



2026:AHC:56153

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 501 of 1985

Rameshwar Singh

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s) : Akhilesh Singh, Ravindra Singh, Shivam Yadav

Counsel for Respondent(s) : A.G.A.

AFR

Reserved on 12.3.2026

Delivered on 19.3.2026.

Court No. - 87

HON'BLE ABDUL SHAHID, J.

1. Heard Sri Akhilesh Singh, learned Senior Counsel assisted by Sri Janardan Yadav, learned counsel for the appellant and the learned AGA for the State.

2. The present criminal appeal has been preferred against the impugned judgment and order of conviction dated 20.2.1985 and sentence dated 23.2.1985, passed by learned VI Additional District and Sessions Judge, Mainpuri in Session Trial No. 504 of 1983 (State Vs. Rameshwar Dayal), whereby the appellant has been convicted and sentenced to seven years rigorous imprisonment and fine of Rs. 500/ under Section 307 IPC.

3. Learned Senior Counsel appearing for the appellant has submitted that an FIR has been lodged by the accused-Rameshwar Dayal against 3-4 unknown miscreants under Section 459 IPC, whereas the Investigating Officer during investigation had made the complainant-Rameshwar Dayal himself as an accused in the said case and converted the offence under Section 307 IPC.

4. Learned senior counsel has further submitted that the prosecution has only relied on the statement of injured, who is wife of the accused. No independent witness has recorded their statement or supported the prosecution story. The gun was not recovered. There are inconsistency in the ocular evidence and medical evidence. Learned trial court has ignored this fact that as per deposition of injured, the injuries has been caused to her

behind her back, hence it is not possible for her to identify the actual assailant. There is neither any criminal history nor any incriminating evidence against the accused-appellant.

5. Learned counsel has further submitted that nature of the injuries is neither fatal nor on vital part of the injured. The nature of injury, may maximum goes upto the injury under Section 323 and 324 IPC and if the court found it appropriate then it may be modified under Section 323 and 324 IPC and sentence may be reduced for the period already undergone.

6. Learned counsel for the appellant has relied on the law laid down by the Hon'ble Supreme Court in **Sivamani and another Vs. State represented by Inspector of Police; 2023 SCC OnLine SC 1581**, where he relied that nature of injuries would not be sufficient under Section 307 IPC and the conviction was modified under Section 323 and 324 IPC and also reduced the sentence to the period already undergone. This has to be considered in this case, if the Court is found convincing evidence against the appellant. He further submitted that the appellant never demanded any dowry nor any genesis of dowry has been proved by the prosecution. The judgment of sentence is liable to be set aside and the criminal appeal is entitled to be allowed.

7. On the other hand, learned AGA has submitted that the present case is peculiar case where sterling evidence is wife of the accused. The wife has got injuries of firearm within her matrimonial home. Neither presence of the accused nor presence of the injured can be ruled out. There has been no case of any mis-identification. The wife could not mis-identify her husband as an offender. There can be no dispute about identification of the accused by his own injured wife. After incident, she never returned to her matrimonial home and even her legs had not been in function properly. The accused-husband even he did not take her to the Hospital for immediate medical treatment after the incident. He had not visited to S.N. Medical College, Agra where the injured had been treated further.

8. Learned AGA has further submitted that it is settled law that quantity of witness is not material, it is quality of witness which is material. In the present case, the witness is real wife of the accused, who had identified him and she is in the category of sterling witness. The statement of the injured is absolutely reliable and admissible. The criminal appeal is liable to be

dismissed.

9. The genesis of the present case is as follows:-

10. The accused-Rameshwar Dayal lodged the FIR Exhibit Ka-1 on 23.2.1983 at the Police Station Bhogaon, district Mainpuri. This has been lodged by him stating that in the said night, 3-4 miscreants entered into his house by staircase from east to his house. His wife Smt. Vimla Devi (injured) wake up and she challenged them, one of miscreants fired on her. When she raised alarm, then Babu Ram, Rewari Lal and Sukhbasi Lal came with torch there, but meanwhile the miscreants fled away from the spot without taking any articles of house-holds. The miscreants were seen and identified in the light of torch and lantern by the complainant and witnesses.

11. The matter was investigated by the Investigating Officer Sri Ramji Lal Sharma- PW-2. He proceeded to Agra to record statement of injured Smt. Vimla Devi, who was admitted in Medical College there. The injured PW-3 told to him that the accused is her husband-Rameshwar Dayal. He was not slept with her on the question of dowry. He fired on her to cause her death. Thereafter, the Investigating Officer had modified the offence into Section 307 IPC and filed the charge sheet against the sole accused-Rameshwar Dayal.

12. In the said case, the injured Vimla Devi, who was medically examined at 3.00 am on 23.2.1983 at Bhogaon District Mainpuri, her age was 18 years and she was brought by Lajja Ram son of Mishri Lal. She had not been brought to the Hospital by the accused/husband. She suffered firearm injuries. As per first injury report Ext. Ka-2, she suffered following injuries:

(1) Firearm wound of entrance about 3 cm x 3 cm depth was kept under observation over the upper medial aspect of left leg. The wound was rounded in shape bleeding present. There was no blackening, tattooing or scorching, margins were inverted.

(2). Fire arm wound of entrance about 4 cm x 2 cm x 3 cm above injury no.1 margins inverted, oval shape and there was no blackening, tattooing or scorching, bleeding was present.

(3). Firearm Wound of exit about 7.5 cm x 6 cm over upper medial lateral aspect of left leg. Margins inverted, bleeding present. Oval shape.

Injury to 2 and 3 were through and through. horizontally downward from medial to lateral side. The bone under lying injury was fractured. X-ray

advised.

(4). Lacerated wound 4.3 Cm x 3 Cm over left side palm, bleeding present. advised X-ray.

(5). Lacerated Wound 2 Cm x 1 Cm over phalange over left index finger. X-ray advised.

13. The charges had been framed against the appellant on 5.11.1984 under Section 307 IPC. He denied the charges, hence trial commenced.

14. The present appeal was preferred before this Court on 25.2.1985 just after two days of sentence of the appellant and the appellant was released on bail on same day and since then he is consistently on bail.

15. Smt. Nanhi Devi, wife of Chandra Bhan deposed herself as PW-1. She deposed that Vimla Devi is my Jethani. The said incident has occurred one year and seven months ago. Her statement was recorded on 19.11.1984 and cross-examination was completed on 8.1.1985. She deposed that miscreants were came in the night and they have committed one fire which hit to my Jethani Vimla Devi. On her objection the fire was made. I could not know who has fired. The accused Rameshwar is present in Court. She has specifically deposed that since miscreants had fired, Vimla Devi is consistently residing with her father's house since then. After firing miscreants had ran away from east side after stepping down with ladder. They have having country made pistol. Alongwith myself, Rewari Lal, Ram Dayal, Sukhvasi Lal came there, they were having torches. On asking Vimla Devi, she told that she has been fired by miscreants. The father of Vimla Devi came third day at Agra. There were conversation took place between them and father of Vimla Devi told that you should assign the role of your husband.

16. This witness has declared hostile and cross-examined by the learned State counsel. She deposed that I had not recorded statement to the Investigating Officer at the Hospital at Agra. I had gone to Agra alongwith Vimla. I had recorded this statement that when I went upstairs alongwith my mother-in-law, then fire was already caused to Vimla. I had not recorded this statement that Rameshwar was standing nearby alongwith gun. I had not recorded this statement that when Vimla became conscious, then she told that her husband had fired on her. I had not recorded this statement that husband of Vimla had not treated conformable with her. I had not recorded

this statement that Rameshwar Dayal never visited to the Hospital. Rameshwar Dayal is my Jeth. We reside jointly in the same house. It is belies to state that she is recording statement to save my Jeth. On further cross-examination by defence, she deposed that when I gone to upstairs then Vimla told that she has been fired by the miscreants. I went to police station alongwith other persons. Vimla had recorded her statement at the police station that miscreants had fired her. Vimla was consistently became conscious. He had been brought to the police station and Hospital by Rameshwar Dayal. The Investigating Officer had discussed with Vimla at Agra. The father of Vimla was present there. I had been separated. The father of Vimla had given some money to the Inspector.

17. The statement of this witness is self contradictory as when she had been separated then how she saw that father of Vimla had given any amount to the Inspector. Her statement is not proved that Rameshwar took her at Police Station and Hospital. As per first medical and injury report Ext. Ka-2, she was brought to Hospital by Lajja Ram and not by the Rameshwar.

18. Ramji Lal as PW-2 has recorded his statement, who is the Investigating of the case. He deposed in his examination-in-chief that he was posted at the police station and investigation was assigned to him. He recorded the statement of Rameshwar Dayal and statement of other witnesses present over there and inspected the place of incident and prepared the site plan. Rameshwar Dayal and other witnesses had recorded statement that Vimla Devi has been fired by miscreants and they would identify them if the miscreants would produce before them. He further deposed that during investigation, he found his father and uncle Lajja Ram were present at the house and it was found incorrect because they were slept at Kolhu at the time of incident. Rameshwar Dayal told in his statement that Kundi of the room was locked from inside. During investigation it was not found how and when Kundi was opened from inside. The ladder which was found at the place, two steps thereof was broken, hence it was not possible for the miscreants to go upstairs by that broken ladder. I had not taken that ladder in my possession, but that ladder has been given to Supurdagi and had been recorded it in the case diary. He deposed that at that time, he has got some doubt about veracity of incident as narrated by the accused. On 30.3.1983, I further reached to the place of incident and searched the witnesses, but none of the witnesses were present before me. On asking to co-villager, one Amar Singh told that there is rumour in the village that Rameshwar Dayal himself

had fired to his wife. This information was also given to him by Mishri Lal that Rameshwar Dayal has himself fired to his wife. Hence, my doubt became more confirm. Thereafter on 31.3.1983, I had visited S.N. Hospital, Agra to record the statement of Vimla Devi (injured). Vimla Devi had recorded her statement that she was sleeping alone in her room and her husband was in another room. In the night her husband told her that miscreants had come and open the Kundi. When she had not opened the Kundi, then her husband had made two gun shots, one on her left leg and one on the hand. She became unconscious with these injury. During investigation, Vimla Devi and her father told that Rameshwar Dayal/accused were not happy of not getting motorcycle in the marriage and he was illicit relation with another woman and he he wants to kill Vimla Devi. Thereafter, I converted the case from Section 459 IPC to Section 307 IPC.

19. The statement of injured Vimla Devi as PW-3 dated 31.3.1983 is exhibited as Exhibit Ka-3. It is verified by the Investigating Officer - PW-2, who has recorded this statement. In this statement, Smt. Nanhi Devi-PW-1 who later on became hostile in the court had recorded this statement that when she saw that Vimla Devi has got firearm injury and Rameshwar Dayal was standing nearby alongwith gun and she recorded that Vimla Devi was conscious at that stage and she told her that her husband Rameshwar Dayal had fired on her on her leg and he was behaving with her comfortably. When father of Vimla came to Hospital then she had also informed this fact to her father that fire in her leg has been caused by her husband. She specifically recorded that husband of Vimla Devi had never visited Hospital.

20. These all are the evidences corroborated the prosecution story that injury to the injured has been caused by Rameshwar Dayal, husband of the injured.

21. On asking of the Court, PW-2-Investigating Officer has deposed his statement that at that stage of investigation, I was confirmed that the real offender is Rameshwar Dayal. The statement of Vimla Devi under Section 161 Cr.P.C has also been recorded, where she deposed that Rameshwar Dayal has caused injury and on that evidence, Rameshwar Dayal had been impleaded as accused in this case. It was asked whether at the time of impleadment of accused Rameshwar Dayal, he had entered the case in general diary in the police station. He replied that as per G.D. No. 29 time 16.10 hours dated 1.4.1983, the Rameshwar Dayal was impleaded as accused. He has further deposed that the incident of this report is also

registered and the investigation is going on, hence to seek further permission for registering case against accused Rameshwar Dayal was not necessary. He further deposed that this case was registered in his presence at the police station. The injured Vimla Devi was came alongwith complainant at the police station and he recorded injuries of the injured on report No. 3 time 2.15 am. I had not inquired about anything with the injured at the police station. The medical examination of injured took place on the very same day at 3.00 hour at the Primary Health Centre, Bhogaon.

22. It is held by the Hon'ble Supreme Court in **Yogesh Singh Vs. Mahabeer Singh and others; AIR 2016 SC 5160** that it is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond reasonable doubts. However, the burden on the prosecution is only to establish its case beyond reasonable doubts and not all doubts. It is held by the Hon'ble Supreme Court in **Rakesh Kumar Vs. State of Haryana (2009) 3 SCC (cri) 1243** that if there is any shoddy investigation, that cannot be advantage for the accused to take advantage of the same. It is held in **Meellappa Siddappa Alakanur Vs. State of Karnataka; 2009 (66) ACC 725 (SC)** that deposition of hostile witness by itself does not wash out his evidence. It is held in **Leela Ram Vs. State of Haryana; 2000 SCC (Cri) 222** that in criminal case, corroboration with mathematical niceties should not be expected.

23. Smt. Vimla Devi-PW-3 , who is injured and sterling witness in the said case. It is settled law that it is quality of witness is the matter and not the quantity. The injured Smt. Vimla Devi is the wife of accused-appellant in the present case. It is highly improbable that she have any doubt about identification of her husband. It is also highly improbable that she has falsely implicated her husband in the said offence. The deposition of her is very much material that she had never visited again to her matrimonial home after said incident. She deposed in her examination-in-chief that she is wife of Rameshwar Dayal, who is present in Court and marriage took place with him around 8-10 years ago. Her statement was recorded on 5.1.1985. She deposed that 'Gauna' was took place in the fifth year of the marriage. Her husband was maltreating her. He was beating her consistently. He told to me that you should give me motorcycle from her father, failing which he will kill her. My father was poor-man. My father assured that he will give some amount for the motorcycle, but my husband was not satisfied with it. My husband prepared liquor in home and consumed it, but he never care to my

objection. The character of my husband was not good. He was having illicit relation with the co-villager as well as with sister-in-law of my sister-in-law. The incident is about one year and nine month ago. One ladder was kept behind the house by concealing it. At that night I was sleeping on the roof room, my husband was sleeping in another room. The door was in between. At that day, my husband had slept alongwith a gun. My Jethani, Prakashwati was sleeping in downstairs. My mother-in-law and Deorani, Nanhi Devi were sleeping in 'Baithak'. My Jeth Lajja Ram went to see cinema. My father-in-law and Dewar were sleeping in 'Chhapper' and 'Chaupal'. At that night, Rameshwar Dayal came near to my cot and wake up me and told that see outside that miscreants had come. I had not come outside from the room. Rameshwar Dayal returned to his Kothari. When I had not come outside from the room then my husband had fired on myself which hit to my left leg. Rameshwar Dayal had fired second fire that also hit to same leg. Thereafter, Rameshwar Dayal loaded his gun and again fired which hit to my palm of the hand. I got injury on my palm. I raised voice that villagers save myself, my husband tries to kill. I had fell down. I was little conscious. The entire family were of the view that I should be killed so that they may get motorcycle after performing second marriage. The villagers came and save me. The villagers took me to Bhogaon Hospital and thereafter took me to Agra for treatment. My father came at Agra and had given money to the villagers. My treatment was continued for fifteen days at Agra. After return from Agra Hospital, I came to the house of my father and since then I had never visited to my matrimonial home. Due to fire, my one leg is totally ineffective. I take support of a Lathi for walking.

24. The aforesaid witness is sterling witness who has got injuries. The identification of her could not be doubted because assailant is her real husband, who has also maltreated her and demanding motorcycle. There is also allegation that the appellant was having illicit relationship with another women. The incident is of mid night within the boundary of the house. She never visited at her matrimonial house since then. It further verifies with the circumstances, that the incident has been committed by her husband. She never feel comfortable in her matrimonial house, hence she never returned. Her one leg also became ineffective and she used to take support of Lathi in walking. She further deposed that the gun which was used by Rameshwar Dayal in firing on her, it was belong to her father-in-law. The kundi of my room was opened by Ramehwsar Dayal after firing after entering into my

room from the adjacent room. She also deposed that there was no children even after five years of my marriage. Rameshwar Dayal never visited to see me in the Hospital. He never visited to my parental house for taking myself with him since till today. When I was admitted in Hospital, then my Deorani, Nanhi Devi had visited to me. My statement was recorded at Agra. At that time, Nanhi Devi was present there. The Inspector had also enquired with her. The statement of Nanhi Devi which was recorded by the Inspector at Agra is Ext. Ka-3 which is verified by PW-2/said Inspector, where she had given evidence that it is Rameshwar Dayal who had fired on Vimla Devi and since then Vimla Devi never returned to her matrimonial house. She further deposed that there is still oozing pus from the wounds which was caused by firearm. She has been duly cross-examined by the learned counsel for the appellant, where she deposed that now-a-days I reside in the house of my father. I returned to the house of my father from the Hospital at Agra with my own consent. I am residing there. I never returned to the house of my husband after return from Agra. The house of my husband is towards east side of the village which is a Pakka house. My husband is residing with her father and brother. The Chaupal is situated towards west side of the house. The 'dewar' was sleeping in another room and that place is at some distance to my place. Nanhi Devi was sleeping at Chaupal. Prakashwati was sleeping in downstairs. The dowry was fixed at the time of my marriage which was Rs. 10,000/- which was given by my father to my father-in-law. The motorcycle was demanded at the time of my 'Gauna' which took place about three years ago prior to the date of incident. The night of incident was dark and the room in which I was there was situated towards west side of the house and another side towards east side. There is no further construction in front of the said room. This room is square. There is another room which is adjacent to this room towards east side. One door of that room is opening to my room. The door of other room is towards east side. The room where I had suffered injury of firearm, anybody can enter into that room after opening the door by east side. On the night of incident, there was no light in the room where I was sleeping. My husband and myself was sleeping in separate room. I was sleeping in the room towards west side and my husband was sleeping in the room towards east side. The place from where fire took place on myself, it was around 10-12 paces from my room towards east side. When fire hit to me, at that time I was standing. When fire took place then my face was towards west side. The offender was standing towards my east side. The fire hit my leg from my behind. All the fires hit when my face was

towards west side. The person who, had committed fire, he was on the door of my side room. Firstly, my Dewar reached to me. Thereafter several persons came there. After firing I had went to police station or not, I do not remember. It is belies to state that my husband had gone to police station Bhogaon. I was not conscious so I could not told at the police station or Bhogaon Hospital, that who had fired on me. The doctor at Bhogaon had given me injection of sleeping. On the day of injury, I had went to Agra. Nanhi Devi and Rewari Lal gone with me. My father came third day of the incident. On sixth day of the incident, the Inspector recorded my statement. I am not aware upto sixth day where report has been registered or not and also that miscreants had fired on me. I had previously told to Inspector that fire was caused to me by my husband. It is belies to state that Rameshwar Dayal had not fired to me. It is also belies to state that miscreants had came to house and they had fired on myself.

25. It was open for the defence to produce evidence that miscreant had came and fired to the injured, whereas the defence had not produced any witness or evidence to prove this fact. It is the case of the defence that miscreants entered in the house and made fire and fled away without looting any households goods. It does not inspire any confidence. The I.O has also found ladder where two steps of the ladder were broken and it was not possible for the miscreants to use that ladder and to reach the roof of the house. It has not been controverted by the defence by any convincing and cogent evidence.

26. PW-3 is the injured/sterling witness and she has specifically deposed that it is her husband, who had fired on her and she suffered injuries due to fire of her husband/accused-Rameshwar Dayal.

27. Learned counsel for the appellant has submitted that when she was towards west side and she had been fired from east side then how she could identify the assailant, who had fired on her. It is peculiar and very important case that the injured is real wife and assailant is real husband. They were residing in the same house and they are not having good relation with each other prior to the incident. There has been consistent act committed by her husband and he was having a gun on the night and thereafter fired. Hence, there is no misconception of any identification of her husband by the injured. The incident took place in the mid night in the house.

28. Learned counsel for the appellant has further submitted that there is no

motive behind the offence, whereas the motive is very much there that relation with the husband and wife was not cordial. He was demanding motorcycle and maltreating to the injured. He was having illicit relationship with different women and tried to remove his wife to get another marriage. However, it is the case of direct evidence where motive is immaterial.

29. It is held by Hon'ble Supreme Court in **Arjun Malik and other Vs. State of Bihar; 1994 Supp. (2) SCC 372** that motive became immaterial and question of proving the motive by the prosecution does not arise, since it is not a case based on circumstantial evidence. It is held by Hon'ble Supreme Court in **Kuriya and another Vs. State of Rajasthan; AIR 2013 SC 1085** that once the principal eye witnesses have proved their credentials on the whole, it can be said to be believable that the prosecution can rest even on the testimony of a single eye witness.

30. It is held by Hon'ble Supreme Court in **Gulam Sarbar Vs. State of Bihar; 2014 CrL. Law Journal 34 (SC)** that in accordance with Section 134 of Indian Evidence Act, 1872, the number of witnesses-, it is quality and not quantity, which determines adequacy of evidence.

31. Learned Senior Counsel has submitted that the firearm has not been recovered and there is no Forensic Science Laboratory report to prove the injuries and weapon. There is inconsistency in the evidence recorded by the injured witness and the medical evidence. Hence, benefit has to go in favour of the accused-appellant.

32. It is held by the Hon'ble Supreme Court in **Mallapa Siddappa Alakanur and other Vs. State of Karnataka; 2009 (66) ACC 725 (SC)** that in criminal trial-medical evidence- ocular evidence trustworthy-to be preferred to medical evidence. It is held by the Supreme Court in **State of U.P. Vs. Naresh and others; 2011 CrL. L, J 2162 SC** that non recovery of firearms from accused, it is no ground to disbelieve prosecution case, when accused could not be arrested by police and had in fact surrendered only after proceedings for attachment of their property had been initiated. It is held in **Abuthagir and other Vs. State; 2011 (1) SCC(Case) (Cri) 970**, in case of criminal trial, it is held -appreciation of evidence, the approach of Court must be integrated and not truncated or isolated, court must analyze and assess the evidence by yard stick of probabilities, its intrinsic value and animus of witnesses and thereafter reach its conclusion.

33. The witness Raja Ram, who has deposed as PW-4 and thereafter converted as CW-1 has deposed in his examination-in-chief that marriage of my daughter Vimla Devi took place with Rameshwar Dayal, who is present in Court. Whatever dowry was agreed that was given by me. The motorcycle was demanded at the time of 'Gauna' which has been refused by myself and I returned to my home. There were strained relations due to demand of motorcycle, prior to one year ago. I reached Agra after third day of the incident, where my daughter told that Rameshwar Dayal has fired on her. Lajja Ram was also present there. My daughter was alone there so I took her with me.

34. This witness is father of the injured-Vimla Devi and supported the prosecution story. The prosecution story further supported with the deposition of sterling evidence, the injured Vimla Devi, who is residing since then, with her father and never returned to her matrimonial home.

35. Dr. S.C. Dubey, who has deposed as PW-5. He had first medically examined the injured Vimla Devi on the date of incident at 3.00 a.m. and find the aforesaid injuries mentioned above on the injured. He had verified that these injuries were possible due to firearm injury and the injuries were fresh in nature. The injuries has been verified and the minor discrepancy, if any, that does not affect very basic prosecution case. The injured witness is highly reliable and in this case it is the wife of the accused and in case of any differences, then ocular evidence will prevail over medical evidence.

36. Learned counsel for the appellant has further submitted that there is no Forensic Science Laboratory report and the injury is not sufficient to make the offence under Section 307 IPC against the appellant.

37. It is held by the Hon'ble Apex Court in **Vineet Kumar Chauhan Vs. State of U.P.; AIR 2008 SC 780** in the matter of expert opinion, where offence has been committed by use of firearm, if there is absence of any expert ballistic report, it is not always fatal to prosecution case. It is held by Allahabad High Court in **Nanhey Vs. State of U.P.; 2011 (I) ACR 171** that to constitute an offence under Section 307 IPC, it is not necessary that the injury inflicted must be grievous or dangerous to life.

38. It is held by Hon'ble Supreme Court in **Bur Singh Vs. State of Punjab; 2009 (65) ACC 98(SC)**, it is the duty of the Court to separate truth from falsehood as the separation of grain is done from chaff.

39. Mahendra Pal Singh, who has been examined as PW-6 has filed the charge sheet and he verified the same.

40. Lajja Ram has been examined as DW-1 for the defence. He deposed that he is the Jeth of the injured and real brother of the accused-appellant and brought to the injured to the Hospital for initial medical treatment. He deposed that he heard the voice of Vimla Devi that miscreants had come. Rameshwar Dayal was also making noise and thereafter he heard noise of firing, then he went on roof and saw that Vimla Devi has got firearm injury and she was nearby door of the room. The blood was oozing out from her wound. I saw along other witness that 3-4 miscreants were fleeing towards east side. He said that he took Vimla Devi to police station and thereafter to the Hospital. The doctor had referred her to Bhogaon and later referred to Agra. In the cross-examination, he admitted that he went to see Cinema and he reached her house at 12.30 a.m, whereas the incident is of mid night at 1.00 a.m, hence presence of this witness at the time of incident is having close proximity, whether he was present or not as he himself admitted that he went to see cinema at Bhogaon. He deposed that miscreants did not take any household goods. The incident took place on the roof and the ladder which was found towards east side which was not having two steps

41. The miscreants did not took any house hold and as per the I.O, it was not possible for a person to reach the roof with that ladder, hence very much statement of this interested witness in favour of his real brother is not proved by convincing and cogent evidence.

42. Babu Ram was examined as DW-2. He deposed that he is the resident of village Kurlakur. On the date of incident at 12 to 1 am, when I was at my house heard voice from the house of Rameshwar Dayal. After hearing noise I went towards house of Rameshwar, then I heard noise of firearm. Then I had saw that 3-4 miscreants were coming out from the house of Rameshwar Dayal and ran away towards east side. I had seen with them with torch.

43. The statement of prosecution witness as well as this DW-1 and DW-2 are contradictory to each other. DW-1 has deposed that miscreants had reached top of the roof with ladder and returned with ladder. This witness DW-2 told that miscreants exited from the house of injured. The evidence of this witness is not very reliable. He is the resident of same house. He is simply a co-villager and he himself deposed in his cross-examination that none of the

miscreants has been identified by him by the police.

44. The statement of accused Rameshwar Dayal has been recorded under Section 313 Cr.P.C and all incriminating evidence had been put before him. He has denied the allegation levelled on him and in defence, he has recorded that he took his wife to the police station and thereafter for medical examination and took her to Bhogwan and thereafter took her to Agra for her treatment, whereas, that has not been corroborated by medical examination as well as by statements of other witnesses. The medical examination was conducted on the very same night and she was brought by Lajja Ram which is evident from the medical examination report. The injured and other witnesses have specifically deposed that the appellant never visited to Agra Hospital for her treatment. The accused has not disclosed this fact, where his wife, since she got injury and discharged from the Hospital at Agra.

45. On the appreciation of all these evidence and facts, learned trial court has convicted the sole accused-Rameshwar Dayal vide judgment and order dated 20.2.1985. Thereafter, the case was fixed for hearing on sentence. In between, statement of Mishri Lal has been recorded as DW-1 on 22.2.1985.

46. The Mishra Lal-DW-1, is father of the accused. He verified that age of the accused is around 20-21 years on the date when statement dated 22.2.1985 was recorded. Hence, age of the accused is around 60 years till this time.

47. Learned Senior Counsel appearing for the appellant has submitted that the appellant is 70 years in age as on date and his age has to be taken into consideration, whereas, as per own statement of father of the accused, his age is about 60 years by this time. He further submitted that there is no criminal history of accused-appellant, Rameshwar Dayal and stated that there were good relation between husband and wife.

48. The father of the accused Rameshwar Dayal has recorded his statement on the point of sentence only, not prior to that. The relationship between husband and wife were not cordial which is evident from all the evidences recorded and discussed herein above. The injured is the real wife of the accused-appellant. There is no question of mis-identification by the wife about her husband. The incident was occurred during mid night within the house. The relationship between husband and wife were not cordial and strange prior to date of incident. The character and habit of the accused-

appellant was not good. He is habitual drunkard and having illicit relation with other women. She is the injured witness, who has vehemently supported the prosecution story and specifically given evidence against her own husband. She is injured and best reliable evidence in this case. Her evidence is absolutely trust worthy.

49. It is held by the Hon'ble Supreme Court in **Bhag Singh Vs. State of Punjab; 1997 SCC (Cri) 1163** that testimony of a witness should be viewed from broad angles. It should not be weighed in golden scales, but with cogent standards. It is held in **Annareddy Sambasiva Reddy and others Vs. State of Andhra Pradesh; (2010) 1 SCC (Cri). 630** that where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in-guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailants in order to falsely implicate someone.

50. It is held by a Division Bench of Allahabad High Court in **Netrapal and other Vs. State; 2010 (71) ACC 757** that the presence of injured witness at the place of occurrence could not be doubted. Her evidence assumes great importance and it cannot be rejected on some minor discrepancies. Where evidence of solitary eye witness, the evidence from blemish or suspicion-impressing court as wholly truthful. The conviction can be recorded solely on testimony of single witness.

51. In view of all these facts and circumstances and evidences, the prosecution has proved its case beyond reasonable doubt and it is held in **Yogesh Singh (supra)** that burden on the prosecution is totally to establish its case beyond reasonable doubt and not all doubts. Hence, the judgment and order of conviction and sentence dated 20.2.1985/23.2.1985 passed by the learned Additional District and Sessions Judge, Mainpuri in Session Trial No. 504 of 1983 (State Vs. Rameshwar Dayal) is hereby affirmed. The criminal revision is liable to be dismissed and it is **dismissed**. The appellant-Rameshwar Dayal is on bail. His bail is cancelled and sureties will be discharged after his surrender before the trial court. The appellant is directed to surrender before the learned trial court within fifteen days from today to complete his sentence, failing which the learned trial court shall take appropriate steps in accordance with law.

52. The C.J.M, Mainpuri, shall ensure that the appellant-Rameshwar Dayal to be arrested, if not surrender in stipulated period, and lodged him in jail to serve out the remaining sentence.

53. Let a copy of this judgment and order be sent to the court concerned immediately by e-mail. The trial court record be sent within a week to the trial court.

54. The criminal appeal stands **dismissed**.

March 19, 2026

sfa/

(Abdul Shahid,J.)