



2025:DHC:9172-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16<sup>th</sup> October, 2025

IN THE MATTER OF:

+ **CRL.A. 475/2002**

**MOHD.NAWAB**

.....Appellant

Through: Mr. S.K. Sharma, Mr. Tejas Singh, Mr. Rahul Sharma, Mr. Yogender and Mr. Saurabh Dagar, Advocates.

versus

**STATE N.C.T. OF DELHI**

.....Respondents

Through: Mr. Aashneet Singh, APP for State along with SI Priyank Rana, Police Station: Darya Ganj, Delhi.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**HON'BLE MR. JUSTICE VIMAL KUMAR YADAV**

**JUDGMENT**

**VIMAL KUMAR YADAV, J.**

1. Among others, a claim has been made on behalf of the Appellant that the circumstantial evidence, brought over the record by the prosecution nowhere proves that it was he who committed murder of Giani. To appreciate his submissions, raised before us, it would be expedient to note the facts. Denuded of details, the facts are that on the night intervening 29<sup>th</sup>-30<sup>th</sup> November 1998, at about 2:00 a.m., one Harpal Singh, PW-8 alighted the car of his boss at red light Delhi Gate, Delhi, to board a bus for Ashok Nagar, Delhi. His boss left for his



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residential house and PW-8 proceeded towards bus stand near Golcha Cinema, Netaji Subhash Marg, Draya Ganj, Delhi. When he reached near Delhi Gate Monument, he saw the Appellant, whose name was disclosed later on, catching hold of a rikshaw puller by his collar and abusing him with an intention to show his upmanship. The Appellant declared that since the rikshaw puller has refused to transport him to his house, he would kill him. With difficulty rikshaw puller got himself released from his clutches, at that juncture the Appellant pounced upon him, made him to lie, put his head on his thigh and started assaulting him with a stone lying there. While so assaulting, he announced that he would finish him. On seeing this, PW-8 started running towards Police Station Darya Ganj, raising a hue and cry of “Maar Diya... Maar Diya”.

2. On his way to police station, he met S.I. Dharmender Kumar Singh. PW-20. In the mean while a PCR van also reached there. When the Appellant noticed presence of police nearby, he left the rikshaw puller and started running towards Delhi Gate bazaar. He struck against railing and fell down. He got up and again started running. He was over powered and PW-8 made a statement against him, which culminated into FIR No. 924/98, registered at police station Darya Ganj, Delhi. Injured (Giani) was lifted and removed to JPN hospital for treatment. In the morning hours, the injured expired in the hospital. After conclusion of the investigation, chargesheet was filed against the Appellant. Case was committed to the Court of Sessions. After trial the Appellant was convicted for an offence punishable under section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay fine of Rs. 1,000/-, in session case No. 34/99. In default of payment of



fine he was to further undergo rigorous imprisonment for one year. The said conviction and sentence have been assailed in the present appeal.

3. Many fold attacks were made by Shri S.K. Sharma, Advocate, Id. counsel for the Appellant on judgement recorded by the Trial Court. In one prong of attack, he asserts that the police officers, examined by the prosecution, are not worthy of credence. To substantiate his point of view, he made us to go through the discrepancies, emerging in their depositions, made before the Trial Court. In the other count he claimed that the circumstantial evidence, adduced in the case, nowhere forms a complete chain of evidence, suggesting that it was the Appellant and none else who committed the crime of murder. There are gaps in the evidence, sufficient enough to show that it is inconclusive of his guilt. No evidence has been put forward to show an intention on the part of Appellant to commit murder of Giani, agitates Shri Sharma. His motive to commit the crime has not been proved, which is a fact that is fatal to the prosecution. Independent witnesses do not raise an accusing finger on the Appellant. The totality of the circumstances is sufficient to infer that the appellant has been framed in the case, argued Shri Sharma. Contra to it the Id. Additional Public Prosecutor strongly argued, claiming that the guilt has been brought home to the hilt.

4. Witness Harpal Singh PW-8 and Abdulla Khan PW-11 have not supported the prosecution's case. PW-8, the star witness of the prosecution, whose statement made under section 154 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), laid the foundation stone of the case. PW-11 was to bring the other facts, leading to the identity of the victim. Both of them bade farewell to the facts, unfolded by them during the course of investigation. They unfolded a



story different than one narrated before the investigating officer. It is a settled proposition of law that when a witness turns hostile, that situation has a far-reaching effect that goes beyond the immediate outcome of a case. Hostile witnesses not only undermine public trust in the reliability of eyewitness' testimony, but also raise concerns about wrongful convictions, miscarriages of justice, and the overall integrity of the legal process. However, the entire testimony of a hostile witness does not become void. Courts may accept those parts of his/her testimony which are consistent with other evidence, ocular or documentary, established in the case. The witness's hostility or adverse testimony does not ipso facto render all his evidence worthless. Facts testified by these witnesses, if corroborated by other independent piece of evidence, may lend support to the story, propounded by either of the parties.

5. How credibility of a witness is to be ascertained, has been dealt by the Trial Court, in the following words:

*“Law recognises the following ways in which evidence of a witness can be termed unreliable: (a) the witness' statement is inherently improbable or contrary to the course of the nature, (b) his deposition contains mutually contradictory or inconsistent passages, (c) he is found to be bitter enemy of the opposite party and therefore possess ample motive to wish him harm, (d) he is not found to be a man of veracity, (e) he is found to have been bribed or accepted bribe or received any other corrupt inducement to give evidence, and (f) his demeanour, while under examination, is found to be abnormal or unsatisfactory.”*

6. To claim that the witnesses are unworthy of credit, Shri Sharma laid emphasis on discrepancies, emerging out of their depositions. It was pointed out that ASI Lal Dhar PW-5 gave discrepant facts about the distance of the place, where they were present, from the place of incident. At one point he details that distance to be 40 feet but



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subsequently, it turned out to be 60-70 feet. Another infirmity pointed out in his deposition is that this witness claimed to have seen the accused for the first time running towards service lane leading to Jama Masjid but during the course of cross-examination he unfolds that he saw him for the first time when he struck against the railing and fell down. Ct. Dinesh Kumar, PW-10, testified that the red stone Ex. P1 was seized from the spot. However, subsequently he clarified that Ex. P1 was not seized from the spot. On this count Shri Sharma disputes the presence of the witness at the place of incident. PW-10 could not notice injuries on the person of the Appellant while as per his MLC Ex. PW20/D there was a contused lacerated wound of 3 cm on left frontal parietal region. Ct. Raj Kumar PW-13 details there were minor abrasions on the body of the Appellant, received on account of fall. A discrepancy as to where the Appellant struck against the railing and fell down has been brought to our notice, emerging out of the deposition of PW-13, and PW-20. Shri Sharma claimed that these discrepancies would go to infer that these witnesses were not present at the spot and story unfolded by them was fabricated, with a view to see the Appellant convicted.

7. Discrepancies or inconsistencies in prosecution evidence is a short fall from which no criminal case is free. While considering the deposition of a witness, the court has to take into consideration the process in which the facts are perceived and testified by a witness. When an incident occurs, a witness perceives facts according to his intelligence and experience in life. When he is called upon to recollect those facts, after a long gap of time, his memory may help or deter him in recollection of those facts. His power of articulation of those facts, while standing in the witness box, would make his testimony perfect or



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imperfect. This human process brings discrepancy in the deposition of a witness, which may be termed as normal or material one. Normal discrepancies may occur on account of errors of observation of facts, normal errors of memory due to lapse of time or mental disposition of a witness. However, material discrepancies are those which are not normal and not expected of a normal person. Material discrepancies affect the substratum of the story itself. When the discrepancies, highlighted by Shri Sharma, are being considered we are of the opinion that these are normal and not material discrepancies. The gravamen of the case, brought over the record by the witnesses, remained unaffected. It is concluded that the inconsistencies in the prosecution case are immaterial and do not have any impact on the facts, deposed by the witnesses.

8. When evidence of the witnesses examined was appreciated, we found that the depositions, of the witnesses examined, was neither inherently improbable nor having any inconsistent or mutually contradictory passages therein. Not to talk of inimical relations, not even a whisper of fact was made by the Appellant, during the course of their cross-examination, that there were any such circumstance which made them to have feeling of animosity with the Appellant. Neither their character was impeached nor receipt of any corrupt inducement by them to give evidence was imputed. Their demeanor, while under examination, was not found to be abnormal or unsatisfactory. We could not find even a single strand to opine that the witnesses, examined in the case, were unworthy of credence.

9. Now coming to the evidence, adduced in the case, we noticed that PW-5 deposes that cries of “Maar Diya... Maar Diya” were coming from the side of peepal tree near “Gumbad” of Delhi Gate at about 2:05



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a.m. on the night intervening 29–30th November 1998. He was on duty at Delhi Gate near Telephone Exchange in a PCR Van, as unfolded by him. They moved towards that point and saw the Appellant running towards service lane leading to Jama Masjid. The Appellant struck against the railing and fell down. Repeated cry of “Maar Diya... Maar Diya” was heard by them. In the mean while PW-20, along with his staff came from the side of police station. The Appellant got up and started running. He was overpowered by PW-20, near Negi Hotel. Injured was lying under peepal tree near the Gumbad. Cycle rikshaw was also lying near the side road. Distressed cries of “Maar Diya... Maar Diya”, coming from the side of Delhi Gate Monument, was also heard by PW-20, who was patrolling near at N.S. Marg at about 2:00 a.m. on that night. The Appellant started running towards service lane Delhi Gate Bazaar, from the side of Delhi Gate Monument and struck against railing and fell down. He got up and tried to run away but was over powered. PW-13, Constable, gives confirmation to those facts, when he spoke that the noise of “Maar Diya... Maar Diya” was coming from the side of Delhi Gate Monument. Appellant was seen running, who was chased and overpowered. Injured was lying near Banyan tree at Delhi Gate Monument.

10. Presence of PCR van, on which PW-5, was on duty that night, at a place near telephone exchange, Delhi Gate, Delhi, was not at all disputed. PW-20 was on patrol duty that night along with PW-13, is also a fact which was not at all challenged by the Appellant. Therefore, presence of PW-5, PW-20 and PW-13 at a place near Gumbad, Delhi Gate, Delhi has been established through their depositions. The events detailed by them, bring material circumstances to our notice, which



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would be considered in subsequent sections.

11. Injured was sent to JPN Hospital in the custody of PW-13. The injured was opined to be unfit for statement as mentioned on MLC Ex. PW 2/A, deposed PW-20. Statement of PW-8, Ex. PW20/A, was recorded and a case for an offence punishable under section 307 of the Indian Penal Code was got registered. He prepared rough site-plan Ex. PW 20/C, along with marginal notes. In the morning of 30th November 1998, injured expired in the hospital and investigation was taken over by Inspector Satish Yadav, PW-18. Appellant was arrested and got medically examined vide MLC Ex. PW 20/D, unfolds PW-20. From the spot, stone Ex. P2 smeared with blood, besides blood stained soil and pant of the Appellant were taken into possession vide memo Ex. PW8/A. Blood, lying at the spot, was also lifted with the help of a cloth piece and taken into possession vide memo Ex. PW 8/E. Blood stained pant Ex. P4, which the Appellant was wearing, was got removed from his person, sealed in a parcel and taken into possession, deposed PW-20. PW-10, Constable, reaffirms the facts relating to the seizure of blood, lying at the spot, blood stained soil, stone Ex. P2 and blood stained pant Ex. P4 of the Appellant. PW-13, also corroborates the factum of seizure of blood, blood stained soil, stone smeared with blood Ex. P2, blood stained pant Ex. P4, worn by the Appellant at that time.

12. Article seized from the spot were deposited in the Mal-Khana in intact condition, announces PW-20. On 29-12-1998 one sealed parcel along with the sample seal were taken into possession by PW-20, and deposited in the Mal-Khana in intact condition. He took those parcels and deposited the same in intact condition in FSL Malviya Nagar on 5th February 1999.



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13. Photographer took photos of scene of occurrence, declares PW-20. Post mortem report, Ex. PW 1/A, conducted by Dr. Anil Aggarwal, PW-1 was collected by Shardul Singh, Inspector PW-19. FSL reports Ex. PA, Ex. PB and Ex. PC, collected by PW-18 were tendered in evidence.

14. Dr. Sachin PW-2 prepared the MLC of the victim in JPN Hospital on 30-11-1998 and proved it as Ex. PW2/A. PW-1 conducted autopsy on the dead body of Giani and found following injuries thereon:

- i. A lacerated wound 3 cm x 1 cm into bone deep over left side of the fore head,
- ii. Lacerated wound 3 cm x 1 cm x bone deep over left side of the forehead almost parallel to injury No. 1 and below- it.
- iii. Punctured wound 2 cm x 1 cm x 1 cm over left cheek prominence with fracture of underlying bone. The edges were ragged and contused.
- iv. Superficial lacerated wound 3 cm x 1 cm over left side of the cheek about 1 cm above the injury No. 3.
- v. Penetrating wound 1 cm x 1 cm x maxillary cavity deep over left side of the cheek about 2.5 cm below and inner to injury No. 3.
- vi. Superficial lacerated wound 1.5 x 0.5 cm over left side of the cheek about 3 cm below and outer to injury No. 3.



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- vii. Lacerated wound 2 x 1 x 0.5 cm over left side of upper lip.
- viii. Lacerated wound 1 x 0.5 x 0.5 cm, with abraded area around measuring 2 x 2 cm over right side of the forehead.
- ix. Multiple abrasions over an area of 9 x 8 cm over right side of the cheek.
- x. Abrasion 8 x 6 cm over right temporo-occipital region just below the right ear.

15. PW-1 opined the injuries to be antemortem in nature and recent in duration. Injuries to the head were sufficient to cause death in ordinary course of nature individually and collectively, narrates PW-1. He explains that the phrase “recent in duration” traditionally implies that the injuries were caused within 24 hours of the death. Punctured wound is a technical term in which depth of the wound is the greatest in dimension while penetrating wound is slightly different from the punctured wound in the sense that it enters a body cavity farther into flesh or bone, announces PW-1.

16. On perusal of Ex. PA it emerges that six sealed cloth parcels and one sealed envelope were deposited in FSL Malviya Nagar, New Delhi. Out of parcel 1, one stone having brown stains, from parcel 2 gauze cloth piece having brown stains, parcel 3 blood stained earth, parcel 4 earth controlled sample, parcel 5 one pant (jeans) having brown stains, parcel 6 containing Exhibits 6a, 6b, 6c and 6d, sealed with the seal of LNJP Hospital, containing one cloth piece having brown stains, one shirt



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having brown stains, one shawl having brown stains and one shirt having brown stains respectively were taken out. Report Ex. PB declares that blood was detected on exhibits 1, 2, 3, 5, 6a, 6b, 6c, 6d and 7. Ex. PC is serological analysis of the blood found on above exhibits. Details that blood of human origin having B group was there on exhibits 1, 2, 5, 6b, 6d and 7. Though blood of human origin was found on exhibit 3, 6a and 6c but group of the blood found on those exhibits could not be ascertained. Therefore, out of these reports it has been brought over the record that exhibit 6a and 6d, pertaining to the deceased were having blood of human origin of group B. This leads us to conclude that the blood of the deceased was of group B.

17. Stone Ex. P2 was smeared with blood of human origin having group B, as emerge out of the aforesaid reports. Pant Ex. P4, seized from the person of the Appellant by PW-20, was also smeared with blood of human origin having group B. Blood- stained earth, seized from the spot by PW-20 was having blood of human origin but its group could not be ascertained, unfolds report Ex. PC.

18. “Maar Diya... Maar Diya” is a statement made contemporaneously with the act or immediately after it, without an opportunity for reflection or fabrication. Without an interval between the act and the said statement brings it within the concept of “res-gestae”. In criminal trial, hearsay evidence is admissible if it forms part of res-gestae, based on the proposition that human action may be so interwoven with words that the significance of the action cannot be understood without the correlative words and the disassociation of the words from the action would impede the discovery of truth. The words, “Maar Diya... Maar Diya”, sought to be proved are absolutely



contemporaneous with the action or event and clearly associated with it to form part of the assault being made and part of the real evidence and not merely a reported statement. The statement, “Maar Diya... Maar Diya”, was made spontaneously and so closely connected in time and circumstances to the event it describes, for it was made immediately after the homicidal assault on the victim, hence relevant and admissible in evidence.

19. The circumstances, emerging over the record, out of ocular and documentary evidence, are as follows:

- i. On the night intervening 29<sup>th</sup>-30<sup>th</sup> November 1998, at about 2:00 a.m., PW-5, ASI, heard distress cries of “Maar Diya... Maar Diya”, when he was present in PCR van near Delhi Gate, Delhi.
- ii. PW-20 and PW-13, who were on patrol duty at that time also heard the said cry of “Maar Diya... Maar Diya”.
- iii. PW-5, ASI, proceeded towards Delhi Gate Monument and saw the Appellant running towards service lane, leading to Jama Masjid side, who struck against the railing and fell down.
- iv. PW-20, saw the Appellant running towards service road, from the side of Delhi Gate Monument, who struck against the railing and fell down.
- v. The Appellant got up and started running, who was chased and over powered.
- vi. At that time injure Giani was lying under Banyan tree near the Gumbad.
- vii. Blood of human origin was lying at the spot.



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- viii. Stone Ex. P2 smeared with blood of human origin of group B was seized from the spot.
- ix. Pant Ex. P4, worn by the Appellant at that time, was smeared with blood.
- x. It was got removed and seized by PW-20.
- xi. Somvir, Constable, was summoned at the spot who took photographs of the scene of crime.
- xii. The injured was removed to JPN hospital for treatment, where he expired in the morning hours of next day.
- xiii. The Appellant was also sent to JPN hospital for medical examination and his MLC Ex. PW 20/D was prepared.
- xiv. Ex. PW 20/D projects that CLW 3 cm on left frontal parietal area of the Appellant was present, which correlates the story of fall after having being struck against the railing.
- xv. Stone Ex. P2 and pant Ex. P4 were found smeared with blood of human origin having group B.
- xvi. Ex. 6b and Ex. 6d, pertaining to the deceased, were smeared with blood of human origin having group B.
- xvii. PW-1 conducts autopsy of the deceased and found 8 lacerated, punctured, penetrating, superficial lacerated wounds on the body of the deceased.
- xviii. Besides the lacerated wounds there were multiple abrasions over right cheek and right temporo-occipital region below the right ear on the dead body. He opined those injuries to be antemortem in nature and recent in duration.



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xix. PW-1 further opined that the injuries to the head were sufficient to cause death in ordinary course of nature individually and collectively.

20. One of the circumstances, referred above, speaks of conduct subsequent the event of the Appellant. As pointed out above, the Appellant was seen standing near the victim and started running when distress cry of “Maar Diya... Maar Diya” was being raised. No explanation of this conduct was offered by him. His conduct subsequent to the event is relevant under section 8 of the Evidence Act, 1872.

21. Circumstantial evidence means combination of facts creating a net without there being any tear though which the accused can escape. It is just like a rope made of many strands to stay together. The rope has more than sufficient strength to bear the stress laid upon it though, if alone, the same filaments of which it is composed would be insufficient for that purpose.

22. Five golden principles, which constitute the “Panchsheel of Proof” of a case based on circumstantial evidence, are: (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established, (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on other hypothesis except that the accused is guilty, (iii) the circumstances should be of conclusive nature and tendency, (iv) they should exclude every possible hypothesis except the one to be proved, and (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused, expounded by the Apex Court in



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Hanumant vs State of Madhya Pradesh (1953 Cr.L.J. 129) and reiterated in Sharad Birdhu Chand Sarda vs State of Maharashtra (1985 SCR (1) 88).

23. Without noticing the judgement in Hanumant (supra) Supreme Court in Naseem Ahmed vs Delhi Administration (1974 (3) SCC 668) propounded those very principles and went on to say that individual circumstances considered in isolation and divorced from the context of overall picture emerging from a consideration of the diverse circumstances and their conjoint effect may by themselves appear innocuous. It is only when the various circumstances are considered conjointly that it becomes possible to understand and appreciate their true effect. Principles propounded in Hanumant's case (supra) has been uniformly followed and applied by the Apex Court in large number of decisions, for instance Tufail (alias) Simmi vs State of Uttar Pradesh (1969 (3) SCC 198) and Ram Gopal vs State of Maharashtra (1972 (4) SCC 625).

24. After considering a large number of cases, the Apex Court in Krishnan vs State (2008 (15) SCC 430) put forward those very principles as laid down in Hanumant's case (supra) and enunciated in Sharad Birdhi Chand Sarda's case (supra). Anwar Ali vs State of Himachal Pradesh (AIR 2020 SC 4519) and Abdul Naseer vs State of Kerala (2025 INSC 35) are the cases which consistently emphasised on high standards for use of circumstantial evidence in a criminal trial.

25. When all strands of above circumstantial evidence are considered, a complete chain of events is formed to infer that it was the Appellant who hit the deceased with stone Ex. P2 and caused injuries on his person, out of which the injuries caused to the head were sufficient to



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cause death in the ordinary course of nature individually and collectively. It is well settled principle of criminal jurisprudence that the circumstantial evidence must be consistent and consistent only with the guilt of the accused. When evidence, brought herein, is appreciated we are of the opinion that there are no gaps, which may afford a slip to the Appellant to come out of that chain of event. The circumstances suggest to the only one inference that it was the Appellant and none else who caused fatal injuries to the deceased.

26. A claim was made on behalf of the Appellant that the evidence, brought over the record, nowhere establishes his intention to commit the crime of murder of Giani. Submissions, so made, have no substance. The first clause of section 300 of the Indian Penal Code says that culpable homicide is murder if the act by which death is caused is done with the intention of causing death. Intention can, of course, be rarely proved by direct evidence. Such evidence may, however, be sometimes available. Such intention may be proved or it would be presumed or inferred, out of the facts and circumstances brought over the record. A man's intention can only be gathered from his acts as every man is presumed to intend the natural consequences of his act. In deciding the question of intention, therefore, the nature of the weapon used, the part of the body on which the blow is given, the force of the blow and its number are some of the factors which assume importance.

27. Stone Ex. P2, can be gripped in a hand from one side and used as a weapon from the other side, is heavy enough to cause lacerated, punctured and penetrating wounds, as described in autopsy report Ex. PW1/A. Lacerated wound No. 1 is bone deep over left side of the forehead. Lacerated wound No. 2 is also bone deep over left side of forehead,



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almost parallel to wound No. 1 and below it. Punctured wound over left cheek prominence with fracture underlying the bone had edges ragged and contused. Penetrating wound No. 5 is maxillary cavity deep over left side of cheek. These injuries project the force with which Ex. P2 was hit on face and head of the deceased. More than 8 blows were inflicted on the victim by the stone Ex. P2, which was used as a weapon of offence. Weapons like Ex. P2 would certainly prove to be lethal, if used on a vital part of the body with force. Successive number of blows inflicted on the person of the deceased is sufficient to gather intention of the Appellant to commit his murder.

28. A counter attack made by Shri Sharma was that the prosecution has failed to prove motive of the Appellant to commit murder of Giani. The contention, so advanced, does not have any weight. Motive is not a necessary ingredient of an offence, for most of the grievous crimes are committed out of very flimsy and frivolous considerations. Evidence of motive, which is frequently given in such cases is of subsidiary importance, and the mere fact that the accused had a motive to cause the death of the deceased is not a fact which will dispense with the proof of points that the accused had got a suitable immediate occasion for committing the crime and of actually committing it. The proof of motive is not necessary to sustain a conviction on a murder charge when there is clear evidence that the person had been done to death by the accused. In other words, when the facts establishing the charge are clear it is immaterial that the motive has not been proved. The reason is that the motive of an act may be known to the perpetrator and to none other and the investigator may not have been able to collect any information in regard thereto.



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29. The circumstantial evidence, brought over the record, adheres to five golden principles, referred above. We have no hesitation in concluding that the prosecution has successfully established the guilt of the accused for causing murder of Giani, beyond a reasonable doubt. Consequently, the appeal fails and is hereby dismissed.

**VIMAL KUMAR YADAV, J.**

**SUBRAMONIUM PRASAD, J.**

**OCTOBER 16<sup>th</sup> 2025**

*IJ*