the Indian Penal Code, read with Section 149 of the Indian Penal Code, since the accused-appellant remained in custody during the trial as well as post-conviction and taking into account the period of incarceration already undergone by him, we deem it appropriate to impose a sentence equivalent to the period already undergone by the accused-appellant.

57. Thus the appeal stands **partly allowed** in the above mentioned terms.The appellant is on bail. He needs not surrender. The bail bonds stand discharged.

58. A copy of this order be sent to the learned trial Court concerned for information.

59. Certified copy, as per rules.

(2025) 5 ILRA 191
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 26.05.2025

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.

Criminal Appeal No. 2240 of 2008

Annu ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Arun Sinha, Hari Bux, Ravi Kant Pandey

Counsel for the Respondent:
G.A., G.S. Verma, S.P. Tiwari, Shiv Pramod Tiwari, Vikas Pandey

(A) Criminal Law - Murder - Attempt to murder - Grievous hurt - Possession of arms - Code of Criminal Procedure, 1973 - Sections 374(2), 428 & 437-A - Indian Penal Code, 1860 - Section 302, 307, 326 - Arms Act, 1959 - Section 3/25 - Evidence Act, 1872 - Section 6 - Principle of "same transaction" - Ocular testimony of injured witness - Reliability - Medical evidence vis-à-vis ocular evidence - Related witnesses - Number of witnesses - Absence of motive - Effect - Where the eye witness's account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive - Where direct evidence of injured eyewitness is trustworthy and corroborated by other witnesses and medical evidence, absence of motive or faulty investigation do not warrant acquittal - power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court. (Para - 38 to 41, 44 to 46, 48 to 52,54)

Appellant, armed with country-made pistol - fired at two boys playing in village - bullet grazed arm of one (PW-2) and fatally injured other (Rafiq), aged 18 - caught on spot by villagers with weapon - Rafiq died next morning - Trial Court convicted appellant - sentencing him to life imprisonment for murder - concurrent sentences for other offences - hence appeal. (Para - 7 to 14)

HELD: - Conviction affirmed. Sentence for Section 302 IPC modified from life imprisonment to 25 years' rigorous imprisonment. Fine maintained. No perversity in the findings of trial court**. (Para - 52 to 56)**

Appeal partly allowed. (E-7)

List of Cases cited:

1. Edakkandi Dineshan Vs St. of Kerala, 2025 (3) SCC 273

2. Ramkant Rai Vs Madan Rai & ors., MANU/SC/0780/2003 : 2004

3. CriLJ 36 Dhananjay Singh Vs St. of Punj., 2004 JIC 399

4. Chandan Vs St. (NCT of Delhi), 2024 (6) SCC 799

5. Madan Vs St. of U.P., 2023 (15) SCC 701

6. Deen Dayal Tiwari Vs St. of U.P. , 2025 SCC OnLine SC 237

(Delivered by Hon'ble Mrs. Sangeeta Chandra, J.)

1. This Criminal Appeal has been filed under Section 374(2) of the Cr.P.C. against the judgement and order dated 02.09.2008 passed by learned Additional Sessions Judge, F.T.C.-VI, Lakhimpur Kheri, in Sessions Trial No. 593 of 2005, in Case Crime No. 183 of 2005 and 184 of 2005, under Sections 307, 302, 326 I.P.C. and Section 3/25 Arms Act, registered at Police Station- Isha Nagar, District, Kheri, convicting and sentencing the appellant under Section 302 of the I.P.C. to rigorous imprisonment for life and fine, and under Section 307 I.P.C., simple imprisonment for seven years and fine, and under Section 326 I.P.C., simple imprisonment for seven years and fine, and under Section 3/25 of the Arms Act, simple imprisonment for two years and fine; all sentences to run concurrently, and in default of payment of fine on each count, additional simple imprisonment has to be undergone.

2. This Appeal was initially filed by Sri Arun Sinha. He failed to appear on various dates thereafter, and this Court appointed Hari Baksh Singh, Advocate, as Amicus on his behalf. Later on, Sri Ravi Kant Pandey filed his power on 27.03.2023 on behalf of the appellant and thereafter filed an application under Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 for declaring the appellant as juvenile at the time of the incident. Such application was filed in February 2024, alleging that the appellant, being born on 10.02.1988, as is mentioned in the school leaving certificate, was juvenile at the time when the incident took place on 28.03.2005. His name in his school records is shown as Ganesh Dutt, as is evident from the transfer certificate issued by Poorva Madhyamik Vidyalaya, Dhaurhara, Lakhimpur Kheri. Such certificate was issued in his real name—Ganesh Dutt, son of Uday Narayan Tiwari.

3. This Court, by order dated 05.08.2024, gave time to the counsel for the complainant to file objections against the application claiming juvenility. Such objections were filed on 21.08.2024. It was alleged in the said objections that the appellant was 22 years of age on the date of the incident and his actual date of birth is 05.01.1983, as is evident from the school leaving certificate issued by Prathmik Vidyalaya, Karohan, where he took admission in Class-I on 05.07.1991, and his name was recorded as Annu Lal, son of Uday Narayan. His name was struck off the school rolls on 16.01.1996 due to his continuous absence from the school when he was studying in Class-V. A copy of the Parivar Register, issued on 16.04.2002, showed that the appellant was 18 years of age in 2002.

4. It was also stated that the appellant and his father, Kallu alias Uday Narayan, had brutally murdered one Tribhuvan Dutt Tiwari, resident of Village Chauhan, on 23.02.2002, and they were accused in Case Crime No. 55 of 2002 under Sections 302 and 307 I.P.C. at P.S. Dhar. The appellant was tried in Sessions Trial No. 522 of 2002 and convicted with life imprisonment by an order dated 07.06.2004. They challenged the order in Criminal Appeal No.1352 of 2004 before this Court, which is pending.

The appellant was bailed out in Criminal Appeal No. 1532 of 2004 and started threatening and bullying the witnesses. He then committed another murder on 28.03.2005 of Rafiq S/o Jahoor and was tried and convicted by the judgement and order impugned in the instant Appeal.

5. On 28.08.2024, the counsel for the appellant stated that the appellant does not wish to press the application raising the plea of juvenility and would rather argue the Appeal on merit. The application raising the plea of juvenility was accordingly rejected and the Appeal was directed to be listed for hearing.

6. We have heard Sri Ravi Kant Pandey for the appellant and Sri Vikas Pandey, learned counsel for the contesting respondent, and the learned A.G.A. for the State.

7. In short, the prosecution story as mentioned in the written report, Exhibit Ka-1, submitted by the informant Rajendra Prasad, son of Munim Brahman, resident of Village Pandit Purwa, P.S. Isha Nagar, is that on 28.03.2005, he was cleaning *Masoor* (a kind of lentil) in front of his house and his son, Anand Mohan was with him who left to play with the children at some distance. After a little while, he heard some noises and he, along with Jahoor son of Badlu, Ramesh and Vinod, sons of Indrabali, Mobin son of Mangare, Banwari son of Lallu, ran towards the place from where the noise was coming. They saw one person with country-made pistol, 315 bore, opening fire. This was at around 11:00 AM in the morning. As a result of this, his son Anand Mohan and Rafiq, son of Jahoor, were injured. The informant, along with other villagers, caught hold of the assailant and beat him up. He told his name as Annu, son of Kallu alias Uday Narayan, of Village Karauha, P.S. Dhaurhara. The informant had come to the Police Station along with his injured son Anand Mohan, Rafiq S/o Zahoor, Zahoor and other villagers along with the injured assailant and his country-made pistol.

8. On the basis of this written report, First Information Report, Exhibit Ka 6, was registered and G.D. Entry No. 16, Exhibit Ka 7, was made at 12:30 PM. Crime No. 183 of 2005 under Section 307 I.P.C. initially (Section 302 I.P.C. was added later) was registered against the accused, and Case Crime No. 184 of 2005 was registered under Section 3/25 of the Arms Act.

9. After registering the F.I.R., the injured Anand Mohan and Rafiq were sent to the District Hospital Kheri for treatment along with Police Constable and Rafiq died the next morning at 07:00 AM on 29.03.2005.

10. The deceased Rafiq's body was sent for postmortem, which was conducted by Dr. Badrish Kumar, and the Postmortem Report, Exhibit Ka 5, was prepared. The ante-mortem injuries that were noted were as follows:

One firearm wound of entry 1 cm x 1 cm deep into the abdomen towards the left, 20 cm below the left nipple. The margins were inverted, irregular, and on opening such wound, the stomach, the small intestine, and the transverse colon were all found lacerated, and one conical bullet was found stuck in such abdominal cavity. The entire abdomen was found full of fluid, blood, and faecal matter.

The bullet that was retrieved was sealed and sent to Superintendent of Police, Kheri.

11. In the opinion of the Doctor, cause of death was excessive bleeding and shock,

resulting from such hemorrhage caused by ante-mortem firearm injury.

12. The Investigating Officer prepared chargesheet on 24.04.2005 and filed it before the Court of Chief Judicial Magistrate, Kheri. The accused was produced in Court and he was handed over copies of all relevant documents, and the Chief Judicial Magistrate committed the trial to the Sessions Court on 30.05.2005. Charges were framed thereafter under Sections 307, 302 and 326 I.P.C. and Section 3/25 of the Arms Act. The accused pleaded not guilty and claimed trial.

13. The prosecution relied upon eleven witnesses:-

Rajendra Prasad P.W.-1, Anand Mohan Pathak P.W.-2, Jahoor P.W.-3, Dr. Rajendra Prasad P.W.-4, Dr. Badrish Kumar P.W.-5, Constable Man Singh P.W.-6, Dr. S.N.H. Rizvi P.W.-7, SO Kailash Yadav P.W.-8, SI Balram Yadav P.W.-9, SI Sarju Prasad P.W.-10 and Constable Rajaram as P.W.-11.

14. Documentary evidence relating to written report, F.I.R., Recovery Memo prepared of country-made pistol and spent cartridge, inquest report, postmortem report, injury report, X-ray report, prosecution sanction under Section 3/25 of the Arms Act, and police papers relating to letter sent to the Chief Medical Officer, and to the Reserve Inspector, X-ray plates, site plan prepared by the Investigating Officer, were proved by the official witnesses.

15. The learned counsel for the appellant, Sri Ravi Kant Pandey, has argued that no one had actually seen the accused Annu firing the gunshot which hit Anand Mohan and Rafiq. He has pointed out from the statement recorded of P.W.-1 Rajendra Prasad that he had initially stated in his examination-in-chief that he was cleaning *Masoor* at his doorstep along with his son, when his son Anand Mohan ran away to play with the kids in the village. He heard some cries and noise and ran along with Ramesh and Vinod, sons of Indrabali, Banwari, Mobin and Jahoor towards the place where kids were playing and found that his son Anand Mohan had been hit by a gunshot on his right arm, and Rafiq was also hit in his abdomen and both had fallen to the ground. They immediately caught hold of the assailant who was holding the gun in his hand and beat him up and snatched the *Tamancha* from him, and he revealed his name as Annu, son of Kallu alias Uday Narayan. P.W.-1, and got the report written by one Shridaya Yadav before approaching the Police Station Isha Nagar along with the injured, the accused and other villagers. Such written report was made the basis of F.I.R. in Case Crime No.183 of 2005, under Sections 302, 307, 326 I.P.C. and Case Crime No. 184 of 2005, under Section 3/25 of the Arms Act

It has been argued that P.W.-1 only saw his son Anand Mohan & Rafiq falling down after the gunshot was heard by him.

16. It has been argued that P.W.-1 in his cross-examination has stated that his son was helping him in cleaning *Masoor* and they worked for around one and a half hours and then filled up the cleaned *Masoor* in a sack and kept it at home and started eating their meal. Anand Mohan ate his meal quickly and ran away to play with children outside, and while P.W.-1 was finishing his meal he heard a gunshot being fired, and he ran outside and saw that around a hundred paces away, his son was

bleeding from his hand. In the meantime, other people had gathered there and they were saying that Pandit's son had been shot at. He had taken his injured son and also Rafiq to the Police Station in a Marshal jeep, along with other villagers viz. Jahoor, Banwari, Ramesh and one Rajendra, and from there he took the injured to the hospital. He stayed at the hospital for eighteen days and therefore could not show the scene of crime to the Investigating Officer.

17. We have examined the testimony of P.W.-1 and we have found that P.W.-1 also admitted that he knew Annu from childhood as his maternal uncle Sahaj Ram lives in Naurangabad, which is a hamlet of the same Gaon Sabha, and he knew also that Annu was convicted of murder earlier. He also stated that Rafiq was around eighteen years of age at the time of the incident and he was around one span (Bitta) taller than his son, Anand Mohan. He denied the suggestion that Annu used to go to the police station often and was falsely accused of the crime at the instance of police personnel at the police station when they had gone to report the incident along with injured persons.

18. P.W.-2 Anand Mohan Pathak was around twelve and half years of age at the time when he was shot at by Annu. He stated that he, along with Rafiq and other children, were playing in the village when Annu came with *Tamancha* in his hand. Rafiq told him not to brandish the *Tamancha* as Police will come to the village and will arrest him. Annu got annoyed and fired his *Tamancha* at them, which, after grazing his right hand, hit Rafiq in his left abdomen. Both fell to the ground and shouted for help when his father Rajendra Prasad, along with other villagers, came and caught hold of Annu along with his *Tamancha*. His father, along with Rafiq's father Jahoor and other villagers, took him to the Police Station and from there to the hospital where both were admitted. Rafiq died the next morning. P.W.-2 admitted that he had never gone to school and that his father owned land on which sugarcane, corn and paddy was sown. On 28.03.2005, he was cleaning *Masoor* along with his father in the Khalihan, which was some four to five houses away from his home.

19. It has been argued by learned counsel for the appellant that P.W.-2 also stated that on the day of the incident he, along with Santosh, Rafiq, Annu, Guddu, Dayashankar, etc., around ten to twelve children, were playing in the village. Around fifty to sixty villagers were watching them play. When he was hit by the bullet in his hand, he was running after Santosh, and Rafiq was a little behind him towards his right. The bullet hit him from behind and he fell down and fainted. He had only heard the sound of the gunshot. He regained consciousness only in the hospital. Although, he denied the suggestion that there were at least two gunshots fired, one of which hit him and the other hit Rafiq. He admitted that he did not see how the bullet had hit him as he was running. He also admitted that Annu was known to him as his maternal home was in Village Naurangabad.

20. P.W.-3 Jahoor, the father of the deceased Rafiq, had stated that he along with Rajendra Prasad, Ramesh, Banwari, Mobin and others, ran towards the south of the village where they had heard a loud noise. On reaching the place, he found Annu holding a *Tamancha* in his hand, and he fired the *Tamancha* and the gunshot at

first hit Anand Mohan in his hand, and later hit his son, Rafiq, in his abdomen. The villagers surrounded and got hold of him and snatched the *Tamancha* away. They reached the police station thereafter along with the injured, and Rajendra Prasad lodged the F.I.R.. The *Tamancha* was handed over to the Sub-Inspector, and injured were taken to the hospital at Isha Nagar, from where they were referred to Lakhimpur District Hospital. The injured were admitted. Rafiq died the next morning.

21. It has been argued by learned counsel or the appellant that P.W.-3 stated that on the day of the incident, he had not gone to his field to work, but was sitting at home along with his family members at his door when he heard someone shout regarding Annu roaming with a *Tamancha*. He knew Annu from before. However, when he reached the place he saw Rafiq had already been hit and Rajendra's son had also been hit by the gunshot and they were lying on the ground. The accused was apprehended along with the weapon of assault at the scene of crime by Rajendra Prasad, Banwari, Ramesh and himself. They beat up Annu and he may have received some injuries in the process, and snatched the *Tamancha* away. They all went to the Police Station in a jeep, which was brought by the villagers. His son had been shot at and fallen towards the north of the Nala/drain, which was towards the west of the house of Lalta Prasad. He had shown the scene of crime to the Sub-Inspector and had also shown him blood having stained the ground. No empty cartridge was found on the scene of crime; it was stuck in the *Tamancha*.

22. We have examined the testimony of P.W.-3 and we find that P.W.-3 had also stated that his son, Rafiq, was speaking softly at the hospital, and one Police Constable from Isha Nagar Police Station was asking him some questions. He did not hear what his son was saying. The Sub-Inspector was not present. His son Rafiq died before dawn the next day. He, along with Rajendra Prasad, Mobin, Ramesh, and Banwari, had caught hold of Annu and snatched the *Tamancha* away from him.

23. It has been argued by Sri Ravi Kant Pandey that none of the prosecution witnesses have seen the incident of Annu firing the gunshot, which hit Anand Mohan and Rafiq; and their statements cannot be relied upon.

24. Additionally, it has been argued that P.W.-2 had stated that the incident occurred at around 1:00 PM, whereas P.W.-1 and P.W.-3 stated that it occurred at around 11:00 A.M. There was a difference in the timing, and therefore, such witnesses cannot be said to be reliable.

25. It was also argued that although all the prosecution witnesses of fact had stated that other villagers were present when Annu was caught hold of and the *Tamancha* snatched away from him, no independent witness was examined. Only related witnesses were examined, who were obviously interested in the conviction of the accused.

26. We have also gone through the testimony of P.W.-4, Dr. Rajendra Prasad, the Medical Officer who had examined the injured at Lakhimpur District Hospital, and he had stated in his testimony that Rafiq, the injured, was brought by Constable Ashok Varma from Police Station, Isha Nagar, at around 3:00 PM, and on examination, a lacerated wound was found

on his left abdomen caused by firearm, and he was advised x-ray. The injury was fresh and may have been caused at 11:00 AM the same morning.

27. P.W.-4 had also examined Anand Mohan and found a firearm entry wound on the back of the right upper arm, 15 cm below the right shoulder with blackening, tattooing, and inverted margins. X-ray was advised by him. One fire wound of exit was found in front of the upper arm, 14 cm below the right shoulder with everted margins. X-ray was advised. The injury was caused around six hours before the examination, which took place at 3:20 PM. During cross-examination, P.W.-4 stated that it was not possible for one gunshot to have injured both Anand Mohan and Rafiq, if they were standing side by side.

28. Sri Ravi Kant Pandey has argued that all the prosecution witnesses have stated that only one gunshot was fired by Annu, which hit both Anand Mohan and Rafiq. The medical opinion is contrary to the ocular evidence, and it is possible that the prosecution witnesses had not seen the incident and were lying.

29. We have examined the testimony of other prosecution witnesses as well. Dr. Badrish Kumar, Medical Officer, District Hospital, Lakhimpur Kheri, was examined as P.W.-5, and he stated that he had conducted the postmortem on Rafiq. The deceased was around 18 years of age. He died at 7:00 AM on 29.03.2005 in the District Hospital. A firearm wound of entry was found on the left abdomen with inverted and irregular margins. On opening the wound, the stomach, small intestine, and transverse colon were all found lacerated, and one conical bullet was retrieved, which was sealed and sent to the Superintendent of Police. It was possible for the injury to have occurred from a distance of around six feet, as no blackening was found on the wound.

30. P.W.-6, Constable Maan Singh, as official witness, had proved the Chik F.I.R. and also the G.D. entry. He stated that Rajendra Prasad had brought a written report along with three other villagers. He also stated that he had no knowledge whether Annu was convicted and was a history-sheeter. He also stated that when the country-made pistol was sealed, no signatures of the accused Annu were taken, although he was present in the Police Station, Isha Nagar.

31. Dr. S.N.H. Rizvi, the Radiologist, was examined as P.W.-7, and he stated that on x-ray being done, he had found the right humerus shaft of Anand Mohan having multiple fractures. X-ray of Rafiq was also done by him, and he found a long conical metallic opaque bullet in his left abdomen near the L2 vertebra.

32. We have also examined testimony of Kailash Yadav as P.W.-8, who was the second Investigating Officer, and Balram Yadav, who was the third Investigating Officer as P.W.-9. He had recorded the statement of Annu in the lock-up. Sub-Inspector Sarju Prasad as P.W.-10, who was posted as Head Constable in the Police Station, had prepared the inquest report of the deceased Rafiq and proved official documents prepared by him.

33. P.W.-11, Constable Rajaram, had stated that Sub-Inspector Richhpal Singh was originally the Investigating Officer who had prepared the site plan, but he was transferred and later on retired. He had seen Sri Richhpal Singh working, and he recognized his handwriting.

34. It has been argued by learned counsel for the appellant that Annu had

denied any involvement in the incident in his statement under Section 313 of the Cr.P.C. and stated that the police had conspired to falsely implicate him. His father, Kallu alias Udai Narayan, also stated that no weapon was recovered from his son and he had been falsely implicated at the instance of the police. However, no reasons could be assigned by the accused and his father as to why the police would falsely implicate Annu.

35. Ravi Kant Pandey, during the course of argument, has stated that the Forensic Science Laboratory did not test the weapon, the country-made pistol allegedly recovered from the accused, as the seal was not intact on the parcel, and therefore it could not be said that the bullet that was recovered from the body of the deceased was actually fired from the same weapon.

36. Sri Vikas Pandey, who appeared for the complainant, has argued that it is settled law that testimony of related witnesses cannot be discarded outright but has to be scrutinized with more care and circumspection. It has been argued that the prosecution is not bound to produce a specific number of independent witnesses to prove the offence to have been committed by the accused. It has also been argued that no doubt there were several people on the scene of crime, and not only P.W.-1 and P.W.-3, but also several other villagers had seen Annu shooting from his country-made pistol. But rustic and ordinary villagers are less inclined to give testimony in Court. It is only related witnesses who are willing and persevering enough to continue to appear in Court to give testimony. Their sincerity alone will not make their testimony unreliable. And it is less likely that they would falsely implicate an innocent person and hide the real culprit.

37. Having heard learned counsel for the parties, we have gone through the statements of all the prosecution witnesses, both related and official ones, and also the judgment impugned.

38. It is evident from the statement of P.W.-1, P.W.-2, and P.W.-3, the three witnesses of fact, that the incident occurred in the forenoon of 28.03.2005, as the F.I.R. was lodged at 12:30 PM in the Police Station, Isha Nagar. It is also clear from the testimony of such witnesses that not only they, but several other villagers, were present when the incident occurred, and they had accompanied the injured as well as the accused, who was caught on the spot, to the Police Station. The injured were admitted to the hospital. Their medico-legal examination report, x-ray plates, and postmortem report were proved by the doctors from District Hospital, Lakhimpur Kheri. The medical evidence with regard to the injuries caused corroborated the ocular evidence of the injuries being caused within six hours of their examination at the hospital, which occurred at around 3:00 PM. One conical bullet of .315 bore was retrieved from the abdomen of the deceased. Anand Mohan, who was only around twelve years of age, had suffered multiple fractures in his right humerus shaft and remained admitted in hospital for around ten days. Being an injured witness, his testimony comes with an inbuilt guarantee of being truthful and reliable. This witness naturally had stated that he was running after one Santosh and Rafiq was following him when suddenly a bullet was shot by the accused, which went through his right arm and hit Rafiq, who was a few steps behind him, in his

abdomen. Rafiq was eighteen years old, and Anand Mohan was only around twelve years old, hence there was a difference in their height. And if the bullet went through his right upper arm, it would, in all likelihood, hit Rafiq in his abdomen as he was right behind him.

39. The Trial Court has considered the argument of the defence counsel regarding none of the prosecution witnesses actually seeing Annu firing the gunshot which hit both Anand Mohan and Rafiq, and taking into account the testimony of all the witnesses, the Trial Court has referred to the provisions of Section 6 of the Evidence Act.

40. Section 6 of the Evidence Act is being quoted hereinbelow:-

6. Relevancy of facts forming part of same transaction- *Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.*

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the [Government of India] by taking part in an armed insurrection in which property is destroyed, troops are attacked and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

41. It was observed by the Trial Court that all the prosecution witnesses had stated the same story with regard to the children playing in the field near the nala/drain and Rafiq telling Annu, who was holding a *Tamancha*, not to brandish it as the police keeps coming to the village and may arrest him. Within minutes, the gunshot was fired, which hit Anand Mohan first and then Rafiq in his abdomen. Almost at the same time, Rajendra Prasad, Jahoor, and other villagers reached the spot and saw the children falling down. They overpowered Annu, who was still holding the *Tamancha* in his hand. The other villagers who were present on the spot were also saying that Annu had fired the gunshot which hit the two children. The evidence of the prosecution witnesses of fact was reliable and relatable to the same transaction.

42. The Trial Court has also considered the argument raised by the counsel for the defence that in the description of the scene of crime, the prosecution witnesses have given different versions with regard to the direction in which the houses of Lalta Prasad and Pyare Lal were situated. The site plan showed a different direction. The Trial Court found that the witnesses had stated that the house of Pyare Lal was situated on the west and the house of Lalta Prasad was situated on

the east of the Gram Samaj land near the nala where the children were playing. In the site plan, however, direction of houses of Pyare Lal and Lalta Prasad was shown in the east and west respectively, i.e., diametrically opposite to what the witnesses had stated, but all other details regarding the houses of other villagers near the place where the children were playing were found to be stated correctly. Only because the direction of houses of Pyare Lal and Lalta Prasad had been stated differently, the testimony of the witnesses cannot be discarded. The testimony of the witnesses, being otherwise cogent and reliable, would be preferred over that of the investigating officer who had prepared the site plan and who was also not present to prove the same as he had already retired. We do not find any infirmity in such conclusion being arrived at by the Trial Court.

43. Hon'ble Supreme Court in ***Edakkandi Dineshan Vs. State of Kerala, reported in 2025 (3) SCC 273***, has observed as under:-

"26. A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a proper investigation could have strengthened its case. In Paras Yadav v. State of Bihar [Paras Yadav v. State of Bihar, (1999) 2 SCC 126 : 1999 SCC (Cri) 104] , the Supreme Court observed as under :

"8. ... the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from Ram Bihari Yadav v. State of Bihar [Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517 : 1998 SCC (Cri) 1085] : (SCC pp. 523-24, para 13)

'13. ... In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.' "

44. The Trial Court has also considered the argument raised by the accused that at least two shots were fired, one at Anand Mohan and the other at Rafiq, as the Medical Officer who had examined both the injured had stated that it was not possible for one bullet to have hit both Anand Mohan and Rafiq if they were standing side by side. However, the Trial Court had found from the testimony of the witnesses that Anand Mohan had clearly stated that he was running after Santosh and Rafiq was behind him towards his right. If they were diagonally positioned, Rafiq being around two paces away, it was possible for the bullet which pierced Anand Mohan's right arm and went through it to have hit Rafiq in his left abdomen, as there was a difference in height of both the children.

45. In ***Ramkant Rai v. Madan Rai and Ors***., reported in ***MANU/SC/0780/2003 : 2004 CriLJ 36***, the Apex Court has observed in Para No. 22 as under:

"22. It is trite that where the eye witnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bantham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. eye witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence Including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts the 'credit' of the witnesses; their performance In the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

46. The Trial Court has also considered the argument raised by the learned counsel for the accused that Annu was not caught at the scene of crime but was at the police station, and when the written report was submitted by Rajendra Prasad along with other villagers, he, being conveniently available, was falsely implicated at the instance of the police personnel at the police station. The Trial Court has considered the medico-legal examination conducted on 28.03.2005 at 12:50 PM of Annu and had found that he had at least four lacerated wounds on his head and upper part of his body and multiple contusions, one abrasion, on him and compared it to the statement recorded of P.W.-1 and P.W.-3, who had admitted to having beaten him up along with other villagers while snatching the *Tamancha* away from him. All the injuries were fresh and simple in nature and had been caused by a hard and blunt object.

47. The Trial Court rightly came to the conclusion that Annu, being caught by the villagers, had been beaten up and may have suffered such injuries in the process.

48. The Trial Court has also considered the argument raised by the defence counsel that blood-stained soil was not collected by the investigating officer from the spot where the incident was alleged to have occurred, but has observed that as per law settled by the Supreme Court in ***Dhananjay Singh versus State of Punjab*, 2004 JIC 399,** the Trial Court should not give the benefit of doubt to the accused only because of faulty investigation.

49. The Trial Court has also considered the argument raised by the counsel for the accused that there was no motive for Annu to have fired the gunshot which hit Anand Mohan and Rafiq. The Trial Court observed that when Annu had come to the place where the children were playing, he had a *Tamancha* in his hand, and Rafiq had said that he should not brandish the same as he might be arrested by the police. It may have annoyed Annu, and he retaliated by firing the shot. Also, the Trial Court has observed that if there is direct eyewitness account available regarding the incident, lack of motive alone would not be a relevant factor in deciding the culpability of the accused. We do not find any legal infirmity in the conclusion arrived at by the Trial Court.

50. Hon'ble Supreme Court in ***Chandan Vs. State (NCT of Delhi),***

reported in ***2024 (6) SCC 799,*** has observed in paragraphs-10 & 11 as under:-

"10. In Shivaji Genu Mohite v. State of Maharashtra [Shivaji Genu Mohite v. State of Maharashtra, (1973) 3 SCC 219 : 1973 SCC (Cri) 214 : AIR 1973 SC 55] , it was held that it is a well-settled principle in criminal jurisprudence that when ocular testimony inspires the confidence of the court, the prosecution is not required to establish motive. Mere absence of motive would not impinge on the testimony of a reliable eyewitness. Motive is an important factor for consideration in a case of circumstantial evidence. But when there is direct eyewitness, motive is not significant. This is what was held : (SCC pp. 224-25, para 12)

"In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy."

11. The principle that the lack or absence of motive is inconsequential when direct evidence establishes the crime has been reiterated by this Court in Bikau Pandey v. State of Bihar [Bikau Pandey v. State of Bihar, (2003) 12 SCC 616 : 2004 SCC (Cri) Supp 535] ; Rajagopal v. Muthupandi [Rajagopal v. Muthupandi, (2017) 11 SCC 120 : (2017) 3 SCC (Cri) 872] ; Yogesh Singh v. Mahabeer Singh [Yogesh Singh v. Mahabeer Singh, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257] .

51. Hon'ble Supreme Court in **Madan Vs. State of U.P.,** reported in **2023 (15) SCC 701**, has observed in paragraphs-65 and 66 as under:-

65. In this respect, we may gainfully refer to the judgment of this Court in State of A.P. v. Bogam Chandraiah [State of A.P. v. Bogam Chandraiah, (1986) 3 SCC 637 : 1986 SCC (Cri) 357] , which reads thus : (SCC p. 640, para 11)

"11. ... Another failing in the judgment is that the High Court has held that the prosecution has failed to prove adequate motive for the commission of the offence without bearing in mind the well settled rule that when there is direct evidence of an acceptable nature regarding the commission of an offence the question of motive cannot loom large in the mind of the court."

66. This Court in Darbara Singh v. State of Punjab [Darbara Singh v. State of Punjab, (2012) 10 SCC 476 : (2013) 1 SCC (Cri) 1037] , has observed thus : (SCC p. 482, para 15)

"15. So far as the issue of motive is concerned, it is a settled legal proposition that motive has great significance in a case involving circumstantial evidence, but where direct evidence is available, which is worth relying upon, motive loses its significance."

52. Thus, after a careful examination of the testimonies of the prosecution witnesses produced before the learned trial Court, in light of the rival submissions of the learned counsel for the appellant and the learned A.G.A. for the State, we are of

the considered view that the learned trial Court, while holding the appellant guilty of the offences under Sections 302, 307, 326 I.P.C. and Section 3/25 of the Arms Act, has not committed any illegality or irregularity. Such findings do not suffer from any perversity either. **The finding of guilt of the appellant under Sections 302, 307, 326 I.P.C. and 3/25 Arms Act is, therefore, affirmed.**

53. We also find no illegality or irregularity in the sentences awarded to the sole appellant insofar as the offences under Sections 307, 326 I.P.C. and Section 3/25 of the Arms Act are concerned.

54. However, we find it relevant to refer to paragraph no.23 of the judgment rendered by the Hon'ble Supreme Court **in Deen Dayal Tiwari vs. State of Uttar Pradesh : 2025 SCC OnLine SC 237,** which, for ready reference, is quoted hereinbelow :-

"23. This Court, while exercising its appellate jurisdiction under Article 136 of the Constitution of India, possesses the authority to scrutinize not only the conviction of an accused but also the appropriateness of the sentence imposed. As articulated in the principles laid down in Swamy Shraddananda, (2008) 13 SCC 767, the power to impose or modify a sentence within the prescribed framework of the Penal Code is exclusively vested in the High Court and this Court. The alternate punishment for offences punishable by death, such as imprisonment for a specific term exceeding 14 years or until the natural life of the convict, remains within the judicial conscience of this Court and the High Court. This ensures that the gravity of the offence, the mitigating and aggravating circumstances, and the possibility of reformation are thoroughly assessed before irrevocable sentences such as capital punishment are affirmed. Therefore, the commutation of a death sentence to imprisonment for the remainder of the convict's natural life, as an alternative to death, is well within the judicial prerogative of this Court and adheres to the constitutional mandate of ensuring justice. The Constitution Bench of this court in Union of India v. V. Sriharan, (2016) 7 SCC 1 have propounded upon these principles. The relevant paras from the same have been reproduced hereunder:

"103. In fact, while saying so we must also point out that such exercise of power in the imposition of death penalty or life imprisonment by the Sessions Judge will get the scrutiny by the Division Bench of the High Court mandatorily when the penalty is death and invariably even in respect of life imprisonment gets scrutinised by the Division Bench by virtue of the appeal remedy provided in the Criminal Procedure Code. Therefore, our conclusion as stated above can be reinforced by stating that the punishment part of such specified offences are always examined at least once after the Sessions Court's verdict by the High Court and that too by a Division Bench consisting of two Hon'ble Judges.

104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition

of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed.

105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court.

106. Viewed in that respect, we state that the ratio laid down in Swamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113] that a special category of sentence; instead of death; for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative. We are, therefore, not in agreement with the opinion expressed by this Court in Sangeet v. State of Haryana [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] that the deprival of remission power of the appropriate Government by awarding sentences of 20 or 25 years or without any remission as not permissible is not in consonance with the law and we specifically overrule the same.""

(emphasis supplied by us)

55. Having regard to the fact that the accused-appellant was aged about 18 years at the time of the commission of the offence in question and his plea regarding juvenility was rejected by this Court since the same was not pressed by the learned counsel for the appellant. The appellant has remained in jail for more than 16 years. We have also not been able to find any specific motive for the commission of the offence in question. Therefore, having regard to the aforesaid facts and circumstances of this case in which the offence was committed, we are of the considered view that the sentence awarded to the appellant for the offence under Section 302 I.P.C. deserves to be modified. Therefore, while affirming the finding of conviction of the appellant for the offence under Section 302 I.P.C., as recorded in the impugned judgment and order dated 02.09.2008, we find it appropriate to modify the sentence awarded to the appellant by the learned trial Court by means of impugned judgment and order dated 02.09.2008 for the offence under Section 302 I.P.C. from life imprisonment to twenty five years' rigorous imprisonment. The fine of Rs.1,000/- is affirmed.

56. The present criminal appeal is **partly allowed.**

57. The period already undergone by the accused-appellant, Annu, in the aforesaid Sessions Trial, either as under trial or post-conviction, shall be adjusted

towards the sentence awarded by this Court in terms of Section 428 Cr.P.C.

58. It is directed that the accused-appellant shall furnish personal bond and two sureties in the like amount to the satisfaction of the court concerned within four weeks from the date of his release from jail in compliance with the provisions of Section 437-A Cr.P.C.

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

(2025) 5 ILRA 205
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.05.2025

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE ANIL KUMAR-X J.

Criminal Misc. Writ Petition No. 9733 of 2025

Shashank Mishra ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Krishna Kumar, Praveen Shrivastav

Counsel for the Respondents:
G.A.

Criminal Law – Constitution of Indian,1950 – Article 226 & 227 - Criminal Procedure Code, 1973 – Section 50 - Indian Penal Code, 1860 -Sections 120-B, 307, 323, 498-A & 506 – Dowry Prohibition Act, 1961 - Sections 3 & 4 - Writ Petition - FIR - Arrest - Allegation of procedural irregularity - Accused-petitioner contends neither he nor his family was informed of grounds of arrest – produced before remand magistrate – grievance that Remand Magistrate failed to address procedural lapse or afford fair hearing – relying on Supreme Court's decision in Prabir Purkayastha Vs St. (NCT of Delhi), petitioner moved application before Additional Sessions Judge seeking to set aside remand order – Application remain pending – present writ petition filed seeking direction to decide said application expeditiously – court observed that - (i) petitioner's bail application already rejected on merits by coordinate bench, (ii) entertaining present writ would amount to indirectly overturning coordinate bench's order and directing lower court to review its bail rejection, (iii) petition suffers from unexplained delay and laches, (iv) petitioner failed to raise issue of illegal arrest during bail proceedings before Sessions Court or High Court, - court held that, (i) collateral challenge is legally impermissible and tantamount to subverting the hierarchy and finality of judicial orders, (ii) writ jurisdiction under Article 226 cannot be invoked to bypass statutory remedies under Cr.P.C. – accordingly, writ petition is dismissed. (Para – 14, 15, 16, 17)

Writ Petition Dismissed. (E-11)

List of Cases cited:

1. U.O.I.& anr. vs Kirloskar Pneumatic Co. Ltd.- (1996) 4 SCC 453,

2. Eastern Coalfields Ltd. Vs Dugal Kumar - AIR 2008 SC 3000,

3. Shankar Ramchandra Abhyankar Vs Krishnaji Dattatreya Bapat - AIR 1970 SC 1,

4. Lallubhai Jogibhai Patel Vs U.O.I.- (1981) 2 SCC 427,

5. Manjeet Singh @ Inder @ Manjeet Singh Chana Vs St. of U.P. & ors.– Criminal Misc. Writ Petition No.934 of 2025,

6. Sachin Soni @ Aansu @ Sachin Kumar Soni Vs St. of U.P. & ors.- Criminal Misc. Writ Petition No. 905 of 2025,

7. Prabir Purkayastha Vs State (NCT of Delhi) (supra) – LAWS (SC)-2024-5-46,