

Ganpat Ram Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/760721

Court : Rajasthan

Decided On : Jul-28-1994

Reported in : 1995CriLJ1466; 1995(1)WLC281

Judge : R.P. Saxena and; R.R. Yadav, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 114 and 302; Arms Act - Sections 27; Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 162, 311, 313 and 374(2)

Appeal No. : Criminal Appeal No. 452 of 1987

Appellant : Ganpat Ram

Respondent : State of Rajasthan

Advocate for Def. : V.R. Mehta and; D.R. Bohra, Advs.;for Public Prosecutor

Advocate for Pet/Ap. : M.L. Garg and; R.K. Singhal, Advs.

Disposition : Appeal dismissed

Judgement :

R.R. Yadav, J.

1. This Appeal is preferred against the judgment dated 15-10-1987 passed by the learned Sessions Judge, Sri Ganganagar in Sessions Case No. 16 of 1986 by

which he found the appellant guilty for the offence under Section 302, IPC, and sentenced him to life imprisonment and a fine of Rs. 100/- in default of payment of fine to further undergo one month's R. I.

2. The prosecution case at the trial was that PW 1, Ramesh Kumar Dhankani, Advocate father of deceased Chandra Shekhar alias Chandu was present at his residence on 20-10-1985 at about 5.40 p.m. PW 5, Raj Kumar came to him at his residence and informed that his son Chandra Shekhar was killed by appellant-Ganpat Ram r/o Naya Chak by causing gun shot injuries in the Collectorate Court Compound. Upon the aforesaid information, father of the deceased-Ramesh Kumar Dhankani (PW 1) along with Raj Kumar (PW 5) rushed up at Collectorate Court Corn-pound where Madan Murari Aasthana, Advocate (PW 9), Satish Kumar (PW 4) and Alma Ram (PW 10) were standing at the scene of occurrence and dead-body of his son Chandra Shekhar was lying in between the wooden plank. Madan Murari (PW 9), Atma Ram (PW 10) and Satish Kumar (PW 4) told him that today at about 4.00 p.m. appellant-Ganpat Ram and deceased-Chandra Shekhar were gambling, in which Ganpat Ram lost his golden ring in gambling to deceased. Appellant Ganpat Ram asked the deceased to return his golden ring and he promised to pay money for the same after holidays but the deceased refused to return his golden ring. On refusal of the deceased to return his golden ring, the appellant was infuriated and started to abuse the deceased. The appellant gave threat to teach a lesson to the deceased for not reluming his golden ring and went away on his scooter. When appellant-Ganpat Ram left the place of occurrence, the deceased managed to bring liquor and started to drink with them along with PW 2, Avinash Chandra alias Kaku. At about 5,15 p.m. appellant-Ganpat Ram came on his scooter No. 7434 armed with double barrel gun, which was driven by an unknown person. Immediately after alighting from the scooter, the appellant exhorted others to leave the place and keep away as he was to kill the deceased. After saying so, he lifted the barrel of his gun and fired a shot in the air. The deceased left the place where he was sitting and came in front of the appellant. He pointed his gun towards the deceased and pressed the trigger of his gun which was mis-fired. Appellant-Ganpat Ram re-loaded his gun and after aiming its barrel on the chest of the deceased he fired, which hit the deceased and he fell down. The deceased instantaneously died. After killing the deceased,

appellant-Ganpat Ram along with the unknown person, who was driving the scooter, left the place of occurrence.

3. On receipt of oral information of father of the deceased PW 1, Ramesh Dhankani, an F.I.R. (Fix. P/1) was registered on the same day at 6 p.m. at police station Kolwali, Sri Ganganagar under Section 302, IPC and Section 27, Arms Act and investigation commenced.

4. After completion of investigation, challan was filed against accused Ladu Ram and appellant-Ganpat Ram under Section 302 read with Section 34, IPC and Section 302 read with Section 114, IPC and under Section 302, 302 read with Section 34, IPC and Section 27, Arms Act respectively in the Court of learned Chief Judicial Magistrate, Sri Ganganagar. Learned Chief Judicial Magistrate committed the case to the Court of Sessions Judge, Sri Ganganagar for trial.

5. Learned Sessions Judge framed the charges against appellant-Ganpat Ram under Section 302, 302, 34, IPC and Section 27, Arms Act and against accused-Ladu Rani, charges were framed under Section 302/34 and 302/114, IPC.

6. At the trial, both the accused-persons pleaded not guilty and claimed trial.

7. In support of the prosecution story, the prosecution agency examined as many as 14 witnesses, namely; PW 1 Ramesh Dhankani, PW 2 Avinash Chandra, PW 3 Gogi Anand, PW 4 Satish Kumar, PW 5 Raj Kumar, PW 6 Dr. Rajendra Kumar Gupta, PW 7 Lakha Ram, PW 8 Sunder, PW 9 Madan Murari Asthana Advocate, PW 10 Atmaram, PW 11 Banwari Lal, PW 12 Jiley Singh, PW 13 Richhpal Singh and PW 14 Gopal Dass and produced 59 documents from Ex. P/1 to Ex. P/59.

8. Both the accused-persons gave their statements under Section 313, Cr. P.C. in which they denied their presence and commission of offence.

It is pertinent to mention here that the appellant-Ganpat Ram, in his statement under Section 313, Cr. P. C. had clearly admitted his presence at Collectorate Court Compound at about 1.30 p.m. on 20-10-85 and had further admitted his meeting on the place of occurrence with PW-9, Madan Murari Asthana, Advocate. It is further admitted by the appellant in his statement under Section 313, Cr. P.C.

that on the day of occurrence, there was Sunday and there were Dashera festival holidays. In order to celebrate Dashera festival, the appellant demanded a sum of Rs. 500/- as loan from Madan Murari Aasthana, Advocate (PW 9) and had offered to pawn his golden ring (Article 5A) in lieu of the said loan. It is stated by the appellant that Madan Murari Aasthana, Advocate (PW 9) had accepted his offer to give him Rs. 500/- as loan and in lieu thereof he took his golden ring as a security. The accused-appellant after taking loan from Madan Murari Aasthana, Advocate (PW 9) went to his residence. It is further important to mention here that the appellant in his statement under Section 313, Cr. P.C. had also stated that PW 2, Avinash Chandra is friend of Ramesh Dhankani (PW 1) father of the deceased. According to the appellant, PW 2, Avinash Chandra is a man of criminal nature and he had criminal history of cheating. Against the said Avinash Chandra, several criminal cases are pending in the local Courts as well as Courts of Delhi, Bombay, Haryana etc. According to the appellant, PW 2, Avinash Chandra has given false evidence against him. The appellant had also filed Ex. D/1 to Ex. D/14 in support of his defence.

9. After hearing learned Public Prosecutor for the State and learned counsel for the accused-appellants, the learned Sessions Judge, at the very outset, held that there is no evidence against accused-Ladu Ram to connect him with the alleged offence. According to the learned Sessions Judge, PW 2 Avinash Chandra, P.W. 4 Satish Kumar, PW 9 Madan Murari Aasthana Advocate and PW 10, Atma Ram failed to identify accused-Ladu Ram in the identification parade conducted by PW 13, Richhpal Singh, Munsif and Judicial Magistrate. According to the learned Sessions Judge, there is no oral and circumstantial evidence against accused-Ladu Ram to connect him with the murder of the deceased and as such the prosecution has miserably failed to establish the guilt against him. Thus, according to the learned Sessions Judge, he has no option except to acquit Ladu Ram accused under Section 302/34 and 302/114, IPC.

10. Learned Sessions Judge after placing reliance on the oral testimony of eye-witness namely, PW 2, Avinash Chandra, which is corroborated by ample circumstantial evidence available on record convicted the appellant under Section 302, IPC and under Section 27, Arms Act.

11. We have heard learned counsel for the appellant and learned Public Prosecutor for the State at length and also have gone through the oral and documentary evidence on record. We have also made a close scrutiny of the finding of guilt recorded by the learned Sessions Judge against the appellant along with learned counsel for the appellant.

12. Mr. M. L. Garg, learned counsel for the appellant questions the finding of guilt recorded by the learned Sessions Judge on the following three grounds :-

(i) According to the learned counsel for the appellant, out of four eye-witnesses namely, PW 2 Avinash Chandra alias Kaku, PW 4 Satish Kumar, PW 9 Madan Murari Aasthana, Advocate and PW 10 Atma Ram, three eye-witnesses i.e. PW 4, PW 9 and PW 10, named above, had been declared hostile by the prosecution agency, therefore, it is unsafe to convict the appellant on the sole testimony of PW 2, Avinash Chandra, who had a criminal history behind him.

(ii) The investigating officer had recorded the statement of PW 2 Avinash Chandra after 8 days, therefore, his testimony becomes suspicious, and

(iii) In a case where the death is due to injury caused by lethal weapon, it has always been considered to be a duty of the prosecution to prove by the expert evidence that it was likely or at least possible for those injuries to have been caused by such weapon and in the manner in which they are alleged to have been caused.

13. Learned counsel for the appellant has invited our attention towards the statement of PW 2, Avinash Chandra given by him before the trial Court, where at page 26 of the Paper-book, he had deposed that the appellant was armed with rifle but in the next breath in para 2 of his deposition, he deposed that the appellant went away with his gun after committing murder. He also pointed out that an application under Section 311, Cr. P. C. was moved on behalf of the appellant for summoning PW 2, Avinash Chandra before a Division Bench of this Court to ascertain as to whether the appellant was really armed with rifle or with gun. According to the learned counsel for the appellant, from the statement of PW 2, Avinash Chandra given before this Court, it is clear that he properly understood

the distinction between the gun and rifle.

14. In support of his aforesaid contentions, Mr. M. L. Garge, learned counsel for the appellant placed reliance on Chanan Singh v. State of Haryana, AIR 1971 SC 1554, Rai Singh v. State of Haryana, AIR 1971 SC 2505 : (1971 Cri LJ 1733), Mohinder Singh v. The State, AIR 1953 SC 415 : (1953 Cri LJ 1761), Ram Narain Singh v. State of Punjab 1975 SCC(Cri)571 :(1975 Cri LJ 1500), Subhas v. State of UP, 1976 SCC (Cri) 483: 1976 Cri LJ 1521), Awadhesh v. State of M.P., AIR 1988 SC 1158 :(1988 Cri LJ 1154), Ram Dass v. State of Maharashtra, 1977 SCC (Cri) 254 : (1977 Cri LJ 966), Hakumat Rai v. The State, 1987 Cri LR (Raj) 718 and Babu Maulana v. State of Rajasthan, 1986 Cri LR (Raj) 518.

15. Learned Public Prosecutor in reply supported the finding of guilt recorded by the learned Sessions Judge and cited the following authorities :-

(i) Darshan Singh v. State of Punjab, AIR 1988 SC 747 : (988 Cri LJ 909),

(ii) State of U.P. v. Anil Singh, AIR 1988SC 1998 :(1989 Cri LJ 88),

(iii) Maqsoodan v. State of U. P., AIR 1983 SC 126 : (1983 Cri LJ 218),

(iv) Prakash v. State of MP, 1992 AIR SCW 2582 : (1922 Cri LJ 3703),

(v) Tarjinder Singh v. State of Haryana, AIR 1994 SC 503, and

(vi) Balbir Singh v. State of Punjab, (1994) 1 Crimes 542 : (1994 Cri LJ 1206) (SC).

16. It is pertinent to mention that relevant cases cited at the bar will be discussed in our judgment in succeeding paragraphs at relevant and appropriate places.

17. It is easily deducible from the emphasis given by the learned counsel for the appellant in support of his argument as if it was necessary for the learned Sessions Judge merely to remember that no innocent person be punished. The aforesaid thrust of argument of the learned counsel for the appellant is not acceptable to us, inasmuch as, a Judge is also required to see that the guilty person does not escape punishment. The former principle of criminal

jurisprudence to the effect that no innocent person should be punished, is as important as latter principle of criminal jurisprudence, according to which, the guilty person should not be allowed to escape punishment on flimsy ground and on inconsequential contradiction. Both the principles of Cr. Jurisprudence are public duties which a Judge has to perform religiously. It is, therefore, not correct to reject the prosecution story merely because it is based on oral testimony of only one eye-witness while other three eyewitnesses had been declared hostile by the prosecution agency if the case made out is otherwise true and acceptable and corroborated by medical evidence, Ballistic Expert opinion and other circumstantial evidence relied upon by the learned Sessions Judge after giving cogent and convincing reasons. In our considered opinion, the finding of guilt recorded by the learned Sessions Judge is based on analytical discussions of oral and documentary evidence on record, which is based on truth, and learned Sessions Judge has rightly convicted and sentenced the appellant on the sole testimony of one eye-witness namely; PW 2, Avinash Chandra which is corroborated by medical evidence, ballistic expert opinion and other circumstantial evidence relied upon by the learned Sessions Judge including recovery of gun at the instance of the appellant from a box, which was found to be in. his exclusive possession.

18. Our aforesaid view is buttressed by a decision given by the Apex Court in State of U.P. v. Anil Singh, AIR 1988 SC 1998 : (1989 Cri LJ 88), upon which, learned Public Prosecutor has placed reliance during course of his argument. Paras 13, 14 and 15 of the aforesaid decision are relevant, which are reproduced below :-

'Of late this Court has been receiving a large number of appeals against acquittals and in the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all the witnesses to the occurrence have not been examined. Nor it is proper to reject

the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. The Privy Council had an occasion to observe this. In *Bankim Bihari v. Matagini* (1920) 24 Cal WN 626 : AIR 1919 PC 157, the Privy Council had this to say (at p. 628) (of Cal WN): (at p. 158 of AIR) :-

'That in Indian litigation, it is not safe to assume that a case must be false if some of the evidence in support of it appears to be doubtful or is clearly untrue, since there is, on some occasions, a tendency amongst litigations to back up a good case by false or exaggerated evidence.'¹⁴. In *Abdul Gani v. State of Madhya Pradesh*, AIR 1954 SC 31 : (1954 Cri LJ 323), Mahajan, J. speaking for this Court deprecated the tendency of courts to take an easy course of holding the evidence discrepant and discarding the whole case as untrue. The learned Judge said that the Court should make an effort to disengage the truth from falsehood and sift the grain from the chaff.

15. It is also our experience that invariably the witnesses add embroidery to prosecution story perhaps for the fear of being disbelieved, But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected, It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.'

19. In our humble opinion, the afore-mentioned judgment of the Hon'ble Supreme Court had set in a new trend in the administration of criminal justice system in our country to make it responsive to the needs of the law abiding citizens. It is pertinent to mention that earlier decisions of the Apex Court, suited to the social conditions of that time but the afore-mentioned decision is suited to the social

conditions and social opinion of today. Their Lordships in the afore-mentioned decision moulded and set the principle of law relating to dispensation of justice system in criminal side to meet the needs and opinion of today which is binding on us.

20. Thus, from the aforesaid discussion, the learned Sessions Judge has rightly come to the conclusion that the statements of eye-witnesses i.e. PW 4 Satish Kumar, PW 9 Madan Murari Aasthana, Advocate and PW 10 Atma Ram, who have been declared hostile is not admissible in evidence. The view taken by the learned Sessions Judge is squarely covered (in AIR 1991 SC 1853 : (1991 Cri LJ 2653), in view of the ratio of the decision given by the Apex Court in Dahyabhai Chhagan Bhai Thakkar v. State of Gujarat, AIR 1964 SC 1563 : (1964 (2) Cri LJ 472), according to which, if statement made in deposition in court is inconsistent with the earlier statement given before the police under Section 161, Cr. P. C., then in such situation within meaning of Section 162, Cr. P. C., no reliance can be placed on such contrary statement made by the witnesses. In our considered opinion, the behaviour of PW 4 Satish Kumar, PW 9 Madan Murari Aashana Advocate and PW 10 Atma Ram was normal during investigation but for unknown reasons it became abnormal when the instant case was committed to the court of Sessions for trial. According to us, it is an obvious attempt to help the accused to escape punishment which is not permissible under law.

21. In the present case, in broad day light, the murder of a young man aged about 30 years son of an Advocate was committed in the Collectorate Court compound in Sri Ganganagar on 20-10-85 at 5.15 p.m. and father of the deceased PW 1 Ramesh Dhankani was informed about the murder of his son at about 5.40 p.m. by PW 5 Raj Kumar, who immediately rushed up to the place of occurrence along with PW 5 Raj Kumar. After verifying the factum of incident from PW 9, Madan Murari Aasthana Advocate, PW 4 Satish Kumar and PW 10 Atma Ram, PW 1 Ramesh Dhankani went to Police Kotwali, which is hardly at a distance of 1 1/2 furlong from the place of occurrence and lodged a prompt FIR (Ex. P/1) at 6 p. m. A perusal of the FIR (Ex. P/1 leads towards an irresistible conclusion that father of the deceased PW 1 Ramesh Dhankani lodged the First Information Report at the earliest moment at 6 p.m., in which, he has given all details in most natural

manner without making any exaggeration about the incident. From vivid description in detail given in the FIR, it is further apparent that no attempt was made by father of the deceased, who was an Advocate to become an eye-witness to the occurrence, which further inspires our confidence to use the FIR as piece of corroborative evidence to the oral testimony of PW 2 Avinash Chandra. The manner of assault by the appellant by his double barrel gun is also disclosed in the FIR in most natural manner even giving posture of the deceased, when gun shots were fired by the appellant from his double barrel gun (Ex. P/51), which was recovered by the investigating officer on the basis of information memo Ex. P/50 on 22-10-85 soon after the occurrence and soon after his arrest. Ex. P/53 report dated 4-3-86 of the State Forensic Science Laboratory through a flood of light that one Baniyan and shirt, which the deceased was wearing at the time of occurrence bore holes present on the front portion of these clothes, which had been caused by shots fired from the gun Ex. P/51. The combustion products of charge were also detected around these holes. Ex. P/54-Ballistic Expert report dated 4-3-86 further indicates that the double barrel gun Ex. P/51 was a serviceable fire-arm and was found to have been fired some time before it was received in laboratory. According to the Ballistic Expert, it is also evident that two 12 bore empty cartridges were fired from 12 bore DBBL gun of the appellant Ex. P/51 including misfired cartridges from left barrel of gun of the appellant. Further according to the ballistic report Ex. P/54, wad pieces and lead pellets sent by the prosecution were also found to have been come out from 12 bore cartridges fired from DBBL gun Ex. P/51. The discloser of number of the Scooter of the appellant by the father of the deceased further inspires confidence about truthfulness as disclosed in the F.I.R.

22. The motive of committing murder is also disclosed in the FIR Ex. P/1. In our opinion, the F.I.R. (Ex. P/1) is based on truth and not on the basis of imagination. A close scrutiny of the material available on record indicates that soon after lodging of the FIR by PW 1 Ramesh Dhankani, the investigation commenced and a golden ring (Article 5A) was recovered by the investigating officer from possession of PW 9 Madan Murari Aasthana Advocate and seizure memo (Ex. P/31) of the golden ring belonging to the appellant was also prepared on the spot soon after the incident. The seizure memo (Ex. P/31) is signed by two motbir

witnesses viz. PW 4 Satish Kumar and PW 5 Raj Kumar, who gave their statements before the court and had admitted their signature on the seizure memo (Ex. P/31). There is a reference of golden ring in Ex. P/31, according to which, the golden ring belong to the appellant, which he lost in gambling to the deceased. It is also disclosed in the seizure memo (Ex. P/31) that when the deceased started drinking liquor, he had given the said golden ring (Article 5A) to PW 9 Madan Murari Aasthana Advocate to keep in his custody. From the aforesaid discussion, it is incorrect to suggest that the statement of PW 2 Avinash Chandra is the sole basis for conviction of the appellant while as a matter of fact the oral testimony of eye witness PW 2 Avinash Chandra is corroborated from the aforesaid circumstantial evidence which bring home the guilt of the appellant beyond all reasonable doubt.

23. In view of the aforesaid discussion the first submission of learned counsel for the appellant Shri M. L. Garg that out of four eye-witnesses viz. PW 2 Avinash Chandra alias Kaku, PW 4 Satish Kumar, PW 9 Madan Murari Aasthana Advocate and PW 10 Atma Ram, three eye-witnesses viz. PW 4 Satish Kumar, PW 9 Madan Murari Aasthana Advocate and PW 10 Atma Ram had been declared hostile by the prosecution agency, hence it is unsafe to convict the appellant on the sole testimony of PW 2 Avinash Chandra, who is involved in the several cases of cheating, is not acceptable to us.

24. It is not the number of witnesses examined nor quantity of evidence adduced by the prosecution on that counts but it is quality of fact which counts. See *Maqsoodan v. State of U. P.*, AIR 1983 SC 126 : (1983 Cri LJ 218).

25. It is undisputed that an accused can be punished on the sole uncorroborated testimony of an independent eye-witnesses, if the witness is held by the Court to be a witness of sterling worth and if the witness is not held to be of sterling worth then in such a situation it requires corroboration. In the present case, it is true that PW 2 Avinash Chandra cannot be held to be a witness of sterling worth, therefore, his testimony requires corroboration. The learned Sessions Judge has relied upon number of circumstantial evidence as well as recoveries made by the investigating officer, which are duly proved before him and also corroborate the statement of

PW 2 Avinash Chandra. Learned Sessions Judge had an opportunity to see the demeanour of PW 2 Avinash Chandra, PW 4 Satish Kumar, PW 9 Madan Murari Aasthana Advocate and PW 10 Atma Ram, who had been declared hostile and after analytical discussion, has rightly believed the statement of PW 2 Avinash Chandra and has recorded the finding of guilt with which we are in full agreement. The learned Sessions Judge has given cogent and convincing reasons in support of the finding of guilt recorded against the appellant and we fully agree with the finding of guilt recorded by the learned Sessions Judge.

26. Second argument of the learned counsel for the appellant is that the investigating officer had recorded the statement of PW 2 Avinash Chandra after lapse of 8 days i .e. occurrence took place on 20-10-85 and statement of PW 2 Avinash Chandra was reocoded by the investigating officer on 28-10-85, therefore, his testimony becomes suspicious. In support of his argument, learned counsel for the appellant placed reliance on the decisions of this Court in Babu Maulana v. State of Rajasthan, 1986 Cri LR (Raj) 518, and Hakumat Rai v. State of Rajasthan, 1987 Cri LR (Raj) 718. The facts of these authorities are distinguishable with the facts of the present case. A perusal of the decision relied upon by Mr. Garg, learned counsel for the appellant in Babu Maulana's case (supra) in para 38 ruled that if the eye-witnesses are not examined immediately after the incident, it will be presumed that such eye witnesses were not present at the time of incident and it creates doubt in the prosecution story. Similarly, the decision rendered by this Court in Hakumat Rai's case (supra) in para 14, it is held that Om Prakash who was an important witness and who had arrived at the spot first of all, his non-examination creates doubt. In the present case, the name of PW 2 Avinash Chandra was disclosed in the FIR (Ex. P/1) itself thus there could be no doubt the presence of PW 2 Avinash Chandra on the spot. The investigating officer has given explanation as to why the statement of P. W. 2 Avinash Chandra was not recorded earlier and the learned Sessions Judge has rightly accepted the explanation given by the investigating officer.

27. Learned counsel for the appellant heavily placed reliance in Balkrishna v. State of Orissa, AIR 1971 SC 804: (1971 Cri LJ 670), wherein, in paras 6 and 8, their Lordships took a view that if the statement under Section 161, Cr. P. C., is

recorded after 10 or 11 days and delay remained unexplained by the investigating officer it would render evidence of the witness unreliable. The case of Balkrishna (supra) came up for consideration before the Apex Court in Ganesh Lal v. State of Maharashtra, 1922 SCC (Cri) 106: (1922 AIR SCW 1175). In Ganesh Lal's case (supra) the statement under Section 161, Cr. P. C., was recorded by the investigating officer after 2 1/2 months. Their Lordships' attention was invited to the case of Balkrishna (supra) and after taking into account the said decision, their Lordships held that evidence of witness recorded at a late stage, must be received with pinch of salt. Delay defeats justice but each case has to be considered on its own facts. Thus, in the subsequent case i. e. Ganesh Lal (supra), their Lordships relied upon the statement given by the witness, which was recorded by the investigating officer after 2 1/2 months since in that case, delay in recording evidence under Section 161, Cr. P. C, was explained.

28. In view of the aforesaid discussion, argument of learned counsel for the appellant to the effect that since the statement of PW 2, Avinash Chandra was recorded after 8 days, therefore, it is not trust-worthy, is not acceptable. In the present case, the learned Sessions Judge was perfectly justified in placing reliance on the statement of PW 2, Avinash Chandra. According to learned Sessions Judge, the Investigating Officer has given satisfactory explanation for recording the statement after 8 days, therefore, he has rightly held PW 2, Avinash Chandra a truthful and reliable witness. A perusal of the statement of PW 2, Avinash Chandra clearly shows and establishes beyond all reasonable doubt that it was the appellant, who fired shot to the deceased by his double barrel gun. The statement of PW 2, Avinash Chandra is sufficiently corroborated from circumstantial evidence, recovery of gun, recovery of golden ring and report of the Ballistic Expert including various other recoveries and circumstantial evidence already discussed in the preceding paragraphs. The statement of PW 6, Dr. Rajendra Gupta, Medical Jurist further corroborates the evidence of PW 2, Avinash Chandra. Discloser of the name of PW 2, Avinash Chandra in the FIR further inspire confidence to believe his statement.

29. Learned counsel for the appellant invited our attention to the contradictory statement given by PW 2, Avinash Chandra at page 26 of the Paper-book to the

effect that the appellant was armed with rifle but in the next breath in para 2 of the deposition, he deposed that the appellant went away with his gun after committing murder of the deceased. Learned counsel for the appellant further invited our attention to the statement of PW 2, Avinash Chandra recorded before the Division Bench of this Court on 14-7-93 under Section 311, Cr. P. C., where he specifically stated that the appellant-Ganpat Ram who had committed murder of the deceased-Chandra Shekhar alias Chandu was armed with rifle is correct and he had stated about the rifle and he has never stated about the gun before the learned Sessions Judge. He further stated before this Court that he understood the difference between gun and rifle. He denied the suggestion to the effect that when he was giving statement before the learned Sessions Judge he did not understand the distinction between the gun and rifle. He also denied the suggestion that he is giving false statement in collusion with the accused in order to help him. It is important to mention that PW 2, Avinash Chandra admitted in his deposition before the High Court on 14-7-93 that the witness and the appellant are living in the same jail in same cell for several days and both of them are brought before 'this Court together. At the risk of repetition, it is stated that the behaviour of all the four eyewitnesses, whose names were disclosed in the FIR was normal up to the investigation stage but when the case was committed to the Court of Session, out of four eye-witnesses, the behaviour of three eye-witnesses become abnormal obviously to help the accused. It is true that the behaviour of PW 2, Avinash Chandra was normal up to the stage of investigation and continue to remain normal up to his deposition before the Court of Session. But after recording the conviction, PW 2, Avinash Chandra developed intimacy in jail with the appellant and after developing the intimacy, his normal behaviour became abnormal.

30. It is suffice to state that the statement given by PW 2, Avinash Chandra under Section 311, Cr. P. C. after finding of guilt recorded by the learned Sessions Judge is an afterthought and statement given by PW 2, Avinash Chandra before the Division Bench of this Court on 14-7-93 is wholly unreliable. The answer given by PW 2, Avinash Chandra in his cross-examination conducted on behalf of the appellant also leads towards an irresistible conclusion that PW 2, Avinash Chandra was bent upon to help the appellant by making statement that the

cartridges used in the rifle are of different kind while the cartridges used in the gun are of different kind. Much emphasis has been given by the learned counsel for the appellant on the statement given by PW 2, Avinash Chandra before the Division Bench of this Court on 14-7-93. But his argument is not acceptable in view of the decision of the Supreme Court in Mohinder Singh v. State, AIR 1953 SC 415 : (1953 Cri LJ 1761). The extract of para 10 of the aforesaid authority is quoted below :-

'10.....in the present case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or a rifle. Indeed, it seems more likely that they were caused by a rifle than by a gun and yet the case for the prosecution is that the appellant was armed with a gun and in his examination, it was definitely put to him that he was armed with the gun P-16. This only by the evidence of a duly qualified expert that it could have been ascertained whether the injuries attributed to the appellant were caused by a gun or by a rifle and such evidence alone could settle the controversy as to whether they could possibly have been caused by a fire-arm being used at such a close range as is suggested in the evidence.'

31. In view of the aforesaid decision relied upon by the learned counsel for the appellant whether the injuries attributed to the appellant were caused by a gun or by a rifle, is to be ascertained by the evidence of duly qualified expert not by PW 2, Avinash Chandra, who has neither expertised knowledge nor he ever used any rifle or gun. In view of the aforesaid discussion, the statement of PW 2, Avinash Chandra recorded under Section 311, Cr. P. C., on 14-7-93 does not create any cloud about truthfulness of the prosecution story where the prosecution has come with definite and positive case right from the FIR up to the conclusion of the evidence before the learned Sessions Judge that the appellant was armed with double barrel gun and after reaching on the spot, one shot was fired by him by his double barrel gun in the air. He fired second shot which was misfired. According to the prosecution, he re-loaded his gun and fired a third shot on the chest of the deceased from close range of 5 to 6 ft. It was put to the appellant in his statement under Section 313, Cr. P. C., that he was armed with gun (Ex. P/51). The lead pieces and pellets found and recovered on the spot by the Investigating Officer,

were sent to the Ballistic Expert. Upon Microscopic examination, the Ballistic Expert found these lead pieces and pellets to have been come out from 12 bore empty cartridges recovered at the instance of the appellant from the tool box of his scooter. The Ballistic Expert had also examined one Baniyan and one shirt, which the deceased was wearing at the time of incident and found holes in front of Baniyan and shirt caused by the shots fired from the gun (Ex. P/51). The combustion products of powder charged, were also detected around these holes. The statement of PW 6, Dr. Rajendra Gupta, Medical Jurist also throws a flood of light that the injuries attributed to the appellant were fired from the gun and not from the rifle, inasmuch as, he found the shirt and baniyan having big holes and around these holes, he found blackening and tatooing present. PW 2, Avinash Chandra had deposed before the learned Sessions Judge that the gun shot was fired from a distance of 5 to 6 feet, which is fully corroborated with the statement of PW 6, Dr. Rajendra Gupta. According to PW 6, Dr. Rajendra Gupta, the shot attributed to the appellant was fired from a close range in front side i.e. face to face. Right from the FIR up to the trial, the definite and positive case of the prosecution was that the gun shot attributed to the appellant was fired from close range. The appellant aimed his double barrel gun towards the chest of the deceased and fired the shot, which hit the deceased and he fell down and instantaneously died on the spot. In view of the qualified expert evidence of PW 6, Dr. Rajendra Gupta, it is proved beyond all reasonable doubt that the injuries attributed to the appellant were caused by double barrel gun and not by rifle as stated by PW 2, Avinash Chandra before the Division Bench of this Court on 14-7-93, therefore, the argument of learned counsel for the appellant is hereby repelled.

32. Learned counsel for the appellant argued that in case, where the death is due to injury caused by lethal weapon, it has always been considered to be aduty of the prosecution to prove by the expert evidence that it was likely or at least possible for those injuries to have been caused by such weapon and in the manner in which they are alleged to have been caused. In order to avoid repetition and to maintain brevity in view of the afore-mentioned discussion, it is suffice to say that in the present case, the prosecution has established beyond all reasonable doubt by expert evidence that the injuries attributed to the appellant were caused by double barrel 12 bore DBBL Gun in the manner in which they are

alleged to have been caused. In the FIR, the manner of assault is specifically stated in detail soon after the occurrence.

33. In support of the aforesaid contention, learned counsel for the appellant relied upon the decision of the Apex Court in *Awadhesh v. State of M.P.*, AIR 1988 SC 1158: (1988 Cri LJ 1154). Their Lordships in para 10 of the aforesaid decision, observed that if shots were fired from 'bari' at the deceased who was drinking water in a sitting posture, the injuries in all likelihood would have, been from lower part to upper part but Dr. Jain deposed that direction of the injuries caused by bullets was from upper part to lower part and the bullet was antero-posteriorly. In the opinion of the doctor, the person who caused injuries to the deceased was at higher level than the deceased. In fact, it was found wholly inconsistent with the testimony of eye-witnesses. Thus, their Lordships set aside the conviction and sentence awarded by the High Court and confirmed the trial Court's judgment of acquittal.

34. The aforesaid decision relied upon by the learned counsel for the appellant in the present case is distinguishable and not applicable to the facts of the case. In the present case, statement of PW 6, Dr. Rajendra Gupta, Medical Jurist fully corroborates the eye-witness account given by PW 2, Avinash Chandra about the distance and manner of assault. In fact, in the present case, there is no inconsistency about the distance and about the manner of assault as deposed by the eyewitness PW 2, Avinash Chandra and statement of PW 6, Dr. Rajendra Gupta, Medical Jurist. According to the F.I.R. the injuries attributed to the appellant were caused by him face to face aiming his double barrel gun on the chest of the deceased when he was standing in front of him. PW 2, Avinash Chandra deposed before the learned Sessions Judge that the gun shot was fired by the appellant from close distance of 5 to 6 feet. The eye-witness account given by PW 2, Avinash Chandra is fully corroborated by the testimony of PW 6, Dr. Rajendra Gupta, who stated on 17-2-87 before the learned Sessions Judge as follows:-

^----- deht o cfu;ku ds ck;h rjQ ,dcM+k Nsn Fkk] ftlds vklikl Cysdfuax o VsVksbax ekStwn FkhA**

At page 52 of the Paper-book in para 3 of his deposition, the Medical Jurist PW 6, Dr. Rajendra Gupta has stated as under :-

^----- Qk;j&vkeZ; tunhd ls o lkeusls pyk;k x;k FkkA***

The aforesaid expert evidence of the Medical Jurist PW 6, Dr. Rajendra Gupta leads towards an irresistible conclusion that the version disclosed in the FIR soon after the incident up to the deposition by PW 2, Avinash Chandra before the learned Sessions Judge, there is no inconsistency whatsoever in the eye-witness account and statement of the Medical Jurist. As a matter of fact, the statement of eye-witness PW 2, Avinash Chandra is fully corroborated from the statement of Medical Jurist PW 6, Dr. Rajendra Gupta, establishes beyond all reasonable doubt that the injuries attributed to the appellant in the present case were caused by double barrel gun (Ex. P/51) with which the appellant was armed. The injuries attributed to the appellant further proved by duly qualified Ballistic Expert's opinion Ex. P/5 3 and Ex. P/54 that the injuries caused to the deceased were caused by double barrel gun Ex. P/51 and not by a rifle. The statement of PW 2, Avinash Chandra that the shot which hit the deceased was fired by the appellant from a close distance of 5 to 6 feet, is also established by the evidence of PW 6, Dr. Rajendra Gupta. A vivid description of manner of assault is disclosed in the FIR by the prosecution agency. No material contradiction has been demonstrated before us which may be said to be inconsistent, therefore, last argument of learned counsel for the appellant is also not tenable.

35. After giving our anxious consideration to the facts and circumstances of the case and the arguments advanced by the learned counsel for the parties and after going through the judgment delivered by the learned Sessions Judge, it appears to us that the fatal injuries have been inflicted by the appellant with his double barrel gun Ex. P/51. The double barrel gun with which the appellant was armed at the time of occurrence and from which, he fired fatal shot to the deceased, was his licenced gun, which was recovered, at the instance of the accused and such recovery of gun Ex.P/51 was not otherwise possible if the accused him self had not assisted for recovery of his double barrel gun. The said double barrel gun was found in serviceable condition by the Ballistic Expert. The pellets recovered from

the dead-body of the deceased were found to have been fired from double barrel gun Ex. P/51 and empty cartridges recovered at the instance of the accused, were also found to have been fired from Ex. P/51. The Ballistic Expert found misfired cartridge, which was recovered along with two empty cartridges from the tool box of the scooter of the appellant bearing its No. 7434, which was used by the appellant at the time of commission of offence. The Ballistic Expert also found that the misfired cartridge was fired from left barrel of the gun. He also noticed that the gun was recently used before examination. According to the opinion of PW 6, Dr. Rajendra Gupta, the fire-arm injuries found on the person of the deceased could be inflicted by a gun from a close range of 5 to 6 feet. He also found marks of blackening and tattooing on the Baniyan and shirt, which the deceased was wearing at the time of assault. The exclusive proof of complicity with the accused-Ganpat Ram in inflicting fire-arm injuries to the deceased, is fully corroborated by the eye-witness account given by PW 2, Avinash Chandra. There may be some minor discrepancy in the evidence of PW 2, Avinash Chandra but so far as complicity of Ganpat Ram is concerned, the deposition of eyewitness PW 2, Avinash Chandra, other circumstantial evidence and evidence of a duly qualified expert fully corroborate the eye-witness account given by PW 2, Avinash Chandra.

36. In the present case, the accused armed with licenced double barrel gun fired one shot in the air, thereafter he re-loaded his gun and fired second shot, which mis-fired. He again re-loaded his gun and fired third fatal shot to the deceased, who was standing in front of him unarmed. The FIR was lodged within no time i.e. the occurrence took place at 5.15 p.m, information reached to the father of the deceased PW 1, Ramesh Dhankani at 5.40 p.m. and report of this incident was lodged at 6 p.m. With all minute details regarding manner of assault and names of the eye-witnesses are mentioned in it and the motive for which fatal assault was given to the deceased, has also been disclosed in the F.I.R. Soon after lodging of the FIR, investigation commenced and Investigating Officer reached on the spot and prepared Ex. P/31 seizure memo of golden ring belonging to the accused also inspires confidence to believe the prosecution story. The defence taken under Section 313, Cr. P.C., by the accused-appellant Ganpat Ram that he went at about 1.30 p.m. in the court compound along with his one companion and demanded Rs. 500/- as loan on Dashera occasion from PW 9, Madan Murari

Aasthana, Advocate and promised to give him golden ring Ex. P/31 as security is not believable. Although the defence taken by the accused-appellant has been supported in his deposition by one of the eye witness PW 9, Madan Murari Aasthana, Advocate, who deposed that he had given Rs. 500/- as loan to the appellant and has taken his golden ring Ex. P/31 as security. The aforesaid deposition of PW 9, Madan Murari Aasthana, Advocate does not inspire our confidence in view of reference made in Ex. P/31 about the golden ring giving its full description and stating therein that the said golden ring belong to Ganpat Ram accused, which he lost during the course of gambling to the deceased. When the deceased managed to bring liquor and was drinking the same along with other eyewitnesses, he handed-over the said golden ring to PW 9, Madan Murari Aasthana, Advocate to keep it in safe custody. After recovery of the said golden ring soon after the incident, the aforesaid statement of PW 9, Madan Murari Aasthan, Advocate was recorded by the Investigating Officer and said information which is quoted above was given by PW 9 himself to the Investigating Officer. The aforesaid Ex. P/31 was duly signed by two motbirs viz. Satish Chandra and Raj Kumar. It is important to mention that Ex. P/31 seizure memo of the golden ring is also signed by PW 9, Madan Murari Aasthana, Advocate. If the defence taken by the accused would have been true then PW 9, Madan Murari Aasthana, Advocate must have disclosed the truth before the Investigating Officer soon after lodging the FIR and he would have not signed Ex. P/31 certifying the statement recorded in Ex. P/31 in the presence of motbir-witnesses, PW 4, Satish Kumar and PW 5, Raj Kumar. PW 9, Madan Murari Aasthana, Advocate has categorically admitted his signature on Ex. P/31 but according to him, his signature were taken on the blank paper by the Investigating Officer. The aforesaid statement of PW 9, Madan Murari Aasthana, Advocate is not believable that he signed on the blank paper being an Advocate by profession. The Investigating Officer cannot be presumed to muster courage to obtain his signature on the blank paper. Even if assuming but not admitting in case, the Investigating Officer had obtained the signatures of PW 9, Madan Murari Aasthana, Advocate on Ex. P/31 -recovery memo of golden ring on the blank paper then he ought to have made complaint to the higher police authorities, but in the present case nothing has been done. It is pertinent to mention that PW 9, Madan Murari Aasthana, Advocate has not only signed on Ex.

P/31 but he has also admitted his signature on Ex. P/2- site plan prepared by the Investigating Officer on the spot, Ex. P/3-description memo and Panchayatnama of the deceased-Chander Shakher alias Chandu. Before the learned Sessions Judge, he stated that he had signed on the blank paper. A man can speak lie but circumstance never speak lie. Had it been a truth that a golden ring belonging to the appellant, was given to PW 9, Madan Murari Aasthana, Advocate as he stated before the learned Sessions Judge in lieu of Rs. 500/- advanced to him by the appellant then firstly he should have disclosed the truth before the Investigating Officer before signing Ex. P/31. PW 9, Madan Murari Aasthana, Advocate has admitted before the learned Sessions Judge in his deposition that he had not made any complaint to the higher police officers. Two motbir witnesses, viz., PW. 4, Satish Kumar and PW 5, Raj Kumar have not supported the recovery memo Ex. P/31.

37. At the risk of repetition, we are constrained to observe that in the present case, the behaviour of all the eye-witnesses disclosed in the F.I.R. was normal up to the investigation stage but when the case was committed to the Court of Session, their behaviour became abnormal obviously to help the accused. The accused-appellant has also filed Exs. D/1 to Ex. D/14 and various documents indicating that various cases against PW 2, Avinash Chandra are still pending before the local Courts and other Courts. These documents have been taken into account by the learned Sessions Judge and has rightly been rejected for cogent and convincing reasons given by the learned Sessions Judge with which we are in full agreement.

38. In view of the afore-mentioned discussion, the finding of guilt recorded by the learned Sessions Judge is hereby affirmed and does not require interference under Section 374(2), Cr. P.C. The conviction and sentence recorded by the learned Sessions Judge on 15-10-87 are hereby confirmed and appeal filed by the appellant is dismissed.