



2026:AHC-LKO:19553-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 737 of 1986

Suresh and 3 OthersAppellant(s)

Versus

State of U.P.Respondents(s)

Counsel for Appellant(s) : S.S. Sharma, Kartikay Singh, Manoj
Kumar Gupta,R.R. Acharya
Counsel for Respondent(s) : Govt. Advocate, Anoop Srivastava,
Anuj Dayal, J.N. Chaudhary,
Virendra Bhatia

AFR

Court No. -10

Reserved on: 21.01.2026

Delivered on: 18.03.2026

**HON'BLE RAJNISH KUMAR, J.
HON'BLE ZAFEER AHMAD, J.**

(Per Zafeer Ahmad, J.)

1. Heard Sri B.P. Singh Dhakray, learned counsel assisted by Sri Manoj Kumar Gupta, Sri Kartikay Singh and Sri Shakti Singh, learned counsel for the appellants, Sri Atul Tiwari and Sri Anuj Dayal, learned counsel for the complainant and Sri Arunendra, AGA for the State and perused the record.

2. The aforesaid criminal appeal arises out of judgment and order dated 08.10.1886 passed by IIIrd Additional Sessions Judge, Unnao, in S.T. No. 479 of 1984 wherein the applicant has been convicted and sentenced to undergo life imprisonment u/s 302 r/w 34 of Indian Penal Code (in short IPC) and five years of rigorous imprisonment u/s 201 r/w 34 I.P.C. It has been further provided that both the sentences shall run concurrently.
3. During the pendency of the appeal, appellant no.1 Suresh and appellant no. 2 Awadhesh have died, therefore, the appeal stands abated on their behalf by means of order dated 07.01.2026. Thus, the appeal survives on the behalf of appellant no. 3, Rakesh and appellant no. 4, Santosh.

Prosecution Case in Nutshell:

4. The prosecution story, in brief, is that on 15.07.1984 at 1:30 P.M. complainant Brij Kishore, son of Suraj Deen, resident of village Manjore, submitted a written report at police station Ganga Ghat, District Unnao stating therein that on the same day he along with his deceased father Suraj Deen was working in their agricultural field, towards the south of their village. His father was putting earth on the boundary/farm ridge (मेड़) of the field with a shovel and complainant was ploughing the field and his cousin named Kallu @ Ram Kumar was also working in his own field. At around 11:30 A.M. accused Suresh, Awadesh, Rakesh and Santosh, resident of

same village, came from the village side and caught hold of Suraj Deen, who cried-out, then he saw that his father was thrusted-down by the accused in the field. Suresh caught the legs of Suraj Deen, Rakesh and Santosh chopped off the head of Suraj Deen by *gandasa*, while the Awadesh was standing nearby with a country-made pistol in his hand. Complainant raised noise, whereupon his cousin, Kallu, rushed form his filed and witnesses namely Amar Sing (r/o village Bani) and Rakesh Pandey (r/o village Bankata), also ran shouting and saw the incident. Hearing their voice people from the village also rushed towards the place of occurrence. Thereupon, Awadesh wrapped the severed head of his father in a *momiya paper* (polythene) and put the same in a bag and went away towards the south of the village. They were chased by the witnesses but they (accused) threatened them with dire consequences, therefore, they could not be apprehended. Thereafter, when the complainant came back to his father, he saw that his father was lying dead, his neck had been slit, there were cut wounds on both the arms, blood was oozing and spread over the ground. It was further stated by the complainant that about 24-25 years back Rajjan Tiwari, father of Santosh, had been murdered by Suraj Deen (deceased) and Ram Kishore Tiwari of the same village were prosecuted but both of them were acquitted. Since then there was enmity between these families and the family members of Rajjan were internally fostering the object of taking revenge of the murder

of Rajjan and out of this revenge, murder of Suraj Deen was committed by the accused persons. All the accused persons are related to each other as cousins.

5. On lodging of the written report (Ext. Ka-1), an FIR was registered (Ext. Ka-3) under Section 302 IPC and GD entry of the same was made (Ext. Ka-4). The investigating officer started the investigation on 15.07.1984 and took the sample of plain earth and blood-stained earth and prepared a memo of the same (Ext. Ka-5), prepared inquest report (*panchayatnama*) (Ext. Ka-6), sketch of the dead of body (Ext. Ka-7), police form no. 13 (Ext. Ka-8), letter to CMO (Ext. Ka-9), letter to RI (Ext. Ka-10), and site plan (Ext. Ka-11).
6. Upon completion of investigation, a charge-sheet (Ext. Ka-12) under Section 302 IPC was submitted against all the accused. The case was committed to the Court of Session, where charge under Section 302 IPC r/w Section 34 IPC along with Section 201 r/w Section 34 IPC were framed. The accused pleaded not guilty and claimed trial.
7. To prove its case, the prosecution examined five witnesses. PW-1 Brij Kishore, PW-2 Dr. O.P. Gupta, PW-3 Amar Singh, PW-4 Ram Kumar @ Kallu, and PW-5 Hari Shanker Singh.
8. After recording of the prosecution evidence, the statements of the accused under Section 313 CrPC were recorded, wherein they stated that they have wrongly been implicated in the case due the

enmity. No defence witness has been produced by the appellants on their behalf.

9. Upon a comprehensive appraisal of the oral and documentary evidence on record, the learned Trial Court found all the accused guilty under Section 302 of IPC read with Section 34 of IPC to undergo life imprisonment and under Section 201 of IPC read with Section 34 of IPC to five years of rigorous imprisonment and provided that both the sentences shall run concurrently.

Submissions made by learned counsel for the Appellants :-

10. Learned counsel for the appellants submitted that the learned Additional Sessions Judge, having disbelieved two alleged eye-witnesses, namely PW-3 Amar Singh and PW-4 Ram Kishore alias Kallu, erred in convicting the appellants on the solitary evidence of PW-1 Brij Kishore, whose presence at the spot is highly doubtful. It was further contended that there was no immediate motive for the appellants to commit the alleged offence, and the motive alleged by the prosecution relates to an incident which took place about twenty-five years back, when the sons of the appellants were not even born, which is insufficient to establish motive for the present occurrence. Learned counsel further submitted that Avadesh and Suresh, though allegedly armed with firearms, did not assault anyone, which renders their participation highly doubtful. It was also argued that from the statement of PW-1 Brij Kishore it is evident that the deceased had been prosecuted in several cases

shortly before the incident and had many enemies who could have caused his death. It was further contended that the alleged occurrence took place at a lonely place far away from the village *abadi*, therefore, the presence of the witnesses is highly improbable. Lastly, it was submitted that PW-1 Brij Kishore was employed at Kanpur and permanently residing there, hence his presence at the place of occurrence is doubtful, and that the sentence imposed is too severe. Thus, the impugned judgment and order of conviction and sentence is liable to be set aside.

Submissions made by learned counsel for the Complainant and

A.G.A:-

11. Per contra, learned counsel for the complainant as well as learned A.G.A. supported the impugned judgment and order and submitted that the same has been passed after proper appreciation of evidence on record and does not warrant interference by this Court. It was contended that the testimony of PW-1 Brij Kishore is trustworthy, natural and inspires confidence, and merely because other witnesses have not supported the prosecution case in entirety would not render his evidence unreliable. It was further submitted that minor inconsistencies or discrepancies are natural in criminal trials and do not affect the core of the prosecution case. Learned counsel submitted that motive, though not essential where there is direct evidence, stands sufficiently established from the background of hostility between the parties. It was also argued that the presence of

the witnesses at the place of occurrence has been satisfactorily explained and cannot be discarded merely on the ground of his place of employment. Learned A.G.A. further submitted that the participation of the accused stands proved from available evidence on record and that the trial court has rightly appreciated the material available before it. It was lastly contended that the sentence awarded is commensurate with the gravity of the offence and calls for no interference, and accordingly the appeal deserves to be dismissed.

Oral Testimonies :-

In order to appreciate the issues arising in the present appeal, it is appropriate to examine, in brief, the oral evidence adduced by the prosecution.

12. **PW-1 Brij Kishore** , son of Surajdeen, deposed that he was acquainted with the accused persons Suresh, Rakesh, Santosh, and Awadhesh, as they belonged to his village and all the accused persons are related as cousins. He further deposed that he had no knowledge of the murder. He further deposed that Santosh's father had been murdered about 24-25 years back, and in that case his father, Surajdeen (deceased), had been named as an accused along with Ramkishan Master of the village, however, his father was acquitted by the court in that case, owing to this incident, the accused persons bore enmity towards his family. He further deposed that the incident occurred about one year and four months

back, at approximately 11:30 A.M., and at that time, he was ploughing his field. His uncle, Ramkumar, was working in his own field, and his father was mending his field with a plough when suddenly, Rakesh, Santosh, Suresh, and Awadhesh arrived and struck him on the ground. He further deposed that upon hearing shouting of his father, he ran towards him and saw Suresh holding his father's legs, while Awadhesh stood nearby holding a country-made pistol and Santosh & Rakesh were cutting his father's neck with a *gandasa*. He further deposed that thereafter Awadhesh wrapped the severed head in a *momiya* paper (polythene) and placed it in a sack. He further deposed that Ramkumar, Amar Singh, and Ramesh Pandey witnessed the incident. He further deposed that when they ran a few steps to chase the assailants, Awadhesh pointed the country-made pistol at them, and Santosh and Rakesh brandished the *gandasa*, threatening that if they came any closer, they would kill them as well. He further deposed that thereafter they approached his father, who was lying dead, with blood oozing from his body. He further deposed that thereafter more villagers arrived, following which he went home, while his uncle and mother remained near the dead body. At his home, he wrote a report (Ext. Ka-1). He further deposed that he went to the police station along with Rajkishore and reached there at about 1:30 P.M. where he handed over the written report to the Munshi, who provided him with a copy. He further deposed that at that time, the Inspector was

not present at the police station. Subsequently, the Inspector arrived at the place of occurrence, recorded his statement and took the dead body and the *fawda* (फावड़ा) (spade or shovel) was handed over in his (witness) custody.

13. **During cross-examination**, he deposed that in the year 1964, Radha Krishan, son of Ram Swaroop Brahmin, was murdered, but he was unaware of the reason for the same, as he was residing in Kanpur, at that time, due to his employment. He further deposed that during that period, he worked for about four years at the Kila Factory in Kanpur. He further deposed that Ram Swaroop Brahmin had earlier been a resident of the village. He further deposed that he did not know whether in the year 1979 a case under Sections 107/116 was registered against his father, against himself and against his brother. He further deposed that Ramkumar @ Kallu is a witness who at the time of this deposition, resided in Shuklaganj. He further deposed that Ramkumar had been residing in Shuklaganj for about one and a quarter years and was earning his livelihood there, though he did not know in which shop Ramkumar worked. He further deposed that he used to go to the factory via Shuklaganj and that he had been residing in Kanpur on G.T. Road, in the quarters of the Ordinance Factory, for the last four to five months. He further deposed that prior to this, he had been residing in Lal Bangla since July, 1984. He further deposed that his father had also been employed in the Ordinance Factory and had retired after

attaining the age of sixty years. He further deposed that his father had retired four to five years prior to the incident and thereafter he had been residing in the village, where he used to do agricultural work. He further deposed that during the period of service, his father used to visit the village while on leave. He further deposed that prior to the incident, he had not lodged any report against the accused persons. He further deposed that the house of the accused persons was adjacent to his father's house and that next to his house was the house of Ram Kishan Master, against whom a murder case relating to Ranjan Tiwari was held. He further deposed that Ram Kishan Master was a teacher in Deoria Kala and used to commute to school daily from village. He further deposed that he also used to visit agricultural land during holidays. He further deposed that his father used to visit the agricultural fields and orchards in the morning, when he used to go to ease himself and also in the evening. He further deposed that sometimes his father would go by cycle from the village to the Kila Factory in the morning and return in evening and duty hours at Kila were from 7:30 AM to 5:30 PM. He further deposed that his father did not work in the night shift and he was employed as carpenter in Kila. He further deposed that the agricultural fields (in which occurrence is said to have taken place) were situated to the south of the village and that one field was also located towards the west. He further deposed that the southern field was at a distance of about half a mile from the village and that the

incident took place in the said southern field. He further deposed that the western field was at a distance of about one and a quarter miles from the village. He further deposed that he had studied up to the seventh standard. He further deposed that the Inspector did not prepare any recovery memo of the *fawda* (फावड़ा) (shovel or spade) and only gave verbal directions for taking it back. He further deposed that around the place of occurrence there were fields and orchards on all four sides, and at the time of the incident no person was seen in those fields or orchards. He further deposed that his father had gone to the field at about 8 o'clock in the morning and had been tying the boundary of the field. He further deposed that Rakesh and Santosh are their father's only sons. He further deposed that for the first time he saw the accused persons from a distance of about 50–60 yards and at that time the accused persons had caught hold of his father and put him down, and that all four accused persons were pressing his father. He further deposed that he did not remember as to who was holding his father's hands, but remembers that Santosh and Rakesh were holding his father's head and cutting it. He further deposed that he did not try to protest against the accused persons by throwing stones etc. He further deposed that he had moved five or six steps from where he saw the occurrence. He further deposed that hearing his scream, five to ten villagers arrived, including Jamuna Prasad, Malik, Mishrilal, and children. He further deposed that the villagers arrived after the accused fled from the

scene of crime. He further deposed that a case under Sections 326 and 323 I.P.C. was filed against his father for assaulting Shyamlal Nai and Kallu Nai. He deposed that he does not remember and was not sure as to whether the said case was instituted in the year 1979, but deposed that it had been instituted four to five years prior to the present incident. He further deposed that he did not know as to whether in the year 1980, on the report of Hari Nai, a case under Sections 323 and 342 of the Indian Penal Code was registered against his father. He further deposed that he is unaware of the fact that in August 1982, his father along with others, complained against the village head for illegally supplying timber to Mahavir Pasi. He further deposed 2 to 2 ½ year before the incident, Harishanker and Kallu were charged under Sections 25A of IPC and 307 IPC. He further deposed that the case was filed based on his report and the same was dismissed. He deposed that a case under Sections 363 and 376 of the Indian Penal Code was pending against witness Amar Singh, and that Amar Singh and Ramesh used to visit his village. He further deposed that Ramesh's maternal uncle, Jamuna Prasad, resided in the village and was a witness to the *panchayatnama*. He further deposed that the villagers arrived about in ten minutes after the accused persons fled, and that he had shown the Inspector, the place up to which he had chased the accused persons. He further deposed that if the said place was not shown in the site plan, he did not know the reason for the same. He further

deposed Suresh was pressing the calves of the deceased and while the deceased was still moving his hands and legs. He further deposed that prior to the written report ,marked as Exhibit Ka-1, he had also written two reports, which were dictated by his father and written by him. He further deposed that those reports had been written against some persons, but he was unaware of the subject matter of those reports. He further deposed that those reports had been written for submission at the police station, though he did not remember against whom they were written. He further deposed that it took about half an hour to write the complaint (Ext Ka-1) and that after writing the report, he did not return to the place of occurrence but proceeded to the police station Ganganaghat *via* Deoria. He further deposed that he did not meet the Inspector in Deoria and remained at the police station for about 20–25 minutes. He further deposed that he returned to the village *via* Deoria and reached the village at about 3 o'clock. He further deposed that when he returned to the place of occurrence, the Inspector had not arrived at that time, and that the Inspector arrived about one hour later and remained there until about 6–7 in the evening. He further deposed that the dead body had been sent by the Inspector at about 5 o'clock by bullock cart. He further deposed that he did not accompany the dead body. He further deposed that when the Inspector left at about 6–7 o'clock, he did not go with him and that thereafter he also did not go separately to the police station. He further deposed that out of

the constables, who had come with the Inspector, three constables remained in the village. He further deposed that after the Inspector left, he remained at home and did not go to Unnao, nor did he go there on the following day. He further deposed that it was incorrect to state that report (Ext Ka-1) was written by him on the next day after the police conducted its preliminary investigation. He further deposed that it was also incorrect to state that he had not witnessed the incident or that he was not present at the place of occurrence. He further deposed that it was also incorrect to state that he had received information regarding his father's murder while he was in Kanpur. He further deposed that it was also incorrect to state that when his father did not return home by the afternoon, a search was conducted and his headless dead body was found, and that thereafter a false case was instituted on the advice of the police. He further deposed that his father was a licensed firearm holder and that whenever he went outside, he sometimes carried the firearm with him and sometimes did not.

14. **PW-2, Dr. O P Gupta**, E.N.T Surgeon District Hospital Unnao, deposed that on 16.07.1984 he was posted at the same post as stated above and on that day at around 3:30 P.M. he conducted the post-mortem examination of deceased Surajdeen s/o Gajraj r/o Kanjoura Police Station Gangaghat District Unnao. He further deposed that the dead body was brought by C.P. 640 Chedalal and Home Guard Ramprakash from police station Gangaghat and the constable had

identified the dead body along with sample seal. He further deposed that there was no head on the dead body. He was about 62 years old and had been dead for about a day. The body structure was normal. He further deposed that rigor mortis had passed and the part below the stomach had turned blue. Following injuries were present on the body of deceased:

- Injury No. 1: Incised wound measuring 15 cm X 3 cm X bone deep extending from the lower part of the right shoulder joint to middle 1/3rd on the interior aspect right upper arm.
- Injury No. 2: Incised wound measuring 18 cm X 6 cm X bone deep on the interior upper 1/3rd
- Injury No. 3: Incised wound measuring 8 cm X 3 cm X clavicle bone deep on the right supraclavicular region.
- Injury No. 4: Incised wound measuring 12 cm X 13 cm X through neck at the level of C5 cutting larynx and upper part of the oesophagus, rest of the neck and head absent (part of the larynx is above the vocal cord present).

He further deposed that on internal examination it was found that the stomach was empty, small intestine was empty and there were some stool and gas in the large intestine. He further deposed that the other things were normal. He further opined that the death must have occurred due to shock and excessive bleeding, which was result of the injuries mentioned above. He further deposed that it might also be possible that deceased died on 15.07.1984 at around

11:00/ 11: 30 A.M. He further opined that the injuries on the body of the deceased could have been caused by an axe.

15. **During the cross-examination**, he deposed that there could be a difference of 6-7 hours on both side in the time of death of the deceased. He further deposed that deceased might not have gone to defecate before dying. He further deposed that the stomach gets empty 5-6 hours after eating. He further deposed that the dead body of Surajdeen along with the relevant papers were received on 16.07.1984 at 11:45 AM. He further deposed that the injuries on the deceased could also have been caused by *kaanta* (hay fork or pitchfork) (काँटा) or *banka* (curved knife or billhook) (बाँका).

16. **PW-3 Amar Singh**, identified the persons, Suresh, Awadesh, Santosh and Rakesh, who were present before the court and deposed that they all are resident of Kanjora, which is 1½ furlongs away from his village. He further deposed that about 1½ years ago, at around 11:30 A.M., he was going from village Bani to Pipri and when he reached near the edge of Durga Kumhar's orchard, he heard cries from behind saying, "*bachao, bachao.*" He further deposed that all four accused ,who were present in the court, were in the field of the deceased and were beating him. He further deposed that Suresh was holding the deceased, Awadhesh was standing near his head with a country-made pistol, and Santosh and Rakesh were beheading the deceased with a *gandasa*. He further deposed that the Kallu was present in his field. He further deposed

Brij Kishore, along with his bulls, was passing from there and was also shouting. He further deposed that Ramesh Pandey was also with him, and both of them ran towards the place while shouting. He further deposed that after beheading the deceased, all four accused went towards their homes. He further deposed that Awadhesh wrapped the severed head of the deceased in a *Momiya* paper, kept it in a bag, and moved towards Pipri village. He further deposed that when they tried to chase and stop the accused persons, they threatened to fire bullets at them and also threatened to kill them. He further deposed that they stopped there and went near the dead body. He further deposed that he has no enmity with the accused.

17. **During cross-examination**, he deposed that it would be wrong to say that he was threatened by the police to give false testimony. He further deposed that he was sentenced to seven years imprisonment in a case of kidnapping and rape of the daughter of Jugal Kishore Dubey and that he was on bail granted by the High Court. He further deposed that he was falsely implicated in that case due to enmity. He further deposed that it is wrong to say that the accused (Suresh) had done pairvi against him (Amar Singh). He further deposed that in 376 IPC case, he had given a statement that he was falsely implicated out of enmity and had not given the statement, that the accused, Suresh and others, had falsely implicated him. He further deposed that his village is situated to the east of Kanjaro, and Pipri

is to the south of his village. He further deposed that he was just going there to meet someone and there was no special work. He further deposed that he has known the names of Suresh and Awadhesh's fathers for the past 5–6 years. He further deposed that it would be wrong to say that he was instructed about the names of the accused persons' fathers by anyone. He further deposed that it would be wrong to say that he has given a false testimony. He further deposed that he met Ramesh Pandey in his village by coincidence and he had not come to his place. He further deposed that Bankata is almost one mile away to the east. He further deposed that both he and Ramesh were on foot. He further deposed that he and Ramesh are friends and used to meet frequently. He further deposed that he and Ramesh were proceeding from the western embankment of Durga Kumar's orchard, while he was walking along the north–south embankment of Durga Kumar's orchard. He further deposed that if the investigating officer has not shown his presence on that embankment, he cannot state the reason for the same. He further deposed that he had left home after having his meal, which he had around 12 o'clock. He further deposed that after he had his meal, he stayed at home for 10–15 minutes and thereafter met Ramesh. He further deposed that he and Ramesh did not stop at any place; there was no conversation while standing, and any conversation took place while walking. He further deposed that Ramesh was going towards Pipri; however, he does not know as to

whom Ramesh intended to meet. He further deposed that Ramesh Pandey does not reside in Chikola, but in Bankata. He further deposed that it is possible that, by mistake, he told the investigating officer that Ramesh Pandey of Chikola was accompanying him. He further deposed that Ramesh Pandey is, in fact, from Bankata, and he may have inadvertently stated his residence as Chikola to the investigating officer. He further deposed that it would be incorrect to say that he does not know Ramesh Pandey or that he was making a false statement at his instance. He further deposed that he remained at the place of occurrence for only 2–3 minutes and thereafter returned to his home. He further deposed that he again went to the place of occurrence; however, he does not remember as to whether he went during the daytime or in the evening. He further deposed that he went to the place of occurrence on his own. He further deposed that on his second visit, he stayed at the place of occurrence for about half an hour or one hour, and after the dead body was taken away, he returned to his home. He further deposed that when he returned, the time was around 7 o'clock or 8 o'clock in the evening, and when he went again, the dead body was still lying in the field. He further deposed that Brij Kishore was present there and that he had a conversation with him. He further deposed that Brij Kishore did not tell him that his father was putting earth on the mends at the time of the incident, and that he himself was aware of this fact. He further deposed that it would be wrong to say

that he had not seen anything or that he was giving false testimony. He further deposed that inspector recorded his statement but did not read it over to him, and that he had informed inspector at the very first instance about the circumstances of the occurrence.

18. **P.W. 4, Ram Kumar** alias Kallu, son of Rambharose, deposed that his native village was Kanjora and that the deceased, Surajdeen, was his uncle. He further deposed that the incident had occurred about one year earlier, approximately between 11:00 A.M. and 12:00 noon. He further deposed that at the relevant time he was working in Shuklaganj and was present there on the date of the incident, therefore, did not witness the occurrence. The witness was declared hostile in the trial court.

19. **During cross-examination**, he deposed that the inspector had questioned him regarding the incident and that he had narrated the correct facts to him. He further deposed that he had told the inspector that at the time of the incident he was present in the field, where his cousin was ploughing and his uncle Surajdeen was putting earth on mends. He further deposed that he did not remember looking towards Kishore or in that direction and that he did not see the accused persons thrusting Surajdeen to the ground. He further deposed that he heard some noise, but he did not remember as to whether he had informed the police that Suresh was holding the legs, that Rakesh and Santosh were cutting the neck with a *gandasa*, and that Awadhesh was standing nearby with a

pistol. He further deposed that he had no recollection of such details and suggested that it was possible that the inspector had recorded such statements on his own. He further deposed that he did not remember telling the police about the arrival of Amar Singh and Ramesh, nor did he remember witnessing the severed head of his uncle being taken away, when his statements recorded under Section 161 of the Code of Criminal Procedure was read out to him, he stated that he did not understand it and, therefore, could not say anything regarding its contents. He further deposed that he had been residing in Shukla Ganj for the past four to five years and denied that he had colluded with the accused persons. He further deposed that Brij Kishore mostly resided in Kanpur. He denied having seen the incident and denied that he was deposing falsely due to any collusion. He also denied that the statement earlier given by him to the Inspector was correct or that he was intentionally giving a false statement before the Court. He further deposed that he was the real nephew of Surajdeen. He further deposed that Brij Kishore had been working in the Kila Factory for the past seven to eight years and was residing at Lal Bangla, Kanpur. He further deposed that Surajdeen and the accused persons used to talk to each other.

20. **P.W. 5, Hari Shankar Singh**, Sub-Inspector, Police Station Dewa Sharif Kotwali, District Barabanki, deposed that from 15.07.84 to 11.08.1984, he was posted as Sub-Inspector at Ganga Ghat Police Station. He further deposed that the F.I.R of this case was lodged in

his absence on 15.07.1984 at 1:30 P.M. He further deposed that he had started the investigation of the case on 15.07.1984. He further deposed that he reached the place of occurrence at around 3:30 P.M., and thereafter, appointed the witness of the *panchayatnama* (Ext. Ka-6). He further deposed that at the same time, he prepared the sketch of the dead body (Ex. Ka-7), challan lash (Ext. Ka-8), letter to C.M.O (Ext. Ka-8), and letter to R.I (Ext. Ka.-10). He further deposed that dead body was wrapped and properly sealed in cloth. He further deposed that dead body was sent for post-mortem on the same day through constable Cheddalal, along with the Chowkidar and Home Guard. He further deposed that from the place of occurrence, he took the sample of blood-stained soil and plain soil and prepared the memo of the same (Ext. Ka-5). He further deposed that thereafter he recorded the statements of complainant Brij Kishore, Raj Kishore and inspected the place of occurrence. The site plan is marked as Ext. Ka-11. He further deposed that on 16.07.1984, he had enquired and searched for the accused but could not find him. He further deposed that on 15.07.1984, he recorded the statement of witness Amar Singh. He further deposed that on 17.07.1984, while he was searching for the accused, he returned to the police station and recorded the statement of Head Moharir. He further deposed that a copy of the post- mortem was obtained. He further deposed that on 19.07.1984, accused Santosh and Rakesh appeared before the court and on 20.07.1984, accused Avadhesh

and Suresh appeared before the court. He further deposed that on 23.07.1984, he recorded the statement of the accused. He further deposed that on 11.08.1984, after completion of the investigation, he submitted the charge sheet against the accused (Ext. Ka-12). He further deposed that on 15.07.1984, he had recorded the statement of Ram Kumar @ Kallu. He further deposed that he had produced the true copy, of the statement given to him by witness Ram Kumar ,before the court (Ext.Ka-13).

21. **During cross-examination**, he deposed that it is incorrect to say that the statements of the witnesses were falsely written. He further deposed that it would be incorrect to say that the site plan was falsely prepared and the inquest proceedings were falsely conducted. He further deposed that it would be wrong to say that the inquest proceedings were prepared at the police station for this case and that the entries of the F.I.R and G.D. were anti-timed. He further deposed that he had written the statements of Rajkumar @ Kallu s/o Ram Bharose and had not taken the statement of Ram Kumar. He further deposed that in the *panchayatnama* (Ex. Ka-6), he had not mentioned those weapons with which injuries were said to have been caused. He further deposed that in the *panchayatnama*, the time of preparation was not mentioned. He further deposed that at the spot, a *fawda* was found, which was handed over to the complainant and no memo in respect of the same was prepared. He further deposed that in the site plan, the place where the *fawda* was

found, is shown and no blood was found on the same. He further deposed that he remained at the spot from 15.07.1984 to 16.07.1984 till 23:55 hours. He further deposed that the site plan does not depict the place from where the complainant chased the accused. He further deposed that witness Amar Singh had given him the statement that when he reached near the western corner of the orchard from the southern boundary of Durga Kohar's orchard, Ramesh Pandey of Chikola was also present with him. He further deposed that the witness stated that all the accused fled towards the southern direction. He further deposed that on 23.07.1984, during the course of investigation, he had gone to Hafizabad @ Vankata village and had recorded the statement of Ramesh Pandey there. He further deposed that he had not recorded the statement of any Ramesh Pandey of Chikola village. He further deposed that it is incorrect to state that the charge-sheet was wrongly submitted in collusion with the enemies of the accused.

Court Analysis:

Conviction on the Basis of Sole Eyewitness and Relevance of Motive

22. The principal submissions urged on behalf of the appellants is that the learned Additional Sessions Judge, having disbelieved the testimony of PW-3 Amar Singh and PW-4 Ram Kishore alias Kallu, gravely erred in recording conviction solely on the testimony of PW-1 Brij Kishore. It has further been contended that there was no immediate or compelling motive for the appellants to commit the

alleged offence and that the motive suggested by the prosecution relates to an incident said to have taken place nearly twenty-five years prior, which, according to the defence, is wholly insufficient to sustain conviction.

23. Before advertng to the factual matrix, it would be apposite to notice Section 134 of the Indian Evidence Act, which unequivocally provides that no particular number of witnesses shall in any case be required for proof of any fact. The emphasis of the law is thus not on the quantity, but on the quality of evidence. Moreover, In ***Anil Phukan v. State of Assam***, (1993) 3 SCC 282, the Supreme Court held in paragraph 3 as follows:

“Indeed, conviction can be based on the testimony of a single eyewitness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is

discarded in toto and no amount of corroboration can cure that defect.....”

24. The Court further clarified that only where the solitary witness is not wholly reliable would the Court insist upon independent corroboration in material particulars. It is only when the witness is found wholly unreliable that his testimony is to be discarded in toto.
25. Examining the testimony of PW-1 Brij Kishore in the light of the aforesaid principles, it emerges that he has given a clear and consistent account of the occurrence. His presence at the place of incident has been questioned on the ground that he was employed at Kanpur and was allegedly residing there permanently. However, from his deposition, it is evident that he had come to the village at the relevant time and was present when the fateful incident took place. Nothing substantial has been elicited in his cross-examination to demonstrate that his presence was improbable or fabricated.
26. As regards motive, even if it is assumed to be correct that the prosecution has not established any immediate provocation preceding the incident and that the motive suggested relates to a prior dispute of considerable antiquity. However, it is equally well settled that in cases resting upon direct eyewitness account, motive loses much of its significance. In *Chandan v. State (NCT of Delhi)*, (2024) 6 SCC 799, the Hon'ble Supreme Court reiterated

that absence of motive is inconsequential when direct and reliable evidence establishes the commission of the crime. Likewise, in *Shivaji Genu Mohite v. State of Maharashtra, (1973) 3 SCC 219*, it was held that where ocular testimony inspires confidence, the prosecution is not required to prove motive, and mere failure to establish motive would not render the evidence of a reliable eyewitness untrustworthy.

27. In the present case, the testimony of PW-1 Brij Kishore is found to be cogent, consistent and trustworthy, the alleged absence or remoteness of motive does not create a dent in the prosecution case. Motive assumes greater importance in cases based entirely on circumstantial evidence; it is not of decisive consequence where there is credible direct evidence.

28. In view of the foregoing discussion, this Court is of the considered opinion that the conviction recorded by the learned trial court on the basis of the solitary testimony of PW-1 Brij Kishore does not suffer from any legal infirmity. The evidence of PW-1 satisfies the test of reliability, and the absence of a strong or immediate motive does not render the prosecution case doubtful in the facts and circumstances of the present case.

Non-Recovery of the Alleged Murder Weapon and Alleged Ocular–

Medical Contradictions:

29. Learned counsel for the appellants has contended that the alleged weapon of assault was not recovered and that no bloodstains were

found either on the alleged *fawda* or on the clothes of the deceased.

It is submitted that this circumstance creates a serious dent in the prosecution case and gives rise to material contradictions between the ocular and medical evidence.

30. This submission doesn't hold merit. As it is well settled that non-recovery of the weapon of offence is not, by itself, fatal to the prosecution case, when there is reliable and cogent ocular testimony on record. Recovery of the weapon is only a corroborative circumstance and not a *sine qua non* for sustaining conviction. Where direct evidence of a credible eyewitness inspires confidence, failure to effect recovery does not dislodge the prosecution version.

31. In this regard, learned counsel for the complainant has rightly placed reliance upon the decision of the Supreme Court in ***Om Pal and others v. State of Uttar Pradesh, 2025 SCC OnLine SC 2292***, wherein it has been reiterated that non-recovery of the weapon cannot be treated as fatal to the case of the prosecution when the ocular testimony is otherwise trustworthy and consistent. This principle squarely applies to the facts of the present case.

32. So far as the alleged contradiction between ocular and medical evidence is concerned, it is trite that medical evidence is essentially corroborative in nature. Unless the medical evidence completely rules out the prosecution version or renders it inherently improbable, minor inconsistencies cannot outweigh clear and

convincing eyewitness testimony. In the present case, the injuries noted in the post-mortem report are broadly consistent with the manner of assault as deposed by PW-1. The defence has not been able to point out any such inconsistency, which would make the ocular account impossible.

33. The argument that no bloodstains were found on the *fawda* or on the clothes of the deceased also does not carry the matter any further. Absence of detectable bloodstains may be attributable to several factors such as lapse of time, cleaning, handling, or limitations in forensic examination. Unless it is demonstrated that the forensic evidence positively excludes the use of the alleged weapon, mere absence of bloodstains cannot be elevated to a circumstance creating reasonable doubt.

34. Therefore, this Court finds that the non-recovery of the weapon and the alleged absence of bloodstains do not constitute material infirmities in the prosecution case so as to discredit the otherwise reliable ocular testimony and the medical evidence vis-a-vis ocular evidence is not in contradiction with each other.

Evidence of Related / Interested Witness

35. Learned counsel for the appellants has also placed a fanciful argument that the conviction is unsustainable as it is primarily based upon the testimony of PW-1 Brij Kishore, who is the son of the deceased, therefore a related witness. It is urged that his evidence ought to have been discarded as being interested and partisan.

36. The appellants have placed reliance upon the decision of the Supreme Court, in *Mohd. Rojali Ali and others v. State of Assam*, (2019) 19 SCC 567. However, a careful reading of the said judgment does not advance the case of the appellants; rather, it fortifies the prosecution case. The Supreme Court has held that the testimony of a related witness cannot be treated as inherently tainted merely because of the relationship. What is required is that the evidence must be scrutinized with care to ensure that it is reliable, cogent, probable and consistent.

37. In paragraph 15 of the said judgment, the Supreme Court, relying upon *Jayabalan v. State (UT of Pondicherry)*, (2010) 1 SCC 199 observed that while the Court must be cautious in appreciating the evidence of an interested witness, it must not be suspicious merely because the witness is related. The primary endeavour of the Court must be to examine consistency and intrinsic worth. The evidence of a witness cannot be ignored or thrown out solely because it emanates from a person closely related to the victim.

38. Further, in paragraph 14 of *Mohd. Rojali Ali (supra)*, reference was made to the celebrated decision in *Dalip Singh v. State of Punjab*, AIR 1953 SC 364, wherein it was observed that ordinarily a close relative would be the last person to save the real culprit and falsely implicate an innocent person. The Supreme Court has consistently drawn a distinction between a “related” witness and an “interested” witness. As clarified in paragraph 13 of the said

judgment, a witness may be termed “*interested*” only when he or she derives some benefit from the outcome of the litigation, or has a motive to falsely implicate the accused due to prior enmity or other compelling reasons.

39. In the present case, PW-1 is a natural witness. His presence at the place of occurrence is neither doubtful nor artificial. Merely because he is related to the deceased does not render his testimony unreliable. No material has been brought on record to demonstrate that he stood to gain any direct or indirect benefit from the conviction of the appellants, or that he harboured such animosity as would prompt false implication. In the absence of any such material, his evidence cannot be discarded on the ground of relationship alone.

40. This Court has independently scrutinised his testimony with due caution. The evidence is found to be consistent, coherent and in material particulars supported by medical evidence and surrounding circumstances. Therefore, the reliance placed by the appellants upon **Mohd. Rojali Ali** (*supra*) is misplaced; on the contrary, the principles laid down therein support the view that the evidence of related witnesses, if otherwise reliable, can form the basis of conviction.

41. Accordingly, the ground relating to the witnesses being related or interested does not create any infirmity in the prosecution case.

Effect of Alleged Defective Investigation:

42. It has also been argued on behalf of the appellants that the investigation in the present case suffers from material irregularities and omissions, and therefore the conviction is liable to be set aside. The submission is that lapses on the part of the investigating agency have caused serious prejudice to the defence and have rendered the prosecution case doubtful.

43. Learned counsel for the complainant, however, has placed reliance upon the judgment of the Supreme Court in *Brahm Swaroop v. State of U.P.*, (2011) 6 SCC 288, particularly paragraph 10 thereof, wherein it has been held that omissions in the inquest report are not sufficient to throw out the prosecution case. The inquest proceedings under Section 174 Cr.P.C. are of a limited scope, confined to ascertaining the apparent cause of death. The inquest report is not a substantive piece of evidence and need not contain every detail of the occurrence. Therefore, minor omissions or absence of certain particulars in the inquest report cannot, by themselves, be a ground to disbelieve the prosecution case.

44. Further reliance has been placed upon *Edakkandi Dineshan @ P. Dineshan v. State of Kerala*, Criminal Appeal No. 118 of 2013, wherein it has been clearly observed that the principle of law is crystal clear that on account of defective investigation alone, no benefit will be given to the accused persons. The Court has reiterated that unless the lapses go to the root of the case and create

serious doubt about the prosecution version, the accused cannot claim acquittal merely because the investigation was not flawless.

45. Moreover, learned A.G.A. has also relied upon *Ashok Kumar Singh Chandel v. State of U.P.*, (2002) 20 SCC 114, particularly paragraph 156, wherein the Supreme Court observed that defective investigation by itself does not vitiate the prosecution case. The law on this issue is well settled that defects in investigation cannot be a ground for acquittal when there is otherwise reliable and trustworthy evidence available on record. Similarly, in *Dhanaj Singh v. State of Punjab*, (2004) 3 SCC 654 (para 5), it was held that it would not be proper to acquit an accused person solely on account of defects in investigation; to do so would amount to allowing the accused to take advantage of the lapses committed by the investigating agency and would result in miscarriage of justice.

46. The settled legal position, therefore, is that the Court must examine whether the evidence adduced during trial establishes the guilt of the accused beyond reasonable doubt. If the substantive evidence is credible and inspires confidence, defects or irregularities in investigation cannot overshadow the otherwise cogent prosecution case. Only where such defects are of such magnitude that they strike at the root of the prosecution case and cause serious prejudice to the accused can they be treated as fatal.

47. In the present case, even if certain procedural lapses or omissions are assumed, they do not, by themselves, demolish the core of the prosecution case. The conviction cannot be set aside merely on the ground of defective investigation, when the evidence on record is otherwise sufficient to sustain the finding of guilt.

Behaviour and Conduct of PW-1:

48. The appellant have attempted to cast doubt upon the conduct of PW-1 on the premise that his reaction was not in consonance with what would ordinarily be expected of a person witnessing such a grave and brutal occurrence. However, it is trite that there is no uniform or straight-jacket formula governing human behaviour in moments of shock, fear or trauma. Different individuals react differently to the same situation; some may raise immediate alarm, some may attempt resistance, while others may be rendered speechless or stunned due to the suddenness of the event. The conduct of PW-1, therefore, cannot be tested on hypothetical or preconceived notions of how a witness ought to behave.

49. In this regard, reference may be made to the decision of the Supreme Court in *Marwadi Kishor Parmanand v. State of Gujarat*, (1994) 4 SCC 549, wherein it was held that no hard and fast rule of universal application can be laid down with regard to the reaction of a person in a given situation. The Court observed that different persons react differently under similar circumstances,

and the behaviour of a witness must be assessed in the backdrop of the surrounding facts and not on abstract expectations.

50. Applying the aforesaid principle to the present case, the conduct of PW-1 cannot be termed unnatural merely because he did not behave in a particular expected manner. His testimony, when read in its entirety, does not suffer from any inherent improbability and his conduct does not create such doubt as would discredit his otherwise consistent and cogent evidence.

Conclusion:

51. Upon a comprehensive re-appraisal of the entire evidence on record, this Court finds that the prosecution case rests primarily upon the ocular testimony of PW-1 Brij Kishore, which has been subjected to lengthy cross-examination but has remained consistent and intact in material particulars. His presence at the place of occurrence has been satisfactorily explained and does not appear to be artificial or doubtful. The medical evidence corroborates the nature of injuries and broadly supports the manner of assault as narrated by the eyewitness.

52. The contention regarding absence or remoteness of motive does not assume determinative importance in the present case, which is founded upon direct eyewitness account. The principles embodied under Section 134 of the Evidence Act and reiterated by the Hon'ble Supreme Court in authoritative pronouncements clearly establish that conviction can be sustained on the testimony of a single reliable

witness. PW-1, upon careful scrutiny, is found to be a natural and credible witness whose testimony inspires confidence.

53. The non-recovery of the alleged weapon of offence and the alleged investigative lapses do not create such infirmity as would demolish the prosecution case. It is well settled that defective investigation or absence of recovery cannot override otherwise cogent and trustworthy evidence. Likewise, the fact that the principal witness is related to the deceased does not render his testimony suspect, particularly when no material has been brought on record to establish false implication or ulterior motive.

54. This Court also finds that the learned trial court has appreciated the evidence in its correct perspective and has not committed any manifest error warranting interference in appeal. The conviction under Sections 302/34 IPC and 201/34 IPC stands supported by reliable evidence on record.

55. In view of the above discussion, this Court is of the considered opinion that the prosecution has successfully proved its case against the surviving appellants beyond reasonable doubt. The appeal, therefore, does not merit interference.

56. The impugned judgment and order dated 08.10.1986 passed by IIIrd Additional Sessions Judge, Unnao do not warrant any interference by this Court. The conviction recorded and sentence of life imprisonment awarded under Section 302/34 of IPC and five years of rigorous imprisonment under Section 201/34 of IPC to the

appellant no. 3 Rakesh and appellant no. 4 Santosh are hereby **affirmed**.

57. Consequently, the criminal appeal is **dismissed**. The appellants are on bail. They shall surrender within 15 days before the court concerned and shall be sent to jail to serve out the sentence imposed upon them, failing which the concerned court shall take appropriate action in this regards. The bail bond is cancelled and sureties are discharged.

58. Let a copy of this judgment, along with the trial court record, be transmitted forthwith to the court concerned for necessary compliance.

(Zafeer Ahmad, J.) (Rajnish Kumar, J.)

March 18, 2026

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