



2025:AHC:174145-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1282 of 1985

Yashoda Devi Appellant(s)

Versus

State of U.P. Respondent(s)

Counsel for Appellant(s)	:	Harikesh, Raj Kishor Pandey, Shamim Uddin Khan, Viresh Misra
Counsel for Respondent(s)	:	A.G.A.

Court No. -44

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE TEJ PRATAP TIWARI, J.

1. Heard Shri Raj Kishor Pandey, learned counsel for the appellant, learned A.G.A. for the State and perused the record.
2. The present appeal arises from the judgment and order dated 09.05.1985 passed by Shri M.M.H. Siddiqi, learned Sessions Judge, Pilibhit in Sessions Trial No. 40 of 1984, State Vs. Chunni Lal and others, under Sections 302 read with Section 34 and 307 read with Section 34 of the I.P.C., Police Station Gajraula, District Pilibhit.
3. By the impugned judgment and order, the learned Court below convicted the accused Chunni Lal, Smt. Ram Dei and Jasoda Devi for offence under Section 302 read with Section 34 I.P.C. and sentenced them to undergo imprisonment for life for the murder of Mewa Ram, Smt. Gulab Devi (daughter of the informant-Natthu

Lal (P.W.-1)) and Prem Shanker, under Section 307 read with Section 34 I.P.C. and sentenced them to three years rigorous imprisonment for attempt to murder the child Roopa Devi (P.W.-2). Both sentences are to run concurrently.

4. The appellant Jasoda Devi is on bail. During pendency of the appeal, accused Chunni Lal and Smt. Rama Dei died. Their appeal has already been abated. The appeal survives on behalf of the appellant Jasoda Devi, only.
5. The prosecution story emerged on the Written Report dated 27.11.1983 (Ex.Ka.35 at the trial). It was submitted by Natthu Lal (P.W.-1). He is the father of the deceased-Gulab Devi and the father-in-law of the deceased-Mewa Ram. That report stated, his elder daughter-Gulab Devi was married to Mewa Ram and that they had a child born to them-the deceased-Prem Shanker.
6. Earlier, Gulab Devi had suffered from leprosy. After she was cured, Chunni Lal (the elder brother of Mewa Ram), wanted Mewa Ram to abandon her. Since, Mewa Ram refused to abide by that wish, it caused bad relations between the families. This led to family partition. The family of Mewa Ram and Gulab Devi started living separate from the family of Chunni Lal and Ganga Devi.
7. In that fact background, the report further stated, before the occurrence, the younger daughter of Natthu Lal, Roopa (P.W.-2), arrived at the house of the deceased Gulab Devi and was staying there. In this context, Natthu Lal (P.W.-1) reached the house of the deceased-Ganga Devi on the night of 26.11.1983, to bring back Roopa (P.W.-2). He was sleeping in a small room/‘*kothari*’, inside the house of Ganga Devi, while the deceased-Mewa Ram, Gulab Devi, Prem Shanker and Roopa (P.W.-2) were sleeping in the courtyard. Around midnight, he woke up to gun shot noise. On reaching the courtyard, he saw the three accused persons, namely,

Chunni Lal armed with a gun, Ram Dei armed with a sharp-edged weapon/‘*baguda*’ and Jasoda Devi (the present appellant) armed with a country-made pistol. They had killed Mewa Ram, Gulab Devi and Prem Shanker, and grievously injured Roopa (P.W.-2).

8. The occurrence was witnessed by Manohar Lal (P.W.-3), Devi Ram (P.W.-4), Bihari Lal (P.W.-5) and Govind Ram (not examined at the trial). Based on the Written Report, the FIR was registered the next morning, on 27.11.1983 at 8:15 a.m.
9. During investigation, a single empty of 12-bore cartridge, was recovered from the crime scene. That Recovery Memo is Ex.Ka.27. The blood-stained clothes of the deceased-Mewa Ram were also recovered. That Recovery Memo is Ex.Ka.26. Further, samples of blood-stained and plain earth as well as some blood-stained clothes were recovered from the place of occurrence, on 27.11.1983. That Recovery Memo is Ex.Ka.25.
10. The injured Roopa was examined on 27.11.1983 at about 2:00 p.m. by Dr. S.K. Agarwal (P.W.-8). In that, following injuries are noted:

“Incised wound 2 cm x 1 cm x bone deep on right mastoid bone.”

11. Also, on 27.11.1983, three Inquest Reports were prepared of the dead bodies of the deceased, namely, of Mewa Ram, at around 11:00 a.m., of Gulab Devi, at around 12:00 p.m. and of Prem Shanker, at around 12:45 p.m. Those Inquest Reports are Ex.Ka.7, Ex.Ka.8 and Ex.Ka.9, respectively. Also, Dr. P.K. Srivastava (P.W.-7) performed autopsy examination on the three dead bodies on 28.11.1983. In that, the doctor found the following ante-mortem injuries on the body of the deceased Mewa Ram:

*“1. Incised wound on the right side face extending from right ear to right eye-brow, 9 cm x 2 cm x bone cut in size.
2. Circular lacerated wound on the right axillary region 3 cm in diameter. Margins inverted, blackening, tattooing, scorching absent, situated 15 cm above the right nipple in 11 O'clock position.
3. Lacerated wound on the right side abdomen 3.5 cm. in diameter; circular. Blackening, tattooing, scorching absent, situated just above the right iliac crest.*

4. Incised wound in right scapular region 1 cm. x 1/2 cm. x skin deep in size.
5. Incised wound on the left hand on the middle and index finger 2 cm. x 1 cm. x bone cut and 1½ cm. X ½ cm. x bone cut in size, situated at the terminal phalynx.”

Following ante-mortem injuries were noted on the dead body of the deceased-Gulab Devi:

- “1. Circular lacerated wound 2.5 cm. in diameter; margins inverted. Blackening, tattooing, scorching present. Situated in the epigastrium 4 cm. below the Xiphyl process.
2. Multiple incised wounds on the left t fore-arm extending from middle of the left fore-arm to the fingers in an area of 22 cm. x 6 cm. x bone cut.
3. Incised wound on the left shoulder 4 cm. x 12cm. x bone deep.
4. Multiple incised wounds on the right fore-arm to the fingers in a-rea of 24 cm. x 7 cm. bone cut in size.
5. Incised wound on the face 5 cm. x 1½ cm. x bone cut extending from bridge of the nose to the right cheek.
6. Incised wound on the right thigh middle and front 5 cm. x 2 cm. x skin deep in size.”

Following ante-mortem injuries were noted on the body of the deceased-Prem Shanker:

- “1. Incised wound on right side face 7 cm. x 1½ cam. x bone cut, 4½ cm. deep, extending from angle of mouth to right ear.
- 2.Circular lacerated wound, margins inverted, blackening, tattooing, scorching absent, in 2½ cm. diameter situated on the back 6 cm. below the angle of the left scapula.”

The Autopsy Reports are Ex.Ka.3, Ex.Ka.1 and Ex.Ka.2, respectively.

12. On completion of investigation, the Investigation Officer Ram Pal Anil (P.W.-10), submitted the charge-sheet.

13.Upon the case being committed for trial to the Court of Sessions, following charges came to be framed against the appellant:

“Firstly:That you on 26/27.11.83, at about mid-night in village Naugawan Kalyanpur, P.S.Gajraula, District Pilibhit, in furtherance of the common intention of you all, did commit the murders by intentionally and knowingly causing the death of Gulab Dei, Mewa Ram and Prem Shanker, and thereby committed an offence punishable u/s.302 read with section 34 I.P.C. and within the cognizance of this court.

Secondly: That you on the aforesaid date, time and place, in furtherance of the common intention of you all one of you Smt. Ram Dei, did an act, caused Baguda injured Km. Roopa with such intention and knowledge and under such circumstances that if by that act, you had caused the death of Km. Roopa, you would have been guilty of murder and thereby committed an offence by causing injuries, punishable u/s.307/34 I.P.C. and within the cognizance of this court.

And I hereby direct that you be tried by this court on the said charges.”

14. At the trial, besides relying on the above documentary evidence, the prosecution relied on oral evidence of 11 witnesses. Natthu Lal- the father of the deceased-Gulab Devi and father-in-law of the deceased-Mewa Ram and grandfather of the deceased Prem Shanker, was examined as P.W.-1. He proved, he was present at the house of Gulab Devi during the night of the occurrence. He also proved old animosity between the parties and existence of partition. He further stated, he woke up to the sound of gunfire. When he went to the courtyard [where the deceased were sleeping with his daughter-Roopa (P.W.-2)], he saw the following accused persons standing there-Chunni Lal armed with a gun, the present appellant-Jasoda Devi armed with a country-made pistol and her mother-Ram Dei armed with a ‘*baguda*’/sharp-edged weapon. As to the occurrence, he only stated, all the accused caused the occurrence, together. He did not attempt to establish specific role of any of the assailants in causing the numerous injuries observed on the three deceased and one injured person.
15. Thereafter, his daughter Roopa, aged about 8-9 years as on 04.12.1984, who would have been 7-8 years of age on the date of occurrence, was examined as P.W.-2. With reference to Section 118 of the Indian Evidence Act, to three queries put her, “*kis darja mein padhti ho?*”, “*jhooth bolne se kya hota hai?*” and “*kasam khane mein kya jata hai?*”, she remained quiet and did not furnish any answer response. Yet, by way of her statement made by way of her examination-in-chief, she made a wholly coherent statement that has been recorded by the learned court below, as below :

“*By prosecution*

जीजा, जिया बल्ला सो रहे थे। सिंदरी मे सोये थे। मैं नौगवा गई थी। मेरी जिया का नाम गुलबिया है। जीजा का नाम पूछा तो जवाब नहीं दिया। चुन्ना, जसुदिया व बाकी अम्मा ने मारा था। चुन्ना जसुदिया व उसकी अम्मा है। बन्दूक से मारा चुन्ना के पास बन्दूक थी। जसुदिया पर तमंचा व उसकी अम्मा पर व शुदा था। जिया जीजा व लल्ला को मारा। जसुदिया की अम्मा ने मुझे मारा।

10- प्रश्न:- तुम्हारे बाप कहा थे?

उत्तर:- नता वाली मुठरिया मे थे। चुन्ना के हाथ मे बन्दूक जसुदिया के हाथ मे तमंचा व उसकी अम्मा पर वगुदा था। गवाह के इक्ज 3 बन्दूक चुन्ना के हाथ मे, व इक्ज-2 तमंचा जसुदिया के हाथ मे व वबुदा एकज 1 उसकी माँ जसोदा की हाथ मे बताया। गवाह ने तीनों की छू कर यह बात बताई।

to be lunch for put up after lunch

Put up after lunch

x x x x x
x x By defence x

2- यह पूछने पर कि घटना से के रोज पहले तुम आई थी गवाह चुप रही। मेरे पिता मेरे बाद आये थे। मार पीट का जो किस्सा हुआ उसके दूसरे दिन आये थे।

नोट:- गवाहा अपनी उगलियों से लकड़ी के खेल रही है उसी पर ध्यान लगाये हुए है शुरु से ही गवाहा कुर्सी पर खड़ी की हुई है।

3-वप्पा ने मुझसे पूछा के क्या किस्सा हुआ।

11- प्रश्न:- तुम्हारे घर मे सामान सब खुला पड़ा था।

जवाब:- हाँ कहा।

12- प्रश्न:- सन्दूक भी खुले पड़े थे?

उत्तर:- हाँ

13- प्रश्न:- दरोगा जी आये थे?

उत्तर:- हाँ

14- प्रश्न:- तुमसे वगुदा कभी नहीं देखा?

उत्तर:- हाँ देखा है।

15-प्रश्न:- वल्लभ जानती हो?

उत्तर:- नहीं जानती हूँ।

16-प्रश्न:- सूजा जानती हो?

उत्तर:- नहीं जानती हूँ

17-प्रश्न:- कौता जानती हो?

उत्तर:- हाँ जानती हूँ।

कौता लम्बा होता है।

18-प्रश्न:- यह मालूम है काहे का बना होता है?

उत्तर:- मुझे नहीं मालूम कांता कहो का बना होता है।

19-प्रश्न:- कितनी बार कचहरी गवाही देने आई?

उत्तर:-मुझे नहीं पता मैं कितनी बार आई

20-प्रश्न:- पुलिस वाले गवाही देने लाये?

उत्तर:- सिपाही लाये थे।

21-प्रश्न:- वह तुम्हे लेकर वकील सरकार को दिखाकर कहा कि इनके घर ले गये थे।

उत्तर:- हाँ

22-प्रश्न:- इन्होने मे तुम्हे बताया (वकील सरकार) कि तुम्हे यह गवाही देना है?

उत्तर:- हाँ बताया था।

23-प्रश्न:- हमारा कहना है कि तुम झूठी गवाही दे रही हो।

उत्तर:- गवाहा चुप है।

नोट:- हमेशा गवाहा का सिर नीचे रहता है और कुछ सोचा करती है उसके पास जाड़ो के लिए कपड़े भी नहीं है उसे जुकाम है नाक वह रही है।"

16. Thereafter, Manohar Lal was examined as P.W.-3. He reached after the occurrence inasmuch as during his examination-in-chief itself he stated that he reached the place after the gunfire was over. He did not see any part of the assault.

17. Next, Devi Ram was examined as P.W.4. He made a similar statement as Manohar Lal (P.W.-3). Suffice to note, he too reached

after the occurrence was over and, therefore, did not see any part of the occurrence.

18. Thereafter, Bihari Lal was examined as P.W.-5. He claimed that he had seen the accused persons jump inside the house of the deceased. During his cross-examination, he stated that he woke up on hearing gunshot noise and, thereafter, he heard the noise of the intruders jumping inside the house of the first informant.

19. Thereafter, Ram Bilas, the witness of recovery, was examined as P.W.-6.

20. Next, Dr. P.K. Srivastava, the doctor who conducted the autopsy examination was examined as P.W.-7. He proved the ante-mortem injuries suffered by the deceased.

21. Next, S.K. Agarwal was examined as P.W.-8. He proved the injuries suffered by the injured Roopa (P.W.-2).

22. Thereafter, Head Constable Arun Kumar Kashyap was examined as P.W.-9. He proved the registration of the criminal case and the relevant G.D. entries.

23. Thereafter, the Investigation Officer, Ram Pal Anil was examined as P.W.-10. He proved the investigation and submission of charge-sheet.

24. Last, Constable Amar Singh was examined as P.W.-11. He proved the transportation of the dead bodies.

25. Thereafter, the statement of the accused persons were recorded under Section 313 Cr.P.C. The present appellant stated that the occurrence was caused by dacoits and she had been falsely implicated, for other reasons.

26. In that state of the evidence, the learned court below has convicted the appellants and sentenced them as noted above.

27. Submission of learned counsel for the appellants is, the occurrence took place in the dead of the night, inside the house of the deceased Mewa Ram and Gulab Devi. No one saw the occurrence. It was a case of dacoity that has given the colour of murder, only to grab the entire properties of Chunni Lal and his family. Natthu Lal who is the father of the deceased Gulab Devi and father-in-law of Mewa Ram, had no occasion to be present at the house of Gulab Devi. Even Roopa (P.W.-2) was not present. Her injuries are manufactured. For reason of motive to grab the properties of the family of the appellant, completely false accusation arose. Absolutely no motive existed with Chunni Lal and his family to cause such a gruesome occurrence.

28. The prosecution story is false and contradicted by its own version wherein it was first narrated that the Chunni Lal wanted his brother Mewa Ram to abandon Gulab Devi. Because Mewa Ram did not abide by that command (of his elder brother), the family experienced partition. Both branches of the family started living separately. That narration itself falsifies the prosecution story that, therefore, Chunni Lal bore animosity towards Mewa Ram, he eliminated the entire family of Mewa Ram that too with active participation of her wife and young daughter. Once partition had been experienced and since no earlier occurrence of physical and other assault was experienced by the parties before or after the partition was effected, the prosecution story is purely imagined and absurd.

29. Assuming Natthu Lal (P.W.-1) and Roopa (P.W.-2) were present inside the house of Mewa Ram at the time of the occurrence, on his own statement Natthu Lal saw nothing. He was sleeping inside a small room/'*kothri*' whereas the deceased and the injured were sleeping outside, in the courtyard. He woke up to the noise of gunfire. When he reached outside, he did not see any part of the

occurrence being caused. He only narrated that he saw all the accused standing, before they fled from the place of occurrence.

30. Thus, it has been submitted, neither Natthu Lal (P.W.-1) saw any part of the occurrence nor he made any narration as may necessarily lead to conviction of the present appellant Jasoda Devi. She was at about 19 years of age on the date of occurrence. Only two firearm injuries-one each were suffered by the deceased Mewa Ram and Gulab Devi. No ballistic report exists to corroborate the prosecution assumption that one or both firearm injuries may have been caused by the appellant Jasoda Devi who was ascribed a country made firearm. At the same time, the prosecution ascribed a gun to the accused Chunni Lal.

31. As to lacerated and incised wounds, the role of causing those injuries were suggested to the wife of Chunni Lal, namely, Ram Dei. Those injuries may never have been caused by the country made firearm assigned to the present appellant Jasoda Devi.

32. Both Chunni Lal and Ram Dei are dead. Their appeal has abated. Then, it has also been submitted that the statement of the child witness is wholly unreliable. The observation of the Court made to the preliminary questions put to her with reference to Section 118 of the Indian Evidence Act do not inspire confidence that the child understood the relevancy of her statement. She had not furnished any rational answers to those questions.

33. In contrast, her statement made to the Court by way of examination-in-chief is a parroted reply. Its reading clearly indicates that the child had come prepared to make a pre-prepared statement/speech to the Court, but she faltered when any basic question put to her for which she may not have been prepared. In that regard, reference has been made to three question Nos. 21, 22 and 23 put to her and her responses to the same, as noted above.

34. The other witness of fact namely Manohar Lal (P.W.-3), Devi Ram (P.W.-4) and Bihari Lal (P.W.-5), are wholly unreliable. Neither they were present nor they could have been present at the time and place of occurrence, when it was caused. In any case, those witnesses reached the place of occurrence later i.e. after the gunfire was over.
35. None of the five witnesses examined by the prosecution proved either of the two firearm injuries had been caused by the present appellant Jasoda Devi. Absolutely no corroborative material exists, to establish that.
36. On the other hand, learned A.G.A. would submit, in the present case, prompt FIR was lodged, early next morning. There is absolutely no doubt with respect to the same. The presence of Natthu Lal (P.W.-1) and Roopa (P.W.-2), is wholly established on the evidence led by those witnesses. That is consistent to the statements made by the other three witnesses namely Manohar Lal (P.W.-3), Devi Ram (P.W.-4) and Bihari Lal (P.W.-5). Their version finds wholesome corroboration in the FIR narration. Third, the status of Roopa (P.W.-2) as an injured witness cannot be denied. No reasonable doubt emerged that the injury suffered by the said witness was not caused in the occurrence. To the extent the presence of all accused is wholly established on such evidence and to the extent they had jumped inside the house of the deceased and caused the occurrence, the learned court below has rightly convicted all the accused persons including the present appellant, with the aid of Section 34 IPC.
37. Having heard learned counsel for the parties and having perused the record, in the first place, it may not be denied that the FIR was unduly delayed. The FIR narrates, the occurrence occurred inside the house of the deceased, at around 11:30 p.m., on 26.11.1983 and

the three assailants fled as many people had gathered at the place of occurrence, after hearing the gunfire. Natthu Lal (P.W.-1), who is the father of the deceased, Gulab Devi and father-in-law of the deceased was already present from before (as per prosecution narration) while Mewa Ram as also Manohar Lal (P.W.-3), Devi Ram (P.W.-4) and Bihari Lal (P.W.-5) had gathered at the house of the deceased. It is to be noted that the FIR was lodged after more than 8 hours, though the police station was barely 8 miles from the place of occurrence. To that extent we may not treat the FIR to be wholly prompt inasmuch as, if the father/father-in-law of the deceased was present and had found ample support from the community wherein at least four persons had arrived, three of whom were examined at the trial, while Govind Ram remained to be examined, more than 8 hours time taken to lodge the FIR, remained unexplained.

38. In that regard, we note that the Inquest Reports though disclosed the time of preparation between 10 a.m. and 12:45 p.m., they do not contain the details of the FIR. If the FIR had been lodged as disclosed at 8.15 a.m., in normal course details of the Case Crime Number, etc., would have found mention on the Inquest Report itself. It does indicate that the FIR may have been lodged a little later than disclosed.

39. Three Autopsy Examination Reports recorded that that examination was conducted on 28.11.1983. Consistent to the lapse on the Inquest Reports details of Case Number is lacking on the Autopsy Reports and the Injury Report of Roopa (P.W.-2), prepared at around 2:00 p.m. on 27.11.1983.

40. In view of the above consideration, we are not fully convinced that the FIR had been lodged at 8:15 a.m., on 27.11.1983, as claimed by the prosecution. The prosecution documents create that doubt. With

this doubt in mind, we examine the presence of Natthu Lal (P.W.-1) and Roopa (P.W.-2) at the time and place of the occurrence. Natthu Lal-the father-in-law of the deceased Mewa Ram and father of the deceased Gulab Devi had a separate living from the deceased. Therefore, he normally had no reason to be present inside their house. The only possible reason for his presence at the house at the time of the occurrence is linked to the presence of Roopa (P.W.-2), who was a child of about 7-8 years of age, at the time of occurrence. She was placed inside the house of the deceased 12 days prior to the occurrence. While there may be no independent witness to that occurrence, the only reason he disclosed to visit the deceased was, to fetch Roopa (P.W.-2).

41. Therefore, the presence of Natthu Lal (P.W.-1) may not be examined independent of the presence of Roopa (P.W.-2). During her examination-in-chief, she stated, she arrived at the house of the deceased Gulab Devi 10-12 days prior to the occurrence.
42. Then, Natthu Lal (P.W.-1) further stated, he woke up to the sound of gunfire. He maintained, before that he was sleeping inside the small room/‘*kothari*’, where he heard the gunfire and rushed outside-to the courtyard. There he only saw the assailants standing with their weapons but they had not caused any part of the occurrence, in the presence of that witness.
43. Seen in that light, Natthu Lal (P.W.-1) did not prove that the present appellant inflicted any injury on the deceased or the injured. The recovery of the country-made firearm apart, there is no ballistic report to prove that either of the two firearm injuries suffered by the deceased-Mewa Ram and Gulab Devi was caused by the present appellant.
44. We are mindful, the appellant was barely 19 years old at the time of the occurrence. She is the daughter of the main accused Chunni Lal,

who is described to have borne deep animosity towards the deceased Gulab Devi. At the same time, the prosecution has maintained, Chunni Lal wanted his brother-Mewa Ram to abandon Gulab Devi. However, no motive was disclosed, why Chunni Lal would cause the death of his brother Mewa Ram with whom he may have felt a bond of attachment that prompted him to ask Mewa Ram to abandon Gulab Devi. In other words, Chunni Lal had no animosity (*per se*) towards his brother, the deceased Mewa Ram.

45. Coming to the statement of Roopa (P.W.-2), it is wholly doubtful. Neither she could give rational responses to the preliminary questions put to her with reference to Section 118 Indian Evidence Act, nor her demeanour as noted by the learned trial Court inspires any confidence. What she stated to the Court, does appear to be a prepared statement that she may have rattled out or recited on being asked. In contrast to her keeping quiet to the basic three questions- "*kis darja mein padhti ho?*", "*jhooth bolne se kya hota hai?*" and "*kasam khane mein kya jata hai?*", she appears to have made coherent statement during her examination-in-chief. Then, during her cross-examination, she remained quiet on being asked, when she had reached her sister's place. That clearly indicates, she may not have been present at all. In fact she further narrated her father Natthu Lal (P.W.-1) reached the house of his deceased sister Gulab Devi, two days after the occurrence. In that, she narrated, her father asked her as to what had transpired. Then in response to question Nos. 21, 22 and 23 put by the learned court below, she admitted not only to being prepared by the Prosecuting Officer, but that she made her statement to the Court, as directed by him. To a suggestion that she had made a false statement to the Court, she remained quite.

46. Whichever way one may look at that statement, clearly it is riddled with reasonable doubts as to its truthfulness. Even, if we assume

that she had reached a few days earlier, her further response indicates that Natthu Lal arrived much later. That corroborates with the in-consistency in the documentary evidence, where we note that though the FIR is claimed to have been lodged at 8:15 a.m., on 27.11.1983, it does not find mention on the Inquest Report that were prepared upto 12:45 p.m., that day. It also does not find mention on the Autopsy Reports prepared on 28.11.1983, and the Injury Report prepared on 27.11.1983.

47. Further, with reference to the doubts expressed by the appellant in her statement recorded under Section 313 Cr.P.C., Roopa (P.W.-2) answered in the affirmative to the question if the trunks/storage places were left open in the occurrence and all belongings were lying scattered.
48. In view of such statements made by Roopa (P.W.-2), the child witness does not inspire confidence with the Court as to her reliability to lead evidence. The inconsistencies and contradictions that arise from a reading of her statement lead us to the conclusion that she is a wholly unreliable witness. Though, she may have been present at the house of the deceased sister Gulab Devi at the time of occurrence, she made a wholly tutored statement to the Court, on that tutoring offered by her father Natthu Lal (P.W.-1).
49. Neither Natthu Lal nor the police documents nor further evidence led by Manohar Lal (P.W.-3), Devi Ram (P.W.-4) and Bihari Lal (P.W.-5) proves or corroborates any part of the FIR allegation as to the exact manner of the occurrence being caused. In fact Bihari Lal (P.W.-5) is also a wholly unreliable witness. He has made wholly imagined if not false statement to the Court. In the first place, he claimed, he woke up to the noise of people jumping inside the house of the deceased. However, during his cross-examination, he stated, he woke up to the noise of gun fire. Thereafter, he heard

people jumping inside the house of the deceased. In that, he also made a wholly unreliable statement that he heard 25-30 gun shots. Also, he had in the beginning itself as also later, stated-he had not disclosed that he had witnessed the occurrence-in his statement recorded by the police during investigation.

50. In that state of evidence, we find, the presence of Natthu Lal (P.W.-1) is wholly doubtful. He appears to have reached the house of his daughter Gulab Devi, after the occurrence, at least after the Inquest Reports had been prepared and may be even after the Autopsy Examination was over. In any case, he may not have seen any part of the occurrence and he did not describe any role played by any of the appellant in causing the occurrence. Insofar as Roopa (P.W.-2) is concerned, she is wholly unreliable witness to the extent. Clearly, she appears to have been tutored to make her statement to the Court. The inconsistency and contradictions in her statement leave us with no choice but to discard her statement, in entirety.

51. Bihari Lal (P.W.-5) too is a wholly unreliable witness, for the reason noted above.

52. Manohar Lal (P.W.-3) and Devi Ram (P.W.-4) had also not seen any part of the occurrence. Consequently, the prosecution case has not been proven beyond reasonable doubt. In fact, there is no evidence to convict the present appellant Jasoda Devi. The basic premise of the prosecution story that a 19 year old girl with no criminal history armed with country made pistol joined her father, who bore animosity with her uncle Mewa Ram, is doubtful. It is further difficult to accept that the occurrence as described was caused inside the house of the deceased, where (according to the prosecution story) entrance was gained during night hours, by jumping inside the house and not through the entrance door.

53. For all the reasons noted above, we are of the view that the prosecution case has not been proven beyond reasonable doubt. Consequently, this appeal succeeds and is **allowed**. The judgment and order of conviction dated 09.05.1985 passed by Shri M.M.H. Siddiqi, learned Sessions Judge, Pilibhit in Sessions Trial No. 40 of 1984, State Vs. Chunni Lal and others, under Sections 302/34 and 307/34 of the I.P.C., Police Station Gajraula, District Pilibhit, is hereby **set aside**. Appellant-Jasoda Devi is on bail. She need not surrender. Her bail bonds are cancelled and sureties discharged. However, the appellant is directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two months from today.
54. A copy of this judgment alongwith the trial court record be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court, at the earliest. Office is directed to keep the compliance report on record.
55. Pending application, if any, stands **disposed of**.

(Tej Pratap Tiwari,J.)(Saumitra Dayal Singh,J.)

September 25, 2025

PS/Anurag/SA