2026:AHC-LKO:78444-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

Criminal Appeal No.- 54 of 2018

Satish @ Sonu .....Appellant(s)

Versus

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

Counsel for Appellant(s)	:	Nagendra Mohan, Abhinav Srivastava, Ajay Veer Singh, Ashok Kumar Singh, Neha Dhanwani, R.B.S. Rathaur, Salil Mohan
Counsel for Respondent(s)	:	Govt. Advocate, Brij Mohan Sahai

Along with:

Criminal Appeal No. 47 of 2018
Pankaj Singh & Anr. .....Appellant(s)

Versus

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

Counsel for Appellant(s)	:	Nagendra Mohan, Neha Dhanwani, Salil Mohan
Counsel for Respondent(s)	:	Govt. Advocate, Brij Mohan Sahai

AFR

Court No. – 09

Reserved On: 31.07.2026
Delivered On: 30.10.2026

HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE ZAFEER AHMAD, J.

1. Heard Shri Nagendra Mohan, learned counsel assisted by Shri Salil Mohan, learned counsel for the appellants, Shri Anurag Verma, learned Additional Government Advocate-1 for the State

and Shri Brij Mohan Sahai, learned counsel assisted by Ms. Shaila Zubair, learned counsel for the complainant. Perused the record.

2. The aforesaid criminal appeals arise out of the judgment and order dated 23.12.2017, passed by the learned Additional Sessions Judge/F.T.C.-2, Sultanpur in S.T. No. 322 of 2012 (S*tate v. Pankaj Singh and others*) and S.T. No. 323 of 2012 (*State v. Satish @ Sonu Singh*), arising out of Case Crime No. 182 of 2012 and Case Crime No. 216 of 2012, respectively, registered at Police Station Lambhuwa, District Sultanpur, whereby all the accused -appellants have been convicted and sentenced to undergo imprisonment for life along with a fine of Rs. 50,000/- under Section 302/34 of the Indian Penal Code, 1860 (in short, 'IPC'), one year's imprisonment along with a fine of Rs. 2,000/- under Section 504 IPC, and one year's imprisonment along with a fine of Rs. 2,000/- under Section 506 IPC. In default of payment of all fine imposed, all the accused-appellants shall undergo further imprisonment for six months'. The accused-appellant namely Satish @ Sonu has also been sentenced to undergo two years' imprisonment along with a fine of Rs. 2,000/- under Section 3/25 of the Arms Act, 1959, and in default of payment of the said fine, he shall undergo further imprisonment for a period of one month. It was further directed that all the sentences shall run concurrently.

3. For convenience and clarity, the accused-respondents shall hereinafter be referred to, as per their array before the Trial Court,

namely: A1- Pankaj Singh; A2- Brijesh Singh and A3-Satish @ Sonu Singh.

4. Furthermore, accused-appellant Ritesh Singh had escaped from custody during the pendency of the trial. Consequently, his case was separated, and the trial in respect of the remaining accused continued before the learned Trial Court. Accordingly, the present appeal does not concern accused-appellant Ritesh Singh.

Prosecution Story in Nutshell:

5. The prosecution case, in brief, is that on 11.06.2012, the complainant, Jag Jeevan Singh, submitted a written report stating therein that on 09.06.2012, his brother, Bhanu Pratap Singh, had gone to village Radhaipur for getting his land irrigated and, at about 6:00 P.M., while he was returning, at Chana Talab situated near Parvatpur, Anil Singh came in front of him on a red Pulsar motorcycle, along with Ritesh Singh, who was riding pillion, and pushed Bhanu Pratap Singh. Thereafter, Bhanu Pratap Singh informed the complainant about the incident, whereupon the complainant, along with his younger brother Dharmendra Singh, went to Raj Bahadur Singh, grandfather of Anil Singh, to apprise him of the conduct of Anil Singh and to get him reprimanded. When the complainant and Dharmendra Singh reached the house of Raj Bahadur Singh on a motorcycle and narrated the entire incident to him, Raj Bahadur Singh called Anil Singh and reprimanded him. Thereafter, Anil Singh ran towards his old house

while grumbling, and Dharmendra Singh tried to apprehend him by running after him. At that time, A1, A2, A3 and Ritesh Singh, who were coming from the opposite direction while waving *katta* (country-made pistol), ran towards Dharmendra Singh. A-1 exhorted the other accused-appellants by stating that because of Dharmendra Singh, the post of *Pradhan* had been lost from their family and because of him, the quota had also been cancelled, and that they had got a good opportunity to kill him. Upon such exhortation, all the four accused allegedly opened fire at Dharmendra Singh with an intention to kill him, due to which Dharmendra Singh became frightened, his leg slipped in a drain and he fell down. At the same time, A3 allegedly fired a shot in the head of Dharmendra Singh, with a country-made pistol (*katta*). Thereafter, all the accused allegedly fled from the spot while firing in the air, abusing and extending threats to kill everyone. The incident is stated to have occurred on 09.06.2012 at around 8:00 P.M. The incident was allegedly witnessed by persons who were already present at the door of Raj Bahadur Singh, namely, Shiv Prasad Singh and Sandeep Singh. The complainant, with the help of Sandeep Singh and Shiv Prasad Singh, lifted Dharmendra Singh, who was in a bleeding condition, and brought him to his (complainant) house. Thereafter, he was taken to the District Hospital, Sultanpur, for treatment, where, considering his serious condition, the doctors referred him to the Trauma Centre,

Lucknow. While undergoing treatment at the Trauma Centre, Dharmendra Singh succumbed to his injuries on 10.06.2012.

6. Thereafter, on 11.06.2012, at around 07:35 A.M., on the basis of the written report, an FIR. No. 77 of 2012 was registered against all the accused-appellants under Sections 302, 504 and 506 of IPC The investigation was entrusted to S.I. Deena Nath Mishra, who proceeded to the house of the complainant on the same day and conducted the inquest proceedings. On 27.06.2012, A3 was taken into police custody, and he was thereafter taken to Village Khasde for the recovery of the pistol allegedly used in the commission of the offence. Pursuant to the recovery, F.I.R. No. 93 of 2012 was registered against A3 under Section 3/25 of the Arms Act. Upon completion of the investigation, the Investigating Officer submitted Charge-sheet No. 112/2012, in Case Crime No. 182/2012, against A1, A2 and A3 under Sections 302, 504 and 506 IPC, and Charge-sheet No. 99 of 2012, in Case Crime No.216 of 2012 against A3 under Section 3/25 of the Arms Act. Thereafter, the Court of Session framed charges against all the accused-appellants under Sections 302, 504 and 506 IPC in Case Crime No. 182 of 2012, and against A-3 under Section 3/25 of the Arms Act in Case Crime No. 216 of 2012. All the accused denied the charges, pleaded not guilty and claimed trial.

7. In order to prove its case, the prosecution examined Jag Jeevan Singh (PW-1), Shiv Prasad Singh (PW-2), Rahul Singh (PW-3),

Vipin Bihari Singh (PW-4), Dr. R.K. Gautam (PW-5) and Deena Nath Mishra (PW-6), Sunil Kumar Yadav (PW-7), Shiva Pujan Yadav(PW-8), Neeraj Singh (PW-9), Jai Prakash Singh (PW-10) Dr. A.K. Yadav (PW-11), and Dr. Mohd. Shahjad Naiyar (PW-12). In support of its defence, the accused-appellants examined Anil Kumar Singh (DW-1), Fateh Bahadur Singh (DW-2) and Suresh Kumar Chaurasia (DW-3).

8. The following exhibits were produced and proved before the Trial Court:

Ext. No.	**Particulars**
Ext. Ka-1	Written Report
Ext. Ka-2	FIR of Case Crime No. 182 of 2012
Ext. Ka-3	FIR of Case Crime No. 216 of 2012
Ext. Ka-4	Post-Mortem Report
Ext. Ka-5	Charge-Sheet in Case Crime No. 182 of 2012
Ext. Ka-6	Site-plan of the place of recovery
Ext. Ka-7	Site-plan of the place of occurrence
Ext. Ka-8 to 10	Letters addressed to the CHC
Ext. Ka-11	Recovery memo of 7.65 mm pistol
Ext. Ka-12	Photocopy of GD in Case Crime No. 182 of 2012
Ext. Ka-13	Carbon copy of FIR in Case Crime No. 216 of 2012
Ext. Ka-14	Carbon copy of GD in Case Crime No. 216 of 2012
Ext. Ka-15	Charge-Sheet in Case Crime No. 216 of 2012
Ext. Ka-16	Application by Rahul Singh, PW-3, for medical examination
Ext. Ka-17	Operation Note of deceased

9. The statements of all the accused-appellants were recorded under Section 313 Cr.P.C., wherein they denied the incriminating circumstances appearing against them in the prosecution evidence and pleaded false implication. A1,A2 and A3 stated that PW-7 had deposed falsely against them due to enmity and that PW-11, in

collusion with the injured witness, had fabricated false papers; they further stated that the present case had been instituted due to village *party-bandi* and enmity. They further accepted the election rivalry between the accused and victim party. They further stated that on the date of the incident A1 was at his maternal home in village Manapur, whereas A2 and A3 were at their shops in *Hata Bazaar,* which is around two and a half kilometers away from the village. Additionally, A3, in his statement under Section 313 Cr.P.C. recorded in S.T. No. 323 of 2012, stated that PW-1 had deposed falsely and his name had been wrongly introduced in the present case, the case had been registered on wrong facts and the charge-sheet had been wrongly submitted; he further stated that PW-9 and PW-10 had deposed against him due to enmity and that the present case was the result of enmity.

Submissions made by learned counsel for the accused-appellants:

10. Learned counsel for the accused-appellants submitted that the prosecution had failed to establish the guilt of the appellants beyond reasonable doubt and that the impugned judgment of conviction is unsustainable in law. It was contended that the prosecution case arose out of admitted village and political enmity between the parties, particularly in relation to the Gram Pradhan election and the alleged cancellation of the ration quota. Such hostility, it was argued, furnished a possibility of false implication and necessitated careful scrutiny of the prosecution evidence. It

was further submitted that the circumstances surrounding the registration of the FIR, when considered alongside the prior police communication regarding the occurrence and the presence of a substantial police force at the complainant's house after the dead body was brought back to the village, raised questions regarding the sequence in which the prosecution version was formally recorded. Learned counsel further assailed the reliability of the alleged eyewitness account by drawing attention to the material omissions in the earliest version of the occurrence, the discrepancies concerning the weapons allegedly used and the specific acts attributed to the accused, and the inconsistency between the ocular account and the medical evidence regarding the alleged additional firearm injury. It was submitted that the medical evidence established a fatal firearm injury to the deceased's head, but did not corroborate the entire sequence of firing narrated by the prosecution witnesses. The testimony of Rahul Singh, PW-3, projected as an injured eyewitness, was also challenged. Learned counsel submitted that his presence and alleged injuries at the place of occurrence were not satisfactorily established by contemporaneous evidence, his statement was recorded after a considerable delay, and the circumstances surrounding his subsequent medical examination did not reliably connect the injuries with the alleged occurrence. It was further contended that the investigating agency had failed to secure

material evidence that could have independently corroborated the prosecution version, including relevant bloodstained articles and a reliable forensic link between the alleged weapon and the bullet recovered from the deceased.

Submissions made by learned A.G.A and learned counsel for Complainant:

11. *Per contra*, learned AGA opposed the appeals and supported the impugned judgment of conviction and order of sentence. It was submitted that the prosecution had established the death of Dharmendra Singh as a result of a firearm injury and that the medical evidence substantially supported the prosecution case regarding the fatal injury. It was further contended that the testimony of the prosecution witnesses, particularly the account of the occurrence given by the eyewitnesses, established the participation of the appellants in the assault upon the deceased. It was submitted that the presence of prior political rivalry between the parties could not, by itself, justify an inference of false implication; rather, the motive attributed to the accused provided an explanation for the occurrence. The mere fact that the witnesses were related to the deceased or belonged to the same village would not render their testimony unreliable in the absence of sufficient grounds to reject their evidence. It was further submitted that discrepancies in the testimony of witnesses and lapses in the investigation, unless shown to affect the substratum of the

prosecution case, could not be made the basis for discarding otherwise credible evidence. It was urged that the medical evidence was required to be considered alongside the ocular testimony and that every variation between the two would not necessarily discredit the prosecution version. The absence of a forensic report or other corroborative material, if any, was also not sufficient by itself to demolish the prosecution case where the oral evidence otherwise established the guilt of the accused.

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, Jag Jeevan Singh,** the complainant and real brother of the deceased, deposed that the occurrence arose against the background of political rivalry relating to the Gram Pradhan election and the cancellation of the village ration quota. He further deposed that on 09.06.2012, at around 8:00 P.M., he and his younger brother, Dharmendra Singh, went to the house of Raj Bahadur Singh to complain about the conduct of Anil Singh, who along with Ritesh Singh had allegedly threatened their brother Bhanu Pratap Singh, near Chana Talab at Parkatpur. When Anil Singh ran towards his old house and that of A1 after being reprimanded, Dharmendra Singh chased him. He further deposed

the accused-appellants, along with Ritesh Singh, then arrived armed with country-made pistols and *lathis-dandas*. A1 allegedly exhorted the others by referring to the loss of the Pradhan election and cancellation of the ration quota. A2 and Ritesh Singh assaulted the deceased, while A1 and Ritesh Singh allegedly assaulted Rahul Singh, PW-3, when he intervened. After the deceased fell, A3 allegedly fired at his head, followed by further firing attributed to A1 and A3, one shot grazing the right side of the deceased's waist. He further deposed that the occurrence was witnessed by him, Shiv Prasad Singh, PW-2, and Sandeep Singh in the light of an inverter bulb and a torch. The injured deceased was first brought to his house and thereafter taken to the District Hospital, Sultanpur, from where he was referred to the Trauma Centre, Lucknow, where he died on 10.06.2012. After receiving the dead body and returning to the village at around 4:00 A.M. on 11.06.2012, he went to Police Station Lambhua and lodged the written report, which was proved as Exhibit Ka-1.

13. **During cross-examination**, he admitted that the deceased had been residing at Sultanpur since 2009 and that his own house was approximately one kilometre from the place of occurrence. He deposed that the deceased was transported initially on a motorcycle and thereafter in a Maruti car and a Bolero vehicle, and that blood had dripped along the route and accumulated at the

place of occurrence and the doorway of his house. He further deposed that he had travelled to Sultanpur and Lucknow in the same bloodstained clothes but changed them after returning to the village before lodging the report. He admitted that more than 50 police personnel were present when he returned with the dead body, but no police officer spoke to him about the occurrence at that time, and the Investigating Officer did not record his statement that day. He also admitted that the FIR did not contain the details of the alleged assault upon PW-3 or the source of light at the place of occurrence. He further deposed that he could not specify the number of shots fired by each accused and had not seen any accused fire a second shot after firing once, though he subsequently deposed that A3 fired at the deceased after he had fallen, followed by further firing attributed to A1 and Ritesh Singh. He denied the defence suggestions that he was not present at the occurrence and that the appellants had been falsely implicated on account of enmity.

14. **PW-2, Shiv Prasad Singh,** deposed that he knew the complainant, and all the accused. He further deposed that on 09.06.2012, at around 7:00 P.M., he was present at the house of Raj Bahadur Singh, where PW-1 and the deceased arrived to complain about Anil Singh. After Raj Bahadur Singh reprimanded Anil Singh, the latter allegedly ran away towards his old house

and the house of A1. The deceased chased him, whereupon the accused persons arrived from the opposite direction, armed with country-made pistols and *lathi-dandas*. He further deposed that A1 and Ritesh Singh assaulted the deceased with *lathi-dandas*, and when Rahul Singh, PW-3, intervened, he sustained a head injury. After the deceased fell when his foot became entangled in a drain, A3 allegedly fired at his head from close range. He further attributed another round of firing at the deceased to A1 and A3, stating that the bullet pierced his stomach and exited from the other side. He claimed to have witnessed the occurrence in the light of a bulb installed at the temple of A1 and deposed that the accused fled while firing and threatening those present. He further deposed that the deceased was initially taken to PW-1's residence and thereafter transported to the District Hospital, Sultanpur, from where he was referred to Lucknow Medical College and died during treatment on 10.06.2012.

15. **During cross-examination** he admitted that he is related to the deceased as a cousin and had supported and voted for Sunita Singh, wife of the deceased, in the Gram Pradhan election. He further deposed that he had reached the house of Raj Bahadur Singh between 7:00 and 7:45 P.M. and that PW-1 and the deceased arrived 10– 15 minutes later. He admitted that he had not personally witnessed the earlier incident involving Bhanu Pratap Singh and had learnt about it from others. He further deposed that,

to his knowledge, the first information at the police station was given on 11.06.2012 at around 7:00 A.M., and that he could not say whether anyone had informed the police through Dial 100. He maintained that all four accused fired at the deceased from a distance of approximately two to three feet, but deposed that, owing to darkness, he could not discern the build or barrel thickness of the country-made pistols. He also acknowledged that certain details regarding the assault by lathi-dandas, which he claimed to have disclosed to the Investigating Officer, had not been recorded in his statement under Section 161 CrPC. He denied the suggestions that he had not witnessed the occurrence, that Rahul Singh was not present at the spot, or that he was falsely deposing on account of his relationship with the complainant.

16. **PW-3, Rahul Singh**, deposed that the deceased was his uncle and PW-1 is his elder paternal uncle. He claimed to be an eyewitness to the occurrence dated 09.06.2012 at around 8:00 P.M. and deposed that he had heard the accused abusing and threatening to kill the deceased. He further deposed that the wife of the deceased, Sunita Singh, had contested the election for the post of Gram Pradhan against the wife of A1 and had won. He attributed the accused' s alleged grudge against the deceased to the election rivalry and an inquiry into complaints regarding the ration quota of the Gram Sabha, which was in the name of Kaushalendra Singh, a member of A1's family. He further deposed that after his

father, Bhanu Pratap Singh, informed the family about an incident involving Anil Singh and Ritesh Singh, he, PW-1 and the deceased went to the house of Raj Bahadur Singh to complain. Upon Raj Bahadur Singh reprimanding Anil Singh, the latter allegedly proceeded towards A1' s house, followed by the deceased and PW-3, who was carrying a torch. He stated that bulbs were lit at Raj Bahadur Singh's house and the temple. When they reached near the eastern drain of Anil's house, all the accused allegedly appeared armed with lathis and country-made pistols and assaulted the deceased with lathis. He further deposed that A3 fired at the deceased, striking him on the head and causing him to fall, whereafter A1 fired another shot that struck the deceased in the stomach and exited after grazing it. He further claimed that he sustained injuries to his chest, head, back and stomach during the assault, when he was trying to intervene. The deceased was taken to the District Hospital, Sultanpur, and thereafter referred to the Trauma Centre, Lucknow, where he died during treatment on 10.06.2012 at around 4:00 P.M. He further deposed that his clothes had become bloodstained during the assault and while lifting the deceased, and that he had handed them over to the Police Inspector, who did not take them into custody. He subsequently produced a pant with belt and a vest before the Court and identified them as the clothes worn by him at the time of the occurrence.

17. **During cross-examination,** he admitted that he had not witnessed the alleged incident involving his father and had learnt about it subsequently. He further deposed that he did not know who had complained about the ration quota and had only heard from villagers that a complaint had been made. As regards his arrival at the place of occurrence, he deposed that he reached Raj Bahadur Singh's house at around 7:00 P.M., five to ten minutes after PW-1 and the deceased had left on a Bullet motorcycle, and also deposed that he had followed them along with Ritesh, his paternal aunt's son. He further deposed that he alone was carrying a torch and that the others were empty-handed. He further deposed that all the accused assaulted him with lathis, inflicting three or four blows before he fell and another three or four blows thereafter. He further deposed that the deceased was brought to PW-1's house and that the motorcycle used to transport the deceased bore bloodstains on its seat, leg-guard and silencer. He further deposed that he did not accompany the deceased to the District Hospital in the same vehicle but followed in another vehicle and reached there at around 10:30 P.M. with family members. He further deposed that his injuries were examined at the District Hospital, Sultanpur, and a bandage was applied, he subsequently obtained a second medical examination on 15.06.2012, stating that he had sought it five to six days after the occurrence because his pain had increased. He denied the suggestion that he had procured a false

medical examination in collusion with the doctor to portray himself as an injured witness. He was unable to state the dimensions of the weapons allegedly used and could not specify where the inverters supplying electricity to the house and temple were located. He also deposed that the Police Inspector had not visited the place of occurrence in his presence and that he returned to the spot on 12.06.2012 with his cousin Ritesh. He denied the suggestions that the occurrence had not taken place in the manner alleged, that he was absent from the place of occurrence, or that he had falsely deposed after being tutored.

18. **PW-4, Vipin Bihari Singh**, Constable, Police Station Ashiyana, District Lucknow, deposed that during the period from 2011 to July, 2012, he was posted as Head Constable at Police Station Lambhua. He further deposed that upon receiving information regarding the incident on 11.06.2012, through the complaint of PW-1, he registered a Case Crime No. 182 of 2012 under Sections 302,504 and 506 IPC against A1 and four other accused. The said FIR was proved by him and marked as Ext. Ka-2. He further deposed that on 27.06.2012 at around 15:50 hours, he registered a Case Crime No. 216 of 2012 under Section 3/25 of the Arms Act in S.T. No. 323 of 2012, *State v. Satish Singh @ Son*u. The said FIR was proved and marked as Ext. Ka-3.

19. **During cross-examination**, he admitted that the FIR in Case Crime No. 182 of 2012 was registered three days after the

occurrence and that, prior thereto, he had not registered any information or complaint concerning the incident. He further deposed that the check copy of the FIR was sent to the office of the Circle Officer either on the same day or the following day. He denied the suggestions that the incident had been caused by unknown persons, that the report had been lodged falsely in collusion with the Station House Officer, or that it had been ante-timed.

20. **PW-5, Dr. R.K. Gautam**, Senior Consultant, Shyama Prasad Mukherjee Civil Hospital, Lucknow, deposed that on 10.06.2012 he was posted on the same post and the dead body of Dharmendra Singh was brought and identified by constable no. 1641, Police Station Lucknow. He estimated the age of the deceased to be around 40 years and deposed that he passed away on 10.06.2012 at around 4:05 P.M. in KGMU Hospital,Lucknow. He further deposed that the post-mortem staining was present on the back side of the deceased and *rigour mortis* had started to begin in eyelid and muscle of the neck. He further deposed that hospital bandage was present and that the trauma for insertion of breathing tube was present in the front of the neck. The following pre-mortem injuries were found on the body of the deceased:

- **Injury No. 1:** Fire-arm entry wound measuring 2cm X 2cm on the right side of the head, 10 cm above left ear with torn edges and sunken inwards. Deep upto brain. Blackness was present all around the wound. Upon opening, the brain and its overlying membrane were found torn and blood was present inside the brain. Gelfom tracing was found inside the brain.

- **Injury No. 2:** Stitched wound measuring 28 cm, semi-circular in shape with 28 stich, on the right side of the head, 2 cm above the right ear.
- **Injury No. 3:** Stitched wound measuring 12 cm with 12 stitches were found on the right side of the stomach, 5 cm outside the umbilicus.
- **Injury No. 4:** An operative mark was found on the right side of the skull, and the excised portion of the skull bone was preserved in the abdominal cavity.
- **Injury No. 5:** Contusion mark measuring 3 cm X 2 cm, on the inner side of the left arm in the middle.
- **Injury No. 6:** Scratched contusion mark measuring 3 cm X 2 cm, on the left palm.
- **Injury No. 7:** Scratched contusion mark measuring 3 cm X 2 cm, on the inside of the right ankle.

On internal examination, skull and membranes were found to be ruptured. The brain membranes were congested and blood was found inside the brain. Both lungs and their outer membranes were congested. The liver, both kidneys and spleen were also congested, 150ml of fluid was found in the stomach. In his opinion, deceased died from a fire arm injury to the head and the resulting injuries and coma. He deposed that the post-mortem was done by him on 10.06.2012 at around 6:00 P.M.. He verified and proved the post-mortem report which was marked as Ext. Ka-4.

21. **During cross-examination**, he deposed that the initial medical examiner can tell how old the injuries on the deceased' s body were. He further deposed that apart from the firearm injury on the head of the deceased, the stitched wounds found are likely to have occurred during the course of the operation. He further deposed that he did not find any marks of firearm injury like blackening on injury no. 3. The stitch was made to protect the skull bone inside the right side of the stomach. In this entire post mortem, only one

injury i.e. injury no. 1 was to due to fire arm and no other injury was due to fire arms. During the post-mortem, no pellets of any kind were found on the body of the deceased. He further deposed that injuries no. 5, 6, 7 could have been caused by falling and the shape of all these injuries is almost round.

22. **PW-6, Dinanath Mishra**, SHO, Police Station Hariyanwa, District Hardoi, deposed that from May to December 2012, he was posted as Station House Officer at Police Station Lambhua, District Sultanpur. He further deposed that Case Crime No. 182 of 2012 under Sections 302, 504 and 506 IPC was registered on 11.06.2012 in his absence and that the papers relating to the investigation were handed over to him at village Khasde by Constable Deepak Singh Yadav. He proved the relevant case-diary papers and deposed regarding the investigation, including recording the statements of the complainant and witnesses, preparation of the site plan, seizure of bloodstained and plain earth and empty cartridges, arrest and search proceedings, collection of post-mortem and medical documents, and subsequent steps towards forensic examination and filing of the charge-sheet. He further deposed that A3 surrendered before the Court and, during his statement recorded after obtaining permission, disclosed that he had fired at the deceased with a 7.65 mm pistol concealed in a bamboo grove. He further deposed that pursuant to the disclosure, A3 was taken on police remand and, in the presence of public

witnesses, Neeraj Singh and Vijay Prakash Singh, allegedly pointed out the place of concealment and produced a wrapped pistol from the bamboo grove. The weapon was seized, sealed and deposited at the police station, and a separate case, Case Crime No. 216 of 2012 under Section 3/25 of the Arms Act, was registered. He proved the charge-sheet as Exhibit Ka-5, the site plan of the place of recovery as Exhibit Ka-6, the site plan of the place of occurrence as Exhibit Ka-7, the letters addressed to the CHC as Exhibits Ka-8 and Ka-9, and the recovery memo as Exhibit Ka-11.

23. **During cross-examination**, he proved the carbon copy of the general diary entry, marked as Exhibit Ka-12. He admitted that on 09.06.2012 at around 8:05 P.M., he had received telephonic information from local residents regarding a fight between the deceased and A1 at village Khasde and a firing incident. He communicated the information to the police station, where an entry was made in the general diary. He could not identify the particular villager who had conveyed the information and deposed that several villagers had called through mobile phones. He further deposed that he reached the village approximately one hour after receiving the information and that senior police personnel arrived thereafter. He further deposed that the family members of the deceased were not present at the place of occurrence when he reached there, though some relatives were present at the

deceased' s house. He further deposed that he did not find the deceased at the place of occurrence and learnt from the deceased's house that he had been taken to the District Hospital, Sultanpur, and subsequently referred to Lucknow. He neither visited the District Hospital to meet the deceased nor obtained any injury-related documents. He admitted that, before registration of the case on 11.06.2012, neither he nor anyone at the police station had received a written complaint and that investigation commenced after PW-1 lodged the report. He further admitted that, although the witnesses claimed to have seen the occurrence in the light of a torch and an inverter bulb, he had prepared no memo regarding the sources of light. He also did not prepare any memo regarding the vehicles used to transport the deceased or inspect them for bloodstains. He did not receive the deceased's clothes, as the post-mortem doctor had not kept them in safe custody. He acknowledged that the site plan did not specifically indicate the positions of the accused;, the place of assault was marked as point "B", and the alleged place where PW-3 was assaulted was not separately shown. He did not find any trail of blood between the place of occurrence and the house of the deceased. He was unaware of a drain to the west of Raj Bahadur Singh' s house, which was not depicted in the site plan. He further deposed that the site plan was prepared on the pointing out of PW-1 and PW-2, but the signatures of those witnesses did not appear on it. He

further deposed that PW-3's presence at the place of occurrence was not mentioned in the FIR or in PW-1's statement under Section 161 CrPC. He recorded PW-3's statement on 06.07.2012, approximately 25– 26 days after registration of the FIR, and deposed that he learnt on that date that PW-3 claimed to have sustained injuries during the assault. He further admitted that PW-3 had not handed over his clothes to him and, consequently, no recovery memo was prepared. He had neither recorded the statement of the doctor who initially treated PW-3 nor included that doctor's name in the list of witnesses. He further deposed that Constable Prem Prakash Pandey had brought the bullet removed from the deceased's body from Gandhi Memorial Hospital and had been sent to obtain the bullet, X-ray plates and medical reports. He further deposed that written letter issued to the constable was not included in the case diary, and he had not recorded the statement of any doctor from Gandhi Memorial Hospital or ascertained the identity of the doctor who had operated upon the deceased and removed the bullet. He further deposed that the bullet removed from the deceased's body was sent to the Forensic Science Laboratory along with the recovered pistol and two empty cartridges. He further deposed that since no fingerprints were found on the weapon, it was not sent for fingerprint examination. He further deposed that the magazine of the recovered pistol contained no bullet. He further deposed that

the bloodstained and plain earth samples and the two empty cartridges recovered during the investigation were kept in the police station's evidence room before being sent to the Forensic Science Laboratory. He further deposed that PW-1 had not told him that Anil Singh, while murmuring, ran towards A1's house, that the accused used lathi-dandas, or that two shots were fired, one hitting the deceased's head and the other his stomach. He further deposed that PW-1 had instead stated that the accused fired at the deceased, causing him to become panicked and fall into the drain, whereafter A3 fired at him. He further deposed that PW-1 had also not specifically mentioned a torch and an inverter bulb as sources of light, had not shown him the inverter bulb or a torch, and had not disclosed the injuries allegedly sustained by PW-3. He further deposed that PW-1 had not identified specific positions of the individual accused, and the site plan consequently marked only point "B" as the place of assault. He further deposed that PW-2 had said that Anil Singh ran towards his old house, but had not stated that Anil ran towards A1's house. He further deposed that PW-2 had also not stated that Ritesh Singh and A2 assaulted the deceased with lathi-dandas or that PW-3 intervened. He denied the suggestions that the investigation was illegal, that no recovery had been made, that the recovery memo was forged, that the FIR had been ante-timed, or that false evidence had been collected and an incorrect charge-sheet filed.

24. **PW-7 Sunil Kumar Yadav**, Constable, Police Station Bazar Shukul, District Amethi, deposed that on 27.06.2012, while posted as Constable at Police Station Lambhua, District Sultanpur, he accompanied the then Station House Officer, Dinanath Mishra, pursuant to an order of the Chief Judicial Magistrate, Sultanpur, to take A3 from District Jail, Sultanpur, into police custody for recovery of the alleged pistol used in the occurrence. He further deposed that they departed at around 10:45 A.M. and, near the Primary Pathshala turn in village Khasre, met the public witnesses, Neeraj Singh and Jai Prakash Singh, who joined them in the government jeep along with other police personnel. He further deposed that near the house of village watchman Kanhai Yadav, A3 signalled the vehicle to stop and led the police party and witnesses along a pathway to Lohra Bagh. He allegedly took them to bamboo trees in the middle of the grove, removed the bamboo leaves and produced a polythene-wrapped parcel containing a 7.65 mm pistol, stating that it was the weapon used to kill Dharmendra Singh on 09.06.2012. He further deposed that the SHO dictated the recovery memo, which Constable Ram Kishor wrote and the pistol was sealed and stamped, and the witnesses signed the memo. He further deposed that when the SHO handed a copy of the recovery memo to A3, the latter read and tore it. Upon their return to the police station, the SHO got the case registered, and his statement was recorded by the Investigating Officer.

25. **During cross-examination** he admitted that the General Diary relating to the alleged recovery was not available to him, that he did not remember its entry number, and that a copy of the entry was not on record. He was unable to state the distance between Lohra Bagh and the place of occurrence. He further deposed that A3 himself took out the pistol along with the polythene and handed it to the SHO, and that the recovery memo had been written by Constable Ram Kishor Mishra at the SHO's dictation. He admitted that the torn copy of the recovery memo was neither taken into possession nor was the fact of its being torn recorded in the General Diary upon their return to the police station. He denied the suggestions that the recovery was fabricated, that the pistol had been planted by the police, or that the recovery had been effected under pressure from the complainant.

26. **PW-8 Shiv Pujan Yadav,** deposed that in 2012, he was posted as Sub-Inspector at Police Station Lambhua, District Sultanpur, and that the investigation of Case Crime No. 216 of 2012 under Section 3/25 of the Arms Act and Case Crime No. 182 of 2012 under Sections 302, 504 and 506 IPC was entrusted to him. He further deposed that on 27.06.2012, he received copies of the FIR and General Diary and recorded the statement of A3. On 28.06.2012, he recorded the statements of PW-6 and other police personnel, as well as public witnesses Neeraj Singh and Jai Prakash Singh, and prepared the site plan. He further deposed that

he recorded the statements of Dinesh Prajapati and Mahendra Yadav near the place of occurrence. On 16.07.2012, he submitted the alleged confession of A3 regarding recovery of the weapon, along with the case diary, to the office of the District Magistrate for sanction, however, sanction could not be obtained as the District Magistrate was on leave. He proved the site plan as Exhibit Ka-12, the carbon copies of the FIR and General Diary as Exhibits Ka-13 and Ka-14, respectively, and the charge-sheet as Exhibit Ka-15.

27. **During cross-examination**, he deposed that the proceedings conducted by him were submitted through the SHO, Dinanath Mishra. He admitted that neither the General Diary nor the Case Diary contained any entry regarding the movement of the evidence into or out of the police station. He denied the suggestion that, being subordinate to the SHO, he had conducted the investigation unlawfully under his pressure, merely performed it as a paper exercise, or submitted a false and fabricated charge-sheet.

28. **PW-9 Neeraj Singh,** deposed that on 27.06.2012, he and Jai Prakash Singh had gone towards the Primary School, by chance, for a stroll between 12:00 noon and 1:00 P.M., when a police jeep from Police Station Lambhua arrived and stopped near them. He further deposed that the police inspector enquired about their names and addresses and informed them that accused A3 had been

brought along with them, and asked them to accompany him.He further deposed that after proceeding for some distance, the jeep was stopped at the instance of A3 near the village, whereafter they proceeded on foot along with A3 towards Lohra Bagh. He further deposed that upon reaching near the bamboo trees in the Bagh, A3 removed the bamboo leaves and took out a polythene-wrapped parcel, from which a pistol was recovered. He further deposed that A3 then confirmed that the said pistol was the one with which they had murdered Dharmendra Singh. He further deposed that he did not remember the make or markings of the pistol. He further deposed that the SHO got the recovered pistol sealed and stamped and obtained his signature on the recovery memo.

29. **During cross-examination**, he deposed that he had been engaged in property dealing in Lucknow since 2011 and was unaware that the police would arrive in the village on 27.06.2012. He admitted that he and the deceased belonged to the same lineage and that, prior to the alleged recovery, he had neither seen a pistol nor closely observed one. He further deposed that the SHO had informed him that the recovered article was a pistol, but had not opened it in his presence, consequently, he could not say whether it contained a bullet. He further deposed that his statement was recorded at the place where the SHO obtained his signature. He further deposed that the complainant was not present at the time of the alleged recovery and that the police had not visited the

complainant's house. According to him, when the police officer met them, only he and Jai Prakash Singh were present, and no other person was there.

30. **PW-10, Jai Prakash Singh,** deposed that on 27.06.2012, between 12:00 noon and 1:00 P.M., he and Neeraj Singh had gone for a walk and met the police personnel from Police Station Lambhua near the turn by the Primary School, Khakhade. He futher deposed that the police informed them that a weapon was to be recovered at the instance of A3 and took them along in the police jeep. Upon reaching near the house of Kanhai Yadav, the village watchman, the jeep stopped, and A3 led them towards Lohra Bagh. On reaching the bamboo trees, A3 allegedly removed the leaves and produced a polythene-wrapped article. He further deposed that, when the Inspector opened the parcel, a pistol was recovered and A3 stated that it was the pistol used to murder Dharmendra Singh on 09.06.2012. He stated that the Inspector prepared the recovery memo at the spot and obtained his signature thereon.

31. **During cross-examination,** he deposed that he did not know how many persons were present in the jeep, although he subsequently estimated that there were three to four persons. He reiterated that he had gone for a walk with Neeraj Singh and found the police jeep near the school turn. He further deposed that neither he nor any member of his family possessed a firearm licence. He further deposed that the Inspector had neither prepared the site plan in his

presence nor obtained his signature on it. He also admitted that he had cordial relations with the deceased and his family. He denied the suggestion that, owing to his relationship with the deceased, he had gone to the police station and signed the recovery memo there.

32. **PW-11 Dr. A.K. Yadav**, Medical Officer, Cardiologist, Hon'ble High Court Dispensary, Lucknow, deposed that on 15.06.2012 he was posted as cardiologist at District Hospital Sultanpur and on the said date he was on duty as EMO and at around 1:30 P.M., Rahul Singh himself came to the district hospital. He further deposed that he did his examination and found the following injuries:

- **Injury No. 1:** A 5 cm long stitched wound, 9 cm above the left ear.
- **Injury No. 2:** Abrasion with dried scab measuring 10 cm X 2 cm, below the collar bone on the right side.
- **Injury No.3:** Abrasion with dried scab measuring 2 cm X 2 cm over back at level of L4 vertebra.
- **Injury No. 4:** Complain of pain of left thigh, however, no visible signs of injury were found.

He further deposed that in his opinion all these injuries must have occurred four to five days ago and all were minor in nature. He further deposed that injury no. 2, 3 and 4 could have been caused by blunt force and the type of the object used to inflict injury no. 1 could not be determined. He proved and verified the injury report, which was marked as Ext. Ka-16.

33. **During cross-examination**, he deposed that the Inspector had not recorded his statement. He further deposed that the medical

examination of Rahul Singh was conducted at his personal request and not on the orders of any authority. He further deposed that the application submitted by Rahul did not specify the date on which, or the person by whom, he had sustained the injuries, how he had sustained them, the nature of the assault that had resulted in the injuries, or whether any FIR had been lodged. He further deposed that he had not informed any police officer either before or after the medical examination of the injured person, as the injuries were not serious in nature. He further deposed that the depth of any injury had not been mentioned in the injury report and that injuries nos. 2 and 3 were covered with scabs. He further deposed that, according to medical jurisprudence, an injury sustained by a person remains fresh and reddish for around 24 hours, after which it gradually turns brownish. He further deposed that it takes around four to seven days for an injury to turn completely brownish. He further deposed that he had not mentioned in the injury report whether the injuries were brownish or not. He further deposed that the injuries sustained by the injured were not one week old but were around five to six days old. He further deposed that the exact date of an injury cannot be determined on the basis of the injuries and that it can only be estimated. He further deposed that, according to Rahul Singh's application, he had walked alone to the hospital emergency room for medical attention and that it was possible that the injuries sustained by him

had been caused by a fall. He denied the suggestion that no injuries had been caused to Rahul Singh and that, under his influence, he had exaggerated the injuries.

34. **PW- 12, Dr. Mohammad Shahzad Nayyar**, deposed that on 10.06.2012 he was posted as neurosurgeon at KGMU/ CSMMU Hospital Lucknow and on the said he operated on the head of Dharmendra Singh and found the following findings during operation:

- **Finding No. 1:** An entry wound was found on the left side of the brain, in the middle region of the left cerebral cortex, just behind the coronal suture, from which brain matter was protruding. No exit wound was found.
- **Finding No. 2**: The right parietal bone was fractured.
- **Finding No. 3:** The right temporal bone was fractured, and brain matter was protruding from the fractured area.
- **Finding No. 4:** A metallic foreign body, identified as a bullet, was found near the right temporal region.

He further deposed that the fracture on the head was due to firearm injury. He further deposed that the surgery on Dhamendra Singh were performed by his team, including him. He verifred and proved the operation note, which was marked as Ext. Ka-17.

35. **During cross-examination**, he deposed that the operation commenced at 8:30 A.M. and continued until 12:30 P.M. He further deposed that the medical report did not mention the date and time of admission of the patient. He further deposed that Dharmendra was alive before the operation. He further deposed that during the operation, he found a bullet lodged in the right temporal region. He further deposed that the bullet had entered

through the vertex of the head and was lodged beneath the skin near the right temporal bone, and that there was no exit wound on the skin. He further deposed that the patient died only after 12:30 P.M. When asked whether the patient would have survived had the operation been successful, he replied that the same could not be stated with certainty.

36. **DW-1, Anil Kumar Singh**, deposed that he and his family had supported Sunita Singh in the Gram Pradhan election and that his family had longstanding enmity with the family of A1 over a land dispute dating back to the time of his grandfather. He further deposed that, on 09.06.2012, at around 2:00– 3:00 P.M., an exchange of words took place between him and Bhanu Pratap Singh in front of the latter's house, which angered Bhanu Pratap Singh. He further deposed that at around 8:00–9:00 P.M. on the same day, the deceased arrived at his door on a motorcycle accompanied by two unknown persons and began abusing and threatening him. He claimed that, when he protested, the deceased and his companions assaulted him and fled towards the west. He further deposed that, while pursuing him, the deceased exhorted his companions to shoot him, whereupon one of the unknown persons fired a shot from behind which struck the deceased instead. Apprehending danger, he continued running and returned home thereafter. He further deposed that his grandfather, Raj Bahadur Singh, was sitting at the door at the relevant time, that his

house had no electricity connection, and that a lantern was burning at the door.

37. **During cross-examination**, he admitted that he had come to depose at the instance of A1. He further deposed that the wife of A1 had contested the Gram Pradhan election but secured third position, while Sunita Singh had won. He further deposed that Kaushalendra Singh, A1' s father, had been running the ration quota shop for a considerable period and that the quota had been cancelled during Sunita Singh's tenure, though he was unaware of the circumstances or the persons who had sought its cancellation. He further deposed that the altercation with Bhanu Pratap Singh had never been resolved and that Bhanu Pratap Singh was aggrieved on account of their quarrel. He further deposed that, when the shot was fired at the deceased, he was running away, was unarmed and carried neither a torch nor a lathi-danda. He described the area as very dark at around 8:00– 9:00 P.M. He further deposed that he had made no statement or affidavit before any competent authority during the period between the occurrence in 2012 and his deposition in Court in 2017. He reiterated that he had deposed at the instance of the accused but maintained that his testimony was truthful. He further admitted that the deceased, accompanied by two persons, had come to his door at around 8:00 P.M. and that only he and his grandfather were present there, neither Shiv Prasad Singh nor Sandeep Singh was present. He

further deposed that a conversation had taken place between the deceased and his grandfather, though the deceased had not come to lodge a complaint. He claimed that the deceased and his companions had assaulted him, but admitted that he had neither undergone a medical examination nor lodged any report concerning the alleged assault. He denied that he had run towards the temple east of his house with the deceased pursuing him or that blood had fallen on the chakroad east of his house. He acknowledged that lights were ordinarily lit in houses and at the temple in the evening, and that a lamp was burning before the temple idol on the night of the occurrence, but expressed ignorance as to whether a light had been switched on in the house of A1 situated behind his own. He denied the suggestions that he and Ritesh Singh had jostled Bhanu Pratap Singh near the pond, that he had supported Soni Singh in the election, or that he had conspired with the accused to murder the deceased near the chakroad. He also denied that he was a tutored witness deposing falsely to extend an undue advantage to the accused.

38. **DW-2, Fateh Bahadur Singh**, deposed that he was a cousin of A1, A2 and A3 and shared cordial relations with their family. He further deposed that A1 had been staying at his house since the preceding day and, upon receiving information about the murder of Dharmendra Kumar Singh on his mobile phone, A1 left for his own house. He further deposed that he subsequently learnt that

A1, A2 and A3 had been falsely implicated due to enmity arising from a quarrel between DW-1 and the deceased. He stated that he regularly visited A1's house for work and was acquainted with the Thakur families of the village. According to him, the family of A1 had long ceased to maintain social relations with the families of DW-1 and Raj Bahadur Singh due to a pending land dispute.

39. **During cross-examination**, During cross-examination, he clarified that he was the maternal cousin of A1, A2 and A3. He admitted that, although the incident occurred in 2012, he deposed before the Court for the first time in 2017 and had neither made any statement nor submitted any affidavit before a competent authority during the intervening period. He further admitted that he was deposing five years after the incident at the request of the accused. He denied the suggestion that, being related to the accused, he was giving false testimony to secure an undue benefit for them. He further deposed that the houses of the accused were approximately twenty kilometres from his own and that he could not say with certainty how long A1 would take to travel by motorcycle between the two places. He further deposed that the house of Ravindra Bahadur Singh, A1's maternal uncle, was about fifty metres from his own house and that A1 had stopped at his maternal uncle's house at the time of the incident. DW-2 admitted that, on the day of the occurrence, he had heard about a quarrel between DW-1 and Bhanu Pratap Singh, as well as between DW-1

and the deceased. He reiterated that DW-1, the grandson of the former Pradhan, had quarrelled with the deceased, while denying the suggestion that he was falsely deposing under the influence of the accused to save them.

40. **DW-3, Suresh Kumar Chaurasia**, deposed that A2 and A3 operated a grocery shop and a mobile shop, respectively, in the same building at Hata Bazar and had been carrying on their businesses there for approximately ten years. He further deposed that on 09.06.2012, at around 9:00 P.M., he visited A3's mobile shop to recharge his mobile phone. As he did not receive the confirmation message despite the recharge being processed, he remained at the shop awaiting confirmation. During that time, some customers informed him that a quarrel had taken place between Dharmendra, the newly elected Pradhan, and Raj Bahadur, the former Pradhan of village Khasre, and that a shot had been fired. According to him, A2, A3, their father and seven to eight customers were present at the shop when this information was received.

41. **During cross-examination**, he deposed that he had known A2 for two to four years before the shop was opened and regularly recharged his mobile phone for approximately ₹200– 300 per month. He admitted that A2 had personally asked him to depose before the Court. He clarified that he had not witnessed the firing and that the place of occurrence was approximately two to two-

and-a-half kilometres from Hata Bazar, a distance that could be covered by motorcycle in five to ten minutes. He further deposed that he had himself been an accused in the murder of his wife on 09.05.2007, had been convicted by the District Court and subsequently acquitted by the High Court in appeal, and had remained in jail for about two years. He admitted that A3 had also remained in jail for approximately five years, but denied that they had formed an unlawful gang during their incarceration. He also denied the suggestions that the shops were not situated in the same building, that no mobile shop was operated by A3, or that the market ordinarily closed by 7:00 P.M. He admitted that the occurrence took place in 2012 and that he was deposing for the first time in 2017, without having made any statement or submitted any affidavit concerning the incident before any authority during the intervening period. He further admitted that he was deposing at the request of the accused. He denied the suggestions that his testimony was false, tutored or given on legal advice to secure an undue benefit for the accused. He stated that he could not recall when he had recharged his mobile phone in May 2012, but denied the suggestion that he had not visited the alleged mobile shop of A2 and A3 at Hata Bazar on 09.06.2012.

Court Analysis:

Delay in Lodging the FIR and the Alleged Omissions Therein:

42. The first question which arises for consideration is whether the delay in lodging the FIR, considered in the light of the circumstances attending the occurrence and the subsequent conduct of the complainant, is sufficient to cast doubt upon the prosecution case. The connected contention regarding omission of certain particulars from the FIR is also required to be examined in this context, bearing in mind the settled distinction between a material omission affecting the substratum of the prosecution case and an omission of a mere detail or particular.

43. The objection regarding delay in lodging the FIR and the further submission that material particulars were subsequently introduced during the course of investigation and impugned judgment in this regard are all required to be considered in their proper perspective. It is well settled that mere delay in lodging the FIR does not, by itself, render the prosecution case doubtful. In ***Harbans Kaur v. State of Haryana*, (2005) 9 SCC**, the Supreme Court held that whether the delay is such as to cast a cloud of suspicion over the prosecution case depends upon the facts of each case and that even a long delay can be accepted where a plausible explanation is forthcoming. The Court specifically observed that where the witnesses first attend to the injured and seek medical treatment, such conduct cannot be regarded as unnatural merely because the

formal report is lodged thereafter. The principle stated therein is that delay is not to be examined in the abstract, but in the setting of the circumstances which occasioned it. The same principle was reiterated in ***Ashok Kumar Chaudhary v. State of Bihar*, (2008) 12 SCC 173**, where, the Supreme Court held:

> " *16. It is trite that mere delay in lodging the first information report is not by itself fatal to the case of the prosecution. Nevertheless, it is a relevant factor of which the court is obliged to take notice and examine whether any explanation for the delay has been offered and if offered, whether it is satisfactory or not. If no satisfactory explanation is forthcoming, an adverse inference may be drawn against the prosecution. However, in the event, the delay is properly and satisfactorily explained; the prosecution case cannot be thrown out merely on the ground of delay in lodging the FIR. Obviously, the explanation has to be considered in the light of the totality of the facts and circumstances of the case*."

44. The aforesaid principle squarely applies here. In the present case, the explanation for the interval between the occurrence and the lodging of the written report is borne out from the evidence itself. The prosecution evidence shows that the deceased, after sustaining a serious firearm injury, was first taken for medical treatment at District Hospital, Sultanpur, thereafter referred to the Trauma Centre, Lucknow and remained under treatment until his death. Thereafter, the inquest and post-mortem formalities were completed and the dead body was received by the complainant only in the evening of 10.06.2012. PW-1 has stated that he reached his house with the dead body in the early hours of 11.06.2012 and thereafter proceeded to the police station without

even performing the last rites. The Investigating Officer has also stated that no written complaint had been received at the police station before the written report of PW-1 and that the report was prepared at the police station on 11.06.2012 at about 7:30 A.M.

45. The aforesaid circumstances, considered cumulatively, provide a natural and satisfactory explanation for the delay. The conduct of the complainant cannot be examined as though he was expected to abandon the injured/deceased immediately after the occurrence and proceed to the police station merely to secure the earliest possible registration of the case. The Hon'ble Supreme Court has repeatedly cautioned that whether a delay is sufficient to cast a cloud upon the prosecution case depends upon the facts and circumstances of each case and that even a substantial delay may be accepted where a plausible explanation is forthcoming. The explanation available on the present record, therefore, cannot be characterized as either artificial or inherently improbable.

46. The next contention concerns the alleged omissions in the FIR. Here again, the nature of an FIR has to be kept in view. An FIR is not an encyclopedia of the prosecution case and is not required to contain every minute detail of the occurrence. Its principal object is to set the criminal law in motion and to place before the police the basic facts constituting the cognizable offence. As held in ***State of M.P. v. Mansingh,*** **(2003) 10 SCC 414**, there can be no hard-and-fast rule that the names of all witnesses, particularly

eyewitnesses, must necessarily find mention in the FIR. Similarly, Hon'ble Supreme Court in ***Kunwarpal v. State of Uttarakhand*, (2014) 16 SCC 560**, reiterated that there is no requirement of law that the names of all witnesses should be mentioned in the FIR.

47. In the present case, the omission of certain particulars from the FIR cannot be equated with the absence of the basic prosecution case. PW-1, in his cross-examination, specifically stated that the fact that the accused had rushed towards the deceased while brandishing country-made pistols was correctly recorded in the FIR and that the fact that all the accused had fired at the deceased was also stated in his written report. The fact that the source of light, the precise manner in which PW-3 received injuries, or the exact number of shots fired individually by each accused was not set out in the FIR is not, by itself, sufficient to transform those omissions into material contradictions.

48. There is, in particular, no legal requirement that the FIR should contain the names of every person who may subsequently figure as a prosecution witness. The evidentiary worth of a witness cannot be rejected merely because his or her name does not find place in the FIR. At the same time, the Court is not required to disregard every omission merely by invoking the expression that an FIR is not an encyclopedia. The real test is whether the omission is of such a nature that the substratum of the prosecution case is materially altered or whether the evidence subsequently

introduced amounts to an afterthought. This distinction was emphasized in ***Prabhu Dayal v. State of Rajasthan*, (2018) 8 SCC 127**, where the Hon'ble Supreme Court observed that some omission in the FIR does not necessarily require rejection of the testimony of a witness, the evidence has to be tested on its own strength or weakness, while the materiality of the omitted fact is borne in mind in assessing credibility.

49. Similarly, ***Jitender Kumar v. State of Haryana*, (2012) 6 SCC 204**, makes it clear that even non-mention of the name of an accused in the FIR does not necessarily result in his acquittal. The Court has to examine, inter alia, whether a definite role is subsequently attributed to such accused, whether that role is established by cogent and reliable evidence, whether the omission could have arisen from the circumstances in which the FIR was lodged, and whether the subsequent introduction of the accused appears to be an afterthought. The mere fact of omission, therefore, cannot be elevated into an inflexible rule of acquittal.

50. Tested on the aforesaid principles, the omissions relied upon by the appellants do not strike at the substratum of the prosecution case. The FIR disclosed the occurrence of the armed assault and the participation of the accused in the firing, while the evidence at trial furnished further particulars regarding the respective acts of the accused. The subsequent elaboration of the occurrence, in itself, cannot be treated as an improvement of such magnitude as

to render the entire prosecution case unreliable. The FIR was lodged for setting the criminal law in motion, it was not required to anticipate and record, with forensic precision, every detail which might subsequently emerge during investigation and trial.

51. Thus, the delay stands satisfactorily explained by the attending circumstances, while the omissions pointed out by the appellants are predominantly omissions of particulars and not a substitution of the basic occurrence by an altogether different version. The FIR, when read as a whole, does not furnish a foundation for holding that the prosecution case was subsequently fabricated. The said grounds, therefore, do not create such a doubt in the prosecution case as would warrant interference with the conviction recorded by the learned Trial Court.

Presence of the Injured Eyewitness, PW-3:

52. The presence and testimony of PW-3, Rahul Singh, have been assailed principally on the ground that the injuries attributed to him are not consistent with the manner of assault alleged by the prosecution and that his medical examination was not conducted contemporaneously with the occurrence. It has also been contended that the nature of the injuries recorded by PW-11, particularly the abrasions, does not support the allegation that PW-3 was assaulted with *lathis* and *dandas*. These submissions require examination in the light of the ocular account, the conduct

of PW-3 immediately after the occurrence and the medical evidence on record.

53. The prosecution has relied upon PW-3, Rahul Singh, not merely as an eyewitness to the occurrence but also as an injured witness. It is well settled that the testimony of an injured witness carries considerable evidentiary value, since the fact of him/her having sustained injuries furnishes an assurance of his/her presence at the place of occurrence. In ***State of U.P. v. Naresh,*** **(2011) 4 SCC 324**, the Hon'ble Supreme Court held that the testimony of an injured witness ordinarily deserves due weight and should not be discarded unless there are substantial grounds, such as major contradictions or discrepancies, rendering the evidence unreliable. The Court has also cautioned that minor inconsistencies or variations which do not affect the core of the prosecution case cannot, by themselves, furnish a basis for rejecting the testimony.

54. The question, therefore, is whether the injuries found upon PW-3, read with his conduct immediately after the occurrence and the medical evidence, furnish such assurance in the present case. PW-3 stated that, when he intervened to save the deceased, he was assaulted with *lathis* and sustained injuries on his head, chest, back and stomach. He further stated that he received three or four blows, fell down and was again assaulted. He also stated that his clothes were stained with blood, both on account of the assault upon him and while lifting the deceased. He specifically deposed

that, after the occurrence, he was taken to the District Hospital, Sultanpur, where his injuries were attended to by applying bandage and other treatment, and that he thereafter accompanied the deceased to Lucknow. He stated that he remained at the District Hospital only for about five to ten minutes before proceeding with the deceased for further treatment.

55. This conduct assumes significance. The deceased, who was his uncle, had suffered a firearm injury to the head and was in a critical condition. In such circumstances, the fact that PW-3 did not remain at the hospital for a prolonged period for the preparation of a formal injury report, but instead proceeded with the injured deceased to Lucknow, cannot by itself be treated as unnatural. His own injuries were described by him as having been attended to before he continued with the deceased. The subsequent medical examination on 15.06.2012 was stated to have been undertaken by him on account of continuing or increased pain. Thus, the later examination cannot, without more, be characterized as an attempt to create an injured witness.

56. The medical evidence also requires to be appreciated in its entirety. PW-11, examined PW-3 on 15.06.2012 and found a stitched wound, two scabbed abrasions and a complaint of pain in the left thigh without any visible external injury. The doctor opined that the injuries were four to five days old and minor in nature. Significantly, he stated that injuries Nos. 2, 3 and 4 could

have been caused by blunt force, while the nature of the object causing injury No. 1 could not be determined.

57. The submission that an assault with *lathi* and *danda* ought necessarily to have resulted in contusions, and that the presence of abrasions therefore excludes the assault alleged by PW-3, cannot be accepted as an absolute proposition. The nature of an injury depends upon the manner, force, angle and surface of impact and the circumstances in which the blow is received. There is no rule of universal application that a blow by a blunt weapon such as a *lathi* must invariably produce a contusion and nothing else.

58. More importantly, the medical evidence in the present case does not positively exclude the prosecution version. On the contrary, the doctor expressly accepted the possibility of blunt-force causation in respect of injuries Nos. 2, 3 and 4. The opinion that the injuries were approximately four to five days old, recorded on 15.06.2012, is also broadly consistent with the date of occurrence, namely 09.06.2012. It is true that the doctor stated that the exact date of an injury cannot be determined merely from its appearance and can only be estimated. That limitation affects the precision of the medical opinion, it does not, however, convert an otherwise compatible medical finding into evidence destructive of the prosecution case.

59. It is also significant that PW-3 did not introduce himself as an injured witness only after a substantial lapse of time. His presence

at the occurrence is consistently spoken to by PW-1 and PW-2. PW-1 specifically stated that PW-3 intervened to save the deceased and was assaulted with *lathis* and *dandas*, though the fact of his injuries was not incorporated in the FIR. PW-2 also stated that PW-3 came to the rescue of the deceased and sustained injuries to his head. Thus, the assertion of PW-3 regarding his presence and his intervention is not an isolated assertion emerging for the first time from his own testimony.

60. It is true that the medical evidence by itself does not establish that the injuries were necessarily caused by the appellants on 09.06.2012. That, however, is not the correct test. The medical evidence is required to be considered along with the ocular account and the surrounding circumstances. In the present case, PW-3's presence is spoken to by the other prosecution witnesses, his intervention on behalf of the deceased forms part of the prosecution account, his presence during the immediate transportation of the deceased is also supported by the evidence and the medical examination subsequently found injuries which, at least in part, were medically capable of having been caused by blunt force and whose estimated duration was broadly consistent with the occurrence.

61. The contention, therefore, that the nature of the injuries recorded by PW-11 is wholly inconsistent with the allegation of *lathi* and *danda* assault cannot be accepted. At the highest, the medical

evidence calls for cautious appreciation of the precise manner in which the injuries were caused, it does not displace the presence of PW-3 at the scene or render his testimony inherently improbable. His evidence has, accordingly, to be tested on its intrinsic consistency and its conformity with the material circumstances, rather than rejected merely because the later medical examination recorded abrasions and minor injuries.

Corroboration of Ocular Testimony and Medical Evidence regarding the Firearm Injuries Sustained by the Deceased:

62. The ocular account has also been assailed on the ground that the description given by the witnesses regarding the second firearm shot allegedly fired at the deceased's stomach is not borne out by the medical evidence. It has been pointed out that PW-3 stated that the second shot struck the stomach and thereafter exited after grazing the stomach, whereas PW-2 described the same firing by stating that the bullet pierced through the stomach and exited from the other side. It is submitted that no corresponding firearm injury, in the manner so described by the witnesses, was found during the post-mortem examination. The submission requires consideration in the context of the entire ocular and medical evidence.

63. PW-3 stated that after the deceased had fallen, A3 fired at his head and the bullet struck him on the head. He further stated that thereafter A1 fired a second shot which struck the deceased in the stomach and exited after grazing the stomach. PW-2, while

describing the same occurrence, stated that after A3 had fired at the head of the deceased, A1 and A3 fired again and the bullet pierced through the deceased's stomach and exited from the other side. Thus, there is some variation in the manner in which the two witnesses described the trajectory or effect of the second shot.

64. The medical evidence, however, has to be considered with some care. PW-5, who conducted the post-mortem examination, found a firearm entry wound on the head, deep up to the brain, along with a stitched wound measuring 12 cm on the right side of the pant, five centimeters outside the umbilicus. The post-mortem also recorded other operative and contusion injuries. The cause of death was opined to be firearm injury to the head and the resulting injuries and coma. PW-12, who had operated upon the deceased, similarly found an entry wound in the brain, fracture of the parietal and temporal bones and a metallic foreign body near the right temporal region, he specifically stated that he found no exit wound in the brain.

65. It is, therefore, evident that the medical evidence conclusively establishes the serious firearm injury sustained by the deceased on the head. The principal ocular account with regard to A3 firing at the head of the deceased thus finds substantial corroboration from the medical evidence. The mere fact that the witnesses have described the second shot in somewhat different terms cannot, by itself, result in rejection of their entire testimony.

66. The distinction between an exaggeration and a falsehood is of some importance in this regard. In ***Achhar Singh v. State of H.P.*, (2021) 5 SCC 543**, the Hon'ble Supreme Court explained that an exaggerated version contains an element of truth with an embellishment superadded to it, and that the duty of the Court is to separate the truth from the exaggeration. The Court further reiterated that, even where a portion of the testimony is found deficient, the acceptable part may be relied upon if it is corroborated by the other evidence on record. The maxim *falsus in uno, falsus in omnibus* has no application in criminal trials and the Court is required to sift the grain from the chaff.

67. Viewed in that light, the difference between the statement of PW-2 that the bullet pierced through the stomach and exited from the other side and the statement of PW-3 that the shot exited after grazing the stomach is not of such a character as to destroy the substratum of the prosecution case. Their evidence was being given with reference to an incident which occurred suddenly and in which several shots were fired in quick succession. The witnesses could reasonably perceive that a firearm shot had been fired at the deceased and could describe its apparent effect, but the precise trajectory of the projectile, particularly whether it passed through the body or merely grazed a particular portion, is a matter on which a lay witness cannot be expected to speak with medical or anatomical precision.

68. This aspect assumes greater significance when the evidence is appreciated in the setting in which the occurrence took place. The witnesses were ordinary rural persons who witnessed a sudden and violent firearm assault. As held by the Hon'ble Supreme Court in *Prabhu Dayal (supra)*, witnesses may be rustic and may, in the course of narration, develop a tendency to exaggerate. Such circumstance does not mean that their entire testimony is false. The Court has emphasised that minor discrepancies, inconsistencies and variations which do not touch the core of the prosecution case should not ordinarily result in rejection of the evidence as a whole. It has also been observed that even truthful witnesses may differ in details because their powers of observation, retention and reproduction are not identical.

69. The present variation falls within that permissible area. The witnesses are consistent about the occurrence of firing, the firearm injury to the head and the fact that the deceased was shot during the assault. Their difference concerns the precise description of the second shot and its trajectory. That portion of their testimony may, at the highest, be regarded as an embellishment or an approximation in the narration of a rapidly unfolding occurrence. It does not follow that because the precise manner of exit of the bullet from the stomach has not been medically established, the entire ocular account regarding the firing becomes unreliable.

70. Consequently, the absence of a medical finding corresponding exactly to the description given by PW-2 and PW-3 regarding the trajectory of the second shot cannot be treated as a material contradiction. The said portion of the evidence may properly be regarded as an exaggeration or imprecise description of the precise effect of the firing. Once that limited embellishment is separated, the remaining ocular account retains sufficient coherence and is materially corroborated by the medical evidence regarding the firearm injury to the head. The Court is not required to accept every detail of the ocular account as literally or scientifically exact, what is required is to determine whether the evidence, read as a whole and tested against the medical and surrounding circumstances, inspires confidence. In the present case, the core of the prosecution version concerning the firearm assault upon the deceased and the fatal injury sustained by him stands substantially corroborated by the medical evidence.

71. The testimony of the prosecution witnesses has been assailed on the ground that there are several omissions, contradictions and inconsistencies in their respective depositions, particularly with regard to the time and manner of occurrence, the presence and movement of PW-3 Rahul Singh, the attribution of the lathi assault, the sequence of firing, the position of the deceased at the time of firing, the source of light and the manner in which the written report came to be prepared. It has further been contended

that material facts subsequently introduced in the deposition of the witnesses were not stated either in the FIR or in their statements recorded during investigation. We have carefully examined the evidence of the prosecution witnesses in this regard.

Alleged Omission in Testimony of Prosecution Witnesses

72. The first and foremost circumstance emerging from the evidence is that there is consistency among PW-1, PW-2 and PW-3 on the essential features of the occurrence. All three witnesses place the incident at the house-side locality of Raj Bahadur Singh, speak of the altercation preceding the assault, attribute the armed assault to the accused persons, specifically attribute the firearm injury to the head of the deceased to A3, and consistently state that the deceased was thereafter taken for medical treatment and ultimately succumbed to the firearm injury. Their evidence is further supported, in its material particulars, by the medical evidence. PW-5 found a firearm entry wound on the head of the deceased and opined that the cause of death was firearm injury to the head and the resultant injuries and coma. PW-12, who operated upon the deceased, found a firearm entry wound in the brain, fracture of the right parietal and temporal bones and a bullet lodged near the right temporal region, with no exit wound. Thus, the central feature of the ocular account, namely, that the deceased

sustained a close-range firearm injury to the head which proved fatal, stands firmly corroborated by the medical evidence.

73. The variations in the approximate time of occurrence, namely, around 8:00 P.M. according to PW-1 and PW-3 and around 7:00 P.M. according to PW-2, do not affect the identity of the occurrence or the participation of the accused. PW-2 himself stated that the assault took place between 7:00 and 7:30 P.M., whereas PW-1 and PW-3 placed it at around 8:00 P.M. The occurrence admittedly took place in the evening and was a sudden and violent incident. A witness cannot reasonably be expected to remember the precise minute of an unexpected occurrence which had taken place several years before his deposition. The Supreme Court in ***Prithu v. State of H.P., (2009)*** **11 SCC 588** and ***State of U.P. v. M.K. Anthony,*** **1985) 1 SCC 505**, has reiterated that undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the root of the matter or shake the basic version of the prosecution witnesses. A witness cannot be expected to possess a photographic memory or reproduce every detail verbatim. Minor variations arising from differences in observation and recollection are, therefore, natural.

74. The criticism regarding the presence of PW-3 also does not, on a careful reading of the entire evidence, dislodge his presence at the occurrence. PW-1 stated that PW-3 arrived shortly before the

incident, whereas PW-3 gave a somewhat different account of his movement towards the place of occurrence and stated that he followed the deceased carrying a torch. PW-2 initially stated that PW-3 was not present at the house of Raj Bahadur Singh when PW-1 and the deceased arrived, but consistently placed PW-3 at the spot when the assault upon the deceased commenced and stated that PW-3 intervened to save him and sustained injuries. Thus, the witnesses may differ regarding the precise stage at which PW-3 arrived, but they are consistent in placing him at the scene when the assault took place. Such variation in the route or immediate movement of a witness cannot be elevated into a contradiction going to the root of the prosecution case.

75. The discrepancy concerning the attribution of the lathi assault is also not sufficient to discard the prosecution version. PW-1 attributed the assault upon the deceased to A2 and Ritesh Singh, while PW-2 attributed it to A1 and Ritesh Singh and PW-3 stated that the accused assaulted the deceased with lathis before A3 fired at him. The witnesses were describing a rapidly unfolding assault in which several persons were armed and moving simultaneously. Their failure to maintain identical attribution of every blow cannot be treated as destructive of the prosecution case when the principal and consistent allegation remains that the accused persons collectively participated in the assault and that A3 fired the fatal shot at the head of the deceased. More importantly, the

medical evidence establishes the fatal firearm injury and the remaining injuries are not the basis upon which the conviction under Section 302 IPC rests.

76. Similarly, the differences in the description of the subsequent firing do not affect the proved fatal act. PW-1 stated that after A3 fired at the head, A1 and A3 also fired, PW-2 stated that A1 and A3 fired again and described a shot as passing through the stomach, whereas PW-3 attributed the second shot to A1 and stated that it grazed the stomach. The post-mortem evidence does not support the description of a separate firearm injury to the stomach in the precise manner narrated by PW-2 or PW-3. PW-5 specifically stated in cross-examination that, apart from the firearm injury to the head, no other injury found during post-mortem was a firearm injury. The evidence, therefore, makes it appropriate to treat the description of the subsequent shot with caution. But the existence of an exaggerated or inaccurate description of an additional shot does not erase the consistent and medically corroborated evidence that A3 fired the fatal shot at the head of the deceased. The Court is required to separate the reliable core from the embellishment rather than reject the entire testimony.

77. The same principle applies to the variation regarding the position of the deceased after he fell. PW-1 described the deceased as

having fallen with his back towards the ground and face upwards, whereas PW-2 described his head as towards the ground and stomach downwards. The witnesses were observing a sudden firing incident at night, involving several persons, and were not expected to make a precise anatomical description of the posture of the deceased. This discrepancy does not affect the fact that the deceased fell and immediately thereafter sustained the firearm injury to his head. The medical evidence independently establishes the nature and location of that injury.

78. The criticism regarding the source of light also does not materially affect the prosecution case. PW-1 spoke of inverter bulb and torch light, PW-2 referred to the inverter light at the temple, and PW-3 stated that he was carrying a torch and that lights were available at the relevant places. The Investigating Officer admitted that no separate memo regarding the source of light was prepared and that PW-1 had not specifically stated in his statement under Section 161 Cr.P.C. all the particulars of the torch and inverter lighting. This is plainly an investigative omission. It does not establish that the witnesses were unable to see the occurrence, particularly when PW-2 specifically described the 100-watt bulb at the temple and PW-3 stated that he was himself carrying a torch. The evidence has to be appreciated as a whole and not rendered suspect merely because the Investigating Officer failed to prepare a separate memo regarding the source of light.

79. The omissions pointed out in the statements under Section 161 Cr.P.C. also have to be appreciated in their proper perspective. PW-6 stated that PW-1 had not specifically disclosed in his statement that Anil Singh, while murmuring, ran towards the house of A1, that he had not narrated the use of *lathi-danda* in the precise manner subsequently stated in Court, that he had not stated that he had seen the occurrence specifically in torch and inverter light, and that he had not narrated the injuries allegedly sustained by PW-3. PW-6 similarly stated that PW-2 had not stated during investigation that A1 and Ritesh Singh had assaulted the deceased with *lathi-danda* or that PW-3 had intervened. These omissions are relevant for assessing the weight of the particular portions of testimony, but they do not amount to a complete destruction of the prosecution case. The witnesses had consistently disclosed the occurrence involving the accused and the firearm assault upon the deceased. The later elaboration of peripheral details cannot be equated with an entirely new prosecution story.

80. The Supreme Court in ***State of M.P. v. Chhaakki Lal*, (2019) 12 SCC 326**, has specifically cautioned that undue importance should not be attached to omissions and contradictions which do not shake the basic version of the prosecution witnesses. The test is whether the evidence has a ring of truth and whether it is cogent, credible and trustworthy. The Court has further reiterated that evidence has to be weighed and not counted. Thus, the mere

existence of several discrepancies cannot furnish a ground for acquittal unless those discrepancies render the core prosecution version inherently improbable or unreliable.

81. The fact that PW-1 and PW-2 are related to the deceased or that they supported the election of the deceased's wife also does not make their evidence liable to be discarded. In ***Gulab v. State of U.P.*****, (2022) 12 SCC 677**, the Supreme Court reiterated that a related witness cannot be treated as an interested witness merely by reason of relationship and that the evidence of a relative can be relied upon where it is otherwise inherently reliable, probable, cogent and consistent. The Court also reiterated that it is the quality, and not the number, of witnesses which matters.

82. In the present case, the evidence of PW-1 and PW-2 is not being relied upon merely because they are related to or acquainted with the deceased. Their account receives substantial corroboration from the objective circumstances. The deceased admittedly sustained a firearm injury to the head at the relevant time, PW-5 medically established the fatal head injury, PW-12, the neurosurgeon who operated upon the deceased, found a bullet lodged inside the head and opined that the fracture was due to firearm injury. The medical evidence, therefore, lends assurance to the central part of the ocular version rather than contradicting it.

83. The defence has also sought to derive advantage from the omissions and contradictions emerging from the testimony of the prosecution witnesses. However, the Court cannot lose sight of the fact that the occurrence took place in 2012 and the witnesses entered the witness box several years thereafter. The possibility of some variation in the recollection of peripheral details is natural. What is material is that the core narrative has remained substantially intact *i.e.* the deceased was involved in the incident preceding the assault, the accused persons came armed, an armed assault followed, A3 fired at the head of the deceased, the deceased sustained a grievous firearm injury, he was taken for treatment and died during treatment and the medical evidence conclusively establishes firearm injury to the head as the cause of death.

84. *T*he principle stated in *Chhaakki Lal (supra)* is particularly apposite that a witness cannot be expected to possess a photographic memory and that a witness overtaken by events cannot be expected to absorb and reproduce every detail with mathematical precision. The Court is required to distinguish between discrepancies which arise from normal human fallibility and those which destroy the credibility of the testimony.

85. On an overall assessment, therefore, the omissions and contradictions relied upon by the appellants do not affect the

substratum of the prosecution case. Some of the witnesses have undoubtedly exaggerated or supplied details which are not fully borne out by the contemporaneous record or medical evidence, particularly with regard to the additional firing and the exact manner of the lathi assault. Those portions cannot be accepted mechanically. Nevertheless, the presence of such embellishments does not render the entire prosecution case false. The reliable portion of the testimony, remains intact and receives material corroboration from the medical evidence and the surrounding circumstances.

86. It is a settled principle that the Court is required to separate the grain from the chaff and to act upon the trustworthy residue of the evidence. The present case is not one where the contradictions create two wholly irreconcilable versions of the occurrence or render the prosecution story inherently improbable. They represent, in substantial part, variations in the narration of a sudden and violent incident, together with certain investigative omissions and subsequent elaborations. Such discrepancies, when tested against the entire evidentiary record, do not create a reasonable doubt regarding the guilt of the accused-appellants.

Defect in Investigation Should Not Enure to the Benefit of the Accused

87. Learned counsel for the accused-appellants argued that the investigation suffered from material lapses and deficiencies,

including failure to collect the bloodstained clothes, properly investigate the place of assault, and record the statement of PW-3 in a timely manner. He further submits that the site plan did not bear the signatures of PW-1 and PW-2. However, this Court is of the opinion that mere defects or omissions in the investigation, in the absence of any prejudice to the accused-appellants or material contradiction affecting the credibility of the prosecution evidence, cannot, by themselves, be a ground to extend the benefit of doubt to the accused-appellants, particularly when the prosecution case is otherwise supported by reliable and cogent evidence.

88. The duty of an Investigating Officer is not merely to collect material supporting the prosecution. He is required to conduct a fair, impartial and complete investigation and to bring before the Court all material circumstances bearing upon the occurrence. In ***Arvind Kumar v. State of Rajasthan*****, (2022) 16 SCC 732**, the Hon'ble Supreme Court has emphasised that an Investigating Officer is an officer of the Court and is expected to investigate the offence fairly, without taking sides either with the victim or with the accused. The Hon'ble Supreme Court has also drawn a distinction between a defective investigation and an investigation which is deliberately designed to suppress material facts. A mere defect in investigation does not, by itself, enure to the benefit of the accused unless the defect goes to the root of the prosecution case and is fundamental in nature. The Court is required to sift the

evidence available on record and ascertain the truth rather than allow an otherwise proved offence to fail merely because the investigation was inept or perfunctory.

89. In the present case, the investigation conducted by PW-6 cannot be described as satisfactory. The omissions noted above disclose a degree of procedural negligence which the Court cannot ignore. In particular, the failure to collect the bloodstained clothes, the failure to investigate the alleged trail of blood, the delayed recording of PW-3's statement, and the failure to properly document several aspects of the scene of occurrence were avoidable lapses. The investigation ought to have been more careful and comprehensive. However, the Court has to distinguish between a deficiency in the investigation and a deficiency in the substantive proof of the offence. The former cannot automatically result in the latter.

90. In ***State of M.P. v. Mansingh*****, (2003) 10 SCC 414**, the Hon'ble Supreme Court held that even where deficiencies in investigation are established, such deficiencies cannot constitute a ground to discard a prosecution version which is otherwise authentic, credible and cogent. Similarly, in ***Dhanaj Singh v. State of Punjab*****, (2004) 3 SCC 654**, the Hon'ble Supreme Court cautioned that although the Court must be circumspect while evaluating evidence in a case of defective investigation, it would not be proper to acquit an accused solely on account of such defect. To

do so may amount to permitting the lapses of the Investigating Officer to defeat the administration of justice. The Court is required to examine the prosecution evidence dehors the omissions attributable to the investigating agency and determine whether that evidence, independently assessed, inspires confidence.

91. The principle is of particular significance in the present case. The deficiencies noticed in the investigation do not render the occurrence itself, nor does it rule out the fatal firearm injury sustained by the deceased. PW-1, PW-2 and PW-3 have given ocular accounts of the assault. Their evidence, notwithstanding the discrepancies already discussed, consistently establishes the presence of an armed assault and, in particular, the firearm assault upon the head of the deceased, which is also corroborated with the medical evidence. Thus, the fundamental fact that the deceased suffered a fatal firearm injury during the occurrence is not dependent upon the manner in which the Investigating Officer performed his duties.

92. The absence of a separate memo regarding the source of light, non-collection of the clothes of the deceased, failure to take sample of blood-trail or failure to examine certain witnesses may affect the completeness of the investigation, but none of these lapses demonstrates that the occurrence did not take place or that the ocular witnesses could not have witnessed it. The same is true

of the delayed recording of the statement of PW-3. The delay is a circumstance requiring the Court to scrutinise his evidence with greater care, and his testimony has accordingly been examined in the light of the other evidence. But the delay in recording his statement is attributable to the investigating process and cannot, by itself, erase the occurrence otherwise established by the evidence on record.

93. The appellants have further placed considerable reliance upon the fact that no FSL report or ballistic expert report has been brought on record connecting the recovered firearm with the projectile or with the fatal injury and it is argued that this omission must also be regarded as a lapse in investigation. Where a firearm and the relevant projectile or cartridge are available, the prudent course for the investigating agency is to send the material for forensic examination and place the resulting expert opinion before the Court. Such scientific examination could have provided additional link evidence and would undoubtedly have strengthened the prosecution case. The Investigating Officer has not offered any satisfactory explanation for the absence of such scientific evidence on the record.

94. Nevertheless, the absence of a ballistic report does not lay down an inflexible rule that the prosecution case must fail in every case involving the use of a firearm. In ***Gurucharan Singh v. State of Punjab*****, AIR 1963 SC 340**, the Hon'ble Supreme Court made it

clear that examination of a ballistic expert is not an indispensable requirement in every prosecution alleging murder by a firearm. Whether such evidence is essential depends upon the facts and circumstances of the particular case. Where the direct evidence is cogent and unimpeachable and the medical evidence is consistent with the ocular account, the absence of ballistic evidence does not necessarily destroy the prosecution case.

95. The same principle has subsequently been noticed and applied in *Gulab* (supra). The Hon'ble Supreme Court, while recognising the importance of ballistic evidence particularly where both the firearm and the crime cartridge are recovered, reiterated that there is no inflexible rule requiring examination of a ballistic expert in every firearm case. Similarly, in ***State of Punjab v. Jugraj Singh*, (2002) 3 SCC 234**, the Apex Court held that where there is convincing eyewitness evidence and the attending circumstances otherwise establish the prosecution version, non-examination of a ballistic expert does not, by itself, affect the creditworthiness of the eyewitnesses. The question, therefore, is not whether a ballistic report would have been desirable, it undoubtedly would have been, but whether its absence creates a reasonable doubt in the evidence which is otherwise available before the Court.

96. In the present case, it does not. The prosecution does not rest solely upon the alleged recovery of the firearm from A3 or empty cartridges from the place of the occurrence. The recovery

evidence is only one part of the evidentiary chain. The principal evidence consists of the ocular account of the occurrence, which has been examined at length and found reliable in its material particulars, coupled with the medical evidence establishing that the deceased sustained a firearm injury to the head which proved fatal. The medical evidence does not merely establish an unexplained firearm injury, it materially corroborates the central feature of the ocular account that the deceased was shot in the head. PW-12 further found the bullet lodged inside the head, thereby confirming that the injury was caused by a firearm projectile. Thus, the absence of a ballistic comparison does not leave the Court without evidence regarding the homicidal firearm injury.

97. It is also significant that the defence has not been able to demonstrate that the absence of the FSL report has resulted in any positive inconsistency between the recovered firearm and the medical evidence. There is no material on record establishing that the fatal injury could not have been caused by a country-made pistol of the nature alleged by the eyewitnesses. The absence of expert linkage may deprive the prosecution of one corroborative circumstance, but it does not retrospectively render the direct ocular evidence unreliable.

98. The distinction between a defective investigation and a false prosecution case is therefore important. A defective investigation

may justify closer scrutiny of the prosecution evidence, it does not justify rejection of credible evidence merely as a matter of consequence. As held in *Dhanaj Singh* (supra), if the lapses are attributable to negligence of the investigating agency, the Court must examine the evidence independently of such omissions and determine whether the evidence itself is reliable. Otherwise, the consequence of the Investigating Officer's negligence would be to confer an unintended advantage upon the accused even where the substantive evidence establishes their guilt.

99. At the same time, the Court is conscious that the principle cannot be applied mechanically. If an investigative lapse goes to the foundation of the prosecution case, results in suppression of material facts, or creates a genuine and reasonable doubt regarding the occurrence or identity of the assailants, the accused cannot be denied the benefit arising from such doubt. *Arvind Kumar* (supra) makes it clear that a calculated or deliberate suppression stands on a different footing from an ordinary defective investigation. The present case, however, does not disclose such a foundational failure. The lapses of PW-6 are principally procedural and investigative in character. They do not destroy the substantive evidence regarding the occurrence, the participation of the accused, or the fatal firearm injury sustained by the deceased.

100. The Court would, therefore, record its disapproval of the manner in which the investigation was conducted, particularly the

failure to collect relevant physical evidence, to examine material medical witnesses, to properly document aspects of the scene and to bring the available forensic evidence on record. Such deficiencies ought not to be repeated. But the Court cannot permit these investigative lapses to overshadow reliable substantive evidence or to create an artificial doubt where the evidence as a whole does not warrant one.

101. Viewed in this manner, the investigation in the present case was undoubtedly defective, but the defect is not fundamental to the prosecution case. It does not demolish the ocular account, it does not neutralise the medical evidence, and the absence of an FSL or ballistic report does not, in the facts of the present case, create a reasonable doubt regarding the fatal firearm assault. The appellants are, therefore, not entitled to the benefit of the investigative lapses. The defects in investigation may call for criticism of the Investigating Officer, but they do not furnish a ground for disturbing the conviction otherwise supported by credible ocular and medical evidence.

Motive and Common Intention under Section 34 IPC

102. The appellants have also challenged the prosecution case on the ground that the alleged motive has not been established in a manner sufficient to sustain the conviction and that there is no satisfactory evidence of any prior meeting of minds so as to attract the provisions of Section 34 IPC. It has been argued that the

background of election rivalry and the alleged dispute regarding the post of Pradhan and cancellation of reservation/quota could equally provide a reason for false implication and, therefore, cannot safely be treated as a circumstance pointing towards the guilt of the appellants. The submission requires consideration in the light of the evidence on record as well as the settled principles governing motive and common intention.

103. So far as motive is concerned, the prosecution evidence discloses a definite background of hostility. PW-1 has stated that there was election-related rivalry and that the accused persons were aggrieved on account of the deceased's role in the election of the Pradhan and the cancellation of the ration quota. The witnesses have further attributed to A1, immediately before the assault, an exhortation referring specifically to the loss of the Pradhan's post and the cancellation of the quota and stating, in substance, that because of the deceased the situation had arisen and that he should be killed. Thus, the motive suggested by the prosecution is not an afterthought wholly unconnected with the occurrence, it forms part of the immediate circumstances in which the assault is alleged to have taken place.

104. It is true that motive, by itself, cannot establish the commission of an offence. It is equally true that previous enmity may furnish a reason for false implication and that enmity is a double-edged sword. In ***Kunwarpal v. State of Uttarakhand*****,**

(2014) 16 SCC 560, the Hon'ble Supreme Court recognised that animosity may constitute a basis for false implication, but it may equally furnish a basis for the commission of the crime. The proper approach, therefore, is not to reject the prosecution case merely because there was previous hostility, but to examine whether the evidence of the occurrence independently inspires confidence and whether the alleged motive is consistent with the proved circumstances.

105. In the present case, the existence of election rivalry cannot be treated as a circumstance operating exclusively in favour of the defence. On the contrary, it provides a plausible background for the occurrence alleged by the prosecution. Moreover, the prosecution case does not rest upon motive alone. The motive is relied upon only as a circumstance lending context to the ocular evidence of PW-1, PW-2 and PW-3. Their testimony regarding the armed assault and the fatal firearm injury is required to be assessed independently, and as already discussed, the core of that evidence finds material corroboration from the medical evidence. Consequently, the fact that the same circumstance could theoretically also furnish a reason for false implication does not, in the present case, create a reasonable doubt when the ocular account is otherwise found trustworthy.

106. It is also necessary to bear in mind that motive assumes a different degree of significance in a case based substantially upon

direct evidence than in a case resting entirely upon circumstantial evidence. Where reliable eyewitnesses give a direct account of the occurrence, failure to establish an elaborate or independent motive cannot by itself destroy the prosecution case. Conversely, where motive is established, it may provide assurance to the ocular account but cannot substitute for proof of participation. The Court, therefore, proceeds to examine the question of common intention on the basis of the conduct of the accused persons at and immediately before the occurrence, rather than treating motive as a substitute for proof.

107. Section 34 IPC does not create a distinct substantive offence. It embodies a principle of constructive liability whereby, when a criminal act is done by several persons in furtherance of the common intention of all, each is liable for that act as if it had been done by him alone. The essential requirement is, therefore, the existence of common intention and participation in the criminal act. In ***Jai Bhagwan v. State of Haryana*****, (1999) 3 SCC 102** and ***Suresh Sakharam Nangare v. State of Maharashtra*****, (2012) 9 SCC 249**, the Apex Court has reiterated that two factors are required to attract Section 34 i.e. common intention and participation of the accused in the commission of the offence. Common intention may be inferred from the facts and circumstances of each case.

108. The requirement of common intention does not necessarily mean that the prosecution must produce direct evidence of an earlier meeting in a formal or elaborate manner. In **P*andurang v. State of Hyderabad*, AIR 1955 SC 216**, the Hon'ble Supreme Court explained that the plan need not be elaborate and that no long interval is required between formation of the intention and commission of the crime. The common intention may be formed suddenly. What is necessary is that there must be a meeting of minds, and the criminal act must be done pursuant to that common intention. The distinction between merely having the same intention independently and acting pursuant to a common intention is real and substantial.

109. The principle has been reiterated by the Hon'ble Supreme Court in ***Virendra Singh v. State of M.P.*, (2010) 8 SCC 407** and ***Chhota Ahirwar v. State of M.P.* ,(2020) 4 SCC 126**, wherein it was held that common intention may develop on the spot, but it must be anterior in point of time to the commission of the criminal act and there must be clear evidence justifying the inference of concert. The existence of a prearranged plan may be inferred from the conduct of the accused, the surrounding circumstances and other incriminating facts. No particular overt act is indispensable on the part of every accused if the evidence establishes that they shared the common intention in respect of the ultimate criminal act.

110. The present case has to be examined in the light of these principles. The evidence does not disclose a situation where the appellants were merely present at the place of occurrence without any connection with the assault. According to the consistent core of the prosecution evidence, the accused persons came together, were armed, participated in the assault upon the deceased and remained together during the occurrence. The exhortation attributed to A1 immediately before the firing is particularly significant. It is alleged that A1 referred to the dispute concerning the Pradhan's post and the cancellation of the quota and exhorted the others to kill the deceased. Thereafter, the assault was carried out by the accused persons acting in concert and A3 fired the fatal shot at the head of the deceased.

111. The exhortation of A1 cannot be considered in isolation. It has to be read along with the conduct of the accused persons immediately thereafter. The prosecution evidence indicates that the accused did not merely happen to be present at the scene, they were armed and participated in the assault which culminated in the shooting of the deceased. The sequence of events, taken as a whole, permits an inference that the accused persons were acting pursuant to a common design directed against the deceased. The participation of A1 in the assault and exhortation, the participation attributed to A2 in the armed assault, and the firing of the fatal

shot by A3 are not isolated acts occurring independently of one another; they form part of one continuous transaction.

112. The fact that the fatal shot was specifically attributed to A3 does not, therefore, exonerate A1 and A2 from the operation of Section 34. Section 34 is precisely intended to meet a situation where several persons participate in a criminal act pursuant to a common intention, though the ultimate act may be physically committed by only one of them. In *Chhota Ahirwar* (supra), the Hon'ble Supreme Court reiterated that no overt act is necessary on the part of every accused if common intention with respect to the ultimate criminal act is established. What is required is participation coupled with the requisite common intention.

113. The submission on behalf of the appellants that there is no direct evidence of a prior meeting of minds also cannot be accepted as a proposition requiring acquittal. Common intention is ordinarily a matter of inference because persons acting together in a crime do not ordinarily announce their agreement in advance. In *Vijendra Singh* (supra), the Hon'ble Supreme Court held that the existence of prior concert may be inferred from circumstances which necessarily lead to that conclusion. The manner in which the accused came armed, the exhortation attributed to A1, their simultaneous participation in the assault and the ensuing firearm attack are circumstances which, when considered cumulatively, provide the necessary basis for such an inference.

114. The circumstances preceding the fatal shot are also relevant. The occurrence was not a case where, without any preceding interaction or concert, one accused suddenly fired a shot while the others remained passive spectators. The prosecution evidence depicts a sequence beginning with the altercation, followed by the arrival of the armed accused, the exhortation concerning the deceased's role in the election dispute, the assault upon the deceased, intervention by PW-3 and thereafter the firearm attack. Even if the precise attribution of individual lathi blows or subsequent firing is not accepted in every detail, the broad course of conduct remains sufficiently established to infer concerted action.

115. The exhortation attributed to A1 immediately before the fatal firing is of particular relevance in this context. The Supreme Court in ***Sandeep v. State of Haryana*****, (2022) 14 SCC 812**, upheld the conviction under Sections 302 and 34 IPC where an exhortation was given by one accused immediately before a co-accused fired the fatal shot. The evidentiary value of the exhortation in the present case has, therefore, to be considered along with the subsequent conduct of the participants and not as an isolated utterance.

116. The evidence, therefore, does not warrant the contention that A3 alone can be held responsible for the fatal firearm injury merely because he is specifically attributed the head shot. Once

the participation of A1 and A2 in the concerted armed assault and the existence of the common intention are established, the principle of constructive liability under Section 34 operates. The criminal act culminating in the death of Dharmendra Singh was not an isolated act of A3 divorced from the conduct of the other accused, rather, it formed part of the concerted action attributed to all the participants.

117. The motive and Section 34, however, must not be conflated. The motive arising from election rivalry and the dispute regarding the Pradhan's post provides the background and a plausible reason for the occurrence. The application of Section 34 rests upon the conduct of the accused and the inference of common intention from the totality of circumstances. The prosecution succeeds not because motive alone establishes common intention, but because the motive is consistent with, and lends context to, the direct evidence showing that the accused persons came armed, participated in the assault and acted together immediately before the fatal firing.

118. On a cumulative assessment, therefore, the prosecution has established a credible motive for the occurrence and, more importantly, has proved the circumstances from which the common intention of A1, A2 and A3 can safely be inferred. The evidence demonstrates participation in the criminal transaction and concerted action directed against the deceased. The fact that

the fatal shot was fired by A3 does not absolve the other participants where the requirements of Section 34 are otherwise satisfied. The conviction of the appellants under Section 302 read with Section 34 IPC is, accordingly, not rendered infirm either by the nature of the motive or by the attribution of the fatal shot specifically to A3.

Plea of Alibi:

119. The appellants have also relied upon the plea of alibi, particularly in respect of the alleged presence of A1 at the house of his maternal relative and the presence of the other accused at their respective places of business. The plea, however, does not inspire confidence when tested against the prosecution evidence and the defence evidence brought on record.

120. In ***Vijay Pal v. State (Govt. of NCT of Delhi)*****, (2015) 4 SCC 749**, the Hon'ble Supreme Court held that alibi is a rule of evidence and not an exception under the Penal Code. Once the prosecution satisfactorily establishes the presence of an accused at the place of occurrence through reliable evidence, the burden lies upon the accused who takes the plea of alibi to establish it by cogent and positive evidence so as to exclude the possibility of his presence at the scene. The plea succeeds only where the evidence is of such quality as to make the presence of the accused at the place of occurrence physically improbable or impossible.

121. In the present case, the prosecution evidence has already been found sufficient to establish the presence and participation of the accused persons in the occurrence. The defence evidence does not create any reasonable doubt in that regard. DW-2 Fateh Bahadur Singh, who sought to establish the presence of A1 at his house, is admittedly a relative of the accused and came forward to depose after several years at the request of the accused. No contemporaneous document, independent witness or other reliable material has been produced to substantiate the alleged presence of A1 at that place at the relevant time. Likewise, the evidence of DW-3 regarding the presence of A2 and A3 at the shops is not that of an eyewitness to the occurrence and, by itself, does not exclude their presence at the place of occurrence. The distance suggested between the shops and the place of occurrence also does not make their presence there physically impossible.

122. The principle stated in ***Jitender Kumar v. State of Haryana*****, (2012) 6 SCC 204**, is also apposite that once the testimony establishing the presence of the accused at the place of occurrence is found trustworthy, the plea of alibi loses its significance unless the accused produces evidence which, at least on reasonable probability and ultimately with requisite certainty, excludes the possibility of his presence at the scene.

123. In the present case, the defence evidence falls considerably short of that standard. The plea of alibi is essentially a bare

assertion unsupported by reliable contemporaneous material and does not render the prosecution evidence regarding the presence and participation of the appellants doubtful. The plea of alibi is, therefore, rejected.

Conclusion:

124. In view of the foregoing discussion and upon a comprehensive appraisal of the entire evidence on record, we are of the considered opinion that the prosecution has succeeded in establishing the occurrence as alleged and the participation of the accused-appellants therein beyond reasonable doubt. The ocular testimony of PW-1, PW-2 and PW-3, insofar as it relates to the core of the occurrence and the fatal firearm assault upon the deceased, inspires confidence and receives material corroboration from the medical evidence. The discrepancies and omissions pointed out by the learned counsel for the appellants, as discussed hereinabove, relate substantially to peripheral details and do not demolish the substratum of the prosecution case.

125. Upon consideration of the entire evidence, we find no perversity, illegality or infirmity in the findings recorded by the learned trial Court. The conviction of the accused-appellants under Sections 302/34, 504 and 506 IPC and of A3 is concerned, under Section 3/25 of the Arms Act, is based upon a proper appreciation of the evidence and does not call for interference by this Court.

126. Accordingly, both the appeals being devoid of merit are hereby **rejected**. The judgment and order of the trial court is hereby **affirmed**.

127. All the accused-appellants are stated to be in jail. They shall continue to remain in custody and shall serve out the sentences awarded by the learned trial court.

128. Pending applications, if any, stands disposed of.

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

(Zafeer Ahmad,J.) (Rajesh Singh Chauhan,J.)

October 30,2026
Shahnaz

Digitally signed by :-
SHAHNAZ BANO
High Court of Judicature at Allahabad,
Lucknow Bench