



2026:AHC:99217

**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 916 of 1983**

Laloo

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : A.n. Mulla, Arun Kumar Singh

Counsel for Respondent(s) : A.g.a, A.G.A.

Court No. - 91

**Reserved on 3.4.2026
Delivered on 1.5.2026**

HON'BLE SANTOSH RAI, J.

1. Heard Sri Arun Kumar Singh, learned counsel for the appellant; Sri Shyam Narayan Rai, learned AGA for State and perused the materials on record including the trial court records.

2. This criminal appeal is preferred under Section 374 of Cr.P.C. by the accused appellant Laloo to set aside the judgment and order dated 31.3.1983, passed by the II Additional Sessions Judge, Non-Metropolitan Area, Kanpur in Sessions Trial No.30 of 1983 (State of U.P. Vs. Laloo & Anr.), arising out of Case Crime No.197 of 1982, under Sections 302/34, 307/34 IPC, Police Station-

Billhaur, District-Kanpur Dehat, whereby the appellant has been sentenced to three years rigorous imprisonment under Section 304 Part-II IPC, sentenced to three years rigorous imprisonment under Section 307 IPC. All the sentences are directed to run concurrently.

3. In this case, the first informant is PW-1, Phool Chandra, who is the younger brother of the accused appellant Lalloo. He submitted a written report (Ex.Ka.1). In his report, he stated that the deceased, Chotey Lal, used to work as a helper on his farm and also lived in his house. An illicit relationship had developed between the deceased and his mother, Shanti. One night, the deceased and his mother were lying together on a cot. At that time, the accused appellants Lalloo and Shyam came into the house. When they saw the deceased and Shanti in a compromising position, both accused persons attacked the deceased with a spade. During the incident, the informant's mother also suffered injuries while trying to save the deceased. On the basis of this written report, an FIR was registered under Section 307 IPC as Case Crime No.197 of 1982 at Police Station Billhaur, District Kanpur Dehat.

4. The investigation started, and statements of witnesses were recorded. After investigation, a charge sheet was filed under Sections 302 and 307 IPC. The Magistrate took cognizance of the case and committed it to the Court of Sessions, where it was registered as Sessions Trial No.30 of 1983 (State of U.P. vs. Lalloo & Another), arising out of Case Crime No.197 of 1982, under Sections 302/34 and 307/34 IPC. Charges were framed against the accused persons. They denied the

charges and demanded trial. However, accused Shyam Lal was later acquitted of the charges under Sections 302/34 and 307/34 IPC.

5. To prove its case, the prosecution produced the following documentary evidence:

- "1. *FIR dated 13.08.1982*
2. *Written Report dated 13.08.1982 (Ex. Ka-1)*
3. *Injury Report dated 13.08.1982 (Ex. Ka-8)*
4. *Injury Report dated 13.08.1982 (Ex. Ka-9)*
5. *Recovery Memo of plain and blood-stained soil (Ex. Ka-5)*
6. *Supurdaginama dated 13.08.1982 (Ex. Ka-6)*
7. *Panchayatnama dated 18.08.1982 (Ex. Ka-4)*
8. *Post-mortem Report dated 19.08.1982 (Ex. Ka-2)*
9. *Charge-sheet dated 13.9.1982 (Ex. Ka-7)"*

6. Apart from the documentary evidence, the prosecution also presented oral evidence. The witnesses examined, Phool Chandra (PW-1), Shanti (PW-2), Fakire Singh (PW-3), Kalyan Singh (PW-4), Dinesh Singh (PW-5), Atar Singh (PW-6), Chhotelal (PW-7), M.A. Siddiqui (PW-8), and M.M. Khan (PW-9), in support of the prosecution case.

7. P.W.-1 Phool Chandra and P.W.-2 Smt. Shanti Devi resiled from their statement recorded during investigation and were declared hostile.

8. Fakire Singh (PW-3) is a witness who resides adjacent to the house of accused Lalloo. He has stated that the incident occurred at the night of Janmashtami at about 1:30 or 2:00 A.M., when he was lying in the courtyard of his house. He further stated that the deceased, Chhotey Lal, used to reside in the house of

Laloo and was engaged in agricultural work there. He has clearly stated that he did not witness the actual assault. Upon hearing an alarm that Laloo had attacked Chhotey Lal, he reached the spot. At that time, he saw accused Laloo running towards the pond with a gadasa in his hand. He further deposed that several other persons had also gathered there. He stated that he enquired from Phool Chandra, who informed him that Laloo had assaulted Chhotey Lal. He also stated that the name of Laloo as an assailant was disclosed to him by persons present at the spot. He further deposed that Laloo was at a distance of about four steps from him while running towards the pond. However, he admitted that he did not see Laloo in the light of any torch. With regard to his statement before I.O wherein he claimed himself as eyewitness of incident.

9. P.W.-6 Atar Singh is a resident of District Etawah and has been mentioned as a witness in the F.I.R. He has deposed that he had come to the village one day prior to the occurrence and had stayed at the house of Achhey Lal, who is the maternal uncle of the deceased Chhotey Lal. He further stated that a keertan was being held at the house of Ram Krishna, where he had gone along with Achhey Lal. He said he left the keertan at about 2:00 A.M., and at that time Achhey Lal was also accompanying him. He further stated that Fakire Singh and Ram Sanchi were also with him when they heard an alarm coming from the house of Laloo. On reaching there, they found that Chhotey Lal had been murdered. He further stated that he saw Laloo and Shyam Lal running away from the house towards the pond. The witness has further deposed

that a dibbi (oil lamp) was burning inside the house. He also stated that it was a dark night and that they were carrying torches, though the Investigating Officer did not inspect his torch. He further stated that the house of Ram Krishna, where the keertan was held, was situated about five to six houses away from the place of occurrence. He has stated that he had come to the house of Achhey Lal without any specific work. He further deposed that when he entered the house of Lalloo, Phool Chandra had already reached there before him. He also stated that he had seen Lalloo and Shyam Lal assaulting Chhotey Lal, and that Smt. Shanti Devi sustained injuries while trying to save Chhotey Lal.

10. P.W.-4 Kalyan Singh did not support the prosecution case and was declared hostile. However, he has deposed that he heard an alarm raised by P.W.-1 Phool Chandra, who was shouting that the accused had committed the murder.

11. P.W.-5 Dinesh is the scribe of the written report. He has testified that the contents of the FIR were written by him on the dictation of P.W.-1 Phool Chandra.

12. P.W.-7 Dr. K.L. Vaish has proved post-mortem report (Ex.Ka.-2) of deceased Chhotey Lal. He stated he found one stitched wound 16 cm long upon the right side of head extending upto right side of cheek. Second wound was 17 cm long having nine stitches on right side of cheek. Parietal bone of deceased was found fractured. He stated that said injuries could have been caused by sharp weapon.

13. Injury reports of deceased Chhotey Lal and P.W.-2 Shanti Devi were admitted by accused under Section 294 Cr.P.C. As per injury report of deceased Chhotey Lal, he has sustained two incised wounds '19cm x 2 cm x bone deep on right side face upto scalp with bleeding present and incised wound 20 cm x 2 cm x bone cut upto brain matter on frontal region with eye ball damaged'. Similarly, P.W.-2 Shanti Devi also sustained two incised wound in the incident. She sustained 'one incised wound bone deep found on middle finger of left hand measuring 2.5 cm x 1 cm. Second injury of incised wound was of 7 cm x 1 cm x muscle deep on left side of lumber region of abdomen'.

14. P.W.-8 A.M. Siddiqi has proved bed head ticket of deceased. He was posted as pharmacist in U.H.M. Hospital at Kanpur. He deposed deceased was brought and admitted in said hospital on 13-08-1982 and remained there upto 18-08-1982 till his death.

15. P.W.-9 S.I. M.M. Khan deposed he was investigation officer and he had recorded statements of witnesses, prepared site plan and recovered blood stained and plain soil from place of incident, prepared memo of earthen lamp and submitted charge sheet finding sufficient evidence against accused.

16. Upon appreciation of the evidence on record, it is revealed that the testimony of P.W.-3 Fakire Singh and P.W.-6 Atar Singh establishes that both the said witnesses had seen the accused fleeing from the place of occurrence immediately after the incident, armed with a blood-stained spade. The presence of blood on the weapon and the conduct of the accused in running away from the spot were treated as incriminating circumstances against him.

The trial court has further taken into consideration the statements of the aforesaid witnesses that they had heard the alarm raised by P.W.-1 Phool Chandra, who was shouting that accused Lalloo had murdered Chhotey Lal. The said utterance was held by the trial court to be admissible as forming part of the same transaction under the doctrine of res gestae.

17. The trial court has also observed that the conduct of the accused in fleeing from the place of occurrence with a blood-stained spade, at the very moment when P.W.-1 was raising alarm and naming the accused, constitutes a relevant circumstance indicative of his involvement in the occurrence. On the basis of the aforesaid circumstances, the trial court, while holding that the charge under Section 302 IPC was not made out, proceeded to convict the accused under Section 304 Part II IPC. However, no specific and cogent reasons were assigned by the trial court as to the absence of intention so as to exclude the offence under Section 302 IPC and for converting the conviction to one under Section 304 Part II IPC.

18. Learned counsel for the appellant has submitted that none of the witnesses examined by the prosecution can be said to be an eyewitness to the actual occurrence, inasmuch as no witness has consistently deposed to having seen the incident of assault. It is further contended that P.W.-1 Phool Chandra and P.W.-2 Shanti, who are alleged to be the eyewitnesses and, in the case of P.W.-2, an injured witness, have not supported the prosecution version during trial. Both these witnesses were declared hostile by the prosecution and have not attributed any role to the accused in the commission of

the offence. Learned counsel has also submitted that though the trial court has placed reliance upon the testimony of P.W.-3 Fakire Singh and P.W.-6 Atar Singh, the said witnesses are not eyewitnesses of the occurrence. Their presence at the time of actual assault is doubtful, and even according to their own statements, they reached the place of occurrence after the incident. It is further urged that P.W.-6 Atar Singh has been treated by the trial court itself as only a partially reliable witness, and therefore, his testimony could not have been made the sole basis of conviction. It is next contended that both P.W.-3 Fakire Singh and P.W.-6 Atar Singh have deposed that they heard P.W.-1 Phool Chandra raising an alarm that accused Lalloo had murdered Chhotey Lal. However, such statements cannot be relied upon, inasmuch as they do not find any corroboration from the testimony of P.W.-1 Phool Chandra and P.W.-2 Shanti, who have not supported the prosecution case at all and have denied the occurrence as alleged. In absence of such corroboration, the said evidence loses its evidentiary value and cannot form the basis of conviction.

19. Learned A.G.A., on the other hand, has opposed the submissions advanced on behalf of the appellant and contended that the prosecution case cannot be discarded merely on the ground that the alleged eyewitnesses, namely P.W.-1 Phool Chandra and P.W.-2 Shanti, have turned hostile during trial. It is submitted that the testimony of a hostile witness is not to be rejected in toto and can be relied upon to the extent it supports the prosecution case. It is further argued that the evidence of P.W.-3 Fakire Singh and P.W.-6 Atar Singh clearly

establishes that they reached the place of occurrence immediately after the incident and saw the accused fleeing from the spot armed with a blood-stained spade, which constitutes a strong incriminating circumstance against him. It is also submitted that both the said witnesses have consistently deposed that they heard the alarm raised by P.W.-1 Phool Chandra naming the accused as the assailant, which forms part of the same transaction and is admissible under the doctrine of *res gestae*. Learned A.G.A. has further contended that the conduct of the accused in running away from the place of occurrence with a blood-stained weapon, coupled with the surrounding circumstances, clearly points towards his guilt, and the trial court has rightly appreciated the evidence on record in recording the conviction, which does not call for any interference by this Court.

20. Upon a careful consideration of the entire material available on record and the submissions advanced by learned counsel for the parties, this Court finds that the trial court has rightly arrived at the conclusion that the accused was responsible for the assault upon the deceased Chhotey Lal. However, the conversion of the charge from murder punishable under Section 302 IPC to culpable homicide not amounting to murder under Section 304 Part II IPC does not appear to be supported by any cogent reasoning and is, therefore, unsustainable in law.

21. It is difficult to accept the findings recorded by the trial court inasmuch as, having placed reliance upon the testimonies of P.W.-3 Fakirey Singh and P.W.-6 Atar Singh, there existed no justifiable basis to absolve the accused of the offence punishable under Section 302 IPC. The

findings of the trial court suffer from lack of proper appreciation of evidence.

22. It is further pertinent to note that the trial court has neither adverted to nor discussed the injury report and post-mortem report of the deceased Chhotey Lal, nor has it properly considered the injury sustained by P.W.-2 Shanti Devi. The evidence on record clearly indicates that P.W.-2 Shanti Devi had also sustained injuries during the course of the same incident, namely two incised wounds on her left hand finger and abdomen. The genuineness of the injury report (Ex.Ka-9) stood admitted by the accused during trial, yet the same has not been properly appreciated by the trial court. In this regard, it is relevant to observe that where the genuineness of a document is admitted under Section 294 Cr.P.C., the same becomes substantive evidence. The Full Bench of the Allahabad High Court in **Saddiq & Ors. vs. State 1981 CriLJ 379** has held that once a document is admitted, its contents and execution need not be formally proved, and it can be read in evidence as substantive material. The expression "read in evidence" implies that such document can be relied upon for proving the facts in issue.

23. If the testimonies of P.W.-3 Fakire Singh and P.W.-6 Atar Singh are accepted to the extent that they saw the accused fleeing from the place of occurrence with a blood-stained spade at the very moment when P.W.-1 was raising alarm naming the accused, then the chain of circumstances clearly points towards the involvement of the accused in the commission of the offence. Such conduct is relevant under Section 8 of the Evidence Act, and the contemporaneous utterance of P.W.-1 forms part

of the same transaction and is admissible under Section 6 of the Evidence Act as 'res gestae'. Section 6 of Indian Evidence Act, 1872 is extracted hereinafter:-

"This section incorporates the principle of res gestae, which is a kind of an exception to the rule against hearsay as illustrated in Illustration (a) to this section. The word "hearsay" is used in various senses. Sometimes it means whatever a person is heard to say; sometimes it means whatever a person declares on information given by someone else. There are four illustrations to the section. In the first illustration, A is accused of the murder of B, by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

Even a hearsay statement is relevant if it forms a part of the same transaction as the fact-in-issue (occurrence). Unless any fact or statement forms a part of the same transaction, it will not be admissible in evidence. For example, utterances just before, during or immediately after the commission of a crime, spontaneous outbursts of bystander or of accused or victim forming part of the same transaction are admissible."

24. Section 8 of the Indian Evidence Act, 1872 is reproduced hereinbelow:-

"8. Motive, preparation and previous or subsequent conduct. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Thus, conduct, which is relevant and hence provable under this section, is conduct, which directly and immediately influences or is influenced by any fact in

issue or relevant fact. Relevant conduct does not include actions resulting from some intermediate cause. Such conduct must have nexus with the crime committed. It must form a part of the evidence as regards his conduct either preceding, during or after the commission of the offence as envisaged under section 8 of the Indian Evidence Act, 1872. Hence, any behaviour or conduct of the accused would be relevant if it had nexus with the offence alleged to have been committed by him. Only such conduct of the accused, which supports, destroys or destroys the presumption of innocence, is relevant. Conduct of accused by way of immediate reaction to an illegal overture of bribe is relevant. Creating false record is a conduct, which, is relevant. False explanation or false plea by an accused is relevant."

25. Considering all the facts and circumstances of the present case as also the material evidence available on record, the trial court has rightly held the accused appellant Lalloo guilty on the basis of relevancy of evidence and conduct of the appellant under Section 6 of the Indian Evidence Act, 1972 but the trial court has committed an erroneous finding that testimony of PW-6 Atar Singh is wholly unreliable. The specific role of appellant Lalloo and Shyam Lal for committing murder of deceased Chotey Lal inside the house of informant has been clearly assigned in the FIR and PW-3 and PW-6 also stated that they have seen the Lalloo and Shyam Lal running away from the house having spade (gadasa) in their hands but as to how Shyam Lal was not held guilty and acquitted in this case is not clearly explained on the basis of specific findings returned by the trial court in this case.

26. In this case, the incident is said to be occurred at about 2.00 AM in the house of the accused appellant Lalloo and three family members were present inside the house i.e. the deceased Chotey Lal and injured Shanti. The FIR was registered by the real brother of accused

appellant alleging that accused applicant has committed murder of Chotey Lal, who was a servant and involved in agricultural work in the house of the appellant. On hearing screams of informant the witnesses reached towards the place of occurrence and saw the accused appellants coming out from the house having blood stained spade (gadasa) in their hands and they ran towards the tank. The persons, who were present at the place of occurrence were informant Phool Chandra, mother of accused appellant Shanti, deceased Chotey Lal and accused appellant himself. Phool Chandra PW-1, who is the real brother of the appellant has no enmity with the accused appellant but he has lodged the FIR promptly. The deceased Chotey Lal and Shanti were taken to the hospital for medical treatment. Though the informant has turned hostile in this case but the relevant and broad facts regarding commissioning of cognizable offence are clearly mentioned in the FIR and the incident is duly corroborated with the testimonies of PW-3 and PW-6 and there is burden upon the inmates of the house namely appellant Lalloo under Section 106 of the Indian Evidence Act, 1872. Section 106 of the Indian Evidence Act, 1872 provides that when any fact is essentially within the knowledge of any person, the burden of proving that fact is upon him. The appellant Lalloo is the only family member who has not explained special circumstance of death of Chhotey Lal inside his house at night. Furthermore, the accused appellant has generally denied the statement as wrong in his statement recorded under section 313 Cr.P.C. and he has not explained the material evidence/circumstances clearly in his statement.

27. The prompt lodging of the FIR by P.W.-1 Phool Chand, who is the real brother, the admitted genuineness of the injury reports of the deceased and P.W.-2 Shanti Devi under Section 294 Cr.P.C., and the testimony of P.W.-5 Dinesh, the scribe, who has categorically stated that he wrote the report as dictated by P.W.-1, conduct of accused Lalloo, unexplained circumstance by the accused appellant, are all circumstances which, taken together, sufficiently establish the guilt of the accused, notwithstanding the fact that the alleged eyewitnesses and injured witness turned hostile during trial.

28. However, this Court is constrained to observe that, in view of the limitations imposed under Section 386 Cr.P.C., and in absence of any appeal or enhancement proceedings by the State, it is not permissible to alter the conviction to one under Section 302 IPC. Nevertheless, it is observed that the trial court has failed to properly appreciate the evidence on record, has omitted to consider material evidence including the injury reports, and has committed a grave illegality in the matter of sentencing by not imposing fine while convicting the accused under Section 307 IPC. It is further observed that even the sentence awarded under Section 304 Part II IPC does not appear to be commensurate with the gravity of the offence established on record.

29. The Apex Court in **Employees' State Insurance Corporation vs. A.K. Abdul Samad and Another, (2016) 4 SCC 785** held that:

"9. In our considered view, the clause "shall also be liable to fine", in the context of the Penal Code may be capable of being treated as directory and thus, conferring on the court, a discretion to impose sentence of fine also in

addition to imprisonment although such discretion stands somewhat impaired as per the view taken by this Court in Zunjarrao Bhikaji Nagarkar. But clearly no minimum fine is prescribed for the offences under IPC nor that the Act was enacted with the special purpose of preventing economic offences as was the case in Chern Taong Shangs. The object of creating offence and penalty under the Employees' State Insurance Act, 1948 is clearly to create deterrence against violation of provisions of the Act which are beneficial for the employees. Non-payment of contributions is an economic offence and therefore the legislature has not only fixed a minimum term of imprisonment but also a fixed amount of fine of five thousand rupees under Section 85(a)(i)(b) of the Act. There is no discretion of awarding less than the specified fee, under the main provision. It is only the proviso which is in the nature of an exception whereunder the court is vested with discretion limited to imposition of imprisonment for a lesser term. Conspicuously, no words are found in the proviso for imposing a lesser fine than that of five thousand rupees. In such a situation the intention of the legislature is clear and brooks no interpretation. The law is well settled that when the wordings of the statute are clear, no interpretation is required unless there is a requirement of saving the provisions from vice of unconstitutionality or absurdity. Neither of the twin situations is attracted herein."

30. Thus, imposition of fine is integral part and fundamental aspect of the punishment, whereas the learned trial court, while awarding sentence, has overlooked the aforesaid legal provision and committed legal error, but so far as the finding of conviction recorded against the accused appellant is concerned, it appears to be just and proper.

31. In **Kali Ram v State of Himachal Pradesh AIR 1973 SCC 2073**, the Supreme Court cautioned that the earlier observations do not affect the well-established principles of presumption of innocence and the burden of proof beyond reasonable doubt. The observations in the decisions quoted above have been quoted with approval in **State of Uttar Pradesh v Pussu @ Ram Kishore (1983) 3 SCC 502**, wherein the Apex Court held as under:-

"25. The rule governing the appreciation of evidence in a criminal case is laid down by this court in *State of Punjab v. Jagir Singh* [(1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407 : 1973 Cri LJ 1589 : (1974) 1 SCR 328] in which this court set aside the judgment of acquittal passed by the High Court which had reversed the conviction and sentence imposed by the trial court thus : [SCC para 23, pp. 285-86 : SCC (Cri) pp. 894-95]

"A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

32. In State of U.P. Vs. Krishna Gopal & Anr. (1988) 4 SCC 302 the Supreme Court has held as under:-

"25. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another a learned Author says [See: "The Mathematics of Proof-II" : Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)] :

"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent

people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice."

33. In Basalingappa Vs. Mudibasappa (2019) 5 SCC 418,
the Supreme Court has held as under:-

"This Court in M.S. Narayana Menon case [M.S. Narayana Menon v. State of Kerala, (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30] held that what is needed is to raise a probable defence, for which it is not necessary for the accused to disprove the existence of consideration by way of direct evidence and even the evidence adduced on behalf of the complainant can be relied upon. Dealing with standard of proof, the following was observed in para 32: (SCC p. 51)

"32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies. 17. In Krishna Janardhan Bhat v. Dattatraya G. Hegde [Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] , this Court held that an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already

brought on record. The following was laid down in para 32: (SCC p. 62)"

17. In Krishna Janardhan Bhat v. Dattatraya G. Hegde [Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] , this Court held that an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. The following was laid down in para 32: (SCC p. 62)

"32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different."

18. This Court in Krishna Janardhan Bhat case [Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] again reiterated that whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". In para 34, the following was laid down: (SCC p. 63)

"34. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies."

34. Letting the guilty escape is not doing justice according to law. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense, growing out of the evidence. If a case is proved perfectly, it is argued it is artificial. If it has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. Proof beyond reasonable doubt is a guideline, not a fetish. A judge presides over a trial not merely to see that no innocent man is punished, also to see that a

guilty man is punished. Both are public duties. What degree of probability amounts to proof is an exercise particular to each case. Reasonable doubt is free from a zest for abstract speculation, from over emotional response. Doubt must be actual and substantial, doubt as to guilt of the accused, arising from the evidence or from the lack of it, as opposed to vague apprehensions.

35. In view of the aforesaid discussion and upon careful appreciation of the entire evidence available on record, this Court finds that the prosecution has succeeded in proving the guilt of the accused-appellant beyond reasonable doubt. The testimony of prosecution witnesses inspires confidence and stands duly corroborated by the medical as well as documentary evidence. The minor discrepancies pointed out by the defence are natural and do not affect the core of the prosecution case. It is well settled that reasonable doubt must be real, substantial and arising from the evidence on record and not based upon conjectures, surmises or vague apprehensions. Criminal justice cannot be allowed to suffer merely on account of trivial inconsistencies which are bound to occur due to normal errors of observation and memory. The learned trial court has rightly appreciated the evidence in its correct perspective and this Court does not find any illegality, perversity or infirmity in the findings so recorded warranting interference in appellate jurisdiction. Accordingly, the appeal lacks merit and is hereby dismissed. The judgment and order passed by the trial court is hereby affirmed, subject to partial modification in the sentence awarded under section 307 IPC.

36. It is observed that the imposition of fine under Section 307 IPC is mandatory and the Trial court does not possess discretion to waive the same in any circumstances. Though this Court, in an appeal against conviction, is not empowered to enhance the substantive sentence, it is well within its jurisdiction to modify or alter the sentence awarded by the trial court. Since fine constitutes an 'integral part' of the sentence under Section 307 IPC, this Court finds it expedient to impose the same.

37. Accordingly, in addition to the sentence already awarded, the accused is directed to pay a fine of Rs. 10,000/- (ten thousand rupees only) for the offence under Section 307 IPC. In default of payment of fine, the accused shall undergo further simple imprisonment for a period of three months. The rest of the judgment of the trial court shall remain unaltered.

38. The accused is directed to appear before the trial court forthwith to serve out the sentence.

39. In the event of failure to appear, the trial court shall take all necessary coercive steps in accordance with law to secure his presence and ensure execution of the sentence.

40. The trial court record be transmitted back forthwith along with a copy of this judgment for compliance.

(Santosh Rai,J.)

May 1, 2026

RA