[2025] 9 S.C.R. 1273 : 2025 INSC 1139

Tarun Sharma
v.
State of Haryana

(Criminal Appeal No. 3810 of 2025)

01 September 2025

[Vikram Nath and Sandeep Mehta,* JJ.]

Issue for Consideration

Conviction of the appellant u/s.302, IPC based on the statement/ dying declaration (Exh. P-34) of the deceased, if ought to be set aside.

Headnotes†

Evidence – Dying declaration – When cannot be relied upon – Penal Code, 1860 – s.302 – FIR u/ss.323, 324, 506 r/w 34, IPC was registered on the basis of injured victim's statement (Exh.P 34) – Victim died, s.302 was added to the case – Appellant along with co-accused persons was arrested – Trial court acquitted the co-accused persons however, the appellant was convicted u/s.302 – Conviction affirmed by High Court – Interference with:

Held: 1.1 Prosecution could neither prove the faithful recording of the statement/dying declaration nor they could prove it to be an unimpeachable document – Such a doubtful piece of evidence cannot be made the foundation of conviction of the appellant. [Para 64]

1.2 There are material infirmities in the case of prosecution – It was categorically stated by PW-1 (brother of the deceased) and corroborated by the Doctors (PW-9 and PW-10) who treated the deceased, that the deceased remained unconscious almost fully from the time of the assault on until his death, and was never in a condition to speak – Hence the fitness certificate becomes doubtful. [Paras 63]

1.3 Prosecution failed to identify or examine the doctor who had issued the fitness certificate, which creates grave doubt about the

* Author

authenticity of the fitness certificate – Furthermore, non-examination of the said doctor, deprived the defence an opportunity to discredit the fitness certificate. [Paras 63]

1.4 No contemporaneous medical record relating to the treatment of the deceased at the hospital was produced nor proved during trial, leaving the Court without corroborative material to assess the fitness of the injured to make a statement. [Para 63]

1.5 The statement/dying declaration itself suffers from serious infirmities as it bears no time of recording, and the recording officer, SI (PW-17), failed to record his own satisfaction that the injured was fit to make such statement. [Para 63]

1.6 Even the prosecution and trial Court did not fully accept the version set out in the statement/dying declaration, inasmuch as one of the named assailants, was not charge sheeted, and another, (accused No. 3), was acquitted by the trial Court. [Para 63]

1.7 PW-1, who was present with the deceased at the time of the incident, categorically deposed that the accused present in Court had not caused any injuries to the deceased and further stated that the assailants could not be identified due to darkness, thereby significantly contradicting the version set out in the statement/dying declaration. [Para 63]

1.8 Prosecution miserably failed to establish the complicity of the appellant for the commission of the crime – There are serious lapses surrounding the recording of the statement/dying declaration coupled with the material contradictions between its contents and the ocular testimony as well as the inconsequential recovery of the knife (purportedly used for causing injuries to the deceased) which is discredited for want of scientific corroboration – Impugned judgments set aside – Appellant acquitted. [Para 66]

Judicial Deprecation – Adjudication of criminal appeal – Constitution of India – Art.21 – Right to fair trial – In the present case, High Court proceeded to take up the main appeal itself for hearing on merits when the matter was listed only for consideration of an application regarding renewal of the registration certificate of the Alto car seized during investigation – Since the counsel engaged by the appellant-accused was not available, the Court appointed an *amicus*

***curiae* and, without granting a reasonable opportunity to prepare the matter, it heard the appeal on merits and reserved judgment on the very same day:**

Held: Approach adopted by the High Court is short of standards of fairness and is particularly more disturbing and unjustified as the accused was sentenced to life imprisonment – Deprecated – The hearing in a criminal trial or appeal must be an effective hearing – This necessarily presupposes not only the presence of counsel but also the grant of adequate time and opportunity for such counsel, whether engaged by the accused or appointed as an *amicus curiae*, to properly prepare and present the case – To appoint an *amicus* and proceed to hear the matter on the very same day, without affording sufficient time for preparation or consultation, renders the safeguard of effective legal representation to an empty formality and undermines the very essence of the right to fair trial enshrined under Art.21 – Word of caution to Courts – In criminal trials and appeals, especially those involving punishment of life imprisonment or capital sentence, the concerned Courts must not treat the appointment of an *amicus curiae* as an empty formality – Such counsel must be afforded sufficient time to peruse the record, meet the accused, and prepare the defence effectively – The principles of fair trial and effective representation are not procedural gimmicks but foundational guarantees of criminal justice system, which cannot be compromised or breached. [Paras 33, 38, 39]

Evidence – Recovery – Of knife – No scientific corroboration – Evidentiary value – Conviction of the appellant u/s.302, IPC – Apart from the statement/dying declaration (Exh. P-34), Trial Court and the High Court also relied on the recovery of the knife made in furtherance of the disclosure statement (Exh. P-24) of the accused-appellant:

Held: The evidentiary value of this recovery is undermined by the fact that the FSL report (Exh. P-1) did not indicate any blood group on the said weapon, nor was any serological report produced to establish that the blood allegedly found on the knife matched with that of the deceased – In the absence of such scientific corroboration linking the recovered knife with the deceased, the recovery remains inconsequential – Otherwise also mere recovery of a weapon, even if stained by the same blood group as that of

the deceased cannot by itself establish the guilt of an accused, particularly where the prosecution's primary evidence, namely the statement/dying declaration (Exh. P-34) suffers from serious infirmities. [Para 65]

Evidence of hostile witness – Admissibility/reliability – Principles governing, discussed. [Paras 45-48]

Case Law Cited

Chaluvegowda v. State **(2012) 13 SCC 538;** *Mohd. Sukur Ali v. State of Assam* **[2011] 3 SCR 209 : (2011) 4 SCC 729;** *Anokhilal v. State of Madhya Pradesh* **[2019] 18 SCR 1196 : (2019) 20 SCC 196;** *C. Muniappan v. State of T.N* **[2010] 10 SCR 262 : (2010) 9 SCC 567;** *K.P. Tamilmaran v. State,* **2025 SCC OnLine SC 958;** *Laxman v. State of Maharashtra* **[2002] Supp. 1 SCR 697 : (2002) 6 SCC 710;** *Atbir v. Govt. (NCT of Delhi)* **[2010] 9 SCR 993 : (2010) 9 SCC 1;** *Raja Naykar v. State of Chhattisgarh* **(2024) 3 SCC 481 – relied on.**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Constitution of India; Bharatiya Sakshya Adhiniyam, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Dying declaration; Serious lapses surrounding the recording of the statement/dying declaration; Deceased remained unconscious; Not in a condition to speak; Fitness certificate; Fitness certificate doubted/doubtful; Doctor who issued fitness certificate not examined; Disclosure statement; Recovery; Inconsequential recovery of the knife; No scientific corroboration; Approach adopted by the High Court in dealing with the criminal appeal; Grant of adequate time and opportunity to counsel; Principles of fair trial; Right to fair trial; Effective hearing; Effective representation; *Amicus curiae*; Not affording sufficient time for preparation or consultation; Punishment of life imprisonment or capital sentence; Recovery inconsequential; Eye-witnesses turned hostile; Testimony of hostile witnesses; Evidentiary value of recovery.

Tarun Sharma v. State of Haryana.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3810 of 2025

From the Judgment and Order dated 24.09.2024 of the High Court of Punjab & Haryana at Chandigarh in CRAD No. 1161 of 2013

Appearances for Parties

Advs. for the Appellant:
Ajay Tewari, Sr. Adv., Abhimanyu Tewari, Siddhant Saroha, Sidhant Awasthy, Aniket Kumar Parcha.

Advs. for the Respondent:
Lokesh Sinhal, Sr. A.A.G., Akshay Amritanshu, Nikunj Gupta, Ms. Ishika Gupta, Ms. Drishti Rawal, Ms. Drishti Saraf, Sarthak Srivastava, Mayur Goyal, Ms. Aakanksha, Ms. Seema Sindhu, Ms. Kirti, Sarthak Arya.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Heard.

2. Leave granted.

3. This appeal by special leave takes exception to the judgment dated 24th September, 2024 passed by the Division Bench of High Court of Punjab and Haryana[1] in CRA-D-1161-DB-2013 whereby the appeal preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973[2] was dismissed and the judgment and order dated 26th August, 2013 passed by the Additional Sessions Judge, Ambala[3] in Sessions Case No. 11-SC of 2012 was affirmed.

4. By the aforesaid judgment, the trial Court convicted the accused-appellant for the offence punishable under Section 302 of the

1 Hereinafter being referred to as the "High Court".

2 For short, "CrPC".

3 Hereinafter being referred to as the "trial Court".

Indian Penal Code, 1860[4] and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/-, in default, to further undergo simple imprisonment for three months.

Brief Facts: -

5. Succinctly stated, the case of the prosecution is that on 1st April, 2012, an information was received at the police station Mullana at around 05:30 PM regarding admission of one Munish Kumar into GMCH Sector 32, Chandigarh in an injured condition. On receipt of this information, Sub-Inspector, Somnath (PW-17), along with Head Constable, Dharam Pal (PW-11) proceeded to the said hospital where they were apprised that injured Munish Kumar had been shifted to the PGI, Chandigarh for treatment. Accordingly, the police officials proceeded to the PGI, Chandigarh and filed an application (Exh. P-32) before the concerned Medical Officer seeking opinion regarding the fitness of Munish Kumar to give a statement. It is stated that the Medical Officer recorded his opinion (Exh. P-33) declaring the injured Munish Kumar to be fit for making a statement. Thereupon, the Sub-Inspector, Somnath (PW-17), proceeded to record the statement of the injured Munish Kumar (Exh. P-34) wherein he alleged *inter alia* as below: -

> "He was a resident of Village Jahangirpur, P.S. Mullana and was doing a private job. On 31st March, 2012, at about 10:00 PM, he and his brother Amit were returning to their village from Ambala by car. When they reached near Mullana, they were intercepted by a Scorpio car and an Alto car. Three persons alighted from one of the vehicles, two of whom were alleged to be Bittoo and Sanjay and the other person was connected to Krishna Transport who went by the name of Tarun Sharma. He did not know the identity of the other man. These persons broke into his car and launched an attack on him. Tarun Sharma inflicted a knife blow on the right side of his stomach whereas Sanjay inflicted a knife blow on his head. Bittoo and the other bearded person held him down. The assailants beat him up mercilessly. Amit was kept confined in the car.

4 For short, "IPC".

> The assailants took away his mobile and the purse. Amit called his friends who got Munish admitted at the CHC, Mullana from where he was shifted to the Government Hospital, Ambala Cantt and then to General Hospital, Ambala City. Subsequently, he was referred to GMCH, Sector-32, Chandigarh and thereafter was referred to PGI Chandigarh."

6. The aforesaid statement of the injured Munish Kumar was treated to be the first information report of the incident and based thereupon, an FIR No. 58 dated 1st April, 2012 came to be registered at P.S. Mullana for the offences punishable under Sections 323, 324, 506 read with Section 34 of the IPC.

7. The investigation was undertaken by Sub-Inspector, Somnath (PW-17). Munish Kumar expired on 14th April, 2012, upon which offence punishable under Section 302 IPC was added to the case. Inquest *panchnama* was drawn and thereafter, postmortem was carried out on the dead body of the deceased and statements of witnesses were recorded. The accused Tarun Sharma (accused No.1/appellant herein), Sandeep Sharma (accused No. 2), Balwinder Singh (accused No. 3) and Deepak Bhardwaj (accused No. 4) were arrested. It is alleged that, acting in furtherance of information/disclosure statement (Exh. P-24) dated 11th April, 2012, the accused-appellant proceeded to point out the knife purportedly used for causing injuries to Munish Kumar. The said knife was recovered and seized *vide* seizure memo (Exh. P-6).

8. It is relevant to mention that, at a later stage of investigation, the prosecution tried to claim that Ashok Kumar (PW-2) was also present in the same vehicle in which the deceased Munish Kumar was travelling.

9. Upon conclusion of investigation, Sub-Inspector, Randhir Singh (PW-25), found Sanjay to be innocent and hence he was not charge sheeted in the case.

10. Chargesheet was filed against Tarun Sharma (accused No. 1/ appellant herein), Sandeep Sharma (accused No. 2), Balwinder Singh (accused No. 3) and Deepak Bhardwaj (accused No. 4) for the offences punishable under Sections 323, 324, 302, 506 read with Section 34 of the IPC.

11. The case was committed and made over to the Court of the Additional Sessions Judge, Ambala for trial. Charges were framed against the accused persons for the offence punishable under Section 302 read with Section 34 IPC who pleaded not guilty and claimed trial.

12. The prosecution examined 25 witnesses (as per table below) and exhibited certain documents to prove its case.

PW-1	Amit Bakshi (Brother of deceased Munish Kumar)
PW-2	Ashok Kumar
PW-3	Ved Prakash
PW-4	Om Prakash
PW-5	Narinder Singh
PW-6	Head Constable Ram Saran
PW-7	Sub-Inspector Yameen
PW-8	Shashi Sharma
PW-9	Dr. Vijay Vivek
PW-10	Dr. Nand Kumar Jha
PW-11	Head Constable Dharam Pal
PW-12	Head Constable Dharamveer
PW-13	Additional Sub-Inspector Baldev Singh
PW-14	Additional Sub-Inspector Girdhari Lal
PW-15	Head Constable Bahadur Singh
PW-16	Head Constable Amit Kumar
PW-17	Sub-Inspector Somnath [Recording officer of Dying Declaration (Exh. P34)]
PW-18	Dr. Amandeep Singh
PW-19	Constable Gurmeet Singh
PW-20	Sub-Inspector Balwant Singh
PW-21	Kuldeep Singh
PW-22	Additional Sub-Inspector Rajinder Singh
PW-23	Head Constable Dhoom Singh
PW-24	Sub-Inspector Rishi Kumar
PW-25	Inspector Randhir Singh

13. The accused were questioned under Section 313 CrPC and upon being confronted with the circumstances appearing against them in the prosecution evidence, they denied the same and claimed to be innocent. However, no evidence was led in defence.

14. It may be stated here that the star prosecution witnesses Amit Bakshi (PW-1), brother of the deceased Munish Kumar, and Ashok Kumar (PW-2), did not support the prosecution case and were declared hostile.

15. Likewise, Ved Prakash (PW-3), Om Parkash (PW-4) and Narinder Singh (PW-5) who were also projected as eye-witnesses did not support the prosecution case.

16. Dr. Vijay Vivek (PW-9) deposed that on 31st March, 2012, he was serving as a Medical Officer at the Community Health Centre, Mullana. At about 10:05 PM, injured Munish Kumar was brought to the emergency ward by his relative with the complaint of having been assaulted on Devi Mandir Road. On examination, the injured Munish Kumar was found to be drowsy due to probable alcohol consumption, and smell of alcohol was also present in his breath. The condition of the patient was serious, and he was complaining of darkness before his eyes. His blood pressure was found to be low. The doctor noticed two clean lacerated wounds, one measuring 4 cm on the right lateral side of the chest, and the other measuring 3 cm on the lower lip, placed obliquely on the left lateral side. Considering the serious condition of the patient, he was referred to the General Hospital, Ambala City for expert opinion and further management.

17. Dr. Nand Kumar Jha (PW-10) deposed that on 1st April, 2012 at about 01:15 AM, injured Munish Kumar was brought to the emergency ward by his father, Sardari Lal, and was admitted in the casualty ward of the Trauma Centre at the General Hospital, Ambala City. He examined Munish Kumar and found a stab wound 4 cm x 2 cm, obliquely placed on posterior axillary line on the lower lateral side of right chest, with oozing of blood. Two more injuries were observed: one on the lower jaw, and another on the posterior part of the parietal region, both with oozing of blood. Munish Kumar was referred to GMCH, Sector-32, Chandigarh for ultrasonography and further management.

18. Head Constable Dharam Pal (PW-11) deposed about the disclosure statement made by the accused-appellant (Exh. P-24) leading to the recovery of a knife seized *vide* seizure memo (Exh. P-6). Likewise, the witness (PW-11) also stated about the recovery of a *Danda* and other weapons at the instance of Sandeep Sharma (accused No.2).

19. ASI Baldev Singh (PW-13) deposed about the disclosure statements made by the accused-appellant and the recoveries made in pursuance thereof.

20. We may note at this stage that though the Investigating Officer claims to have effected recoveries of weapons at the instance of the accused, the fact remains that the prosecution did not place on record or prove any serological report for connecting the recovered weapons with the deceased based on blood group matching.

21. Since the eye-witnesses Amit Bakshi (PW-1) and Ashok Kumar (PW-2) turned hostile, the substratum of the prosecution case hinges on the statement/dying declaration (Exh. P-34) of deceased Munish Kumar purportedly recorded by Sub-Inspector, Somnath (PW-17).

22. In this backdrop, the evidence of Sub-Inspector, Somnath (PW-17), is considered most relevant for disposal of the appeal and hence, the relevant portion of the same are extracted hereinbelow: -

> "That on 31.3.2012, I was posted as SI Police Station Mullana. On that day, I received rukka from PGI Sector- 32, Chandigarh regarding admission of injured Munish Kumar. On this information I along with HC Dharampal reached in PGI, Chandigarh. **I moved an application Ex P32 seeking opinion of the doctor as to whether the injured was fit to make statement or not and who vide his opinion Ex P33 declared injured fit to make statement**. Amit Kumar brother of injured Munish Kumar was also present near Munish Kumar. In his presence Injured Munish Kumar volunteerly got recorded his statement which is Ex P34 (Objected to). He signed this statement at point A. Thereafter, I made endorsement under neath his statement which is Ex P35 (objected to) and send the rukka through HC Dharampal to the police station for registration of the case. On the basis of which formal FIR E P36 was recorded

by ASI Rishi Kumar. I identify his signature as I have seen him writing and signing during my official duties. He also made his endorsement Ex 237 on the rukka.

On 11.4.2012, I arrested accused Tarun Kumar present in the court today. On my interrogation accused Tarun Kumar suffered a disclosure statement Ex P24 to the effect that the knife with which he had caused injuries to Munish Kumar, had been kept concealed by him in the drawer of the table lying in his shop and he could get the same recovered after demarcation. This disclosure statement was signed by accused as well as by HC Dharam Pal. Accused Tarun Sharma led the police party to his shop and after demarcation got recovered one knife (Chhuri) the sketch of the same Ex P7 was prepared and it was converted into a parcel and sealed with the seal of SN and it was taken into possession vide memo Ex P6. The sketch and recovered memo was attested by accused, Ved Parkash and HC Dharampal."

(Emphasis supplied)

23. In cross-examination the witness (PW-17) stated as below: -

"I had received Telephonic Message from police post of GMCH, Sector-32, Chandigarh on 31.3.2012 at about 1.30 PM. Prior to it no information was received from either CHC Mullana or Civil Hospital, Ambala. I had received these rukkas from the doctors of CHC Mullana and Civil Hospital Ambala again said only from CHC Mullana. I had never visited Civil Hospital, Ambala I did not receive or collect any medical report of deceased from Civil Hospital Ambala city. Information which was received in the night from GMCH, Chandigarh was recorded in DDR of Police Station, Mullana. I cannot produce DD entry which was recorded in this regarded I have seen court file the same is not available there also. It was not made Spart of charge sheet of the case.

It has come to my notice that Injured was referred to Civil Hospital, Ambala by the medical officer of CHC Muliana.

I cannot tell at what time, by whom deceased was referred GMCH, Sector 32, Chandigarh and what time he reached there. I had received the police information with regard to this case from CH Ambala City during the course of investigation on 1.4.2012 I had received this rukka 10.00/11.00 am from Police Post Civil Hospital Ambala City. I am not sure if I collected this rukka from Police Post Sector -7, Ambala City. Despite the information from GMCH, Sector-32 Chandigarh at 11.30 AM on 31.3.2012 I did not proceed to that Hospital. None from the family of the deceased or any of his friend or relative met me till the time I proceeded to Chandigarh on 1.4.2012. From the information which was received by me on 31:3.2012 at 11.30 PM. I came to know the name of injured, place of resident and also name of the person who had taken into hospital. Despite this fact I did not visit to the house of injured which is situated in village Jhahangirpur. Village Jhahangirpur falls within the jurisdiction of police Station Mullana.

I remained associated the investigation of this case for a period about one month. I have seen Ex.P4 which is the statement of Shri Ashok Bakshi. Statement of Ashok Bakshi was recorded on 22.6.2012. **Ashok Bakshi was never brought or appear before me to make statement. This fact was not brought before me and Ashok Bakshi was in the car of Munish Baxshi. I cannot say Sh. Ashok Bakshi had stated in statement u/s 161 Cr.P.C. that he was with Munish Bakshi in his car on 31.3.2012 and he had not stated that Amit Bakshi was with him/ them.** I have seen hand written statement of Ashok Bakshi in the police file which is original statement and Ex P4 is the computerized copy of the same. Name of any of other accused except the name mentioned in the FIR was given to me by Amit Bakshi or Ashok Bakshi or any of the family members of Munish Bakshi. **The involvement of Deepak or Balwinder Singh was not disclosed to me by any of the witness."**

(Emphasis Supplied)

24. As is discernible from the above statement, the witness (PW-17) was responsible for moving the application (Exh. P-32) seeking opinion of the Medical Jurist regarding the fitness of the injured Munish Kumar to make a statement. Important it is to note that neither the witness (PW-17) disclosed the name of the doctor who issued the fitness certificate (Exh. P-33) nor did he himself record his own satisfaction regarding the fitness of the injured Munish Kumar before recording the statement/dying declaration (Exh. P-34).

25. Dr. Amandeep Singh (PW-18), along with Dr. Kulbir Singh Bal and Dr. Sanjay, conducted post-mortem examination on the body of deceased Munish Kumar on 15th April, 2012 and issued the post mortem report (Exh. P-43). On external examination, a tracheotomy wound was found on the front of the neck. There were also surgical wounds corresponding to laparotomy, drainage, and chest tube insertion. The doctors noted a stitched wound admeasuring 5 cm in length with 5 stitches, located on the right side of the chest, about 28 cm below the axilla and 29 cm to the right of the midline, placed obliquely. On dissection, the track of the wound was found to extend medially, cutting through the underlying subcutaneous tissues and muscles, passing through the intercostal space between the 8th and 9th ribs, piercing the pleura, cutting through the diaphragm, and ultimately injuring the right lobe of the liver on its superolateral aspect. The doctors opined the cause of death to be result of stab injury to the liver and its consequences (haemorrhagic and septicaemic shock).

26. The other witnesses examined by the prosecution were more or less formal and their testimony does not have any bearing on the outcome of the case and thus, we need not refer to their evidence.

27. The trial Court held that the statement/dying declaration of the injured Munish Kumar (Exh. P-34) was recorded after due compliance of the procedural protocol. The concerned Medical Officer recorded his satisfaction (Exh. P-33) to the effect that injured Munish Kumar was in a fit condition to make the statement/dying declaration (Exh. P-34).

28. The trial Court found no plausible evidence against Sandeep Sharma (accused No.2), Balwinder @ Bittoo (accused No.3) and Deepak Bhardwaj (accused No. 4), thereby acquitting them of the charges, however, the appellant herein was held guilty for the offence punishable under Section 302 of the IPC *vide* judgment dated 26th

August, 2013, and was sentenced to imprisonment for life *vide* order of sentencing of the even date.

29. The accused-appellant preferred an appeal before the High Court. The matter was listed on 18th September, 2024, for passing an order on an application seeking release of the registration certificate of the seized Maruti Alto car for the purpose of renewal. However, the High Court insisted for hearing the appeal on that very date. Since the engaged counsel was unavailable, the Division Bench proceeded to appoint an *amicus curiae* to represent the accused-appellant in the criminal appeal and concluded the hearing and reserved the judgment on 18th September, 2024 itself.

30. The appointed amicus was neither furnished with the case records from the lower Court nor afforded reasonable time to prepare the matter or consult with the accused-appellant. The appeal was finally dismissed by the impugned judgment dated 24th September, 2024, which is the subject matter of challenge in the present appeal.

Findings and Conclusion: -

31. We have heard and considered the submissions advanced by learned senior counsel Shri Ajay Tewari representing the accused-appellant and Shri Lokesh Sinhal, Sr. AAG appearing for the State of Haryana and have gone through the impugned judgments and the materials placed on record.

32. Before dealing with the merits of this case, we are compelled to address a matter of serious concern regarding the approach adopted by the High Court in dealing with the criminal appeal.

33. On 18th September, 2024, when the matter was listed only for consideration of an application regarding renewal of the registration certificate of the Alto car seized during investigation, the High Court on the very same day proceeded to take up the main appeal itself for hearing on merits. Since the counsel engaged by the accused-appellant was not available, the Division Bench appointed an *amicus curiae* and, without granting a reasonable opportunity to prepare the matter, it proceeded to hear the appeal on merits and reserved judgment on the very same day. This approach of the High Court is particularly more disturbing and unjustified in the present case where the accused had been sentenced to life imprisonment.

34. At the very outset, we must hold that the course adopted by the High Court fell short of the standards of fairness expected in the adjudication of a criminal appeal. In the circumstances noted above, the High Court ought to have acted pragmatically and adjourned the matter to another date so as to secure the presence of the accused-appellant's counsel, or, at the very least, it should have afforded the newly appointed amicus a reasonable opportunity to inspect the record, study the relevant documents, and consult with the accused-appellant so as to prepare the case effectively.

35. In ***Chaluvegowda v. State***[5], a similar situation arose wherein the amicus appointed by the High Court on an earlier date was not available on date fixed for hearing, Therefore, the Court appointed a new amicus and on the very same day heard the appeal and reserved the judgment. This Court set aside the judgment and remitted the matter back to the High Court for fresh hearing with the following observations:

> **"19. The right to be represented by a lawyer must not be an empty formality. It must not be a sham or an eyewash. The appointment of an amicus curiae for the defence of an accused person must be in true letter and spirit, with due regard to the effective opportunity of hearing that is to be afforded to every accused person before being condemned.** The due process of law incorporated in our constitutional system demands that a person not only be given an opportunity of being heard before being condemned, but also that such opportunity be fair, just and reasonable.
>
> **25. In our considered view, the appellant-accused were not given an effective opportunity to defend themselves in a case as the one involved here, carrying the possibility of a substantial prison sentence. Therefore, we say, the procedure adopted by the High Court is not only contrary to the Rules as quoted above, and also contrary to the fair trial which is the first imperative of dispensation of justice**. Therefore, it is difficult for us to sustain the impugned judgment and

5 (2012) 13 SCC 538.

order [State v. Chaluvegowda, Criminal Appeal No. 777 of 1996, order dated 17-10-2001 (KAR)] passed by the High Court.**"**

(Emphasis Supplied)

36. In ***Mohd. Sukur Ali v. State of Assam***[6], the counsel engaged by the accused was not present on the date of hearing of the appeal, wherein this Court observed the following:

> "**17. We reiterate that in the absence of a counsel, for whatever reasons, the case should not be decided forthwith against the accused but in such a situation the Court should appoint a counsel who is practising on the criminal side as amicus curiae and decide the case after fixing another date and hearing him.** If on the next date of hearing the counsel, who ought to have appeared on the previous date but did not appear, now appears, but cannot show sufficient cause for his non-appearance on the earlier date, then he will be precluded from appearing and arguing the case on behalf of the accused. But, in such a situation, it is open to the accused to either engage another counsel or the Court may proceed with the hearing of the case by the counsel appointed as amicus curiae."
>
> (Emphasis Supplied)

37. A 3-Judge Bench of this Court in ***Anokhilal v. State of Madhya Pradesh***[7] laid down the following guidelines regarding appointment and assistance of *amicus curiae* in criminal matters:

> **"31.** Before we part, we must lay down certain norms so that the infirmities that we have noticed in the present matter are not repeated:
>
> **31.1. In all cases where there is a possibility of life sentence or death sentence, learned advocates who have put in minimum of 10 years' practice at the Bar**

6 (2011) 4 SCC 729.

7 (2019) 20 SCC 196.

alone be considered to be appointed as Amicus Curiae or through legal services to represent an accused.

31.2. In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae.

31.3. Whenever any learned counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard-and-fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.

31.4. Any learned counsel, who is appointed as Amicus Curiae on behalf of the accused must normally be granted to have meetings and discussion with the accused concerned. Such interactions may prove to be helpful as was noticed in Imtiyaz Ramzan Khan [Imtiyaz Ramzan Khan v. State of Maharashtra, (2018) 9 SCC 160 : (2018) 3 SCC (Cri) 721]"

(Emphasis Supplied)

38. Thus, what emerges from the precedents cited above is that the hearing in a criminal trial or appeal must be an effective hearing. This necessarily presupposes not only the presence of counsel but also the grant of adequate time and opportunity for such counsel, whether engaged by the accused or appointed as an *amicus curiae*, to properly prepare and present the case. To appoint an amicus and proceed to hear the matter on the very same day, without affording sufficient time for preparation or consultation, renders the safeguard of effective legal representation to an empty formality and undermines the very essence of the right to fair trial enshrined under Article 21 of Constitution of India.

39. We thus sound a word of caution that in criminal trials and appeals, especially those involving punishment of life imprisonment or capital sentence, the concerned Courts must not treat the appointment of an *amicus curiae* as an empty formality. Such counsel must be afforded sufficient time to peruse the record, meet the accused, and prepare the defence effectively. The principles of fair trial

and effective representation are not procedural gimmicks but foundational guarantees of our criminal justice system, which cannot be compromised or breached.

40. Looking to the long period of incarceration suffered by the accused-appellant, rather than remitting the matter for fresh consideration, we find it expedient, in the interest of justice, to address the case on its merits.

41. Suffice it to say that the entire case of the prosecution rests purely on the statement/dying declaration (Exh. P-34) of the deceased Munish Kumar recorded by Sub-Inspector, Somnath (PW-17).

42. It is noteworthy that Amit Bakshi (PW-1), brother of the deceased Munish Kumar who, as per the statement/dying declaration (Exh. P-34) was also present in the same car as the deceased Munish Kumar at the time of incident, did not support the prosecution case and was declared hostile by the prosecution. Testimony of Amit Bakshi (PW-1) in his examination-in-chief is important, and relevant part is reproduced hereinbelow: -

> "Munish Bakshi (Since deceased) was my real brother. He sustained injuries on 31.3.2012 at about 10:00 p.m. when myself and he were coming in the car. **Munish fell unconscious. We could not identify the unknown persons who caused injuries to Munish in scuffle due to darkness. I also cannot tell in which vehicle they, had come and in which direction, those assailants had fled. I have seen the accused present in the court today, they had not caused any injuries to Munish. On 31.3.2012 at about 10:00 p.m I removed my brother Munish in an unconscious condition to CHC Mullana** and then to Govt. Hospital Ambala and from there Munish was taken into G.M.C.H. Sector 32, Chandigarh and from there he was shifted to PGI Chandigarh. **Munish remained unconscious till his death. except for a short time but he was not in a position to speak though he was conscious.** I disclosed to the doctors of Govt. Hospital Ambala and that of GMCH Sector 32, Chandigarh and as well as to the Deters of PGI Chandigarh that some unknown assailants had caused injuries to Munish."
>
> (Emphasis Supplied)

43. From the deposition of (PW-1), it is clearly discernible that due to darkness, neither the witness (PW-1) nor injured Munish Kumar could identify the assailants in the scuffle, nor could the witness (PW-1) specify the details of the vehicles in which they had come or the direction in which they fled. The witness (PW-1) categorically stated that the accused present in Court had not caused any injuries to Munish Kumar at the relevant time. He further stated that Munish Kumar fell unconscious immediately after sustaining injuries and, though he regained consciousness for a short period, but was never in a position to speak.

44. It is relevant to mention here that although the Public Prosecutor declared Amit Bakshi (PW-1) hostile and cross-examined him, there was no attempt to dislodge his stand on the important aspect that the incident took place in pitch darkness. Furthermore, not a single question was put to the witness (PW-1) regarding the categorical assertion that his brother, Munish Kumar, remained unconscious almost for the entire period and was not in a position to speak from the time of receiving the injuries on 31st March, 2012 till he took his last breath on 14th April, 2012.

45. In ***C. Muniappan v. State of T.N.***[8]***,*** this Court while summing up the earlier decisions, laid down the following principles governing the admissibility or reliability of the testimony of hostile witnesses: -

> **"81.** It is settled legal proposition that:
>
> > "*6*. … the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. **The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.**
>
> **82.** In *State of U.P.* v. *Ramesh Prasad Misra* [(1996) 10 SCC 360 : 1996 SCC (Cri) 1278] this Court held that (at SCC p. 363, para 7) **evidence of a hostile witness would not be totally rejected if spoken in favour of**

8 (2010) 9 SCC 567.

the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde* v. *State of Maharashtra* [(2002) 7 SCC 543: 2003 SCC (Cri) 112], *Gagan Kanojia* v. *State of Punjab* [(2006) 13 SCC 516.

83. Thus, the law can be summarised to the effect that **the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence."**

(Emphasis Supplied)

46. Recently, this Court in ***K.P. Tamilmaran v. State***[9]***,*** once again clarified the position of law regarding the evidentiary value of a hostile witness, setting out the governing principles as under: -

"**26. As a general rule, the testimony of a witness who has been cross-examined by the party which produced him/her will not stand totally discredited, and it is for the Court to consider what value should be attached to this testimony.** After referring to a series of judgments on this point, the Court in *Sat Paul* held as follows:

"52. From the above conspectus**, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds**

9 2025 SCC OnLine SC 958.

> **that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it.** If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto.
>
> ……..
>
> (Emphasis Provided)

27. An examination of the cases referred above shows that **there can be no doubt about the fact that the evidence of a witness, who has been cross-examined by the side which produced him/her, cannot be totally discarded** [Also see : Neeraj Dutta v. State (NCT of Delhi), (2023) 4 SCC 731]."

.....

33. The statements made by a witness in Court, including in cross-examination, either conducted by the opposite party or by the party who produced the witness, would come under the definition of 'evidence' under Section 3 of the Evidence Act, since this evidence has come before the Court with its permission. **Moreover, there is no specific bar under the Evidence Act which mandates that such evidence has to be discarded. Thus, it would form part of the entire evidence which the Court can examine while arriving at its decision, and it is for the Court to determine what value has to be given to that piece of evidence or how such evidence has to be used in a given case.**

34. Viewed from a different perspective, the rejection of the entire testimony of a prosecution witness, who has

been cross-examined by the prosecution, would not only harm the case of the prosecution but perhaps also of the defence in a given case. **This is because as the law stands today, the benefit of the testimony of such witness can be taken by both the prosecution and the defence, allowing them to use it to build their case** [See: Paulmeli v. State of T.N., (2014) 13 SCC 90, Ramesh Harijan v. State of U.P., (2012) 5 SCC 777]. **In any case, ultimately, it will be the cause of justice that will suffer if the testimony of such witness is totally discarded. It is, therefore, rightly left to the discretion of the Court to test the evidentiary value of such a testimony.**

.....

36. It is though trite and much overstated but the maxim *"falsus in uno, falsus in omnibus",* is not applicable to our criminal justice system. **It is for the Court to distinguish the wheat from the chaff while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record.**

If part of the evidence of a hostile witness corroborates with other reliable evidence, then that part of the evidence is admissible. Once a prosecution witness has been declared hostile and then cross-examined by the prosecution, then it is for the Court to evaluate the veracity of the testimony. There can be several reasons for a witness to turn hostile and the court must also look into these factors while evaluating the evidence given by a hostile witness. It is an uncomfortable reality in our criminal Courts for a prosecution witness to turn hostile. But then the purpose of a Trial Court is to go to the truth of the matter. Whatever evidence is there before the Court must be examined, tested, corroborated (whenever necessary), before a verdict can be finally given."

(Emphasis Supplied)

47. Applying the aforesaid principles governing the evidence of hostile witness to the facts of the present case, we find that the testimony

of Amit Bakshi (PW-1), though declared hostile, cannot be discarded altogether. His deposition must be assessed with care to ascertain which portions, if any, can be separated and relied upon. On a close reading, what stands out is that Amit Bakshi (PW-1) categorically deposed that the accused present in court had not caused any injuries to the deceased Munish Kumar and that, due to darkness, the assailants could not be identified. This appears to be true because the incident took place at 10:00 PM in the night. He further stated that Munish Kumar became unconscious immediately after sustaining injuries and remained so except for a short period until his death, and was never in a condition to speak. These portions of his testimony are consistent, withstand scrutiny, and are corroborated by the evidence of the Medical Officers, Dr. Vijay Vivek (PW-9) and Dr. Nand Kumar Jha (PW-10), both of whom confirmed that Munish Kumar was not in a position to speak.

48. Consequently, the testimony of Amit Bakshi (PW-1) cannot be brushed aside merely because he did not support the prosecution case in entirety. On the contrary, the acceptable portions of his deposition directly contradict the prosecution's theory regarding the statement/dying declaration (Exh. P-34), and therefore must be given due weight.

49. Additionally, during the course of investigation, the prosecution deviated from its original version by portraying that Ashok Kumar (PW-2) was also present in the vehicle driven by Munish Kumar. However, this claim is belied by the statement/dying declaration (Exh. P-34), which makes no reference whatsoever regarding the presence of Ashok Kumar (PW-2) in the vehicle. This discrepancy further undermines the credibility of the prosecution case.

50. Now coming to the statement/dying declaration (Exh. P-34) on which the entire case of prosecution hinges. On a perusal of the record, and on going through the impugned judgments of the High Court and the trial Court, we find that the prosecution made no effort whatsoever to disclose the identity of the Doctor/Medical Officer who had appended the fitness certificate (Exh. P-33) regarding the fit state of the injured Munish Kumar to give the statement (Exh. P-34). Consequently, the said Doctor was not examined at the trial.

51. We feel that the trial Court acted with total apathy and in a lackadaisical manner in ignoring this vital aspect of the case. Section 165 of the Indian Evidence Act, 1872 (Section 168 of the Bharatiya Sakshya

Adhiniyam, 2023) casts a duty on the Court to remain cognizant and not to act as a mute spectator in the course of trial. This was undeniably a fit case wherein, the Presiding Officer of the trial Court ought to have exercised the powers vested by virtue of Section 311 CrPC (Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023) to ascertain the identity of the doctor concerned who had purportedly issued the fitness certificate (Exh. P-33) and should have examined him as a court witness since the prosecution was not desirous to do so. The failure of the trial Court in this regard represents not only a procedural shortcoming but also an abdication of the Court's obligation to play a proactive role in eliciting the truth and safeguarding the fairness of the trial.

52. Furthermore, it is observed that not even a single document relating to the treatment of injured Munish Kumar at GMCH Sector-32, Chandigarh or PGI, Chandigarh was produced on record and proved by the prosecution. This is a serious omission which compels us to draw an adverse inference against the prosecution.

53. The Doctors who treated injured Munish Kumar on the night of the incident *i.e.* Dr. Vijay Vivek (PW-9) posted at CHC, Mullana and Dr. Nand Kumar Jha (PW-10) working as a Medical Officer at Trauma Centre GH, Ambala City, did not utter a word in their testimony that the injured Munish Kumar was in a condition to speak while he was admitted in either of the two hospitals.

54. Thus, there is a serious lapse on the part of the prosecution in failing to lead substantive evidence of the concerned witness for proving the fitness certificate (Exh. P-33), which was essential to satisfy the Court regarding the condition of the injured Munish Kumar to make a statement, as claimed by Sub-Inspector, Somnath (PW-17). The non-disclosure of the identity of the doctor who allegedly issued the fitness certificate (Exh. P-33), coupled with the failure to place on record the medical records (Bed Head Ticket) of the deceased Munish Kumar while he was alive and undergoing treatment casts a grave doubt on the entire case of prosecution regarding the alleged dying declaration (Exh. P-34).

55. A perusal of the statement/dying declaration (Exh. P-34), further reinforces these doubts. Before recording the said statement/dying declaration (Exh. P-34) the recording officer, *i.e.*, Sub-Inspector Somnath (PW-17), neither noted nor recorded his own satisfaction

that the injured Munish Kumar was in a fit condition to make a statement.

56. It has been consistently held by this Court in a catena of decisions that the satisfaction of the person recording the dying declaration is indispensable. A Constitution Bench of this Court in ***Laxman v. State of Maharashtra***[10], observed the following:

> **"3.** ……Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. **What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind.** Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."
>
> (Emphasis Supplied)

57. In the present case, the absence of satisfaction recorded by the Sub-Inspector, Somnath (PW-17), regarding the fitness of the injured Munish Kumar to make a statement, casts a serious doubt on the reliability of the statement/dying declaration (Exh. P-34).

58. Moreover, while narrating the circumstances in which the statement/dying declaration (Exh. P-34) was recorded, the Sub-Inspector, Somnath (PW-17), merely exhibited the statement/dying declaration (Exh. P-34) and stated that injured Munish Kumar had appended his signatures thereupon. Though he identified the signatures of Munish Kumar, he failed to identify the signature of the doctor who purportedly gave the fitness certificate (Exh. P-33). The prosecution also did not make any attempt to get the signature of Munish Kumar as appended on the statement/dying declaration (Exh. P-34) verified through his own brother Amit Bakshi (PW-1).

10 (2002) 6 SCC 710.

59. Furthermore, the statement/dying declaration (Exh. P-34) does not mention the time at which the same was recorded. This omission is a serious lapse, as recording of time in a dying declaration is essential so as to correlate the statement with the medical condition of the injured at that point. Without it, the Court cannot fairly assess whether the injured was in a fit state of mind or whether the statement was recorded contemporaneously or after undue delay. The absence of this foundational detail, therefore, casts a grave doubt on the authenticity of the dying declaration and seriously erodes its evidentiary worth.

60. The cumulative effect of these crucial infirmities and loopholes, namely, the prosecution's failure to examine or even identify the certifying doctor, the absence of contemporaneous treatment records of the injured Munish Kumar, the omission by the recording officer, Sub-Inspector, Somnath (PW-17) to record his own satisfaction regarding the fitness of the injured Munish Kumar and his failure to mention the time at which statement/dying declaration (Exh. P-34) was recorded, creates a grave doubt on the veracity of the statement/dying declaration (Exh. P-34). These grave doubts not only undermine the authenticity of the statement/dying declaration (Exh. P-34) but also render the same unreliable so as to form the sole basis for sustaining the prosecution case.

61. Furthermore, the statement/dying declaration (Exh. P-34) mentions about the role of three more assailants, namely, Bittoo, Sanjay, and one unknown man, in addition to the accused-appellant. Specific allegations were attributed against Sanjay in the statement/dying declaration (Exh. P-34) alleging that he was the one who inflicted the fatal knife injuries on the head of the deponent Munish Kumar. However, the Investigating Officer, Randhir Singh (PW-25), found no evidence to substantiate this allegation and consequently exonerated the said Sanjay who was the main assailant as per the statement/dying declaration (Exh. P-34). Bittoo, was charge sheeted by stating that he was none other than Balwinder (accused No. 3), but the trial Court itself chose not to rely upon the statement/dying declaration (Exh. P-34) to the extent of his participation in the case and acquitted him. Hence, even the trial Court and the High Court have not given full imprimatur to the version as set out in the statement/dying declaration (Exh. P-34).

62. This Court in ***Atbir v. Govt. (NCT of Delhi)***[11], relying upon its earlier judgments, laid down key principles regarding convictions based upon dying declaration, which are extracted hereinbelow:

> **"22.** The analysis of the above decisions clearly shows that:
>
> (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
>
> **(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.**
>
> (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
>
> (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
>
> **(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.**
>
> **(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.**
>
> (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
>
> (viii) Even if it is a brief statement, it is not to be discarded.
>
> **(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.**
>
> (x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent,

11 (2010) 9 SCC 1.

there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration."

(Emphasis Supplied)

63. In wake of the discussion made hereinabove and testing the evidence on the touchstone of the principles laid down by this Court, the following material infirmities are noticeable in the case of prosecution:

(i) It was categorically stated by Amit Bakshi (PW-1) and corroborated by the Doctors who treated Munish Kumar *i.e.* Dr. Vijay Vivek (PW-9) and Dr. Nand Kumar Jha (PW-10) that Munish Kumar remained unconscious almost fully from the time of the assault on 31st March, 2012 until his death on 14th April, 2012, and was never in a condition to speak. Hence the fitness certificate (Exh. P-33) stating that Munish Kumar was fit to give a statement becomes doubtful.

(ii) The prosecution failed to identify or examine the doctor who had issued the fitness certificate (Exh. P-33) certifying Munish Kumar fit to make a statement, which creates grave doubt about the authenticity of the fitness certificate (Exh. P-33). Furthermore, non-examination of the said doctor, deprived the defence an opportunity to discredit the fitness certificate (Exh. P-33).

(iii) No contemporaneous medical record relating to the treatment of Munish Kumar at GMCH Sector-32, Chandigarh or PGI, Chandigarh was produced nor proved during trial, leaving the Court without corroborative material to assess the fitness of the injured Munish Kumar to make a statement.

(iv) The statement/dying declaration (Exh. P-34) itself suffers from serious infirmities as it bears no time of recording, and the recording officer, Sub-Inspector, Somnath (PW-17), failed to record his own satisfaction that the injured Munish Kumar was fit to make such statement.

(v) Even the prosecution and trial Court did not fully accept the version set out in the statement/dying declaration (Exh. P-34), inasmuch as one of the named assailants, Sanjay, was not charge sheeted, and another, Bittoo (accused No. 3), was acquitted by the trial Court.

(vi) Amit Bakshi (PW-1), who was present with Munish Kumar at the time of the incident, categorically deposed that the accused present in Court had not caused any injuries to Munish Kumar and further stated that the assailants could not be identified due to darkness, thereby significantly contradicting the version set out in the statement/dying declaration (Exh. P-34).

64. In light of the infirmities and loopholes noted by us in the case of the prosecution, we are of the firm opinion that neither could the prosecution prove the faithful recording of the statement/dying declaration (Exh. P-34) nor they could prove it to be an unimpeachable document. Such a doubtful piece of evidence cannot be made the foundation of conviction of the accused-appellant.

65. Apart from the statement/dying declaration (Exh. P-34), the trial Court as well as the High Court laid emphasis on the recovery of the knife made in furtherance of the disclosure statement (Exh. P-24) of the accused-appellant. However, the evidentiary value of this recovery is undermined by the fact that the FSL report (Exh. P-1) did not indicate any blood group on the said weapon, nor was any serological report produced to establish that the blood allegedly found on the knife matched with that of the deceased. In the absence of such scientific corroboration linking the recovered knife with the deceased Munish Kumar, the recovery remains inconsequential. Otherwise also mere recovery of a weapon, even if stained by the same blood group as that of the deceased cannot by itself establish the guilt of an accused[12], particularly where the prosecution's primary evidence, namely the statement/dying declaration (Exh. P-34) suffers from serious infirmities.

66. In view of the serious lapses surrounding the recording of the statement/dying declaration (Exh. P-34), coupled with the material contradictions between its contents and the ocular testimony as well as the inconsequential recovery of the knife which stands discredited for want of scientific corroboration, the case of the prosecution has miserably failed to establish the complicity of the accused-appellant for the commission of the crime.

12 See *Raja Naykar v. State of Chhattisgarh*, (2024) 3 SCC 481.

67. Resultantly, the impugned judgment of the High Court dated 24th September, 2024 and the impugned judgment and order of the trial Court dated 26th August, 2013 do not stand to scrutiny and the same are hereby set aside. The appellant is acquitted of the charges. He is in custody and shall be released from prison forthwith, if not wanted in any other case.

68. The appeal stands allowed accordingly.

69. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey