



2025:AHC:173705

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1664 of 1986

Madneshwar Rai And Another

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s) : Ashutosh Kumar Mishra,
A.N. Rai

Counsel for Respondent(s) : A.G.A., Virendra Singh

Court No. - 48

Judgement Reserved on 28.08.2025

Judgement Delivered on 25.09.2025

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Ashutosh Kumar Mishra, learned Amicus Curiae for the appellants and Sri S.K. Ojha, learned A.G.A.-I for the State.

2. The instant criminal appeal has been filed by the appellants herein against the judgment and order dated 11.06.1986 passed by the Third Additional Sessions Judge, Ballia in Sessions Trial (ST) No. 174 of 1983, whereby both the appellants herein were convicted for the offences under Section 307 read with Section 34 I.P.C., however, the Appellant No.2, Badri Rai, was sentenced to undergo four years rigorous imprisonment and the Appellant No.1, Madneshwar Rai, was directed to undergo imprisonment for one year rigorous imprisonment.

3. As per the report dated 07.07.2025, received from District Judge- Ballia, both the appellants herein are alive, however, they are residing outside the village. The notices were duly served through their legal heirs. Despite the aforesaid service, none appeared on behalf of the appellants to press the instant appeal. In view thereof, vide order dated 04.08.2025, this Court has

appointed Sri Ashutosh Kumar Mishra, as Amicus Curiae in the instant case on behalf of the appellants to facilitate hearing of the instant appeal as the case is pending since 1986.

4. The briefly stated prosecution case is that in the year 1981, the father of the informant had filed a civil case against the accused persons as well as their uncle. After the said case was lodged by the father of the informant, the uncle of the accused persons, namely Vishwanath, had also lodged a civil suit against the father and the brother of the informant. Due to the aforesaid litigation between the parties, there was animosity between them.

5. In August 1983, the elder brother of the informant, Shrikant Rai, who was working in the Indian Air Force, came to the village. The family members of the accused persons had beaten him due to the previous animosity. Thereafter, the uncle of the accused persons, namely Shambhu, had lodged a case under Section 307 I.P.C. against the informant and his family members, due to which there was continuous animosity between them.

6. On 10.09.1983, when the informant, Gorkhnath Rai, was going to school on his bicycle, when he reached a little ahead of the barrier of the District Council (Zila Parishad) near Bharauli tri-crossing, all the three accused persons namely Shyam Bihari, Badri Rai, who were armed with country-made pistol and Madneshwar, armed with lathi, fired upon the informant and chased him. The informant jumped off his cycle and to save his life went towards the agricultural fields, leaving the road. Then the accused persons, while firing from their country-made pistol, chased him after around 200 yards. When the informant found it difficult to breathe, he sat down near two jackfruit trees. The accused persons reached there chasing him, and the accused Shyam Bihari fired upon the informant through the country-made pistol. The informant raised his left hand to save himself, which became injured due to the firearm injury. After being injured, he fell down. Thereupon, the accused Madneshwar had beaten him up with a lathi on his head. The informant while running towards

the agricultural field leaving the main road, was also shouting for help. At the same time, one Radha Kishan, who is a relative of the informant, was going on a taxi from Ballia-Ghazipur Road to his village Semra, and by chance, the taxi passed through the place of incident when the informant was running to save himself. Then he got stopped the taxi and reached on the spot and saw the incident and at the same time, the other witnesses, namely Ram Prasad Singh (PW2) and Dev Narain Rai and other persons of the nearby fields reached on the spot, due to which the accused persons left injured and ran away toward the Ganges river. After the incident, the relative of the informant, Radha Kishan (PW3), brought the informant till Bharauli tri-crossing, and also prepared a written report. Thereupon, the informant had sent him to his home to inform about the incident and he went on a mini bus to Police Station- Narhi around 10:30 A.M in the morning and submitted a written report.

7. On the basis of the written report submitted by the informant, the F.I.R. was registered against the three accused persons, namely Shyam Bihari, Badri Rai and Madneshwar. The informant was sent to the Primary Health Center at Narhi for medical examination, where the doctor was not available. Therefore, the police personnel sent him to the District Hospital Ballia, where his medical examination was conducted by Sri Kailash Chandra (PW6) at 13:05 P.M., and the injury report was prepared. The following injuries were found by Dr. Kailash Singh on medical examination of the informant:

1 - Gun Shot .5 cm x 1 cm depth could not be measured. There was a 6 cm wound on the left forearm from the elbow towards the back. The wound was burnt and fresh blood was oozing out.

2- Gun shot 1 cm x .5 cm depth could not be measured. 10 cm height from wrist to palm on left forearm.

3- Gun shot 1 cm x .5 cm did not go measure the depth. On the left forearm from the wrist 3 cm above.

4- Bluish mark 4 cm x 2 cm on right side of head, 10 cm above right ear. Colour red.

8. After registration of the F.I.R., the Investigation Officer (IO) conducted the investigation and seized the certain pants worn by the informant at the time of incident, which were having the bloodspots. The IO inspected the place of incident and prepared the site-plan and recovered the bloodstained soil as well as the plain soil. He tried to arrest the accused persons on the date of incident but could not find them. On 13.10.1983, the charge-sheet was filed against the accused appellants, namely Madneshwar and Badri Rai, and on 19.10.1985, a separate charge-sheet was filed against the accused Shyam Bihari and separate cases were registered on the basis of the separate charge-sheets. However, the trial of both the cases was conducted together. After conducting the trial, the learned trial court has convicted the appellants herein for the offences under Section 307 read with Section 34 I.P.C. However, the other co-accused person, namely Shyam Bihari was acquitted for the offence committed under Section 307 read with Section 34 I.P.C. while giving the *benefit of doubt*. The accused appellant, Badri Rai, was sentenced to undergo four years rigorous imprisonment for the offence under Section 307 read with Section 34 I.P.C., and accused appellant, Madneshwar Rai was sentenced to undergo one year imprisonment for the offences under Section 307 read with Section 34 I.P.C. vide impugned judgment and order dated 01.16.1986. Being aggrieved by the same, instant criminal appeal has been filed by the appellants herein.

9. The learned counsel for the appellants submits that there was previous animosity between the family of the informant and the appellants herein. Thus, they have been falsely implicated in the instant case by the informant due to the previous animosity between the families. During the investigation, there is no

recovery of any country-made pistol either from the appellants herein or from the co-accused Shyam Bihari. Thus, the instant case is nothing but that of a false implication on the part of the informant due to the previous rivalry and the pendency of civil suit as well as the criminal proceedings against each other.

10. The learned counsel for the appellants further submits that the witness Radha Kishan is an interested witness, who is a relative of the informant. Thus, Radha Kishan has falsely deposed against the appellants, who has been shown as a chance witness in the instant case. The presence of the co-accused Shyam Bihari has been doubted by the trial court itself on the *plea of alibi*, which has been successfully proved by the defence witness. Thus, the entire story of the prosecution is nothing but a falsity. The injuries sustained by the informant are either self-inflicted injuries with intention to falsely implicate the accused persons, as the informant was already implicated on behalf of the accused persons just one month prior to the incident or he has otherwise sustained the injuries in some other incident for which the false implication has been done by the informant. It is further submitted by the learned counsel for the appellants that the trial court has wrongly disbelieved the *plea of alibi* of the appellant no.2, Badri Rai, as on the date of incident, the appellant no.2 was far away from the place of incident and he was apprehended on the date of the incident itself at Indo-Nepal border at Bathnaha situated near Purnia district of Bihar, while he was carrying six strips of foreign watches from Nepal.

11. The DW4 has categorically proved the documents with regard to the proceedings under the Excise Act against the Appellant No.2. It is further stated by the learned Amicus Curiae that the Appellant No.1 was also outside the District- Ballia. He was studying at Allahabad and on the date of incident he was there at Allahabad. Thus, learned Amicus Curiae for the appellants submits that the instant case is nothing but purely a case of false implication by the informant due to previous animosity. Therefore, the appellants herein are entitled for acquittal in the

instant case.

12. *Per contra*, learned A.G.A. for the State submits that so far as the *plea of alibi* taken by the Appellant No.2 is concerned, that has been dealt in detail by the trial court and it was found that DW4, Nishit Kumar, was a friend of Shyam Bihari and was posted as Excise Inspector at Bathnaha, who had allegedly issued the said receipt for the apprehension of the Appellant No.2. After analysis of the entire evidence, the trial court has rightly denied the said *plea of alibi* taken by Appellant No.2, as the same was not reliable and the said receipt of seizure of the six strips of foreign watches by Nishit Kumar was nothing but an attempt to save the Appellant No.2 from the instant prosecution, being an interested person.

13. So far as the plea of alibi taken by Appellant No.1, Madneshwar Rai, that has also been denied by the trial court on the strength that while moving the bail application on behalf of Appellant No.1, it was stated that he was in Patna for his treatment from one day before the incident till one day after the incident for his treatment. Whereas, in the appeal entirely different plea has been taken that, Appellant No.1 was studying at Allahabad and was in Allahabad on the date of incident. Thus, there was enough contradiction between the defence taken on behalf of Appellant No.1, to show the *plea of alibi*. Thus, the same has rightly been disbelieved by the trial court.

14. Learned A.G.A. further submits that informant is the injured witness who has categorically supported the prosecution case and there can be no better witness than the injured witness to depose against the real accused persons. It is hard to believe that an injured person would name someone else leaving the real assailants aside. The medical examination report duly supports the prosecution case as narrated by the informant. In view thereof, no interference is called for in the instant appeal. The trial court has rightly convicted and sentenced the appellant herein taking a very liberal view while sentencing the appellants

herein. Thus, learned A.G.A. seeks dismissal of the instant appeal.

15. P.W.1 is the injured witness, Gorakhnath Rai, who has categorically supported the case as narrated in the written report. He further has categorically deposed with regard to the civil litigation previously pending between the families of the informant and the accused. It is further stated by PW1 that in August 1983, the elder brother of the informant, who was working in the Air Force, came to the village, when the accused persons had assaulted him in front of their house. The case regarding the same is pending before the Magistrate. After the said incident, the uncle of the accused persons had lodged a false case against the informant and his brother for the offence under Section 307 I.P.C. He further states that his school is about 13 kilometers away from his village, and he used to go on a bicycle to his school. On 10.09.1983, in the morning, as per his routine, he left his house around 9:00 A.M. and when he reached a little ahead of District Council (Zila Parishad) Barrier, all three accused persons, Shyam Bihari, Badri carrying country-made pistol and Madneshwar, carrying a lathi, chased him while firing against him. He jumped off the cycle and left the main road, running towards the agricultural field to save himself. The accused persons chased him while firing and while he ran approximately 200 yards, he had difficulty in breathing and was tired, so he sat down. Then, all three accused persons also reached there. The accused Shyam Bihari assaulted him with a country-made pistol, therefore, the informant raised his hand and his hand was injured. Thereupon, he laid on the ground, and then Madneshwar assaulted him with his lathi on his head. While the informant was running, he was shouting due to which various other persons gathered there. One of his relatives, Radha Kishan, had also reached as he was going in a taxi and saw the accused persons chasing the informant, he stopped the taxi came on the spot and witnessed the incident. Therefore, Radha Kishan took the informant to Bharauli tri-crossing, and thereupon he was sent back to his home to inform the family members. He then went to

the police station and submitted the written report, which was prepared at Bharauli tri-crossing. Thus, the report of the incident was lodged immediately after the incident. Thereafter, after registration of the F.I.R. his medical examination was conducted at the District Hospital, Ballia. His pant and shirt, which were bloodstained were seized, memo was prepared by the Investigation Officer. He has proved the said memo, and he has also identified his clothes in court. The court has observed that, on the left hand of the shirt, there were six or seven small holes on the shirt, and the edges of the same were burnt. In the X-ray, there was fracture on his left hand. Nothing has been brought up in the cross-examination whereby the deposition of this witness could be disbelieved.

16. PW2 is Ramprasad Singh, who is also a chance witness. He has stated that on the date of the incident, he was going to village Ujiyar to take wooden parts of a gate on the foot and he has seen that the injured PW1 was running to save himself while leaving his school on the cycle on the road, and all the three accused persons were chasing him and accused Shyam Bihari and Badri were firing while chasing him, and Madneshwar was also chasing him while carrying a lahti. After running about one furlong, the injured Gorakhnath sat down near the jackfruit tree. Thereupon, Shyam Bihari has assaulted him with a country-made pistol, which Gorakhnath had tried to avoid from his hand, whereupon he sustained the injuries on his hand. Thereupon, Madneshwar had assaulted him with lahti. Hearing the noise, the persons who were cutting grass nearby and one of the relatives of the informant, Radha Kishan, he and one another person reached there. Thereafter, the accused persons ran towards the Ganges river. Thereafter, they carried the injured to some distance, and thereafter he went to village Ujiyar. There is no abadi near the place of the incident. He was known to the accused persons three or four years prior to the incident on two-three occasions. He met them. Thereafter, he has seen him at the time of the incident. In the cross-examination, he has stated that, as per his understanding, the injured had fallen down near the jackfruit tree

while he was running, and he has seen the injuries sustained by the injured. He has followed the injured as well as the accused persons till the jackfruit tree.

17. PW3 is a relative of the informant and a chance witness of the incident, and at the time of the incident, he was going on a taxi when he saw that the informant was chased by the accused persons armed with a country-made pistol and lathi. He stopped the taxi and followed them. Thus, he had witnessed the incident. He has seen the injured running and fell down near the jackfruit tree, and thereupon the accused Shyam Bihari had assaulted him with a country-made pistol, and thereupon, Madneshwar had assaulted him with lahti. He has categorically supported the prosecution case, that they were the accused persons who had assaulted the injured informant. He had come upto Bharauli tri-crossing where the informant had written the report. Thereafter, he boarded him in a mini bus for the police station. Thereupon, he went to collect the cycle, which was left on the road, and then went to the informant's house to inform about the incident to family members of the informant. After 18-20 days, the Investigation Officer recorded his statements.

18. PW4 is the Sub-Inspector T.N. Mishra, who took over the investigation after registration of the F.I.R., had recorded the statement of the informant on the date of the incident. Afterwards, he went to the place of incident and prepared the site-plan. At the indication of Awadh Bihari Rai, who was grazing the buffaloes near the place of incident, and a site-plan was prepared on his indication. After preparing the site-plan, he collected bloodstained and plain soil from the place of incident and seized and sealed the same. Afterward, he went to the house of the accused persons to search them and he also searched their house. However, the accused persons could not be found. Afterward, he recorded the statement of witnesses. Then, he has taken the permission to initiate the proceedings under Section 82 and 83 of Cr.P.C. against the accused Madneshwar and Badri Rai, and their movable property were attached on 13.10.1983. Afterward, both

the accused persons surrendered on 19.10.1983 in the court. He came to know that the accused Shyam Bihari was posted at Chhapra in Bihar State as Deputy Collector. He went to arrest him on 10.10.1983 at Chhapra and he was arrested there at Chhapra. Shyam Bihari informed him that he was at Chhapra on the date of the incident. He informed about the same to his District Magistrate, who was inquiring into the matter in this regard. On such information given by the accused Shyam Bihari, he met the District Magistrate of Chhapra and recorded his statement. He informed him that he was doing necessary inquiry in this regard and would send a report to the concerned police station. Afterward, he released the accused Shyam Bihari on personal bond and came back. On 29.09.1983, he recovered the blood-stained clothes (shirt and pants) of the injured, and a memo was prepared. After completion of the investigation, he submitted the charge-sheet against the appellants, Badri and Madneshwar on 13.10.1983. However, the investigation continued against Shyam Bihari. He did not get any reliable evidence from the District Magistrate of Chhapra, whereby it could be believed that on the date of incident the accused Shyam Bihari was not involved in the incident. Thus, on 19.04.1984, the charge-sheet was prepared against the accused Shyam Bihari as well.

19. PW5 is an X-ray technician who brought the X-ray register and x-ray plaint, which was conducted by Dr. Harim, the radiologist. The X-ray report was submitted in the court, and on the basis of which the report was prepared by Dr. Harim. When the X-ray was taken, there was bandage on the hand of the injured, Gorakhnath.

20. PW6 is Dr. Kailash Singh, who conducted the medical examination of the injured and who supported the injury report. As per his opinion all the injuries were fresh at the time of medical examination and the injuries could have been caused at around 9:00 A.M. on 10.09.1983. From the X-ray, a fracture was found on the ulna of the left hand. As per his opinion, all the three gunshot injuries were caused by a single fire. The fracture relates

to injury no.2. After the prosecution evidence, the statements of the accused persons were recorded. Appellant No.2, while denying the prosecution case, alleged that on the date of the incident, he was coming from Viratnagar (in Nepal) to Allahabad, where he was studying and at Bathnaha near Purnia District of Bihar, near the Nepal border, an Excise Officer had apprehended him, and he was later released. Therefore, there was no question of presence of the accused at the place of the incident. Appellant No.1, Madneshwar, has also denied the prosecution case and stated that on the date of the incident, he was studying at Allahabad and he was there. The accused, Shyam Bihari, has also denied the allegations of the prosecution and stated that on the date of the incident, he was posted as Probationer Deputy Collector at Chhapra and on the date and time of the incident, he was there at his Headquarters at Chhapra.

21. In defense, the accused persons examined DW1, Madan Prasad, who was an Officer of the Administrative Services of Bihar. He stated that he knew the accused, Shyam Bihari. He is a member of the Administrative Service of Bihar. He was on training on September, 1983 at Chhapra. His in-laws house is at Chhapra, and he and Shyam Bihari were residing at his in-laws' house. There was no holiday on the second Saturday. On 10.09.1983, he and Shyam Bihari were both at Chhapra. They could leave their headquarters only with the permission of the District Magistrate. He further stated that he remembered that on 10.09.1983, Shyam Bihari was at Chhapra, as one day before i.e., 09.09.1983 there was a *Teej* and the wives of both the persons were fasting for them. The next day it was *Chaturthi*.

22. On 24-25 September, 2025, someone from his village went to Shyam Bihari at Chhapra where he was informed that on 10.09.1983, some incident had taken place in his village. Therefore, during the training period, there is no provision for any attendance register for the trainees. Since 1982, he and Shyam Bihari had stood together and upto 07.10.1983, he was with him at Chhapra. In September 1983, training of both the

persons was concluded. He further stated that training was actually completed in May-June 1983, however, with the expectation of posting, they used to stay at District Headquarters Chhapra, and sometimes they used to look after the law and order and treasury work. However, for the same, there was no arrangement for any attendance to be marked.

23. DW2 is Sudhakar Rai, who stated that he knew the accused Badri Rai, as he had studied with him. He has identified the writing of accused Badri Rai on the detention receipt.

24. DW3 is Dinesh Malviya, Block Development Officer. He stated that he is a member of the Bihar Administrative Services. Since 20.11.1981, he was on training at Chhapra. In March, 1982, for about four months, he had gone to Ranchi. Thereafter, he again came back to Chhapra. Thereafter, he stayed there for about two months for training and again went for training for two months at Dhanbad and again came back to Chhapra. Thereafter, he stayed upto 14.02.1982 at Chhapra. He knew the accused Shyam Bihari, who was also a member of the Administrative Service and was under training in Chhapra. None of the trainees could leave the Headquarters without the permission of the District Magistrate. On the date of the incident i.e., 10.09.1983, he, along with trainee Madan Prasad and Shyam Bihari, had gone to Chhapra court for training purposes. He stated that on 09.09.1983, he was suffering from fever and he had asked Shyam Bihari to bring medicines for him, and he brought the medicines and the next day, at around 10:00 A.M., he came to inquire about his well-being. Thereafter, both of them had gone to court.

25. DW4 is Nishit Kumar, who was posted as Inspector, Central Excise, Patna. He stated that in September 1983, he was post on the same post at Bathnaha, District Purnia. There is no check post at Bathnaha. However, for the purpose of visit, a unit was also there at Bathnaha, however, the same was not there right now. When the people were coming from Nepal to India, their articles used to be checked by the Customs Officer. On 10.09.1983, he

checked Badri Rai and he found six foreign strips of watches in his possession. The same were seized and a receipt in this regard was issued by him. He has identified his signature on the said receipt. The person who was apprehended also signed the said receipt. The case regarding the items seized during inspection is used to be forwarded to the Superintendent and in this case, was also forwarded to the Superintendent at Jogbani, where the departmental order had been sent to the address given by Badri. He submitted that he could not identify the signatures of Superintendent Nirmal Singh.

26. In cross-examination, he could not tell whether except the seizure of the strips of watches on 10.09.1983, he seized the similar items again. He admits that he has been summoned with the original record, however, he has not brought any original record with regard to the aforesaid incident. He has further stated that he cannot identify Badri, who was apprehended by him on 10.09.1983. However, he has stated that he knew the accused Shyam Bihari, who is present in court, since 1978, because Shyam Bihari was also working as an Inspector, in Central Excise earlier at Bathnaha from whom he took the charge. When Shyam Bihari was posted at Bathnaha, which was just 7 KM away from the said place i.e., Forbesganj, District- Poornia.

27. DW5 is Ram Bachan Rai, who was posted as clerk in Sewa Sang Inter College, Sohaon. He has brought some registers from the school regarding the admission of the informant to the school. However, nothing material could be noticed from his deposition.

28. Thus, from the aforesaid depositions of the prosecution witnesses, it has been categorically established that they were the accused persons who chased the informant due to previous enmity and caused the injuries to the informant. At the time of the incident as per the allegation made by the prosecution, specifically the injured witness, it was the accused Shyam Bihari who assaulted him with a country-made pistol, however, the presence of said Shyam Bihari has been doubted by the trial court

on the basis of the depositions of the defence witnesses, as it was stated that he was a trainee at Chhapra on the date of the incident and was present at the place of training and he could not have left the headquarters without the permission of the District Magistrate. However, no definite opinion could be given with regard to his presence at Chhapra on that day as no specific report has been given by the District Magistrate at Chhapra regarding the presence of the accused Shyam Bihari at Chhapra. Though the two witnesses have appeared as defence witnesses who were the co-trainees, who stated that the accused Shyam Bihari was present there. Since the accused Shyam Bihari has already been given the *benefit of doubt* and there is no State appeal before this Court against his acquittal, therefore, this Court do not find any good reason to analyse the evidence with regard to the accused Shyam Bihari. So far as the accused Badri Rai and Madneswar are concerned, clear and categorical allegations have been made by the prosecution that both the appellants herein, Badri, armed with a country-made pistol, as well as Madneshwar, along with Badari, armed with lathi, was chasing the informant due to previous enmity and Shyam Bihari and Madneshwar had assaulted the informant. Due to the gunshot injury fired by Shyam Bihari, he has sustained gunshot injuries and thereafter Madneshwar had assaulted on head of the informant with intention to kill him. Badri Rai had played an active role in chasing the informant.

29. Thus, from the prosecution evidence, there is sufficient material regarding the involvement of the appellants herein, namely Badri Rai and Madneshwar. Though, as per the prosecution case, it was Shyam Bihari who caused the gunshot injury, however, thereupon after the injured fell down, it was Madneshwar who assaulted with lathi on the head, that being a vital part of the injured. Therefore, it can be safely concluded that the intention of the appellants was to kill the informant. However, during the process, the other persons gathered there, due to which the accused persons fled away from the spot. The injuries, as

stated by the prosecution, are duly supported by the medical examination report. Thus, the prosecution has successfully proved its case against the appellants herein. So far as the previous enmity is concerned, it is a double-edged weapon and the same could also categorically indicate the motive of the assault by the appellants on the injured. Since the prosecution has successfully proved its case beyond doubt, therefore, there is no question of any false implication of the appellants herein.

30. So far as the *plea of alibi* taken by the accused Badri Rai is concerned, that is on the basis of a receipt issued by one Nishit Kumar, the Excise Inspector who was a friend of the elder brother of the accused Badri Rai. They had worked together. However, the said Nishit Kumar, who had allegedly apprehended the accused Badri Rai, was asked to bring on record the original record of apprehension and seizure, etc., however, no record had been produced by him except a copy of the receipt produced on record by the accused Badri Rai. No record of any further proceedings has been produced in respect of the said apprehension of accused Badri Rai regarding the seizure of six strips of watches from the possession of accused Badri Rai by the Central Excise Inspector. Thus, the said receipt and deposition of Nishit Kumar is wholly unreliable, which has been rightly discarded by the trial court. Therefore, this court do not find any illegality in the same. Thus, the appellant no.2 has failed to prove his *plea of alibi* in that instant case.

31. So far as the *plea of alibi* taken by the appellant no.1, Madneshwar, is concerned, the same is self-contradictory as, in his bail application, he stated that he went to Patna for his treatment on the date of incident, however, in his 313 Cr.P.C. statement he made a statement that he was in Allahabad, where he was studying. Thus, there is no evidence in support of his plea of alibi has been produced on record. Thus, the same is also not reliable. Thus, the plea of alibi of appellant no.1, Madneshwar, is also not reliable. Thus, the same has been rightly discarded by the trial court. In view thereof, this Court do not find any illegality in

the conviction of the appellants for the offence under Section 307 read with Section 34 I.P.C.

32. So far as the sentence of the appellants is concerned, this Court do not find any justification for awarding a sentence of four years to the Appellant No.2, Badri Rai and one year sentence for the same offence to the Appellant No.1, Madneshwar Rai. The prosecution has assigned the firearm injury to the co-accused Shyam Bihari and not to the Badri Rai, however, active role has been assigned to accused Madneshwar for causing the head injury with lathi.

33. In view thereof, in the considered opinion of this Court, there cannot be any discrimination in awarding the sentence to both the appellants herein. Since there is no State appeal with regard to the sentence awarded to Madneshwar, in view thereof, this Court do not find any reason to award a higher sentence to the co-accused Appellant No.2, Badri Rai.

34. In view thereof, the sentence awarded of Badri Rai, Appellant No.2 is modified to that of one year rigorous punishment instead of four years rigorous imprisonment as awarded by the trial court. The sentence awarded to appellant Madneshwar Rai is maintained to one year rigorous imprisonment for the offence under Section 307 read with Section 34 I.P.C.

35. Thus, the instant appeal on behalf of the Appellant No. 1 is hereby ***dismissed*** and appeal on behalf of the Appellant No.2, Badri is ***partly allowed***. The trial court shall take all necessary steps to apprehend both the appellants for undergoing the remaining sentence in accordance with law. The Superintendent of Police, concerned shall co-operate in this regard.

36. The trial court record be sent back to the trial court for further necessary action.

37. This court appreciates the assistance provided by *Sri Ashutosh Kumar Mishra*, Amicus Curiae, who has assisted the Court and

for the service rendered by him, an honorarium of Rs. 10,000/- shall be paid to him as per rules.

(Anish Kumar Gupta,J.)

September 25, 2025
Shubham Arya