cr.P.C. (corresponding to Section 313, Cr.P.C. 1973) has to be treated as evidence and the version of the accused should be accepted if it is reasonable and accords with probabilities. It was observed by the Supreme Court as follows:-

***"10**. Now the statements of an accused person recorded under Sections 208, 209 and 342 of the Criminal Procedure Code, 1898 are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in*

England and in America he would be free to state in his own way in the witness box.

They have to be received in evidence and treated as evidence and be duly considered at the trial (Sections 287 and 342). This means that they must be treated like any other piece of evidence coming from the mouth of a witness and matters in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him*. Nay more. Because of the presumption of innocence in his favour even when he is not in a position to prove the truth of his story,* ***his version should be accepted if it is reasonable and accords with probabilities unless the prosecution can prove beyond reasonable doubt that it is false****. We feel that this fundamental approach has been ignored in this case.****"***

(Emphasis supplied)

In **Narain Singh v. State of Punjab, 1962 SCC OnLine SC 203,** the Supreme Court held that if the accused in his examination under Section 342, old Cr.P.C. (corresponding to Section 313, Cr.P.C. 1973) sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety. If the accused admits to have done an act which would but for the explanation furnished by him be an offence, the admission cannot be used against him divorced from the explanation. The relevant observations of the Supreme Court in **Narain Singh (Supra)** are reproduced below:-

"5*. ……. Under Section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution, to ascertain from the accused his version or explanation, if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may "be taken into consideration" at the enquiry or the trial.* ***If the accused person in his examination under Section 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstances appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety. It is not open to the Court to dissect the statement and to pick out a part of the statement which may be incriminative, and then to examine whether the explanation furnished by the accused for his conduct is supported by the evidence on the record. If the accused admits to have done an act which would but for the explanation furnished by him be an offence, the admission cannot be used against him divorced from the explanation****."***

(Emphasis supplied)

The admission of the appellant regarding firing is inextricably connected to his explanation that the gun got accidentally fired because of a tussle between the deceased and the appellant when the deceased was trying to prevent the

appellant from leaving the house with an intention to settle scores with Pradeep. The act of firing would amount to offence if divorced from the explanation that the gun got accidentally fired due to the tussle between the deceased and the appellant. The statement of the appellant has to be read in its entirety and treated as evidence and has to be viewed with as much deference and given as much weight as evidence produced against him. The admission of the appellant cannot be used as evidence if his explanation is rejected. Further, the version of the appellant has to be accepted if it is found reasonable and accords with probabilities unless there is any prosecution evidence which proves, beyond reasonable doubt, that the explanation is false. The accused in a criminal trial is not supposed to produce evidence to prove his innocence and it is the prosecution which is to stand on its own legs and prove its case beyond reasonable doubt. In a criminal trial the accused, who in this case is the appellant, is to only cast a reasonable doubt on the prosecution version and once a plausible version has been put forth in defence under Section 313 Cr.P.C., then it is for the prosecution to negate such defence plea (Reference may be made to the observations of the Supreme Court in Paragraph 22 of its judgement reported in **Parminder Kaur Vs. State of Punjab,** (2020) 8 SCC 811).

The trial court has not disbelieved the explanation of the appellant that the deceased was in illicit relations with Pradeep. The trial court has also held that it was at the instance and on the tutoring of P.W.-1 that in their evidence P.W.-4 and P.W.-5 concealed the visits of Pradeep. I have already held that the testimony of P.W.-4 and P.W.-5 cannot be relied upon without corroboration. The trial court and my learned Brother accept the admission of the appellant and use the same to corroborate the testimony of P.W-4 and P.W.-5 so far as firing at the deceased is concerned but reject the explanation of the appellant regarding the circumstance in which the firing occurred on the ground that the appellant had not produced any evidence to prove his case. My learned brother and the trial court have split up the admission of the appellant by accepting the incriminating part and reject his explanation. The approach only fills up the gaps in prosecution evidence. With respect, the reasoning of my learned Brother is contrary to the law laid down by the Supreme Court in its judgments referred

above. The explanation of the accused in his cross-examination under Section 313 Cr.P.C. cannot be used to fill up the gaps in the prosecution evidence.

It would also be relevant to note that the doctor who conducted the post-mortem and deposed as PW-6 admitted in his cross-examination that injury no. 2 could be a result of scuffle.

In light of the opinion that illicit relations between Pradeep and the deceased can not be ruled out and that the evidence of P.W.-4 and P.W.-5 so far as it conceals the visits of Pradeep is on the tutoring of P.W.-1 coupled with the opinion of P.W.-6, i.e., the doctor who conducted the post-mortem, the explanation of the appellant accords with probabilities and cannot be considered unreasonable. The explanation of the appellant cannot be ignored. The explanation creates a reasonable doubt on the prosecution version that the appellant had intentionally fired at the deceased to kill her because the deceased had refused to transfer her money and properties to the appellant.

The fact that the appellant had loaded his gun while the deceased had gone to fetch water for the appellant does not by itself prove that the firing by the appellant was intentional and a premeditated act. It is in the evidence of PW-4 and PW-5 that when the appellant came home, he told the deceased that he had to go to his village and asked the deceased to take out his clothes. The clothes were arranged by the appellant in his attachi case. It is also in the evidence of PW-5 that for security reasons, appellant used to take his gun whenever he went to his village. It is common knowledge that whenever a person takes a weapon with him when he goes out, he takes it loaded and mere loading of the weapon is no evidence of any premeditation by the person nor any intention can be imputed to the appellant on that evidence.

My learned brother has also rejected the explanation of the appellant because Pradeep was not present in the house at the time of incident. The presence of Pradeep at the time of incident could have been relevant only if the plea of the appellant was regarding Exception 1 to Section 302. The plea of the appellant is not that he fired because of some grave and sudden provocation. The appellant pleads that the gun got accidentally fired in the tussle when the appellant was

going out to settle scores with Pradeep. Thus, the explanation of the appellant cannot be rejected on the ground that at the time of incident Pradeep was not present in the house.

My learned Brother has also rejected the explanation of the appellant on the ground that the defence of the appellant does not fall either under Exception 1 or Exception 4 of Section 300, i.e., there was no grave and sudden provocation to the appellant nor the act happened without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. My learned Brother has held that the burden was on the defence to prove that the case would be covered by the Exceptions to Section 300. With respect to my learned Brother, the explanation of the appellant shows that the defence case is not that the appellant was liable to be convicted under Section 304 Indian Penal Code and Exception 1 or 4 to Section 300 was applicable in the present case. The case of the defence is that the prosecution had not been able to prove beyond doubt that the ingredients of Section 300/302 were fulfilled and the appellant had intentionally fired at the deceased. The case of the defence is that the gun was accidentally fired. The appellant denies the intention or knowledge required by Section 300 or Section 299 to convict the appellant either under Section 302 or Section 304. The appellant has not pleaded any Exception to Section 300, therefore, the burden to prove any exception is not on the appellant. It was for the prosecution to prove beyond all doubts that the ingredients of Section 300 exist in the present case.

I also do not agree with my learned Brother when he observes that the explanation of the appellant has to be read keeping in mind that the appellant was a practicing advocate. The explanation has to be read as held by the Supreme Court in its various judgements referred above. An accused cannot be denied the protection of law because of his profession. In a criminal trial an admission can be suicidal for the accused and I have not been able to lay my hands on any judicial precedent which permits a court to split up an admission of the accused and accept the incriminating part ignoring the explanation only because the accused is an advocate. The approach adopted by my learned brother amounts to raising a presumption against the appellant because of his

profession- an approach which is not permissible in criminal law and would also violate the fundamental rights of the accused.

At this stage it would be apt to consider another noticeable feature of the case. In his testimony the Investigating officer as P.W.-7 has stated that during investigation of the case the Investigating Officer had interrogated the neighbours of the deceased and also Mithilesh. Mithilesh and neighbours of the deceased were not examined by the prosecution. The said witnesses were material witness who could have thrown some light on the circumstances after the firing and on the claim of P.W.-1 regarding his presence at the place of incident and the claim of the witness that no one had come to the house of the deceased till the witness took the deceased to hospital and could also have thrown light on the subsequent conduct of the appellant. It is the explanation of the appellant in his statement under section 313 Cr.P.C. that after the gun got accidentally fired, the appellant got nervous and the gun fell from his hand. The appellant ran out to hire a rickshaw to take the deceased to the hospital but when he came back the appellant found that PW-1, Mithilesh and some other persons had gathered at the house and on seeing the appellant they started shouting and chased the appellant. The appellant got scared and fled. The conduct of the appellant after the incident was a relevant evidence under Section 8, Evidence Act. The assertion by the appellant, if true, would support the case of the defence that the appellant had no intention to kill the deceased and the gun was not intentionally fired but got fired accidentally in the tussle. The assertion of the appellant, if proved false, would have been an incriminating circumstance and would have supported the prosecution case. The neighbours and Mithilesh were material and independent witnesses in this regard. The failure of the prosecution to examine the neighbours and Mithilesh persuades the court to infer against the prosecution that if the witness had been examined, they would not have supported the prosecution. In light of the aforesaid, the failure of the prosecution to examine Mithilesh and neighbours of the deceased is fatal to the prosecution.

So far as the motive of the appellant is concerned, the case of the prosecution is that the marital relations between the appellant and the deceased were strained because the appellant regularly demanded money from the

deceased and also pressurised the deceased to transfer the immovable properties owned by the deceased but the deceased refused to give in to the demands of the appellant. It is alleged that the appellant was annoyed with the deceased because of her refusal and on the date of incident the appellant shot at the deceased because on that day also the deceased refused to give in to the demands of the appellant. The source of income of the deceased has not been disclosed but it was claimed by P.W.-1 in his evidence that the deceased was given a cheque of Rs. 2,00,000 by the Air Force after the death of her first husband. The case that a cheque of Rs.2,00,000/- was given to the deceased by the Air Force has not been proved by any documentary evidence. The statement of account of the deceased was not produced to prove the aforesaid claim. There is no eye witness of the claimed payment or deposit of cheques in the bank. In his cross-examination, P.W.-1 admitted that he had no information regarding the details of the accounts of the deceased in any bank and came to know that there was no balance in the account of the deceased when, after the incident, the eldest son of the deceased showed him the passbook of the deceased. It is in evidence that no attempt was made by the Investigating Officer to find out about the accounts of the deceased. There is no evidence indicating that the appellant was short of money. The allegation that on the date of incident the appellant asked the deceased to transfer the immovable properties in favour of the appellant has not been made in the FIR but has been stated in the evidence of P.W.-1, P.W.-4 and P.W.-5. I have already held that P.W.-1 had financial interests in the immovable properties of the deceased and is an interested witness. The financial interest of the witness in the immovable properties of the deceased was adverse to the interests of the deceased and the appellant. It can not be ruled out that the claim of the prosecution witnesses that on the date of incident the appellant asked the deceased to transfer the immovable properties in favour of the appellant is an improvement in the testimony of the prosecution witnesses and has been included as after thought at the instance of P.W.-1 and only because, during investigation, the prosecution realised that the deceased had no balance in her bank account. In light of the aforesaid the prosecution has not been able to prove that marital relations between the appellant and the deceased were strained because the appellant used to pressurize the deceased to transfer her money and properties in favour of the appellant and on the date of incident also the

appellant pressurized the deceased to transfer her money and properties to the appellant. Evidently, the motive attributed to the appellant by the prosecution for committing the crime does not stand proved.

The explanation of the appellant cannot be rejected without any evidence by the prosecution proving it to be a false defence. There is no evidence on record to prove that the explanation of the appellant is false and should be rejected. The testimony of P.W.-1 can not be relied upon to convict the accused/appellant. It has been held that the evidence of P.W.-4 and P.W.-5 show signs of tutoring by P.W.-1. In their evidence P.W.-4 and P.W.-5 conceal the visits of Pradeep at the instance and tutoring of P.W.-1. The case of the defence that the deceased had been in illicit relationship with Pradeep and Pradeep used to visit the deceased in absence of the appellant cannot be ruled out. The prosecution has not been able to prove the motive of the appellant to kill the deceased. The prosecution withheld material witnesses who could have thrown light on the events after the act of firing which includes the subsequent conduct of the appellant relevant under Section 8 Evidence Act. The explanation of the appellant that the firing was accidental and not intentional cannot be rejected as implausible. Even a charitable assessment of prosecution evidence leads to the conclusion that two views are possible, one of which is that the gun got accidentally fired in the tussle between the deceased and the appellant when the appellant was going out to settle scores with Pradeep.

It has been held by our courts that where on evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits the accused, the accused is entitled to benefit of doubt. It was observed by the Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116** as follows:-

> ***"163****. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram v. State of Himachal Pradesh [(1973) 2 SCC 808 : 1973 SCC (Cri) 1048 : AIR 1973 SC 2773 : (1974) 1 SCR 722 : 1974 Cri LJ 1] this Court made the following observations: [SCC para 25, p. 820: SCC (Cri) p. 1060]*
>
> "**Another golden thread which runs through the web of the administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the**

> **guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. ……**
>
> (Emphasis supplied)

For all the aforesaid reasons, I hold that the prosecution has not been able to prove beyond doubt that the appellant had intentionally fired at the deceased and had committed an offence punishable under Section 302 IPC.

The Appeal is ***allowed***. The judgment and order dated 26.04.1996 passed by the III Additional Sessions Judge, Fatehpur in Session Trial No. 225 of 1992 is set aside. Consequently, the conviction of the appellant in Session Trial No. 225 of 1992 under Section 302 IPC arising out of Case Crime No. 546 of 1991 at Police Station Kotwali, District Fatehpur is set aside and the appellant stands acquitted.

The appellant was on bail. His Bond stands cancelled and Sureties are discharged.

(Salil Kumar Rai,J.)

November 10, 2025
Vipasha

A.F.R.
Judgment reserved on: 25.07.2025
Judgment delivered on. 10.11.2025
Neutral Citation No. - 2025:AHC:197781-DB

Court No. - 43

Case :- CRIMINAL APPEAL No. - 787 of 1996

Appellant :- Shailendra Kumar Mishra
Respondent :- State of U.P.
Counsel for Appellant :- Km. Laxmi Srivastava,Rashmi Srivastava
Counsel for Respondent :- Govt. Advocate

Hon'ble Salil Kumar Rai, J.
Hon'ble Sandeep Jain, J.

Per: Sandeep Jain, J.

1. This criminal appeal has been preferred by the convicted accused against the impugned judgment and order dated 26.04.1996 passed by Sri Vijay Singh, Third Additional Sessions Judge, Fatehpur in Sessions Trial No.225 of 1992 (State vs. Shailendra Kumar Mishra), arising out of Case Crime No.546 of 1991, PS. Kotwali, District Fatehpur, whereby the accused has been convicted for committing murder of his wife Smt. Sunita Devi under Section 302 I.P.C. and sentenced to undergo life imprisonment.

2. Factual matrix is that Smt. Sunita Devi (deceased), the sister of first informant Vijay Krishna Tripathi (PW-1 at the trial) was married to the accused-appellant Shailendra Kumar Mishra, who is an advocate. Their marriage was solemnized in the year 1982. Prior to that, Smt. Sunita Devi was married to Vijay Shankar Mishra in the

year 1970, who was the elder brother of the appellant. Vijay Shankar Mishra was Sergeant in Airforce, who died in an air-crash in the year 1981. After the death of Vijay Shankar Mishra, Smt. Sunita Devi, being his widow, received an amount of Rs.2,00,000/- (Rs. 2 lakhs), by cheque, which was deposited in her account in State Bank of India. From the first marriage, Sunita Devi had two children Ajay and Abhay (PW-5 at the trial).

3. After solemnizing marriage with the appellant in the year 1982, a daughter Km. Soni @ Sonia (PW-4 at the trial) was born out of that wedlock in the year 1984. It's a case of the prosecution that since marriage with Smt. Sunita Devi, the appellant continuously demanded money from her, but she refused, because the appellant used to spend the money unnecessarily and due to this, there were differences between them. Since two-three days prior to the incident, the appellant was pressurizing his wife Smt. Sunita Devi for withdrawing the money from her bank account but she refused. This refusal annoyed the accused-appellant. On 26.07.1991 at about 4:45 PM the accused-appellant arrived at his house by motorcycle and after entering his house, took his licensed gun and pointed it on his wife Sunita Devi, who was at that time sitting on sofa, and said that since she was not giving the desired money, as such, he would finish her and after this, the appellant shot his wife Sunita Devi. On hearing

the sound of gun shot, the first informant and one Mithlesh rushed towards the house of Sunita Devi on foot and then they saw the appellant fleeing away from his house on foot in the south-western direction. The first informant and other persons chased him, but could not apprehend him. The Yezdi motorcycle of the appellant was found in front of his house. On entering the house, the first informant saw his sister Sunita Devi lying on the sofa, covered in blood, who narrated the whole incident to the first informant. The first informant took Sunita Devi by rickshaw in injured condition to the hospital, where she died a short while later. At the time of the incident, the children of the deceased Abhay (PW-5 at the trial), Soni (PW-4 at the trial), and Punita Devi's(sister of deceased) son Amit Kumar, aged about 12 years, were present, who saw the incident. The first informant Vijay Krishna Triapthi (PW-1) described the whole incident narrated aforesaid, in his application dated 26.07.1991 (Ex.Ka-1 at the trial) and gave it to the police station Kotwali, District Fatehpur, on the basis of which, F.I.R. regarding this incident was registered on 26.07.1991 at 18:30 hours being Case Crime No.846 of 1991, under Section 302 I.P.C. against the accused-appellant and a corresponding entry was also made in the general diary of the police station at Serial No.56 time 18:30 hours. The check F.I.R. is Ex.Ka-2 at the trial. The investigation of the case was assigned to S.I. A.P. Pandey (PW-7 at the trial).

4. The Investigating Officer PW-7 collected the blood stained sofa cloth and plain cloth from the spot on 26.07.1991. The recovery memo of which is Ex.Ka-6 at the trial. He also took into possession on 26.07.1991, the black colour Yezdi motorcycle Registration No. UTW 6628 of the appellant, which was standing just outside his house, the recovery memo of which is Ex.Ka-7 at the trial. He also took into possession on 26.07.1991 a 12 bore licenced single barrel gun No.6773 alongwith an empty cartridge, which was found trapped in the barrel. The recovery memo of which is Ex.Ka-8.

5. The *Panchayatnama* of deceased Smt. Sunita Devi was prepared on 27.07.1991 between 8:00 –10:00 AM, which is Ex.Ka-9 at the trial, by the Investigating Officer.

6. The autopsy of the deceased Smt. Sunita Devi was performed by Dr. G.C. Sethi (PW-6 at the trial) on 27.07.1991 at 4:45 PM at District Hospital, Fatehpur. The autopsy report is Ex.Ka-4A at the trial. The following ante-mortem injuries were found on her dead body:-

> *(i) Gun shot wound of entry on right side breast 5 cm x 3 cm x cavity deep at 10 O'clock and 11 O'clock (in between) 4 cm above right nipple blackening present in an area of ½ cm around wound. Margins inverted and irregular direction towards back and lower down.*
> *(ii)Abrasion 2 cm x 1 cm in the middle of right upper arm 1 cm below axilla on inner surface.*
> *(iii)Gun shot wound of exit (two in number) on right side back infra scapula area 5 cm from mid line and 13 cm below lower front angle of scapula 1.5 cm x 1 cm x 1 cm x 0.5 cm in size*

(both cavity deep) and adjacent to each other. Margin everted. Wounds inter-communicate with injury no.1.

7. In the autopsy, 8th -10th rib of the right side of the deceased was also found fractured, one litre blood was found in chest cavity, one medium size pellet and one wading piece were also recovered from the right kidney and post abdominal wall. According to the doctor, Sunita Devi died about a day prior to autopsy, due to shock and haemorrhage, as a result of ante-mortem injuries.

8. The gun and the empty cartridge, were sent for forensic analysis to the Forensic Science Laboratory, Lucknow, its report dated 21.12.1991 (Ex.Ka-16) is on record, according to which the empty cartridge(EC-1) found trapped in the barrel of the gun, was indeed fired from that gun.

9. After investigation, charge sheet was submitted by Inspector Sushil Kumar Singh (PW-3 at the trial) against accused-appellant Shailendra Kumar Mishra, under Section 302 I.P.C. on which cognizance was taken by the lower court. On 16.09.1993, charge under Section 302 I.P.C. was framed against the accused-appellant for murdering his wife Smt. Sunita Devi, to which he pleaded not guilty and claimed trial.

10. During trial, the following prosecution witnesses were examined, who proved the following documents/objects:-

S.No.	Witnesses	Document proved
1.	Vijay Krishna Tripathi, the first informant was examined as PW-1.	proved the written application given at the police station as Ex.Ka-1.
2.	Prem Narain Awasthi, Head Constable, examined as PW-2.	proved the check FIR as Ex. Ka-2 and the true copy of GD Entry No.56 time 18:30 hours dated 26.07.1991 as Ex. Ka-3.
3.	Sushil Kumar Singh, 2nd Investigating Officer, examined as PW-3	proved the charge-sheet against the accused as Ex. Ka-4.
4.	Km. Soni Mishra@ Sonia, examined as PW-4	not proved any document
5.	Abhay Mishra, examined as PW-5	not proved any document
6.	Dr. GC Sethi, examined as PW-6	proved the autopsy report of deceased as Ex.Ka-4A and the clothes and bangles of the deceased, found on her body, during autopsy, as material Ex. 1 to 6.
7.	A.P. Pandey, 1st Investigating Officer, examined as PW-7	(i)proved the site-plan of the spot of occurrence as Ex. Ka-5 (ii)proved the recovery memo of the blood stained cloth of sofa as Ex. Ka-6, recovery memo of motorcycle as Ex. Ka-7 and the recovery memo of 12 bore SBBL gun and empty cartridge as Ex.Ka-8 (iii)proved the *Panchayatnama* of deceased as Ex. Ka-9, the prosecution papers accompanying the dead body for autopsy as Ex. Ka-10 to Ka-15 (iv)the gun of the accused and the empty cartridge found in it, as material Ex. 7 & 8 (v)the blood stained sofa cloth and plain cloth as material Ex. 9 & 10.

11. The first informant Vijay Krishna Tripathi, PW-1 deposed in his examination-in-chief that his sister Sunita Devi's marriage was solemnized with the accused Shailendra Mishra, Advocate in the year 1982. Prior to it, she was married to Vijay Shankar Mishra in the year 1970, who is the elder brother of the accused. Vijay Shankar Mishra was Sergeant in the Air Force, who died in the year 1981, in an air crash and on his demise, her widow Sunita Devi received about Rs. 2 lakhs by cheque, which was deposited in her bank account in State Bank of India. Out of the wedlock of Vijay Shankar Mishra and Sunita Devi, two sons Ajay and Abhay were born. After solemnizing marriage with the accused, Sunita Devi gave birth to a daughter Soni in the year 1984. After the birth of his daughter, accused continuously demanded money from his sister Sunita Devi and when she refused, then the accused used to create unruly scenes in the house and also used to harass and assault his sister. His sister had a plot, a house, a semi-constructed house in Abu Nagar, Awas Vikas Colony, near Kutchery Road, Fatehpur. The accused wanted the ownership of the plot and house, be transferred to him, and for this, he used to pressurize his sister.

12. He further deposed that on 26.07.1991 at about 4:45 PM, Shailendra Mishra arrived at his(accused) house by motorcycle and

parked it nearby, entered the house, demanded his clothes and told his sister to bring his gun. He expressed his desire to go to the village. His sister took out the gun and gave it to the accused. Thereafter, the accused demanded water from his sister and she went to bring water and when she returned back, the accused asked her to sit on the sofa to which she complied. Meanwhile, the accused loaded his gun. He further deposed that prior to shooting, the accused inquired from her whether she would give the money, plot and house to him or not, to which his sister told the accused that the property was hard earned, which belonged to the children, and does not belong to them. Thereafter, the accused shot her in the breast by saying that he would finish her. He further deposed that the moment his sister was shot, he arrived at the door of his sister's house, alongwith his cousin brother, Mithlesh and at that time, he saw accused pointing his gun and soon thereafter, the accused fired. He further deposed that soon after, they rushed inside the house, the accused threw his gun, they tried to apprehend him and chased him upto some distance, but he could not be apprehended, who fled towards south-west direction.

13. PW-1 further deposed in examination-in-chief that he thereafter, rushed inside the house and saw his sister lying, covered in blood on the sofa, who was still alive and speaking. At that time Abhay, Soni and Amit Kumar were also present in the gallery of the room, in which the incident took place. He further deposed that his injured

sister narrated the whole incident to him. He further deposed that he took his injured sister by *rickshaw* to the hospital, wherein she was declared dead by the doctor. He deposed that his sister died on the way to the hospital. Thereafter, he returned back to the house by *rickshaw* to give information about his sister's death and also wrote the application for getting the FIR registered. The first informant proved the application written by him and submitted at the police station, as Ex. Ka-1.

14. PW-1 deposed in cross-examination that Ashok Tiwari, Pradeep Tiwari and Dinesh Tiwari are his brother-in-law. He denied the suggestion that after the murder of Sunita, Pradeep turned *sanyasi* and lived in a temple, belonging to a trust. He deposed that Vijay Shankar Mishra died in an air crash in the year 1981 and denied the suggestion that he died in an air crash on 22.02.1980. He admitted that Vijay Shankar resided with Sunita and children in Agra, whose dead body was cremated by the military personnel. He admitted that his sister had told him, that a cheque of Rs.2 lacs was received by her, which was deposited in the State Bank of India, Agra. He denied the suggestion that Sunita never received a cheque of Rs.2 lacs. He also feigned ignorance that his sister received in cash Rs.1,25,000/- which was deposited with the assistance of employees of the department in the Indian Overseas Bank, Kheriya, Airforce Station, Agra branch. He feigned ignorance, that from the above money, two fixed deposits of

Rs.55,000/- and Rs. 40,000/- in the name of Sunita Devi and two fixed deposits of Rs.10,000/- each in the name of Abhay and Ajay were prepared and Rs.10,000/- was deposited in the saving account of Sunita Devi. He admitted that he never suggested his sister to remarry. He admitted that he had no knowledge of the marriage of accused and Sunita. When asked whether he was against the marriage of accused with his sister, then this witness remained silent. He further deposed that after her second marriage, Sunita started residing in Fathepur, in the year 1983. He disclosed that in the year 1982 he gifted a plot of land measuring 50 feet x 50 feet, by executing it's sale deed. He denied the suggestion that he took consideration of Rs.30,000/-, for executing the sale deed. He further disclosed that in the year 1983, two sale deeds of plot-one of 25 feet x 50 feet and another of 25 feet x 50 feet, were executed in favour of Sunita by him, which were gifted by him, and the expenses of sale deed were also borne by him. He denied the suggestion that he received Rs.30,000/- from the accused, as sale consideration of these plots. He further admitted that near Awas Vikas Colony, on Kutchery Road, Sunita constructed a house on a plot of 12 feet x 50 feet and the land of this house, was purchased by Sunita from Rajendra Bhan Singh, but he could not tell it's sale consideration. He further admitted that one plot of 25 feet x 50 feet was purchased by Sunita from a person named Srivastava, on which construction had just started, but was

lying incomplete. He further estimated that the house in which Sunita was murdered, would have been constructed at a cost of about Rs.15,000-20,000/- because only two small rooms, kitchen, bathroom and a courtyard were constructed on it. He denied the suggestion that the cost of construction of that house was Rs.1 lac. He admitted that in the semi-constructed house, Rs.30,000/- would have been spent. He further admitted that Ajay was admitted in Class VI in Colvin Taluqdar College, Lucknow, who remained for a year in the hostel. He further disclosed that since accused was against it, because hostel were expensive, he was taken out from that hostel and kept at some other place. He denied the suggestion that the boy(Ajay) remained in the hostel for about three years and thereafter, he resided in a rented flat. He denied the suggestion that Ajay was taken out from the hostel, on his own request. He admitted that Ajay remained missing for about five years and he registered a case of kidnapping and murder of Ajay, against the accused. He further disclosed that after returning from Bombay, Ajay was residing in his(own) house.

15. PW-1 further deposed in the cross-examination that after the death of Sunita and abscondence of the accused, he never inquired about their pass book and the bank accounts. Only two days back, Ajay had shown him the passbook and some documents and on perusing the pass book, he came to know, that there was no money in that account. The pass book was of Indian Overseas Bank, Agra. The

money of that bank account was transferred to Vijay Engine Agency, Bindki, whose proprietor was the accused Shailendra Mishra. As per his knowledge, about Rs. 70 to 80 thousand rupees were transferred, as per the entries in the passbook. He denied the suggestion that no money was transferred to Vijay Engine Agency. He further denied the suggestion that whatever money was available in the bank account, was spent by Sunita for purchasing the plot, constructing the house and educating her children. He further denied the suggestion that if there was any deficit in making the above expenditure, then that was made over by the accused. He further admitted that he availed a cash credit loan from Bank of Baroda, G.T. Road, Fatehpur of Rs.20,000/- in the year 1984, in which Sunita Devi was guarantor, who mortgaged her plot of 50 feet x 50 feet. He feigned ignorance that Sunita received notice for default in repaying the loan, but admitted, that he received the notice. He disclosed that the accused was also aware that Sunita Devi, was guarantor(of that loan).

16. He denied the suggestion that the accused was not aware of this and he(accused) only became aware, when notice was served on Sunita Devi. He further denied the suggestion that he was pressurizing Sunita Devi, to pay the loan amount, which was objected by the accused and due to this, their relations deteriorated. He further admitted that he had neither organized a Panchayat for instructing the

accused nor complained about assault to the police but disclosed, that his sister gave an application to the Superintendent of Police. He admitted that he failed to mention in his report that the accused wanted the ownership of plot, house and semi-constructed house, be transferred in his name. He further admitted that he had not mentioned in his report that “the accused came and began to pack his clothes, demanded water from his sister, after handing the gun, his sister went to fetch water and in the meantime he loaded the gun. When she returned, then the accused told her to sit on the sofa and she sat down on the sofa.” He stated that he told the above fact to the Investigating Officer, but he could not tell the reason, why this was not mentioned in his statement.

17. PW-1 further deposed that Sunita’s house is at a distance of about 120 paces from his house. He denied the suggestion that this distance was about 200-250 paces. He admitted that at the time of incident, he was at a distance of about 8-9 paces from the door towards west. He also admitted that he was at a distance of 2-3 paces from the door, then accused fled, after throwing his gun. He admitted that when the accused exited from the door, he was at a distance of about 5-6 paces from him. He disclosed that when accused fled, he and Mithlesh chased him for a distance of about 18-20 paces and till he returned, crowd had not gathered outside the house. He denied the

suggestion that he reached the spot after being informed by neighbours that Sunita was lying dead.

18. He disclosed that when he saw Sunita for the first time, she was leaning back on the sofa, who had not made any effort to stand up, but was squirming, who had not fallen from the sofa during squirming, but was gasping for breath. He disclosed that when he reached inside the house, then children were standing in the gallery, adjoining the room, who after seeing him, entered the room. He disclosed that within a minute after firing, he entered the room and instantly supported his sister and tried to see her injuries and then, Sunita herself told him briefly, about the incident. Sunita took about a minute to narrate it. He denied the suggestion that the three children were not present at the time of the incident, inside the house. He further denied the suggestion that he had not witnessed any incident. He further denied the suggestion that when he reached the house, then Sunita had already died, who was not speaking and since her body was warm, he under false impression that she was alive, had taken her to the hospital. He further denied the suggestion that the neighbours reached the spot, prior to him. He disclosed that after registering the FIR, he returned to the spot at about 07:00 PM and remained till the next morning. He admitted that he was tried under Section 25 of the Arms Act and also under Goonda Act. He denied the suggestion that

his brother-in-law Pradeep used to visit Sunita's house and had illicit relation with her, and because of Pradeep, Sunita was murdered, as such, Pradeep had renounced the world. He further denied the suggestion that after Sunita's murder, he had taken into possession her house and other property. He further denied that for usurping the property of Sunita, he had falsely implicated the accused.

19. Prem Narain Awasthi PW-2, proved the registration of the first information report and the corresponding General diary entry of registration of first information report, as Ex. Ka-2 and Ka-3, respectively.

20. Sushil Kumar Singh PW-3, the second investigating officer, concluded the investigation and submitted the charge sheet against the accused. He proved the charge sheet as Ex. Ka-4.

21. Soni Mishra alias Sonia was examined as PW-4, who deposed in her examination- in- chief that the murder took place at about 4:30 – 4:45 PM inside her house and then she, her brother Abhay, Amit and mother Sunita Devi along with father Shailendra Kumar Mishra were present. Her father had arrived from outside and told her mother to bring his clothes, since he wanted to go to the village. Thereafter, her father started packing clothes and also told her mother, that he would go on bike to the village. Thereafter, her father came to a room and after obtaining the keys, took out his gun and came outside the room

and then told her mother to bring a glass of water, to which she complied. She further deposed that thereafter, her father told her mother that he wanted to talk to her and then her mother sat on the sofa. Her father asked her mother, what decision she had taken, whether she wants to transfer both the plots and house in his favour, to which her mother replied that the property was acquired with hard earned money and it would devolve on the children, neither he nor she would get anything. At this, her father said that since she doesn't want to give him money, he would finish her and after uttering these words, her father shot her. Her mother shouted. Thereafter, her father threw his gun and ran outside. Just then, her maternal uncle Vijay Krishna Tripathi, accompanied with Mithlesh arrived, who came near her mother. Thereafter, her maternal uncle rushed to apprehend her father but failed. After returning, her maternal uncle inquired from her mother. She further deposed that at the time when her mother was shot, she and both her brothers were standing in the gallery from there she could see her parents. She further deposed that her mother told about the incident to her maternal uncle.

22. PW-4 in cross-examination admitted that at the time of the incident, she was studying in class 2nd but denied that Pradeep used to visit her house. She admitted that she had heard about Pradeep, who is the brother-in-law of her maternal uncle. She denied the suggestion

that Pradeep used to visit her house and due to this, there was quarrel between her mother and father. She admitted that from the very beginning, she was witnessing the quarrel between her father and mother and due to this, her father was less affectionate towards her and also failed to assign any work to her. Due to this quarrel, she had no affection towards her father. She admitted that the house of her maternal uncle is at a distance of 100 – 150 paces from her house. She also disclosed that on the fateful day, there was a school holiday, as such, she and her brothers were present at the house. She deposed that until her father came, they were playing games in the house and when he(father) arrived, they were under the impression that he must have brought something, rushed towards him, but when they saw him angry, then they went back to the gallery. She further deposed that on that day, there was no quarrel but her father was speaking loudly, but her mother was not. She further disclosed that just after arriving, her father desired to go to the village, as such, told her mother to bring his(father) clothes and when her mother was going to bring the clothes, just then, her father had started packing the clothes himself. At that time, the brief case was kept on the ledge(*taand*) of the room. She disclosed that she was witnessing this from the gallery. She also disclosed that her father expressed his desire to go the village with his gun, and then, after obtaining keys from her mother, he himself took the gun from the box. She further disclosed that after pointing the gun

at her mother, her father fired instantly, without giving her(mother) any opportunity to stand. At that time, her mother was at a distance of one pace from her father. After being shot, she fell on the sofa and started weeping and shouting. Just after that, her father threw his gun and went outside.

23. She further disclosed that till her maternal uncle arrived, she remained standing in the gallery and only after his arrival, she went near her mother. She further deposed that the police personnel arrived at about 7:30 PM, who inquired from her about the incident. She denied the suggestion that her mother had not told anything to her maternal uncle. She disclosed that on hearing the gunshot and when her mother was lying on the sofa, the neighbours had not arrived. She also disclosed that till the police arrived, the gun remained there. The police personnel took the gun with them. She clarified that she had not told the Investigating Officer, the fact that her mother was taken to the hospital by her maternal uncle because, the same was disclosed by her maternal uncle to the police. She denied the suggestion that at the time of incident, she was in her village Rasulpur. She also denied the suggestion that she had not witnessed the incident and was giving tutored evidence in the court.

24. Abhay Mishra PW-5 deposed in his examination-in-chief that his mother Sunita Devi was murdered about 4 ½ years back, at about

4:30 – 4:45 PM. When his mother was murdered he, his younger sister Soni, maternal aunt's son Amit were present. At that time, his father Shailendra Mishra arrived from his bike and told his mother that he would go to the village, as such, his clothes be arranged and then, he himself went inside the room and started packing the clothes in a brief case. His father told his mother that he would go to the village alongwith his gun. Then he obtained the keys and took out the gun from the box. Thereafter, his father told his mother to bring a glass of water, and when she returned with the water, then his father shot her dead with the gun. He further disclosed that prior to shooting, his father said to his mother to sit down on the sofa as he wished to have a talk, to which his mother complied and then his father asked his mother, that what she had thought regarding transferring the ownership of the plots and house to him(father), and also whether she would give the money kept in the bank, but his mother refused by saying that the property had been acquired after hard labour and it would go to the children, she would not give it to anybody. Upon hearing that, his father said that "since you are not giving me the house, plots and money, as such, I would finish you" and after saying this, his father fired from his gun on his mother. He disclosed that at that time he along with her younger sister Soni and Amit were standing in the gallery. He disclosed that the bullet struck the chest of his mother. His father threw the gun and went outside and

just then, his maternal uncle Vijay Krishna Tripathi and Mithlesh were coming, who tried to apprehend the accused, but the motorcycle came between them and such the accused managed to flee.

25. PW-5 deposed in the cross-examination that his real father was Vijay Shankar Mishra, who is the elder brother of accused. He disclosed that he was never told by her mother Sunita Devi about any bank account standing in his or his brother's name. He admitted that there was some money in his mother's bank account but he could not tell the exact amount. He admitted that at the time of the incident, his elder brother Ajay was not present in the house. He further disclosed that on the day of the incident, his father had left the house at about 10 – 10:30 AM and at that time, he was present in the house, since it was school holiday on account of Guru Poornima festival. He disclosed that his father had left after taking meals and in the morning, no quarrel occurred between his parents. But the quarrel took place a day prior to the incident. He disclosed that there was no conversation between his parents in the evening, but when his father arrived, he straight-away asked for his clothes and then he himself started packing the clothes in a brief case. He also admitted that his father obtained the keys from his mother and then he himself took out the gun from the box and told his mother to bring a glass of water. He admitted that till her mother brought water, there was no hot talk

between his parents, the dispute started after his mother brought water. He further disclosed that the dispute took place for about 1-1 ½ minute, which was regarding house, plot and children and during this dispute, his mother remained seated on the sofa and during the dispute, his father angrily shot her. He further disclosed that after firing, his father threw his gun and had not attempted to reload the gun. He further disclosed that his father fired on his mother, from a distance of hardly one pace. After throwing the gun, his father fled outside. His mother remained seated on the sofa.

26. He further deposed in cross-examination that Pradeep neither visited their house nor he knew him. He denied the suggestion that Pradeep used to visit and due to this, his parents used to quarrel frequently. He further denied the suggestion that no quarrel took place between his parents regarding money, house and plot. He disclosed that the accused had some agricultural land and house in village Rasulpur and the accused sometimes visited that property and also used to carry the gun for his safety. He disclosed that on the day of the incident, at about 7:30 PM police personnel arrived and his statement was also recorded. He denied the suggestion that he had not witnessed the incident and was giving tutored testimony in the court.

27. Dr G.C. Sethi PW-5 deposed in examination-in-chief that he conducted the autopsy of deceased Sunita on 27.7.1991 at about 4:45

PM. The ante-mortem injuries found on the dead body of Sunita have been elaborately mentioned previously in this judgment, as such, are not being repeated for the sake of brevity. He disclosed that the 8th rib of the deceased towards left side was found fractured. The heart was empty. About one litre blood was found in the chest cavity. Liver, gallbladder and right kidney were found lacerated. In between the right kidney and posterior abdominal wall, a medium-sized pellet and one wading piece were found. He opined that she died about a day prior to the autopsy, due to shock and haemorrhage resulting from ante-mortem injuries. He further deposed that one saree, one blouse, one petticoat, one hair band, five bangles and one bra were recovered from the dead body and sealed in a packet. This witness proved the following objects as material Ex. 1-6. He further proved the autopsy report as Ex.Ka– 4A. He further opined that the deceased could have died on 26.7.1991 at about 4:45 PM from gunshot injury. He further opined that the deceased could have remained alive for a short time after being shot, but he could not precisely tell that time. PW-5 admitted in cross-examination that injury No. 2 was possible due to scuffle.

28. A.P. Pandey PW-7, the first Investigating Officer deposed in his examination-in-chief that the first information report was registered in his absence. This witness proved the site plan of the spot of

occurrence as Ex. Ka –5, the recovery memo of the blood stained and plain cloth of sofa as Ex.Ka-6, the recovery memo of the Yezdi motorcycle, which was found near the spot, as Ex.Ka–7, the recovery memo of 12 bore gun along with empty cartridge as Ex.Ka-8, the *Panchayatnama* of the deceased as Ex.Ka-9, the prosecution papers prepared for autopsy as Ex. Ka –10 to Ka-15. He also proved the gun and empty cartridge recovered from the spot as material Ex.7 and 8 and the bloodstained and plain sofa cloth as material Ex.9 and 10.

29. PW-7 deposed in cross-examination that the first informant and Mithlesh were not present at the time of the incident. He disclosed that he drew the above inference from the recitals of the first information report. He admitted that he inquired from the first informant and Mithlesh regarding the incident. He further disclosed that he collected the gun and empty cartridge from the spot at about 21:30 hours and they were submitted at the police station on 27.7.1991 at 19 hours. He admitted that he had sent the gun and cartridge for analysis to Lucknow. He admitted that he had not made any effort for knowing whether the deceased had a bank account and what was the balance in it. He denied the suggestion that he was aware that there was no balance in the bank account of Sunita. He admitted that the first informant had told him that on hearing the sound of gun shot, he and Mithlesh rushed on foot to the house of

Sunita. He admitted that witness Soni had not told him that her maternal uncle tried to apprehend her father but a motorcycle came in between them and due to this, her father fled and when her maternal uncle returned. then he had inquired from her mother. He further admitted that Soni had not told him that when her maternal uncle returned then her mother had told him that the accused arrived on a motorcycle and started to pack his clothes for going to the village, demanded water, brought his gun, told her to sit on the sofa for having some necessary talk and then her father asked her mother whether she was willing to give him the house and both the plots to which her mother said that since they were acquired from hard earned money, which does not belong to them and would be given to it's rightful owner, then her father shot her mother dead. He further disclosed that the *Panchayatnama* was not conducted in the night of 26.7.1991 because the light was not sufficient.

30. The statement of accused under Section 313 Cr.P.C was recorded in which he admitted that his marriage was solemnised with Sunita in the year 1982. He also admitted that he, his wife Sunita Devi, daughter Soni and son Abhay Mishra were residing in a house situated in Abu Nagar, Awas Vikas Colony, Fatehpur, at the time of the incident. He further admitted that Sunita's first marriage was solemnised with his elder brother Vijay Shankar Mishra in the year

1970 and out of that wedlock two sons namely Ajay and Abhay were born; Vijay Shankar Mishra was employed in Air Force as Sergeant, who died in air-crash in the year 1980; that Soni @ Sonia was his daughter, who was born out of wedlock of him and Sunita. He denied that there was a dispute regarding the property and money between him and Sunita and due to which, he used to assault her. He also denied that Sunita had a plot, a house, a semi- constructed house in moholla Abu Nagar, near Kutchery Road, Fatehpur, which he intended to get transferred in his name and was pressurising Sunita for this. He also denied that when she refused to transfer the above-mentioned properties and also refused to give him money, after withdrawing from her bank account, he harboured enemity towards her. He denied that he had shot dead Sunita Devi. He further submitted that the prosecution witnesses had given false testimony in the court.

31. The accused Shailendra Kumar Mishra further admitted in his written statement under section 313 Cr.P.C that his elder brother Vijay Shankar Mishra was married to Sunita Devi, who died in an air crash on 22.2.1980. After the death of Vijay Shankar Mishra, she received an amount of ₹ 1,25,000 from the Air Force which was deposited in the Indian Overseas Bank, Branch Air Force Station as such, the prosecution story that she received ₹ 2 lakh which were deposited in

State Bank of India, is completely false. He admitted that after consulting his parents, he solemnised marriage with Sunita Mishra in the year 1981 and thereafter, there were cordial relations between them and a daughter Soni @ Sonia was also born on 23.3.1983, from this wedlock. He further submitted that in the year 1982 – 83 and thereafter had purchased three plots from the income of his business, in the name of Sunita and thereafter on one plot, house was constructed and on other plot, the construction remained incomplete. He further submitted that he educated his children in good schools and bore their educational expenses. He further submitted that Sunita Devi used to withdraw money from her Indian Overseas Bank account and out of that, used to give some money to the first informant and also used to spend some money on her and Pradeep. He further submitted that six months prior to the incident, no money remained in her bank account and he was constructing the house from his income, because Sunita had already spent all the money, after withdrawing it from her bank account. He further submitted that after marriage, he initially did business and thereafter, began practising law. He also had some income from agriculture and was not short of money. He never demanded money from Sunita Devi. He further submitted that the first informant had obtained in the year 1984 loan of ₹ 20,000 from Bank of Baroda, Fatehpur, in which Sunita Devi was guarantor, but that loan was not repaid and when a notice was

received by Sunita for repaying the loan amount along with interest then he became aware about this loan, which was not repaid. He further submitted that the first informant asked Sunita to repay the loan but he objected to this, and since then the first informant harboured enemity towards him. He further submitted that since he married Sunita, the first informant was jealous of him because the first informant was not happy with the marriage. He further submitted that there was never any dispute between him and Sunita regarding money. The whole family together ate breakfast and dinner. The relatives of Sunita from the parental side, used to visit his house, who were given due respect.

32. The accused further submitted that some months prior to the incident, his daughter Soni disclosed to him that in his absence Pradeep used to visit his house, who was having illicit relations with Sunita. On getting this information, he inquired from Sunita about this, to which she denied but still, he warned her that Pradeep should never visit his house and if he ever came, then he would face dire consequences. He also submitted that the deceased assured him that Pradeep would not visit the house. The accused further submitted that he had also instructed the first informant to prevent Pradeep from visiting his house, in his absence and due to this, the first informant became angry. He further submitted that on the day of the incident, he

was preparing to go to his village, had folded his clothes in which Sunita was helping him, he had also demanded his gun and a glass of water and when she went for fetching water, in between he was told by his son Abhay that today Pradeep had again visited and was abusing him(accused) in front of Sunita and when she returned after fetching water, then he had asked her as to why Pradeep had come today to which she denied and when Abhay insisted that Pradeep had indeed came to the house, then she became agitated and said Pradeep will definitely come here, on this, he also became agitated and said that prior to departing for the village, he will settle the matter and Sunita tried to prevent him and also caught hold of the barrel of the gun and in the ensuing scuffle, the gun was accidentally fired, which hit Sunita in the breast, who collapsed on the sofa, he was frightened, the gun fell down from his hand and he ran to bring a rickshaw for taking Sunita to the hospital but when he returned back the first informant, Mithlesh and other persons were present in his house, who on seeing him, challenged him and tried to apprehend him by saying that he had murdered the first informant's sister, who chased him but he fled. He further submitted that the first informant is a person of criminal antecedents who had previously registered a false case of kidnapping and murder regarding his elder brother's son Ajay, who ran away from the house and returned after five years from Bombay.

He further submitted that the first informant in collusion with the police, lodged a false case against him.

33. The accused further submitted that he had not intentionally shot Sunita but, the incident was an accident, because Sunita was pulling the barrel of the gun towards her and during this, the gun had accidentally fired. He further submitted that there was no verbal duel, at the time of incident, with Sunita, regarding money and plots. He further submitted that prosecution witnesses Abhay and Sonia gave tutored evidence in the court. He further submitted that he was prevented from appearing in the court by the first informant.

34. Learned counsel for the accused-appellant submitted that the prosecution story is false and unbelievable. The accused had cordial relations with his wife Sunita, who had no motive for murdering her. Learned counsel further submitted that the accused had sufficient means of livelihood, he had sufficient property, as such, there was no need for the accused to demand any property and money from Sunita. Learned counsel further submitted that there was no enmity and premeditation on the part of the accused for murdering his wife. Learned counsel further submitted that, a person named Pradeep used to visit the house of the accused, who was having illicit relations with his wife Sunita and when the accused objected to this extramarital affair of his wife, then she became agitated. Learned counsel further

submitted that on the day of incident, the accused was preparing to go to his village with gun, but when the accused came to know that Pradeep had visited the house in his absence then he inquired about this from Sunita, who initially denied but when this fact was confirmed by his son Abhay, then she became agitated. The accused in the heat of moment wanted to settle the matter with Pradeep and was intending to go to his(Pradeep) house, but he was prevented by Sunita, who caught hold the barrel of his gun then, in the ensuing scuffle, the gun had accidentally fired, resulting in grievous injuries to Sunita. The accused never intended to murder his wife. There was no planning, conspiracy, premeditation, as such, the trial court has committed grave illegality in convicting the accused for the offence of committing murder of his wife Sunita. He further submitted that the first informant is not an eyewitness of the incident. The child witnesses had given tutored testimony, under the influence of first informant, which remained uncorroborated, and was also unreliable. He further submitted that the accused had not concealed anything and had given a proper explanation of the incident in his written statement under section 313 Cr.P.C. which has not been considered by the trial court. With these submissions, it was prayed, that the appeal be allowed.

35. Learned AGA submitted that the accused was continuously demanding money from the deceased and was also trying to get the ownership of immovable properties(plot and houses) transferred in his name, to which Sunita objected and due to this objection, an altercation took place between the accused and Sunita and when Sunita stated that she would neither give him the money nor transfer the property in his favour, then in rage, the accused shot dead Sunita from point blank range. Learned AGA further submitted that at the time of incident, the children of the deceased Soni @ Sonia and Abhay Mishra were present at the spot of occurrence, who witnessed the incident and gave credible testimony in the court, which is also corroborated by the written statement of accused under section 313 Cr.P.C. He further submitted that the accused admitted in his statement under Section 313 Cr.P.C. that he shot Sunita Devi, which is also corroborated by the medical evidence and the ocular evidence of minor child witnesses. He further submitted that there was no evidence on record to prove that Sunita Devi was having an extramarital affair with Pradeep, as such, the accused had no reason to have an altercation with her on the day of the incident. He further submitted that the eye-witnesses had also not supported the statement of the accused, that the gun was accidentally fired during a scuffle, that took place between the accused and Sunita Devi. He further submitted that Sunita refused to transfer the ownership of the plot and

houses to accused, and also refused to give him money, infuriated the accused, which led him to intentionally shoot Sunita from point blank range, stood proved from the testimony of eye witnesses. He further submitted that in view of the evidence on record, the trial court has not committed any illegality in convicting the accused for the offence of murder of Sunita. With these submissions, it was prayed that criminal appeal be dismissed.

36. I have heard the learned counsel of both the sides and perused the evidence on record.

37. The Apex Court in the case of ***Indrakunwar v. State of Chhattisgarh, 2023 SCC OnLine SC 1364,*** reiterated the principles which evolved over time, while considering the statements of accused under Section 313 Cr.P.C, held as under:-

> *"**35.** A perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when considering such statements.*
>
> > *35.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.*
> >
> > *35.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.*
> >
> > *35.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.*
> >
> > *35.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.*
> >
> > *35.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or*

may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

35.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

35.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8 This statement is to be read as a whole. One part cannot be read in isolation.

35.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

35.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

35.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.

38. From the perusal of the evidence of first informant Vijay Krishna Tripathi PW-1, it appears that on hearing the gunshot, he rushed to the house of his sister Sunita, saw his sister covered in blood, lying on the sofa. In the first information report, it is also mentioned that on hearing the gunshot, he rushed alongwith Mithlesh, on foot, to the house of Sunita Devi. On seeing them, the accused fled, who was chased, but could not be apprehended. The first information report also discloses that after entering the house, the first

informant saw his sister covered in blood, lying on the sofa. Although, this witness deposed that when he reached near his sister, she was alive, who narrated the whole incident to him. This witness also deposed that at the time of incident, minor child witnesses Soni PW-4 and Abhay Mishra PW-5 were also present near the spot of occurrence, but PW-5 remained silent on this aspect in his examination-in-chief. Soni also disclosed in her examination-in-chief that her mother narrated about the incident to the first informant, but she had not disclosed this in her statement to the Investigating Officer, as such, no reliable evidence is available to prove that after the incident, Sunita remained alive till first informant came near her, and she narrated the incident to him. The Investigating Officer PW-7 also admitted in his cross-examination that the first informant was not present at the time of the incident. In view of the above evidence, it is doubtful that after the incident when the first informant came near Sunita, then at that time she was alive, who had narrated the incident to him. It is also proved that the first informant had not seen the accused shooting Sunita.

39. From the evidence of Soni PW-4 and Abhay Mishra PW-5, it is proved that on the date of the incident, at about 4:30 – 4:45 PM, the accused returned to his house and told his wife Sunita to give his clothes for going to the village on motorcycle. It is also proved that

whenever he went to the village, he used to carry his gun for his safety and also on that day, he took the keys of the box, in which his gun was kept, from Sunita, and then opened the box and taken out the gun. Thereafter, he asked his wife to bring a glass of water and in the meanwhile, the accused loaded his gun and when she returned back, the accused told her to sit on a sofa and then asked her whether she was willing to give him the money and also transfer the immovable property in his name, to which she refused, which infuriated the accused. Thereafter, the accused pointed the barrel of his gun towards the breast of his wife Sunita, and from a distance of about one pace, fired a single shot, which caused grievous injuries to her, as a result of which she fell on the sofa and died. It is also proved that prior to the incident, the accused had an altercation with his wife, regarding the immovable property and money, which the deceased possessed. The accused also admitted in his statement under section 313 Cr.P.C. that the shot was fired from his gun accidentally, in the scuffle, which took place between him and the deceased, prior to the incident. Since the ocular evidence of PW-4 and PW–5 is also corroborated by the admission of the accused in his written statement under section 313 Cr.P.C, the prosecution story insofar, it relates to the gun shot injury caused to deceased by the accused, is proved.

40. From the ocular evidence of the above two eyewitnesses, it is proved that Sunita was shot from very close distance by the accused. Both the eyewitnesses have proved that Sunita was shot from a distance of about one pace. According to the autopsy report, a single gunshot wound of entry and two exit wounds were found on her body, which had blackening around the entry wound. One medium-sized pellet and one wading piece was also recovered from the dead body. The doctor PW-6 proved that Sunita died due to ante-mortem gunshot injuries and she could have died on 26.7.1991 at 4:45 PM from the above injuries.

41. The accused stated in his written statement under section 313 Cr.P.C that Sunita was having an extramarital affair with Pradeep to which he objected, but she was adamant. He stated that on the day of the incident, Pradeep had visited his house, which was informed by his son Abhay PW-5 and when Sunita was inquired about it, then she got agitated, he wanted to settle the matter with Pradeep and was intending to proceed to his(Pradeep) house armed with a gun, which was resisted by Sunita, who caught hold the barrel of the gun, resulting in the scuffle, in which an accidental shot was fired because Sunita was pulling the barrel of the gun towards her.

42. Both the eyewitnesses of the incident PW-4 and PW-5 categorically denied that Pradeep used to frequently visit their house

in the absence of their father and also denied that, on the date of the incident, Pradeep had visited their house. There is no evidence on record to prove that Sunita was having an extramarital affair with Pradeep. The burden of proving such affair, lies upon the accused, which has not been discharged by him. In view of the above, it is not proved that the deceased was having an extramarital affair with Pradeep and due to this, there was friction and quarrel between them and it is also not proved, that on the date of the incident, Pradeep had visited the house of the accused.

43. Although, the prosecution has not filed any documentary proof of ownership of any immovable property of the deceased on record, but in the ocular evidence of first informant PW-1, it was proved that Sunita had previously solemnised marriage with the elder brother of the accused, in the year 1970, who was a Sergeant in the Air Force, who died in an air crash in the year 1981 and Sunita, being his widow received about ₹ 2 Lacs from the government, as compensation, which was deposited by her in a bank account. It was also proved that two sons Ajay and Abhay were born out of the first marriage and from the subsequent marriage with accused, a daughter Soni was born. It was also proved by this witness that Sunita had one plot, one house and one semi-constructed house in Fatehpur, which the accused wanted to get transferred in his name, to which Sunita objected. She

wanted to preserve the property for the benefit of her children and, as such, refused to give it to the accused. This was the real cause of friction between the accused and his wife.

44. The accused submitted in his written statement under section 313 Cr.P.C that he was well off and was having a decent income from his legal practice and was also having agricultural income, as such, there was no need for him to pressurise his wife to transfer the property in his name, but the accused has not proved this fact by adducing documentary evidence of his income. It is the case of the prosecution that Sunita had purchased the property from the money she received as widow, due to the untimely demise of her first husband, and also from the earnings of her first husband, as such, she wanted to preserve the property for the benefit of her children, which is quite natural and justified. The accused has also admitted in his above statement that Sunita received an amount of ₹ 1,25,000 on the demise of her first husband, which was deposited in a bank account. The accused submitted in his statement that three plots were purchased in the name of Sunita in the year 1982–83 from the earnings of his business and on one plot, he constructed a house and on the other plot, construction of house started but could not be completed. This admission of accused itself proves that Sunita was the owner of the above properties. According to the accused, he purchased these

properties from his income, in the name of Sunita, but the accused had not adduced any documentary evidence to prove the above fact. The first informant PW-1 was suggested in the cross-examination that whatever money Sunita was having in her bank account, it was spent by her for purchasing the plot of land, for constructing the houses and on the education of children. This suggestion itself proves that the property was purchased by Sunita from her own money. In the light of the above evidence, it is proved that Sunita was having immovable property in her name, which was purchased by her, from her own money.

45. From the evidence of PW-5 it is proved that on the day of incident, there was no quarrel between his parents but previously, a day prior to the incident, quarrel took place between them. It is also proved that on the day of the incident, the accused after entering the house, asked for his clothes and then packed his clothes in a brief case and then he himself took out his gun from a locked box, after obtaining the keys from his wife and opening it. It is also proved that just prior to the incident, he ordered Sunita to bring a glass of water for him to which she duly complied with. It is also proved that in the meantime the accused loaded his gun.

46. From the evidence of eyewitnesses PW-4 and PW-5, it is proved that the dispute between accused and his wife Sunita was regarding

property. On the day of incident, the accused ordered Sunita to bring glass of water and when she went to fetch water, in the meanwhile, the accused had loaded his gun. Thereafter, the accused made her sit on the sofa and asked her whether she was willing to transfer the property in his favour and when Sunita refused by saying that the property belongs to the children, then the accused got infuriated with that refusal and shot her dead.

47. It is also true that the accused is an Advocate, who has submitted his defence, which is very well planned, but the accused failed to prove that Sunita had extramarital relations with Pradeep, as such, his version that Pradeep visited the day of the incident and when this fact was put to Sunita, she became agitated and he also became agitated and in order to settle the matter with Pradeep, took out his gun and intended to take revenge but Sunita resisted, and caught hold the barrel of the gun, due to which a scuffle took place between them, in which accidentally, a shot was fired from the gun, which hit Sunita on her breast, is liable to be rejected. The burden to prove the above defence was upon the accused, which has not been discharged by him, by adducing cogent evidence.

48. The Apex Court in the case of ***Kunhimuhammed @ Kunheethu v. State of Kerala 2024 SCC OnLine SC 3618***, while discussing Section 300 IPC, which defines murder, has held as under: -

“25.8. The appellant's primary defence has been the absence of intent to commit murder. However, intent can be inferred from the circumstances surrounding the act, including the nature and location of the injuries inflicted, the weapon used, and the actions of the appellant during the incident. The injuries were concentrated on the vital parts of the deceased's body, such as the chest and ribs, which house critical organs like the heart and lungs. The deliberate targeting of these areas indicates a clear intent to cause harm that could lead to death. According to the testimony of the injured eyewitness, the appellant stabbed the deceased with considerable force, further corroborating the prosecution's argument that the injuries were inflicted intentionally or at least with the knowledge of their natural consequence. While other co-accused were reportedly armed with sticks, the appellant-accused no. 1 was in possession of a sharp knife, which was used to inflict severe injuries. The decision to carry and use such a weapon during the scuffle reflects a readiness to escalate violence beyond a mere physical altercation. Even if the appellant did not have a prior intention to murder the deceased, the circumstances demonstrate that such injuries were caused which were sufficient in the ordinary course to cause death. The deliberate act of stabbing vital parts of the body, coupled with the force used, indicates that the appellant must have been aware of the likely fatal consequences of his actions. Under the provisions of Section 300 IPC, an intention to cause such injuries that are sufficient in the ordinary course of nature to cause death qualifies as murder, and even if ingredients other than intention to cause murder are proved, mere knowledge of the result of fatal actions is enough to ascribe culpability to the accused person.

25.9. The lower courts have also dismissed the appellant's argument that the act was not premeditated. While the attack may not have been planned in advance, intent can emerge in the heat of the moment, particularly during a violent confrontation. The appellant's decision to use a

lethal weapon and the precise targeting of the victim's vital organs are sufficient to establish the requisite intent for murder or at least knowledge of the possible consequences of one's actions and to hold the appellant liable for death of the deceased as per clause 3 of Section 300, IPC.

25.10. This Court held in Virsa Singh vs. State of Pepsu 1958 SCR 1495, that the prosecution must prove that there was an intention to inflict that particular injury, that is to say that the injury was not accidental or unintentional or that some other kind of injury was intended, and that particular injury was sufficient in the ordinary course of nature to cause death.

25.11. The third clause of section 300 speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. This Court in the above-mentioned judgment held that to bring the case under this part of the section the prosecution must establish objectively:

> *1. That a bodily injury is present;*
>
> *2. That the nature of injury must be proved;*
>
> *3. It must be proved that there was an intention to inflict that particular bodily injury;*
>
> *4. That the injury inflicted is sufficient to cause death in the ordinary course of the nature.*

25.12. The Court further held that:

> *"13. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S. 300, "Thirdly. It does not matter that there*

was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."

25.13. This position has further been upheld by this Court recently in the case of Vinod Kumar v. Amritpal (2021) 19 SCC 181, wherein the bench observed that:

> *"24. Once the prosecution establishes the existence of the three ingredients forming a part of "thirdly" in Section 300, it is irrelevant whether there was an intention on the part of the accused to cause death. Further, it does not matter that there was no intention even to cause the injury of a kind that is sufficient to cause death in ordinary course of nature. Even the knowledge that an act of that kind is likely to cause death is not necessary to attract "thirdly"."*

25.14. This Court in the case of Balkar Singh v. State of Uttarakhand (2009) 15 SCC 366, while following the judgment in Virsa Singh (Supra) further elaborated the position of law and laid down that culpable homicide is murder if two conditions are fulfilled:

> *a. the act which caused death is done with the intention of causing death or is done with the intention of causing a bodily injury; and*
>
> *b. the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.*

25.15. The Court in the above-mentioned judgment clarified that even if the intention of accused was limited to inflicting a bodily injury sufficient to cause death in the ordinary course of nature, the offence of murder would still be made out.

25.16. The third clause of Section 300, IPC defines murder as the act of causing death by causing such bodily injury as is likely to result in death in the ordinary course of nature. In the present case, the appellant's actions satisfy these criteria. The appellant was armed with a knife, which he used to inflict multiple injuries on vital organs. The fatal nature of these injuries, as confirmed by medical evidence, and the circumstances of the attack clearly point to an intent to cause death or at least an intention to inflict injuries with the knowledge that they were likely to result in death. Even if it is presumed that the appellant - accused no. 1 did not have an intention to cause such bodily injury, the act of causing injuries with knife to vital parts is reflective of the knowledge that causing such injuries is likely to cause death in the ordinary course.

25.17. The defence's argument that the incident was a spontaneous scuffle does not absolve the appellant of liability. While the scuffle may have triggered the attack, the appellant's use of a lethal weapon and the manner in which the injuries were inflicted elevate the act from

culpable homicide to murder. ***Courts have consistently held that intent can be inferred from the nature and severity of injuries, as well as the choice of weapon and the manner of its use. The use of a lethal weapon and the deliberate targeting of vital parts of the body are strong indicators of such intent.***

25.18. In light of the evidence and the legal principles involved, the appellant's plea for leniency on the grounds of spontaneity and lack of premeditation cannot be sustained. The nature and location of the injuries inflicted, the choice of weapon, and the circumstances of the attack unequivocally establish the liability of the appellant for causing the death of Subrahmannian. The argument that the act was committed in the spur of the moment does not diminish the gravity of the offence or the appellant's culpability."

(emphasis supplied)

49. The Apex Court in the case of ***Narayan Yadav v. State of Chhattisgarh, 2025 SCC Online SC 1603***, while considering the applicability of Exception 4 to Section 300 of the I.P.C., held as under: -

*"**38.** Section 299 of the IPC explains culpable homicide as, causing death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that the act complained of is likely to cause death. The first two categories require the intention to cause death, or the likelihood of causing death. While, the third category confines itself to the knowledge that the act complained of is likely to cause death. On the facts of this case, the offence of culpable homicide is clearly made out.*

***39.** Section 300 of the IPC explains murder and it provides that culpable homicide is murder if, the act by which the death is caused is done with the intention of causing death, or the act complained of is so imminently dangerous that it must in all probability cause death, or "such bodily injury as is likely to cause death". There are some*

exceptions when culpable homicide is not murder and we are concerned with Exception 4 which reads:

> *"Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner." Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault."*

40. *Exception 4 to Section 300 of the IPC applies in the absence of any premeditation. This is very clear from the words used in the provision itself. It contemplates that the sudden fight must occur in the heat of passion, or upon a sudden quarrel. The Exception deals with a case of provocation not covered by Exception 1, although it would have been more appropriately placed after that exception. It is founded upon the same principle, as both involve the absence of premeditation. However, while Exception 1 involves total deprivation of self-control, Exception 4 refers to that heat of passion which clouds a person's sober reason and urges them to commit acts they would not otherwise commit. There is provocation in Exception 4, as there is in Exception 1, but the injury caused is not the direct consequence of that provocation. In fact, Exception 4 addresses cases where, notwithstanding that a blow may have been struck or provocation given at the outset of the dispute, regardless of how the quarrel originated, yet the subsequent conduct of both parties' places them on an equal footing with respect to guilt.*

41. *A "sudden fight" implies mutual provocation and the exchange of blows on both sides. In such cases, the homicide committed is clearly not attributable to unilateral provocation, nor can the entire blame be placed on one side. If it were, Exception 1 would be the more appropriate provision. There is no prior deliberation or intention to fight; the fight breaks out suddenly, and both parties are more or less to blame. One party may have initiated it, but had the other not aggravated the situation by their own conduct, it may not have escalated to such a serious level. In such scenarios, there is mutual provocation and aggravation, making it difficult to determine the precise share of blame attributable to each participant. The protection of Exception 4 may be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the deceased.*

42. *To bring a case within Exception 4, all the ingredients mentioned therein must be satisfied. It is important to note that the term "fight" occurring in Exception 4 to Section 300 of the IPC is not defined in the IPC. A fight necessarily involves two parties - it takes two to make a*

fight. The heat of passion requires that there must be no time for the passions to cool, and in such case, the parties may have worked themselves into a fury due to a prior verbal altercation. A fight is a combat between two and more persons, whether with or without weapons. It is not possible to enunciate any general rule as to what constitutes a "sudden quarrel". This is a question of fact, and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not enough to show that there was a sudden quarrel and no premeditation. It must also be shown that the offender did not take undue advantage or act in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

43. *From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder", it will be convenient to approach the problem in three stages. The question to be considered at the first stage is, whether the accused committed an act which caused the death of another person. Proof of a causal connection between the act of the accused and the resulting death leads to the second stage, for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299 of the IPC. If the answer to this question is, prima facie, found in the affirmative, the next stage involves considering the application of Section 300 of the IPC. At this stage, the court must determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this is in the negative, the offence would be "culpable homicide not amounting to murder", punishable under either the first or the second part of Section 304, depending respectively on whether the second or the third clause of Section 299 is applicable. However, if the answer is in the positive, but the case falls within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the Part I of Section 304 of the IPC.*

44. *In State of Andhra Pradesh v. Rayavarapu Punnayya, (1976) 4 SCC 382, this Court, while drawing a distinction between Section 302 and Section 304, held as under:—*

> *"12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three*

degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

(Emphasis supplied)

45. *In Budhi Singh v. State of Himachal Pradesh, (2012) 13 SCC 663, this Court has held as under:—*

"18. The doctrine of sudden and grave provocation is incapable of rigid construction leading to or stating any principle of universal application. This will always have to depend on the facts of a given case. While applying this principle, the primary obligation of the court is to examine from the point of view of a person of reasonable prudence if there was such grave and sudden provocation so as to reasonably conclude that it was possible to commit the offence of culpable homicide, and as per the facts, was not a culpable homicide amounting to murder. An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose selfcontrol but only temporarily and that too, in proximity to the time of provocation. The provocation could be an act or series of acts done by the deceased to the accused resulting in inflicting of injury. Another test that is applied more often than not is that the behaviour of the assailant was that of a reasonable person. A fine distinction has to be kept in mind between sudden and grave provocation resulting in sudden and temporary loss of selfcontrol and the one which inspires an actual intention to kill. Such act should have been done during the continuation of the state of mind and the time for such person to kill and reasons to regain the dominion over the mind. Once there is premeditated act with the intention to kill, it will obviously fall beyond the scope of culpable homicide not amounting to murder…."

(Emphasis supplied)

46. *In the case of Kikar Singh v. State of Rajasthan, (1993) 4 SCC 238, this Court held as under:—*

> *"8. The counsel attempted to bring the case within Exception 4. For its application all the conditions enumerated therein must be satisfied. The act must be committed without premeditation in a sudden fight in the heat of passion; (2) upon a sudden quarrel; (3) without the offender's having taken undue advantage; (4) and the accused had not acted in a cruel or unusual manner. Therefore, there must be a mutual combat or exchanging blows on each other. And however slight the first blow, or provocation, every fresh blow becomes a fresh provocation. The blood is already heated or warms up at every subsequent stroke. The voice of reason is heard on neither side in the heat of passion. Therefore, it is difficult to apportion between them respective degrees of blame with reference to the state of things at the commencement of the fray but it must occur as a consequence of a sudden fight i.e. mutual combat and not one side track. It matters not what the cause of the quarrel is, whether real or imaginary, or who draws or strikes first. The strike of the blow must be without any intention to kill or seriously injure the other. If two men start fighting and one of them is unarmed while the other uses a deadly weapon, the one who uses such weapon must be held to have taken an undue advantage denying him the entitlement to Exception 4. True the number of wounds is not the criterion, but the position of the accused and the deceased with regard to their arms used, the manner of combat must be kept in mind when applying Exception 4. When the deceased was not armed but the accused was and caused injuries to the deceased with fatal results, the Exception 4 engrafted to Section 300 is excepted and the offences committed would be one of murder. The occasion for sudden quarrel must not only be sudden but the party assaulted must be on an equal footing in point of defence, at least at the onset. This is specially so where the attack is made with dangerous weapons. Where the deceased was unarmed and did not cause any injury to the accused even following a sudden quarrel if the accused has inflicted fatal blows on the deceased, Exception 4 is not attracted and commission must be one of murder punishable under Section 302. Equally for attracting Exception 4 it is necessary that blows should be exchanged even if they do not all find their target. Even if the fight is unpremeditated and sudden, yet if the instrument or manner of retaliation be greatly*

disproportionate to the offence given, and cruel and dangerous in its nature, the accused cannot be protected under Exception 4…."

(Emphasis supplied)

47. *This Court, in the case of Surain Singh v. State of Punjab, (2017) 5 SCC 796 has observed that:*

"The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300, IPC is not defined in IPC... A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"."

(Emphasis supplied)

48. *Section 304 of the IPC prescribes the punishment for culpable homicide not amounting to murder. Part I of this Section provides that if the act by which death is caused is done with the intention of causing death, or causing such bodily injury as is likely to cause death, then the punishment may extend up to imprisonment for life. On the other hand, Part II of Section 304 provides that if the offending act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death, then the punishment may extend to imprisonment for 10 years.*

49. *The High Court considered only the first part of Exception 4 to Section 300 of the IPC. This part refers to the absence of premeditation in a sudden fight arising from a sudden quarrel in a heat of passion. However, it does not end there. The exception further requires that the offender must not have taken undue advantage or*

acted in a cruel or unusual manner. Having regard to the manner in which the assault was carried out, could it not be said that the offender i.e., the appellant-herein took undue advantage and also could be said to have acted in a cruel or unusual manner. The deceased was unarmed, it was not mutual fight between two individuals that would bring the case within the ambit of Exception 4. The deceased was absolutely harmless when the appellant inflicted injuries all over his body indiscriminately.

50. *Therefore, if at all the High Court intended to extend the benefit of any of the Exceptions to Section 300 of the IPC, it ought to have considered Exception 1 of Section 300 of the IPC. However, it is not necessary for us to delve into Exception 1 i.e., grave and sudden provocation since, we have already reached the conclusion that the case in hand is, one of no legal evidence and therefore, the appellant deserves to be acquitted. We refer to Exception 1 merely to illustrate that, if at all, it was this exception that could have been examined. It is alleged that while the appellant and the deceased were consuming alcohol at the deceased's residence, the appellant showed the deceased a photograph of his girlfriend. The deceased allegedly made an obscene remark, "get your girlfriend to my place and leave her with me for one night." Such a statement might have provoked the appellant, who then picked up a vegetable-cutting knife lying in one corner of the house and inflicted injuries upon the deceased. This aspect could have been considered in that context."*

50. The Apex Court in the case of ***Vijay @ Vijaykumar v. State Represented By Inspector of Police 2025 INSC 90***, while discussing Exception 1 to Section 300 IPC, held as under:-

"18. Exception one of Section 300 states that a culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes death of the person who gave the provocation or causes the death of any other person by mistake or accident.

19. It is well established that Exception 1 to Section 300 can apply when the accused is shown to have deprived of power of self-control by grave and sudden provocation which is caused by the person whose death has been caused.

20. It is not each and every provocation that will reduce the crime from murder to culpable homicide not amounting to murder. The provocation must be both grave and sudden. In order to invoke the

benefit of the exception, it must be established that the act committed by the accused was a simultaneous reaction of grave as well as sudden provocation which deprived him of the power of self-control. If the provocation is grave but not sudden, the accused cannot get the benefit of this exception. Likewise, he cannot invoke the exception where the provocation though sudden is not grave.

21. In Mancini v. Director of Public Prosecutions reported in 1942 A.C. 1, Viscount Simon observed:

> *"It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self-control, as the result of which he commits the unlawful act which causes death. "In deciding the question whether this was or was not the case, regard must be had to the nature of the act by which the offender causes death, to the time which elapsed between the provocation and the act which caused death, to the offender's conduct during that interval, and to all other circumstances tending to show the state of his mind": Stephen's Digest of the Criminal Law, art. 317. The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in Rex v. Lesbini, so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance (a) to consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter".*

22. In order to bring the case within Exception 1, the following conditions must be complied with:

> *(i) The deceased must have given provocation to the accused;*
> *(ii) The provocation must be grave;*
> *(iii) The provocation must be sudden;*

(iv) The offender, by reason of the said provocation, shall have been deprived of his power of self-control;
(v) He should have killed the deceased during the continuance of the deprivation of the power of self-control; and
(vi) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

23. In other words, before Exception 1 can be invoke, the accused must establish the following circumstances:

(i) there was a provocation which was both grave and sudden;
(ii) such provocation had deprived the accused of his power of self-control; and
(iii) whilst the accused was so deprived of his power of self-control, he had caused the death of the victim.

24. In order to bring his case under Exception 1 to Section 300 IPC the following ingredients:

(i) The provocation was sudden; (ii) the provocation was grave; and (iii) loss of self-control. These three ingredients may be considered one by one:

(i) Whether the provocation was sudden or not does not present much difficulty. The word 'sudden' involves two elements. First, the provocation must be unexpected. If an accused plans in advance to receive a provocation in order to justify the subsequent homicide, the provocation cannot be said to be sudden. Secondly, the interval between the provocation and the homicide should be brief. If the man giving the provocation is killed within a minute after the provocation, it is a case of sudden provocation. If the man is killed six hours after the provocation, it is not a case of sudden provocation.

(ii) the main difficulty lies in deciding whether a certain provocation was grave or not. A bare statement by the accused that he regarded the provocation as grave will not be accepted by the court. The court has to apply an objective test for deciding whether the provocation was grave or not. A good test for deciding whether a certain provocation was grave or not is this: "Is a reasonable man likely to lose self-control as a result of such

provocation?" If the answer is in the affirmative, the provocation will be classed as grave. If the answer is in the negative, the provocation is not grave. In this context, the expression 'reasonable man' means a normal or an average person. A reasonable man is not the ideal man or the perfect being. A normal man sometimes loses temper. There is, therefore no inconsistency in saying that, a reasonable man may lose self-control as a result of grave provocation. A reasonable or normal or average man is a legal fiction. The reasonable man will vary from society to society. A Judge should not impose his personal standards in this matter. By training, a Judge is a patient man. But the reasonable man or the normal man need not have the same standard of behaviour as the judge himself. The reasonable man under consideration is a member of the society, in which the accused was living. So, education and social conditions of the accused are relevant factors. An ordinary exchange of abuse is a matter of common occurrence. A reasonable man does not lose self-control merely on account of an ordinary exchange of abuses. So, courts do not treat an ordinary exchange of abuses as a basis for grave provocation. On the other hand, in most societies, adultery is looked upon as a very serious matter. So, quotes(sic courts) are prepared to treat adultery as a basis for grave provocation.

(iii) the question of loss of self-control comes up indirectly in deciding whether a particular provocation was grave or not. So, if it is proved that the accused did receive grave and sudden provocation, the court is generally prepared to assume that homicide was committed while the accused was deprived of the power of self-control. In some cases, it may be possible for the prosecution to prove that the accused committed the murder with a cool head in spite of grave provocation. But such cases will be rare. So, when the accused has established grave and sudden provocation, the court will generally hold that he has discharged the burden that lay upon him under Exception 1 to Section 300 IPC.

25. What should be the approach of the court? The provocation must be such as will upset not merely a hasty and hot-tempered or hypersensitive person, but one of ordinary sense and calmness. The Court has to consider whether a reasonable person placed in the same position as accused would have behaved in the manner in which the accused behaved on receiving the same provocation. If it appears that the action

of the accused was out of all proportion to the gravity or magnitude of the provocation offered, the case will not fall under the exception. The case can only fall under the exception when the court is able to hold that provided the alleged provocation is given, every normal person would behave or act in the same way as the accused in the circumstances in which the accused was placed, acted.

26. In the words of Viscount Simon: "The whole doctrine relating to provocation depends on the fact that it causes, or may cause, a sudden and temporary loss of self-control, whereby malice, which is the formation of an intention to kill or to inflict grievous bodily harm, is negatived. Consequently, where the provocation inspires and actual intention to kill, or to inflict grievous bodily harm the doctrine that provocation may reduce murder to manslaughter seldom applies".

27. Section 105 of the India Evidence Act, 1872 casts burden of proof on the accused. Being an exception, the burden of proving the circumstances covered by Exception 1 is on the accused. ***Where the prosecution prima facie proves that the act was committed by the accused which had resulted in the death of the deceased and the accused pleads that the case falls within one of the exceptions, it is for him to prove that.***

28. It is for the accused who seeks to reduce the nature of his crime by bringing his case under Exception 1, to prove that the provocation received by him was such as might reasonably be deemed sufficient to deprive him of self- control, and that the act of killing took place whilst that absence of control was in existence and may fairly be attributed to it.(Ref.:Ratanlal and Dhirajlal's Law of Crimes, 24th Edition)."

(emphasis supplied)

51. It is proved from the evidence of PW-4 and PW-5 that there were frequent quarrels between their parents regarding property. It is also proved that a day prior to the incident, a quarrel took place between the accused and Sunita and also, just before the incident, the accused asked whether she was willing to transfer the property in his favour and when, Sunita refused, she was shot dead. It is also proved that, after ordering Sunita to bring water, the accused loaded his gun, and

when Sunita came back with water, the accused was ready with his loaded gun and then he made Sunita sit on the sofa, and then asked her whether she was going to transfer the property or not? This conduct of accused demonstrates that he was fed up with the persistent refusal of Sunita for transferring the property in his favour and had ultimately made up his mind that if she, refuses this time to transfer the property in his favour, then he will shoot her dead. The loading of gun itself proves that accused had made up his mind that he will settle the matter today, itself. Otherwise, there was no need for the accused to load his gun, while he was present in his house. The loading of gun itself proves that accused premeditated that he will shoot Sunita, if she refused to accede to his demand. This premeditation proves that the accused intended to kill Sunita, if she refused to accede to his demand for transferring the property in his favour. In the above facts and circumstances of the case, the prosecution has succeeded in proving that there was premeditation on the part of the accused for murdering Sunita.

52. Learned counsel for the accused-appellant submitted that the accused is entitled to get benefit of Exception-4 of section 300 IPC, because there was no premeditation on the part of the accused to kill Sunita, the incident occurred due to the visit of Pradeep on the day of the incident, which suddenly provoked the accused gravely and in the

heat of the moment, the accused decided to settle the matter with Pradeep. The accused was having a loaded gun and this was resisted by Sunita, who caught hold of the barrel of the gun, and in the ensuing scuffle, the gun accidentally fired. Learned counsel further submitted that despite the objection of the accused, the continuity of extramarital affair of Sunita, enraged the accused and in similar circumstances, any husband would have acted, similarly. Learned counsel submitted that the accused had not acted abnormally. In view of this, the accused is entitled to get the benefit of Exception-4 of Section 300 IPC.

53. Learned counsel for the accused-appellant also submitted an alternative argument that the extramarital affair of Sunita was objected to by the accused and the accused had ordered Sunita to end this affair but, when the accused came to know on the day of the incident that Pradeep had visited the house in his absence, then the accused got enraged. The visit of Pradeep acted as a trigger, which suddenly provoked the accused, which was grave in nature, who lost self-control, who was having a gun in his hand and deprived of self-control, he shot dead Sunita. He submitted that in such circumstances, the accused is entitled to get the benefit of Exception-1 of Section 300 IPC.

54. It is apparent from the law laid down by the Apex Court in ***Narayan Yadav****(supra)* ***and Vijay @ Vijayakumar****(supra)*, that for attracting Exception-4 of Section 300 IPC, there must be no premeditation, the incident should take place in sudden fight, in the heat of passion, upon a sudden quarrel, without the accused having taken undue advantage and the accused should not have acted in a cruel or unusual manner. It is also proved that there must be mutual combat or exchange of blows on each other, there should not be one side action. Where the accused is armed with a deadly weapon, then it will deny him the benefits of Exception-4.

55. It is apparent from the law laid down by the Apex Court in ***Vijay @ Vijayakumar****(supra)*, that for attracting Exception-1 of Section 300 IPC, there must be sudden and grave provocation on the part of deceased, as a result of which a reasonable man was likely to lose his self-control. Such reasonable man should be a member of the society, in which the accused was living, as such, education and social conditions of the accused are relevant factors. Further, ordinary exchange of abuse cannot be a basis for grave provocation. The case can only fall under this exception when the court is able to hold that provided the alleged provocation is given, every normal person would behave or act in the same way as the accused, in the circumstances in which the accused was placed, acted.

56. It is apparent from the law laid down by the Apex Court in ***Vijay @ Vijayakumar****(supra)* that where the accused pleads that his case falls within one of the exceptions of Section 300 IPC, the burden lies upon him to prove this fact.

57. From the evidence of PW-4 and PW-5, it is proved that there was no mutual combat between the accused and Sunita. Further, Sunita was unarmed whereas, the accused was armed with gun. From the discussion made herein before, it is also proved that the accused had loaded his gun, before Sunita returned back with water, as such, the accused had already premeditated to settle the matter with Sunita. It is also proved that Pradeep had not visited the house of the accused that day and there was no extramarital affair between Pradeep and Sunita, as such, there was no provocation on the part of Sunita. In the above facts and circumstances, the accused cannot take shelter behind Exception -4 to Section 300 IPC.

58. It is also proved that there was absolutely no provocation on the part of Sunita, what to say of grave provocation, as such, there was no justification on the part of the accused to shoot her dead. It is also proved that the accused shot Sunita fatally in her breast, from close range, which proves the intention of the accused of murdering her. The burden lies upon the accused to prove that there was sudden and

grave provocation on the part of Sunita or his case falls within the exceptions of Section 300 IPC, which he utterly failed to prove.

59. I am of the considered opinion that Sunita was the owner of immovable property, which the accused wanted to get transferred in his name, which Sunita refused and due to this, there were frequent quarrels between them, which culminated in this incident. It is proved beyond reasonable doubt that Sunita was intentionally killed by accused on a refusal to transfer property in his favour. The ocular evidence of PW– 4 and PW– 5 and the statement of accused under section 313 CrPC, which corroborates the above ocular evidence, proves that the accused murdered Sunita. In view of the above, the version of the accused that Sunita had extramarital affair with Pradeep, to which he objected, and due to this affair, the incident occurred, is rejected. The version of the accused that a scuffle took place when Sunita caught hold of the barrel of his gun and then accidentally the gun fired, is also unbelievable because no injuries have been found on the hands and fingers of the deceased during autopsy, as such, the version of scuffle is also rejected. It is also apparent that the accused is an Advocate, who has very skilfully crafted his defence under section 313 CrPC which has no substance, which is an afterthought, in order to escape from the credible ocular evidence against him.

60. I am of the considered opinion that in the facts and circumstances of the case, the trial court has not committed any illegality in convicting the accused under section 302 IPC, for committing the murder of his wife Sunita and sentencing him to undergo the minimum sentence of life imprisonment. Accordingly, the appeal deserves to be rejected.

61. ***The appeal is hereby dismissed.***

62. The accused – appellant is on bail, who shall surrender before the trial court within a month, to undergo the remaining sentence awarded to him by the trial court, failing which, the trial court is directed to adopt coercive measures for securing his presence, in accordance with law.

Order Date:- 10.11.2025
Jitendra/Himanshu/Mayank

(Sandeep Jain, J.)

(By the Court)

There is disagreement between us regarding the final order in the appeal and the reasons for the same.

In view of the aforesaid, let the records of the case be put up before Hon’ble the Chief Justice for nomination under Section 392 Cr.P.C.

(Sandeep Jain,J.) (Salil Kumar Rai,J.)

November 10, 2025
Vipasha