

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

*Case No.: CRA No. 57/2009
CrlM No. 1284/2023
c/w
CONF No. 22/2009
CRA No. 58/2009
IA No. 5/2011*

*Reserved on: - 18.09.2025
Pronounced on: - 16.10.2025
Uploaded on: - 17.10.2025*

*Whether the operative part or full
judgment is pronounced:- 16.10.2025*

CRA No. 57/2009

Dev Raj, Age 40 years
S/o Sh. Krishan Lal
R/o Goal Pattan Gajansoo
Tehsil and District Jammu

....Appellant(s)

Through:- Mr. S. C. Sharma, Advocate

V/s

State of Jammu and Kashmir

.....Respondent(s)

Through:- Mr. Sunil Sethi, Spl. PP

CRA No. 58/2009

Balwan Singh Aged 60 years
S/o Visheshwar Chand
R/o H.No. 217 Janipur, Jammu
At present lodged in central
Jail Kot Bhalwal Jammu

....Appellant(s)

Through:- Mr. G. S. Thakur, Advocate

V/s

State of Jammu and Kashmir

.....Respondent(s)

Through:- Mr. Sunil Sethi, Spl. PP

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

JUDGMENT

(Per: - Sanjay Parihar-J)

1. These appeals arise from the judgment and order dated 05.10.2009 and 22.10.2009 passed by the Sessions Judge, Jammu, in FIR No. 70/2001 registered at Police Station Bahu Fort under Sections 302, 307, 326, 109, and 34 RPC. By the impugned judgment, the appellants Balwan Singh and Dev Raj, along with co-accused Gandharb Singh, were convicted and sentenced to life imprisonment for the offence under Section 302 RPC and to five years' rigorous imprisonment for the offences under Sections 307 and 326 RPC, besides a fine of ₹50,000 each. The trial court also referred for confirmation of the sentence.

2. During the pendency of the appeals, co-accused Gandharb Singh passed away, resulting in abatement of the appeal insofar as he is concerned. The present appeals, therefore, survive only with respect to Dev Raj and Balwan Singh.

3. The prosecution's case, in brief, is that appellant Balwan Singh had a dispute with one Ashok Kumar regarding a booking counter at the Jammu Bus Stand. Ashok Kumar had authorised Pardeep Kumar @ Deepa (deceased) through a Power of Attorney to represent him in the matter. On 24.04.2001, Pardeep Kumar, along with his friend Kamal Raj@Pappu (also deceased) and PW Sanjeev Kumar, had gone to the JDA office at Panama Chowk, Jammu, to attend proceedings related to the

dispute, pursuant to directions from a civil court to approach the JDA authorities for resolution.

4. On 24.04.2001, deceased Pardeep Kumar (alias Deepa) and Kamal Raj (alias Pappu), along with PW Sanjeev Kumar (the complainant), were present at the first floor of the JDA office complex at Panama Chowk, Jammu. While they were conversing, appellants Balwan Singh and Gandharb Singh arrived at the spot, accompanied by Gandharb Singh's Personal Security Officer, i.e. Appellant Dev Raj, who was armed with an AK-56 rifle. The appellants began abusing Pardeep Kumar. When he objected, Balwan Singh allegedly exhorted Gandharb Singh and Dev Raj to fire at the trio. Acting on this, Dev Raj opened fire, killing Pardeep Kumar and Kamal Raj on the spot, while Sanjeev Kumar was assaulted with the butt of a 12-bore gun, which Balwan Singh had snatched from Gandharb Singh. Thereafter, the appellants threw Sanjeev Kumar out of the window. The injured witness managed to crawl to safety and was taken to the hospital. On this basis, FIR No. 70/2001 under Sections 302, 307, 326, 109, and 34 RPC was registered at Police Station Bahu Fort. After completion of the investigation, the challan was presented before the Chief Judicial Magistrate, Jammu, and subsequently committed to the Sessions Court. The Sessions Judge, Jammu, after examining 40 witnesses out of 53 cited by the prosecution and considering the defence evidence, convicted and sentenced the appellants as earlier noted.

5. In appeals, the appellants challenged the conviction primarily because:

- PW Sanjeev Kumar, the purported eyewitness, gave contradictory statements and lacked credibility due to his antecedents.
- PW Onkar Singh, another alleged eyewitness, was a planted witness with a criminal background, and his delayed disclosure of the incident (on 06.05.2001) rendered his testimony unreliable.
- No test identification parade was conducted to identify appellant Dev Raj, who was allegedly unknown to the witnesses.
- The deceased themselves were alleged to be persons of criminal background, and their presence at the JDA complex was suspicious.
- The police reached the scene only after 5 PM, indicating suppression of the true genesis of the incident and fabrication of the prosecution's story.

6. The Counsel appearing for appellant Dev Raj (in CRA No. 57/2009) contended that the Investigating Officer, Abdul Rouf Lone, in his deposition, admitted that Dev Raj had acted in *exercise of his right of private defence* to protect his protectees, co-accused Gandharb Singh, from the complainant party. It was argued that the firing was not intentional or premeditated but a defensive act, which at best constitutes *culpable homicide not amounting to murder*, and therefore, a conviction under Section 302 RPC was unsustainable. Counsel further argued that the deceased themselves were armed and had a long-standing enmity with Balwan Singh and Gandharb Singh, indicating that they were the aggressors.

7. While relying on the judgment of Hon'ble Supreme Court in case titled "*Darshan Singh vs. State of Punjab*" reported as **AIR 2010 SC 1212**, it was submitted that the prosecution's evidence did not substantiate a charge of murder. The counsel for appellant Balwan Singh also adopted similar arguments, asserting that PW Sanjeev Kumar (complainant) was not an actual eyewitness but a planted witness introduced through padding. His version that he was thrown out of a window was described as unbelievable. It was further argued that there was no credible evidence of conspiracy or common intention, as the alleged exhortation ("lalkara") by Balwan Singh to kill the deceased was not corroborated by any independent evidence. Both defence counsels urged that, even if the prosecution version is accepted, the case would, at most, amount to culpable homicide not amounting to murder since there existed prior animosity, and the deceased had earlier threatened Balwan Singh over the bus stand dispute.

8. Conversely, Senior counsel for the State and the complainant argued that the case clearly involved misuse of an official service weapon by appellant Dev Raj at the instigation of Balwan Singh and co-accused Gandharb Singh. The evidence unambiguously established that the fatal firing was done from Dev Raj's service rifle. During cross-examination, the defence failed to show that the firing came from any weapon other than the one allotted to Dev Raj. PW Sanjeev Kumar, being an injured eyewitness, withstood cross-examination and credibly testified that the firing was done at the direction of the co-accused. His testimony, it was

contended, inspires confidence and rules out any false implication. The argument denying Balwan Singh's exhortation ("lalkara") was also rejected, as the evidence clearly showed that he had instigated Dev Raj to fire and kill the deceased, which he did.

9. We have given our anxious consideration to the rival submissions and perused the record with care. The principal defence projected on behalf of the appellants is that appellant Dev Raj had acted in exercise of his right of private defence of person to avert an impending assault which, according to him, was directed towards co-appellants Balwan Singh and Gandharb Singh by the deceased Pardeep Kumar @ Deepa and Kamal Kumar @ Pappu. It has been urged that the situation was so grave and sudden as to create a reasonable apprehension in the mind of appellant Dev Raj that death or at least grievous hurt was imminent, whereupon he, to protect himself and his companions, fired the fatal shot.

10. To substantiate the plea, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Darshan Singh v. State of Punjab and Anr.***, (2010) 2 SCC333, wherein the Apex Court has lucidly laid down that the right of private defence is available to a person who is suddenly confronted with the necessity of averting an impending danger and not to one who brings about such a situation by his own act. The right commences the moment a reasonable apprehension of danger arises and continues so long as such apprehension subsists. It is equally well settled that in exercising such a right, the force employed should not be wholly disproportionate or much greater than what is necessary for protection.

11. Adverting to the facts of the present case, it is an admitted position that there existed a dispute between the parties concerning the KMD transport counter at Bus Stand, Jammu. The evidence of PW Ashok Kumar and PW Abdul Rouf Lone establishes that both the appellants and the deceased party were present at the office of the Vice-Chairman, JDA, on 24.04.2001 pursuant to directions of the Civil Court requiring adjudication of the said dispute. The presence of both sides at the scene of occurrence thus stands admitted. The antecedent civil litigation and the business rivalry are factors which demonstrate that the occurrence did not arise out of a sudden and unforeseen quarrel but was the culmination of a continuing discord between the parties.

12. In this backdrop, the plea of private defence has to be tested on the touchstone of whether there existed a reasonable and imminent apprehension of death or grievous hurt at the hands of the deceased and whether the force used by appellant Dev Raj was proportionate to such apprehension. The material on record, however, prima facie suggests that the appellants were not wholly innocent victims of a sudden assault but participants in a dispute already brewing between the parties. The firing by appellant Dev Raj, therefore, appears to have exceeded the bounds of lawful private defence as contemplated under Sections 96 to 106 IPC, being disproportionate to the threat perceived.

13. Admittedly, appellant Dev Raj was serving as the Personal Security Officer of deceased/appellant Gandharb Singh and had been duly allotted an AK-47 rifle for his official duties. The said weapon, an AK-56 rifle

bearing No. 15178342, together with twenty-two live cartridges allotted to him by the 3rd Battalion of Security, stands seized vide seizure memo Ex.PW-SL on 24.04.2001. The possession and recovery of the weapon from appellant Dev Raj is, therefore, a matter of record and not in dispute.

14. The prosecution has succeeded in establishing the presence of the appellant at the scene of the occurrence through the ocular testimony of PW Sanjeev Kumar and PW Onkar Singh, both of whom were present at the JDA office complex when the incident took place. Their version further finds corroboration from the evidence of PW Amar Singh, PW Nanak Singh, PW Gian Singh, PW Trilochan Singh Wazir and PW Rakesh Chander Gupta, to whom the information regarding the firing was immediately conveyed by PW Onkar Singh. The said witnesses have consistently deposed that they were informed, while in a meeting relating to transport business, about the firing incident directed towards the deceased at the hands of appellant Dev Raj.

15. It is true that PW Vijay Kumar Bagotra, PW Mohd. Mouzam Khan, PW Balbir Singh and PW Vijay Kumar, though present at the spot, have not assigned specific overt acts to any of the accused; yet, their depositions uniformly confirm that indiscriminate firing took place inside the JDA premises, causing panic and stampede. PW Balbir Singh even sustained injuries in the commotion and, along with PW Vijay Kumar, has categorically stated that blood was seen spilled in the corridor adjoining the office of the Vice-Chairman, JDA.

16. From the cumulative effect of the testimonies of the above witnesses, there emerges a consistent narrative that an incident of firing indeed occurred in the JDA office complex on the morning of 24.04.2001. The plea of the defence that appellant Dev Raj was not present at the scene is rendered untenable, particularly in view of the unimpeached recovery of his service weapon from the spot and the ocular account of multiple witnesses. The contention that PW Sanjeev Kumar lacked prior acquaintance with appellant Dev Raj or Balwan Singh does not materially dent the prosecution case, since the presence of the appellants at the scene stands otherwise proved beyond a reasonable doubt through independent and corroborative evidence.

17. Whether the prosecution has successfully established the presence and participation of the appellants in the occurrence leading to the death of the deceased, and whether the testimony of the injured eyewitnesses can be relied upon despite their alleged criminal antecedents. Upon a careful reappraisal of the evidence on record and the findings returned by the learned trial court, it is evident that the defence has failed to dislodge the consistent and corroborated version of the prosecution witnesses regarding the presence of the appellants at the scene of the crime.

18. Even the defence witnesses, namely DW Ghulam Mohd. Bhat and DW Kripa Ram have admitted facts that substantiate the prosecution's case. Both witnesses have spoken of a dispute concerning the possession of the *KMDCounter* at Bus Stand, Jammu, which had previously been managed by the Kashmir Motor Drivers Association and subsequently

handed over to appellant Balwan Singh. Further, DW Kripa Ram, in his cross-examination, conceded that he had seen the appellants descending from the spot in an injured condition, their clothes being blood-stained. His admission that he had inquired from them as to who had beaten them but received no response, lends implicit support to the prosecution's version and negates the defence plea of false implication.

19. The cumulative effect of the prosecution and defence evidence thus leaves no manner of doubt regarding the presence of the appellants at the scene of the occurrence. The contention that PW Sanjeev Kumar could not have identified appellant Dev Raj merely because he was unaware of his parentage stands rejected, as Dev Raj was admittedly serving as the *Personal Security Officer* to the deceased appellant Gandharb Singh, who in turn was a close associate of Balwan Singh, a fact never disputed or shaken in cross-examination.

20. Having established the presence of the appellants, the next question is whether the prosecution has proved their participation in the murderous assault on the deceased. PW Sanjeev Kumar is not only an eyewitness but also an injured witness, and as per the settled position of law, the testimony of an injured witness commands greater evidentiary value than that of an ordinary witness. Such a witness, having himself suffered injuries in the same transaction, is unlikely to shield the real culprit or falsely implicate innocent persons.

21. The Hon'ble Supreme Court in "***State of U.P. v. Naresh and Others***" [(1997) SCC (Cri) 199] has held that the evidence of an injured

witness must be accorded a higher degree of reliability, unless strong grounds exist for its rejection. The testimony of PW Sanjeev Kumar provides a coherent and consistent account of the entire incident and inspires confidence. There is no material contradiction or infirmity to discredit his version.

22. The defence has also attempted to impeach the credibility of PW Sanjeev Kumar and PW Onkar Singh on the ground that both have criminal antecedents. This contention has no merit in law. The learned trial court has rightly placed reliance upon the decisions of the Hon'ble Supreme Court in ***"Ram Sanjiwan Singh & Others v. State of Bihar"*** [1996 Cri. L.J. 2528] and ***"State of U.P. v. Farid Khan"*** [AIR 2004 SC 5050], which hold that when the presence of an eyewitness at the place of occurrence is natural and established, his testimony cannot be discarded merely because of his prior involvement in criminal cases. In the present case, PW Sanjeev Kumar's presence at the spot is not only natural but also proved through his own injuries and corroboration by other evidence. Being an injured witness, his testimony, giving a complete and coherent account of the occurrence, cannot be disbelieved merely on account of past misconduct.

23. Whether the testimonies of PW Sanjeev Kumar and PW Onkar Singh are reliable, credible, and sufficient to establish the appellants' culpability in the homicidal assault. PW Shamsheer Singh, the then SHO of Trikuta Nagar, recorded the statement of PW Sanjeev Kumar immediately after learning that the injured had been shifted to the hospital. This

statement, exhibited as EXPW-SK, has not been discredited in any material particular during cross-examination. PW Sanjeev Kumar categorically stated that the firing was directed towards the deceased, and since he was accompanying them, he immediately ducked down when appellant Dev Raj opened fire. The defence contended that the witness's claim of being thrown out of the window of the VC JDA office was improbable. However, this argument does not hold merit.

24. Given the chaotic circumstances at the time of firing, with people running in panic, the witness being beaten by appellant Balwan Singh with the butt of a rifle, and witnessing his companions receiving gunshot injuries, it was natural for him to attempt an escape. His statement that he jumped through the adjacent window, boarded an auto, and proceeded to the railway station, where his van (JK02K 8455) was parked, is both plausible and corroborated.

25. PW Rakesh Bakshi corroborates this version, deposing that on 24.04.2001, while present at the railway station, he saw Sanjeev Kumar arriving in an auto, visibly terrified, with both legs fractured. He then accompanied the injured to the hospital. This independent corroboration lends strong credence to PW Sanjeev Kumar's account. During cross-examination, the defence suggested to PW Sanjeev Kumar that the deceased had attempted to snatch the rifle from appellant Dev Raj, which the witness denied. This suggestion itself implies that the defence acknowledged the presence of the witness at the scene of the occurrence. Such a line of questioning inadvertently fortifies the prosecution's case,

confirming that PW Sanjeev Kumar was indeed present during the incident.

26. According to PW Sanjeev Kumar, upon reaching the office of the Vice Chairman, JDA, along with the deceased, they encountered the appellants who were already present there. A heated exchange of words ensued between the deceased and appellant Balwan Singh. At that juncture, appellant Balwan Singh, along with Gandharb Singh, incited appellant Dev Raj to fire upon the deceased, shouting an exhortation to “kill all.” Thereafter, Dev Raj opened fire with his service rifle, resulting in the instantaneous death of Pardeep Kumar and Kamal Raj, while PW Sanjeev Kumar himself fell on the ground and sustained injuries. The scene was drenched in blood, with visible stains across the corridor details that bear the hallmarks of a truthful narration. The consistency and specificity of this testimony inspire confidence, and we find no reason to doubt its veracity.

27. The prosecution’s version receives further corroboration from PW Onkar Singh, who testified that he had received a telephone call from the deceased Pardeep Kumar on the morning of 24.04.2001, asking him to come to the JDA office regarding the dispute over the KMD Counter at the Bus Stand. He arrived there at about 11:00 a.m., parked his vehicle, and while standing near a *rehriwala* preparing lemon water, he saw the deceased, accompanied by PW Sanjeev Kumar, proceeding towards the JDA office. At that moment, the appellants arrived in their vehicle. Dev Raj, serving as PSO, was armed with an AK rifle, while Gandharb Singh

carried a 12-bore gun. PW Onkar Singh categorically deposed that Dev Raj fired upon Pardeep Kumar and Kamal Raj from a distance of about 4–5 feet, and that the deceased had not attempted to snatch the weapon. He also heard Balwan Singh and Gandharb Singh exhorting Dev Raj to fire. Though the defence questioned the delay in recording his statement (from 24.04.2001 to 06.05.2001), both the witness and the Investigating Officer satisfactorily explained that the delay was occasioned by the funeral rites of the two deceased, who were close associates of the witness, and the period of mourning observed by their families.

28. PW Sanjeev Kumar has also confirmed the presence of PW Onkar Singh at the scene, and his testimony thus lends corroborative strength to the prosecution's case. The testimonies of PW Sanjeev Kumar and PW Onkar Singh are natural, consistent, and corroborative of each other. Both witnesses have given a coherent account of the sequence of events, which stands reinforced by medical and circumstantial evidence. The defence has failed to impeach their credibility or establish any material contradictions. The version of the prosecution is, therefore, found reliable and trustworthy, and the court finds no reason to disbelieve the ocular account of these two key witnesses.

29. Both the deceased sustained three gunshot injuries, including one that pierced the arm and chest, with AK-56 cartridges recovered from the scene. Of the 30 rounds issued to appellant Dev Raj, eight were fired during the incident, while 22 rounds with a magazine were recovered from the appellants at Batra Hospital, where from they were subsequently

arrested. The ballistic expert confirmed the mechanical efficacy of the rifle, which was handed over to the police upon arrest

30. The evidence establishes that there was a clear enmity between the appellants and the deceased over the KMD counter. The trial court noted that Gandharb Singh had been previously arrested in a rape case and that the deceased, Pardeep Kumar, had publicly tarnished his image during the Assembly elections, further escalating the dispute with Balwan Singh, who was allied with Gandharb Singh. It was also established that Balwan Singh operated from Gandharb Singh's shop in Karan Market, Jammu, indicating their close association. The deaths occurred from firing by the service weapon allotted to appellant Dev Raj, a fact not denied during cross-examination, and no evidence was presented to suggest that any other weapon was used. The testimony of PW Sanjeev Kumar and other prosecution witnesses demonstrates that the killing was carried out at the coaxing and exhortation of Balwan Singh, with Dev Raj executing the act, and nothing in cross-examination or the appellants' Section 342 Cr.P.C. statements casts doubt on the prosecution's narrative.

31. The appellants' attempt to portray the incident as a case of firing in self-defence or to protect the protectees by the PSO is found to be wholly unconvincing. The deceased were unarmed, as confirmed by the eye witnesses and version of I/O that no weapons were recovered from either the deceased, and therefore there was no occasion for appellant Dev Raj to open fire under the directions of the other appellants. The assertion that Balwan Singh merely made a "lalkara" to prompt Dev Raj to fire does not

absolve him of responsibility, as the words clearly directed Dev Raj to kill the deceased. Since Dev Raj complied, it indicates a deliberate intention by the appellants to eliminate the deceased. Much reliance was placed by the appellants on the testimony of PW Abdul Rouf Lone, the investigating officer, who stated that Dev Raj had exceeded his powers of defence. However, the officer's testimony does not support the claim of self-defence. While Dev Raj had a record of proper use of his service weapon, he fired eight rounds at the scene, where the deceased were unarmed and posed no threat. A PSO's duty is to protect the protectees reasonably and not to resort to lethal force against unarmed individuals. The officer's statement emphasised the limits of a PSO's responsibilities, not a justification for the killing.

32. Although indeed, criminal acts generally arise from motive, the absence of proof of motive does not negate the existence of criminal intent. Motive is a psychological phenomenon, and the failure of the prosecution to establish it does not imply the accused lacked intent. In this case, the background of the dispute over the KMDA booking counter at Jammu is relevant. The deceased had legal possession of the counter, while appellant Balwan Singh sought to reclaim it, with support from the KMD Association. The civil court had directed the matter to be settled, which explains the presence of both parties at the scene on 24.04.2001, but does not justify the actions of the appellants.

33. The fact that the appellants were carrying weapons indicates a premeditated intent to create an impact on the deceased. Even if there was

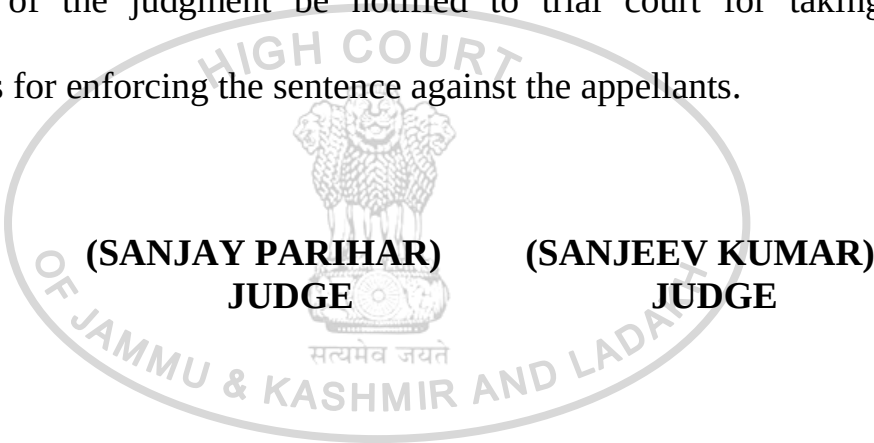
a minor scuffle, the deceased were unarmed and cannot be deemed assailants. The killing of the deceased by Dev Raj, using an automatic rifle, cannot be construed as self-defence; it clearly signifies an intention to do away with the deceased. Furthermore, the longstanding enmity between Balwan Singh, Gandharb Singh, and the appellants, particularly Pardeep Kumar @ Deepa, suggests that the incident was used as an opportunity to settle old scores. The minor scuffle that occurred on the day of the incident, along with minor injuries sustained by the appellants, does not justify the excessive use of force. The disproportionate firing demonstrates that the appellants exceeded the limits of self-defence and acted with a clear intention to kill.

34. In conclusion, the evidence unequivocally establishes that the appellants, motivated by old enmity and with deliberate intent, instructed Dev Raj to fire upon and kill the unarmed deceased. The act of firing by the PSO cannot be considered self-defence, and the appellants' actions constitute a deliberate and unlawful attempt to eliminate the deceased, transcending any legitimate duty of protection.

35. In the facts and circumstances of the case, it is evident that the investigation against the appellants was conducted fairly and transparently, free from any preconceived bias. The claim of self-defence is wholly negated by the evidence collected and appreciated by the trial court. There is no indication that the deceased were aggressors or assailants; rather, the evidence overwhelmingly shows that the appellants abused the deceased, which led to a heated exchange of words. This

provoked the appellants to direct PSO Dev Raj to open fire, which he did immediately, killing both deceased. Dev Raj fired eight rounds from his service weapon, and the fact that bullets struck both deceased in the chest area clearly demonstrates an intention to eliminate them, an act that far exceeded any reasonable measure of self-defence. There is thus no reason to interfere with the trial court's findings, and the judgment does not suffer from any perversity. Consequently, these appeals are devoid of merit and are **dismissed**. The convictions of the appellants are accordingly sustained, their bail bonds are cancelled, and they are directed to surrender to the custody of the trial court to undergo the sentence as ordered.

36. A copy of the judgment be notified to trial court for taking sequential steps for enforcing the sentence against the appellants.



JAMMU
16.10.2025
Pawan Angotra

Whether the order is speaking? : Yes

Whether the order is reportable? : Yes