

69. Accordingly, the appeals are **allowed.**

70. The appellants, namely, Shera and Lakhan are on bail. Therefore, their bail bonds are cancelled and sureties are discharged. They need not surrender, if they are not wanted in any other case.

71. In compliance with the provision contained in Section 437-A Cr.P.C. the appellants are directed to furnish their personal bonds and two sureties each to the satisfaction of the court concerned within a period of eight weeks from today.

72. Let a copy of this judgment be placed on the records of connected Criminal Appeal No.605 of 2001 titled as Lakhan vs. State of U.P.

73. Let the trial court record along with a copy of this judgment be transmitted to the learned trial Court for its information and necessary compliance through fax/ e-mail, forthwith.

(2025) 5 ILRA 130
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.05.2025

BEFORE

THE HON'BLE MOHD. AZHAR HUSAIN
IDRISI, J.

Criminal Appeal No. 1507 of 1983

Shambhu & Anr. ...Appellants
Versus
State ...Respondent

Counsel for the Appellants:
Pawan Shukla (A.C.), Ayank Mishra, Maha Prasad, Tanmay Verma, Vivek Kumar Srivastava

Counsel for the Respondent:
A.G.A.

(A) Criminal Law - Murder and Attempt to Murder - Conviction - Indian Penal Code, 1860 – Section 302, 307 read with 34 - Proof of Common Intention - Motive and Direct Evidence Established - Testimony of related or interested witnesses, if credible and trustworthy, is sufficient for conviction - Presence of eye-witnesses, corroborated by post-mortem and chemical analysis, sufficiently established the guilt of appellants beyond reasonable doubt - motive and sequence of events ruled out false implication. (Para - 12,42,47 to 53,72,73)

(B) Words and Phrases – “Interested witness” does not mean “related witness” - an interested witness is one who has a personal stake in the conviction. (Paras 40)

Accused having married the widow of the informant's nephew - seeking sole claim over agricultural land - developed animosity when the informant initiated legal proceedings asserting reversionary rights - On 26.11.1982, at about 7:30 a.m., accused and one other - armed with tabbals, assaulted and killed the informant's son - attempted to murder the informant and another witness by firing at them, but they escaped unhurt - FIR was lodged promptly at 10:15 a.m. the same day. (Para - 3, 15-18, 30)

HELD: - Conviction of the appellants under Sections 302 and 307 IPC read with Section 34 IPC was affirmed. Prosecution had established the guilt of the accused beyond reasonable doubt through credible eye-witnesses supported by medical evidence. Defence theory was found to be untrustworthy and unconvincing. FIR was held to be lodged promptly. Presence of the accused at the place of occurrence and their participation in the crime was proved.(Para - 72,73)

Appeal dismissed. (E-7)

List of Cases cited:

1. Bathula Nagamalleswar Rao & ors. Vs St. Rep. By Public Prosecutor, 2008 (2) CRIMES 188 (SC)
2. Appukutan Vs State, 1989 Cri LJ 2362
3. Amar Singh Vs Balwinder Singh & ors., (2003) 2 SCC 518
4. Krishna Mochi & ors. Vs St. of Bihar, (2002) 6 SCC 81
5. Masalti Vs St. of U.P., AIR 1965 SC 202
6. Darya Singh Vs St. of Punj., AIR 1965 SC 328
7. St. of A.P. Vs S. Rayappa & ors., (2006) 4 SCC 512
8. Pulicherla Nagaraju @ Nagaraja Reddy Vs St. of A.P., (2006) 11 SCC 444
9. Jayabalan Vs U.T. of Pondicherry, 2010 (68) ACC 308 (SC)
10. Dharnidhar Vs St. of U.P., (2010) 7 SCC 759
11. Ram Bharosey Vs St. of U.P., AIR 2010 SC 917
12. Baban Shankar Daphal & ors. Vs The St. of Maha., 2025 SCC Online SC 137
13. Shahaja @ Shahajan Ismail Mohd. Vs St. of Maha., (2023) 12 SCC 558
14. Pahalwan Singh & ors. Vs St. of U.P., 2020 (6) ALJ 166
15. Jarnail Singh Vs St. of Punj, (2009) 9 SCC 719
16. Vadivelu Thevar & anr. Vs St. of Madas, AIR 1957 sc 614
17. Mathura Prashad & anr. Vs St. of M.P., 1992 Supp (1) SCC 406
18. St. of Uttrakhand Vs Darshan Singh, (2020) 12 SCC 605
19. Gopi Ram Vs St. of U.P., 2006 (55) ACC 673, SC,
20. St. of U.P. Vs Nabaw Singh, 2005 ACC (Cri.)33
21. Shiv Raj Bapu Ray Jadhav Vs St. of Karn. (2003) 6 ACC 392,
22. St. of Rajasthan Vs Arjun Singh, AIR 2011 SC 3380,
23. Radha Mohan Singh Vs St., 2005 CRLJ 167
24. St. of Guj. Vs Aniruuddh Singh, AIR 1997 SC 278

(Delivered by Hon'ble Mohd. Azhar Husain Idrisi, J.)

1- (i)- Office report dated 03.08.1983 demonstrates that Trial Court Record has been received way back in the year 1983 and the accused appellants were released on bail vide order dated 09.06.1983. The paper books were also prepared pursuant to the order dated 15.07.2019. Order sheet transpires that the learned counsel for the accused appellants avoided to appear before the Court to argue the appeal, despite consistent orders. In these pressing and compelling circumstances non-bailable warrants were issued against the accused appellants on 15.07.2019, which were duly executed upon the accused appellants, the accused appellants appeared in the court of Chief Judicial Magistrate, Jalaun at Orai and were released on bail with undertaking that they would appear before this court on the date fixed. A perusal of the order sheet further evinces that the appeal was listed on 16.03.2022 and 31.08.2022 for hearing but no one appeared on behalf of appellants to advance arguments. The appeal was again listed on 31.01.2024 for hearing. On that date, learned counsel for the accused appellants appeared and made a request for being adjourned. The appeal was again listed for hearing on 12.07.2024, but on account of call of strike by members of

Bar, hearing could not be done. Again the appeal was directed to be listed on 25.07.2024 and in the meantime notices were served upon the accused appellants personally which is evident vide letter dated 5.6.2024 sent by Chief Judicial Magistrate, Jalaun at Orai and the office report dated 3.7.2024. Eventually, the appeal was listed on 5.11.2024. On that date, despite repeated calls, none appeared on behalf of accused appellants to press the appeal. Thus the record demonstrate that the counsel for the accused appellants as well as accused themselves employed all gadget to oscillate the appeal sine die, without seeing day light. The present appeal being of the year 1983 has been swinging years together on the dilatory and stalling tactics adopted by the counsels as well as the accused appellants themselves.

(ii)- In view of the above, we are of the opinion that no useful purpose would be served to keep the present appeal swinging any more accommodating counsel for the appellants to advance argument on three dates. The Court is under bounden obligation to proceed with the matter and decide it after hearing the learned counsel for the parties, consequently, Sri Pawan Shukla, Advocate was appointed as Amicus Curiae to argue the appeal on behalf of accused appellants.

2- The instant appeal has been instituted on behalf of appellants against the judgment and order dated 21.5.1983 passed by the learned Special Judge/Additional Sessions Judge Jalaun at Orai in Sessions Trial No. 16 of 1983 (State versus Shambhu and another) arising out of Case Crime No. 292 of 1982 under sections 302/307 IPC Police Station Kadaura, District Jalaun whereby the appellants have been convicted and sentenced to undergo

life imprisonment with fine of Rs.1,000/- each for the offence punishable under sections 302 I.P.C. and were also directed to serve out five years rigorous imprisonment for the offence punishable under section 307 IPC with fine of Rs. 500/- with default stipulations. Both the sentences were directed to run concurrently.

3- (i)- Succinctly, the prosecution case, as divulged in First Information Report (in short F.I.R.) and other undisputed facts and circumstances, is that on 26.11.1982 at about 7.30 a.m. Informant Ghanjua S/o Matain, R/o- village Kahata, within circle of Police Station Ata, District Jalaun, orally informed to the P.S. Kadaura, about the incident occurred on 26.11.1982 at about 07.30 a.m. He informed that the accused appellants are originally residents of village Kahata, within circle of Police Station Ata, but since last few years they have started living in village Kanakhera, where the incident took place. In village Kanakhera the informant Ghanjua s/o Matain and his nephew Raghbir s/o Chunbaddhi families were residing and they had some joint agricultural land. Raghbir had died about seven years before the incident, and after his demise, name of his wife Smt. Janakia was mutated in revenue records jointly with the informant in place of Raghbir.

(ii)- About three years ago Smt. Janakia remarried with accused Shambhu. Since then accused Shambhu and his other family members started living with Janakia in village Kanakhera. About one month before the incident accused Shambhu asked complainant Ghanjua that he should get his name struck off from revenue records over the land of Janakia and him to give his consent to get his name expunged. The informant Ghanjua agreed to this. He went

to Kadaura with the accused Shambhu and gave his consent before the Consolidation Authorities for deleting his name over the land of Janakiya. Thereafter the complainant- Ghanjua consulted and deliberated to the lawyers, for initiating legal process.

(iii)- During discourse with lawyers it came to his notice that since his cousin daughter-in-law (Janakiya) had remarried to Shambhu therefore, she would not have any right, title or interest over the land belonging to deceased Raghubir and the land left by Raghubir would come back to his share. At this legal advice, Ghanjua started making preparation for ensuing legal process. Two days' before the incident, the complainant Ghanjua had gone to Kalpi to instruct his counsel for preparation of initiating the process of taking action in a legal forum. Incidentally accused Shambhu was also present at Kalpi and he somehow came to know of the intention of the informant and took ill of it.

(iv)- One day before the incident, Shambhu called informant's son Gayadin and threatened that since the informant was preparing to go for litigation against him, he would see him. He also asked the informant's son to return Rs.2/- which he had expended in taking him to Kadaura for giving consent to strike off his name in revenue records. The accused appellant Shambhu exerted pressure upon Gayadeen to intimate his father to return back Rs. 2/- and also extended warning that he would take drastic steps against them. The said exchange of words with accused appellant Shambhu was duly communicated by Gayadeen to his father/ complainant. This is to suggest that the accused was now bent upon for show down.

(v)- The prosecution story further unrevealed that on the fateful day at about 7.30 a.m. informant's son Thakurdin was

going to his field to harvest green fodder for cattle having a '*Hasiya*' (sickle). The informant/ complainant Ghanjua and witness named Rasna, who is also resident of the same village, were going to ease themselves in field and were following the deceased. When the deceased reached near the end of 'Gadhैया-wala Jwar/' field of Jagannath Singh Verma situated outside the village, accused Shambhu and Lakhna both son of Gauri Shanker Raidas resident of village Kahata, police station Ata, district Jalaun, who were residing in the village of complainant, hiding themselves in the shrub of crop of Jwar, duly armed with tabbals, appeared and abruptly ensued to inflict tabbals' blows to the deceased Thakurdeen. The deceased after receiving fatal injuries, immediately fell down on the ground. The informant and witness Rasna raised alarm and challenged the assailants and ran towards them making shriek and scream. On hearing the alarm and shrill raised by the complainant and Rasna, informant Ghanjua's another son Gayadin, by chance who was present at the house of witness Kadora s/o Alam hailing to the same village and whose house is situated about 5-6 paces from the place of incident reached at the place of occurrence raising voice. Gayadin and Kadora at the time of incident were talking and preparing tobacco to eat when they heard the cries. They immediately ran towards the place of occurrence and also saw the accused persons attacking the deceased. When the accused persons were challenged they advanced towards Ghanjua and Rasna. Accused Shambhu took out a pistol from his pocket and fired at them with intention to eliminate them. Witness Rasna escaped threadbare without sustaining any injury as Rasna sat down promptly and Informant Ghanjua hide himself in the crop standing in the near by field. On follow up by

complainant and other village folks accused, appellant disappeared from the place of occurrence, unleashing reign of terror. On account of horrific and awful scene developed by the accused appellants, the complainant and other folks of the locality could not muster courage to pursue them. At this they turned to Thakurdeen, and found him dead on the spot.

(vi)- The complainant / informant immediately went at the police station Kadaura along with chaukidar to intimate the police about the incident. His oral intimation was entered into kaimi GD No. 13 at 10.15 A.M. dated 26.11.1982 and reduced in writing in chick FIR (Ext. Ka-4) registering Case Crime No. 292 of 1982, under Section 302, 307 Indian Penal Code (in short I.P.C.) against the accused appellants Shambhu and Lakhan, P.S. Kadaura, District Jalaun was registered in the presence of station officer S.I. Arjun Singh Tomar. It may be mentioned that police station at about 10 kms away from the place of occurrence and accused appellant were named in the FIR.

(vii)- The station officer S.I. Arjun Singh Tomar taken over the investigation of the case himself and set the investigation into motion. He recorded statement of the complainant at the P.S. itself on the same day and reached at the place of occurrence within two hours of the incident. After completing requisite formalities inquest of the dead body of the deceased was conducted in the presence of I.O. and witnesses. The inquest report was prepared as Ext. Ka-1. Wrapped the corps in the clothes, sealed it and handed over to constable C.P. 68 Ramji Tiwari and constable C.P. 468 Om Prakash to carry it in their supervision and vigil to the mortuary for autopsy, on the same day i.e., 26.11.1982 at about 3.00 P.M.

(viii)- I.O. collected the incriminating material to corroborate the prosecution case such as blood-stained cloth, pair of shoes, sickle (Hasiya) Ext-1, which the deceased was allegedly carrying with him, at the time of incident, it was in two parts. I.O. collected both the pieces of the Hasiya, plain and blood-stained soil and sent them for chemical examination. The dead body of the deceased was sent for post mortem examination. I.O. also prepared site plan on the same day, at the instance of complainant. The postmortem of deceased Thakurdeen was conducted by PW-6 Dr. H.G. Gupta on 27.11.1982 at about 1.00 P.M. In the opinion of the doctor, the cause of death of deceased Thakurdeen is shock and Haemorrhage, as a result of ante-mortem injuries. Investigation Officer also recorded the statement of witnesses and after collecting the credible and convincing material, submitted the charge-sheet against the accused appellants, showing their involvement in the incident, in the court of CJM, District- Jalaun, who took the cognizance of the case. Since, the case was exclusively triable by the court of sessions, CJM, Jalaun committed it to the Sessions Court, vide his order dated 08.02.1983. where it was registered as S.T. No. 16 of 1983 and later transferred to Special Judge/ Additional Sessions Judge, Jalaun at Orai for trial.

4- Learned Trial Sessions Judge vide its order dated 02.03.1983 directed to frame formal charges u/s 302 and 307 both read with section 34 IPC accordingly formal charges were framed against the accused appellants, on 02.03.1983 against the accused appellants. Mentioning that they have committed these offences in furtherance of their common intentions accused appellant abjured the charges.

They pleaded not guilty and claimed to be tried.

5- In order to bring charges home, against accused/ appellants, prosecution has examined witnesses in ocular evidence as under:-

Sl. no.	PW No.	Name	Remarks
1.	PW-1	Bhoora	Witness of inquest
2.	PW-2	Ghanjua	Informant /Eye witness
3.	PW-3	Rasna	Eye witness
4.	PW-4	Karhora	Eye witness
5.	PW-5	Con-S. N Tiwari	Head Moharrir Witness
6.	PW-6	Dr. H.G. Gupta	Performed post mortem
7.	PW-7	Arjun Singh Tomar	I.O.

6- In order to further substantiate the charges levelled against the appellant, prosecution has also adduced the following documentary evidence:-

Sl no.	Documents Exhibited	Proved by	Ext Nos.
1	Panchayatnama	P.W.- 1,7	Ext. Ka- 1
2	Recov. memo B. Stained/Plain soil	P.W.- 1,3,7	Ext. Ka- 2
3	Recovery memo Shoes, Hasiya	P.W.-1,3,7	Ext. Ka- 3
4	Recovery memo B. Stained Dhoti	P.W.-1,3,7	Ext. Ka- 4
5	Oral intimation/ chick F.I.R.	P.W.- 2,7	Ext. Ka- 5
6	Kaimi GD	P.W.-5	Ext. Ka-6
7	Post Mortem Report	P.W.-6	Ext. Ka- 7
8	Site Plan with Index	P.W.-7	Ext. Ka- 8
9	Photo Lash	P.W.-7	Ext. Ka- 9
10	Chalan Lash	P.W.-7	Ext. Ka-10
11	Charge Sheet	P.W.-7	Ext. Ka-11
12	Chemical Examination Report	P.W.-7	Ext. Ka-12
13	Chemical	P.W.-7	Ext.

	Examination Report		Ka-13
14	CH-5	-	Paper-n 64

7- Besides, in further corroboration to prosecution case, it has also exhibited physical objects in its evidence as under:-

Sl. no.	Objects Exhibited	Proved by	Ext Nos.
1	Hasiya with broken parts	P.W.-7	Ext.-1
2	Blood stained Soil	P.W.-7	Ext.-2
3	Plain Soil	P.W.-7	Ext.-3
4	One pair of shoes	P.W.-7	Ext.-4
5	With Bricks	P.W.-7	Ext.-5
6	Blood stained Dhoti	P.W.-7	Ext.-6
7	Kurta of the Deceased	P.W.-7	Ext.-7 & 8
8	Under wear	P.W.-7	Ext.-9
9	Tahemad	P.W.-7	Ext.-10

8- (i)- After the conclusion of the prosecution evidence, accused / appellants were confronted with the evidence adduced against them during trial and their statements under Section 313 Cr.P.C has been recorded. In their statement accused/appellants denied the allegations and claimed that they have been falsely implicated due to enmity.

(ii)- According to the accused persons, enmity between the both the parties pertains to the fact that Shambhu had purchased land from Smt. Jankiya. This was not relished by the complainant. It is alleged that the complainant falsely implicated the two accused persons on account of this enmity. It is established from the sale-deed, Ext. Kha 3 and which has not been disputed by the prosecution that in March, 1980 Smt. Jankiya, widow of Raghubir, sold away certain agricultural land in village Kanakhera to Shambhu.

9- Accused appellants have examined following witnesses in support of their defence as ocular evidence:-

Sl no.	PW No.	Name of witness	Remarks
1.	DW-1	Krishna Lal	Defence Witness
2.	DW-2	Maniram Ahirwar	Defence Witness
1.	DW-3	Param Shukh	Defence Witness

10- In order to further fortify their defence the accused appellants has also adduced the documentary evidence as under:-

Sl no	Documents Exhibited	Proved by	Ext Nos.
1	Affidavit of Kadora	D.W.-1	Ext. Kha-1
2	Affidavit of Rasna	D.W.-1	Ext. Kha-2
3	Sale deed	D.W.-3	Ext. Kha-3
4	Compromise Deed	-	P.noKha-89

11- Heard Sri Pawan Shukla A.C., learned counsel for the appellants and Sri Amit Sinha learned A.G.A. representing the State, in extenso, and also perused the entire materials on record.

12- After hearing rival submissions of both the parties and marathon analysis of the evidence and other material on record, learned Trial Sessions Judge concluded that prosecution has fully proved that the accused appellant committed the crime beyond all reasonable doubts and by judgement and order dated 21.05.1983 convicted and sentenced accused appellants for the offence under sections 302 and 307 read with 34 I.P.C. with understanding that these offences has been committed by accused appellants in furtherance of their common intention. Aggrieved by their conviction and sentence accused appellants preferred the present appeal, before this Court. In order to fortify their stand learned

Amicus Curiae appearing for accused appellants and learned A.G.A. has advanced various arguments and rival submissions, but their rival submissions has to be tested on the anvil of the evidence adduced by them. Therefore, it is imperative to discuss the evidence adduced by the prosecution at this juncture firstly.

13- P.W.1 Bhura, examined on 21.03.1983, stated on oath that it was the incident of about four months back. Thakurdeen who was belonging to his village was done to death. The station officer P.S. Kadaura had come to Kanakhera, so as to investigate the incident. The investigating officer had prepared the inquest report of Thakurdeen in his presence. He identified and verified his signature on the inquest report which was duly proved as Ext. Ka.1. by P.W.1 Bhura. He also proved the collection of blood saturated and plain soil as well as taking of corpse of deceased Thakurdeen into his control by the I.O. He also identified his signature on the recovery memos of these articles as Ext. Ka.2. He also proved recovery memo of the shoes, cloths and other incriminating articles collected during investigation and duly proved them as Ext.Ka.3 and Ext.Ka.4. The blood saturated Dhoti Ext.-6 by which deceased Thakurdeen was covered was also taken into custody and recovery memo of the same was prepared. He proved it as Ext. Ka.4. P.W.-1 Bhura narrated the incident in a natural way without adding any embellishment. He also proved the presence of Devi Dayal, Rasna ,Vidyasagar Narain Singh and other folks of the locality at the spot.

14- In his cross-examination P.W.-1 Bhura admitted that he reached near the dead body of Thakurdeen at about 12.30

P.M. He came to know about the murder of Thakurdeen from the co-villagers. Thus, this witness is certainly not present at the time of occurrence at 07.30 a.m. and not an eye witness of the incident and came to know about the incident from the co-villagers. However, he had proved place of occurrence Ext. Ka. -8. Inquest report Ext. Ka.-1 and he also admitted Ghanjua and Rasna to be the members of his family.

15- Prosecution examined P.W.-2 Ghanjua s/o Mataiya (complainant) on 21.03.1983. He stated on oath that the incident had occurred about four months ago. He was going to attend nature's call at about 7.30 a.m. at in har (field) through passing a narrow alley path. The said narrow alley path was running through the field of Jagannath Verma. The witness Rasna was also pursuing him. His son Thakurdeen was going ahead to them, for harvesting green fodder for cattle. When Thakurdeen reached in the mid way the field of Gadhaiya wala Jwar, hailing to Jagannath Verma, where the crop of Jwar was standing having height of about 5 feet and below to it, the crop of arhar was standing. The accused appellants were hiding themselves in the shrubs of Jwar and arhar. When Thakurdeen reached mid of that field, they exhorted him to stop. At this the victim Thakurdeen stayed there, both the accused persons namely Shambhu and Lakhan equipped with tabbal started to inflict multiple injuries on him. P.W.-2 Ghanjua and Rasna P.W.-3 were about 40 to 45 paces back from victim Thakurdeen. On the shriek and scream of victim Thakurdeen, the complainant and they also raised alarm and shriek. Hearing the awful hue and cry, his son Gayadeen (complainant other son) associated with Kadora rushed towards the place of occurrence. In the meantime witness Rasna

also reached near them. The accused assailants after eliminating Thakurdeen, turned towards them. The accused Shambhu took out Katta (Country made pistol) from his pocket and fired upon them. The complainant and Rasna having sensed danger to life ran towards the shrubs of standing crops. The complainant and Rasana escaped threadbare from the hit of firing with Katta. The accused assailants fled away towards the village. Witnesses pursued some steps to the accused assailants, but on account of fear and terror unleashed by them. They came back to injured victim Thakurdeen and found Thakurdeen lying dead, as a sequel of ante-mortem injuries inflicted on his person. He went at the police station concerned along-with Chaukidar parting from the corpse of Thakurdeen, in the vigil and supervision of number of persons gathered at the place of occurrence. He gave intimation of occurrence to the police at the police station. The first information report was lodged at the statement of complainant P.W.2. After scribing the report, thumb impression of P.W.2 Ghanjua was affixed on it. The said report was duly reduced in writing and marked and proved by him as Ext. Ka.5. In the process of recording the statement, it was unfolded by P.W.2 Ghanjua that there is his joint agricultural land with Raghbir (his nephew). His nephew Raghbir was married with Jankiya. Raghbir had expired and after his demise, the said agricultural land of Raghbir was mutated in the name of Ghanjua but it came in the ownership and possession of Jankiya. After passing away of some period from the death of Raghbir, Jankiya came in contact with Shambhu and settled her marital knot with Shambhu., During the course of consolidation proceeding, the accused Shambhu told the complainant that his name be mutated on

the share of Raghubir and Complainant Ghanjua might be expunged amicably. The said episode relates one month before the murder of Thakurdeen. P.W.2 Ghanjua had gone with accused Shambhu and accused Shambhu had paid Rs.2/-towards the charges of his Tanga fare. Thereafter he had gone to Kalpi and consulted to the Advocates who suggested him that since Jankiya had remarried, the land left by deceased Raghubir will be owned and possessed by his family members. It prompted P.W.2 Ghanjua to ensue the legal battle for acquiring the land left by Raghubir. This fact anyhow came in the notice of Shambhu, who cherished and nurtured grudge and animus against them.

16- It was also divulged by P.W.-2 that prior to one month of the said incident, when his son Gayadeen was coming back from Har to his home, Shambhu called him and told that firstly his father Ghanjua had consented to return back the land after getting his name expunged, now he is playing deceptive and illusory game and therefore now he will face dire consequences. He also exhorted pressure upon him to communicate his father Ghanjua to return back Rs 2/- which he has paid his tanga fare. This fact was narrated by Gayadeen to P.W.2 Ghanjua and after three days of this verbal duel, the accused appellants had executed the said offence of liquidating Thakurdeen. P.W.2 Ghanjua proved strong motive nourished by accused appellants behind the commission of crime. He had also proved that the broken sickle (Hasiya) was lying at a distance of two paces from the dead body of Thakurdeen. Thus the P.W.-2 Ghanjua had given detailed description of the incident in unison of first information report. He had portrayed the vivid and glowing scene narrating the incident in natural and

articulate manner. He made his best to prove the prosecution version without any adornment and embellishment

17- The prosecution has examined Rasna on 23.3.1983 as P.W.3. who deposed that about to four months earlier at about 7.30 a.m. he was going to attend nature's call through the field of Vermaji. Thakurdeen was going ahead to him. He was going behind to Ghanjua. When Thakurdeen had crossed about half of the field of Gadhैया wala Jwar belonging to Vermaji, he heard apathetic and heart-rending voice. He rushed towards voice and saw that accused appellants Shambhu and Lakhan had appeared from the south side of arhar field and were inflicting blows with Tabbal upon Thakurdeen. As soon as P.W.-3 Rasna proceeded running ahead, accused Shambhu shot firing at him, it may be remembered that Rasna was following P.W.-2 Ghanjua. They fell down so as to save their life. Thus both of them narrowly escaped unhurt. P.W.-3 Rasna was thunderstruck and flabbergasted on account of loose of terror hence he could not see disappearance of accused persons. In the meantime Gayadeen and Kadora s/o Alam also arrived at the spot. After disappearance and departure of the accused persons, they reached near Thakurdeen and found him dead on account of fatal injuries and profuse bleeding. Subsequent thereto, the police personnel arrived at the spot and carried out necessary formalities i.e. recovery of blood stained and plain soil, recovery of blood stained sickle (Hasiya) recovery of blood stained dhoti and shoes which were duly marked as Ext.2,3, and 4. P.W.3 Rasna was cross-examined in detail on various points but in the cross examination, nothing could be elicited to discredit his testimony. P.W.3 Rasna had narrated the manner of assault and mode of

incident in vivid and natural manner without any colouration.

18- The prosecution has examined P.W.4 Kadora s/o Alam on 23.3.1983. He deposed that it was about four months ago, he was sitting at his door steps at about 7.30 a.m. where Gayadeen s/o Ghanjua was also present. There was a path for going Margayan crossing near his house. There was also a Nali with the width of 4 feet from that path running towards the field of Gadhैया wala jwar of Jagannath Verma. The said Nali was generally used in rainy season and in a rest of months, it was being used as path. Gayadeen told him to provide tobacco. P.W.4 Kadora after rubbing tobacco ingested himself and gave to Gaya Deen. In the meantime, a frightful and terrible voice was heard seeking help. P.W.4 Kadora and Gayadeen rushed speedily towards the field of Vermaji. They saw that Shumbhu and Lakhan were inflicting blows with tabbal upon Thakur Deen, who was at a distance of one and half foot from narrow alley running from the field of Verma Ji. At some paces Rakhan alias Rasna, Ghanjua and others were present and raising alarm and shrill. The assailants had inflicted injuries with tabbal upon Thakurdeen at his neck, head etc. Subsequent thereto, Shambhu shot fire upon them but they escaped unhurt. After causing injuries to Thakurdeen, the assailants disappeared from the place of occurrence. When P.W.-4 Kadora and others reached near Thakurdeen. They found him dead. In cross-examination, defence could not extract any material belying and discrediting the testimony of P.W.-4 Kadora rather the testimony of P.W-4. Kadora was delineation of glowing picture of incident which added impetus in the prosecution version. He proved his presence on spot at the time of incident

narrating all interrogations in a simple and natural way.

19- The prosecution also examined constable 381 Siddhnath Tiwari as P.W.-5 on 25.3.1983. He deposed that he was posted at police station Kadora as Constable Moharrir on 25.03.1983. He proved the chik F.I.R Ext. Ka.-5. scribed by him on the oral statement of Ghanjua. The said information was copied in Kaimi G.D. no.-13 which is marked as Ext. Ka.6. On 27.11.1982 at 10.15 a.m. I.O./station Officer A.S. Tomar had handed over incriminating articles i.e. blood stained soil, plain soil, broken sickle (Hasiya) Dhوتي, shoes, and other articles in a sealed cover. He disclosed that on 26.11.1982 at about 10.30 a.m. the station officer had departed to visit and inspect the place of occurrence. The station officer did not come back at the police station on 26.11.1982. He came back at the police station on 27.11.1982. The first information was registered in the presence of station officer on 26.11.1982. The chaukidar Divya had also associated with informant. The FIR relating to this incident was sent on 26.11.1982 at 12.20 O' clock to the authorities concerned and ilaka Magistrate. The said report was sent through constable 294 Shyam Kishore. 26.11.1982 at about 21.45 hours, the said constable came back at the police station after making service of special report. An entry to this effect was made in G.D. No.- 28 on 26.11.1982. He stated that first information report was registered on 26.11.1982 before 12 'O' clock thus the defence did not succeed to create any dent in the testimony of P.W.5. Siddhnath Tiwari and the prosecution version stood fully above board.

20 -(i)- The prosecution examined on 25.3.1983 Dr. H.G. Gupta, Medical Officer

jail Hospital at Orai as P.W.-6 who stated on oath that on 27.11.1983 he was posted as Medical Officer Police & Jail Hospital at Orai. On the fateful day, the corpse of Thakurdeen S/o Ghanjua was brought by constable CP 68 Ramji Tiwari & constable 468 Om Prakash posted at police station Kadaura. The corpse of Thakurdeen was in an intact sealed cover.

(ii)- The Doctor P.W.-6 Sri H.G. Gupta, conducted post mortem examination of the corps of deceased Thakurdeen on 27.11.1982 at about 01.00 P.M. During autopsy Dr. found following facts, mentioned in PMR-

(iii) **Ante-Mortem Injuries:-** Doctor found the following ante-mortem injuries on the body of the deceased at the time of autopsy:-

(1)- Incised wound 7 cm x 3 cm x 2cm on the humerus bone left side. The bone under it was cut upon left shoulder outer side. Apex of the wound was backward.

(2)- Abrasion 2 cm x ½ cm which was 2 ½ cm above injury no.1.

(3)- An incised wound 14 cm x 4 cm x 3 cm on left side of skull on perital region. The perital bone was cut and brain matter was coming out from wound. The wound started from the upper part of the left ear and extended upto the middle and top of the head.

(4)- Incised wound 8 cm x 1 ½ cm x 3 cm. This was skull bone deep incised wound 8 cm x 1 ½ cm x 3 cm. This was skull bone deep and left mastoid and occipital bone were broken. The brain matter was coming out from the wound.

(5)- A punctured wound 1 cm x 1 cm x 4 cm just below left mandible angle. The edges were clean cut and direction was towards right.

(6)- Punctured wound 1 cm x 1 cm x 3 cm which was 1 cm below injury no.5. Edges were clean cut and direction was towards trachea.

Cause of Death:- In the opinion of the Doctor P.W.-6, the cause of death of deceased Thakurdeen was shock and Haemorrhage as a result of ante-mortem injuries specially injury no. 3 and 4.

According to the Doctor P.W.-6 H.G. Gupta, Thakurdeen died about 1¼ days earlier conducting autopsy. He further clarified his death may be occurred on 26.11.1982 at 07 to 07.30 a.m. Doctor has proved post mortem report as Ext. Ka.- 7.

The post mortem report demonstrates that stomach of the deceased was empty and semi-liquid matter was present in small intestine. The large intestine was full of solid faecal. The bladder was having 100 gm. urine.

The doctor opined that cut wounds could be caused by tabbal. Punctured wounds could also be caused by tabbal, in case tabbal had a pointed and sharp edged end. The defence could not elicit any thing to disprove the medical report which remained consistent with prosecution version.

In his cross examination P.W.-6 Dr. H. G. Gupta at one place has stated that the death of the deceased is possible to be occurred in the morning (in the night of 25/26) at about 03.00 to 04.00 a.m. also.

21- (i)- P.W.-7 Arjun Singh Tomar Station Officer P.S. Kadaura District Jalaun at Orai, is the investigating officer of the case. He was examined by the prosecution on 11.4.1983. He deposed that the first information report was lodged in his presence. On getting the information with respect to said occurrence, he started to investigate the case. During the course of investigation, he recorded the statement of

complainant at the police station concerned. Subsequent thereto he proceeded to the place of occurrence and recorded the statement of witnesses namely Kadora, Rasna and Bhura etc. He prepared the site plan at the instance of the complainant Ghanjua, photo lash, Challan lash and also collected blood stained and plain soil, shoes, dhoti, kurta, Tahemad. He also recovered a pair of Shoes, broken sickle, dhoti and other incriminating articles of deceased Thakurdeen. He prepared the recovery memos of these articles. He stated that all the incriminating articles collected from the spot. He also proved that he had sent blood saturated articles to chemical analyst. The blood stained soil was put in red container and the plain soil was put in green container. It also transpired during investigation Jankiya had sold her some land in favour of Shambhu. The name of Shambhu was recorded on the land purchased by him before one month of the occurrence. The investigating officer did not collect any revenue paper from Ghanjua in relation to disputed property. According to information gathered by investigating officer, Jankiya had sold approximately more than ten acres of land to Shambhu.

(ii)- During the course of investigation, it came in the notice of investigating officer that tabbal is bigger than axe but is smaller than spear. Tabbal has pointed edge in both side .

(iii)- The site plan was prepared on the pointing of the complainant. The site plan duly prepared and signed by the investigating officer was identified by him. He proved the site plan as Ext. Ka-8.

22. There are also reports of the chemical analyst to whom blood stained incriminating articles were sent for chemical analysis. According to these

reports, human blood stains were found on the blood saturated articles i.e. Dhoti, Kurta, Tahemad, underwear which the deceased Thakurdeen was wearing on the fateful day. Similar blood stains were found on the blood saturated soil and sickle (Hasiya) which the investigating officer had collected from the spot of occurrence. All these blood saturated articles were hailing to belong blood group 'A'.

23. Ext. Ka-14 is the notice in C.H. Form No.5. In remarks column a note is shown to the effect that Smt. Jankiya had remarried Shambhu and on the land of Raghubir, the possession of Ghanjua was recorded. This notice was issued on 22.07.1982 and the name of the tenureholder has been shown as Janakiya, widow of Raghubir.

24. It will not be out of place at this stage to discuss defence evidence also. Defence has examined Krishan Lal S/o Baldeo Prasad as D.W.-1. He stated that he has prepared Affidavits of Kadora and Rasna resident of Kanakhera on 05.01.1983. He prepared the Affidavits as per their instructions. They wanted to prepare the affidavits with regard to the facts as if they have not seen the occurrence and they have been wrongly named as witnesses in the charge sheet against the accused Shambhu and Lakhan. In his cross examination he admitted that these deponents were known to him earlier as they use to visit his neighbour advocate but he failed to give any instance when these deponent met him earlier. He also admitted Rasna and kadora are illiterate. They never came before earlier any other work. He also admitted that he has attached his Vakalatnama with notarial affidavits prepared. He is unable to tell in which court these affidavits were filed.

25. D.W.-2 Maniram Ahirwar has also been examined by the defence. He stated that he has prepared affidavits of Rasna and Kadora on 05.01.1983. Krishna Lal (D.W.-1) had identified them. In his cross examination he has stated that these deponents were not known him earlier. The statement of D.W.-1 Krishan Lal and Maniram Ahirwar D.W.-2 are highly dubious. Because they characterise Deponent Rasna and Kadora are illiterate person but they have signed alleged affidavits. It appears that these affidavits has been get prepared for some ulterior motive by some one other then the deponents. Therefore these affidavits do not inspire any confidence at all and do not help to the defence also particularly when Rasna and Kadora have been examined in the court during trial.

26. Paramsukh has been examined by the defence as D.W.-3. He stated that he is a resident of Chhunk. He tried to state that two accused persons were not in the village Kanakhera on the day when incident took place. However no reliance can be placed on the statement of D.W.-3 of this behalf. Because he himself is a resident of another village and his presence in the village Kanakhera is doubtful. He said that he is looking after agricultural land of Smt. Jankiya and managing it. He is resident of village in which his maternal uncle Shambhu resided who is the member of his Biradari. The witness could not tell how much land revenue is paid by Jankiya on her agricultural land. He is also unable to state the boundaries of the said land of alleged Jankiya. All things create doubt about his statement that he manages land of Jankiya and Shambhu had not married Jankiya or accused persons were not present in the village Kanakhera on the fateful day. Thus his statement does not

inspire confidence at all and not reliable. The prosecution witness have clearly stated that Shambhu had married Jankiya and thereafter Shambhu started living in the village Kanakhera though the marriage according to Hindu Rites was not valid but it was not required also. From the evidence it is clearly established that Shambhu was living with Smt. Jankiya and had also purchased land from Jankiya which originally belonged to Raghubir nephew of Ghanjua. It is also established that Ghanjua was interested to purchase the said land of Jankiya.

27. At this juncture, we propose to refer various submissions of Learned Amicus Curiae and Learned A.G.A. and to test them on the touch stone of the above discussed evidence of both the parties.

28. Learned Amicus Curiae appearing on behalf of accused appellants submits that the incident is alleged to have taken place on 26.11.1982 at about 7.30 a.m. and the first information report has been lodged on the same day at about 10.15 a.m. while the distance of police station from place of occurrence is about 10 kilometres. Thus, apparently there is a delay of 2.30 hours in lodging the FIR. It is also submitted by learned Amicus Curiae that the deceased was murdered in between 3.00 to 4.00 O' clock in the morning and to meet out delay in lodging FIR it is depicted that he died at about 7.00 to 7.30 A.M. P.W.-6 Dr. H.G. Gupta in his examination has stated that death of the deceased could have been caused at about 07.00 to 07.30 a.m or 03 to 04 a.m. also. Thus, lodging of FIR is delayed by about 30 hours. There is no plausible and convincing explanation for this inordinate delay in lodging FIR. The first information report appears to have been lodged naming the appellants after

much deliberation and consultation so as to wreak personal vengeance. Learned AGA refuted the contentions of the Learned Amicus Curiae appearing for the accused appellants.

29. It is well settled that the initial step that sets criminal law in motion is the lodging of First Information Report (FIR). This information may be given to police officer verbally or in writing. If it is provided verbally, it must be reduced to writing. A FIR should be filed as soon as possible after the offence is committed although there is no time restrictions specified in any law or regulation for doing so. The judges determination of what constitute an acceptable time will very according to facts of each case. In the case of *Bathula Nagamalleswar Rao & Ors. v. State Rep. By Public Prosecutor 2008 (2) CRIMES 188 (SC)* the Supreme Court declared that a reasonable delay in filing a FIR is not fatal. In *Appukutan v. State 1989 Cri LJ 2362* Supreme Court decided that the major objective of filing an immediate FIR and a reporting it to the magistrate forthwith, is to avoid any embellishment and to keep the magistrate inform about the inquiry. In *Amar Singh vs. Balwinder Singh and Others reported in (2003) 2 SCC 518* Supreme Court opined that there is no hard and fast rule that any delay in filing of a FIR would automatically render prosecution case doubtful. Thus, law on the point of lodging delayed FIR is crystal clear in various pronouncement of the Apex court. Normally courts viewed the delay in lodging the FIR with suspicion as there is possibility of concoction of evidence against accused. On the other hand filling a report in time unmistakable guarantee of the truthfulness of the prosecution version. So it is the duty of the prosecution to

explain the delay satisfactorily and even a long delay can be condoned if the informant has no motive for implicating the accused.

30. (i)- In the present case all the prosecution witnesses of facts namely P.W.-2 Ghanjua, P.W.-3 Rasna and P.W.-4 Kadora have clearly stated that incident took place on 26.11.1982 at about 07.00 to 07.30 a.m. Although these witnesses are illiterate, but since incident took place in the morning hours, one can understand and could properly guess the time of incident.

(ii)- P.W.-2 Informant Ghanjua stated that parting with the dead body of the deceased and entrusted it to the people of village, gathered there, he went to the Police Station Kadaura, which is about 10 km. from the place of occurrence with chaukidar, and informed about the incident to the Police Station orally. P.W.-5 CP S.N. Tiwari who reduced oral intimation into writing in Kaimi GD Ext.Ka.-6 and Chik FIR Ext.Ka.-5 wherein it is clearly mentioned that the incident occurred on 26.11.1982 at about 07.00 to 07.30. a.m. and an FIR was registered at 10.15 a.m. on the same day. He also stated that he sent the commission of crime report to the higher authority and to the Magistrate concerned on the same day at about 12.30 p.m. P.W.-7 investigating officer corroborated the statement of Head moharrir P.W.-5. Thus, an incident which occurred on 26.11.1982 at about 7.30 a.m. FIR is lodged promptly and there appears no unreasonable delay in lodging FIR. The culminating effect of all these facts is that there is no delay in lodging FIR in reasonable time in the matter, as facts and circumstances tells the story suo motu.

(iii) Learned Amicus Curiae referring in cross examination of Dr. P.W.-

6 Dr. H.G. Gupta contended that the deceased was done to death in the night of 25/26 November 1982 in between 3 to 4 a.m. by some miscreants. Thus, there is a delay of about 7 hours in lodging the FIR. Learned AGA refuted the argument. He submits various submissions and surrounding circumstances of the case in support of prosecution.

(iv)- On the one hand Dr. H.G. Gupta has clearly stated that the death of the deceased occurred on 26.11.1982 in between 07. to 07.30 a.m. This statement of Doctor well corroborated by other prosecution witnesses and entire evidence be read in light of statements of eye witnesses and surrounding the circumstances.

(v)- There are circumstances which rule out the possibility of the death having occurred on 26.11.1982 at 03 to 04 a.m and then delay of about 30 hours in lodging FIR occurred. For instance, indisputably the incident occurred in the month of November i.e. winter season. Incident took place in the field of Jagannath Singh Verma which is close to the village. There is no reason/ explanation that the deceased will be at the place of occurrence in a winter season in the night at about 03 to 04 a.m. Further the medical report does not suggest that the incident could not have happened at 07.30 a.m. Another circumstance may be noted that deceased Thakurdeen was carrying one Hasiya with him at the time of incident as he was going to collect green fodder for cattle. Hasiya Ext.-1 was recovered from the place of occurrence. In view of these circumstances just because the doctor says that the incident could have happened at 03 or 04 a.m. also, does not mean that it has actually at that time. Thus, defence version that death of the deceased occurred at 03.00 or 04.00 a.m. on 26.11.1982 appears to be

baseless. Thus, argument of the Amicus Curiae about delay regarding lodging of FIR, is not tenable and devoid of any force.

31. Learned Amicus Curiae further submitted that there is no independent and impartial witness to support the prosecution version. The testimony of the prosecution witnesses does not inspire any confidence so as to strengthen its veracity and truthfulness. There are grave inconsistencies and contradictions in the statements of witnesses, giving rise to suspicion. P.W.3 Rasna and P.W.4 Kadaura had given their affidavits to the effect that they had not seen the incident. The presence of the prosecution witnesses at the place of occurrence is highly doubtful and unbelievable. There has been material conflict and contradictions in the statement of prosecution witnesses rendered by which their testimony unreliable. There is material inconsistency and discrepancy in the prosecution version. Some of the prosecution witnesses had made improvements in their deposition and had narrated the manner of incident in such a way which cannot be perceived by ordinary course of diligence and prudence. It is also submitted by learned Amicus Curiae that the prosecution has withheld its best witnesses Jankiya and Gayadeen were not examined in the court for the case. Learned A.G.A. vehemently opposed the argument of learned Amicus Curiae. Learned A.G.A. has vehemently opposed the argument advanced by the learned Amicus Curiae. A close scrutiny of the witnesses of the prosecution establishes that their evidence is trustworthy in all respects.

32. In view of the rival submissions made by Ld. Amicus curiae and Larned AGA it is mentioned that prosecution has examined four witnesses of facts. P.W.-1

Bhura, belong to the Biradari of complainant Ghanjua, P.W.-2 Ghanjua is the complainant and the father of the deceased Thakurdeen. P.W.-3 Rasna is a co-victim with P.W.-2 Ghanjua upon whom appellant Shambhu is alleged to fired with the intention to kill them with Katta and who escaped threadbare hitting the fire. Thus, Shambhu attempted to murder them. Before proceeding further it will interesting to discuss law on the point of the evidentially value of related/ Interested and injured witness.

33. In **Krishna Mochi and others vs. State of Bihar (2002) 6 SCC 81**, the Hon'ble Apex Court laid emphasis on realistic approach to be adopted by the criminal courts while appreciating evidence in criminal trial, paragraph 32 whereof is quoted as under:

"32.....The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower.....These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals"....."

34. In **Masalti vs. State of U.P., AIR 1965 SC 202**, Hon'ble Apex Court in paragraph 14 observed as under:

"14. But it would, we think, be unreasonable to contend that evidence

given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on 7 the sole ground that it is partisan would invariably lead to failure of justice."

35. In **Darya Singh vs. State of Punjab, AIR 1965 SC 328**, the Hon'ble Apex Court has also taken the view that related witness does not necessarily mean or is equivalent to an interested witness. A witness may be called interested only when he or she derives some benefit from the result of litigation; a decree in a civil case, or in seeing a person punished in a criminal trial, paragraph 6 whereof is quoted as under:

"6. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

36. The Apex Court in **State of A.P. vs. S. Rayappa and others, (2006) 4 SCC 512** observed that it is now almost a fashion that public is reluctant to appear and depose before the court especially in criminal cases and the cases for that reason itself are dragged for years and years, paragraph 6 whereof is quoted as under:

"6.....by now, it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as interested witness. The term interested postulates that the person concerned must

have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons."

37. In **Pulicherla Nagaraju @ Nagaraja Reddy v. State of AP, (2006) 11 SCC 444**, the Hon'ble Apex Court in paragraph 16 has held as under:

"16. In this case, we find that the trial court had rejected the evidence of P.W.-1 and P.W.-2 merely because they were interested witnesses being the brother and father of the deceased. But it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise, found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted.".....

38. In **Jayabalan vs. U.T. of Pondicherry, 2010 (68) ACC 308 (SC)**, the Hon'ble Apex Court in paragraph 21 held as under:

"21. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and

accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

39. In **Dharnidhar vs. State of U.P., (2010) 7 SCC 759**, the Hon'ble Apex Court held that there is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case.

13. Similar view was taken by this Court in **Ram Bharosey v. State of U.P. [AIR 2010 SC 917]**, where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before accepting the same.

14. In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their

statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then we see no reason why the statement of so called 'interested witnesses' cannot be relied upon by the Court.”

40. In a very recent judgement rendered by Hon'ble Apex Court in **Baban Shankar Daphal and others vs. The State of Maharashtra**, 2025 SCC Online SC 137 in respect of testimony of witness which should not be discarded merely because of relation with victim, the Hon'ble Apex Court has, in paragraphs 27 and 28, held as under:

“27.....Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.

28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

41. In a recent judgement rendered by Hon'ble Apex Court in **Shahaja @ Shahajan Ismail Mohd. vs. State of**

Maharashtra, (2023) 12 SCC 558 has observed that the appreciation of ocular evidence is a hard task there is no fixed straight jacket of formula for and appreciation of ocular evidence in a criminal case. Judicially involved principle of ocular evidence provide the law and guidelines in appreciation of ocular evidence. it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Hon'ble Supreme Court has enumerated a long list of such guide lines which of great help.

29.2. it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.....

29.3 When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

29.4 Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

42. In **Pahalwan Singh and others vs. State of U.P., 2020 (6) ALJ 166** the Apex Court held as under:-

“48. Thus, in view of aforementioned decisions of the Supreme Court, it is now a settled position of law that the statements of the interested

witnesses can be safely relied upon by the court in support of the prosecution story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons who are closely related to the deceased. When their statements find corroboration by other evidence, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then there is no reason as to why the statement of so-called 'interested witnesses' cannot be relied upon by the Court. It would be hard to believe that the close relatives shall leave the real culprit and shall implicate innocent persons falsely simply because they have enmity with the accused persons.

43. In **Jarnail Singh V/s State of Punjab (2009) 9 SCC 719** Supreme Court reiterated the special evidentially status accorded to the testimony of an injured accused. The fact that the witness sustained injuries at the time and place of occurrence, lends support his testimony that he was present during the occurrence.

44. Learned Amicus Curiae appearing for the accused appellants placed reliance upon judgements of the Supreme Court in cases of **Vadivelu Thevar and another vs. State of Madas, AIR 1957 sc 614; Mathura Prashad and another vs. State of Madhya Pradesh, 1992 Supp (1) SCC 406 and State of Uttrakhand vs. Darshan Singh, (2020) 12 SCC 605**, to contend that the testimony of a witness may be classified in three distinct categories:-

- (i)- wholly reliable,
- (ii)- wholly unreliable, and
- (iii)- Neither reliable nor wholly unreliable.

45. In a case where testimony is wholly reliable, no further corroboration would be required. If the testimony of a witness falls in the second category then it will require corroboration. However, when the testimony of a witness is placed in third category, it is wholly unreliable.

46. In the present case, testimony of PW-1 Bhura would fall in third category. He has deposed in his cross-examination that Ghanjua (PW- 2 father of deceased) and Rasna belong to his biradari and they come from his khandaan. Thus, prosecution witnesses come from relation to the deceased and complainant, but the moot point is whether his evidence is trustworthy and credible. P.W.-1 in his examination has clearly stated that he reached at the place of occurrence near dead body, at about 12.30 p.m. and he came to know about the murder of the Thakurdeen from village folks. Thus, admittedly he is not an eye-witness of the occurrence. However, he admitted that he has participated in the inquest proceedings of the dead body and signed the inquest report. I.O. has taken various incriminating articles in his presence. He also visited mortuary. In this manner, although he is not an eye-witness but has participated in subsequent proceedings, conducted by investigating officer in his presence. Naturally, that much part of his deposition is credible.

47. P.W.- 2 Ghanjua is said to be an eye-witness of the occurrence. Although, he is the father of deceased Thakurdeen, but a close scrutiny of his testimony reveals that in his presence at the spot incident took place. He has narrated the incident in a natural way without adding any embellishment. He has also proved the presence of Devi Dyal, Rasna, Vidya

Sagar, Narayan Singh and other folks of the locality at the scene of occurrence. PW- 2 has averred that at the time of the incident he was going to attend natures call at about 7.30 A.M. in the field through a narrow alley path, which was running through the filed of Jagannath Verma. The witness Rasna was also pursuing him from behind, so as to attend natures call. Thakurdeen was going ahead to him for harvesting green fodder for cattle. When the deceased reached in the mid filed of Madhaiya, hailing to Jagannath Verma field. Crop of Jwar was standing having height of about 5 feet and below to it, the crop of arhar was standing. The accused appellants were hiding themselves in the shrubs of jwar and arhar when the deceased reached near their filed, they exerted to stop them. As soon as the victim Thakurdeen stayed, both the accused persons Shambhu equipped with tabbal upon the deceased started to inflict multiple injuries to the deceased Thakurdeen. P.W.-2 was about 40-50 paces back from the victim Thakurdeen. On shriek and scream, his another son Gayadeen associated with another person Kadora rushed towards the place of occurrence. Rasna also reached to them. Seeing the witnesses heading towards them accused Shambhu took out katta from his pocket and fired upon them. Sensing danger to life come PW- 2 Ghanjua ran towards the shrubs of standing crop. Both of them escaped threadbare from the hit of firing and katta. Later accused persons fled away towards village. They pursued them some steps, but on account of fear and terror unleashed by them, they came back to injured victim Thakurdeen and found him dead. He went at the police station concerned and lodged FIR orally which was later scribed by Head Moharrir of police station Kadaura.

48. PW- 3 Rasna that on the day of event, at about 7.30 A.M., was going to

attend natures call through the field of Verma Ji. Field of Thakurdeen was going ahead to him. He was going behind the Ghanjua (P.W.- 2). Thakurdeen has crossed about half of the field of Madhaiya belonging to Verma Ji, has heard apathetic and heart rendering voices. Then he rushed and saw that accused appellants Shambhu and Lakhan appearing from South side of Arhar filed and inflicting blows with the tabbal upon him. As soon as he proceeded running, accused Shambhu sought firing at them. He fell down, so as to safe his life. Thus he escaped unhurt. The witness has also stated that in the meantime, Gayadeen and Kadora arrived at the spot. After departure of the accused appellants from the place of occurrence they reached near Thakurdeen and found that on account of fatal injury and profused bleeding, him dead. Subsequently, P.W.-2 informed to the police station concerned and police personnel arrived at the spot and completing necessary formalities. Nothing could be elicited to discredit his testimony. PW. 3 Rasna had narrated the manner of assault and mode of incident in vivid and natural manner, without any colouration and very spontaneous and natural way. Thus, P.W.-2 Ghanjua, P.W.-3 Rasna and P.W.-4 Kadaura are not only the eye witnesses and they have given eye witness account of the entire incident. As discussed above (P.W.-2) Ghanjua/ complainant and (P.W.-3) Rasna. P.W.-4 Kadaura has deposed that on the day of incident at 7.00 to 7.30 A.M. Gayadeen another son of complainant (P.W.-2) was sitting with him at his doorstep. He asked Kadora to provide him tobacco. In the meantime, they heard shriek and scream “dauro bachao”. At this both of them reached at the spot and saw that accused appellants Shambhu and Lakhan were hitting deceased Thakurdeen with Tabbal near narrow alley in the field

of Verma Ji. Rasna and Ghanjua were also present who were making hue and cry on receiving injuries on his upper side of body and neck. Accused were using tabbal with pointed sharp edge. Thakurdeen fell on the ground. When Ghanjua and Rasna headed towards the deceased accused appellants opened the fire by "katta" upon them. Ghanjua and Rasna fell in the field of Jwar and saved them unhurt. Later he along with other reached to Thakurdeen who was lying dead. This witness is also an eye witness of the occurrence who saw accused appellants hitting Thakurdeen with tabbal and opening fire on Ghanjua and Rasna. The Thakurdeen was lying at a distance of one and half feet of narrow alley running from the field of Verma Ji, at some paces. Rasna, Ghanjua and other were present and raising alarm and shriek. Assailants had inflicted injuries with tabbal upon Thakurdeen at his neck and head etc. In his cross-examination defence could not extract any material belying and discrediting the testimony of P.W.-3 Rasna. Testimony of P.W.-4 Kadora was delineation of glowing picture of incident which added impetus in the prosecution version. He proved his presence on spot at the time of incident by narrating all interrogations in a simple and natural way. Thus, P.W.- 2, P.W.- 3 and P.W.-4 are eye witnesses. They have given credible trustworthy and believable evidence. Their evidence appears to be of sterling quality. Rest of witnesses are formal in nature.

49. Learned Amicus Curiae has vehemently argued that prosecution has withheld the real witnesses of the incident Gayadeen, and Jankiya. There is no independent and impartial credible witness of prosecution. P.W.-1 Bhura has not support prosecution version at all. This cast serious doubt about the truthfulness of prosecution

case. Learned A.G.A. has strongly opposed the argument advanced by the learned Amicus Curiae. The law on the point is crystal clear that for establishing the guilt of accused appellants quality and not the quantity of the witnesses produced, is important. Conviction may be rest on even on a sole credible and believable witness. In the present case, although P.W.-1 Bhura is not an eye-witness account but presence of P.W.-2 Ghanjua, P.W.-3 Rasna and P.W.-4 Kadora at the place of occurrence is beyond any doubt, therefore, their evidence is of sterling quality. In this background if P.W.- 1 Bhura is not an eye witness nevertheless he remained present on the place of occurrence and participated and witnessed the subsequent proceedings.

50. Learned Amicus Curiae has contended that there are material contradictions in the statement of prosecution witnesses but no such contradictions has been pointed out which could demolish prosecution case or any embellishment in it. Rather their evidence is natural and spontaneous. They have narrated the entire story in a natural manner, which inspire confidence and credibility of their statements.

51. Learned Amicus Curiae further submits that I.O. has not properly investigated the matter. There are material lacunae which goes to the route of the investigation and cast serious doubtful about the truthfulness of the prosecution story. Learned A.G.A. refuted the argument. It may be submitted in this behalf that investigation has been made thoroughly. I.O. has collected incriminating, credible and confidence inspiring and convincing evidence to establish the guilt of the accused appellants beyond reasonable doubt.

52. Learned Amicus Curiae painstakingly contended that the nature of

the injuries caused could not be inflicted upon the deceased by tabbal. Learned A.G.A. opposed the argument. It may be mentioned that tabbal had a pointed and sharp edged end. Thus, injuries caused to the deceased stood proved to have been caused by tabbal. Cut wounds and punctured wound is caused by tabbal by pointed edged and sharp edged. P.W.-6 Dr. H. G. Gupta has subscribed the conclusion. Besides all the prosecution witnesses has deposed that they saw accused appellants Shambhu causing injuries to the deceased Thakurdeen by tabbal. Thus, the medical evidence corroborate the factual evidence.

53. The above discussion discloses that in the present case accused appellant Shambhu and Lakhan fired upon the father of the deceased, Ghanjua / complainant (P.W.-2) and Co-victim Rasna (P.W.-3) who happens to be relative of Ghanjua, with the intention to kill them. However they narrowly escaped from hitting the fire. In other words an attempt was made by accused appellant to murder them. All these witnesses though related to deceased and complainant but they are eye witnesses whose presence at the spot could not be doubted. P.W.-1 Bhura although is named as eye witnesses but he has denied that the incident occurred in his presence at the spot and stated that he reached at the spot at about 12.30 hours. However he has proved inquest report Ext. Ka.-1 by identifying his signature on it. All this go to establish his presence also at the spot. In these circumstances and in view of the law discussed above, presence of these witnesses could not be doubted. They have seen the occurrence themselves therefore, they are eye witness and their testimony can not be discarded mainly because they are related to the deceased, rather they are natural witnesses residing in the close

vicinity of the place of occurrence and their presence at the spot is spontaneous and their statement is trustworthy.

54. Learned Amicus Curiae has argued that the witnesses P.W.-3 Rasna and P.W.-4 Kadora has not supported the prosecution version as they have filed affidavits prepared outside the court regarding their presence at the spot at the time of occurrence and falsely naming them as witnesses. In this regard it may be mentioned that the P.W.-3 Rasna and P.W.-4 Kadora had earlier given affidavits Ex. Kha-1 and Kha-2 to the effect that they have not seen any occurrence and have been wrongly cited as witnesses by the complainant. However during their examination in the court these two witnesses denied having given such affidavits. They stated that they had taken some loan for purchasing pumping set. They could not get proper pumping set with full accessories and therefore were not satisfied. They had come to court to move an application that in view of the aforesaid circumstances they will not avail loan thereof. According to the witnesses they had contacted a lawyer in the courts and explained him of the the application they wanted to be drafted. The lawyer obtained their thumb impressions on several papers and asked to come back again after 3-4 days. After a few days they learnt that some affidavits on their behalf have been filed in the court of law for the benefit of the accused persons. They filed their counter affidavits which are already on record. Thus it is not going to make any difference as the witnesses have filed counter affidavits. Further the statements of the witnesses on oath before the court constitute the evidence and their previous statements not before the court, can only be used for the purposes of contradiction or

challenging the veracity of the witnesses. The evidence given by P.W.-3 Rasna and P.W.-4 Kadora in the court is wholly consistent and probable and it does not appear that they are telling lie or that they had not seen the occurrence. In view of this even if they had voluntarily given some affidavits earlier in support of the accused, it would not made any difference. It may, however, mention that the circumstances do not indicate that they had voluntarily given affidavits e.g. Kha 1 and Kha 2 for the accused. The defence has examined D.W.-1 Sri Krishna Lal, Advocate, who prepared the affidavits Ex. Kha 1 and Kha 2 allegedly on the instructions of P.W.-3 Rasna and P.W.-4 Kadora and identified them before a Notary and filed those affidavits in the court on behalf of these witnesses. The perusal of his statement does not inspire confidence. He is the counsel to whom the witnesses have gone for the first time for any work. The witness said that he was knowing to Kadora and Rasna from before only because they used to visit Sri Daya Ram Ahirwar, Advocate, who has his seat near the seat of Sri Krishna Lal, Advocate. Since they used to make such visits to him, this witness came to know him also. Sri Daya Ram Ahirwar, Advocate has not been examined to corroborate and support the statement of this witness. The witness could not tell whether Rasna and Kadora used to come to Daya Ram Ahirwar, Advocate in connection with any civil or criminal case. He could not get opportunity of any such of which he know tell any date on which these witnesses visited Sri Daya Ram Ahirwar, Advocate. He said that he is unable to tell in which court he had filed affidavits of these witnesses and at what time these affidavits were presented in the court. In view of these statements not much reliance can be placed on the statement of D.W.-1

Krishna Lal, Advocate and it is highly doubtful that Rasna and Kadora had voluntarily given any affidavits in favour of the accused on 5.1.1983 as alleged by the defence. We are, therefore, of the opinion that statements of P.W.-3 Rasna and P.W.-4 Kadora, cannot be discarded merely on the ground that they allegedly gave some affidavits stating that they had not seen the occurrence in their examination on oath before the court. They have denied the filling of any such affidavits and supported the prosecution version to the hilt. Hence, arguments of learned Amicus Curiae are not accepted.

55. There is not much good reason to disbelieve the statements of the eye witnesses. There is no motive to these witnesses to falsely implicate the accused persons. The incident took place in broad day light and the presence of the witnesses near the place of occurrence is highly probable and believable. It is to be noted that the accused persons were named in the F.I.R. which was lodged without delay. The sale-deed by Smt. Jankiya in favour of Shambhu was executed about 3 years before the incident. There is no evidence on record to suggest that during this period of three years the complainant made any attempt to falsely implicate the accused in any other case or made any other gesture expressing enmity.

56. Learned Amicus Curiae submits that accused appellant did not have any animus against the deceased and his family. Prosecution has failed to prove any motive in the present case. It is worth mentioning that the law is well settled that motive in criminal cases, when there is direct evidence, is not very material. There is catena of the case law of the Apex Court in this context. In Gopi Ram Vs State of Uttar

Pradesh 2006 (55) ACC 673, SC, State of Uttar Pradesh Vs Nabaw Singh 2005 ACC (Cri.)33 and Shiv Raj Bapu Ray Jadhav Vs State of Karnataka (2003) 6 ACC 392, State of Rajasthan Vs Arjun Singh AIR 2011 SC 3380, Radha Mohan Singh Vs State 2005 CRLJ 167 and State of Gujarat vs Aniruuddh Singh AIR 1997 SC 278. Hon'ble the Apex Court has reiterated the law that where there are direct evidence, motive loses much of its importance.

57. Present is the case of direct evidence. Therefore, motive occupies back seat. However, in this case the statement of P.W.2 Ghanjua clearly shows that because Ghanjua had started preparation to take legal proceedings against Shambhu to get the land of his nephew Raghubir in which Shambhu was also interested. Actuated by these facts the accused persons had committed this crime. Apart from this, Jankiya had sold some of the land to Shambhu, as is evidence from the Statement of D.W.-1 and sale deed Ext. Kha.-3. In these circumstances motive becomes to be very probable and enough to author the present incident. Though, the prosecution has not filed any document to show that Ghanjua in fact initiated any legal proceedings but Ex. Ka-14 is notice in C.H.Form No.5 shows that on the land of Jankiya widow of Raghubir, has taken possession by Ghanjua was shown and the fact of remarriage of Jankiya with Shambhu was noted. This gives credence to the statement of the complainant P.W.-2 Ghanjua. This notice was issued on 22.7.1982 while the incident took place on 26.11.1982. Accused persons had, therefore, clear motive to commit this crime. P.W.-3 Rasna and P.W.-4 Kadora do not appear to be related to the complainant though they hail from the same Biradari. But merely on this ground their statements

cannot be disbelieved and it cannot be concluded that they were not speaking the truth.

58. The learned Amicus Curiae for the accused also argued that the accused Shambhu had a fire arm with him and in these circumstances if he had to cause death of deceased, he could have used the fire-arm instead of making use of tabbal. We are of the opinion that from this it cannot be concluded that the accused persons had not committed the crime. We do not know as how much ammunition the accused had with him and further the loading of the weapon also need some time and these things might have induced the accused to use tabbal instead of fire-arm and they might have considered use of fire-arm better for frightening away the witnesses.

59. It was next argued that the prosecution has not been able to establish that Jankiya had remarried Shambhu and for this D.W.-3 Param Sukh has been examined. He is resident of Chhaunk and he has also tried to say that the two accused persons were not in village Kanakhera on the day when the incident took place. To our mind, no reliance can be placed on his statement. Firstly, he himself is a resident of another village and his presence in village Kanakhera is doubtful at the relevant time. He said that he is looking after the agricultural land of Smt. Jankiya and is managing it. He is resident of village in which the maternal uncle of Shambhu resided and his maternal uncle, according to this witness, hails from biradari of the witnesses. The witness could not tell how much land revenue is paid by Smt. Jankiya on her agricultural land. He was also unable to tell the boundaries of the said land. In view of this, it is doubtful that he

manages the land of Smt. Jankiya and his statement that Shambhu had not married to Smt. Jankiya and the accused persons were not present in village Kanakhera on the day of the incident is not reliable. The prosecution witnesses have clearly stated that Shambhu had married with Jankiya and had started living in village Kanakhera. Though marriage, according to Hindu Rites is not established but that was not required also. From the evidence it is clear that Shambhu was living with Smt. Jankiya and want to purchase land from Jankiya as the said land originally belonged to Raghubir, who was nephew of Ghanjua. It is also stated that Ghanjua had started laying his own claim on the said land.

60. Learned Amicus Curiae has argued that accused appellant has been falsely implicated in the present case due to enmity. So far as plea of enmity is concerned it is well settled that enmity is a double edged weapon which cuts both ways. On the one hand it can be a ground of committing offence but it can also be a ground for false implication. In present case when Complainant Ghanjua opposed mutation of the land belong to his nephew Raghubir, accused appellants took ill of it and there is grater possibility for them to commit the crime against the opponents. Thus motive appears to be very provable and sufficient for commission of gruesome crime so they murdered not only the son of the Ghanjua but also attempted to murder Ghanjua and Rasna.

61. In the present case, as discussed above time of the incident has been determined by the prosecution as 07.30 a.m. So far place of occurrence no much dispute in this regard. P.W.-7 I.O. Arjun Singh Tomar prepared site plan Ext.Ka.-8 and affixed the place of occurrence at point

“A”. I.O. P.W.-7 has also collected plain and blood stained soil on the place of occurrence. Although a chemical report Ext. Ka. 12 found and matched the soils taken from the place of occurrence. That also confirms the place of occurrence.

62. Learned Amicus curiae has submits that the eye witnesses have given different version about the place where assault was made on the deceased and where the deceased fell down. It was pointed out that some of the witnesses have stated that it was in the middle of the field of Jagannath Singh Verma. Some others said that it was towards the end of the field and the witnesses have given different distance from the 'Mend' or other fixed points from the said place. We have examined the statements of the witnesses in light of the argument and am of the opinion that the place of occurrence given by the witnesses is one and definite and there are no contradictions. It is to be noted again that the witnesses are totally illiterate and are villagers. They cannot be expected to have a clear and good sense about the distances and specifically when the distance is much. P.W.2 Ghanjua has stated that the place of occurrence is about 8 or 10 paces from 'Nariya' i.e. drain passing through the field of Jagannath Singh Verma. The Investigating Officer has also shown this drain at a distance of few paces from the place where the dead-body of the deceased was found. PW.3 Rasna has also stated that dead-body was about 10 paces away from 'Nariya' and was on Pagdandi. PW.2 Ghanjua also said that dead-body Was on Pagdandi. P.W.4 Kadora has also said that the dead-body was on pagdandi in the field of Jagannath Singh Verma. The learned defence counsel asked these witnesses to give the distance of place of occurrence from the 'Mend' of the field or

from the well which was about 100 paces from the place of occurrence or from the house of the witnesses. In giving these distances the witnesses have no doubt even varying measures but to my mind that does not change the place of occurrence and it is only the skill of the lawyer that he was able to bring these contradictions on record. They are, however, very minor and are natural in view of the fact that the witnesses are illiterate villagers. Even educated witnesses can commit such mistakes. To our mind on this basis it cannot be said that the witnesses have not seen the occurrence.

63. Learned Amicus Curiae has argued that no incriminating article has been recovered from the possession or as the instance of accused appellant. I.O. has failed to recover the weapon of assault tabbal from accused appellant. It is the prosecution case after committing the crime accused appellants fled away from the scene of occurrence and could not be arrested from the spot. Although complainant Ghanjua and other villagers folks in village and witnesses attempted to chased them to some extent but co-accused them terror withdrew themselves. When accused fled away they carried with tabbal along with them. Later they surrendered on 29.11.1982 in the court of CJM, Jalaun at Orai. In the meantime they did not disclose about tabbal to any one. It is in the best of their knowledge where tabbal as been hidden by them. However it is established that accused appellant used tabbal in hitting the deceased on vital parts. Similarly the country made pistole could also not recover from accused appellant but prosecution witnesses seen using the katta in attempting to use murder in Ghanjua and Rasna. In theses circumstances, non recovery of tabbal and country made pistol (Katta) do not adversely effect the prosecution case.

64. Learned Amicus Curiae has submitted that according to prosecution case at the time of the incident deceased Thakurdeen was going to collect green fodder for cattle with a sickle (Hasiya). In the villages, as agricultural instrument Hasiya is use to cut gross, fodder, and other crops in field. So it is not strange that at the time of occurrence when deceased Thakurdeen was going to take green fodder from the field for cattle, he was also having Hasiya Ext-1. Prosecution witnesses has reiterated this facts in their statements. That the time of incident Thakurdeen Hasiya with him but from the place of occurrence this Hasiya was recovered in broken condition in two parts. Learned Amicus Curiae raised the issue has to how Hasiya was broken and turned in two pieces. It appears prosecution has implanted it order to give colour to the prosecution case. Learned AGA refuted this argument of Amicus Curiae. In the present case it is established that Hasiya Ext-1 is broken in two pieces. P.W. -3 Rasna who is an eye witness has even stated that Thakurdeen made some attempts to save himself by raising in his hand this is quite natural also. The witnesses, the Thakurdeen have Hasiya in his hand and some of the blows given by the accused persons fell on Hasiya of the deceased also and Hasiya fell down. This explains how the Hasiya is broken and the evidence appears to be very probable and convincing.

65. Thus it is clear that the deceased was carrying hasiya at the time of incident this fact corroborates prosecution version that he was going to the field to collect green fodder for cattle. This fact also confirm the time of the incident that is 07.30 a.m. is very probable and believable and there was no occasion to deceased to come out of his house with Hasiya in

winter season and to be present in the field of Jagannath Singh Verma. Therefore defence version that the incident took place some time in the dark hours at about 03 a.m. or 04 a.m. on 26.11.1982 and some unknown persons were nurturing animus and grudge against the accused appellant to succeeded in their venomous and filthy design of liquidating him nobody have seen the occurrence. The accused persons have been named in the present case on the basis of suspicion, is baseless and not accepted and prosecution witness is wholly reliable on this point.

66. Learned Amicus Curiae argued that the reliability of the statement of the eye witnesses has been tried to be challenged by the defence in light of the medical evidence. As mentioned earlier the medical evidence showed that "A" the deceased had two punctured wounds on his neck. They were 1 cm x 1 cm x 4 cm deep just below mandible angle and 1 cm x 1 cm x 3 cm which was 1 cm below the above punctured wound. The learned Amicus Curiae for the accused appellant argued that Tabbal is a curved sharp cutting weapon and it such punctured wounds could not have been inflicted and therefore the eye account of the witnesses should not be believed. After carefully examining the evidence on record I do not find force in this. The instrument by which the injuries were inflicted has not been produced before the court. The witnesses, who gave description of the weapon, are wholly illiterate and uneducated and cannot even sign their names. They also are unable to give statements by understanding the directions i.e. east, west, north, south. It has, however, come in their statements that the Tabbal used by the accused persons had pointed ends. P.W.2 Ghanjua has stated that after the deceased had fallen down, the

accused used their weapon vertically also to inflict injuries. Thus if the ends of the weapon were pointed and outwards, punctured wounds could be caused by their use in the manner mentioned by the witness. P.W.3 Rasna has also described the weapon used by the accused persons as Tabbal with a curved sharp edge with pointed ends on both sides which has been described by him as thinner as compared to an axe. This witness has also stated that the accused persons had used their weapon vertically to inflict injuries on the deceased when the latter had fallen down. The statement of P.W.4 Kadora is also to the same effect. According to him, Tabbal is a weapon with its cutting edge curved and the to point ends sparing out.

67. P.W.-6 Dr. H.G. Gupta has also conceded that if the weapon used by the accused had pointed ends has sharp edge, the punctured wound of the nature described in the PMR of the deceased could be inflicted by it. It is, therefore, clear that the punctured wound on the deceased have clearly been explained by the prosecution and it cant be said that these wounds could not be caused by tabbal. Thus it can not be concluded the witnesses had not seen the occurrence.

68. Learned Amicus Curiae argued that the so called incised wound on the body of the deceased were not in-fact incised wound but lacerated wounds. He based his arguments Dr. report where in it is mentioned that the bones under those injuries were broken and not cut, besides the doctor in his statement said he cannot say whether he has examined margins of theses injuries was magnifies glass. It is further argued that the injury by blunt weapon on a boni part may give appearance of any incised wound. P.W.-6 Dr. H.G.

Gupta has clearly stated that though he used expression “broken” for the bones under the incised injury but in fact he meant that the bones were cut. incised injuries but in fact he meant that the bones cut. It were cut. It is unfortunate that a qualified and educated witness failed to use exact word to express his opinion but in the light of the statements of the witnesses and other circumstances, I am of the opinion that the statement of the doctor given before the court is reliable. One of the injuries which is injury no.1 of the anti mortem injuries mentioned-in the post mortem report Ex. Ka 7 is an incised wound on the left humerus bone. This part of the body is not a bones part covered with a stretched skin. When the doctor has mentioned injury on this part an incised wound of the size of 7 cm x 3 cm x 2 cm, it cannot be said that he could mistake a lacerated wound for incised wound. However, it would have been better if the doctor had mentioned in the report itself that he had used or not the magnifying glass to see the margins of the wounds. Dr. Gupta has clearly stated that anti mortem injury no.4, keeping in view its length, is definitely caused by some sharp cutting weapon and not the blunt weapon. In view of the statements of the eye witnesses read in light of the statement of PW.6 Dr. H.G. Gupta, it cannot be said that there is any material inconsistency and that the injuries caused on the deceased were not inflicted by a sharp cutting weapon like Tabbal.

69. The investigation was also done in a pedantic and lackadaisical manner with the oblique motive of implicating the accused appellants on the undue pressure exerted by prosecution side. No incriminating articles have been recovered on the pointing of accused appellants which creates entire prosecution story highly

untrustworthy and unconvincing. No clinching material from the side of the prosecution has been led to evince that the accused appellants had harboured vengeance to eliminate Thakurdeen.

70. Learned Amicus Curiae has urged that the chain of evidence and circumstances is also not complete so as to conclusively establish that the accused appellants are the actual perpetrator of dreadful murder of Thakurdeen. The complainant and his family members were also the men of felonious nature and were having in their credit so many At-agonists. Some unknown persons were nurturing animus and grudge against the accused appellants who succeeded in their venomous and filthy design of liquidating him and nobody had seen the occurrence. The accused appellants have been named in the present case on the basis of suspicion. The alleged incident appears to have taken at about 3 or 4 a.m. by some unknown miscreants on 26.11.1982.

71. The accused appellants did not have any animus against the deceased and his family members. The prosecution also not prove any motive against the accused appellants which actuated them to take such a drastic step. It will be within the knowledge of complainant why he had figured accused appellants and had roped them falsely in the present case.

72. On the basis of above discussion, we conclude that accused appellant assaulted deceased Thakurdeen on 26.11.1982 at or about 7.30 a.m. in village Kanakhera in the field of Jagannath Singh Verma and incident was witnessed by P.W.-2 Ghanjua P.W.-3 Rasna and P.W.-4 Kadora. As a result of these assault Thakurdeen died on the spot. In the

circumstances of the case, it is clear that they had intention to cause death of the deceased and had also knowledge that by their act they would cause the death of the deceased. Both of them are, therefore, guilty of committing an offence punishable under Section 302 read with 34 I.P.C. When P.W.-2 Ghanjua and P.W.-3 Rasna reached to rescue deceased Thakurdeen both the accused appellants with the intention to kill them attempted to hit fire to them. Thus, they have also committed the offence punishable under section 307 read with 34 I.P.C.

73. Thus, in the light of prolix and verbose discussions made herein above and also regard being had to the entire gamut and circumstances of the case, we are of the opinion that the prosecution has proved its allegations beyond reasonable doubt pointing unerringly guilt of the accused appellants. The trial court has rightly accepted the prosecution evidence holding the accused appellants guilty for the offence punishable under section 302/307 both read with section 34 IPC. The cumulative effect of totality of circumstances shows that all links in the chain are complete and the conclusion of guilt drawn by the court below is fully established as the evidence of the prosecution witnesses is consistent and finds due corroboration from medical evidence. The eye witnesses and the accused appellants were belonging to the same locality and knew to each other before incident. who has fully proved that the accused appellants have committed offence beyond all reasonable doubts on the basis of which they have been convicted and sentenced by the learned trial judge. The learned counsel for the accused appellants could not put forth any error or mistake to call for interference in the impugned judgment.

74. Resultantly, in our considered opinion, the accused appellants are guilty of

the offence causing death to an innocent person Thakurdeen. We find no cogent and substantial reasons to interfere with the impugned judgment and order dated 21.5.1983 passed by the learned trial court. The judgment and order dated 21.5.1983 passed by the trial court, which is being affirmed. The appeal sans merit and is accordingly dismissed. The appellants are on bail. They be taken into custody forthwith to serve out the sentence.

75. Certify the judgment to the trial court to incorporate entry of the result of this appeal in the relevant register. The compliance be reported to this court within two months.

76. Trial court record be remitted back immediately.

77. Mr. Pawan Shukla was appointed an Amicus Curiae in the instant case. He has rendered valuable assistance to the Court. The Court quantifies Rs.15,000/- to be paid to Mr. Pawan Shukla, Advocate towards fee for the able assistance provided by him in hearing of the instant criminal appeal. The said payment shall be made to Mr. Pawan Shukla, Advocate by the Registry of this Court within one month from today.

(2025) 5 ILRA 158
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.05.2025

BEFORE

THE HON'BLE ALOK MATHUR, J.

Criminal Appeal No. 1546 of 2025

Raje Bhasin **...Appellant**
Versus
Commissioner of Police, Police
Commissionerate Lucknow & Ors.
...Respondents