



2026:AHC-LKO:16932-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**CRIMINAL APPEAL No. - 926 of 2001**

Basheer Ahmad And 3 others .....Appellant(s)

Versus

State of U.P. ....Respondent(s)

Counsel for Appellant (s) : Rishad Murtaza, A.K. Srivastava,  
Ashok Kumar Singh, Girish Kumar  
Pande, Jaikaran, Rahul Kumar  
Singh, Saurabah Srivastava,  
Saurabh Srivastava

Counsel for Respondent(s) : Govt. Advocate, Amar Nath Pandey

**Court No. -10**

**Reserved on 10.12.2025  
Delivered on 09.03.2026**

**A.F.R.**

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

**(Per : Rajnish Kumar, J.)**

**(1)** Heard Sri Rishad Murtaza, learned Counsel for the appellant nos. 1, 2 and 4, Sri Rahul Kumar Singh, learned Counsel for the appellant no.3, Sri Pawan Kumar Mishra, learned A.G.A. for the

State and Sri Amar Nath Dubey, learned Counsel for the complainant.

- (2) The instant criminal appeal under Section 374 of the Code of Criminal Procedure, 1973 (here-in-after referred to as “*Cr.P.C.*”) emanates from the judgment and order dated 09.10.2001 passed by learned Additional Session Judge (Fast Track Court), Pratapgarh, in Sessions Trial No. 506 of 1994; *State Versus Bashir Ahmad and others*, arising out of Case Crime No.220 of 1994, under Section 302/34 of the Indian Penal Code, 1860 (here-in-after referred to as “*I.P.C.*”), Police Station Jethwara, District Pratapgarh.

**FACTS**

- (3) The prosecution case, in short, is that on 13.07.1994, complainant, Ram Pratap Singh, submitted a written report (Ext. Ka. 1), stating therein that he is the Gram Pradhan of Gram Sabha Walipur Parsan. On 13.07.1994, he and Shri Sita Ram, son of Lallu Ram Jaiswal, Gram Pradhan of Sidhour, was distributing kerosene oil at Shamsheganj Bazaar (Market). At around 07:30 a.m., Bashir son of Minhaj, Wakeel Ahmad son of Minhaj, Hamid son of Chhote Khan and Bhullar son of Umar Khan, residents of village Sidhour (Nauturwa), Police Station Jethwara, District Pratapgarh, came to the fair price shop and fired with gun and country-made pistol

upon Sita Ram Pradhan, as a consequence of which, Sita Ram Pradhan died on the spot. Ganga Prasad Singh, son of Choharja Singh and Shamsheer Singh, son of Mataprasad Singh, residents of village Walipur Parsan, Police Station Jethwara, District Pratapgarh, who came to bring Kerosene Oil, saw the accused persons firing. On hearing the firing, several villagers ran, upon which the accused persons fled away towards their home.

- (4)** On the basis of the aforesaid written report (Ext. Ka.1), F.I.R., bearing Case Crime No. 220 of 1994, under Section 302 I.P.C., was registered on 13.07.1994 at 09:15 A.M. at police station Jethwara, district Pratapgarh against four accused persons, namely, (1) Bashir son of Minhaj, (2) Wakeel Ahmad son of Minhaj, (3) Hamid son of Chhote Khan and (4) Bhullar son of Umar Khan.
- (5)** The investigation of the case was entrusted to S.I. Girivar Giri (P.W.3). On 13.07.1994, the Investigating Officer S.I. Girivar Giri, after getting investigation, got copy of the F.I.R. and the report and reached at the place of incident and prepared the inquest report of the dead body and sent it for post-mortem examination. He recovered the blood stained soil and plain soil, empty cartridges, wed (tikuli), bullet and pellet etc. from the place of occurrence and prepared recovery memo of it. He also prepared site plan.

(6) The postmortem of the dead body of the deceased Sita Ram was conducted by Dr. B.B. Sethi (P.W.4) on 14.07.1994 at about 10:00 a.m. The doctor found the age of the deceased about 44 years and probable time of death was about one day; the deceased was of average built; both eyes were protruded and rigor mortis was present in both extremities. He found following ante-mortem injuries on the body of the deceased Sita Ram :-

- (1) Fire Arm wound of entry 4 cm x 2 cm x muscle lower part of Right axilla over posterior Axillary fold. Vertical blackening scorching, tattooing present.
- (2) Fire Arm wound of exit 9 cm x 4 cm x muscle over lower part of Rt. axilla on Anterior axillary fold (Right), oblique. Communicating with injury No.1.
- (3) Fire arm wound of entry 2 cm x 1 cm x cavity Right Side Abdomen 2 cm below umblicus at 7 O'clock position. Oblique Blackening, Scorching, Tattooing present.
- (4) Fire arm wound of exit 4 cm x 2 cm x cavity Right Side Abdomen 5 cm away from umblicus at 9 O'clock position. Omentum is coming out. oblique.
- (5) Fire arm wound of entry 6 cm x 4 cm x Bone left side Neck 3 cm above sternal Notch, oblique. All the Muscles, Vessels, Trachea, oesophagus in neck Lacerated. Fracture of All Cervical Vertebrae, Blackening, Scorching, Tattoing present.
- (6) Fire arm wound of exit 15 cm x 10 cm x Bone Right Side head just above Right ear. Oblique. All the bones of skull, face, Mandible Fractured. Right ear lacerated.
- (7) Fire arm wound of entry 4 cm x 2 cm x bone left side Neck just below left ear lobule, Oblique, Fracture of Jaws, Skull Bones. Blackening, Scorching. Tattooing present.
- (8) Fire Arm wound of exist 10 cm x 6 cm. Left side Forehead and head just above left ear. Oblique with fracture of underlying bones.”

On internal examination, Dr. B.B. Sethi found that membranes were lacerated; brain was badly lacerated; cervical vertebrae were fractured; and spinal cord was lacerated in neck. He also found that peritoneum was lacerated; abdominal cavity contains 1½ litres of blood; stomach was empty; small intestine lacerated at several places; mesentery above was lacerated and contains liquid gas; large intestine-mesentery lacerated at places and contains gas and faecal matter. He also found seven pieces of wadding and thirty four pellets in the body of the deceased, out of which, three wadding and ten pellets were found in head, four pellets in right axilla; four wadding and four pellets in liver, sixteen pellets in abdominal cavity and muscles and mesentery.

As per the opinion of Dr. B.B. Sethi, the cause of death was due to shock and haemorrhage as a result of ante-mortem injuries.

- (7) The further investigation of the case was entrusted to Shri Shivanand Mishra (P.W.5), Incharge Inspector, Lalganj, who, after getting the order of attachment under Section 82/83 Cr.P.C., started proceedings for attachment of the property of the accused persons. Thereafter, he arrested the accused persons. The Investigating Officer, Shivanand Mishra, after collecting material evidences and recording statements of witnesses, submitted the charge-sheet

No.126/94 on 21.07.1994 under Section 302/34 I.P.C. against accused Bashir Ahmad, Hamid, Bhullar and Wakeel Ahmad alias Munda.

- (8) The Chief Judicial Magistrate, Pratapgarh, took the cognizance on the charge-sheet and after making compliance of Section 207 Cr.P.C., committed the case to the Court of Session by means of order dated 17.10.1994, where on 06.01.1995, appellants were charged for the offence punishable under Section 302/34 I.P.C., to which they pleaded not guilty and claimed to be tried.
- (9) In support of its case, the prosecution examined the following six witnesses :-

P.W.1-Ram Pratap Singh	Complainant /eye witness
P.W.2-Ganga Prasad Singh	Eye witness
P.W.3-Shri Girivar Giri	First Investigating Officer
P.W.4-Dr. B.B. Sethi	Conducted the post-mortem of the deceased Sita Ram
P.W.5-Shri Shiva Nand Mishra	Second Investigating Officer, who filed charge-sheet against the accused persons
P.W.6-C.P. Mohammad Sabir	Prepared chik F.I.R. on the basis of written report submitted by complainant

- (10) Apart from the aforesaid, the prosecution has also produced and proved the material exhibits and following documentary evidence :-

Ext. Ka.1	Written Report
Ext. Ka.2	Recovery memo of recovery of 15.75 paise
Ext. Ka.3	Panchayatnama
Ext. Ka.4	Photo lash
Ext. Ka.5 & Ext. Ka.6	Report of police station Jaithwara
Ext. Ka.7	Form No. 13
Ext. Ka.8	Form No.33
Ext. Ka. 9	Sample Seal
Ext. Ka.9Ka	Recovery memo of Blood stained soil
Ext. Ka.10	Recovery memo of empty cartridges
Ext. Ka.11	Post-mortem report
Ext. Ka.12	Charge-sheet
Ext. Ka.13	First Information Report
Ext. Ka. 14	Copy of Report No. II
Ext. Ka. 15	Site plan

- (11) After completion of the oral as well as documentary evidence, the statements of the accused/appellants under Section 313 of Cr.P.C. were recorded, in which they stated that they were innocent and have been falsely implicated on account of enmity and on the pressure of Ex-MLA Shri Ramesh Bahadur Singh.
- (12) After conclusion of trial, the Trial Court, by means of judgment and order dated 09.10.2001, convicted the accused/ appellants for the offence under Section 302 read with Section 34 of IPC and sentenced them to undergo life imprisonment and a fine of Rs.20,000/- and in default of payment of fine to undergo two years additional imprisonment.

(13) Being dissatisfied, the accused/appellants has come up before this Court with the present appeal.

**ARGUMENTS**

(14) Shri Rishad Murtaza, learned Counsel for the appellants no. 1, 2 and 4 submitted that the conviction recorded by the learned Trial Court is wholly unsustainable in law and on facts, as the prosecution has failed to prove its case beyond reasonable doubt. He has contended that the entire prosecution case rests upon the testimony of P.W.1-Ram Pratap Singh and P.W.2-Ganga Prasad Singh, who are neither natural nor independent witnesses, but both are chance witnesses and their presence at the place of occurrence has not been satisfactorily explained and their presence at the place is doubtful.

(15) He further submitted that both witnesses, P.W.1 and P.W.2, are admittedly inimical towards the appellants on account of prior political rivalry. Their evidence, therefore, requires strict scrutiny and independent corroboration, which is absent in the present case. Moreso, there are material contradictions between the evidence of P.W.1 and P.W.2 regarding the manner of assault, sequence of events and participation of the accused persons. These

contradictions go to the root of the prosecution case and render their testimony unreliable.

- (16) He further submitted that the medical evidence does not fully support the ocular evidence. The injuries described in the post-mortem report are not wholly consistent with the manner of assault as narrated by the alleged eye-witnesses P.W.1 and P.W.2. He further submitted that the prosecution has withheld the best available evidence and independent witnesses from the locality have not been examined without any plausible explanation. Thus, an adverse inference under Section 114(g) of the Evidence Act is liable to be drawn against the prosecution. In this backdrop, his submission is that the possibility of false implication cannot be ruled out, particularly in view of admitted enmity between the parties. According to him, where two views are possible on the evidence adduced, the view favourable to the accused must be accepted. Hence, since the learned Trial Court failed to properly appreciate the contradictions and inconsistencies in the prosecution case and erroneously recorded conviction of the appellants by means of the impugned judgment and order and the cumulative effect of the infirmities in the prosecution case creates reasonable doubt, therefore, the appellants are liable to the benefit of doubt

and acquitted setting aside the impugned judgment and order passed by learned trial Court.

(17) In support of his submission, learned Counsel for the appellants no. 1, 2 and 4 has placed reliance on the judgment of the Apex Court rendered in the case of **Mallappa & others Vs. State of Karnataka**; 2024 INSC 104 (Criminal Appeal No.1162 of 2011, decided on 12.02.2024), **Ashok Vs. State of Uttar Pradesh**; 2024 INSC 919 (Criminal Appeal No. 771 of 2024, decided on 02.12.2024), **Khema @ Khem Chandra Etc. Vs. State of Uttar Pradesh**; 2022 LiveLaw (SC) 689; **Vadivelu Thevar Vs. the State of Madras**; 1957 AIR 614 and the judgment of this Court rendered in the case of **Brijraj @ Vijay Vs. State of U.P.**; 2025:AHC-LKO;74467-DB.

(18) Shri Rahul Singh, learned Counsel appearing on behalf of the appellant no.3 submitted that one eye-witness in the F.I.R. has not been examined by the prosecution. He further submitted that the place of incident as alleged by the prosecution is doubtful. According to him, incident as alleged by the prosecution had occurred at a public place, however, no independent witness has been examined. There are material improvements and contradictions in the statements of P.W.1 and P.W.2 during trial,

however, the prosecution has failed to explain the contradictions. He further submitted that the medical evidence does not fully support the ocular evidence of the prosecution witnesses. The post-mortem report indicates entry and exist wounds only and allegations of multiple firearm injuries are not substantiated. No empty cartridges were recovered from the spot. He has further submitted that the prosecution has failed to satisfactorily prove the distribution of oil at the time of prosecution in the fair price shop. Thus, the appellant no.3 is liable to benefit of doubt and acquitted setting aside impugned judgment and order.

- (19)** Shri Pawan Kumar Mishra, learned A.G.A. vehemently opposed the submissions of the learned Counsel for the appellants and has submitted that there are no contradiction in the evidence of eye-witnesses P.W.1 and P.W.2, however, way of telling about the incident may be different, which is natural. The learned trial Court has carefully evaluated the evidence of P.W.1 and P.W.2 and found their evidence trustworthy. The findings of the learned trial Court are based on proper appreciation of evidence and material on record, which does not suffer from any illegality or perversity. The prosecution has proved the case beyond reasonable doubt. Hence the conviction of the appellant has rightly been made by the

learned trial Court by means of the impugned judgment and order and the present appeal is liable to be dismissed.

- (20) Shri Amar Nath Dubey, learned Counsel appearing on behalf of the complainant has also vehemently opposed the submissions of learned Counsel for the appellants and has argued that the F.I.R. was promptly lodged and the names of accused persons and the specific role of firing are clearly mentioned. Thus, there is no delay and no possibility of deliberation or false implication.
- (21) He further submitted that P.W.1 is not a chance witness as his presence at the place of occurrence is natural because he was present for distribution of the kerosene oil of his village at the time of incident, which was required. P.W.2 was also present at the spot for purchasing the kerosene oil and his name has been mentioned in the F.I.R. Thus, the presence of P.W.1 and P.W.2 at the time of incident is not doubtful and they cannot be said to be chance witnesses. He further submitted that the post-mortem report indicates four entry and four exit wounds and the doctor has clearly opined that the death of the deceased was due to ante-mortem injuries, which were caused by firearm. Furthermore, the injury pattern supports the allegations of close range firing. Thus,

there is complete consistency between ocular testimony and medical findings.

(22) He further submitted that the prosecution has fully proved the motive behind the murder of the deceased. He further submitted that P.W.5-Shri Shiva Nand Mishra has clearly stated that it is a case of broad day light murder and due to long criminal history of the appellants, no independent witness has come forward to adduce evidence against the appellants, however, the Investigating Officer has recorded the statement of all the witnesses under Section 161 Cr.P.C. To show the criminal history of the appellants, learned Counsel has drawn our attention to the order dated 27.02.2025 passed by a Co-ordinate Bench of this Court in C.M. Application No. IA/14/2024 (Application for cancellation of Bail) in re: Criminal Appeal No. 926 of 2001 : Basheer Ahmad and 3 others Vs. State of U.P. Thus, submission is that the prosecution case is fully supported by the ocular as well as medical evidence and the conviction recorded by the learned trial Court deserves to be affirmed and sentence confirmed, consequently the appeal is liable to be dismissed.

(23) In support of his submission, Shri Dubey has placed reliance on **Sathya Narayanan Vs. State rep. By Inspector of Police; 2013**

(80) ACC 138, **Javed Vs. State of U.P.**; 2013 (2) JIC 16 (All), and **Narsingh Vs. State of U.P.**; 2011 (3) JIC 64 (All).

**ANALYSIS**

- (24) We have heard learned Counsel for the parties and gone through the trial Court's record as well as impugned judgment.
- (25) Complainant Ram Pratap Singh appeared as P.W.1. He stated that the written report of the incident was given by him at Police Station Jethwara, which is in his handwriting and signed by him. It has been marked as Ext. Ka.1. The written report of the incident occurred on 13.07.1994 at 07:30 A.M. has been lodged on the same day at 09:15 A.M. at police station Jethwara. The writer of the chik F.I.R. on the basis of written report submitted by the complainant appeared as P.W.6, namely, C.P. Mohammad Sabir. He stated that on the basis of the written report of the complainant, Ram Pratap Singh (P.W.1), he had written chik F.I.R., which is in his handwriting and signed by him. The entry of it was made in the G.D. as Rapat No. 11. The case was lodged at 09:15 A.M. He has proved the chik F.I.R. as well as copy of the G.D. entry as Ext. Ka. 13 and 14, respectively. In the cross-examination from both, complainant Ram Pratap Singh (P.W.1) and P.W.6-C.P. Mohammad Sabir, nothing could be extracted, which may create any doubt

about the writing of the report on the basis of the written report submitted by the complainant at 09:15 A.M. in regard to the incident at 07:30 A.M. on 13.07.1994. Thus, the F.I.R. was promptly lodged.

**(26)** A dispute was tried to be raised in regard to names of accused persons given in the written report because they are not in same chronological order because in the written report (Ext. Ka.1), names of accused persons have been mentioned as Bashir, Wakeel Ahmad, Hamid and Bhullar but in the chik F.I.R. (Ext. Ka. 13), firstly name of Wakeel Ahmad alias Munda and thereafter Bashir and other accused persons have been given. In this regard, a doubt in the prosecution case on its basis have been tried to be created by learned Counsel for the appellants. Learned trial Court, after considering the aforesaid grounds raised by learned Counsel for the appellants, has recorded a finding that there is no delay in lodging the F.I.R. as the distance of the police station from the place of the incident is 12 Kms and merely by changing the order of accused persons in the chik F.I.R., the case cannot be said to be doubtful.

**(27)** A doubt has also been tried to be created on the prosecution case on the ground that in the inquest report, 'alias Munda' was written

with Wakeel Ahmad, whereas it is not in the F.I.R. However, learned trial Court has recorded a finding that in case he was known by the said name also, it has been written in the inquest report as such, it would not have any adverse effect on the prosecution case. Even otherwise, it has not been disputed that Wakeel Ahmad is known as 'Munda' also, therefore, on coming to know it, if 'alias Munda' has been mentioned with Wakeel Ahmad, it cannot have any adverse effect on the prosecution case. This Court does not find any illegality or infirmity to the findings recorded by the learned trial Court in regard to lodging of the F.I.R., delay and mentioning of 'alias Munda' with the name of Wakeel Ahmad in the inquest report.

- (28)** The complainant (P.W.1), who is an eye-witness, has stated in his evidence that he knows the accused persons, namely, Bashir Ahmad, Wakeel Ahmad alias Munda, Bhullar, Hamid, resident of Sindhur Sautodava, police station Jethwara, Pratapgarh. Bashir and Wakeel Ahmad are real brothers and accused Bhullar is their cousin brother. Accused persons are their co-tenure holders and friend. They are dreaded criminal and criminal cases are going on against them. The name of aunt (बुआ) of accused Bashir is Hadisul, who has been married to Badiruddin resided at Jameshrapur, Police Station Jethwara. The name of daughter of

Hadisul is Pammu, who was married with Illias of Sindhour. The fair price shop dealer Farooq is the real brother of Illias and brother-in-law of Sageer. He further stated that in the election of Pradhan of Village Sindhaor held in 1988-89, the deceased Sita Ram and father of accused Bashir, namely, Minhaj, had contested the election against each other, in which deceased Sita Ram was declared elected as Pradhan, on account of which, accused persons were keeping enmity with the deceased Sita Ram. In the Assembly Election held in November, 1993, accused Bashir and his family members were supporter of Congress and on the date of voting, they had injured Sita Ram and Tulsi Ram, on account of which, Sita Ram had lodged the prosecution, under Section 307 I.P.C., against them. He also stated that deceased Sita Ram had given his house to the fair price shop dealer Farooq Ahmad on rent. In the same house, on the date of the incident, kerosene oil and sugar were being distributed. The deceased Sita Ram had another house at a distance of 150 steps from the said shop in the western side, in which his family resides. On the date of incident, complainant (P.W.1) was the Pradhan of village Walipur Parsan and the kerosene oil and sugar of his village Sindhour was also being distributed at the same fair price shop of Farooq Ahmad and the deceased Sita Ram, being Pradhan, used to get distributed kerosene oil and sugar.

(29) P.W.1 further stated that about ten months back, on the date of incident, the complainant (P.W.1) had gone to Shamsheer Ganj at 07:00 in the morning for distribution of the oil, where Pradhan Sita Ram (deceased) and Farooq met. The deceased Sita Ram had also come for distribution of kerosene oil of village Sindhur. He further stated that when he asked from the deceased Sita Ram for tea, he said that it was Tuesday fast yesterday; his stomach was upset; he had not even gone to defecate, therefore, after distribution of the oil, he would bathe and then have tea and water. Thereafter, he sat near the eastern room of Hajari and distribution of oil started and to his west, Sita Ram was getting oil of his village distributed. Sita Ram was sitting on a bench placed on the platform (चबुतरा) and on that bench, one man, namely Bhola, was also sitting and in the middle of the bench, Farooq, the *kotedar* (fair price shop dealer) was sitting. He further stated that two separate lines were formed for taking oil; one of his village (Walipur Parsan) in eastern side and another of the village (Sindhur) of Sita Ram on the western side. He further stated that the incident occurred at about 07:30 A.M. The accused Bhullar caught Sita Ram from the platform (चबुतरा) and pulled him down, on which Sita Ram raised alarm, then he ran and tried to get him relieved. At that moment, accused Bashir and Hamid took out their

countrymade pistols (कट्टा) and said “हट जाओ नही तो तुम्हे ही मार देंगे।” (*keep aside otherwise you would also be killed*). While saying this, they fired one or two shots from the front at Sita Ram, which hit him in the stomach. There was a large crowd and chaos ensued. Bhullar then fired from his own countrymade pistol (कट्टा) at the right shoulder of Sita Ram. He further stated that he ran and hid in the house of Nure Sardar. After that when Sita Ram fell down, Wakeel alias Munda fired at the face of Sita Ram by a double-barrel gun from close range. Munda also fired two shots in the air and said that if anyone came there, he would shoot him as well. Thereafter, accused persons went away towards the east in the direction of their village. The complainant, Ram Pratap Singh (P.W.1), had lodged the written report of the incident at the police station, on the basis of which chik F.I.R. was written. He proved the F.I.R. marked as Ext. Ka.1. Thus, complainant (P.W.1), Ram Pratap Singh, who is an eye-witness, has given the details of the firearm used in the incident and manner of fire at deceased Sita Ram.

**(30)** P.W.2, Ganga Prasad Singh, the second eyewitness and an independent witness, was present at the spot for the purpose of purchasing kerosene oil from the fair price shop, therefore, his presence at the spot was natural and he cannot be said to be not an

eyewitness. He corroborated the testimony of the complainant, P.W.1. P.W.2 stated that the incident occurred about a year ago, in the morning, when he had gone to Shamsheer Ganj Market to collect kerosene oil. In the market, kerosene oil was being distributed at the house of the deceased, Sita Ram Pradhan. The Pradhan of his village, Ram Pratap Singh, had also come to the market for the same purpose. A large crowd was present and people were made to stand in a queue. P.W.2 stood in the line, while Sita Ram was getting the oil of his village distributed, Sindhur, and was seated on a bench on the platform (चबुतरा) along with Mohammad Farooq, the fair price shop dealer, and another person. The fair price shop for both villages, including Sindhur, was operated by Mohammad Farooq. P.W.2 described the incident in the same manner as P.W.1. He stated that at around 7:30 A.M., the accused Bhullar caught Sita Ram from behind and pulled him down from the platform (चबुतरा). Thereafter, Bashir fired repeatedly at Sita Ram from the front. When Ram Pratap Singh (P.W.1) attempted to intervene, he was threatened that he too would be killed if he came in between. The accused Hamid also fired at Sita Ram from the side of right shoulder. Sita Ram fell down and Wakeel Ahmad alias Munda fired two shots at him from a double-barrel gun, keeping it near the side of his mouth, while Hamid used a country-made pistol. After the death of Sita Ram,

Wakeel Ahmad alias Munda fired two additional shots in the air and threatened that if anyone would come forward, he will be killed, causing fear and silence among the crowd. Thereafter, the accused fled from the spot. The evidence of P.W.1 and P.W.2 is in complete consonance and consistency. There is no contradiction in their statements regarding the place and time of the incident, the manner of occurrence, the number and names of the accused persons, the role of each accused or the weapons used.

- (31)** The defence made extensive cross-examination of both witnesses, P.W.1 and P.W.2, but nothing emerged during the cross-examination, which could create any doubt on the veracity of their testimonies. The learned Trial Court considered their evidence in detail and recorded that there is complete coherence in the evidence of both witnesses. It has specifically been noticed that P.W.1, Ram Pratap Singh was cross-examined at length, covering approximately 82 pages, on the grounds that the accused had been implicated due to enmity and on allegations of an illicit relationship between him and the wife of the deceased, Sita Ram. However, the cross-examination did not elicit any material that could have any adverse effect on the prosecution case. Similarly, P.W.2, Ganga Prasad Singh, was cross-examined extensively, but nothing adverse emerged from his testimony either. This Court is

fully in agreement with the findings of the learned Trial Court, which are based on a careful appraisal of the evidence and material on record. The credibility and consistency of the testimonies of P.W.1 and P.W.2 remain intact and their evidence continues to strongly support the prosecution case.

**(32)** An argument was also raised regarding alleged political enmity, as mentioned in the evidence of the complainant, Ram Pratap Singh (P.W.1), who stated that he was an agent of a candidate of the Bharatiya Janata Party, namely Shri Ramesh Bahadur Singh, whereas the accused persons were supporters of a Congress party candidate. It was further deposed that in the Gram Pradhan election of 1988–89, the deceased, Sita Ram, had contested against Minhaz, the father of the accused Bashir, and had won. In addition thereto, the deceased Sita Ram had lodged prosecution under Section 307 I.P.C. Learned counsel for the appellants contended that on account of this alleged enmity and under pressure from the then MLA, Shri Ramesh Bahadur Singh, the accused were falsely implicated. However, the defence failed to adduce any evidence in support of this contention and relied only on bare allegations. The learned Trial Court rightly recorded that mere support of a political candidate cannot, by itself, establish political enmity or create a presumption that the witnesses would falsely implicate the

accused. The findings of the trial Court are based on evidence and material on record. No evidence could be adduced by the defence to discard or discredit the prosecution case and nothing substantive also could be pointed out before this Court on account of which, this Court may take any contrary view, therefore, the contention of political enmity has no merit and stands rejected.

- (33)** The main thrust of arguments of learned Counsel for the appellants is that P.W.1 and P.W.2 are chance and interested witnesses, therefore, their testimony is not reliable. It has also been alleged that the complainant (P.W.1) had an illicit relationship with the wife of the deceased, Sita Ram, and on that basis the accused persons have been falsely implicated. It has further been contended that P.W.2, Ganga Prasad Singh, is an interested witness merely because he is a supporter of MLA Mr. Ramesh Bahadur Singh of Bhartiya Janta Party. However, both these allegations remain unsubstantiated, as no cogent evidence has been adduced by the defence to prove either the alleged illicit relationship or any motive on the part of the witnesses to falsely implicate the accused persons/appellants. Mere suggestion or bald allegation, without supporting evidence, cannot be accepted as proof. It was also argued that the wife of the deceased was not produced in the witness box. In this regard, this Court is of the considered view

that where specific allegations are levelled by the accused persons, the burden lies upon them to substantiate such allegations by leading evidence. In the absence of any material to support the defence version, the testimony of P.W.1 and P.W.2 cannot be discarded on mere conjectures or surmises. P.W.1 and P.W.2 can also not be said be chance witnesses, as discussed above, and their presence on spot was natural and obvious. When the witnesses were present on the spot for the specific purpose, for which, the persons had come, they cannot be said chance witnesses. Even otherwise, these cannot be ground to discard the testimony of a witness, when his presence on the spot is not doubtful and his testimony inspires confidence and nothing could be extracted from him or produced, which may create any doubt on his presence or testimony. However, his testimony requires deep scrutiny and some corroboration.

- (34)** Hon'ble Supreme Court in the case of **Vadivelu Thevar Vs. the State of Madras (supra)**, opined that *“it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely: (1) Wholly reliable; (2) Wholly unreliable; (3) Neither wholly reliable nor wholly unreliable.”* It has further been held that *“the Court should have no difficulty incoming to its conclusion either way i.e. it*

*may convict or may acquit in the first category and equally in the second category but in the third category of cases, the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.*

**(35)** The aforesaid judgment has been relied, by the Hon'ble Supreme Court, in the case of **Khema @Khem Chandra Etc. Versus State of Uttar Pradesh (supra)**. The relevant paragraph-21 is extracted here-in-below :-

*"This Court, in the celebrated case of **Vadivelu Thevar v. State of Madras**; [1957] SCR 981, has observed thus:*

*".....Hence, in our opinion, it is a sound and well established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:*

- (1) Wholly reliable.*
- (2) Wholly unreliable.*
- (3) Neither wholly reliable nor wholly unreliable.*

*In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial....."*

**(36)** A Division Bench of this Court, in the case of **Javed Versus State of U.P. (supra)**, has held that it is settled by a catena of judgments of the Apex Court that testimony of any interested or related witness cannot be discarded merely because of their being related or interested witnesses but the same requires caution and deep scrutiny by Court.

(37) A Division Bench of this Court, in the case of **Narsingh Versus State of U.P. (Supra)**, has observed that it is well settled law that where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance. The Court also found that it was a case of direct evidence because both the prosecution witnesses are natural witnesses who had seen the accused/appellant assaulting the victim in front of his house from where the Investigating Officer had also collected blood because both of them were returning from their agricultural plots and the deceased was also accompanying them, therefore, they cannot be said to be chance witnesses.

(38) Adverting to the facts and evidence of P.W.1 and P.W.2, it cannot be said that they would fall in the third category because they have narrated the incident in one and the same manner and minor inconsistency, if any, may be only because of telling the incident in their own way, which is natural because one incident may be described by two persons in their own manner but the fact remains that material things in regard to the incident are consistent in the evidence of both witnesses. In the case of ocular witness account, if it proves the case, the motive and medical examination are not much relevant but the motive has been shown by defence himself by cross-examining and raising issues on that account and it is

settled that enmity is double edged sword, which may be either way.

**(39)** Insofar as the medical evidence is concerned, Dr. B.B. Sethi (P.W.4) conducted the post-mortem examination of the deceased and proved the post-mortem report, which was marked as Ext. Ka-11. He stated that the incident could have occurred on 13.07.1994 at about 07:30 A.M. The doctor further proved the ante-mortem firearm injuries sustained by the deceased. In the ocular testimony account, P.W.1 and P.W.2 stated that four shots were fired at the deceased. Correspondingly, the doctor found four entry wounds and four exit wounds on the body. He also stated that in respect of the shot fired with the gun placed close to the face of the deceased, blackening and tattooing were present, indicating close-range firing. Thus, the post-mortem report and the testimony of Dr. B.B. Sethi (P.W.4) fully corroborate the prosecution case as narrated by the eye-witnesses, P.W.1 and P.W.2, and there is complete consistency between the medical and ocular evidence, therefore, the medical evidence also supports the prosecution case and ocular testimony.

**(40)** An argument was also raised by learend Counsel for the appellant that the incident could not have occurred on 13.07.1994 at 07:30 A.M., as alleged by the prosecution, but might have taken place at

about 04:00 A.M., as the stomach of the deceased was empty, and that the deceased was killed by unknown persons during the darkness of the night. It was argued that the named accused were falsely implicated by showing the time of occurrence as 07:30 A.M., particularly in view of the statement of P.W.4, Dr. B.B. Sethi, who stated in his evidence also that the death could have occurred around 04:00 A.M. This Court does not find any merit in the aforesaid submission. The evidence of the eye-witnesses, P.W.1 and P.W.2, clearly establishes that the incident occurred at 07:30 A.M., and this version has not been contradicted by any cogent evidence adduced by the defence. The contention raised is based merely on conjecture and surmises. Moreover, P.W.1 has explained in his testimony that he had asked the deceased, Sita Ram, to take tea, but the deceased declined, stating that he had observed a fast on Tuesday and his stomach was not well, and that he had not yet defecated. He further stated that he would take tea after distribution of oil and taking bath. This explanation reasonably accounts for the empty stomach of the deceased on the date and time of the incident. The learned Trial Court has also dealt with this aspect in detail and rightly observed that the act of attending to nature's call or the presence or absence of food in the stomach cannot be fixed with mathematical precision, as it depends upon varying circumstances such as eating, drinking, and sleeping

habits. Merely because gas or emptiness was found in the stomach, it cannot be conclusively inferred that the death occurred prior to 07:30 A.M. The doctor has also given only an opinion, which cannot be conclusive, particularly when the ocular evidence of occurrence is otherwise, which is also corroborated by medical evidence. This Court, therefore, finds no illegality or perversity in the findings recorded by the learned Trial Court, which has been based on proper appreciation of the evidence on record. Thus, the contention of learned Counsel for the appellants in this regard also lacks merit and stands rejected.

- (41)** An argument was also advanced that the ante-mortem injuries were not consistent with the manner of assault as described by the prosecution witnesses. However, the learned trial Court considered this contention in detail and found that the alleged inconsistency stood sufficiently explained by the witnesses. The learned trial Court observed that persons present at the spot cannot be expected to minutely observe every detail of the incident, particularly in a situation involving firing. It may not be possible for them to accurately remember the exact direction, sequence, or manner of firing, especially when people are likely to change positions in such circumstances and when panic situation occurred on account of firing. On that account alone, the prosecution version cannot be

said to be improbable. Upon appreciation of the evidence, the learned trial Court found that there is no contradiction between the ocular and medical evidence. In the internal examination of the deceased, the same number of firearm injuries were found as stated by the prosecution witnesses and reflected in the relevant documents. The eye-witnesses, P.W.1 and P.W.2, deposed that firearm injuries were caused in the stomach, on shoulder and face of the deceased, Sita Ram. The post-mortem examination revealed corresponding injuries at those very places, as proved by the evidence of P.W.4, Dr. B.B. Sethi. The doctor further opined in the post-mortem report that the cause of death was due to ante-mortem firearm injuries. Thus, the medical evidence fully corroborates the oral testimony, and there is no inconsistency between the ocular and medical evidence; rather, both are in complete coherence.

- (42)** The other witnesses, namely, the 1<sup>st</sup> and 2<sup>nd</sup> Investigating Officers (P.W.3 and P.W.5), have also deposed in support of the prosecution case and the post-mortem report. Nothing has been elicited from their cross-examination also to create any doubt regarding the veracity of their evidence.
- (43)** An argument was also advanced on behalf of the appellants that the register pertaining to the distribution of essential commodities

to ration card holders was not taken into custody, thereby creating doubt regarding the place of occurrence. However, when the ocular testimony, duly corroborated by medical evidence, clearly establishes the place of incident and the incident and nothing could be elicited in cross-examination to discredit the same, the mere non-seizure of the Register of Distribution of Essential Commodities or the ration cards does not render the prosecution case doubtful. The place of occurrence having been firmly established, through reliable eye-witness account, supported by medical evidence, such non-recovery is not fatal to the prosecution. The learned trial Court, after due consideration of this aspect, has rightly recorded a finding that recovery of the Register for Distribution of Essential Commodities and ration cards was not essential for proving the prosecution case.

- (44)** An argument was also raised that important witnesses have been withheld, as neither persons named in the F.I.R., nor any ration card holder referred to in the evidence of P.W.1, had been examined by the prosecution. However, this contention of the learned counsel for the appellants is misconceived and not tenable. It is the prerogative of the prosecution to adduce such evidence as it considers necessary to support its case. Merely because certain persons named in the F.I.R. were not examined, it cannot

automatically be inferred that their testimony would have been favourable to the defence or adverse to the prosecution. The prosecution is entitled to rely on the evidence it chooses to present, and non-examination of every named individual does not, by itself, vitiate the case. However, in the present case, one of the witness shown in the F.I.R. has been examined and he has supported the prosecution case, which is corroborated by the medical evidence also.

**(45)** In this regard, learned Counsel for the complainant has invited attention of this Court towards the order passed by a Co-ordinate Bench of this Court in the instant appeal i.e. on 27.10.2025, by means of which bail granted to appellants no. 1, 2 and 4 on 28.01.2002 was cancelled, considering their criminal history on account of which it was argued by learned Counsel for the complainant that no body could have dare to give his/her evidence against the appellants, according to which appellant no.4-Wakeel Ahmad alias Munda has criminal history of 28 cases; appellant no.2-Hamid has criminal cases of at least 9 cases; and appellant no.1-Bashir Ahmad has criminal history of 18 cases. It has also been recorded in the said order as argued by the learned Counsel for the complainant that appellants no. 1, 2 and 4 were caught by the Special Task Force and rewards of Rs.50,000/- and Rs.25,000/-

were declared on the appellant nos. 4, 1 and 2, respectively, however, in some of the cases, they were acquitted.

**(46)** The Hon'ble Supreme Court, in the case of **Mollappa & others Versus State of Karnataka** (Supra), has summarized the principles which come into play while deciding the appeal from acquittal, in which Hon'ble Supreme Court has summarized that the principles of apprehension of evidence is the core element of a criminal trial and such appreciation must be comprehensive-inclusive of all evidence, oral or documentary; Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge. It has also been laid down that if the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed. The relevant points (i), (ii) and (iii) as summarized in paragraph-36, relevant for the instant case, are extracted here-in-below :-

*“(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive – inclusive of all evidence, oral or documentary;*

*(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;*

*(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;”*

- (47) A Division Bench of this Court in which one of us (Rajnish Kumar, J.) was also member, in the case of **Brijraj @ Vijay Vs. State of U.P. (Supra)**, has also relied upon **Shivaji Chintappa Patil Vs. State of Maharashtra**; (2021) 5 SCC 626, in which it has been held that in case, two views are possible in the evidences adduced, the benefit shall always go to the accused.
- (48) This Court also upon considering the evidence and material on record as well as the findings recorded by learned trial Court in the impugned judgment and order, found that it is not a case in which two views can be said to be possible on the evidence and material on record, on account of which any benefit may be in favour of the appellants.
- (49) Learned Counsel for the appellants, placing reliance on **Ashok versus State of Uttar Pradesh** (supra), contended that all incriminating circumstances were not put to the appellants in their statements recorded under Section 313 Cr.P.C., thereby resulting in a violation of the principles of natural justice. However, upon perusal of the statements of the appellants recorded under Section 313 Cr.P.C., we find no illegality or infirmity in the manner in which the opportunity was afforded to them. All material circumstances appearing in the evidence were duly put to the

appellants. Consequently, the appellants are not entitled to derive any benefit from the said decision.

(50) The judgment of the Hon'ble Supreme Court, in **Sathya Narayanan v. State rep. by Inspector of Police** (supra), relied upon by the learned Counsel for the complainant, is not applicable to the facts and circumstances of the present case. The said decision pertains to a case based on circumstantial evidence, whereas the present case rests on direct ocular testimony. The principles governing appreciation of evidence in both categories are distinct. In cases of direct ocular evidence, the Court is required to assess whether the witness falls within any of the well-settled categories, namely, wholly reliable, wholly unreliable, or neither wholly reliable nor wholly unreliable. The Court has to further examine as to whether such testimony is corroborated by other evidence, including medical evidence, if required. In contrast, in cases based on circumstantial evidence, the Court has to ascertain as to whether the chain of circumstances is complete and conclusively points to the guilt of the accused and none else and there is no hypothesis of his innocence. In such cases, motive assumes considerable significance. However, where there is trustworthy direct ocular evidence or chain of circumstances

completely pointing out towards the guilt of the accused only, the motive recedes into the background and is not of much relevance.

(51) Adverting to the facts of the present case, it is evident that the prosecution rests on direct evidence. The case has been proved through the testimony of two eye-witnesses, namely P.W.1 and P.W.2, whose evidence is consistent, cogent, and coherent. Their ocular account finds due corroboration from the medical evidence, particularly the post-mortem report and the ante-mortem injuries sustained by the deceased, which ultimately resulted in his death. The scribe of the F.I.R. as well as the Investigating Officers have also given evidence in aid of the prosecution case. Despite being afforded full opportunity of cross-examination, the defence could not elicit anything material to discredit their testimony or to create any doubt or inconsistency in the prosecution testimony. The learned trial Court, upon proper appreciation of the evidence and material available on record, has rightly recorded the finding of guilt of the appellants and has passed the impugned judgment and order of conviction by a well-reasoned and speaking order, awarding appropriate sentence. This Court finds no illegality, infirmity, or perversity in the impugned judgment and order warranting interference in appellate jurisdiction.

**(52)** Consequently, the present appeal fails and is, accordingly, **dismissed**. The conviction of the appellants is upheld and sentence confirmed. The appellants are in jail, they shall remain in jail and shall serve the sentence as awarded by the learned trial Court. Pending application(s), if any, shall stand disposed of.

**(53)** Let a copy of this order as well as the trial Court's record be transmitted to the Court concerned forthwith and in any case within ten days from today for information and compliance.

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

**March 9, 2026**

Ajit/-