Vinod Kumar vs The State Of Uttar Pradesh on 7 September, 1990

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Bench: S.R. Pandian

ORDER

S. Ratnavel Pandian, J.

1. This appeal by special leave is directed against the judgment of the High Court at Allahabad, Lucknow Bench rendered in Criminal Appeal No. 821/78 dismissing the appeal preferred by the appellant and confirming Use judgment of the Trial Court, whereunder the appellant stood convicted under Section 302 IPC and also under Section 27 of the Arms Act and sentenced to imprisonment for life and 5 years' rigorous imprisonment respectively.

2. The appellant, Vinod Kumar took his trial along with one Anil Kumar (since acquitted) on the charge that on 20.11.1977 at about 3,30 P.M. in the Held of Vishwa Nath Kapoor situated in the village Makanpur within the limits of Palia Police Station, he caused the death of the deceased Raj Kumar by shooting him with a double barrel breach loading gun (DBBL gun No. 7075), the licence for which stood in the name of his mother. The charge against the acquitted accused was under Section 302 read with Section 34 IPC for having shared the intention of the appellant in committing the murder of Raj Kumar.

3. The facts of the case leading to the prosecution are set out in great details in the judgment of the Trial Court Neverthless, we think it necessary to recapitulate the following salient and material facts in order to give our own reasons for the conclusion which we will be arriving at.

4. There were two affluent and influential families in Makanpur - Palia locality, of which one family was of Vishwa Nath Kapoor, consisting of four brothers including Satish Kumar (PW-1) and Raj

Kumar Kapoor (the deceased herein). Their father was one of Lala Charan Makanpur who developed an agricultural farm extending to an area of 150 acres. All the brothers were residing under a common roof, having common mess and doing cultivation. The other family was that of one Sharda Prasad who was murdered about 17 or 18 years ago and who is survived by his wife, Bhagwati Devi and his two sons, i.e. the appellant Vinod Kumar and another by name Bhagwan. The said Sharda Prasad was also owning a big farm extending to an area of 65-70 acres and a farm house. After his death, his wife and sons were looking after the cultivation of the lands residing in the farm house.

5. The distance between Makanpur and Palia is about a mile. The relationship between the two families was cordial before the murder of Sharda Prasad. Later on, a dispute arose in respect of the enjoyment of one acre of land which adjoins the farm land of the appellant. The appellant and his brother filed a civil suit against PW-1 and his brothers and the same was pending before the consolidation authorities at the relevant time of the occurrence, the hearing of which stood posted to 21.11.79. As there was breach of peace in respect of the enjoyment of the disputed property, a proceeding under Section 145 of the CrPC was initiated on an application moved by the appellant and his brother and the disputed land was attached. Besides a security proceeding under Section 107 of the CrPC was also initialed against the members of the two families. About 3 days prior to the occurrence i.e. on 17.11.1977, Vishwa Nath Kapoor (PW-6) the brother of the deceased was threatened by Bhagwan and one Prem Singh in respect of which Vishwa Nath Kapoor (PW-6) lodged a criminal complaint.

6. The occurrence look place on 20.11.1977 at about 3.30 P.M. By about that time, while PW-1 along with his servant, PW-3 was doing agricultural operation in his farm field which is at a distance of about furlong from his family farm house, the deceased Raj Kumar was coming by the road running near the field, riding his cycle. The appellant came by that way driving his jeep. The acquitted Anil Kumar was sitting on the right side of the jeep as the jeep was one of left hand drive. One noticing the jeep coming at a distance of 20 paces, the deceased parked his cycle and got down into the field, evidently to give way to the jeep. The field was at a lower level from the level of the road. On seeing the deceased, the appellant stopped the jeep, got down with the gun and challenged the deceased, threatening "Bastard, where will you go now?" So saying, he moved towards the deceased whilst the latter stood facing the appellant. Suddenly, the appellant fired a shot at the deceased who on receipt of the gun-shot injury fell down. The appellant successively fired a second shot but the aim was lost. PWs-1 and 3 who were in the field near the scene rushed towards the scene spot. The deceased, presumably apprehending further attack suddenly got up and snatched away the gun from the hands of the appellant. The accused On noticing PWs 1 and 3 rushing to the scene and on being taken aback by the sudden snatching away of the weapon from his possession got into the jeep along with Anil Kumar and made good his escape by driving the jeep.

7. PWs 1 and 3 came near the injured Raj Kumar and found him bleeding. The deceased handed over the gun to PW-1. The members of the deceased family were informed about the occurrence. Vishwa Nath Kapoor (PW-6) and Mihi Lal brought a cot in a tractor attached with a trolly. The deceased Raj Kumar was alive. So the witnesses after placing the injured in the tractor removed him to Palia Hospital. PW-1 prepared a report Ext. Ka. 1 and went to the police station taking the gun (Ext.1) containing two fired cartridges (Ext.2) and lodged Ext. Ka 1 at 4.30 P.M. The police station is at a

distance of two miles from the place of occurrence. PW-9 a constable clerk received Ext. Ka-1 at 4.30 P.M. and registered a case under Section 307 and 307 read with Section 109 IPC. The Sub-Inspector of Police (PW-11) took up the investigation.

8. PW-11 realising the necessity of immediately obtaining a dying declaration from the victim, Raj Kumar telephonically contacted the Principal of Baldeo Vidia Intermediate College, by name Raj Kumar Dixit and requested him to proceed to the Primary Health center for recording a dying declaration from the injured Raj Kumar. By then, a lecturer of the same college, by name Ram Kumar Trivedi (PW-5) had arrived there on hearing about the occurrence. At the request of Mr. Dixit, PW-5 recorded Ext. Ka 11, the dying declaration of the deceased. When the Sub-Inspector reached the Primary Health center at about 5.05 P.M. the injured had already been taken to the operation theatre where the Medical Officer Ratan Singh (PW-2) started recording another dying declaration of the deceased. Even before the dying declaration was completed, the deceased expired at about 5.30 P.M.

9. On receipt of the information of Raj Kumar's death, the investigating officer directed PW-9 to go to the police station and get the case altered into one of murder - under Section 302 IPC. Then, he held inquest over the dead body of the deceased and gave a requisition to the Medical Officer to conduct necropsy on the dead body. The statements of the witnesses of PWs 6 and others were recorded. The appellant was absconding. However, the investigating officer found the jeep involved in the occurrence having been parked outside the house of the appellant. He seized the jeep. On the next day, he inspected the scene of occurrence and prepared a rough sketch Ex. Ka. 34. He noticed blood-stains at point 'A' marked in the site plan wherefrom he took sample of blood-stained earth. The scene was in the field of Vishwa Nath Kapoor, PW-6. He recorded the statement of the eye witness i.e. PW-3. He again searched for the appellant on the 22nd, but could not trace him. Therefore he submitted a report for taking action against appellant and Anil Kumar under Section 82/83 of the Code of Criminal; Procedure.

10. On 4.12.1977 PW-11 arrested the appellant and examined them. After completing the investigation, PW-11 laid the charge-sheet against the appellant and Anil Kumar on 27.12.1977.

11. The prosecution examined as many as 11 witnesses including the official witnesses and filed a number of documents. The appellant when questioned under Section 313 of the CrPC has given a statement to the effect that on the fateful day, he was going to his farm in his jeep in which his mother was sitting on the rear seat; that he had kept a double barrel gun (ext.1) with him in the front seat behind his back; that when he arrived near culvert he found a bullock cart fully loaded coming on the opposite side; that he stopped the jeep on the road which was narrow; that when he was waiting for the bullock-cart to pass through, the deceased came near his jeep, threatening him and attempted to pick up the gun. He has further stated that he, apprehending danger, caught hold of the butt of the gun whilst the barrel of the gun was in the hands of the deceased; that while the deceased tried to snatch away the gun violently, a shot went off by accident causing a gun-shot injury on the chest of the deceased; that he, getting panicky on account of this unexpected incident, left the scene leaving the gun in the hands of the deceased who fell down in the field. He has added that the dying declaration was falsely concocted by PW-11 in collusion with the Principal of the

College. The acquitted Anil Kumar stated that he had been falsely implicated in this case.

12. The learned Sessions Judge accepting the ocular testimony of PWs 1 and 3, placing reliance on the two dying declarations Ext. Ka-11 and Ext. Ka-3 recorded by PWs 5 and 2 respectively and rejecting the plea of the appellant held:

> It was not a case of accidental fire as alleged by the defence, but was a case of deliberate act of firing by the appellant Vinod Kumar at the deceased Raj Kumar.
>
> and consequently convicted and sentenced the appellant under both the charges as aforementioned and acquitted Anil Kumar. The appellant preferred an appeal before the High Court which after examining the evidence in extenso has rendered its impugned judgment, agreeing with the findings of the Trial Court and dismissing the appeal as devoid of any merit. Hence this appeal.

13. Mr. Lalit, senior counsel appearing on behalf of the appellant took us very meticulously through the recorded evidence and strenuously contended that the facts and attending circumstances of the case go fully in support of the defence that the deceased received the injury accidentally while the deceased and the appellant were pulling the gun, the former holding the barrel and the latter holding the butt in an effort to get the gun and that the two dying declarations Ext. Ka-3 and Ka-11 said to have been recorded by PWs 2 and 5 respectively are clouded with grave suspicion and as such these incredulous documents ought not to have been relied upon for recording the conviction. According to him, as the evidence of PWs 1 and 3 is not only highly interested but also irreconcilably in conflict with the medical evidence, it should be rejected in toto as unworthy of acceptance.

14. Before adverting to the argument advanced by Mr. Lalit, we shall give a brief preface on the basis of the incontrovertible facts.

15. The occurrence took place on 20.11.1977 at about 3.30 P.M. in the field of PW-6. The appellant came driving his jeep on the road running near the filed of PW-6 and met the deceased who was standing by the side of the road in the nearby field. The appellant during the incident in question was possessed with a DBBL gun (Ext.1) the licence of which stood in the name of his mother. This gun, carried by the appellant in the jeep, was the weapon of offence. The gun-shot injury received by the deceased on his chest was due to the hitting of pellets which went off from Ext. 1. Leave apart the question whether he received the injury accidentally or otherwise the fact remains that the deceased succumbed to that injury on the same day.

16. In the background of the above indisputable facts, we shall now examine the defence contentions seriatim. The first submission is with regard to the hotly debated controversial question as to whether the firing of the shot was homicidal or accidental. The specific plea of the appellant is that the deceased violently attempted to snatch away the gun already loaded with cartridges by holding the barrel against his chest from the grip of the appellant who was holding the butt and in the process of pulling, one shot accidentally went off hitting on the chest of the deceased. Contrary to the above defence theory, the prosecution puts forth its version stating that while the deceased was

standing in the field which was in a lower level from the road, the appellant got down from the jeep, moved towards the deceased, obviously with a spirit "come what may" and fired a shot aiming at his chest which within two hours proved fatal; that the aim of the second shot was missed; that the injured Raj Kumar suddenly got up and snatched the weapon out of the hands of the appellant and fell down in the field and that the appellant on seeing PWs-1 and 3 rushing to the scene spot and on being taken aback on the deceased suddenly snatching away the gun from his hands left the scene abruptly driving his jeep. Though prima-facie the defence theory seems to be somewhat appealing, when deeply examined in the light of the established facts, the said theory is proved to be a palpably false and invented story.

17. The eye-witnesses i.e. PWs 1 and 3 are giving a graphic version about the occurrence, the gist of which is that the appellant got down from the jeep with the double barrel gun without switching of the engine of the jeep; moved towards Raj Kumar who was facing the appellant slightly leaning towards west and suddenly fired a shot at Raj Kumar who on receiving the gun shot wound fell down; that the appellant not being satisfied with that shot, in quick succession fired a second shot but the aim was missed; that the deceased suddenly pounced upon the appellant and snatched away the gun from his hands and thereafter the appellant made good his escape by driving his jeep leaving the gun in the hands of the deceased. Besides the testimony of PWs 1 and 3 there are two dying declarations Ext. Ka-3 and Ext. Ka-11 in which the deceased had consistently stated that he received the injuries at about 3.00 P.M. on that day at the hands of the appellant. He could not mention the nature of the weapon used by the appellant in Ext. Ka-3 since his condition became serious and was unable to speak thereafter when questioned about it. Nevertheless in Ext. Ka-11 he had unambiguously and clearly stated that the appellant fired the first shot at him by using his gun and the aim of the second shot was missed and that he snatched the gun out of the hands of the appellant. Thus against the unsubstantiated defence version we have got the oral as well as the unimpeachable documentary evidence.

18. The version of the prosecution in addition to the above ocular testimony and dying declarations is amply supported by the evidence of other witnesses and the impelling circumstances. Firstly, the injured Raj Kumar did not die instantaneously at the spot, but died at about 5.30. P.M. in the hospital. This cannot be doubted because it is the disinterested evidence of PW-2, the Medical Officer that Raj Kumar succumbed to his injuries only in the operation theatre. PW-5 has recorded the first dying declaration Ext.Ka-11 and he has sworn to the fact that the injured Raj Kumar was in a fit condition to make the dying declaration voluntarily. PW-4 who conducted necropsy on the dead body of the deceased though could not give a definite and decisive answer to the question whether the injured Raj Kumar after sustaining the injury could have been alive and snatched the weapon, at one point of time he would assert that the injured could have suddenly jumped and snatched the weapon before he suffered heavy loss of blood. Secondly even accepting the defence theory for the sake of argument that the appellant was holding only the butt of the gun (i.e. handle portion) it has to be held that the trigger with its guard which is generally attached to the butt of the gun was on the side of the appellant. The admitted case is that the gun in question was a hammer action gun which was manually operated, but not an automatic or semi-automatic one. As deposed by PW-10, the ballistic expert that accidental firing occurs only when a hammer gun is defective, otherwise there is no possibility of accidental firing taking place irrespective of the fact whether the gun is a hammer

or hammerless one. There is no evidence in the present case that it was a defective one. Further it is not the case that during the course of the struggle of pulling the gun it fell down and due to the poor mechanism the shot went off accidentally. Normally unless one pulls the trigger there is no possibility of the shot being fired. So it can be safely inferred that the appellant who admittedly was holding the butt had fired the shot by pulling the trigger. Thirdly, both the barrels of the gun on examination were found to have contained two fired cartridges indicating two shots were fired. Fourthly, the ballistic expert who microscopically examined the gun has deposed that he reached the conclusion that the cartridges marked as E.C.I and E.C.2 were fired from the left and right barrels of the gun (ext. 1) respectively. Fifthly, it is neither the case of the defence nor even a suggestion to the effect that after the appellant had left the scene, somebody had fired the second shot. Sixthly if the defence theory is to be accepted, then the gun besides one fired cartridge should have contained a live cartridge also. Seventhly, according to PW-4, the deceased should have been shot within a range of 1 ft. to 4 ft.

19. All the above oral and circumstantial evidence clearly reveal that it was the appellant who fired the shot at the deceased deliberately and the defence theory of accidental firing is nothing but a fabricated story as rightly concluded by both the courts below and that the deceased did not die instantaneously, but lived for nearly two hours.

20. The next bone of contention is that considering the injuries suffered by the deceased it could have been neither possible nor probable that the deceased would have got up after receipt of the gun shot injury and snatched away the gun from the hands of the appellant and could have been in a position to make any dying declaration. In support of the above contention, much reliance was placed on the testimony of PW-4 and the contents of Ex.P-8, the post-mortem certificate which evidence shows that the pleura, liver and lung of the deceased were all punctured on the right side of the body; that the twelfth rib was fractured; that 400 c.c. of blood had been collected in the right chest cavity besides two litres of blood in the abdominal cavity and that there was a hole on the sternum and extensive laceration of both lobes of the liver and gall bladder. PW-4 has opined that the injured might have died instantaneously or some time thereafter. As pointed out earlier PW-4 though could not give positive answers to certain questions he is very assertive when a specific question was addressed to him stating that the deceased could have snatched the gun. We feel that it would be appropriate to reproduce the question and answer in this regard for proper understanding the opinion of pw-4:

> Ques: If any victim is not in a state of shock after being so much injured, whether he can do such act or not as jumping and snatching something from a young man?
>
> Ans: Yes he can

21. In Ex.P-8, it is mentioned that the margins of the injury was lacerated and inverted with carrying and tattooing around the wounds. Taking this feature into consideration, PW-4 has opined that the shot should have been fired by the assailant standing at a distance of 1 foot to 4 feet from the deceased. In other words, the shot was fired within a close range. The deceased aged about 33 years was a strong man with a six feet height whereas the appellant was hardly 4' and few inches in height.

According to PW-5, the deceased gave the dying declaration Ex.Ka-11 at about 4.50 P.M. PW-2 started recording the dying declaration, Ka-3 at about 5.10 P.M. and stopped the same at about 5.20 P.M. before it could be completed since the deceased could not speak further. However, he died by 5.30 P.M. The evidence of PWs 2 and 5 indicate that the deceased was alive upto 5.30 P.M. i.e. for two hours after receipt of the injury as concluded in the preceding part of this judgment.

22. Considering the facts that the deceased was a strong man of 33 years and was standing very close to the appellant and that he did not instantaneously die, we safely infer that the deceased on receipt of the injury by a spontaneous reflection and by either voluntary or involuntary impulse would have suddenly sprang upon the appellant like a wounded tiger and forcibly snatched away the gun and the appellant on becoming unnerved on seeing PWs 1 and 3 rushing to the scene-spot and on being taken aback by the sudden and unexpected spring of the deceased had let loose the grip of the gun and abruptly got into the jeep, the engine of which was on and made good his escape. The High Court before which a similar contention has been raised, after making reference to certain excerpts of some renowned authors on "Medical Jurisprudence and Toxicology" has concluded thus:-

> In view of the above medical authorities it cannot be held that the victim of the present occurrence must necessarily have gone into shock immediately on receiving the injuries mentioned in the postmortem report rendering him incapable of rising and snatching the gun.

23. We are in full agreement with the above finding of the High Court for the reasons assigned herein-before.

24. We shall now examine the question whether the deceased could have given the two dying declarations Ext. Ka-11 and Ext. Ka-3 to PWs 5 and 2 respectively.

25. As pointed out ibid, the victim had sustained serious injuries and was lingering. Though the nature of the injuries may lead loan inference that the probability of the victim becoming unconscious could not be completely ruled out, it could also be safely inferred that the victim who was 33 years old with robust Constitution might have been fully conscious till his end. However, as the faculty of memory and speaking could not be said to have been impaired the victim, if not had become unconscious could have given these two dying declarations. It is pertinent to note that nothing has been elicited from PW-4 regarding the capability of the deceased making any declaration. Not even a suggestion is made by the defence either to PW-2 who recorded the second dying declaration Ext.,Ka-3 or to PW-4 who conducted necropsy that the victim after receipt of these injuries could not have given the dying declarations. Therefore, the question whether the deceased had given the dying declarations or not would depend upon the reliability and acceptability of the testimony of PWs 2 and 5.

26. The first dying declaration (Ext.Ka-11) was recorded by PW- 5, who was then a lecturer in Baldev Vidia Inter College, Palia. PW-5 knew both the deceased and the accused as both of them had been his students. He recorded the dying declaration as requested by the Principal and another lecturer, by name, Shri Kant Shukla. It is the evidence of PW-5 that he recorded Ext.Ka-11 only after

ascertaining the fact that the injured Raj Kumar was in a fit condition to make a statement voluntarily. In fact, a certificate (Ext.Ka-11 A) has been appended to the dying declaration which certificate reads thus:

> The above statement was made before me (Shri Raj Kumar Dixit, Ram Kumar Trivedi, Shri Kant Shukla) in fit state of mind without any pressure. Whatever was spoken to:-
>
> by Raj Kumar was written and read over to him and his signatures were obtained. These are the signatures of Raj Kumar.

27. The assertion of PW-5 that he took the signatures of Raj Kumar in Ext. Ka-11 and the evidence of PW-6, brother of Raj Kumar, identifying the signatures of Raj Kumar in the said document have not been challenged by the defence. PW-5 continues his evidence staling that after recording Ext. Ka-11 and appending the certificate Ext. Ka-l.lA he put it in a sealed envelope (Ext. Ka-12) and handed it over to the Chief Judicial Magistrate.

28. The only suggestion addressed to this witness is what he had recorded is not the declaration given by the deceased, but it is only a fabricated document concocted by having a deliberation with the Principal and certain Congress leaders. This suggestion, in our opinion, has to be simply mentioned for rejection. Yet another criticism levelled by the defence is that the sub-Inspector of Police (PW-11) who telephonically requested the Principal to record the dying declaration did not exhibit any inquisitiveness to know the contents of the dying declaration. Even assuming the conduct of PW-11 is to be condemned in not immediately coming to the hospital and taking any interest as to what was the nature of the statement by the deceased, that itself would not be a ground to reject this valuable document, namely, the document which commands acceptance at the hands of this Court.

29. The second dying declaration Ext.Ka-3 in the form of questions and answers was recorded by PW-2 commencing the same at about 5.10 P.M. after administering glucose water and giving injection and on being satisfied that Raj Kumar was in a fit condition to make a statement. PW-2 stopped the recording of the dying declaration by 5.20 P.M. when the declarant could not give any answer to the question with which weapon he was assaulted. Thereupon PW-2 forwarded this dying declaration which is complete so far as the involvement of the appellant is concerned, though otherwise incomplete, to the Chief Judicial Magistrate by putting it in a sealed envelope. It seems that on the particular day PW-2 had been to Paraspur to attend an opening ceremony of a Maternity Sub center and the second Medical Officer had gone to inspect a site for the purpose of starting a Government Hospital at Chandan Chowk. Therefore, there was no officer present in hospital at the time when the injured Raj Kumar was brought by 5.00 P.M. According to PW-2, though he had requested a lady doctor to attend to the urgent cases, the Compounder failed to inform the said lady doctor. Much argument was advanced on the failure of the lady doctor in attending on the injured, but in our view it does not merit consideration in the light of the evidence of PW-2. A cursory glance of Ext.Ka-3 would show that it is incomplete. Had PW-2 been a party to manipulate a false dying declaration as suggested by the defence, he would have definitely done it in a better way by

preparing the dying declaration, with more details, inclusive of the nature of the weapon used. The suggestion that the thumb impression of the deceased was taken in the manipulated dying declaration only after his death is liable to be rejected for the reasons earlier stated. According to PW-2, as Raj Kumar was not in a position to sign the dying declaration, he put his thumb impression. After carefully going through the evidence of PWs 2 and 5 and the contents of Ext.Ka-11 and Ext.Ka-3 we are of the firm view that the credibility of these two witnesses is not in any way shaken despite the tact that these witnesses have been subjected to incisive and searching cross-examination. In fact both the Courts below have thoroughly scrutinised the veracity of the two dying declarations and have rightly spurned the criticism made by the defence and accepted and acted upon them. We are in full agreement with the concurrent conclusion, arrived at both by the trial and appellate Courts and we, therefore, have no compunction in placing much reliance on Exts. Ka 3 and Ka 11 which are free from any infirmity and which are with a stamp of truth and reliability.

30. The last contention of the defence is that as PWs 1 and 3 are the brother and farm servant of the deceased respectively, their ocular testimony should be rejected altogether as having been tainted with interestedness. This contention, in our opinion, does not merit consideration for more than one reason. Firstly, the presence of these two witnesses in the scene of occurrence is more probable since the occurrence took place inside the farm field, belonging to the family of the deceased.

31. Secondly, it was PW 1, even at the earliest point of time, went to the police station, handed over the weapon of offence and laid the written report Ext. Ka 1 in which the name of PW-3 is specifically mentioned as having witnessed the occurrence along with PW-1.

32. Thirdly, the deceased himself in his first dying declaration Ext. Ka 11 had mentioned that PWs 1 and 3 witnessed the entire occurrence and came to the scene spot.

33. Fourthly, since the presence of PWs-1 and 3 in the scene at the relevant time of the occurrence is satisfactorily established and the credibility of their testimony is neither impaired nor successfully impeached, the testimony can be candidly believed and safely acted upon.

34. Fifthyly, the evidence of PWs 1 and 3 is amply corroborated by the medical as well as the circumstantial evidence.

35. Sixthly, since the testimony of PWs 1 and 3 is found to be intrinsically reliable and worthy of credit on being subjected to strict and careful scrutiny, there is no impediment in accepting that evidence and it is not the law as repeatedly ruled by this Court in various decisions that the evidence of an interested witness should be equated with that of a tainted witness.

36. Mr. Lalit before winding up his arguments hesitantly made a fervent but futile plea regarding the nature of offence though not specifically pleaded the right of private defence as unsuccessfully pressed before the High Court. As we have totally rejected the defence theory of accidental firing and come to the inescapable conclusion that it was a deliberate homicidal firing, resulting in the death of the deceased, this plea is not at all available to the appellant.

37. Resultantly, we are of the firm opinion that the prosecution has established the guilt of the appellant under both the charges beyond all reasonable doubts by adducing overwhelming and flawless oral, documentary and circumstantial evidence which is demonstrative and decisive in proving the perpetration of this atrocious crime by the appellant and consequently we uphold the impugned judgment of the High Court and affirm the convictions under both the charges and the sentences imposed therefor.

38. The appeal is dismissed accordingly.