

Penal Code, 1860, S.302 – Murder – Conviction – Set aside – There are material improvements which have been attempted in the course of the deposition over the case as set out in the FIR as well as in the course of the examination-in-chief – The role which originally is attributed to all the accused who were armed with country made pistols is of having fired upon the deceased – Subsequently, in the course of the cross-examination, PW-1 has stated that insofar as A-3 is concerned, he had fired in the air while two accused had actually fired at the body of the deceased – The entire case of the prosecution, was that all the accused who were alleged to be wielding country made pistols had fired upon the deceased – This case of the prosecution is substantially diluted in cross-examination – Postmortem report indicates only one fire arm injury, which is not consistent with the case of the prosecution that all the accused had fired upon the deceased – Postmortem report indicates one injury on the neck of the deceased which again is inconsistent with the deposition of PW-1 and PW-2 that both SD armed with a farsa and G who was allegedly armed with a knife had assaulted the deceased on the neck – Presence of both PW-1 and PW-2 at the spot is gravely in doubt and there are material contradictions in their evidence – High Courts view was that the contradictions which have been pointed out by the defence are of a minor nature – Having evaluated the evidence, we are unable to sustain that conclusion given that the contradictions were of fundamental nature which go to the root of the case of the prosecution.

Criminal trial – Non examination of witnesses – It is true that the prosecution was not obligated to examine every witness who is alleged to have been present at the site or the scene of the offence, yet in the context of the facts as they have emerged before this Court, the failure to examine C , who was the father of the deceased and was allegedly sitting in the close proximity, assumes significance – Acquitted – Penal Code, 1860, S.302.

[2022 Scej 0294 , 2022 PLRonline 0502](#)

[Subhash v. State of Uttar Pradesh , 2022 Scej 0294 , 2022 PLRonline 0502](#)