

Reserved on 12.05.2025

Delivered on 13.08.2025

Neutral Citation No. - 2025:AHC:137350-DB

In Chamber

Case :- CRIMINAL APPEAL No. - 1959 of 1986

Appellant :- Om Prakash And Others

Respondent :- State

Counsel for Appellant :- G.P. Dikshit, Anurag Shukla, Rajeev Agrawal, Siddharth Niranjana

Counsel for Respondent :- A.G.A.

Hon'ble Vivek Kumar Birla, J.

Hon'ble Jitendra Kumar Sinha, J.

(Per: Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Shri Sanjeev Kumar Dubey, learned Senior Counsel assisted by Shri Abhishek Tiwari, learned counsel appearing for the appellants, Shri Rahul Asthana, learned AGA for the State and perused the record.

2. By means of this criminal appeal, the appellants have challenged their conviction and sentence of imprisonment for life vide judgement and order dated 17.07.1986 passed by learned Additional Sessions Judge, Ist, Etawah, in Sessions Trial No.52 of 1984 (State Vs. Om Prakash and three others), arising out of Case Crime No.619 of 1981, under Sections 302/34 of IPC, Police Station Auraiya, District Etawah.

3. The prosecution story in brief is that complainant Sone Shanker, resident of village Kariyari, District Bulandshahr has given a written report at concerned police station stating therein that his son Keshav Babu had a tea shop in Auraiya, in the Co-operative Union Park in Homeganj Mohalla. Day before

the date of lodging of the first information report, his son had told that about eight or 10 days ago, Rakesh son of Hari Ram resident of his village, was eating beetle at Vinod Gupta beetle shop. At that time, Hari Krishna Upadhyay was present there. It was 6 or 6-1/2 o'clock in the evening, when Surya Prakash and Om Prakash, sons of Shri Krishna Mohalla Homeganj, who live near his shop, and Vinod, resident of village Shahvadiya, and his friends, a couple of boys and young man, came there. They called Rakesh. When Rakesh did not go, those three-four boys kicked and beat him there itself. The next day his son Keshav and Rakesh and Ram Lakhan and two-three boys together went to Om Prakash's father Shri Krishna and there his son Keshav and Om Prakash abused each other and his father Shri Krishna intervened and made them apologize but since then Om Prakash had developed a strong grudge against him. On that day, he, Jagat Narayan Tripathi and Rakesh from his village had come to Auraiya for shopping and were sitting at his son's shop. It was around two o'clock his son Keshav was working at his tea shop when Om Prakash and Surya Prakash 'sons of Shri Krishna and Vinod resident of village Shahbadiya and Rajesh came and called his son and took him towards the Sanskrit school. Jagat Narayan Tripathi and Rakesh also followed him. As soon as he reached near the school, Rajesh Kumar caught hold of his son and the other three took out their knives and attacked his son with the knives saying that today he would kill him and will not spare the complainant. At the same time, on his son's raising hue and cry, other people who were passing by jumped and challenged the four persons, then these four persons left his son Keshav

lying there after injuring him with the knives and ran away towards Narayanpur with the knives in their hands. Rajesh Kumar's hand, who was holding his son, had also been injured due to the stabbing by those persons. There was a lot of blood at the place where they hit his son.

4. The investigation of the case was conducted by the investigating officer and after conclusion of the investigation he submitted charge sheet against the accused in the Court.

5. The learned Magistrate took cognizance on the charge sheet submitted to the Court of Session for trial. The learned trial Court framed charge against the appellants accused under Sections 302 IPC. The appellants accused pleaded not guilty and claimed for trial.

6. The prosecution has examined eight witnesses before trial Court, namely, PW-1 Sone Shanker, PW-2 Jagat Narain, PW-3 Rakesh, PW-4 Vijay Bahadur Singh, PW-5 Dr. R.K. Gupta, PW-6 Nawab Singh, PW-7 Dr. Rajendra Singh. The prosecution has proved Written Report as Ext. Ka1, FIR as Ext. Ka2, Panchayatnama as Ext. Ka6, Recovery memo of blood stained and plain earth as Ext. Ka12, Charge sheet Mool as Ext. Ka13, Charge sheet Mool as Ext. Ka14, Injury Reports as Ext. Ka15, Ka16, Ka17 & Ka18, Postmortem Report as Ext. Ka19 as documentary evidence.

7. PW-5, Dr. R.K. Gupta, M.O., Government Hospital Auraiya examined the deceased Keshav Kumar and found the following injuries on his person:-

“1- Incised wound 2cm X 1 cm whose depth was not measured. It was on the right side of the chest 4 cm towards the right nipple, its edges were regular and clean cuts and it was bleeding badly.

2- Incised wound 2cm X 1cm whose depth was not measured.

He had prepared the above injury report during medical examination which was in his handwriting and signature. On it, identification marks of the injured were marked 02 on it. EXC 17 was put on it. It is possible that the above injuries were caused by a knife. It is possible that these injuries were caused on 25-12-81 at 2 o'clock in the afternoon.

3- On the same day at 3:30 P.M. Shri Rajesh Kumar, aged 23 years, son of Shri Ram Kishan resident of Budhadana, Police Station Dibiyapur, who was taken to C/5. 804 Hakim Singh was brought to the hospital and his injuries were examined by the doctor and the following injuries were found on his body-

1- Incised wound 6cm X 1cm which was deep to the muscles and was on the inner side of the middle portion of the left palm. Its edges were regular and cleanly cut. The direction was oblique. It was bleeding profusely.

2- Incised wound 1cm X linear which was deep to the skin and was on the inner side of the right palm near the wrist. It was bleeding fresh. Both these injuries were inflicted by a sharp weapon and were simple and fresh.

In the opinion of the doctor, both the injuries of Rajesh Kumar were on his palms, so there was a possibility that he might have got these injuries while saving himself or someone else.

8. PW-7, Dr. Rajendra Singh was posted as Medical Officer, Police Hospital, Moradabad conducted the postmortem of the deceased and following injuries were found on his person :-

“1- Incised wound 2cm X 0.5cm X cavity deep on the right side of the chest 4 cm towards the right nipple.

2- Incised wound 2cm X 0.5cm X cavity deep on the left side of the stomach 13cm below the left nipple.

3- Incised wound 3cm X 1cm X cavity deep on right side of abdomen 5 cm outwards from injury no. 2.

4- Incised wound 1 cm X 0.5cm X cavity deep on left side of chest along axillary line 14cm outwards from left nipple.

5- A total of 6 clothes, trousers, vest, bush shirt, sweater, coat and underwear were removed from the body of the deceased, sealed in a bundle and handed over to the policemen accompanying him. The death of the deceased could have occurred on 25-12-81 at 3:00 PM.

6- Keshav Kumar's pleura, lungs and liver were cut due to the injuries, it was possible that he became unconscious immediately after the injuries. There could be a difference of 2-3 hours in the time of death of the deceased on either side, i.e. the death could have occurred on 25-12-81 at 2:00 PM”

9. After closure of prosecution evidence the statements of appellants-accused were recorded under Section 313 Cr.P.C., in which the accused persons denied their involvement in the case. The appellants accused also stated in their statements under Section 313 Cr.P.C. that they were roped in this case due to enmity.

10. The learned trial Court after hearing the arguments of prosecution and the defence and on perusal of the records passed the judgment of conviction and order of sentence impugned.

11. In case of **Harbans Singh Vs. State of U.P. and others (1982) 2 SCC 101**, paragraph no.18 whereof reads as under:-

“18. To my mind, it will be a sheer travesty of justice and the course of justice will be perverted, if for the very same offence, the petitioner has to swing and pay the extreme penalty of death whereas the death sentence imposed on his co-accused for the very same offence is commuted to one of life imprisonment and the life of the co-accused is shared. The case of the Petitioner Harbans Singh appears, indeed, to be unfortunate, as neither in his special leave petition and the review petition in this Court nor in his mercy petition to the President of India, this all important and significant fact that the life sentence imposed on his co-accused in respect of the very same offence has been commuted to one of life imprisonment has been mentioned. Had this fact been brought to the notice of this Court at the time when the Court dealt with the special leave petition of the petitioner or even his review petition, I have no doubt in my mind that this Court would have commuted his death sentence to one of life imprisonment. For the same offence and for the same kind of involvement, responsibility and complicity, capital punishment on one and life imprisonment on the other would never have been just. I also feel that had the petitioner in his mercy petition to the President of India made any mention of this fact of commutation of death sentence to one of life imprisonment on his co-accused in respect of the very same offence, the President might have been inclined to take a different view on his petition.”

12. In the case of **Ram Laxman Vs. State of Rajasthan (2016)12 SCC 389**, paragraph nos.6 & 7 whereof reads as under: -

“6. Strangely, the High Court disbelieved Ganesh qua the other co-accused and granted them acquittal but accepted his testimony in respect

of the appellants by explaining that the maxim “*falsus in uno, falsus in omnibus*” stands disapproved since long as per judgment of this Court in the case of [Ugar Ahir v. State of Bihar](#), AIR 1965 SC 277.

7. In our considered view the Division Bench committed a serious error in relying upon the aforesaid judgment. No doubt, it is an established principle of criminal law in India that only on account of detecting some falsehood in the statement of a witness who is otherwise consistent and reliable, his entire testimony should not be discarded. It is equally settled law that if a witness is found un-dependable and un-reliable his evidence can not be split to grant benefit to some co-accused while maintaining conviction of another when in all respects he stands on same footing and deserves parity.

13. In the case of Javed Shaukat Ali Qureshi Vs. State of Gujrat (2023) 9 SCC 164, paragraph nos.15 and 19 whereof reads as under:

“15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.

19. We have found that the case of accused no 2 stands on the same footing as accused nos. 1,5 and 13 acquitted by this Court. The accused no.2 must get the benefit of parity. The principles [laid down in](#) the case of Harbans Singh⁴ will apply. If we fail to grant relief to accused no 2, the rights guaranteed to accused no. 2 under [Article 21](#) of the Constitution of India will be violated. It will amount to doing manifest injustice. In fact, as a Constitutional Court entrusted with the duty of upholding fundamental rights guaranteed under the Constitution, it is our duty and obligation to extend the same relief to accused no.2. Therefore, we will have to recall the order passed in the special leave petition filed by accused no.2.”

14. In the case of Ram Singh Vs. State of U.P. (2024) 4 SCC 208, paragraph no.3 and 7 whereof reads as under:

“3. As noticed above, the appeal filed by the appellant before the High Court of Judicature at Allahabad (“ the High Court” for short) was dismissed. Consequently, the conviction and sentence of the appellant imposed by the Sessions Court was confirmed by the High Court.

“7. To prove its case, the prosecution examined six witnesses. After considering the evidence and materials on record, the Sessions Court convicted the appellant under Section 301 read with Section 302 IPC and also under Section 307 IPC. However, the other accused Lala Ram was given the benefit of doubt and accordingly was acquitted.”

15. In the case of **Joginder Singh and others Vs. State of Punjab (1994) 4 SCC (Cri) 46**, paragraph nos.3 & 4 whereof reads as under: -

“3. The accused denied the offence and stated that they were falsely implicated. The prosecution case rested on the evidence of PW3, the father of the deceased and PW 4 who claimed to be an eye witness. The trial Court convicted six of the accused persons, as already stated. The trial Court considered their evidence and observed that the possibility of false implication of three of the convicted accused cannot be ruled out. Having stated so, the High Court acquitted three of the accused. At more than one place, the High Court pointed that the false implication of the acquitted accused cannot be ruled out. Without further discussion, the High Court convicted the three appellants solely on the ground that they had motive to attack. It may be mentioned that the evidence of PWs3 and 4 is to the effect that quite a few of the acquitted accused inflicted injuries with shard-edged weapons. But their evidence is rejected in respect of other five accused solely on the ground that they could have been falsely implicated. In our view, the same reasoning applies to the case of the present appellants also. If that be the position, the appellants cannot be treated as a different category merely on the ground that they had motive and on that basis they could not have been convicted when the evidence of the eyewitnesses was found to be highly unsatisfactory. The High Court has committed an error in convicting the present appellants having rejected the evidence of the eyewitnesses in respect of the other accused.

4. Accordingly, the appeal is allowed. The conviction and sentences passed against the appellants are set aside. If they are on bail, their bail bonds stand cancelled.”

16. Learned counsel for the appellants submits that the trial Court has committed error in convicting the appellants. He further submits that on the same set of facts and the evidence other two accused persons, namely, Vinod and Rajesh have been acquitted by the learned trial Court.

17. Learned counsel for the appellants further submits that the trial Court has acquitted Vinod on the ground that PW-3 Rakesh had given an affidavit to the Superintendent of Police that the accused Vinod was not involved in this case and accused Rajesh was acquitted on the ground that he received injuries on his palm. The learned trial Court has held that he was trying to save the deceased Keshav Babu and he was not an assailant.

18. Learned counsel for the appellants submits that there are material contradictions in the testimony of PW-1, PW-2 and PW-3 the so called eye witnesses. He refers to the examination-in-chief of PW-1 Sone Shankar, in which, he has stated that the accused Rajesh Babu had caught hold of Keshav Babu near the 'Pathshala' and accused Rajesh had also received injuries in the 'Marpeet'. He refers to the cross-examination of PW-1, in which he has stated that when he and other witnesses reached the place of occurrence, the accused persons had fled away after inflicting stab blows and accused persons have inflicted four blows. Accused Vinod had also inflicted stab wound on the stomach as was told to him by his son but he did not see as to which accused had inflicted a stab wound.

19. Learned counsel for the appellants further refers to the cross-examination of this witness, in which, he has stated that Om Prakash and Vinod had inflicted stab wound as told to him by his son but he did not see. This witness has further stated in his cross-examination that he did not get it written from Ravi Kishan that his son had told him that Vinod and Om Prakash had inflicted knife wound.

20. Learned counsel for the appellants further refers to the cross-examination of this witness, in which, he had stated that he had not told the Daroga that his son had told him that Vinod and Om Prakash had inflicted knife wounds.

21. Learned counsel for the appellants submits that from the testimony of this witness in his cross-examination, it is evident that all the eye witnesses reached the place of occurrence after

the incident had already taken place and none of them had witnessed the incident.

22. Learned counsel for the appellants further submits that PW-1 clearly admitted in his cross-examination that he did not see as to who inflicted the stab wound. He further refers to the cross-examination of PW-1 that he took the injured son to the Hospital and he further stated that he cried while clinging on his son but no blood was found on his clothes, which is highly improbable.

23. Learned counsel for the appellants further refers to the cross-examination of the witness, in which , he has stated that he had not accompanied the Daroga for preparation of the site plan and he did not know as to on whose pointing out the site-plan of the place of occurrence was prepared by the Investigating Officer.

24. Learned counsel for the appellants has referred to the testimony of PW-2, in which, he has stated that at the time of occurrence he along with PW-3 Rakesh, Sone Shankar PW-1 and Hari Krishna Upadhyaya were present at the shop of Keshav and at that time, Om Prakash, Surya Prakash, Vinod came there and they called Keshav Babu. This witness has supported the prosecution case in the examination-in-chief but in cross-examination by defence, he has stated that accused Om Prakash gave the first blow which was intercepted by Rajesh and Rajesh also received injuries.

25. Learned counsel further submits that there is a material contradiction in the testimony of PW-1 and PW-2 and PW-1 has stated that Rajesh had caught hold of Keshav Babu,

whereas PW-2 has stated in his examination-in-chief that Rajesh intercepted the first blow of Om Prakash. This witness has stated in his cross-examination that he had filed an affidavit in the Court after the incident that Rajesh had tried to save Keshav Babu as a result of which, he received injuries.

26. Learned counsel further refers to the cross-examination of this witness, PW-2 in which, he had stated that the place of occurrence is about 50 yards away from the shop of Keshav and the accused persons called him. He went with them forthwith and this witness went after them five minutes later. This witness has further stated that when the first blow was inflicted on Keshav Babu, he was 20 yards away from him. This witness has stated that Surya Prakash had caught hold of Keshav Babu and Surya Prakash had caught hold of him by neck and as soon as the accused attacked with knife, the accused persons did let down their grip of the victim.

27. Learned counsel submits that from the testimony of PW-2, it is evident that he is not an eye witness to the occurrence and there are material contradictions in the testimony of PW-1 as PW-2 as PW-1 has clearly stated that Rajesh had caught hold of the victim, whereas this witness PW-2 has stated that Surya Prakash had caught hold of the victim. He further submits that this witness has stated that he left the shop of Keshav, five minutes after Keshav had left with the accused persons and the place of occurrence is 50 yards from the shop of Keshav.

28. Learned counsel for the appellants further submits that PW-2 has not stated anything in his cross-examination that

there was any wall or any obstruction between the shop and the place of occurrence.

29. Learned counsel further submits that in the cross-examination of this witness it has come that when Keshav left with accused persons there were 2 to 4 customers present at his shop, whereas PW-1 has stated that no one was present at the shop when the incident took place.

30. Learned counsel also refers to the cross-examination of PW-1, in which, he has stated that after the incident he did not have any talk with PW-2, which is highly improbable that since the incident took place before them, it was usual to have talk with him at least for sometime after the incident.

31. Learned counsel also refers to the cross-examination of PW-3 Rakesh son of Hari Ram and submits that the witness was also not present at the place of occurrence and this witness has also stated that he followed Keshav 4-5 minutes after he left the shop in the company of the accused. In his cross-examination, this witness has stated that Rajesh was also involved with the other accused persons in '*Marpeet*' and he had not accompanied the injured and Rajesh had gone to the Hospital after the death of Keshav.

32. Learned counsel further refers to the cross-examination, in which, he had denied that he had filed an affidavit before the Superintendent of Police. However, he has admitted his signature on the affidavit.

33. Learned counsel further submits that there are material contradictions in the testimonies of PW-1, PW-2 and PW-3 regarding the manner in which, the occurrence had taken place

and their presence at the place of occurrence is doubtful. He further submits that the accused Rajesh, who has been assigned the role of catching hold of the victim and in the process he received injuries on his palm, could not have been possible, as a person cannot receive injuries on his palm while catching hold of another person.

34. Learned counsel further submits that the learned trial Court has completely erred in partly relying on the testimony of the witnesses and partly not relying on them with regard to the role of appellants Surya Prakash and Om Prakash and other two acquitted persons, namely, Rajesh and Vinod. He further submits that the learned trial Court has given a finding that the motive for commission of offence did not rest with the co-accused Vinod as the complaint regarding the ‘*Marpeet*’ with PW-3 was made to the father of the appellant Om Prakash and not with the father of Vinod.

35. Learned counsel further submits that it is also clear on the same reasoning that there was no motive against the appellant Surya Prakash.

36. Learned counsel for the appellants further submits that in view of the judgment of Hon’ble Supreme Court in the case of *Joginder Singh and others Vs. State of Punjab*, *in which, the Hon’ble Supreme Court has held that the same reasoning applies to the case of the present appellants also. If that be the position, the appellants cannot be treated as a different category merely on the ground that they had motive and on that basis they could not have been convicted when the evidence of the eyewitnesses was found to be highly*

unsatisfactory. The High Court has committed an error in convicting the present appellants having rejected the evidence of the eyewitnesses in respect of the another accused.

37. Learned counsel further submits that since presence of PW-1, PW-2 and PW-3, the eye witnesses at the place of occurrence is doubtful and two of the accused persons, namely, Rajesh and Vinod have already been acquitted by the trial Court on the same evidence the appellants also deserve the benefit of doubt and are liable to be acquitted.

38. On the other hand, learned AGA has supported the judgment of learned trial Court and has submitted that the learned trial Court has rightly convicted the appellants as the eye witnesses PW-1, PW-2 and PW-3 are wholly reliable. He further submits that there are some discrepancies in their statement but they are not so material, which can go to the root of the matter.

39. Learned AGA further submits that the benefit of acquittal of the co-accused persons, namely, Vinod and Rajesh cannot be extended to the appellants and the evidence has to be appreciated on the record of the trial court as it is.

40. We have gone through the evidence available on the record.

41. Initially, the first information report was lodged under Section 307 IPC, which means that at the time of lodging of the first information report, the victim Keshav Babu was alive. Subsequently, after the death of Keshav Babu, the case was converted under Section 302 of IPC. PW-1 Sone Shanker is the informant of the case who is father of the deceased.

42. As per the first information report, motive as alleged is that 8-10 days prior to the incident, the accused Vinod, Surya Prakash, Om Prakash and two other boys had called Rakesh and when he did not respond to the call, all the above persons beat him with fisticuffs and leg kicks and a complaint regarding this was made to the father of Om Prakash, namely, Shri Krishna and exchange of abuses took place between Om Prakash and Keshav Babu. Shri Krishna father of Om Prakash intervened and got the matter settled. From this incident Om Prakash got inimical to Keshav and due to this enmity, the offence has been committed by all the four accused persons, namely, Om Prakash, Surya Prakash, Vinod and Rajesh.

43. As per first information report, on the date of occurrence dated 25.12.1981 at about 02:00 P.M., four accused persons, namely, Om Prakash, Surya Prakash, Vinod and Rajesh took away the son of the informant Keshav towards Sanskrit Pathshala and the informant Sone Shanker, Jagat Narain Tripathi and Rakesh, namely, PW-1, PW-2 and PW-3 followed them where Rajesh Kumar had caught hold of the son of the informant and rest of the accused inflicted knife wound on him.

44. As per first information report, a motive as alleged is clearly against Om Prakash whereas there is no motive against Surya Prakash. As per first information report, accused Rajesh Kumar has been assigned the role of catching hold of the victim and PW-1 in his testimony has stated that Rajesh caught hold of the victim whereas PW-2 has stated in his examination-in-chief itself that accused Rajesh intercepted the blow of Om

Prakash with his palm and that Rajesh had tried to save the victim Keshav Babu, which is a materially contradictory to the averments made in the first information report.

45. On the careful scrutiny of testimony of PW-1, PW-2 and PW-3, it is evident that PW-1 has stated in his cross examination that he did not see the incident himself rather he was told by his son regarding the manner of the occurrence, who subsequently died. Similarly, PW-2 and PW-3 have stated in their testimonies before the trial Court that they followed the victim 4-5 minutes later after he had left with the accused persons. The distance of the place of occurrence from the shop of the deceased is 50 yards and it is highly improbable that a person would cover a distance of 50 yards in five minutes and he will not see the incident. A normal person can see anything happening before him from a distance of 50 yards by his naked eyes. PW-2 has stated that when the incident took place, he was 20 yards away from the place of occurrence, which is highly improbable.

46. Similarly, the testimony of PW-3 Rakesh is also materially contradictory with regard to the role of Rajesh as this witness has stated that Rajesh was also with the other accused persons in calling the victim Keshav Babu.

47. The testimony of this witness itself is contradictory as he himself has stated that the accused Rajesh intercepted the first blow of Om Prakash whereas he stated that the time of '*Marpeet*' all the accused persons were together and Rajesh was involved in the '*Marpeet*' and he had left with other accused persons after the '*Marpeet*'. Further, the testimony of the

Doctor PW-5, who has medicolegally examined the injured Keshav Babu before his death and found two incised wound on his person as already noticed, whereas PW-7 Dr. Rajendra Singh, who conducted the postmortem of the deceased has found four incised wound on his person, which is materially contradictory to each other.

48. PW-5 has medicolegally examined Rajesh and has found two incised wound, one in left palm and another on right palm. Other witnesses are formal witnesses, namely, PW-4 who has proved the chik FIR. PW-5 and PW-6 are also formal witnesses, where as PW-6 has proved that he took the dead body of Keshav in a sealed condition for the conduct of postmortem, whereas PW-4 has proved the chik FIR and he is also the investigating officer of the case and he has stated that the case was converted to Section 302 IPC after the death of Keshav Babu at 03:15 P.M.

49. DW-1 is Advocate Arun Kumar Chaturvedi, who has proved the signature of Rakesh on his affidavit and has stated that Rakesh had given an affidavit on 25.03.1983 and he had identified the signature of Advocate Panna Lal Yadav, who had verified the signature of PW-3 Rakesh.

50. The learned trial Court has acquitted the accused Rajesh and Vinod on the ground that an affidavit was filed by PW-3 Rakesh before the Superintendent of Police stating therein that Rajesh was not involved in the commission of offence and the learned trial Court has also given the reasoning that motive for commission of offence was not against Vinod.

51. The learned trial Court has also acquitted the co-accused Rajesh believing the testimony of PW-2 that Rajesh intercepted the first blow of Om Prakash and he was not involved in the commission of the offence rather he tried to save victim Keshav Babu.

52. So far as the motive is concerned, in the case of direct evidence, the motive is of little significance and motive as alleged is shown against accused Om Prakash and the prosecution has suggested no motive against accused Surya Prakash.

53. Moreover, PW-1, PW-2 and PW-3 are contradictory in their statements, whereas PW-1 has stated that Rajesh had caught hold of victim Keshav Babu, whereas PW-2 has stated that the accused Surya Prakash had caught hold of the victim by neck, whereas PW-3 has stated that no one had caught hold of the victim.

54. On overall appreciation of the evidence, we find that the presence of eye witnesses PW-1, PW-2 and PW-3 at the place of occurrence is doubtful. We also find that the prosecution has not been able to prove its case beyond the shadow of reasonable doubt against the appellants and the appellants are also entitled to be given benefit of doubt.

55. Resultantly, the appeal deserves to be allowed. The conviction and sentence of imprisonment for life passed by learned Additional Sessions Judge, Ist, Etawah, in Sessions Trial No.52 of 1984 (State Vs. Om Prakash and three others), arising out of Case Crime No.619 of 1981, under Sections 302/34 of

IPC, Police Station Auraiya, District Etawah, are hereby set aside.

56. Accordingly, the appeal is allowed.

57. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties are discharged.

58. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate, Etawah, for compliance forthwith.

Order Date :- 13.08.2025
RKM