

doubt and also to prove that the crime in question had been committed by none other than the accused-appellants. The trial court only on the basis of suspicion convicted the accused appellants while passing the impugned judgment.

Conclusion

63. In view of the discussions and deliberations held above, the prosecution could not prove its case against the accused-appellants beyond reasonable doubt. Hence, both the appeals deserve to be allowed.

64. Accordingly, the both the appeals succeed and are **allowed**. The impugned judgment dated 7th December, 2020 passed by the Additional Sessions Judge/POCSO Act, Court No.43, Shahjahanpur in Sessions Trial No. 487 of 2011 (State Vs. Laddan and Ram Dev) under Sections 302, 201 and 120-B I.P.C. arising out of Case Crime No. 107 of 2011, Police Station-Jalalabad, District-Shahjahanpur, against the accused appellants, is hereby set aside.

65. The accused appellant-Ram Dev, who is in jail since 13th April, 2012 shall be released forthwith, unless he is wanted in any other case on compliance of the provisions of Section 437-A Cr.P.C. Whereas the accused-appellant Laddan, who is reported to be on bail, he needs not surrender before the court below. His bail bond shall be deemed to have been discharged.

66. Let a copy of this judgment be sent to the Chief Judicial Magistrate, Shahjahanpur henceforth, for necessary compliance.

(2025) 5 ILRA 113

**APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 29.05.2025**

BEFORE

**THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE AJAI KUMAR SRIVASTAVA-I, J.**

Criminal Appeal No. 652 of 2001
With
Criminal Appeal No. 605 of 2001

Shera **...Appellant**
Versus
State of U.P. **...Respondent**

Counsel for the Appellant:
Sudeep Kumar, A.K. Pandey

Counsel for the Respondent:
Govt. Advocate

(A) Criminal Law - Appreciation of Evidence – Appreciation of Testimony - Indian Penal Code, 1860 – Sections 302, 307, 323 & 504 - Arms Act, 1959 - Section 3/25 - Evidence Act, 1872 - Sections 134 & 114 (g) - Quality, not quantity, of evidence is decisive - conviction can rest on testimony of closely related witnesses only if wholly reliable and of sterling character - benefit of doubt must be given where prosecution evidence suffers serious lacunae and main witnesses are found unreliable or only partly reliable - Suspicion, howsoever grave, cannot take place of a proof - Related/Interested witness - Testimony must be carefully scrutinised and corroborated if not wholly reliable - Acquittal on parity where co-accused are acquitted on same evidence - Standard of proof - There is a long distance between 'may be' and 'must be - Where principal witnesses are not wholly reliable and corroboration is lacking, and there is unexplained non-production of material witnesses with serious discrepancies in prosecution case, conviction is unsustainable and benefit of doubt must go to accused. (Paras 48, 49, 58, 60, 61, 63 to 68)

(B) Criminal Law - Acquittal on Identical Evidence - Benefit of Doubt - If co-accused are acquitted on same set of evidence, remaining accused also entitled to same benefit - Conviction cannot rest on identical evidence which was insufficient to convict co-accused. (Para 63 to 65)

Two criminal appeals arose against conviction under Section 302 IPC (Lakhan) and Section 307 IPC r/w Section 3/25 Arms Act (Shera) in a case involving murder and injuries caused to several persons - conviction was based on testimony of related/injured witnesses only - with non-examination of all but two injured witnesses - there were discrepancies in ocular and medical evidence - contradictions between prosecution witnesses - and failure to explain non-production of independent witnesses as well as non-corroboration of recovery with forensic (FSL) link. (Paras - 1 to7, 22 to 29, 32 to 41, 59 to63)

HELD: - Testimony of P.W.-2 was found wholly unreliable and that of P.W.-1 only partly reliable. Injured witnesses were not examined. Recovery was not independently corroborated. Serious discrepancies existed in prosecution story. Prosecution failed to prove its case beyond reasonable doubt. Evidence adduced by the prosecution cannot be said to meet the standard required to prove the guilt of the appellants in this case. Appellants ought to have been given the benefit of doubt. Conviction and sentence set aside. Appellants acquitted. (Paras - 65 to 70)

Appeals allowed. (E-7)

List of Cases cited:

1. Chandrashekhar Suresh Chandra Bhatt Vs St. of Maha. , 2000 (10) SCC 582
2. Govind Vs St. of M.P. 1994 (1) SCC 536
3. Meherbaan & ors. Vs St. of U.P., 2000 (1) JIC 519
4. Dahari & ors. Vs St. of U.P. , (2012) 10 SCC 256

5. Ram Singh Vs St. of U.P., (2024) 4 SCC 208

6. Javed Shaukat Ali Qureshi Vs St. of Guj., (2023) 9 SCC 164

7. Upendra Pradhan Vs St. of Orissa , (2015) 11 SCC 124

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

1. These are two criminal appeals challenging judgement and order dated 20.07.2001 passed by the Vth Additional District and Session Judge, Lucknow in Sessions Trial No. 194 of 1998, State of U.P. Vs. Chhote Lal and Others convicting the appellant Lakhan in Criminal Appeal No. 605 of 2001 under Section 302 of the Indian Penal Code (hereinafter referred as 'IPC') and awarding a punishment of life imprisonment and a fine of Rs.5000/- in default of payment of which an additional simple imprisonment of six months, and the Shera under Section 307 IPC read with Section 3/25 of the Arms Act and awarding a rigorous imprisonment of five years and a fine of Rs.2000/- in default of payment of which an additional simple imprisonment of two months.

2. The prosecution story in short is that one Kesh Kumar S/o Reoti Pasi, R/o Madharmau, Police Station - Gosaiganj, Lucknow lodged a First Information Report on 09.10.1997 at Police Station - Gosaiganj in Case Crime No. 383 of 1997, 11:50 PM against the appellant, Shera S/o Prahlad, and Lakhan S/o Chhote Lal and Prahlad S/o Fatte, Chhote Lal S/o Dukkha, all resident of village Madharmau, alleging there in that one Punarvasi S/o Chhote Lal, was murdered some four months ago, and the family members of Punarvasi had suspicion upon the uncle of the informant Nankau. On 09.10.1997, when the informant's

Uncle Nankau was coming from Lucknow on bicycle along with one Kunware towards his home, all the accused waylaid Nankau, banging their bicycle to the bicycle of Nankau. As Nankau fell down, all of them started beating, Nankau. Kunware, who was accompanying Nankau ran towards the village, shouting for help. Nankau also ran towards the village. On hearing such shouts for help, the grandfather of the informant Dukkha (the deceased), and other family members of Dukkha had rushed towards the spot. The accused ran away on seeing the informant's family. When Dukkha and other family members including the informant were returning towards their village at around 08:00 PM then all the accused had assaulted the informant and his family members by using Farsa and Tamancha. The accused killed the informant's grandfather, Dukkha S/o Mangal, and injured the informant's father, Reoti, his brother Mukesh Kumar and Jaskaran S/o Chheda Lal, by opening fire upon them and also attacking them with *Farsa* and *Lathi*.

3. The informant had accused four persons namely Lakhan, Shera, Prahlad and Chhote Lal. FIR was registered under Sections 302, 323, 307, 504 of the IPC in Case Crime No. 383 of 1997. The body of the deceased Dukkha was sent for postmortem examination, which was conducted by Dr. S.H. Siddiqui on 10.10.1997 at District Hospital. The other injured i.e., the informant Kesh Kumar, his father Reoti, his brother Mukesh Kumar, and his uncle Nankau and one Jaskaran were medically examined by Dr. Sushil Kumar and referred for x-ray examination to Balrampur Hospital. Investigation was conducted by Sub-Inspector, Arvind Mohan Jaiswal and chargesheet filed against the four accused. The trial was

committed to the Sessions Court on 22.01.1998.

4. During investigation, the Gosaiganj police arrested the accused Shera along with an unlicensed country made pistol with one 12 bore Live cartridge and Section 3/25 of the Arms Act was also invoked against the accused.

5. The accused denied the charges and claimed trial.

6. The prosecution produced two witnesses of fact, P.W.-1 Kesh Kumar the informant, and P.W.-2, Nankau his uncle. For proving the postmortem report P.W.-3 Dr SH Siddiqui was produced. For proving the medical legal examination report of the injured Dr. Sushil Prakash Chaudhary was produced as P.W.-6. The radiologist Dr S.K. Hasan was produced as P.W.-5. and the Sub Inspector Arvind Mohan Jaiswal was produced as P.W.-4. Head constable BC Dixit, who had prepared the Chik F.I.R. and proved the GD entries was produced as P.W.-7.

7. The accused did not produce any defence witnesses. After considering all evidences the Trial Court has acquitted Prahlad and Chhote Lal of all charges. It has convicted Shera under Section 307 of the IPC and Lakhan under Section 302 IPC and sentenced them as aforesaid.

8. Miss Radhika Verma, holding brief of Shri Sudeep Kumar argued on behalf of the appellants that the trial court has committed a manifest error of law in relying upon statement of P.W.-1 Kesh Kumar and P.W.-2 his uncle Nankau as there were several discrepancies in the statements of the two prosecution witnesses.

9. It has been argued that P.W.-1 stated that at least four to five shots were fired by Shera which made the informant and his other family members run for cover. They hid themselves and returned only after the assailants had left. On returning they found Dukkha dead. He did not notice any empty cartridges lying on the ground. The informant and others thereafter went to the police station on a Tempo with a written report which was written by P.W.-1 partly in his village and Partly in an eatery near the Tempo Stand on the way to the Police Station. After registering the FIR, the Sub-Inspector had taken the statement of P.W.-1, where he did not specify the manner of Lakhan hitting with sharp edge of Farsa initially and later on giving blows from the wrong side. P.W.-1 and also stated that he had noticed only one injury on his grandfather's neck, because the night was dark, he did not notice other injuries on his body and whether they were bleeding. He was sure that his grandfather did not receive any gun shot injury. Jaskaran, Mukesh, and the informant had alone suffered gunshot injuries. His father, Reoti and his uncle Nankau were hit by Prahlad and Chhote Lal with brickbats. They were taken to Gosaiganj Primary Health Centre for treatment from where they were sent next morning to Balrampur Hospital for x-ray.

10. P.W. -1 stated that the cycle on which Nankau was riding was not seriously damaged as Mukesh Kumar was holding it while they were walking back to their village. P.W.-1 also admitted that he had not accompanied the Sub-Inspector to the place where the attack took place and did not show exactly where each of them were standing when Shera opened fire on them. He had not told the Investigating Officer initially that Chhote Lal and Prahlad were

throwing brickbats at them. He also admitted that as soon as Dukkha received the first blow of Farsa by Lakhan, they had moved away and when he fell down and was being hit by Lakhan again, they came forward to save him, but were shot at by Shera and they hid themselves and only returned after around 10 minutes when the accused had left the scene and they found Dukkha dead. P.W.-1 also admitted that he did not state in his written report that Prahlad and Chhote Lal had beaten his grandfather with fists and kicks. Prahlad and Chhote Lal are not related to each other. Prahlad is the father of Shera. They had no prior enmity with Prahlad. He denied the suggestion made by counsel for the defence that Dukkha had died and the informant and his other family members had received injuries in an attack by dacoits in their home and they were falsely implicating the accused at the behest of Investigating Officer.

11. It has been argued that P.W.-2, Nankau stated that when he was attacked by the four accused while returning home, he had started running and shouted for help and passers by who saw the incident informed his family members in Madharmau, who hurried to the spot to save him, but all the four accused had run away. While they were returning home at around 8 o'clock in the night again, all the four accused attacked them and they started running, but his father Dukkha could not run, and he was caught hold of by the accused, Lakhan and he hit him with his Farsa and Dukkha shouted for help, they all turned and ran towards Dukkha. But Shera had a country made pistol with him, and he fired upon them, which resulted in injuries to his brother Reoti, his two nephews Kesh Kumar and Mukesh Kumar, and to Jaskaran. The accused also beat them with

kicks and fists. Nankau ran shouting for help, and by the time other villagers assembled the accused had run away. On reaching the place, they found Dukkha had already died because of his injuries. His nephew, Kesh Kumar wrote down the incident on a piece of paper and all of them then went to Police Station, Gosaiganj to lodge FIR. Nankau could not remember the exact date when the incident took place and he stated that he was illiterate, but the incident had taken place at least two days before Dussehra. He had been working as a Whitewasher in Lucknow, which is 11 KM away from his village. While returning home, he had been attacked by the accused. He did not mention that he was being accompanied by Kunware, his cousin. He also stated that the accused Shera had banged his cycle with his own cycle which resulted in Nankau falling down, and as soon as he fell from his cycle, he was beaten with kicks and fists and he ran towards the field and hid himself. Passersby saw the incident and informed his family in the village and when they had come, he had come out of his place of hiding in the field, but the accused had run away when his family arrived. He picked up his cycle and started walking with them. His family members were unarmed while they were walking home. They saw the accused on the way intending to attack them again. This time the accused were armed and Nankau and his family members started running away, but his father Dukkha could not run and was hit by Lakhan with Farsa and he shouted for help. They turned and started moving towards their father in order to save him, but Shera fired his gun at them which injured his two nephews and Jaskaran. Nankau, however, did not say that on Dukkha having been hit with Farsa and falling to the ground, all his family members had run away and taken shelter

behind the house of Rakesh Bhujua and kept on hiding for 10 to 15 minutes, till the accused left the scene. When they returned they found Dukkha dead, all of them took a tempo to the Police Station and reached there at around 10:30 PM

12. P.W.-2 did not mention the family first going to the village where the informant wrote down part of his written report. He did not also mention having stopped at an eatery to write the remaining report. P.W.-2 also did not see the initial blow of Farsa on Dukkha and his father falling down. He stated that as soon as Dukkha fell down, he had hidden himself behind the wall of a house. His family members also took shelter at various places nearby.

13. Miss Radhika Verma has pointed out discrepancies in the statement of P.W.-1 Kesh Kumar with regard to the place of the first incident as described by him and by P.W.-2 Nankau. She has also pointed out that there were no gunshot injuries received by Dukkha and postmortem report reveals only incised wounds on the body of the deceased.

14. It has been pointed out by Miss Radhika Verma that P.W.-2 stated that his cycle was not damaged and he had walked home with it. Whereas P.W.-1 had stated that a few spokes in the wheel had come out and his younger brother Mukesh was walking with Nankau's cycle when they were again attacked by the four accused.

15. P.W.-1 had stated that when the accused attacked a second time with Farsa and Gun, Nankau and his family members tried to escape by running, but Dukkha was old and he could not run and fell on receiving the first blow from Farsa held by

Lakhan. It was then that they turned in order to save Dukkha, but Shera fired at them from his gun, which resulted in injuries being caused to Kesh Kumar, Mukesh Kumar and Jaskaran. They again ran for cover and returned only after 10 to 15 minutes. On the other hand, Nankau in his testimony has stated that they did not run away and did not hide.

16. Miss Verma has also pointed out discrepancy regarding scribing of written report by P.W.-1 partly in his village and partly at an eatery near the Tempo Stand before approaching the Police Station, Gosaiganj. On the other hand, P.W.-2 has stated that while going to the Police Station on Vikram tempo, they had not stopped anywhere, and Kesh Kumar had written the report in the Police Station.

17. This Court has found from testimony of P.W.-1 and P.W.-2 that P.W.-2 admittedly had not gone to the Police Station along with other family members and he, therefore, could not have made any statement that the written report was scribed by P.W.-1 at the Police Station itself because P.W.-2 had also stated that he had run towards Thikaria village to save himself where he fell down and kept lying there for around 10 minutes, when the other villagers arrived, they took him to the Police Station on a cycle. P.W.-2 also denied that Krishna Kumar and others had accompanied him to the Police Station. P.W.-2 kept changing his story with regard to how he or his family members, reached the Police Station to lodge the FIR. P.W.-2 also stated that when his family members were being attacked in the second incident, he had tried to seek help from other villagers by knocking their doors, but no villager came out to help.

18. Miss Verma also pointed out discrepancy in P.W.-2 describing the incident of Lakhan hitting Dukkha with Farsa. Miss Verma had pointed out that while P.W.-1 says that Prahlad and Chotte Lal attacked his father and uncle by throwing brickbats at them, P.W.-2 states initially that none of the accused had used bricks at all but later on improved his story and stated otherwise.

Miss Verma had also pointed out from the testimony of P.W.-1 and P.W.-2 that they were confronted several times with regard to absence of details which they were mentioning at the time of their examination-in-chief from the statement under Section 161 CrPC but they reiterated that they were stating only that which they had mentioned in their statement under Section 161 CrPC. Also, they could not tell any reason why the Investigating Officer had not mentioned such details in their statement recorded by him under Section 161 CrPC.

19. P.W.-2 had also stated that his father was walking around 8 to 10 steps ahead of them and they were lagging behind, and when his father reached the house of Nanha Badhai the accused suddenly came out of hiding and started abusing them loudly. Initially, Chhote Lal and Prahlad hit Dukkha with kicks and fists when Dukkha fell down, then Lakhan hit him with his Farsa four to five times. P.W.-2 admitted that when Dukkha had fallen down on being hit and Shera had fired one shot at other family members, he had run away towards the village while the other family members remained there. But at the same time, he stated that he had seen Prahlad and Chhote Lal, throwing brick bats at them. At one point during his cross-examination, P.W.-2 also stated that he had

not seen the cycle after the first incident of attack on him on way home.

20. It was argued further that the trial court has based the conviction solely on the testimony of related and interested witnesses, particularly the informant who was the grandson of the deceased and Nankau, who was the son of the deceased. There were allegedly two independent witnesses, one Kunware who was accompanying Nankau when he was returning home from work and one Jaskaran who was accompanying the informant and his family members and had received gunshot wounds in the subsequent attack on all family members by the accused. The Investigating Officer had not made any effort to record the statement of either Kunware or Jaskaran and the prosecution did not produce any independent witnesses to support the story.

21. It was also argued that the trial court did not appreciate that there was no motive for the appellants to kill the deceased Dukkha, particularly when the enmity which they were said to have was with Nankau his son, who only sustained minor injuries like contusions and Nankau's statement did not correspond with the statement of the informant regarding the sequence of events which led to the death of the deceased.

22. It has been argued by the counsel for the appellant that the medical evidence does not support ocular evidence of P.W.-1 and P.W.-2 in so far as out of eight injuries found on the body of Dukkha seven were incised wounds caused by sharp edged weapon and one was contusion. There was no Fire arm injury.

23. It has also been argued that it is quite unnatural for an assailant to first

attack the victim with the sharp side of Farsa and then turn it around and start hitting with the wrong side. It has been also argued that initially when Nankau was attacked, Kunware was with him and Kunware was not examined by the investigating officer nor produced before the court. Similarly, during the second attack, Jaskaran and Mukesh Kumar, had also received gun shot injuries but they were not produced by the prosecution. Jaskaran being an independent witness and not related to the informant's family was crucial to support story set up by the prosecution.

24. It has also been argued that from the evidence of Nankau P.W.-2, it is evident that he reached the police station at around 09:00 P.M. along with others from village Thikaria. The P.W.-1 however, along with other injured witnesses reached the police station at around 11:30 PM. By that time, Nankau was already in the Police Station, along with other villagers belonging to Thikaria. Also there is no explanation for the delay and in all probability, the FIR was lodged after due discussion and deliberation to falsely implicate the appellants. There are major contradictions in statement of P.W.1 and P.W.2 with regard to manner of lodging of FIR, the place of writing of FIR and the time of writing of FIR.

25. It has also been argued that recovery of Farsa was not made from Lakhan but Lakhan has been convicted under Section 302 IPC and given life imprisonment. Only Tamacha/countrymade pistol was recovered allegedly on the disclosure of Shera and from the Forensic Science Laboratory report, it is evident that it was of a different bore from the pellets found in the bodies of the injured yet Shera

has been convicted under Section 307 IPC and sentenced for life. It has also been argued that on the same set of facts two co-accused, Chhote Lal and Prahlad, have been acquitted while Appellants have been convicted.

26. Having heard the learned Counsel for the appellants, we have gone through the evidence as available in the Trial Court's record and also the judgement and order dated 20.07.2021.

27. The postmortem examination of the deceased was done by Dr. S.H. Siddiqui, who appeared in the witness box and proved the postmortem report. There were seven incised wounds on the head, face, and neck, and left shoulder and fore arm and left thigh of the deceased, and one contusion on the right forearm 9 cm below the elbow joint. In answer to a specific query the medical officer rejected the suggestion that the injuries could have been caused at midnight or early dawn. Instead, he opined that they may have been caused around 10:00 or 11:00 PM on 09.10.1997, but simultaneously stated that the time of death mentioned by him may vary by two hours either ways.

28. Dr. Sushil Prakash Chaudhary, P.W.-6 Medical Officer Incharge of Primary Health Centre Gosaiganj Lucknow had examined the rest of the injured persons and he found two gunshot wounds on right upper arm and on left hand, middle finger on Krishna Kumar, P.W.-1. Tattooing was found on both the injuries and he had advised x-ray.

P.W.-6 had found four gunshot wounds on the left side of the chest, on the right thigh, on the right palm, just at the base of the little finger, and near the left knee joint

of Mukesh the younger brother of the informant. All injuries were simple and caused by firearm. Tattooing was present on all these wounds, and in some of them pellets were palpable. X-ray was advised.

Jaskaran had also suffered two gunshot wounds on the right side of his forehead and on the left upper thigh. Tattooing was present. All injuries were simple in nature caused by fire arm. X-ray was advised.

The Medical officer P.W.6 also described injuries of Reoti father of the informant. He had suffered two contusions on his shoulder and knee joint and one abraded contusion on the left side of the neck. The informant's uncle Nankau had three abraded contusions on the left shoulder, on the lower part of the right chest, on the right upper scapular region, and also a simple contusion on outer part of the left thigh.

29. X-ray reports of all the injured were proved by Dr. S.K. Hasan P.W.-5 and he had found foreign metallic bodies in the X-ray plates of the injured.

30. The Investigating Officer had arrested Shera on 10/11 November 1997. One country made unlicensed pistol of 12 bore was recovered from Shera, son of Prahlad. One cartridge of 12 bore was also recovered from the pocket of trousers worn by Shera. Prahlad son of Fatte was also arrested, but no weapon was recovered from him.

Both the accused confessed before the police team that they had murdered Dukha and they had been absconding from the village since then.

31. However, in their statement under Section 313 of the Cr.P.C., they had denied any such involvement and had asserted that they had been falsely implicated and were

being framed in the conspiracy. No motive, however, could be assigned by the accused to the informant or his family for falsely implicating the accused. Since a countrymade pistol was recovered from Shera, Section 3/25 of the Arms Act was also invoked against him.

32. We have gone through the testimony of P.W.-1 Kesh Kumar alias Krishna Kumar, who is also the informant. He has stated that there was a suspicion in the minds of the accused regarding death of one Punarvasi S/o Chhote Lal being caused by his uncle Nankau and one day when Nankau along with one Kunware a distant relative was returning home from work at around 07:00 PM all the four accused stopped him on the way and when Nankau fell down from his cycle, Shera started beating him up. Kunware ran to the village, shouting for help. On coming to know, the informant's grandfather Dukkha, his father Reoti, his younger brother Mukesh, one Jaskaran, and the informant went to rescue him. Nankau, had managed to escape by the time they reached the place where the incident took place and the accused had run away. When they were returning home it was around 08:00 P.M., the accused again appeared and Shera had a country made pistol in his hand, Lakhan had a Farsa, Prahlad and Chhote Lal were unarmed. The first blow was on Dukkha with Farsa by Lakhan and Dukkha fell to the ground. When the informant and his other family members approached towards Dukkha in order to save him, Shera fired from his pistol which resulted in injuries to the informant, Jaskaran and Mukesh. Prahlad and Chotte Lal were throwing brickbats at them, such brickbats hit Reoti and Nankau. As soon as the informant and his other family members moved away Lakhan hit Dukkha with the wrong side of his Farsa

and Shera, using the butt of his countrymade pistol to hit Dukkha many times. The informant and his family members ran and hid themselves. Dukkha kept lying on the ground. After about 10 to 15 minutes the accused went away and then they approached Dukkha but found him dead. Thereafter, the informant along with his family members went to Gosaiganj Police Station to lodge a written report. After the report was lodged the Police sent them to the Primary Health Centre, Gosaiganj for treatment where the informant, his father, his uncle, his younger brother and Jaskaran stayed in the night. Later on they went to Balrampur Hospital for X-ray as advised by the Medical Officer, who had given them treatment at Primary Health Centre, Gosaiganj.

33. In cross examination, the informant stated that Kunware was a distant relative and he had only shouted for help while running to the village, and he did not accompany them to the place where Nankau was initially attacked. Jaskaran was not related to them. He admitted that in the FIR that was lodged no mention was made of Kunware accompanying Nankau when he was initially attacked. He also did not give details about the exact place where the initial attack took place. When they had reached the spot the accused had run away. After they reached the spot, Nankau arrived after 2 to 3 minutes as he had hidden himself, they stayed at the spot for 4 to 5 minutes and were returning home with Nankau, who told them the details of how his cycle was initially banged by Shera and he had fallen to the ground along with his cycle, and he was later slapped several times by Shera. P.W.1 also stated that he had told the Sub-Inspector about Shera hitting the cycle of Nankau with his own cycle, making him fall down and then

slapping him but did not know as to why these details were not mentioned in the statement under Section 161 Cr.P.C. The informant was grilled by the counsel for the accused repeatedly with regard to the exact place where Nankau was initially accosted by the accused. He was also questioned repeatedly with regard to the exact place where the second attack was made, which resulted in Dukkha's death. He stated that while they were returning home, Mukesh was holding the cycle of Nankau. Dukkha was hit by Lakhan with the sharp side of Farsa initially, and Dukkha fell to the ground later on, he was hit with the wrong side of the Farsa repeatedly by Lakhan. When they tried to save him, Shera fired his gun which caused injuries to them and they backed away and Shera also hit his grandfather Dukkha with the butt of his pistol. P.W.-1 could not remember whether Dukkha also received gunshot injury.

34. A suggestion was made to P.W.-1 having motive to implicate Shera as sometime in spring of 1996, there was a wedding in the family of Mata Prasad, his uncle where Shera had accused P.W.-1 in the Panchayat at Hanuman Temple of abducting the sister-in-law of Mata Prasad. The girl was later recovered. This suggestion was denied by P.W.-1. It was also suggested to P.W.-1 that Dukkha had been killed and other family members injured in a dacoity carried out in the night at their house. This suggestion was also denied. It was also suggested that Dukkha was infamous for making spurious country liquor and had also gone to jail, and Nankau was also involved in various crimes, as a result of which they had several enemies, and any one of them could have carried out the attack. This suggestion was also denied.

35. However, in their statement recorded under Section 313 Cr.P.C., by all

the accused they have not substantiated the suggestions made during cross examination of P.W.-1 regarding Shera being falsely implicated as he had deposed before the Panchayat that P.W.-1 had been instrumental in the abducting of the sister-in-law of Mata Prasad his brother. They did not also substantiate their claim of Dukkha and Nankau having criminal history and having several enemies. None of the suggestions made during cross examination by their counsel were in any way substantiated or elaborated in the statement of the accused taken under section 313 Cr.P.C.

36. P.W.-4, Arvind Mohan Jaiswal, the Investigating Officer during his examination had stated that the informant alongwith Mukesh, Reoti and Jaskaran had reached the Police Station on 09.10.1997 at around 11:50 P.M. and after recording the statement, he had sent the injured to Primary Health Centre, Gosaiganj, along with one Constable, Anil Kumar Yadav. He himself had left for the scene of the crime along with Sub-Inspector Ram Teerath Pandey and other members of the Police team. Sub-Inspector, Ram Teerath Pandey had taken a photo of the body of the deceased, the inquest report was prepared, and the body was sealed and sent to the Medical College for postmortem and he had collected blood stained soil and plain soil in the presence of witnesses. Site plan was prepared and Nankau, one of the eye witnesses statement was taken. Then he visited the place where initially Nankau was attacked and prepared another site plan. On 11.10.1997, he had arrested Shera along with his country-made pistol and live cartridge of 12 Bore and also Prahlad and recorded their statements. On 15.10.1997, he received medical examination report of all the injured and postmortem report of

Dukkha. On 23.10.1997 Chhote Lal and Lakhan surrendered in court. On 24.10.1997 he took statements of Reoti Prasad, Mukesh Prasad and on 11.11.1997, took statements of Chhote Lal and Lakhan in jail. On 28.11.1997, he took statement of Jaskaran and on 01.12.1997, he received X-ray reports of Jaskaran, Mukesh and Krishna Kumar.

P.W.-4 denied that P.W.-1 and P.W.-2 had stated that any details of the incident in statements under Section 161 Cr.P.C. as mentioned by them in their examination-in-chief.

37. The Investigating Officer stated that there was a lamp post two steps away from the place where the Dukkha was attacked and all evidence was collected with the help of light from such lamp post. He also stated that he had found the body lying near the house of *Nanha Badhai*. He also stated that he did not recover any pellets or empty cartridges near the place of the crime. No brickbats were also found lying there. He had prepared the Site Plan of both the places with the help of Nankau. The scene of crime was around half a kilometre away from the Police Station. The site plan was prepared by him in the morning at around sunrise. He denied the suggestion made by the defence counsel that Nankau had arrived at the Police Station at around 08:00 P.M. and he had lodged the FIR and the one lodged by Krishna Kumar was the second FIR of the same incident and it was late registered as Case Crime No. 383 of 1997 after due deliberation with Police at the Police Station Gosaiganj.

38. In the postmortem examination of the deceased, the doctor had found eight injuries of which seven had been caused by sharp edged weapons. The frontal, temporal,

and occipital bone in the skull were found fractured. There was fracture also in the maxillary bone. Oesophagus and trachea were found cut. Cranial fossa was also found to have been fractured.

39. Mukesh had four gunshot wounds, Jaskaran had two gunshot wounds, Krishna Kumar had two gunshot wounds, and the radiologist in his testimony had proved foreign bodies of metallic density being found in the X-ray plates of Mukesh, Jaskaran and Krishna Kumar. The Medical Officer who had examined the injured at Primary Health Centre Gosaiganj had stated that these injuries could not have been caused by the patients themselves. Also, the medico legal report of Reoti showed three contusions one of them abraded, having been caused either by lathi or Danda or by dragging. He had also examined Nankau and had found four contusions three of them being abraded. All the injuries were simple in nature caused by a blunt object. The doctor opined that these injuries could have been caused either by lathi or Danda or by dragging. Also, Medical Officer had opined that the injuries may have been caused at around 08:00 P.M. the previous night.

40. The Head Constable had proved the G.D. Entry and F.I.R. The investigating officer had proved the collection of blood stained and plain soil, preparation of Inquest Report, preparation of Site Plan of two places where the incidents had taken place, recovery of TamanCha/countrymade pistol and one live cartridge of 12 Bore from Shera, and the lodging of the second F.I.R. under Section 3/25 of the Arms Act against him after permission from the District Magistrate.

41. After having recorded the evidence of the official witnesses and having considered the contents of the FIR and of

the statement of the accused under Section 313 of the Cr.P.C., the trial court has from internal page 11 of the judgement considered the prosecution story in detail and arguments raised by the Counsel for the defence. He framed the issue with regard to whether the death of Dukkha and the injuries caused to various witnesses had occurred on the date and time and place as stated by the prosecution. He examined the testimony of P.W.-1 Krishna Kumar who had received gunshot wounds and was the informant and also of P.W.-2 Nankau who had also suffered injuries though simple in nature.

42. The Trial Court has also considered the argument raised by the defence that informant P.W.-1 has not stated clearly the place of the first incident and that Kunware who had witnessed the first incident and had run towards the village shouting for help had not been produced as a witness. The trial court considered the testimony of P.W.-2 Nankau, who was the injured person in the said attack as first hand account and found it to be truthful as he had not stated anywhere that he was attacked by all the accused, carrying arms with them. He had only stated that Shera had banged his cycle and on falling down from it, he was beaten up by Shera and Lakhan. Since the report was lodged by P.W.-1, he had only stated what he had heard from his uncle and therefore details regarding the place of attack and the manner of attack could not have been stated by him very clearly in the FIR, which was understandable.

43. With regard to the second incident which occurred at around 08:00 P.M., the same night, the testimony of P.W.-1 seemed more reliable as he had received gun shot injuries and had given a first hand

account. P.W.-2 had admitted that he had run away and hid himself. P.W.-2 Nankau was illiterate and he on repeated cross examination had tried to improve his statements. Sometimes he stated that he had not hidden himself at others he stated that he had hidden himself and had run away to village Tikariya from where he gathered help and reached the police station on his own.

44. The trial court has considered the argument raised by the defence counsel that in the F.I.R. it had been written that Dukkha had been killed by Farsa and Tamancha but there were no gunshot injuries found on his body during postmortem examination. The trial court carefully examined the testimony of P.W.-1 and P.W.-2, who had more or less stated the same facts that initially Dukkha had fallen down on being hit with Farsa by Lakhan and when the others tried to save him, Shera had fired from his pistol at them which made them run for cover. Dukkha having fallen down, was repeatedly attacked with Farsa which led to his death. The statement regarding Shera having fired upon the other family members is proved by gunshot wounds received by at least three persons and pellets having being found as foreign metallic bodies in their X-ray reports. .

45. The Trial Court, however, disbelieved the prosecution story regarding Chhote Lal and Prahlad having hit Nankau and Reoti with bricks, as the injuries caused to both Nankau and Reoti could have been caused by falling and dragging and also by lathi and Danda, as opined by the Doctor who examined them. Also, the Investigating Officer had not found any brickbats lying near the scene of crime when he had gone to inspect the scene of

crime and prepare the Site Plan the same night. There was a lamp post only two paces away which was working. When Dukkha was attacked, has also been noted by the Investigating Officer meaning thereby that there was sufficient light for him to inspect the place. The Trial Court rejected the argument raised by the defence Counsel that the night was pitch dark and instead believed the Investigating Officer and P.W.-1 and P.W.-2, who had also stated that moon was shining that night.

46. The Trial Court has considered the minor discrepancies pointed out in the testimony of P.W.-1 and P.W.-2, with regard to where Dukkha was standing when other family members saw him falling down, and where Shera was standing when he used his Tamancha to fire at the family members who had tried to save Dukkha, and where each of the family members were standing when they were hit by pellets from such gunshot. The court found the core prosecution story to have been proved not only by P.W.-1 and P.W.-2, but also by the testimony of the three Medical Officers who had appeared as P.W.-3, P.W.-5 and P.W.-6.

47. The Trial Court observed that it is not natural for each of the witnesses to be stating the exactly same story with exact same details. The trial court also considered the fact that both P.W.-1 and P.W.-2 had been repeatedly cross examined on various dates by Counsel for the defence and same questions were asked in different manner each time, and it was not possible for such rustic witnesses to state exactly the same thing again and again. The Trial Court relied upon *Chandrashekhar Suresh Chandra Bhatt versus State of Maharashtra*, 2000 (10) SCC 582 and *Govind versus State of M.P.* 1994 (1) SCC

536, where the Supreme Court had held that some differences in statements made in the court and statement given under Section 161 Cr.P.C. cannot be labelled as enhancement or improvement of prosecution story. And if the eye witnesses statement under Section 161 Cr.P.C. does not indicate in a very detailed manner the incident, which statement ultimately is only a recording by the Investigating Officer made on his own, then evidence of such eyewitness could not be invalidated. In *Meherbaan and others versus State of U.P.*, 2000 (1) JIC 519, Allahabad High Court had observed that only the main points are recorded by the Investigating Officer in the statement given by the under section 161 Cr.P.C. in his diary.

48. Once we have outlined the statements of witnesses of fact, namely, P.W.-1, Kesh Kumar and P.W.-2, Nankau, we notice that P.W.-1, Kesh Kumar is grandson of the deceased, whereas P.W.-2, Nankau is the son of the deceased. The prosecution has chosen to produce only these two witnesses, who are evidently related witnesses. Therefore, before we undertake scrutiny of testimonies of aforesaid two witnesses of fact examined by the prosecution, we would like to refer to paragraph No.11 of a judgment rendered by Hon'ble the Supreme Court in **Dahari and others vs. State of Uttar Pradesh** reported in (2012) 10 SCC 256, which is quoted herein below :-

“11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. In case the evidence has a ring of truth to it, is cogent, credible and

trustworthy, it can, and certainly should, be relied upon. [Vide *Himanshu v. State* (NCT of Delhi) [(2011) 2 SCC 36 : (2011) 1 SCC (Cri) 593], *Ranjit Singh v. State of M.P.* [(2011) 4 SCC 336 : (2011) 2 SCC (Cri) 227 : AIR 2011 SC 255] and *Onkar v. State of U.P.* [(2012) 2 SCC 273 : (2012) 1 SCC (Cri) 646]]”

(emphasis supplied)

49. It is no more *res integra* that conviction in a criminal case can safely be recorded on the basis of sole testimony of prosecution witness provided testimony of such witness is wholly reliable and free from any blemishes and the same is of sterling character.

50. In the written report, Ext. Ka-1, it is mentioned that the deceased was done to death by the accused persons, including the appellants, by using *farsa* and *tamancha*. It is also mentioned in the written report, Ext. Ka-1, that when the first informant, along with his father Reoti, brother Mukesh, and Jaskaran, tried to save his grandfather (the deceased), all the four accused persons, including the present appellants, also inflicted firearm injuries on them. It can be noticed that no specific weapon was assigned to any particular accused in the written report, Ext. Ka-1, but the same is not a legal requirement either.

51. So far as P.W. -1, Kesh Kumar, is concerned, we find that, according to him, after the incident occurred, he had gone to get the First Information Report lodged. He stated that the written report, Ext. Ka-1, was prepared in two parts, some part of it was written in the village concerned and the remaining part was written in an eatery close to the police station. However, at the cost of repetition, we may mention that P.W. -2, Nankau, has very categorically

stated that the written report, Ext. Ka-1, was written at the police station concerned. This is a fact that cannot be said to fall within the category of a minor or inconsequential discrepancy.

52. The recovery of a missed cartridge and a 12-bore country-made firearm was made from one of the appellants, namely, Shera. The recovery memo thereof is Ext. Ka-18, whereas the F.S.L. report in respect of the examination of the missed cartridge and 12-bore country-made firearm is Ext. Ka-25. It is also evident from the written report, Ext. Ka-1, that the incident-in-question is also stated to have occurred in two legs on 09.10.1997, and that too in the evening. The deceased, Dukkha, is stated to have been killed at 08:00 PM on 09.10.1997 itself.

53. It is also noteworthy that the report submitted by the FSL, Lucknow, proved as Ext. Ka-25, mentions that gunpowder was allegedly found in the barrel of a country-made 12-bore pistol. However, despite the alleged recovery of a 12-bore cartridge from the possession of one of the appellants, namely, Shera, there is a complete lack of any report confirming that the said cartridge was fired from the recovered country-made 12-bore firearm.

54. P.W.-1, Kesh Kumar, in his testimony as P.W.-1, has stated that the appellant Shera was armed with a pistol, whereas the appellant Lakhan was carrying a *farsa*, while the other accused persons, namely, Chhotelal and Prahlad, were not carrying any weapon. He has also stated that on the date of the incident, the accused persons not only fired several shots but also assaulted Nankau by throwing brickbats at him. The appellant Lakhan assaulted the deceased with a *farsa* and while doing so,

he used both the sharpedge and the blunt i.e. reverse side of the *farsa*. He has also stated that when the accused persons again tried to open fire, the first informant, his father Reoti, his brother Mukesh, and Jaskaran ran away towards the village. He has specifically stated that the accused persons, namely, Chhotelal and Prahlad, who have been acquitted by the learned trial court, had assaulted the deceased with kicks and fists. While doing so, they also shouted that the deceased should not be left alive. P.W.-1, Kesh Kumar, has also stated that "जब मुल्जिमान फिर से हम लोगों पर गोलियां चलाने को बढ़े तो हम लोग गांव की तरफ भागे।" This statement of P.W.-1, Kesh Kumar, suggests that at least more than one accused was carrying a firearm. This, according to his own earlier statement, is not correct, as the firearm has been attributed only to the appellant Shera.

55. P.W.-1 has himself stated that when he went to the police station for getting the first information report lodged, he was accompanied by Jaskaran, Nankau, Reoti, Mukesh, and Alok. Two other persons had also accompanied him, whose names he was unable to recollect. He has also admitted that he was informed about the first leg of the incident by one Kunware. However, neither the name of Kunware has been mentioned in the written report, Ext. Ka-1 nor he was examined by the prosecution before the trial court without any plausible reason.

56. When we examine the statement of P.W.-2, Nankau, who is also stated to have seen this very incident himself, we notice that, according to P.W.-2, Nankau, the written report, Ext. Ka-1, was scribed at the police station in the presence of a Sub-Inspector. Though he has stated that the content of the written report, Ext. Ka-1, was not dictated by any police personnel,

however, he has stated that he, along with the first informant and others, reached the police station at about 10:00–10:30 PM. All of them went to the police station together on a Vikram Tempo. They went directly to the police station and did not stop anywhere in between, which is in sharp contrast to what has been stated by P.W.-1, Kesh Kumar in this regard. P.W.-1, Kesh Kumar, has stated that some part of the written report, Ext. Ka-1, was written in the village, whereas the remaining part was written at an eatery.

57. We have also noticed that, according to P.W.-2, Nankau, he had also sustained a gunshot injury in this incident. However, the medical report, Ext. Ka-14, does not corroborate the same. Therefore, the only logical conclusion is that this witness was not telling the truth. Hence, the kind of discrepancies appearing in the statement of P.W.-2, Nankau renders his testimony to be wholly unreliable.

58. Though it is not incumbent upon the prosecution to examine all the prosecution witnesses in order to prove its case, particularly in view of Section 134 of the Evidence Act, it is also settled legal position that it is the quality not the quantity of evidence that matters in evaluating the evidentiary value of testimony of a particular witness. However, having said so, we also find it relevant to mention that according to the prosecution, five persons sustained injuries in the alleged incident, including P.W.-1, Kesh Kumar and P.W.-2, Nankau. Despite this, the injured persons, namely, Jaskaran, Krishna Kumar, and Reoti were not examined by the prosecution to prove its case. From the record, we do not find any plausible reason for doing so.

59. The injury reports of all the injured witnesses are available on record, however

as noted above, the persons who were allegedly injured in this incident neither chose to appear nor deposed before the trial Court. As such, the injury reports do not assist the prosecution case in any manner. The injury reports of the alleged injured witnesses, namely, Jaskaran, Krishna Kumar and Reoti do reveal that on 10.10.1997, when their reports were prepared, various injuries were present on their persons. However, as they did not enter the witness box and did not state as to who caused those injuries at what time and where, therefore, it cannot be inferred that such injuries were inflicted on them by the appellants or any other co-accused.

60. In the instant case, for the aforesaid numerous reasons, we are of the considered view that P.W.-2, Nankau is a wholly unreliable witness. However, P.W.-1, Kesh Kumar, can be placed in the category of a partly reliable witness. Therefore, the testimony of P.W.-1, Kesh Kumar, required corroboration by at least some other reliable testimony of any other witness, which, in the present case, was not done by the prosecution for the reasons best known to it.

61. Non production of alleged injured witnesses, namely, Jaskaran, Krishna Kumar and Reoti can also be seen from a different point of view also. As the prosecution has not been able to offer any plausible reason for not examining these other injured witnesses, out of which one, P.W.-2 Nankau, we have found to be wholly unreliable, whereas P.W.-1 Kesh Kumar, in our considered opinion, is only partly reliable, therefore, having regard to the provisions contained in Section 114(g) of Evidence Act, it can safely be inferred that had these witnesses been produced, their testimonies would have been unfavourable to the prosecution.

62. We also notice that there was no independent witness to the recovery, although some independent witnesses had signed the recovery memos, Exts. Ka-7 and Ka-18, at the time of their preparation. However, they were not produced by the prosecution and no plausible explanation therefore was furnished for their non-production.

63. We also find it necessary to remind ourselves at this stage that, according to the written report, Ext. Ka-1, apart from the present appellants, the co-accused, namely, Chhote Lal and Prahlad, were also stated to have committed the crime in question. The names of Chhote Lal and Prahlad, who have been acquitted, find mention in the written report, Ext. Ka-1. Their role has been reiterated by P.W.-1, Kesh Kumar, and P.W.-2, Nankau. However, the learned trial Court has acquitted them. Therefore, despite the fact that the doctrine of *falsus in uno, falsus in omnibus* is not applicable in our country, having regard to the fact that the learned trial Court proceeded to convict the present appellants on the basis of the same set of evidence that was found to be deficient for convicting co-accused, Chhote Lal and Prahlad, we find it appropriate to hold that, in such a situation, the present appellants also deserved the benefit of doubt.

64. While holding so, we are supported by a recent judgment rendered by the **Hon'ble Supreme Court in Ram Singh v. State of U.P., (2024) 4 SCC 208**, wherein reliance has been placed on an earlier judgment in **Javed Shaukat Ali Qureshi v. State of Gujarat, (2023) 9 SCC 164**. In Ram Singh's case (supra), it was specifically held that if the trial Court has given the benefit of doubt to a co-accused even on the ground that there was

a grudge between the accused and one of the prosecution witnesses and there is similar or identical evidence of eyewitnesses against two accused, ascribing them the same or similar role, the Court cannot convict one accused while acquitting the other.

65. Hence applying the above proposition to the facts of the instant appeals, we are of the considered view that the evidence tendered by the eyewitnesses suffers from serious lacunae. The testimony of P.W.-1, Kesh Kumar, and P.W.-2, Nankau, as discussed above, cannot be said to be wholly reliable. In addition, material witnesses have not been examined. Therefore, on the whole, the evidence adduced by the prosecution cannot be said to meet the standard required to prove the guilt of the appellants in this case.

66. We are conscious of the fact that in the present case, an old man has been done to death but the fact remains that it is the duty of prosecution to prove its case against the accused-appellants beyond reasonable doubt. Suspicion, howsoever grave cannot take place of a proof. In this regard, the **Hon'ble Supreme Court in Upendra Pradhan vs. State of Orissa reported in (2015) 11 SCC 124** in para-14 has held as under :-

"14. Taking the first question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognised as a human right by this Court. In Narendra Singh v. State of M.P., [(2004) 10 SCC 699 : 2004 SCC (Cri) 1893], this Court has recognised presumption of innocence as a human

right and has gone on to say that: (SCC pp. 708 & 709, paras 30-31 & 33)

"30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'.

xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx"

(emphasis supplied)

67. Thus, we conclude that P.W.-1, Kesh Kumar, is not a wholly reliable witness, whereas P.W.-2, Nankau, is a wholly unreliable witness and the other witnesses, namely, Jaskaran, Krishna Kumar and Reoti, who were also shown as injured witnesses in this incident, were not examined by the prosecution. The testimony of P.W.-1, Kesh Kumar, in our considered view, is not of such sterling character as to warrant reliance for convicting the appellants solely on its basis. Therefore, this is a case in which the appellants ought to have been given the benefit of doubt. The learned trial Court, while appreciating the prosecution evidence, appears to have lost sight of the various aspects noted above. Accordingly, the impugned judgment and order dated 20.07.2001, being unsustainable, deserves to be set aside and the appellants deserve to be acquitted in the facts of this case.

68. In view of the aforesaid overall discussion, we are of the considered view that the finding of conviction of accused-appellants recorded by learned trial Court by means of impugned judgment and order dated 20.07.2001 is unsustainable, which deserves to be set aside and is accordingly, set aside.

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: