



2026:AHC:22292-DB

**AFR**  
**Reserved on 22.01.2026**  
**Delivered on 02.02.2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**CRIMINAL APPEAL No. - 1565 of 1987**

Achhaibars and others .....Appellant(s)  
Versus  
State of U.P. .....Respondent(s)

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Counsel for Appellant(s) : Jaiprakash Narain Raj,  
Kamleshwar Singh, Pramod  
Shukla

Counsel for Respondent(s) :

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**Court No. - 48**

**HON'BLE CHANDRA DHARI SINGH, J.**  
**HON'BLE CHAWAN PRAKASH, J.**

**(Per Hon'ble Chandra Dhari Singh, J)**

1. This criminal appeal has been filed against a judgment dated 27.05.1987 and order dated 01.6.1987 passed by the learned Sessions Judge, Basti in ST No. 184 of 1985, under Sections 147, 148 and 302/149 IPC, police station Bakhira, district Basti, whereby the learned Sessions Judge convicted and sentenced all the appellants namely Achhaibar (Ram Achhaibar),

Phoolman, Sanwarey, Rajendra and Ram Dass to imprisonment for life under Section 302 read with Section 149 IPC. Accused Achhaibar, Ram Dass, Phoolman and Sanwarey were further convicted under Section 147 IPC and sentenced to one year's rigorous imprisonment, whereas accused Rajendra was convicted and sentenced to two years rigorous imprisonment under Section 148 IPC.

2. However, all the sentences were directed to run concurrently.

### **Brief Facts**

3. The facts that formed the bedrock of the present appeal, in short compass, are that a written report was given by the first informant Smt. Murta, wife of Bideshi Kurmi, resident of village Gajauli at the police station Bakhira at 09:30 hrs on 07.04.1985 mentioning therein that in the previous night, her husband after taking meals slept in the *Khalihan* in his portion of the land (*Chak*). By the side of *Chak*, she also slept under a *Chhappar*. Her daughters were in her dwelling house in the village. Her *Chak* is adjacent to the west of Abadi. She and accused-Acchaibar resided in the same house on separate portion on account of private partition. Accused-Rajendra, son of Ram Dass alias Lalla resided in the adjacent house. The FIR further alleges that *Chhappar* of her house was pulled down for being repaired and replaced. At that time, there had been some altercations between her husband on one side and Acchaibar and his two sons Sanwarey and Phoolman on the other. Supporting the accused persons, Rajendra and

his father Lalla also came there, abused and threatened her husband of dire consequences. Today at about 03:00-03:30 AM all the aforementioned accused persons came to her husband at *Khalihan* and started assaulting him by lathi and knife. On the painful cries of her husband, she woke up, rushed to the spot and raised an alarm for rescue. Naresh, son of Banshraj and Ram Shankar, son of Ganga , who were in the nearby field and *Khalihan* and some other persons of the village reached the spot. On arrival and challenged by the witnesses, the accused persons left the place abusing and extending threats. Accused-Rajendra was armed with knife whereas accused-Achhaibar, Sanwarey, Phoolman and Ram Dass were armed with lathis. Due to fear, they could be chased and they managed to escape. The accused were seen and recognized by the witnesses in the moonlit night. Leaving the dead body on the spot, she submitted written report at the police station Ext. Ka-2.

4. On the basis of the aforesaid report, a case was registered at case crime No. 57 of 1985, under sections 147, 148, 149 and 302 IPC, police station Bakhira, district Basti, Ext. Ka-3, which was entered in GD vide report No. 12 at 09:30 hours by Head Moharrir PW-5, Ram Jatan Chaudhary.

5. After the registration of the first information report, the law set into motion and investigation of the case was entrusted to PW-8, SI Vijai Pratap Singh. He reached the place of occurrence at 11:05 AM and found the dead body of Bideshi (hereinafter referred to as 'the

deceased) lying in his *Chak* in village Gajauli towards west. In that *Chak* a portion of the land was a *Khalihan* and in that *Khalihan* there was *kooty* (straw). The dead body was lying on that *kooty*. The wife of the deceased, who is the first informant of the case, was also there by the side of the dead body along with Chaukidar Ram Raj. He took the dead body in his possession and conducted inquest, Ext. Ka-8. He also prepared photo Lash and Challan Lash, Ext. Ka 9 and 10. He also prepared letter to CMO for postmortem. Thereafter the investigating officer handed over the dead body in sealed cover to Constables Rajendra Pratap Yadav and Sangram Prasad along with relevant documents including copy of the FIR and sample seal. On the pointing out of the first informant Smt. Murta and the witnesses, he inspected the spot and prepared site plan, Ext. Ka 14. He found blood on the spot on the heap of fresh *kooty* of wheat. He took sample of it and ordinary *kooty* (straw), put them in sealed cover and prepared memos thereof as marked as Ext. Ka-15. He also found blood on *Kathri*. He took a piece of bloodstained *Kathri* and quilt, put them in sealed cover and prepared memo Ext. Ka-16 and sent all these bloodstained articles to the Forensic Science Laboratory, Agra. He also recorded the statement of the first informant at the place of occurrence.

6. On 08.04.1985, the investigation of the case was taken over by the Station House Officer, SO Jai Prakash Mishra.

7. PW-7, Station House Officer Jai Prakash Mishra recorded the statements of witnesses Naresh and Ram

Shankar etc. On 08.4.1985 On the information of the informer, he arrested the accused Achhaibar by the side of brick kiln of Sami Ullah. The accused was having fresh blood stains on his Dhoti and Banyan. He had blood stains on his lathi also. He took all these articles into custody and prepared memo Ext. Ka.5. Those articles, i.e. *Dhoti*, *Bandi* and piece of lathi are Ext. 1, 2 and 3. On 10.04.1985, he reported the matter to the Court for initiating proceedings under Section 82/83 against rest of the accused. On 12.04.1985, he raided the place of accused persons, but they could not be arrested. On 13.04.1985, he arrested accused-Rajendra, who confessed to his crime and agreed to get the weapon of assault recovered. Thereafter, he was brought to his house by the police where he took out the knife from *Khaprail* and handed over the same to the police, Ext. Ka-61. The shirt which was worn by the accused Rajendra was also having blood stains. He took into custody the same and prepared memo thereof Ext. Ka-5 and sent it to the Forensic Science Laboratory, Agra.

8. After culmination of investigation, the investigating officer submitted charge sheet against the accused Achhaibar, Sanwarey, Phoolman, Rajendra and Ram Dass.

9. As the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 184 of 1985. Learned Sessions Judge, Basti framed the charge against the accused Achhaibar, Sanwarey, Phoolman, Rajendra and Ram Dass under Sections 147

and 302 read with section 149 IPC. Accused Rajendra was further charged under Section 148 IPC. The charges were read over and explained to the accused in Hindi, who pleaded not guilty and claimed to be tried.

10. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as eight witnesses of facts, out of whom PW-2, Smt Murta (the first informant of the case), PW-3 Shankar, PW-4 Ram Naresh and PW-6 Iqbal Husain are the witnesses of facts, whereas PW-1, Dr. P.N. Bansal, who conducted autopsy on the cadaver of the deceased, PW-5, Head Constable 69 Ram Jatan Chaudhary, Chik writer of the FIR, PW-7, SHO Jai Prakash Mishra, the second investigating officer and PW-8, SI Vijay Pratap Singh, who started the investigation, were formal witnesses.

11. PW-1, Dr. P.N. Bansal conducted autopsy on the cadaver of the deceased at 04:00 PM on 08.04.1985, which was brought by Constables Rajendra Prasad Yadav and Sangram Prasad in a sealed condition. On external examination, doctor found the age of the deceased about 55 years. Between the time of death and conducting postmortem examination is about 36 hours. The deceased was a man of average build. Rigor mortis had passed of the upper and lower limbs of the body. Doctor found the following ante-mortem injuries.

- 1. Lacerated wound 6 cm x 4 cm x bone deep left side face about 3 cm lateral to chin, underneath mandible broken into multiple pieces.*

2. *Lacerated wound 4 cm x 3 cm x bone deep at the lower lip tooth underneath broken and coming out, underneath mandible broken into multiple pieces.*
3. *Lacerated wound 4 cm x 3 cm x bone deep upper lip, underneath tooth coming out and upper joint broken into pieces.*
4. *Punctured wound 4 cm x 1 cm bone deep right side face near the root of the nose, underneath bone broken.*
5. *Punctured wound 4 cm x 2 cm x bone deep left side forehead on left eyebrow, underneath orbit. Parietal bone fractured into pieces.*
6. *Lacerated wound 4 cm x 2 cm into bone deep right side forehead 2 cm above the root of nose, underneath bone broken into multiple pieces.*
7. *Punctured wound 4 cm x 3 cm x bone deep right side forehead, right eyebrow orbit and parietal bone broken into multiple pieces.*
8. *Multiple abraded contusions 15 cm x 10 cm right side face downwards 4 cm below the eye and just below the right ear.*
9. *Multiple abraded contusion 20 cm x 12 cm left side face just below the left ear and 5 cm below the left eye.*

  

12. On internal examination, doctor found blood clot in the skull. Membranes congested and lacerated. Blood clot present, brain congested, lacerated and blood clot present, mouth, teeth and tongue broken, stomach contained semi digested rice food material. In the opinion of the doctor, the deceased died as a result of shock and hemorrhage on account of ante mortem

injuries. In the opinion of the doctor, injuries No. 4, 5 and 7 could have been caused by sharp edged weapon. Remaining injuries could have been caused by giving lathi blow by back side (*Hura*) of lathi or some other blunt object. He also opined that deceased died after 4-5 hours of taking food.

13. PW-2, Smt Murta, who is the first informant and wife of the deceased, in her examination-in-chief, which was recorded on 02.07.1986, stated that Sheo Saran, Surajbali and Jai Karan are real brothers. Bideshi is the son of Sheo Saran whereas Achhaibar is the son of Surajbali. Achhaibar's sons are Phoolman and Sanwarey. Jai Karan's son is Ram Dass and Ram Dass's son is Rajendra. PW-2, Smt Murtha has further stated that she has only one son and two daughters. She has ancestral house in the village. In that house she along with her family (including the deceased), Surajbali and Jai Karan along with their family reside in separate portion. Two days prior to the murder of her husband, the roof of portion of the house of the deceased was pulled down for being thatched again. At that time there had been some altercation between the accused persons and the deceased, thereupon the accused threatened the deceased of dire consequences. The accused persons do not want to give share to the deceased in the house. At a distance of about two bighas towards the west, she had a *Chak* of three bighas. In that *Chak*, she had made a *Madai*, which does not have any door. More than a year before the date of occurrence, the deceased after doing work, slept on *Khalihan*. Inside the *Chappar*, she was

also sleeping. This witness further stated that she along with her husband-deceased worked in *Khalihan* up to mid-night and thereafter they slept after taking food. It was a moonlit night. Deceased had taken rice, pulse and Chokha of Aalu. At about 2:00 AM, accused persons Lalla alias Ram Dass, Phoolman, Sanwarey, Achhaibar and Rajendra came there. Rajendra was armed with knife and rest of the accused persons were having lathis. Achhaibar overpowered her husband and sat over his chest, Rajendra assaulted him with knife whereas Sanwarey, Phoolman and Lalla assaulted with the back (end side) of lathis. On an alarm being raised by her, witnesses Shankar and Naresh rushed to the spot. On seeing the witnesses coming towards the place of occurrence, the accused persons after killing her husband fled away. Her husband died at the spot. In the early morning, village Pradhan, Chaukidar and several persons of the village came there. She got the report of the offence written by Iqbal Husain, Pradhan, who read over the same to her, on which she put her thumb impression and sent the same to the police station through Shankar.

14. PW-3, Shankar, in his examination-in-chief, which was recorded on 08.07.1986, deposed that his house is at a distance of about 25 kathas towards east from the *Khalihan* of the deceased. Between his house and the *Khalihan* of the deceased, there is no house. About 1-1/2 years back at about 3:00 AM, he was lying in his *Khalihan*, which is situated in front of his house and is at a distance of 35 Kathas from the *Khalihan* of the

deceased. On hearing the shrieks of Smt. Murta that they were killing, he rushed to the *Khalihan* of the deceased . He was about 3 Kaththas from that place and saw the accused-Rajendra with knife and Achhaibar, Sanwarey, Phoolman and Ram Dass with back (end side ) of lathis were assaulting the deceased. It was a moonlit night. The wife of the deceased was crying. Ram Naresh had also reached there. By the time they had reached the place two kaththas from the place of occurrence, the accused persons after killing the deceased fled away towards north. He was having a torch and was flashing it. Then, in the early morning when the persons of the village collected there, wife of the deceased got the report of the incident scribed by Pradhan, which was handed over to this witness for giving it to the police station. Accused and the deceased were living in the same building. They are residing separately on the basis of private partition. Three days' prior to the occurrence, the deceased had pulled down a portion of his roof (*Khaprail*) for being repaired. On that date accused persons had abused and threatened the deceased of dire consequences. He was present there at that time. By the time, when he reached near the deceased, he was dead.

15. PW-4, Ram Naresh, in his examination-in-chief, which was recorded on 09.07.1986, deposed that deceased was killed about 1-1/2 years ago. It was the season of harvesting and the month of *Chaitra*. He was sleeping in the field in the night. On that date, he had harvested crop and for the protection of that crop, he

was sleeping there. At about 3:30 AM, wife of the deceased raised alarm "Bachao Bachao". He had not slept by that time. He responded to the call and went to the spot. On reaching there, he saw the deceased lying in his Khalihan on Kooty and wheat and accused Rajendra by knife, Ram Dass, Phoolman, Sanwarey and Achhaibar with the back (end side) of lathis were assaulting the deceased. It was a moonlit night. Shankar had also reached the spot. When he reached the place and was at a distance of about 1-1/2 kaththas from the deceased, the accused after killing the deceased fled away. He had a torch in his hand. He wanted to chase them, but on account of fear of knife and lathis, he did not chase them. After the accused left the place of occurrence, he saw that the deceased had died. The field in which he was sleeping at that time is at a distance of 20-25 Kaththas towards south-west from the place of occurrence.

16. PW-5, Head Constable Ram Jatan Chaudhary, in his examination-in-chief deposed that on 07.04.1985, he was posted as Head Muharrir at police station Bakhira. On that date he had prepared Chik FIR, Ext. Ka-3 on the report brought by Shankar Lal, which was entered in GD vide report No. 12 at 09:30 hours.

17. PW-6, Iqbal Husain in his examination-in-chief, which was recorded on 18.07.1986, deposed that he is the Gram Pradhan of Gajrauli. The village where he lives and village Gajrauli come under the same Gram Sabha. In the morning of 07.04.1985, on the dictation of Smt. Murta, wife of the deceased, he wrote and read over the

report, on which after putting her signature, she had given it to Shankar for being handed over at the police station. Daroga Ji (police inspector) came to village and conducted inquest, on which he also put his signature. The Police Inspector also collected bloodstained wheat *Kutty*, simple *Kutty*, bloodstained *kathri*, *Rajai* (quilt) and *Taat* and made memos thereof, on which this witness also put his signature.

18. The evidences of PW-8, SI Vijay Pratap Singh, who conducted initial investigation and PW-7, SO Jai Prakash Mishra, who conducted remaining investigation and submitted charge sheet, have already been discussed above.

19. After the closure of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. in which all the accused persons have denied the charges and stated that witnesses are depositing against them due to enmity. However, they claimed to be tried.

20. Accused-Achhaibar further stated that he was arrested from his house and police took his shirt. Lathi was not recovered from him. He also stated that when he was arrested, police had sprinkled nail polish on his shirt.

21. Accused in his defence has also produced one Raja Ram as DW-1.

22. DW-1, Raja Ram, in his examination-in-chief has deposed that he lives in village Gajrauli. Accused and the first informant also live in the same village. Police has

not recovered any knife from the accused. Police came to the village and took his thumb impression on a blank paper.

23. Learned Sessions Judge, Basti after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

24. Hence, this appeal.

25. Pursuant to the order of the Court 09.09.2025, appeal filed on behalf of appellant Nos. 1, 4 and 5 namely Achhaibar (Ram Achhaibar), Rajendra and Ram Dass stand abated, whereas vide dated 13.01.2025, appeal on behalf of Appellant No. 2, Phoolman stand abated.

26. Now, this Court is deciding the appeal on behalf of appellant No. 3, Sanwarey.

### **Submissions on behalf of the appellants**

27. Learned counsel for the appellants submits that there are material contradictions in the statements of the witnesses.

28. Learned counsel for the appellant further submits that PW-3 Shankar and PW-4, Ram Naresh deposed that they were having torch, but no memo was prepared by the investigating officer.

29. Learned counsel for the appellants also submits that Investigation is tainted inasmuch as the investigating officer in his deposition submits that when

he arrested the accused Rajendra, blood was found on his clothes, whereas in the report of the Forensic Science Laboratory, Agra no blood was found on his shirt, which belied the whole prosecution story.

30. Learned counsel for the appellant lastly submits that accused-Rajendra was assigned the role of causing injuries with knife whereas the present appellant was assigned lathi and most of the injuries were caused by knife and, therefore, the appellant cannot be held responsible for the injuries resulting in the death of the deceased.

31. The incident took place in the night and there was insufficient light to recognize the accused.

### **Submissions on behalf on the State**

32. On the other hand, learned Additional Government Advocate submits that the contradictions pointed out by the learned counsel for the appellant is very trivial in nature. Learned Additional Government Advocate further submits that non-making of memo of the torch, which PWs 3 and 4 were having at the time when they reached at the spot is the lapse on the part of the investigating officer, the benefit of the same cannot be extended to the accused.

33. He also pointed out that the appellant was armed with lathi and most of the injuries were caused by lathis. He also submits that since, it was the moonlit night, the accused could be easily identified by the witnesses.

34. Heard Sri jai Prakash Narain Raj, learned counsel appearing on behalf of the appellant, Sri S.N. Tewari,

learned AGA appearing on behalf of the State and perused the evidences on record.

### **Analysis and Conclusion**

35. The first contention of learned counsel for the appellant is with regard to contradictions in the statement of PW-2 Smt Murta and PW-3, Shankar and PW-4 Ram Naresh. The contradictions pointed out by the learned counsel for the appellant is that PW-1, Smt. Murta in her deposition has stated that accused Achhaibar sat on the chest of the deceased and accused Rajendra was assaulting the deceased with knife, Sanwarey, Phoolman and Lalla with the back (end side) of lathis, whereas PW-3 Shankar and PW-4 in their deposition have not stated that on hearing the shrieks of Smt. Murta, when they rushed to the spot, they saw that accused-Rajendra was assaulting the deceased with knife, whereas accused Achhaibar, Sanwarey, Phoolman and Ram Dass were assaulting the deceased with lathis. We have perused the deposition of PW-1, Smt Murta and PW-3, Shankar and PW-4, Ram Naresh. PW-1, Smt Murta in her deposition stated that accused Achhaibar sat on the chest of the deceased, but that does not mean that he was only sitting on the chest of the deceased, but what she wants to depose is that the deceased was overpowered by the accused-Achhaibar and this Court failed to notice any contradictions in their deposition.

36. Moreover, in the depositions of witnesses there may always be some normal discrepancies. These discrepancies are due to lapse of time and mental disposition such as shock and horror at the time of the

occurrence. Material discrepancies are those which are not normal and go to the root of the prosecution case and not expected of a normal person. Therefore, such a minor contradiction pointed out by the learned counsel for the appellant is of no help to the appellant. Further the discrepancies pointed out by the learned counsel for the appellant is very trivial in nature, which does not, in any way, affect the foundation of the prosecution case.

37. In **State of Rajasthan Vs. Kalki** (1981)2 SCC 752, High Court of Rajasthan acquitted the accused on the grounds that PW-1 was highly interested witness because she is the wife of the deceased and that there was discrepancies in her statement. Against the order of High Court, State of Rajasthan preferred a Criminal Appeal. Hon'ble Supreme Court set aside the order of the High Court and convicted the accused. The Court in paragraphs 5, 6 and 7 held as under:

*5. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the*

*result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.*

*6. The second ground on which the High Court refused to place reliance on the evidence of P.W. 1 was that there were "material discrepancies". As indicated above we have perused the evidence of P.W. 1. We have not found any "material discrepancies" in her evidence. The discrepancies referred to by the High Court are, in our opinion, minor, insignificant, natural and not 'material'. The discrepancies are with regard to as to which accused "pressed the deceased and at which part of the body to the ground and sat on which part of the body; with regard to whether the respondent Kalki gave the axe blow to the deceased while the latter was standing or lying on the ground, and whether the blow was given from the side of the head or from the side of the legs. In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. As indicated above we have not found any material discrepancies in the evidence of the P. W. 1.*

*7. Learned counsel for the respondent submitted that the appeal involved only appreciation of evidence and this Court may not interfere with the findings of facts*

*resulting from appreciation of evidence. It is true that in an appeal under Article 136 of the Constitution this Court normally does not interfere with findings of facts arrived at by the High Court. But when it appears that the findings of facts arrived at are bordering on perversity and result in miscarriage of justice, this Court will not decline to quash such findings to prevent the miscarriage of justice."*

38. In **State represented by Inspector of Police Vs. Saravanam and another**, (2008) 17 SCC 587, Hon'ble Supreme Court held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.

39. In **State of U.P. Vs. M.K. Anthony**, (1985)1 SCC 505, Hon'ble Supreme Court held as under:

*"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the*

evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error

*in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible."*

40. Further, we find that PW-2, Smt. Murta, who is the first informant of the case is illiterate and rustic villager as is evident from her deposition that got the report scribed by PW-6, Iqbal Husain and put her thumb impression thereon. Therefore, such a trivial contradictions is of no help to the appellant.

41. Hon'ble Supreme Court in **Shivaji Vs. State of Maharashtra**, AIR 1973 SC 2622, held thus:

*"The scene of murder is rural, the witnesses to the case are rustic and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumption about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of various witnesses, we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishment in essential parts cannot mitigate against the veracity of the core of the testimony provided there is impress of truth and conformity of probability in the substantial fabric of testimony delivered."*

42. Second argument of learned counsel for the appellant is concerned that PW-3 Shankar and PW-4, Ram Naresh deposed that they were having torch, but no memo was prepared by the investigating officer, it has no leg to stand inasmuch as if the accused had used a

torchlight or if the victim had a torchlight with him during the occurrence, or the witnesses had stated that they saw the accused or the occurrence in the torchlight, there would be force in insisting that the investigating officer should have seized it as the same could be used as a material object during trial. In the present case, PW-3, Shankar and PW-4 Ram Naresh have only stated that they were having torch and at no point of time they have stated that in the torchlight they saw the accused. Therefore, non-seizure and non-making of memo cannot be considered as lapse on the part of the investigating officer.

43. Next argument of learned counsel for the appellant is that the investigation was tainted. It is to be mentioned that in the present case, as per report of the Forensic Science Laboratory, Agra dated 13.08.1986, no blood was found on on the *Baniyan* of accused Achhaibar and on the shirt of accused Rajendra. In his statement under Section 313 Cr.P.C. accused Achhaibar has stated that nail polish was sprinkled over his clothes. This fact has not been put to the investigating officer in his cross examination. Merely because, the Forensic Science Laboratory has opined that on the *Baniyan* of the accused-Achhaibar no blood was found, it cannot be said that the investigation was tainted particularly when the material on record shows that there had been some sorts of stains on the clothes of Achhaibar at the time of his arrest. Prosecution called those spots on the clothes as bloodstained whereas the accused-Achhaibar stated

that nail polish was sprinkled over his clothes by the police at the time of his arrest.

44. Further, *Dhoti* of the accused, which was taken into possession by the investigating officer and was sent for chemical examination, benzidine test was found positive. Moreover, knife and part of lathi, on benzidine test were found positive. As the versions of the eyewitnesses in specially naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to bring home the guilt of the accused persons. When the testimony of PW-2, Smt. Murta, PW-3, Shankar and PW-4 Ram Naresh is seen cumulative, their versions can be seen to be corroborating each other. Therefore, it cannot be said that the investigation was tainted.

45. It is settled proposition of law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions of the Hon'ble Supreme Court.

46. In **C. Muniappan v. State of Tamil Nadu, (2010) 9 SCC 563** the following discussion and conclusion are relevant which are as follows:

*"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by*

*perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.*

47. In **Dayal Singh v State of Uttarakhand**, (2012)8 SCC 263 while reiterating the principles rendered in **C. Muniappan (supra)**, the Apex Court held thus:

*"Merely because PW 3 and PW 6 have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground. ..." In *Gajoo v State of Uttrakhand*4, while reiterating the same principle again, the Apex Court held that defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused should not be an aspect of material consideration by the Court. Since the Court has adverted to all the earlier decisions with regard to defective investigation and outcome of the same, it is useful to refer the dictum laid down in those cases:*

48. In **Edakkandi Dineshan alias P. Dineshan and others Vs. State of Kerala**, (2025) 3 SCC 273, Hon'ble Supreme Court after considering a catena of judgement on the point held as under:

*"Hence, the principle of law is crystal clear that on account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. It has been a consistent stand of this Court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons."*

49. The last limb of argument of learned counsel for the appellant is that accused-Rajendra was assigned the role of causing injuries with knife whereas the present appellant along with others accused were assigned lathi and most of the injuries were caused by knife and, therefore, the appellant cannot be held responsible for the injuries caused by lathis. This argument of learned counsel for the appellant is totally mis-conceived and has no leg to stand.

50. In the postmortem report nine injuries were noted by the doctor. On internal examination, doctor found clot in the skull. Membranes congested and lacerated. Blood

clot present, brain congested, lacerated and blood clot present, mouth, teeth and tongue broken. Doctor specifically opined that except Injury Nos. 4, 5 and 7, rest of the injuries have been caused by giving lathi blow or by some blunt object.

51. Furthermore, the appellant has been roped in this case by virtue of Sections 148 and 149 IPC. He was a part of the unlawful assembly which had the common object of eliminating Bideshi (deceased) by means of criminal force and, therefore, being a member of the unlawful assembly, he was also guilty of the offence committed in prosecution of the common object, i.e. the offence under Section 302 IPC.

52. At this juncture, we would briefly survey the relevant legal provision.

**Section 141** IPC defines unlawful assembly. It says that an assembly of five or more persons is designated as unlawful assembly, if the common object of the persons composing that assembly is to commit an illegal act by means of criminal force.

**Section 148** IPC deals with rioting armed with deadly weapon. It says that whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Section 149** IPC says that every member of an unlawful assembly shall be guilty of the offence

committed in prosecution of the common object. Section 149 IPC further says that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

53. Thus, it is a case of murder under Section 302 IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302/149 IPC.

54. In **Krishnappa Vs State of Karnataka (2012) 11 SCC237**, Hon'ble Supreme Court held thus:

*"It is now well settled law that the provisions of Section 149 IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.*

*The factum of causing injury or not causing injury would not be relevant, where accused is sought to be roped in with the aid of Section 149 IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not."*

55. Hon'ble Supreme Court in ***Vinubhai Ranchhodhai Patel Vs. Rajivbhai Dudabhai Patel*** (2018)<sup>7</sup> SCC 743, reiterated the decision that Section 149 does not create separate offence but only declares vicarious liability of all members of the unlawful assembly for acts done in common object. The Court further held as under:

*"In cases where a large number of accused constituting an unlawful assembly are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 IPC is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justified. The mere presence of an accused in such an unlawful assembly is sufficient to render him vicariously liable under Section 149 IC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149 IPC for the offence punishable under Section 302 IPC. Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime."*

56. The aforesaid decisions in **Krishnappa Vs State of Karnataka (2012)11 SCC 237** and **Vinubhai Ranchhodhbhai Patel Vs. Rajivbhai Dudabhai Patel (Supra)** have been followed by Hon'ble Supreme Court in **Nitya Nand Vs. State of U.P. (2024)9 SCR 37**.

57. So far as the last limb of argument of learned counsel for the appellant that the incident took place in the night and there was insufficient light to recognize the accused, is concerned, it may be noted that PW-2, Smt. Murta, in her examination-in-chief has clearly stated that it was a moonlit night. Further PW-3 Shankar in his cross-examination has stated that he was able to see the accused without torchlight. PW-4, Ram Naresh in his cross examination has stated that when he reached near the place of occurrence, he saw that accused were assaulting the deceased. Moreover, PW-2, Smt. Murta, the first informant, PW-3, Shankar and PW-4, Ram Naresh and all the accused persons are either relatives or living in the same village and they were familiar to each other. Since, the witnesses were familiar to the accused, there was no difficulty for them to identify the accused.

58. Hon'ble Supreme Court in **Anwar Hussain Vs. State of UP**, AIR1981 SC 2071 held as under:

*“Even if there is insufficient light, a witness can identify a person, with whom he is fairly acquainted or is in intimate terms. From his voice, features etc. Therefore, there is nothing to discard the evidence of PW-8 so far as his claim to have recognised the appellant is concerned.”*

59. In **Dalbir Singh Vs. State of Haryana**, (2008) 11 SCC 425, it was observed by the Hon'ble Apex Court that it would be possible for a witness to identify an assailant in insufficient light from his voice, gait, features etc. with whom he was fairly acquainted or was in intimate terms.

60. In view of the above, the contention of learned counsel for the appellant that there was insufficient light to recognize the appellant has no leg to stand.

61. It was a gruesome murder. Perusal of postmortem shows that the deceased was mercilessly attacked. Severity of injuries clearly demonstrate the brutality of the attacks.

62. We have carefully scrutinized and examined the evidence of PW-2, Smt Murta, PW-3 Shankar and PW-4 Ram Naresh and we find that they have been correctly marshalled and assessed by the learned Trial Court.

63. In view of what has been indicated above, we are of the view that the prosecution has successfully proved its case beyond all reasonable doubt against all the accused-appellants.

64. Accordingly, the criminal appeal is dismissed.

65. The appellant Sanwarey is on bail. His bail bond is cancelled and sureties are discharged. He is directed to surrender before the Court concerned within four weeks to serve out the sentence awarded to him by the learned Trial Court.

66. Office is directed to send a copy of this order to the court concerned for compliance and compliance report be submitted to this Court within two months.

**(Chawan Prakash,J.) (Chandra Dhari Singh,J.)**

**February 02,2026**

**Ishrat**