

AFR
Judgment reserved
on 21.07.2026
Judgment delivered
on 28.09.2026



HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1638 of 1988

Hari Ram and Other

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Manju Verma, A.N. Mulla, Ajai Kumar Malviya, V.C. Tewari
Counsel for Respondent(s)	: A.G.A., D.G.A.

Court No. - 43

HON'BLE SIDDHARTH, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi,J.)

1. Heard Ms. Manju Verma, learned Amicus Curiae duly appointed by this Court for arguing the matter on behalf of the surviving appellant No.2 Man Singh, Sri Thakur Azad Singh, learned AGA for the State-respondent, perused the trial court record and the judgment of the trial court.

2. The instant Criminal Appeal No. 1638 of 1988, *Hari Ram and Another v. State of U.P.*, has been preferred by the convict-appellants, **Hari Ram** and **Man Singh**, against the judgment and order of conviction and sentence dated 08.07.1988 passed by the learned IX Additional Sessions

Judge, Bareilly, in Sessions Trial (S.T.) No. 645 of 1984, (State v. Hari Ram and Another), arising out of Crime No. 254 of 1984, under Sections 302 and 307 of IPC, Police Station Amla, District Bareilly.

3. The prosecution story, as revealed from the FIR, Exhibit Ka-1, is that the informant, Chunni Lal (PW-1), gave oral information (*Soochna Jubani*) at Police Station Aonla on 01.09.1984, stating that his name was Chunni Lal, son of Dodaram, and that he was a resident of Village Gilauri, which fell within the jurisdiction of the said police station. He further stated that on that day, at about 5:00 p.m., there was a public hand pump situated on the western side of his house. His son, Jagpal, and nephew, Omkar, had gone there to fetch water. At that time, Hari Ram, son of Chhadammi, and Man Singh, son of Nanku, both residents of his village, also came there to fetch water. They scolded the children of my family and drove them away. Thereafter, his brother Nem Chand, his son Mohan Lal, and Ram Swaroop, a member of his family, said to them that the hand pump is public and government property and asked why they are preventing them from taking water. Upon this, an altercation began between them. Hari Ram and Man Singh then ran towards their house and brought guns. Chhadammi and Nanku exhorted them to kill them. Thereupon, Hari Ram fired a shot, which hit his brother Nem Chand in the mouth and chest, as a result of which he fell down there. Man Singh fired the second shot, the pellets from which hit Ram Swaroop in the chest and stomach. Upon hearing their hue and cry, Lakhan, son of Chunni Lal, and Dharam, son of Ram Gulam, who were present nearby and were residents of the village, intervened and

exhorted them. Thereafter, Hari Ram and Man Singh, carrying their guns, along with Chunni Lal and Nanku, ran away towards the western direction. His brother Nem Chand died on the spot due to the gunshot injuries. The informant left the dead body in the care of his family members and came to lodge the report.

4. On the basis of above oral information (*Soochna Jubani*) given by the informant, Chunni Lal (PW-1), on 01.09.1984, Head *Moharrir* Chandrapal (PW-6) of Police Station Amla registered an FIR against the accused on 01.09.1984 at 18:30 hours under Sections 302 and 307 IPC. After registration of the FIR, the case was handed over to S.I. Brij Raj Singh (PW-7) for investigation. The Investigating Officer, PW-7 Brij Raj Singh, reached the place of incident. Since darkness had set in by that time, he resumed the investigation of the case on the next day, i.e., 02.09.1984, at 04:45 a.m. He prepared a *Chitthi Majroori* in respect of the injured Ram Swaroop, marked as Exhibit Ka-5, and Constable Ram Saran Mishra took the injured Ram Swaroop to Amla Hospital for medical examination. Thereafter, under the supervision and direction of the Investigating Officer, Brij Raj Singh (PW-7), S.I. Siya Ram Pandey prepared the *Panchayatnama* of the deceased Nem Chand, marked as Exhibit Ka-6. He also inspected the place of incident and prepared the site plan, marked as Exhibit Ka-7. He collected simple soil and blood-stained soil in two separate boxes and prepared the recovery memo, marked as Exhibit Ka-8. Under the supervision and dictation of the Investigating Officer, Brij Raj Singh (PW-7), S.I. Siya Ram Pandey prepared the *photolash*, marked as Exhibit Ka-9; the letter to the CMO, marked as Exhibit Ka-10; the letter to the R.I., marked as

Exhibit Ka-11; the paper and seal of cloth, marked as Exhibit Ka-12; the *challanlash*, marked as Exhibit Ka-13; and the sample of seal, marked as Exhibit Ka-14. Thereafter, the dead body of the deceased Nem Chand was packed and sealed and handed over to Constable Ram Autar (PW-8) and Chandrapal Singh (PW-6) for autopsy. On 03.09.1984, the investigation of the case was transferred to S.I. Ghanshyam Singh. After completion of the investigation, Inspector Chaman Singh submitted a charge-sheet, Exhibit Ka-15, against the accused before the concerned Court on 28.09.1984.

5. Dr. Balbir Singh (PW-4) conducted the postmortem examination of the deceased, Nem Chand, on 02.09.1984 and prepared the postmortem report, Exhibit Ka-2. Dr. Balbir Singh (PW-4) found the following ante-mortem injuries on the body of Nem Chand:

"1. G.S.W. of entries -3 in an area of 4cm. x 4cm. on the left side of forehead 2cm. above left eyebrow, Margins inverted. No blackening & tattooing. Size of each shot .3cm. x .3cm. x cavity brain deep (2 shots removed from brain cavity).

2. G.S.W. of entries-3 in an area of 6cm. x 5cm. in the left side of face one cm. below left lower eyelid, size .3cm. x .3cm. x skin deep. Margins inverted. No blackening & no tattooing.

3. (6) Multiple G.S.W. of entries-6, in an area 8cm. 5cm. on the front of left side of neck and lower jaw. Margins inverted & no blackening & no tattooing. Size .3cm. x .3cm. x muscle deep 2 shots removed.

4. Multiple G.S.W. of entries in an area of 25cm. x 19cm. on the front of left shoulder and left side of the chest upto below left nipple. Margins inverted. Size .3cm.

x .3cm. x cavity (chest) & muscle deep. No tattooing or no blackening.

5. Two G.S.W. of entry- inverted margins on the front of right shoulder joint 2cm apart, size .3cm. x .3cm. x [illegible/crossed-out text] No blackening and no tattooing.

6. One G.S.W. of entry- .3cm. .3cm. x chest cavity deep on the right side of chest 9 cm. above right nipple. Margins inverted. No blackening and no tattooing present.

The cause of the death according to the doctor was DUE TO SHOCK AND HAEMORRHAGE.

The doctor was of the opinion that there can be variation of six hours in making the assessment medically about the time of death of the deceased."

6. The In-charge Medical Officer of Male Hospital, Amla, Bareilly, Dr. C.P. Singhal (PW-5), examined the injuries sustained by the injured Ram Swaroop and prepared the injury report, Exhibit Ka-3. Dr. C.P. Singhal (PW-5) found the following injuries on the body of the injured Ram Swaroop:

"1. One circular L.W. .25 cm. x .25 cm. x muscle deep on the left front of upper chest 2.5 cm. away from the mid line. Margins irregular. Dotted blood is present.

2. One circular L.W. .25 cm. x .25 cm. x muscle deep on the right lower part of front of chest 15 cm. away from the mid line. Margins irregular. Dotted blood is present."

7. After submission of the charge-sheet before the concerned Court, the learned Magistrate committed the case to the Court of Sessions for trial, as the case was exclusively triable by the Sessions Court.

8. On 19.03.1985, the Trial Court framed charges against the accused, Hari Ram, Man Singh, Chhadammi,

and Nanku, under Section 302 read with Section 34 of the IPC and Section 307 read with Section 34 of the IPC. Subsequently, on 03.12.1987, the charges were amended, and the Trial Court framed charges against Hari Ram, Chhadammi, and Nanku under Section 307 read with Section 34 of the IPC, and against Chhadammi, Man Singh, and Nanku under Section 302 read with Section 34 of the IPC. The Trial Court also framed a separate charge against Man Singh under Section 307 of the IPC simpliciter and against Hari Ram under Section 302 of the IPC simpliciter, both on 03.12.1987. All the accused denied the charges and claimed trial.

9. To substantiate its case, the prosecution adduced the informant, Chunni Lal (PW-1), the injured witness, Ram Swaroop (PW-2), and Mohan Lal (PW-3) as fact witnesses. Dr. Balbir Singh (PW-4), Dr. C.P. Singhal (PW-5), Chandra Pal (PW-6), Brij Raj Singh (PW-7), and Ram Autar (PW-8) were adduced as formal witnesses of the prosecution.

10. Apart from the aforesaid oral evidence, the prosecution also relied upon documentary evidence, such as, Exhibits Ka-1 to Ka-15, in support of its case.

11. The evidence of the prosecution witnesses was recorded by the Trial Court. After recording the evidence of the prosecution witnesses, the statements of the accused were recorded under Section 313 Cr.P.C. In their statements under Section 313 Cr.P.C., the accused, in response to the questions put to them, expressed ignorance regarding the matters referred to in the questions and stated that the allegations put to them were wrong and false. They further stated that they had been falsely implicated due to *parti-bandi* and in collusion

with the police. They also stated that they had been falsely implicated in the present case due to enmity.

12. The Trial Court heard the arguments advanced by the prosecution and the defence and, after perusing the entire evidence on record, acquitted accused Chhadammi and Nanku of the charges under Sections 302/34 IPC and 307/34 IPC by giving them the benefit of doubt. However, the Trial Court found appellant Hari Ram guilty under Section 302 IPC and sentenced him to life imprisonment. Hari Ram was also found guilty under Section 307 IPC read with Section 34 IPC and was convicted and sentenced to seven years of rigorous imprisonment. Accused Man Singh was found guilty and convicted under Section 302/34 IPC and sentenced to life imprisonment. He was also convicted and sentenced for the charge under Section 307 IPC. All the sentences awarded to Hari Ram and Man Singh were directed to run concurrently.

13. Aggrieved by the aforesaid judgment and order of conviction and sentence dated 08.07.1988 passed by the Trial Court, appellants Hari Ram and Man Singh have preferred the present Criminal Appeal before this Court.

14. It is noteworthy to mention here that during the pendency of the present criminal appeal, appellant No. 1, Hari Ram, died. Consequently, the criminal appeal in respect of appellant No. 1, Hari Ram, was *abated* by order of this Court dated 18.05.2018. Therefore, at present, the appeal survives only in respect of appellant No. 2, Man Singh, and we are adjudicating the present criminal appeal only in respect of the surviving appellant, namely, appellant No. 2, Man Singh.

15. Learned counsel for the surviving appellant, Man Singh, has submitted that the Trial Court acquitted

accused Chhadammi and Nanku on the basis of the same evidence adduced by the prosecution, but, contrary to the settled principles of law, convicted Hari Ram (since deceased) and the surviving appellant, Man Singh, on the basis of the same prosecution evidence. It is submitted that, on the basis of the same evidence, there could be no justification for acquitting some accused while convicting others. Learned counsel for the surviving appellant, Man Singh, has further submitted that all the fact witnesses are family members of the deceased, Nem Chand, and are related to him by blood. Therefore, in view of the aforesaid facts, the evidence of the prosecution witnesses, namely, informant Chunni Lal (PW-1), Ram Swaroop (PW-2), and Mohan Lal (PW-3), is neither reliable nor believable for the purpose of sustaining the conviction of the surviving appellant. It is further submitted that there is no independent witness who could prove the prosecution story and the allegations levelled by the informant, Chunni Lal (PW-1). Learned counsel for the surviving appellant has also argued that there are major and material contradictions in the depositions of the prosecution witnesses. For this reason, the testimony of the prosecution witnesses could not be believed or relied upon against the surviving appellant, Man Singh, for his conviction in the present case.

16. The Trial Court has failed to appreciate the entire evidence in its proper prospective and in accordance with law. Contrary to the settled principles of law, the Trial Court recorded a conviction against the surviving appellant, which is not based on cogent and reliable prosecution evidence and is also contrary to the settled principles of law. Therefore, the judgment and order of

conviction and sentence dated 08.07.1988, as passed by the Trial Court, is not sustainable in the eyes of law. Consequently, the appeal preferred by the surviving appellant, Man Singh, deserves to be allowed, and the judgment and order of conviction and sentence dated 08.07.1988 is liable to be set aside.

17. Per contra, learned AGA for the State-respondent has vehemently opposed the aforesaid submissions of learned counsel for the surviving appellant, Man Singh. Learned AGA has submitted that the present case is based on the direct evidence of eyewitnesses of the prosecution. The incident took place in broad daylight in the presence of the informant, Chunni Lal (PW-1), Ram Swaroop (PW-2), and Mohan Lal (PW-3). Injured Ram Swaroop (PW-2), who himself sustained a firearm injury, is an injured eyewitness of the prosecution. It is a settled principle of law that the evidence of an injured eyewitness cannot be rejected lightly or on flimsy grounds. Learned AGA has further submitted that the evidence of the informant, Chunni Lal (PW-1), injured Ram Swaroop (PW-2), and Mohan Lal (PW-3) finds support from the medical evidence of Dr. Balbir Singh (PW-4) and Dr. C.P. Singhal (PW-5). In other words, the oral evidence corroborates the medical evidence, and the medical evidence, in turn, lends corroboration to the oral evidence. There is no law of this kind that the evidence of family members and kith and kin of the deceased cannot be relied upon if it is found to be reliable and trustworthy beyond reasonable doubt. Learned AGA has lastly submitted that the Trial Court appreciated the evidence in its proper and legal perspective and considered the evidence in the light of the settled legal principles. The

findings and reasoning of the Trial Court are based on cogent and sound evidence and are also in accordance with the settled principles of law. There is no perversity or illegality in the judgment and order of conviction and sentence dated 08.07.1988 passed by the Trial Court. It is also submitted that there is no law to the effect that, if some accused are acquitted on the basis of the same evidence, the other accused cannot be convicted. Therefore, the appeal preferred by the surviving appellant, Man Singh, is devoid of merit and has no force in law. Accordingly, it is liable to be dismissed, and the judgment and order of conviction and sentence dated 08.07.1988 passed by the Trial Court is liable to be affirmed.

18. In the light of the submissions made by learned counsel for the surviving appellant, Man Singh, and learned AGA for the State-respondent, upon perusal of the First Information Report, Exhibit Ka-1, it is clear that the incident in the present case occurred on 01.09.1984 at about 5:00 p.m. The informant, Chunni Lal (PW-1), promptly and immediately gave oral information at Police Station Amla. Thereupon, on the same date, i.e., 01.09.1984, at 18:30 O' clock, the FIR was registered against the accused persons without any delay.

19. From a perusal of the deposition of the informant, Chunni Lal (PW-1), it appears that the incident occurred over the issue of fetching and taking water from a public hand pump. The children of the family of informant, Chunni Lal (PW-1), had gone to fetch water from the public hand pump. At that time, deceased appellant Hari Ram and surviving appellant Man Singh also arrived there to fetch water from the public hand pump. Hari Ram and

Man Singh scolded the children, namely Jagpal and Ompal, of the family of the informant, Chunni Lal (PW-1), and drove them away from the public hand pump. The children thereafter complained about the incident to deceased Nem Chand, Mohan Lal, and injured Ram Swaroop. Deceased Nem Chand, Mohan Lal, and Ram Swaroop objected to the conduct of deceased appellant Hari Ram and surviving appellant Man Singh, stating that when the hand pump was public property, there was no reason for them to prevent the children of their family from fetching water. On this issue, an altercation took place between deceased Nem Chand, Mohan Lal, and injured Ram Swaroop on the one side, and deceased appellant Hari Ram and surviving appellant Man Singh on the other side. During the altercation, deceased appellant Hari Ram and surviving appellant Man Singh went to their home and returned to the place of occurrence with their guns. Deceased appellant Hari Ram and surviving appellant Man Singh fired a shot, which hits at the mouth and in the chest of deceased Nem Chand. By this, Nem Chand fell down. After that, surviving appellant Man Singh has also fired a shot with intention to kill, that hit in the chest and stomach of the injured Ram Swaroop. It also appears that on the exhortation of Chhidammi and Nanku, deceased appellant Hari Ram and Man Singh have fired shot at Nem Chand and upon Ram Swaroop. The defence has cross-examined the informant Chunni Lal PW-1 at length. However, from the perusal of the whole cross-examination, as has been done by the defence, we find that there is no any material and major contradictions of such a nature on the ground of which,

we could disbelieve the reliable and trustworthy evidence of informant Chunni Lal PW-1.

20. From a perusal of the entire evidence of informant | Chunni Lal PW-1, it is clearly established that at the time of the occurrence, informant Chunni Lal PW-1 was present at the place of occurrence. There is no doubt about the presence of informant Chunni Lal PW-1 at the place of occurrence when incident happened. It is natural that some minor and trivial variations and contradictions and also omission are expected to surely be crept in the cross-examination of any witness, however, that trivial minor and un-relevant contradictions could not and must not create any doubt about the truthfulness and reliability of the evidence of informant Chunni Lal PW-1. Thus, we find that informant Chunni Lal PW-1 has clearly established and proved the prosecution story, as has been narrated by him in his oral information (*suchna jubani*) as given at the police station.

21. Ram Swaroop PW-2, is an injured witness in this case. Ram Swaroop PW-2 has himself received gun shot injuries as fired by surviving appellant Man Singh. Injured eye-witness Ram Swaroop PW-2 has also deposed in the same way as has been deposed by informant Chunni Lal PW-1 in his evidence. From a perusal of the whole evidence of injured Ram Swaroop PW-2, we find that this witness has also received gunshot injuries. According to Dr. C.P. Singhal PW-5, who examined and prepared injury report of Ram Swaroop PW-2 on 02.09.1984 at Male Hospital, Amla, who was brought by Constable Ram Saran with *Chitthi Majroomi*. Dr. C.P. Singhal, PW-5 prepared the injury report Exhibit Ka-3 of injured Ram Swaroop and found following two injuries :

"1. One circular L.W. .25 cm. x .25 cm. x muscle deep on the left front of upper chest 2.5 cm. away from the mid line. Margins irregular. Dotted blood is present.

2. One circular L.W. .25 cm. x .25 cm. x muscle deep on the right lower part of front of chest 15 cm. away from the mid line. Margins irregular. Dotted blood is present."

22. In the opinion of Dr. C.P. Singhal, PW-5, both injuries have come from firearm, it is possible that the injuries came from gun. Since, two gunshot injuries have been found by Dr. C.P. Singhal PW-5 on the body of injured Ram Swaroop PW-2, therefore, presence of injured Ram Swaroop PW-2 at the place of occurrence is fully established and proved behind reasonable doubt. The injuries of Ram Swaroop PW-2 also established and proved this fact that at the time of happening of incident, this witness was present at the place of occurrence when incident happened and crime was committed by the deceased appellant Hari Ram and surviving appellant Man Singh. We find no any ground to disbelieve and discard the reliable and trustworthy evidence of injured Ram Swaroop PW-2.

23. The Hon'ble Supreme Court in ***Suresh Sitaram Surve Vs. State of Maharashtra (2002) 10 SCC 28*** has held on the point of inimical and injured witness in paragraph 6 as follows:

"The evidence of the injured eyewitnesses cannot be discarded in toto on the ground of inimical disposition towards the accused or the improbability of narrating the details of actual attack. True, their evidence has to be scrutinized with caution taking into account the factum of previous enmity and the tendency to exaggerate and to implicate as many as possible. But on a perusal of

the evidence tested in the light of the broad probabilities, the High Court was justified in reaching the conclusion that the prosecution witnesses are natural witnesses and they could not have concocted the case against the accused without any basis. The fact that the FIR was lodged almost immediately after the occurrence naming the appellant as the main assailant lends positive assurance to the credibility of the prosecution case as unfolded by the eyewitnesses, most of whom were injured. Both the trial court and the High Court found that there was sufficient light emitted by the tubelight in front of the house to identify the accused who were known persons. The fact that the incident occurred outside and inside the house cannot be doubted as there was blood both at the steps where the dead body lay and inside the house and weapons stained with human blood were found lying in the adjoining narrow lane and the injuries were found on almost all the inmates of the house. It is highly unlikely that within a short time of the occurrence the prosecution party could have come forward with a false version implicating the persons who were not at all seen, while leaving out the real culprits. The eyewitnesses' account of the attack by the appellant is quite consistent. Though certain doubts are sought to be created as to the genesis of the incident and the manner of attack, but the prosecution case is not belied on account of such factors."

24. Thus, from the law as enunciated by Hon'ble Supreme Court, in ***Suresh Sitaram Surve (supra)***, it is clear that only on the ground of inimical witness, a Court must not reject the evidence of an injured person in *toto*. What is required in that case is that the evidence of such type of witness must be carefully and deeply scrutinized

and be tested on this ground that whether deposition of the injured witness is reliable and inspire confidence or not. In the present case at hand, we find that injured Ram Swaroop PW-2 himself has received two gunshot injuries on the vital part of his body. From the seat of the injuries at the body of the injured Ram Swaroop PW-2, we could also gather the intention of surviving appellant Man Singh that surviving appellant Man Singh has fired upon Ram Swaroop PW-2 with intention to kill him. Therefore, in the light of the law, as enunciated by the Hon'ble Supreme Court in ***Suresh Sitaram Surve(supra)*** we find the deposition of injured witness Ram Swaroop PW-2 wholly reliable and trustworthy.

25. In the same way, Mohan Lal PW-3 has also deposed and proved prosecution story, as has been stated in the FIR Exhibit Ka-1 and as has been deposed by the informant Chunni Lal PW-1 and injured witness Ram Swaroop PW-2 before the Trial Court. Mohan Lal PW-3 has also deposed against deceased appellant Hari Ram and surviving appellant Man Singh. Apart from that, informant Chunni Lal PW-1, injured Ram Swaroop PW-2 has assigned same role to deceased appellant Hari Ram and surviving appellant Man Singh. The defence has also cross-examined Mohan Lal PW-3 and to injured Ram Swaroop PW-2 at length. However, from the perusal of the cross-examination, as conducted on behalf of the defence, we find that there is no major and material contradiction in the deposition of prosecution witness Mohan Lal PW-3 and injured Ram Swaroop PW-2. From the perusal of the evidence of informant Chunni Lal PW-1, injured Ram Swaroop PW-2 and Mohan Lal PW-3, it appears that deceased Nem Chand was uncle of Mohan

Lal PW-3 and by relation deceased Nem Chand was cousin brother of informant Chunni Lal PW-1 and injured Ram Swaroop PW-2. Thus, we find that all the three eye-witnesses, such as informant Chunni Lal PW-1, injured Ram Swaroop PW-2, and Mohan Lal PW-3 are family members among themselves and related to deceased Nem Chand by blood. However, only on the ground of family members of the deceased Nem Chand and also related by blood with Nem Chand, reliable and trustworthy evidence of eye-witness informant Chunni Lal PW-1, injured Ram Swaroop PW-2 and Mohan Lal PW-3 could not be doubted or rejected on that ground.

26. Relation as being a family member of the deceased or victim is no ground to reject the trustworthy and reliable evidence of any witness, who is family members or related by blood with deceased or injured person. In that kind of cases, Courts are required only to cautiously and deeply scrutinized their evidence and to see that the evidence of that kind of witness must be reliable and inspire confidence. From the perusal of the entire evidence of informant Chunni Lal PW-1, injured Ram Swaroop PW-2 and Mohan Lal PW-3, it is amply clear that evidence of these above prosecution witnesses are found to be wholly reliable and trustworthy that inspire confidence.

27. The Hon'ble Supreme Court in ***State of Rajasthan Vs. Smt. Kalki and Another (1981) 2 SCC 752*** held in paragraphs 7 and 8 thus:

7. As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds : (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were

discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'.

8.In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. As indicated above we have not found any material discrepancies in the evidence of PW 1."

28. In *Thatireddigari Maheshwara Reddy Vs. State of Andhra Pradesh (2024) 15 SCC 671* with regard to related witness, held in paragraph 11 as follows:

"As PW-1 and PW-3 are closely related to the deceased, we have meticulously examined their testimony. We find their testimony is reliable. No material contradictions or omissions have been brought on record in their cross-examination. Only because an eyewitness is a member of the deceased's family, per se, the evidence of such a witness cannot

be discarded. If the evidence of an eyewitness who is a close relative of the deceased is cogent, reliable and credible, it can always be relied upon. Regarding the role of appellant-Accused 2, the evidence of PW 1 to PW 3 is consistent. All three of them have ascribed a clear role to appellant-Accused 2 of assaulting the deceased with a hunting sickle. In this case, even the evidence of PW 2 is very reliable, who is not related to the deceased."

29. The Hon'ble Supreme Court in ***Sucha Singh and Anr. Vs. State of Punjab (2003) 7 SCC 643*** held in paragraph 13 thus :

" Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible."

30. Thus, from the law as enunciated by Hon'ble Supreme Court in the above case laws in ***Suresh Sitaram Surve, State of Rajasthan Vs. Smt. Kalki and Another, Thatireddigari Maheshwara Reddy and Sucha Singh and Anr. (supra)*** it is clear that only on this ground that all prosecution witnesses are related to each other and deceased is a family member of the prosecution witnesses, is no ground to disbelieve and discard the trustworthy and reliable deposition and testimony of the related and family member's deposing as the prosecution witness. What is required is that evidence of that kind of witness must be deeply and cautiously be scrutinized to see that there is no any concoction and false implication.

In the light of the above law, as enunciated by the Hon'ble Supreme Court, we find that evidence of prosecution witnesses, such as informant Chunni Lal PW-1, injured Ram Swaroop PW-2 and Mohan Lal PW-3 are found to be wholly reliable. There is no doubt or suspicion about their truthfulness and veracity of the evidence of these witnesses.

31. From the perusal of the First Information Report Exhibit Ka-1, and also from the perusal of the deposition of informant Chunni Lal PW-1, injured Ram Swaroop PW-2 and Mohan Lal PW-3, this fact is clearly revealed that when altercation took between the prosecution side and accused side, then, both deceased appellant Hari Ram and surviving appellant Man Singh have went to their houses and returned with their guns in their hand at the place of occurrence. The above act of the deceased appellant Hari Ram and surviving appellant Man Singh is a clear indication about this fact that both of them had went to their houses and returned with their guns in their hands with pre-planned, pre-concert and with prior meeting of minds to commit the crime and kill by their guns by firing on deceased Nem Chand and Ram Swaroop PW-2. The deceased appellant Hari Ram and surviving appellant Man Singh by their guns in hands fired at the deceased Nem Chand and at the injured Ram Swaroop PW-2 indiscriminately. From the firing of gunshot by the deceased appellant Hari Ram and surviving appellant Man Singh, deceased Nem Chand has received total six number of gunshot injuries on his body. All injuries are of firearms and are targeted from chest to the head of the deceased Nem Chand on the vital part of the body. That fact shows the intention of the deceased appellant Hari

Ram and surviving appellant Man Singh. Injured Ram Swaroop PW-2 has also received two gunshot injuries on his body, which is proved by Dr. C.P. Singhal PW-5 by his evidence.

32. Thus, from the above facts and circumstances of the case, it is clear that deceased appellant Hari Ram and surviving appellant Man Singh, not only participated in the commission of the crime with the common intention, pre-plan, with prior meeting of mind and with pre-concert, but both of them have also performed their overt act by firing at deceased Nem Chand and injured Ram Swaroop PW-2. Thus, in the present case at hands, we find that deceased appellant Hari Ram and surviving appellant Man Singh have participated in the commission of the crime with common intention with pre-planning, and pre-concert and with prior meeting of minds and in execution of their common intention, both of them have also fired by their guns at deceased Nem Chand and injured Ram Swaroop PW-2, thereby causing death of Nem Chand and injuring Ram Swaroop PW-2. Thus, we find that in this case from the manner of the commission of the crime and conduct of the deceased appellant Hari Ram and surviving appellant Man Singh, pre-plan pre-concert and prior meeting of minds with their overt act are present in this case against the appellants. Thus, we find that the Trial Court has rightly convicted the surviving appellant Man Singh with the aid of Section 34 IPC in right perspective and in legal manner, which is based on cogent evidence, as adduced by the prosecution.

33. We have perused the judgment and order of the Trial Court dated 08.07.1988. From the perusal of the

judgment and order of the Trial Court, it is revealed that the Trial Court, by appreciating the evidence of the prosecution witnesses, found involvement of acquitted accused Chhadammi and Nanku, as doubtful. The Trial Court has also found by appreciating the evidence that presence of acquitted accused Chhadammi and Nanku at the place of occurrence is doubtful and the evidence of prosecution witnesses in respect of the role of acquitted accused Chhadammi and Nanku are not reliable and trustworthy. However, the Trial Court has found evidence of prosecution witnesses about the role of deceased appellant Hari Ram and surviving appellant Man Singh to be wholly reliable, trustworthy and creditworthy. In view of the above facts, the Trial Court has found guilty to surviving appellant Man Singh and deceased appellant Hari Ram for the commission of the crime. Thus, the Trial Court found the evidence of prosecution witnesses in respect of deceased appellant Hari Ram and surviving appellant Man Singh to be wholly reliable and trustworthy. In the light of the above facts, the Trial Court had acquitted other accused Chhadammi and Nanku named in the FIR and convicted the deceased appellant Hari Ram and surviving appellant Man Singh for the commission of the crime.

34. The Hon'ble Supreme Court in *Nisar Ali Vs. State of Uttar Pradesh (1957) 1 SCC 350* held in paragraphs 8 and 9 thus:

"8. It was next contended that the witnesses had falsely implicated Qudrat Ullah and because of that the Court should have rejected the testimony of these witnesses as against the appellant also. The well-known maxim falsus in uno falsus in omnibus was relied upon by the

appellant. The argument raised was that because the witnesses who had also deposed against Qudrat Ullah by saying that he had handed over the knife to the appellant had not been believed by the courts below as against him, the High Court should not have accepted the evidence of these witnesses to convict the appellant. This maxim has not received general acceptance in different jurisdictions in India; nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded not that it must be disregarded. One American author has stated:

"... the maxim is in itself worthless; first in point of validity ... and secondly, in point of utility because it merely tells the jury what they may do in any event, not what they must do or must not do, and therefore, it is a superfluous form of words. It is also in practice pernicious...."

9. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances but it is not what may be called "a mandatory rule of evidence."

35. The Hon'ble Supreme Court in ***Menoka Malik and Others Vs. State of West Bengal and Others (2019) 18 SCC and in Ilangovan Vs. State of Tamil Nadu (Represented by Inspector of Police) (2020) 10 SCC 533***, relied the above case law of ***Nisar Ali (supra)*** in the same terms. Thus, the law as enunciated by Hon'ble Supreme Court in the case of ***Nisar Ali (supra)*** which was followed by the Hon'ble Supreme Court itself in its later decisions in ***Menoka Malik (supra)*** and ***Ilangovan (supra)***. Thus, from above case law of Hon'ble Supreme Court, it is clear that if some accused persons, on the same evidence of the prosecution witnesses are acquitted, on this ground

that evidence of witnesses is not reliable and trustworthy, that does not mean that other accused on the basis of same evidence of prosecution witnesses which are trustworthy and reliable could not be convicted. Therefore, we find that the Trial Court has given a sound reasoning and finding which is based on settled principles of law. We also find no illegality in this respect by the Trial Court in convicting the deceased appellant Hari Ram and surviving appellant Man Singh for the commission of the crime, since act of the deceased appellant Hari Ram and surviving appellant Man Singh has been fully proved by the cogent and reliable evidence of the prosecution witnesses, which further found corroboration and support from the medical evidence of postmortem report Exhibit Ka-2 of deceased Nem Chand and from the injury report Exhibit Ka-3 of injured Ram Swaroop PW-2.

36. From the perusal of the injury report Exhibit Ka-3 of injured witness Ram Swaroop PW-2, which was prepared by Dr. C.P. Singhal PW-5 and from postmortem report Exhibit Ka-2 of deceased Nem Chand, which has been prepared by Dr. Balbir Singh PW-5, it is revealed that two firearm injuries are found on the body of injured Ram Swaroop PW-2 and injuries of the deceased Nem Chand are of firearm injuries, which are total six in numbers. Thus, oral evidence found support and corroboration from medical evidence and medical evidence finds support from the oral evidence of the prosecution witnesses. In other words, oral evidence and medical evidence corroborated and supported to each other.

37. We have also gone through the judgment and order of conviction and sentence dated 08.07.1988 as passed by the Trial Court, and find that Trial Court has

appreciated the evidence in proper prospective and legal manner. The Trial Court has based its reasoning upon cogent evidence as available on the record. The finding of the Trial Court is well reasoned and in accordance with settled principles of law. We find no perversity and illegality in the judgment and order of the Trial Court dated 08.07.1988. Therefore, in the light of the above discussions and appreciation, we find no force in any of the submissions of the learned counsel for the surviving appellant Man Singh in this respect.

38. In the light of the above discussions, we are inclined to affirm the judgment and order of conviction and sentence dated 08.07.1988 as passed by the learned IX Additional Sessions Judge, Bareilly, in Sessions Trial (S.T.) No. 645 of 1984, (State v. Hari Ram and Another), arising out of Crime No. 254 of 1984, under Sections 302 and 307 of IPC, Police Station Amla, District Bareilly. Hence, we find that the criminal appeal of surviving appellant Man Singh has devoid of merits and is, therefore, liable to be dismissed.

39. We, therefore, **dismissed** the criminal appeal of the surviving appellant Man Singh, who is on bail. His personal bonds are cancelled and sureties are discharged.

40. The surviving appellant **Man Singh** is directed to surrender before the Court of the learned Chief Judicial Magistrate (CJM), Bareilly, within a period of one month from today or from the date of production of a certified copy of this order, to serve out the remaining sentence passed by the learned Trial Court vide its order dated 08.07.1988.

41. In the event, if surviving appellant- Man Singh, failed to surrender before the court concerned within the

stipulated period of one month, the Chief Judicial Magistrate, Bareilly shall take immediate steps by issuing non-bailable warrants against him to secure his arrest. Upon his arrest, he shall be sent to jail to serve out the remaining sentence as passed by the Trial Court vide order dated 08.07.1988.

42. Let a copy of this judgment and order, along with the Lower Court Record, be transmitted to the Trial Court forthwith for necessary information and compliance.

43. Learned Amicus Curiae appearing on behalf of the appellants has rendered her valuable assistance to the Court. She shall be paid Rs. 15,000/- towards her fee for the able assistance provided by her in hearing of the present old appeal.

(Vinai Kumar Dwivedi,J.) (Siddharth,J.)

September 28, 2026
NSC