

Madhya Pradesh High Court

Pappu @ Matiuddin vs State Of M.P. on 7 April, 2022

Author: Gurpal Singh Ahluwalia

1

Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010)

HIGH COURT OF MADHYA PRADESH
GWALIOR BENCH

DIVISION BENCH

G.S. AHLUWALIA

&

RAJEEV KUMAR SHRIVASTAVA J.J.

Cr.A. No. 246 of 2010

Pappu @ Matiuddin

Vs.

State of M.P.

Shri O.P. Mathur, Shri Yash Saxena and Shri Ayush Saxena Counsel
for the Appellant
Shri C.P. Singh Counsel for the State

Date of Hearing : 22-3-2022
Date of Judgment : 07th-04-2022
Approved for Reporting :

Judgment

07th - April -2022

Per G.S. Ahluwalia J.

1.

This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the judgment and sentence dated 9-3-2010 passed by 2 nd Additional Sessions Judge (Fast Track Court), Datia in S.T. No. 125 Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) of 2008 by which the Appellant Pappu @ Matiuddin has been convicted under Sections 148,302/149,120-B of IPC. For offence under Section 302/149 of IPC, he has been sentenced to undergo the Life Imprisonment and a fine of Rs. 10,000/- with default rigorous imprisonment of 2 years, for offence under Section 148 of IPC he has been sentenced to undergo the Rigorous Imprisonment of 2 years and fine of Rs. 2,000/- with default Rigorous Imprisonment of 3 months. All the sentences shall run concurrently.

2. It is not out of place to mention here that the co-accused Phulle @ Kabuluddin was arrested after the conviction of the Appellant and accordingly, he was tried separately and has also been convicted. The appeal i.e., Cr.A. No. 382 of 2017 filed by Phulle @ Kabuluddin has also been heard simultaneously. In the light of the judgment passed by Supreme Court in the case of A.T. Mydeen Vs. The Asstt. Commissioner, decided on 29-10-2021 in Cr.A. No. 1306 of 2021, the evidence led in the case of co-accused Phulle @ Kabuluddin cannot be read either in favor or against the Appellant Pappu @ Matiuddin and vice versa, therefore, in order to avoid any confusion, the appeal filed by Phulle @ Kabuluddin shall be decided by a separate judgment.

3. It is also not out of place to mention here that according to the prosecution case, initially, the Appellant Pappu @ Matiuddin along with four other co-accused persons, killed Imambaksh and Jameel, and while fleeing away, they killed their own father Jainuddin. The Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) present case is in relation to murder of Jainuddin, whereas Crime No. 79/08 was registered for murder of Imambaksh and Jameel. The appellant was also tried for murder of Imambaksh and Jameel in S.T. No. 84/2008 and has been convicted and Cr.A. No. 401/2010 arises out of judgment passed in S.T. No.84/2008. The said Criminal Appeal has also been heard simultaneously and is being decided by separate Judgment.

4. The necessary facts for disposal of the present appeal in short are that the Appellant Pappu @ Matiuddin lodged an FIR on 21-4- 2008 at about 20:30 that he is the resident of Boran Colony. He is a labourer by profession. At about 19:00, his father Jainuddin was sitting outside his shop. The complainant has an enmity with Imambaksh and the case is pending in the Court. At that time, Imambaksh with Ali, Basheer, Patel @ Shakeel, Baksha @ Jameel, Shriram, Khunde, Bakar, Jumman, Jamal and Mouzu came there and started assaulting him. At that time, Ali fired a gun shot with an intention to kill the complainant, thereby causing injuries on his left shoulder and back. Bakar, Jamal, Mouzu and Shriram started assaulting him by lathi and danda. Basheer fired a gun shot and his father Jainuddin came rushing in order to save him. Then Ali fired a gun shot from his .12 bore gun causing gun shot injury to Jainuddin, who died on the spot. Thereafter, with great difficulties, he has come to the police station and the dead body of his father Jainuddin is lying on the spot. The incident has been witnessed by Nathu, Saleem, Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) Shashi, Guddu etc.

5. Accordingly, the police registered crime No. 78/2006 against Ali, Basheer, Patel @ Shakeel, Babba @ Jameel, Shriram, Khunde, Bakar, Jumman, Jamal, Mouzu and Shyam Baksh. The appellant was sent for medical examination and it was found that he had suffered simple injuries. Alibaksh lodged FIR against the appellant Pappu @ Matiuddin, Phulle @ Kabuluddin Javeli and others on the allegations that they have killed Imambaksh and Jameel and in order to create a false defence, the co-accused Phulle @ Kabuluddin and others have killed their own father Jainuddin. Phulle @ Kabuluddin is the real brother of the Appellant Pappu @ Matiuddin. Accordingly, he was arrested in Crime No. 79/2008 lodged by Alibaksh for murder of Imambaksh and Jameel. The injuries found on the body of Appellant Pappu @ Matiuddin were found to be self inflicted. Although in FIR, it was alleged that Ali had killed his father by his .12 bore gun, whereas in Post Mortem it was found that the deceased had suffered gun shot fired by .315 bore gun. Accordingly, the charge sheet was filed against the Appellant Pappu @ Matiuddin and other co-accused persons

were declared absconding.

6. The Trial Court by order dated 19-6-2009 framed charges under Sections 148,302/149,194,182,211, 120-B of I.P.C.

7. The Appellant abjured his guilt and pleaded not guilty.

8. The prosecution examined Anupam Shrivastava (P.W.1), Gayadeen Sahu (P.W.2), Dr. M.M. Shakya (P.W.3), Naseeruddin Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) (P.W.4), Balbhadra Singh (P.W. 5), Bihari Lal (P.W.6), Ali Baksh (P.W.7), Rajjak (P.W.8), Gurudayal (P.W.9), Dr. Umesh Kumar Dantare (P.W.10), Hariram (P.W.11), Mahendra Kumar Tiwari (P.W.

12), Ramjisharan (P.W.13), Islam (P.W.14), Habib Khan (P.W.15), Manu @ Rashi Manjoori (P.W. 16), Balaprasad (P.W. 17), and Atul Kumar Singh (P.W.18).

9. The Appellant examined Dr. R.S. Parihar (D.W.1) and also examined himself as D.W.2, and Guddu @ Shakiruddin (D.W.3).

10. The Trial Court by the impugned judgment, convicted and sentenced the appellant for the above mentioned offences.

11. Being aggrieved by the judgment and sentence passed by the Trial Court, it is submitted by the Counsel for the Appellant, that in fact, he was attacked by the complainant party, and when his father Jainuddin tried to intervene in the matter, then he was shot dead by Alibaksh and the appellant has been falsely implicated. The injuries sustained by the Appellant have not been explained by the prosecution. All the witnesses are related and interested witnesses, therefore, their evidence is liable to be discarded. There are material omissions and contradictions in the evidence of the witnesses.

12. Per contra the Counsel for the State has supported the findings recorded by the Trial Court.

13. Heard the learned Counsel for the Parties.

14. Before advertng to the facts of the case, this Court would like to consider as to whether the death of Jainuddin was homicidal in Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) nature or not?

15. Dr. M.M. Shakya (P.W.3) has conducted the Post-mortem of the dead body of the deceased Jainuddin and found the following injuries on his body :

Dead body of a male lying supine on P.M. Table wearing whitish colour kurta with blood stains having hole at the site of the injury. Face, eyes are closed, mouth fully open, rigor mortis pass in upper limb and present in lower limb. Following injuries were present :

(I) Wound of Entry : present over the left side on chest just below nipple oval in shape 1 cm in diameter margin of the wound inverted. Multiple dotted abrasion present around the wound. Blackening is present around the wound. Wound is directed forward slightly down ward towards the right (Illegible) lateral part of the back of the lower chest at level of rib 9 th, 10th and 11th ribs. On opening of the wound is piercing subcostal muscle and ribs (6 th) along with left lung and pierce of (illegible) part of the (illegible) lateral part of the chest.

(ii) Wound of the Exit : Lacerated wound present margin of the wound everted. On opening of wound 9 th and 10th ribs fractured, muscles of subcostal injured directed towards left communicate with the trace injury no.1.

(iii) A lacerated wound gutter shaped present over the right upper anterior shoulder size 4 x 2 cm x 1/2 cm from below to upward margins of the lower part of the inverted and upper part of the wound everted. Blackening present over the lower part of the wound.

(iv) Abrasion wound present over the right ear lower part of ear lobe black in colour 1/2 x 1/2 cm.

The deceased was very linear thin body built. All injuries were ante-mortem in nature caused by gun shot fire arm injury. Time since death within 2 hours from P.M. Examination.

Bullet present inside cloth kurta at the injury site no. 3 taken out, sealed and handed over to the above P.C., P.S. Bhandar.

Kurta with blood stained having holes sealed and sent to S.O., P.S. Bhandar. Swab taken from wound sealed and sent to S.O., P.S. Bhandar along with seal sample. In the opinion cause of death is shock due to excessive hemorrhage from the injured heard caused by fire arm injury. Duration time since death within 2 hours from P.M.

Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) Examination. The Post-mortem report is Ex. P.3.

16. In cross-examination, he stated that dead body was brought by Constable Balbhadra Singh on 22-4-2008 at 3:00 P.M. Dr. R.S. Parihar is the Chief Medical Officer. Govt. Hospital, Bhandar. He had come on his duty on 22-4-2008 at 08:05. He was not on night duty, which was discharged by Dr. R.S. Parihar. He stated that arrangement can be made for keeping four dead bodies at a time. At the relevant time, 3 dead bodies were there, i.e., Jainuddin, Imambaksh and his son. The dead body of Jainuddin was identified by his relatives Naseeruddin and Ainuddin. He admitted that bullet causing injury no.1 was found inside the body. He further stated that in case if the entire bullet doesnot come out of the body, then a part of the bullet would remain stuck inside the body but the pointed part of the bullet would cause exit wound. It is correct to say that half of the bullet was

inside the body whereas half of the bullet was outside the body. This fact is also mentioned in Post-mortem report, Ex. P.3. He denied that similar types of injuries are caused by .12 bore cartridge and .315 bullet. Dr. Parihar was with him during the post-mortem. The post-mortem report, Ex. P.3 is in his handwriting.

17. Thus, it is clear that the deceased Jainuddin died because of gun shot injury. Therefore, it is held that his death was homicidal in nature.

18. The next question for consideration is as to whether the Appellant and other accused persons had killed Jainuddin or not?

Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010)

19. The prosecution has examined Naseeruddin (P.W.4), who was declared hostile. However, he stated that blood stained and plain earth was seized vide seizure memo Ex. P.4. Safina form is Ex. P.5 and Lash Panchnama is Ex. P.6. In cross-examination, he admitted that he is the son of cousin brother of deceased Jainuddin, thus, he is related to the Appellant Pappu @ Matiuddin.

20. Balbhadra Singh (P.W.5) has stated that he took the dead body of Jainuddin to C.H.C., Bhandar. He had brought the cloths of the deceased, a bullet, a packet containing swab, one seal specimen and handed over to Head Constable Biharilal which were seized vide seizure memo Ex. P.9.

21. Biharilal (P.W.6) had seized the cloths of the deceased, one packet containing bullet, wound swab and specimen of seal vide seizure memo Ex. P. 9. On 23-4-2008, he had seized the cloths of the Appellant Pappu @ Matiuddin, wound swab and specimen of seal vide seizure memo Ex. P.10.

22. Ali Baksh (P.W.7) is not an eye-witness of firing on Jainuddin, but he is an eye-witness of murder of Imambaksh and Jameel.. He stated that the deceased Imam Baksh is his elder brother. On 21-4- 2008, it was 7 to 7:30 P.M. He was standing along with his brother Imambaksh. Indal, Jameel and other persons were also there. At that time, the Appellant Pappu @ Matiuddin, Phulle and 3-4 more person came there. All of them were carrying country made pistol. The Appellant instructed his brother that he should compromise the matter Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) in trial pending for offence under Section 307 of IPC. Imam baksh said that compromise would be done. Thereafter, the Appellant Pappu fired a gun shot which hit on the chest and another gun shot hit in the abdomen of Imambaksh. Imambaksh fell down on the ground. Jameel and Indal were sitting there. Jameel stood up in order to save Imambaksh, then the co-accused Phulle shot Jameel on his right Cheek, but there after corrected himself and said left cheek and went through and through his right ear. The moment, Jameel fell down on the ground, both of them were taken to Hospital on the rickshaw along with Rajjak. The Appellant Pappu @ Matiuddin ran towards the Police Station whereas other co-accused persons ran towards Sarsai road, then he said Chirgaon road. They all were saying that Pappu should now do his work, whereas they have done their work. Some people chased Pappu @ Matiuddin and took him to police station. He was also beaten by general public. When they reached Hospital, Imambaksh was declared hostile and Jameel was referred to Gwalior. Jameel breathed his last on his way to Gwalior. He was

declared dead at Sahara Hospital, Gwalior. At about 12:30-1:00 in the night, they came back to Bhandar and he lodged the F.I.R. On the next day, he came to know that Pappu @ Matiuddin had lodged FIR against 11 persons on the allegations that those 11 persons have killed his father Jainuddin. He gave an application to S.P. for fair investigation, Ex. P.11. He also came to know that in fact, the Appellant Pappu @ Matiuddin has killed his father along with Phulle Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) with an intention to lodge a cross-case. Thereafter, the police had seized .12 bore gun from him along with his license. The seizure memo is Ex. P.12. The police had also seized copies of various complaints made by him to police vide seizure memo Ex. P.13. In cross-examination, he stated that he was having .12 bore gun. He admitted that the number of cartridges possessed by licensee is mentioned in the arms license. He admitted that on the date of seizure of gun, he was not having 10 cartridges. He explained that while purchasing gun, the gun was tested by the shopkeeper by firing two shots. He denied that he had fired a gun shot causing injury on left shoulder of the Appellant Pappu @ Matiuddin. He on his own clarified that on the date of incident, his gun was kept in his house, and further stated that he if was having gun with him at the time of incident, then his nephews would not have died. He denied that he fired second gun shot causing injury on the chest of Jainuddin.

23. Thus, it is clear that this witness has not witnessed the incident of murder of Jainuddin, but he has spoken about the incident which took place immediately prior to murder of Jainuddin.

24. Rajjak (P.W.8) is the witness of seizure of complaints from Alibaksh vide seizure memo Ex. P.13.

25. Gurudayal (P.W.9) is an independent Eye witness. He has stated that at about 7-7:30 P.M., he was in the shop of Imambaksh. Pappu along with 2-3 more persons came on the spot and fired at Imambaksh causing injuries on his chest and abdomen. Imambaksh Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) fell down. Then co-accused Phulle fired gun shot causing injury to Jameel who too fell down on the ground. Pappu ran towards Bhandar whereas Phulle and others ran towards Chirgaon. They shot Jainuddin who is their father and thereafter, they ran towards forest area through Sankatmochan street. The police recorded his statement about 10-5 days after the incident. This witness was cross-examined.

26. In cross-examination, he stated that he had started from village Kulariya for Bhandar at 10-11 A.M. He had come on cycle. Kulariya village is approximately 8-9 Km.s away from Bhandar. He took approximately 1 hour to reach Bhandar. He purchased goods and had also purchased sugar from the shop of Basheer. The market was open. He knows Basheer for 10-5 years. He used to come to the shop of Basheer as and when required. He knew Jainuddin for the last 10-15 years. He knows 2-3 sons of Jainuddin. He denied that the shops of Jainuddin and Basheer are situated at a distance of 1 1/2 km.s. He said the distance is approximately 50 to 100 ft.s only. When he reached the shop of Basheer, Imambaksh was sitting and Jameel was giving goods. Imambaksh was sitting outside, whereas 2 persons were sitting inside the shop. There were other customers in the shop of Basheer but he doesnot know about their identity. Jameel was shot by Phulle. It is true that there are three roads i.e., going towards Sarsai, Chirgaon and Bhandar Motor Stand. Imambaksh was standing at the distance of 2-3 ft.s away from this witness whereas Jameel was standing inside the shop at a distance of 1-1 1/2 ft. He Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) admitted that

after 1st shot was fired, he ran away from the spot, and could move for 10-15 ft.s only when second shot was fired. Thereafter, the miscreants shot Jainuddin. He denied that lights were ON at the time of incident. When the miscreants ran away, he came back to the spot and saw that Jameel had sustained a gun shot on his forehead near his eye, whereas Imambaksh had sustained two gun shots i.e., on chest and abdomen. He took about 10 minutes to come back to the place of incident. He admitted that he did not go to police station to lodge the FIR. He denied that it was dark and claimed on his own, that the visibility was upto 100-200 ft.s. He stated that the shop of Jainuddin was open. Jainuddin was shot dead in front of him and saw his dead body after the assailants ran away. It is true that the Appellant Pappu ran towards one direction, whereas Phulle ran towards another direction. He denied that Alibaksh had shot Jainuddin. He denied that Basheer had fired at the Appellant Pappu. He denied that he had not seen the incident and is giving false evidence. When he saw the Appellant Pappu on the spot, he was not having any injury on his body. He denied that Jainuddin was already murdered prior to murder of Imambaksh and Jameel. He went to his house after the incident. He denied that he did not narrate the incident to any body. After 8-10 days of incident, he was informed by a Constable that S.H.O. is calling him. Thereafter, he informed the police about the incident which was seen by him. Shriram Nanha is the resident of Umariya whereas he is the resident of Kulariya. He Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) doesnot know as to whether he was also present on the spot or not? He denied that he has come with Alibaksh. He denied that he has been tutored by Alibaksh. He denied that S.H.O. had tutored him.

27. Dr. Umesh Kumar Dantare (P.W.10) is a veterinary Doctor. He has stated that he was in additional charge of Bhandar. On 23-4-2008, Jaj Singh, A.S.I. Bhandar had brought one dog aged about 1 1/2 years. He had skin problem and had not found any remarkable injury. His report is Ex. P.14. This witness was cross-examined.

28. In cross-examination, he stated that requisition for medical examination of dog was sent on 23-4-2008. Jaj Singh had come along with dog. On the information of Jaj Singh, the name of owner of the dog was written. He had mentioned the colour of the dog by way of identification mark. There was no head injury on the dog.

29. Hariram (P.W. 11) is also one of the eye-witness. He stated that it was 7-7:30 P.M., he was purchasing grocery from a shop situated at Sarsai Tiraha. Kunwarraj and Surendra were also purchasing goods. He heard the noise of gun shot. He saw that Pappu and Phulle were firing gun shots, which hit Imambaksh and Jameel. Thereafter, Pappu and Phulle along with 3-4 persons, ran towards Chirgaon road. Imambaksh and Jameel fell down on the ground. Pappu ran towards Police Station, whereas others ran towards Sankatmochan. Then he heard that Pappu and Phulle have shot their father. Thereafter, he went back to his house. This witness was declared hostile. In cross-examination by Public Prosecutor, he admitted that after hearing Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) noise of gun shots, he saw that 4-5 persons were firing towards the shop of Imambaksh. They ran towards Sankatmochan Hanuman. Pappu and Phulle are known to him whereas other 3 were not known. He also admitted that immediately after firing there was helter-skelter. It is true that after sustaining gun shot injuries, Imambaksh and Jameel fell down on the ground. It is true that one of the miscreants who was also firing, fired a gun shot causing injury

on the back of Pappu. The person who had caused pellet injuries to Pappu was his companion. Thereafter, Pappu, Phulle and their companions, went towards the shop of their father and shot thrice or four times as a result Jainuddin died on the spot. It is true that thereafter, Phulle and his companions ran towards sankatmochan. It is true that the family members of Imambaksh were working in the shop and were unarmed. Imambaksh died instantaneously. It is true that Pappu ran towards the police station, but he was caught by the public and was also beaten. It is true that Alibaksh, etc were busy in looking after Imambaksh and Jameel. It is true that Pappu was beaten by the public. It is true that Pappu thereafter succeeded in running away and ran towards the Police Station for lodging report against Alibaksh etc. It is true that family members of Imambaksh, initially took Imambaksh and Jameel to Bhandar and thereafter to Gwalior. This witness was cross-examined.

30. In cross-examination, he stated that he is the resident of village Mushtara which is 6-7 Km.s away from Bhandar. There are only two Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) shops in his village. He further stated that he purchases goods from Bhandar. He started from his village Mushtara at 10:00 A.M. for Bhandar. Since he doesnot wear watch therefore, was not in a position to state that by what time, he reached Bhandar. He stated that if a person comes on a cycle then he would take approximately 2 ½ - 3 hours to reach Bhandar. Thereafter, he, Kunwarraj and Surendra went towards Court. He remained in Court for 2 hours. Thereafter, they sat near Well of Maharaj for 1 ½ hours. He had no reason to remain in Court for 3 hours, to remain in market for 4 hours and had no reason to sit at Well of Maharaj for 1 ½ hours. Imambaksh is known to him for 10-15 years. Jameel was also known to him for 10 years. He had not seen any other shop of Imambaksh and Jameel. The shop of Imambaksh was approximately 4-5 meters from the shop from where he was purchasing goods. The shop of Imambaksh is approximately 12 ft wide. Customers were standing there. He knows Jainuddin. He had floor mill. He was the father of Pappu and Phulle. He denied that the floor mill of Jainuddin is 1 ½ km.s away from the shop of Imambaksh. He denied that the floor mill of Jainuddin is not visible from the shop of Imambaksh. The noise of firing was coming from the side of shop of Imambaksh. He denied that he did not see that who were firing gun shots. It is true that after the firing, people starting running helter-skelter and shopkeepers started closing their shops. He took shelter after the firing took place. Jainuddin was shot after this witness took shelter.

Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) After firing took place at the shop of Imambaksh, he had heard the noise of firing from the shop of Jainuddin. He stated that Pappu and Phulle had shot Jainuddin. He denied that the fact of killing Jainuddin was told by the family members of Imambaksh, but clarified that lot of persons present on the spot were saying so. He knows the brothers of Imambaksh by face but their names are not known to him. He denied that Alibaksh had shot Jainuddin. He denied that Alibaksh has come to Court along with this witness. Alibaksh is the brother of Imambaksh. Imambaksh was lying outside the shop, whereas Jameel was lying inside the shop. Alibaksh was also standing there. He admitted that Pappu had suffered gun shot injury on his left back. However, denied that Alibaksh had shot the Appellant Pappu, but clarified on his own, that the companions of the Appellant Pappu had caused gun shot injury to Pappu. He admitted that Pappu had already suffered gun shot injury prior to his beating. He denied that load-shedding takes place in Bhandar at 5 P.M. He had seen the incident from the distance of

6-7-8 ft.s. He claimed that Pappu had not shot Jainuddin but he ran towards Police Station. He denied that Pappu had injuries all over his body. He came back to his house after 5-6 minutes of the incident. He had taken 2 ½ -3 hours to reach to Bhandar as he came very slowly but took 15-20 minutes to come back to his village.

31. Mahendra Kumar Tiwari (P.W.12) has stated that he was offering prayer in Hanuman Temple. Pappu, Phulle and 4-5 persons Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) came from Sarsai Tiraha and were firing gun shots. Jainuddin was sitting on the platform. Phulle shot Jainuddin and ran towards Ghusiyana Colony. Thereafter, he went to Sarsai Tiraha and came to know that Imambaksh and Jameel Khan have been killed. Thereafter, the family members of Imambaksh and Jameel took them to Hospital. This witness was declared hostile and in cross-examination by Public Prosecutor, he stated that he had seen that Pappu, Phulle and other 2-3 persons were coming from the side of shop of Imambaksh. It is true that he had told the police that Pappu and his companions had fired towards Imambaksh and on account of gun shot injuries, Imambaksh and Jameel fell down on the ground. He had seen that Imambaksh and Jameel were at the shop. Imambaksh was unarmed. Imambaksh died on the spot. It is true that Pappu was shouting to kill. Although he expressed his ignorance as to whether, one of the companion of Pappu caused gun shot injury to Pappu. This witness was cross- examined.

32. In cross-examination, he stated that he is the resident of Hemantpura Colony, Bhandar. His house is about 10-15 houses away from Hanuman Temple. He denied that the shop of Imambaksh and Jameel is not in between his house and Hanuman Temple. It is true that the house of Imambaksh and Jameel is situated in front of their shop. The house of Imambaksh is after 8-9 houses. The adjoining colony is known as Sitola colony. He admitted that he is residing in Bhandar since his birth. There is a road in between Temple and shop Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) of Jainuddin. He works as a labourer in transport shop. The owner of shop is Jafar. He is working as a labourer for the last 7-8 years in the shop of Jafar. He earns Rs. 2000 per month. Transport Company remains opened for 24 hours. About 1 year back, he came to know about the enmity between Pappu and Imambaksh. It is true that daily he offers prayer in Hanuman Temple. At the time of incident also, he was in the temple. He took 15-20 minutes to offer prayer. He further stated that while he was going to temple, he had seen the Appellant Pappu and others with country made pistol, but still he went to Temple. He admitted that he did not inform Imambaksh, because he was not aware that where these persons were going. He had heard the noise of firing from the side of shop of Imambaksh. After 5 minutes of the incident, he went to the shop of Imambaksh and Pappu, Javel and Phulle were not there, because they had gone to kill their father. They dragged Jainuddin from his shop and shot him. He had seen the incident. Phulle had caught the hand of Jainuddin and Pappu and Javeli were there, but could tell with certainty, that who shot Jainuddin. He had seen the incident of murder of Jainuddin from a distance of 15 ft.s. He denied that he has come to depose at the instance of Alibaksh. He stayed back in the hospital for 10-15 minutes and went back to transport office.

33. Ramjisharan (P.W. 13) is also another eye-witness. He stated that he had gone to answer the call of nature. He heard the noise of gun shot firing. Thereafter, he came to the road and saw that 5-6 Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) persons were coming. They were

Phulle, Javeli, Pappu, Lalu, Balle who were having firearms. They came to the shop of Jainuddin and Phulle shot his father Jainuddin and thereafter, they ran towards Ghusiyana Colony. In the meanwhile he heard noise from the shop of Imambaksh and accordingly, he went there and came to know that same assailants have shot Imambaksh and Jameel. This witness was cross-examined.

34. In the cross-examination, he stated that when he was going to answer the call of nature, Janiuddin was sitting outside his shop, but he did not have any talk with him. It is true, that the shop of Imambaksh is clearly visible from the shop of Jainuddin. When he was going to answer the call of nature, the shops were opened. He denied that it was dark. He denied that it was complete dark at 7:00 P.M. He heard the noise of gun shot while he answering the call of nature. He had seen 5-6 persons running. He further stated that when Jainuddin was shot by Phulle, there was no body except this witness. He stated that he had not seen the incident of firing at Imambaksh and Jameel. He had not seen Alibaksh causing injury to Pappu.

35. Islam (P.W.14) has also stated that Phulle shot his own father Jainuddin. Thereafter, he went towards Sarsai Square and found that Imambaksh and Jameel were lying in pool of blood. The persons present on the spot told that Phulle and other 4-5 persons have shot Imambaksh and Jameel. This witness was also cross-examined.

36. In cross-examination, he admitted that he is nephew of Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) Imambaksh. His shop is about 500-600 ft.s away from his house. It is true that the shop of Jainuddin is in between his house and shop of Imambaksh. From the distance of 10 ft, he had seen the assailants. He was all alone while he was going towards the shop of Imambaksh. Jainuddin was sitting at the door of his shop. The light was not ON. He had seen Jainuddin from a distance of 7-8 ft.s.

37. Habib Khan (P.W.15) had also seen the incident of murder of Jainuddin and has stated that Pappu, Phulle, Javeli, Lalu and Balle came and were having fire arms in their hands. Phulle shot his father Jainuddin and ran towards Sankatmochan temple. He was declared hostile, and in cross-examination by Public Prosecutor, he stated that he had not seen the incident of causing gun shot injuries to Imambaksh and Jameel. He stated that after some time, he came to Square and then came to know that Imambaksh and Jameel have been killed. This witness was cross-examined.

38. In cross-examination, he stated that there was sufficient day light and street lights were not ON. Jainuddin was standing as he was caught by the assailants and gun shot injury was caused in standing position. He did not go to Police Station to lodge the FIR. Phulle had fired from a close range of 3-4 ft.s. After witnessing the incident of murder of Jainuddin, he went towards the shop of Imambaksh. As he was frightened, therefore, he rushed towards the shop of Imambaksh instead of rushing towards his house.

39. Mouzu @ Rashi Manzoori (P.W.16) has stated that he was in Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) his shop. It was 7-7:30 P.M. Pappu, Phulle and 3 other persons came there who were having country made pistol. Pappu started abusing his uncle Imambaksh and challenged as to whether he is compromising in offence under Section 307 of IPC or not, and fired at

him. Imambaksh fell down. Jameel came there in order to save him. Phulle fired at him as a result, he too fell down on the ground. The other persons who had come with them, were also firing. Thereafter, the assailants ran towards Sankatmochan Temple. Out of fear he closed the shutter of his shop. After 10 minutes, he opened the shutter and found that Imambaksh was already dead, whereas Jameel was alive and was in serious condition. The neighbors and family members took them to hospital. He heard that Pappu ran towards the Police Station but he was caught by public and was beaten. His brother Jameel was taken to Gwalior and thereafter, he heard that the assailants have killed their own father Jainuuddin. This witness was cross-examined. But one thing is clear that he is a hearsay witness of murder of Jainuuddin and has not seen said incident.

40. Balaprasad (P.W.17) was working on the post of Head Constable. He has proved the register according to which the counter copy of FIR in crime no. 78/08 was sent to J.M.F.C. on 21-4-2008, Ex. P.19 and photocopy is Ex. P.19C. The counter copy of FIR was received in the Court of JMFC, Bhandar on 21-4-2008 and its acknowledgment is Ex.P.20 and its photo copy is Ex. P.20C.

Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010)

41. Atul Kumar Singh (P.W.18) has stated that on 21-4-2008, the Appellant Pappu @ Matiuddin had lodged a FIR against Ali, Basheer, Patel, Babba, Shriram, Khunde, Bakar, Jumman, Jamal, Mouzu, Imambaksh etc for murder of Jainuuddin and FIR, Ex.P.21 was registered for offence under Sections 147,148,149,302,307 of IPC. Merg No. 11/2008 was registered for murder of Jainuuddin, Ex. P.22. Thereafter, Pappu @ Matiuddin was sent for medical examination. The requisition for the same is Ex. P.23. He prepared the spot map on the information of Gayadeen Sahu, Ex. P.2. On 22-4-2008, he issued Safina form to Naseer, Jainuuddin, Rafiq Khan, Munna Bohare, Arif Ali, Ex. P. 5. Lash Panchayatnama, Ex. P.5 was prepared. Requisition for post-mortem was given, Ex. P.3. The blood stained and plain earth was seized from spot, vide seizure memo Ex. P.4. The statements of witnesses were recorded. In the investigation, it was found that in fact, the Appellant along with his brothers has killed his own father Jainuuddin and had lodged false report. He sent a query to the Doctor, Ex. P24 and the query report is Ex. P.25. The statements of Habib Khan, Ramjisharan, Islam, Ramniwas Sharma, Kunwarraj, Hariram, Salim, Naseeruddin @ Nathu, Gurudayal etc. were got recorded under Section 164 of Cr.P.C. Ali had given an application, Ex. P.11 to S.P. Datia against false report, which was forwarded to him. During the investigation, the licensed gun of Ali and license was seized vide seizure memo Ex. P.12. He had also seized the copies of various complaints made to Senior officers, as Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) well as the copy of summons issued in S.T. No.16/07 pending in the Court of Special Judge, were seized vide seizure memo E. P.13. A report, Ex. P.26 to the effect that in fact the complainant Pappu himself is an accused was sent to J.M.F.C., Bhandar. The bullet recovered from the dead body of Jainuuddin was sent to F.S.L., Sagar by memo dated 24-5-2008, Ex. P.28. Another draft no. 148/2008 dated 1.9.2008, Ex. P.29 was also sent to F.S.L., Sagar. The F.S.L. reports are Ex. P.30 and 31. Case no. 135/08 was registered against Phulle, Lalu, Balle and Javeli @ Javed as they were absconding. The copy of FIR is Ex. P. 32 and the copy of charge sheet is Ex. P.33. The counter copy of the FIR lodged by Appellant Pappu was sent to J.M.F.C. Bhandar on 22-4-2008, Ex. P.21C and it was received on 22- 4-2008. A copy of criminal record of Appellant in crime no. 189/06, 252/06 and 353/06 is also produced. The appellant was formally arrested in Jail vide arrest memo Ex. P.34. The charge sheet

was filed after completing the investigation. This witness was cross-examined.

42. In cross-examination, he stated that since morning, he was in the police station on 21-4-2008. The details of work done by him is mentioned in the Rojnamchasanhas. On 21-4-2008, Pappu had lodged the report at 20:30. He admitted that he had met Pappu at 20:30. He admitted that the FIR, Ex. P.21 lodged by Pappu was written by him, without looking at the dead body of Jainuuddin and without doing any enquiry. A question was put as to whether this witness was sure that Pappu is lodging correct FIR, then it was replied that the FIR was Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) lodged on the information given by Pappu and there is no provision for conducting any enquiry prior to that, therefore, he had not conducted any enquiry. He had seen the injuries on Pappu, therefore, he took him to Bhandar Hospital for medical treatment. He did not go to see the dead body of Jainuuddin along with Pappu. After coming back from hospital, he went to the spot. Since, Pappu @ Matiuddin was a wanted criminal in crime no. 252/06 for offence under Section 307,323,147,148,149 of IPC therefore, a guard was also sent. He did not arrest the appellant Pappu immediately, as he was having injuries and he was sent to Gwalior, as his treatment was more important than his arrest. He denied that he did not take Pappu to Bhandar Hospital. On 21-4-2008, from 8:30 till 11:00 P.M., the dead body of Imambaksh was lying in the hospital and some people had gathered there, who informed that it is the dead body of Imambaksh. A question was put to him as to whether Ali, Basheer, Patel @ Shakeel, Babba, Shriram Nanha, Khunde, Bakar, Jumman, Jamal, Mozu and Imambaksh were present in the hospital or not, then this witness replied that since he was posted in the said police station on the very same day, therefore, he cannot say as to whether above mentioned persons were present in the hospital or not? When an information regarding causing gun shot injury to Jameel was received in the Police Station, he was not there, therefore, Jaj Singh and H.C. Anirudh Singh, went to hospital directly. When he reached on the spot, lot of persons had gathered there and were chanting slogans. As Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) situation was deteriorating therefore, he shifted the dead body of Jainuuddin to Bhandar Hospital and did not prepare the lash Panchnama on the spot and left two constables on the spot for securing the place of incident. He reached on the spot at about 9:30 P.M. and it was dark. It is true that FIR in crime no. 78/08 and 79/08 were written by him and both the cases were investigated by him. He admitted that no family member of Jainuuddin had come to lodge the report that Phulle has killed his father Jainuuddin. Even Alibaksh did not lodge the report that Phulle and Pappu have killed their father Jainuuddin. He admitted that he was not directed by any senior officer to raise query on the medical report of Pappu. He himself had sent query, Ex. P.24 in the capacity of investigating officer. He admitted that no eye-witness was the resident of locality. He stated that Pappu had come to Police Station all alone. He admitted that Jainuuddin was killed after the incident of murder of Imambaksh. He admitted that there is old enmity between the families of Alibaksh and the Appellant. He admitted that during investigation, he did not find that Appellant had killed his father. He admitted that he had found that Balla @ Amruddin and Lalu @ Kabaruddin were not present on the spot. He admitted that he had received the formal permission from J.M.F.C., Bhandar on 2-8-2008, to arrest the Appellant. He denied that he had prepared false charge sheet against the Appellant.

43. Dr. R.S. Parihar (D.W.1) has stated that on 21-4-2008 he had Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) medically examined Pappu at 10:50 and found following injuries on his

body :

(i) Lacerated wound present over skull on left rental region size 4 cm x 1/2cm x bone deep

(ii) Abrasion present over left arm posteriory in middle of arm 5 in number size of each abrasion 0.2 to .2 cm blackening present. Oozing of small amount of blood from the abrasions.

(iii) Abrasions present over left lateral side of back 10 in number spread in area of left later side of back size of each abrasion .2 cm x 2. cm blackening present.

(iv) Abrasion present over left lateral side of lower back at lumber region 3 in number size 0.2 cm x .2 cm.

(v) Contusion present over right side of lower chest size 4 cm x 3 cm

(vi) Contusion present over right side of face size 3 cm x 2 cm

(vii) Contusion over nose size 2 cm x 2 cm Opinion : Injury no. 1,5,6,7 are caused by hard and blunt object and injury no 2, 3 and 4 caused by fire arm. Injury no. 6 and 7 simple in nature nature of injury no. 1 to 6 advised x-ray swab prepared from wounds side and sent to S.O. P.S. Bhander Shirt stained with blood and having multiple small hole at the site of injuries sealed sent to S.O., P.S. Bhander Duration of all injuries within 24 hours.

Case referred to J.A. Hospital Gwalior for needful treatment and x-ray for tracing out any foreign body or bony injury. The M.L.C. is Ex. D.11.

44. This witness in his examination-in-chief itself stated that on a query, Ex. P.24, he had given his query report, Ex. P.24 mentioning that the injuries no. 2,3 and 4 which were gun shot injuries and were sustained by Appellant Pappu, could have been self inflicted injuries. He further stated that his query report, is based on the MLC of the Appellant Pappu, Ex. D.11. He was unable to state that whether the injuries caused by .315 bore, .312 bore and 0.9 mm pistol would be of Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) different in nature or not?

45. Thus, it is clear that from the evidence of Dr. R.S. Parihar (D.W.1), that the gun shot injuries no. 2,3 and 4 sustained by Pappu could have been self inflicted injuries and since, this evidence has been given by a defence witness, therefore, it is difficult for the appellant to get out of it.

Whether all the Eye-witnesses are Related witnesses

46. It is submitted by the Counsel for the Appellant, that all the witnesses are related and interested witnesses.

47. The aforesaid submissions made by the Counsel for the Appellant is not correct. Naseeruddin (P.W.4) who is related to the Appellant has turned hostile and did not support the prosecution case. Alibaksh (P.W.7) is the brother of deceased Imambaksh, whereas Mouzu @ Rashi Manzoori (P.W. 16) is the son of Alibaksh. Rajjak (P.W.8), is an independent witness, but he has also stated that he is the resident of Jalon and Alibaksh (P.W. 7) is distantly related. He further stated that since, his brother-in-law has expired therefore, he is residing in Bhandar for the last 14 years to look after his parents and children. Gurudayal (P.W.9), Hariram (P.W.11), Mahendra Kumar Tiwari (P.W.12), Ramjisharan (P.W. 13), and Habib Khan (P.W.15) are independent witnesses. So far as Alibaksh (P.W.7), Islam (P.W.14) and Mouzu @ Rashi Manzoori (P.W.16) are concerned, their testimony cannot be rejected merely because they are brother and nephew of the deceased Imambaksh. Further, both these Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) witnesses were in their shop and the incident took place in their shop. Therefore, their presence on the spot is natural. Further more, merely because a witness is a related witness, would not mean that he would spare the real culprit. The Supreme Court in the case of Rupinder Singh Sandhu v. State of Punjab, reported in (2018) 16 SCC 475 has held as under :

50. The fact that PWs 3 and 4 are related to the deceased Gurnam Singh is not in dispute. The existence of such relationship by itself does not render the evidence of PWs 3 and 4 untrustworthy. This Court has repeatedly held so and also held that the related witnesses are less likely to implicate innocent persons exonerating the real culprits.

48. The Supreme Court in the case of Shamim Vs. State (NCT of Delhi) reported in (2018) 10 SCC 509 has held as under :

9. In a criminal trial, normally the evidence of the wife, husband, son or daughter of the deceased, is given great weightage on the principle that there is no reason for them not to speak the truth and shield the real culprit.....

49. The Supreme Court in the case of Rizan v. State of Chhattisgarh, reported in (2003) 2 SCC 661 has held as under :

6. We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

7. In Dalip Singh v. State of Punjab it has been laid down as under: (AIR p. 366, para 26) "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an

innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

8. The above decision has since been followed in *Guli Chand v. State of Rajasthan* in which *Vadivelu Thevar v. State of Madras* was also relied upon.

9. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh* case in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed: (AIR p. 366, para

25) "25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in -- '*Rameshwar v. State of Rajasthan*' (AIR at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel."

10. Again in *Masalti v. State of U.P.* this Court observed: (AIR pp. 209-10, para 14) "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hardand-fast rule can be laid down as *Pappu @ Matiuddin Vs. State of M.P.* (Cr.A.No. 246 of 2010) to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

11. To the same effect is the decision in *State of Punjab v. Jagir Singh* and *Lehna v. State of Haryana*.

50. Why a "related witness" would spare the real culprit in order to falsely implicate some innocent person? There is a difference between "related witness" and "interested witness". "Interested witness" is a witness who is vitally interested in conviction of a person due to previous enmity. Further more, why a related witness would spare the original assailant. Even according to the defence, the Appellant Pappu could have inflicted the injuries to himself. The "Interested witness" has been defined by the Supreme Court in the case of *Mohd. Rojali Ali v. State of Assam*, reported in (2019) 19 SCC 567 as under :

13. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see *State of Rajasthan v. Kalki*; *Amit v. State of U.P.*; and *Gangabhavani v. Rayapati Venkat Reddy*). Recently, this difference was reiterated in *Ganapathi v. State of T.N.*, in the following terms, by referring to the three-Judge Bench decision in *State of Rajasthan v. Kalki*: (*Ganapathi case*, SCC p. 555, para 14) "14. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"."

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh v. State of Punjab*, wherein this Court observed: (AIR p. 366, para 26) "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person."

15. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in *Jayabalan v. State (UT of Pondicherry)*: (SCC p. 213, para 23)

51. "23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

51. Thus, the testimony of Alibaksh (P.W.7) and Mouzu @ Rashi Manzoori (P.W.16) cannot be discarded only on the ground that they are related witnesses. Further more they are not the eye-witnesses of incident of murder of Jainuddin. They are the witnesses of the Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) murder of Imambaksh and Jameel.

Whether the testimony of independent witnesses is not reliable as they did not immediately narrated the incident to the police on their own.

52. It is next contended by the Counsel for the Appellant that other witnesses did not approach the police on their own, and narrated the incident only when they were called by the police, therefore, they appear to be tutored and created witnesses.

53. Considered the submissions made by the Counsel for the Appellants.

54. The Supreme Court in the case of Nirpal Singh v. State of Haryana, reported in (1977) 2 SCC 131 has held as under :

10. The last of the eyewitnesses is PW 22 Rattan Singh whose evidence has also been believed by the Sessions Judge who observed as follows:

"The fact that his name was not recorded in the first information report in a way shows that it was not a case of planned first information report otherwise his name would have been mentioned therein. After going through the statement of Ratan PW I feel inclined to hold that it also inspires confidence and is true."

The High Court also came to a similar finding as follows: "Because of his disinterestedness the evidentiary value of the testimony of Rattan Singh deserves a considerable weight." Counsel for the appellants vehemently contended that as the name of Rattan Singh was not mentioned in the first information report, although the eyewitnesses Sadhu Ram and Inder Kaur have categorically stated that another Rattan Singh of Siria was present at the occurrence, the Court should hold that Rattan Singh is a made-up witness. To begin with, this is essentially a question of fact which was fully noticed by the two courts of fact and in spite of that the courts of fact have believed the evidence of PW 22 Rattan Singh. Secondly, the mere fact that his name was not given in the FIR, though of some relevance, would not be Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) sufficient by itself to entail rejection of the testimony of this witness. We must realise that five persons had been killed and the informant Sadhu Ram must have been stunned and stupefied at the ghastly murders that took place in his presence and had picked up sufficient courage to run to the Police Station to lodge the FIR. It may be that in view of that agitated mental condition he may have omitted to mention the name of Rattan Singh. The mere fact that Rattan Singh s/o Siri, Ram is not mentioned in the FIR does not establish that Rattan Singh PW 22 could not have seen the occurrence. It is possible that both these persons may have witnessed the occurrence and the informant

mentioned the name of one and not the other. Other comments were also made against Rattan Singh which have been considered by both the trial court and the High Court. Both the courts have held that the evidence of this witness inspires confidence. Strong reliance was placed on the conduct of the witness in not reporting to the police officer immediately when he came to the spot. The witness was, according to the findings of the Sessions Judge and the High Court, an independent one and was not at all connected with the litigations between the appellants and the deceased. He, therefore, must have disclosed the version before the police only when he was asked to do so, because he had no interest in the matter at all. For these reasons, we do not see any reason to take a view different from the one taken by the Courts below regarding the credibility of this witness.

(Underline supplied)

55. Even otherwise, now a days, independent witnesses hesitate in coming forward to depose for various reasons. The Supreme Court in the case of Ambika Prasad v. State (Delhi Admn.), reported in (2000) 2 SCC 646 has held as under :

12. It is next contended that despite the fact that 20 to 25 persons collected at the spot at the time of the incident as deposed by the prosecution witnesses, not a single independent witness has been examined and, therefore, no reliance should be placed on the evidence of PW 5 and PW

7. This submission also deserves to be rejected. It is a known fact that independent persons are reluctant to be witnesses or to assist the investigation. Reasons are not far to seek. Firstly, in cases where injured witnesses or the Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) close relative of the deceased are under constant threat and they dare not depose the truth before the court, independent witnesses believe that their safety is not guaranteed. That belief cannot be said to be without any substance. Another reason may be the delay in recording the evidence of independent witnesses and repeated adjournments in the court. In any case, if independent persons are not willing to cooperate with the investigation, the prosecution cannot be blamed and it cannot be a ground for rejecting the evidence of injured witnesses. Dealing with a similar contention in State of U.P. v. Anil Singh this Court observed: (SCC pp. 691-92, para 15) "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 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."

56. Therefore, if the independent witnesses did not come forward on their own, and narrated the incident only when they were summoned by the police, this Court is of the considered opinion, that no adverse inference can be drawn against such witnesses. Further more, as per Section 179 of IPC, a person is under obligation to state the truth on any subject to any public servant, otherwise, his refusal to do so would be punishable under Section 179 of IPC. Chance witnesses

57. It is submitted by the Counsel for the Appellant that according to the prosecution case, Gurudayal (P.W.9), Hariram (P.W.11), Mahendra Kumar Tiwari (P.W.12), Ramjisharan (P.W. 13) and Habib Khan (P.W.15) were not related to the family of deceased, but Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) Gurudayal (P.W.9), Hariram (P.W.11), are the residents of different villages, whereas Mahendra Kumar Tiwari (P.W. 12) is resident of Hanumantpura Colony, Bhandar. Ramjisharan (P.W.13), Islam (P.W.

14) and, Habib Khan (P.W.15) are residents of Sitola Colony, Bhandar. Thus, it is clear that none of the witness examined by the prosecution is the resident of the locality where incident took place. Thus, it is clear that all the independent eye-witnesses are chance witnesses.

58. Heard the learned Counsel for the Appellant.

59. The Supreme Court in the case of State of U.P. Vs. Anil Singh reported in 1988 Supp SCC 686 has held as under :

24. The reason given by the High Court for disbelieving the evidence of Chhotey Lal PW 2 is fanciful. PW 2 is a resident of the Village Astiya. The village is at a distance of two miles from Pukhrayan town. It will be seen from his evidence that he along with Baijnath and Manuwa Maharaj

-- all residents of the same village had gone to the town for their requirements. PW 2 wanted iron nails, Manuwa required vegetables and Baijnath had to purchase iron rods. After purchasing the respective goods, they proceeded towards their village. When they reached the tehsil, they came across 3-4-5 boys who told them that there was Bal Mela and cultural programme in the Normal School. It was natural for them to stay on to see the cultural programme. They came to their grain dealer. They kept their articles at his place and after some time they started towards the Normal School at about 7.30 or 7.45 p.m. When they were approaching the Khazanchi hotel, they saw the accused assaulting KK. The evidence of PW 2 receives corroboration from PW 1. He figures as an eyewitness in the FIR. He cannot, therefore, be categorised as a chance witness.

(Underline supplied)

60. The Supreme Court in the case of Dargahi v. State of U.P., Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) reported in (1974) 3 SCC 302 has held as under :

12. The prosecution has examined four witnesses of the occurrence and they have all supported the prosecution case. Out of the four eyewitnesses, Harihar Nath (PW 1) is the brother of Lachhman Prasad deceased. Harihar Nath admits enmity with the accused and that fact would make the Court scrutinise his evidence more closely. If that evidence can stand that test, it can be acted upon in spite of the inimical relations of Harihar Nath with the accused. Gur Saran PW and Behari PW, the other two eyewitnesses, have no enmity with the accused and we find no particular reason as to why they should depose falsely against the accused. The submission made on behalf of the appellants that Gur Saran and Behari are chance witnesses and that the Court should not therefore place much reliance upon their testimony, in our opinion, is not well founded. The occurrence took place on the road going to Fatehpur. In the very nature of things the occurrence could have been witnessed by the persons going on that road. In a sense any one going on the road in question at the time of the occurrence would be a chance witness but that fact by itself would not be enough to discredit his testimony.

(Underline supplied)

61. The Supreme Court in the case of Ramvir v. State of U.P., reported in (2009) 15 SCC 254 has held as under :

14. The eyewitnesses examined in the trial cannot be said to be chance witnesses as they were the residents of the same village and at about 6.15 p.m. these eyewitnesses were moving around, some were going to their agricultural field while some were coming from their respective agricultural fields. The incident had happened near a sugarcane crop which is near the agricultural field. The time 6.15 p.m., being broad daylight, the presence of the eyewitnesses at the place of occurrence is quite natural. The witnesses being the residents of the locality, their presence at the place of occurrence could not be considered unnatural. They had no cause to give false evidence. Accordingly, their testimonies cannot be discarded.

62. The Supreme Court in the case of Harbeer Singh v. Sheeshpal, reported in (2016) 16 SCC 418 has held as under :

Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010)

23. The defining attributes of a "chance witness" were explained by Mahajan, J., in Puran v. State of Punjab. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

63. The Supreme Court in the case of Jarnail Singh Vs. State of Punjab reported in (2009) 9 SCC 719 has held as under :

21. In *Sachchey Lal Tiwari v. State of U.P.* this Court while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and a passerby had deposed that he had witnessed the incident, observed as under:

If the offence is committed in a street only a passerby will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there.

The Court further explained that the expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence.

22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir v. Surat Singh*, *Harjinder Singh v. State of Punjab*, *Acharaparambath Pradeepan v. State of Kerala* and *Sarvesh Narain Shukla v. Daroga Singh*). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide *Shankarlal v. State of Rajasthan*).

23. Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident (vide *Thangaiya v. State of T.N.*).

64. The Supreme Court in the case of *Baby v. Inspector of Police*, reported in (2016) 13 SCC 333 has held as under :

30.....The Court further explained that the expression Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence.

65. The Supreme Court in the case of *Vijendra Singh Vs. State of U.P.* reported in (2017) 11 SCC 129 has held as under :

32. Mr Giri, learned Senior Counsel for the appellant has also impressed upon us to discard the testimony of PW 3, Tedha, on the ground that he is a chance witness. According to him, his presence at the spot is doubtful and his evidence is not beyond suspicion. Commenting on the argument of chance witness, a two-Judge Bench in

Rana Partap v. State of Haryana was compelled to observe: (SCC p. 329, para 3) "3. ... We do not understand the expression "chance witnesses". Murders are not committed with previous notice to witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed on a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". The expression "chance witnesses" is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are "chance witnesses", even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence."

33. Tested on the anvil of the aforesaid observations, there is no material on record to come to the conclusion that PW 3 could not have accompanied PW 2 while he was going to the shed near the tubewell. What has been elicited in the cross-examination is that he was not going daily to the tubewell. We cannot be oblivious of the rural milieu. No adverse inference can be drawn that he was not going daily and his testimony that he had accompanied PW 2 on the fateful day should be brushed aside. We are convinced that his evidence is neither doubtful nor create any suspicion in Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) the mind.

34. Thus, the real test is whether the testimony of PWs 1 to 3 are intrinsically reliable or not. We have already scrutinised the same and we have no hesitation in holding that they satisfy the test of careful scrutiny and cautious approach. They can be relied upon.

66. If the evidence of Gurudayal (P.W.9) and Hariram (P.W.11) is considered, then it is clear that they are the residents of villages which are only 7-8 Km.s away from Bhandar. Bhandar is a Tahsil and therefore, if a person who is residing in a nearby village, comes to a Tahsil to purchase goods, then it cannot be said that his conduct is unnatural. The Appellant has failed to prove that Gurudayal (P.W.9) and Hariram (P.W. 11) are interested witnesses. The incident is alleged to have taken place in the mid of market, therefore, the presence of independent witnesses at the spot or at a nearby place of incident is natural and it cannot be said that they are chance witnesses.

67. Further more, Mahendra Kumar Tiwari (P.W. 12) is resident of Hanumantpura Colony, Bhandar. Ramjisharan (P.W.13), Islam (P.W.

14) and, Habib Khan (P.W.15) are the residents of Bhandar and are residing at the nearby places. The shop of deceased Jainuuddin is situated quite nearer to Hanuman temple and the house of Mahendra Kumar Tiwari (P.W. 12) is situated after 10-12 houses from Hanuman Temple. Further, lot of persons visit temples regularly to offer their prayers. If Mahendra Kumar Tiwari (P.W. 12) was

in the Hanuman Temple to offer his prayers, then his presence on the spot is natural.

Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) Ramjisharan (P.W.13) has stated that he was answering the call of nature. The appellant has not challenged the said stand of the witness. Further, Mahendra Kumar Tiwari (P.W. 13) has specifically stated that Sitola Colony, Bhandar is adjoining to the place of incident, and Ramjisharan (P.W.13) is the resident of Sitola Colony, Bhandar. Similarly, Islam (P.W. 14) has stated that the shop of deceased Jainuddin is in between his house and the shop of deceased Imambaksh. Habib Khan (P.W.15) is also the resident of Sitola Colony, Bhandar. Thus, these witnesses are the resident of nearby locality and Bhandar is a Tahsil and not a big town. Thus, the presence of independent witnesses on the spot is natural and it cannot be said that they are created witnesses.

Whether Prosecution has proved the injuries on the body of Appellant Pappu?

68. It is the prosecution case, that after causing gun shot injuries to Imambaksh and Jameel, the Appellant Pappu, co-accused Phulle and others murdered their own father Jainuddin in order to develop a false case against the complainant party.

69. It is true, that the Appellant Pappu had sustained certain injuries, but the Appellant himself has examined Dr. R.S. Parihar (D.W.1) who has admitted in his examination-in-chief itself, that the gun injuries found on the body of the Appellant Pappu could have been self inflicted injuries.

70. Therefore, it is clear that in fact the Appellant Pappu himself Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) had caused gun shot injuries to him in order to falsely implicate the complainant party.

Whether the Prosecution deliberately diverted the investigation and whether the FIR lodged by Appellant was correct?

71. It is submitted by the Counsel for the Appellant Pappu, that the prosecution has deliberately diverted the investigation in order to save the complainant party, and therefore, the investigation is tainted and biased.

72. Considered the submissions made by the Counsel for the Appellant Pappu.

73. The Appellant Pappu in his FIR, Ex. P. 21 had alleged that 11 persons namely Ali, Basheer, Patel @ Shakeel, Babba @ Jameel, Shriram Nanha, Khunde, Bakar, Jumman, Jamal, Mouzu, and Imambaksh have killed his father Jainuddin.

74. In fact the Appellant Pappu has tried his level best to bring some evidence on record to suggest that the incident of murder of Imambaksh and Jameel took place after the murder of Jainuddin, but all the witnesses have specifically stated that the incident of murder of Jainuddin took place after the murder of Imambaksh and Jameel. Although Imambaksh had expired on the spot, but Jameel was seriously injured and his condition was critical and he was taken to hospital, therefore, the

presence of Imambaksh and Jameel at the time of murder of Jainuddin was impossible. It is the prosecution case, that the Appellant Pappu had lodged a false report against 11 persons Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) in order to create a false case against the complainant party. Therefore, the allegation made by the Appellant Pappu in his FIR, Ex. P.21 that Imambaksh and Jameel were also amongst the assailants, clearly falsify his stand because Imambaksh was already dead and Jameel was lying in an injured condition and his condition was critical. Further more, Dr. R.S. Parihar (D.W.1) has stated that the gun shot injuries sustained by Appellant Pappu could have been self inflicted injuries.

75. Thus, it is incorrect to say, that the prosecution has deliberately diverted the investigation in order to save the complainant party. Whether the medical evidence is consistent with the allegations made in FIR, Ex. P.21 or not?

76. According to Post-mortem report, the deceased had suffered a bullet injury. The Appellant Pappu had alleged in his FIR, Ex. P.21 that Ali (P.W.7) had fired from his .12 bore gun. The police had seized one .12 bore gun from Alibaksh (P.W. 7) vide seizure memo Ex. P. 12.

77. Bullet Cartridge is used in .315 bore gun, whereas pellet cartridge is used in .12 bore gun. A bullet injury was found on the dead body of Jainuddin and even a fired bullet was also recovered from the dead body of Jainuddin. In the F.S.L. report, Ex. P.30, it has been specifically opined that the fired bullet matches with authentic . 315 caliber cartridge and it was also specifically opined that the fired bullet is not a part of .12 bore cartridge. Thus, the allegation of the Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) Appellant Pappu in his FIR, Ex. P.21 that Alibaksh (P.W.7) caused gun shot injury to Jainuddin by his .12 bore gun is false and is contrary to medical evidence. Thus, it is clear that false FIR, Ex. P.21 was lodged by the Appellant Pappu.

Why the sons would kill their own father

78. The witnesses have stated that Jainuddin was a very thin person and used to remain naked or wear kurta only. From the post- mortem report, Ex. P. 3, it is clear that the dead body of the deceased was very linear thin body built. Further, from Photographs, Ex. P.36, it is clear that the deceased was a very thin person and was wearing on Kurta and not even lower or underwear. In the post-mortem report, Ex. P.3 also, Dr. M.M. Shakya (P.W.) had mentioned that dead body was wearing whitish colour kurta with stains of blood having hole at the site of injury. No other cloth was found on the body of the deceased. Thus, it is clear that the deceased was not even getting nutritious and sufficient food, therefore, he was a linear thin personality which is also visible from his photographs Ex. P.36. Therefore, it is clear that his sons were not looking after him. Thus, it is clear that the sons of deceased had no affection and attachment with him.

Non-Recovery of Weapon

79. It is submitted by the Counsel for the Appellant that the weapon allegedly used in this offence has not been recovered, whereas it has been submitted by the State Counsel that the weapon Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) of offence was seized from the Appellant

Pappu in Crime No. 79/08.

80. Heard the learned Counsel for the parties.

81. It is true that the prosecution has not proved the seizure of gun from the Appellant Pappu in this case, but that would not give any dent to the prosecution case.

82. It is suffice to mention here that recovery of weapon is not essential to prove the guilt of the accused. In case if the accused succeeds in hiding the weapon of offence, and police fails to recover the same, then he cannot take advantage of his own cleverness. The Supreme Court in the case of Rakesh Vs. State of U.P. reported in (2021) 7 SCC 188 has held as under :

12. Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with the firearm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non.

83. The Supreme Court in the case of Gulab Vs. State of U.P. by order dated 9-12-2021 passed in Cr.A. No. 81/2021 has held as under :

17. The deceased had sustained a gun-shot injury with a point of entry and exit. The non-recovery of the weapon of offences would therefore not discredit the case of the prosecution.....

84. The Supreme Court in the case of Krishna Gope v. State of Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) Bihar, (2003) 10 SCC 45 has held as under :

8. Learned counsel further pointed out that the country- made firearm alleged to have been used by the appellant was not recovered by the police and the same was not sent to the police station. The learned counsel submitted that the investigation was not properly done and that the appellant is entitled to the benefit of doubt. In our view, this plea is not tenable. The house of the appellant was searched immediately after the incident, but the police could not recover the weapon of offence from his house. It appears that the appellant had succeeded in concealing the weapon before the police could search his house. In our opinion, the fact of non-recovery of the weapon from the house of the appellant does not enure to his benefit.

85. Thus, the non-recovery of weapon of offence would not make the direct evidence unreliable.

86. It is next contended by the Counsel for the Appellant that Atul Kumar Singh (P.W. 18) in para 39 of his cross-examination, has specifically stated that in his investigation, he had found that the Appellant Pappu has not killed his father Jainuddin, therefore, it is clear that the Appellant Pappu is an innocent person.

87. Heard the learned Counsel for the Appellant as well as the Counsel for the State.

88. The prosecution case is that Phulle @ Kabuluddin fired at the deceased Jainuddin, whereas the Appellant lodged false report. If the statement of Atul Kumar Singh (P.W. 18) is read in proper perspective, then it is clear that this witness wanted to say that the Appellant Pappu has not killed his father, but it doesnot mean that the Appellant Pappu was found to be innocent. The real intention behind the statement of Atul Kumar Singh (P.W.18) was that in fact Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010) the Appellant Pappu had not shot his father Jainuddin.

89. No other argument is advanced by the Counsel for the Appellant.

90. From the evidence which has come on record, it is clear that initially, the Appellant Pappu @ Matinuddin along with 4 other persons shot Imambaksh and Jameel and while fleeing away they killed their own father Jainuddin, thus, it is held that the Appellant Pappu @ Matinuddin was the member of Unlawful Assembly and in furtherance of Common Object, the deceased Jainuddin was killed.

91. Accordingly, the Appellant Pappu is held guilty of committing offence under Sections 148, 302/34 of IPC.

92. So far as the question of sentence is concerned, the minimum sentence for offence under Section 302 of IPC is Life Imprisonment, therefore, the sentence awarded by the Trial Court doesnot call for any interference.

93. Ex-Consequenti, the Judgment and Sentence dated 9-3-2010 passed by 2nd Additional Sessions Judge (Fast Track) Datia in S.T. No. 125 of 2008 is hereby Affirmed.

94. The Appellant Pappu is in jail. He shall undergo the remaining jail sentence.

95. Let a copy of this judgment be immediately provided to the Appellant Pappu, free of cost.

96. The record of the Trial Court be send back along with the copy of this judgment for necessary information and compliance.

Pappu @ Matiuddin Vs. State of M.P. (Cr.A.No. 246 of 2010)

97. The Appeal fails and is hereby Dismissed.

(G.S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge

Pappu @ Matiuddin vs State Of M.P. on 7 April, 2022

ARUN KUMAR MISHRA

2022.04.07 19:04:04 +05'30'