



2025:AHC:161747-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

Criminal Appeal No. 2052 of 1985

Raja Babu And Another Appellants(s)

Versus

State of U.P. Respondents(s)

Counsel for Appellants(s)	: Ghanshyam Das Mishra, Umesh Panday, V.P.Srivastava
Counsel for Respondent(s)	: D.G.A

With

Criminal Appeal No. 1653 of 1985

Radhey @ Radhey Appellants(s)
Shyam And Others

Versus

State Respondents(s)

Counsel for Appellants(s)	: :J.S.Sengar
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Counsel for Respondent(s)	: V.S.Singh
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Court No. - 44

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

1. Heard Sri Gopal Swaroop Chaturvedi, learned Senior Counsel assisted by Ms Saumya Chaturvedi, learned counsel for the appellants and Ms Archana Singh, learned A.G.A-1 for the State and perused the record.

2. Present criminal appeal arises from the judgement and order dated 12.06.1985 passed by Shri V.S. Kulshertha, learned Sessions Judge, Banda in S.T. No. 168 of 1985 (State Vs. Raja Babu, Ram Babu both

sons of Chunnubad, Radhey @ Radhey Shyam, Ram Milan, Chhota, Raja son of Ram Dass). Thereby, the learned Court below has convicted Raja Babu, Ram Milan and Radhey @ Radhey Shyam for offence under Section 302 read with 149 I.P.C sentenced them for life; also it has convicted those appellants under Section 148 I.P.C and sentenced them two years rigorous imprisonment. At the same time learned Court below has convicted the appellants Ram Babu, Chhota and Raja for the offence under Section 302 read with 149 I.P.C. and sentenced those accused for life. LastP, it has convicted the appellants Ram Babu, Chhota and Radhey @ Radhey Shyam under Section 147 I.P.C. and sentenced them for one year rigorous imprisonment.

3. Against the above judgement and order, two sets of appeal have been filed. Criminal Appeal No. 2052 of 1985 has been filed by accused Raja Babu and Ram Milan. In that, the appellant Ram Milan is dead. His appeal has been declared abated. Also, other four accused namely Radhey @ Radhey Shyam, Ram Babu, Chhota and Raja have filed the other criminal appeal no. 1653 of 1985. The appellant Raja has died. His appeal has also been declared abated.

4. The prosecution story emerged on the strength of Written Report dated 16.01.1985 submitted by Laxmi Prasad, father of the deceased Ram Lala, narrating that on 16.01.1985 at about 4:30 PM, the deceased was killed by Raja Babu and Ram Milan who shot at him with their guns, in the field of Kallu Dhaturaha at village Tendura. In that, other appellants Radhey @ Radhey Shyam, Ram Babu, Chhota and Raja were assigned general role of exhortation. The occurrence was seen by Laxmi Prasad (PW-1), his younger son Babu Prasad (PW-3) and his daughter Ranno, who were going towards their agricultural field, at that time. On alarm being raised, other villagers arrived at the place of occurrence. On that Written Report, FIR was registered at Police Station Bisanda, at a distance of 9 km from the place of occurrence, at 6:30 PM on 16.01.1985. The FIR is Ex. Ka-3 at the trial.

5. On that FIR, Inquest Report was prepared the next day i.e on 17.01.1985 between 8-10 AM by S.I. Jagmohan Pandey, first Investigation Officer (PW-6). It is Ex. Ka-6 at the trial.

6. Also on the same day, samples of plain and blood stained earth was recovered from the place of occurrence. That Recovery Memo is Ex.Ka-1 at the trial. Another recovery was made of empty cartridge, from the place of occurrence. That Recovery Memo is Ex.Ka-12 at the trial.

7. The next day i.e. 18.01.1985 at around 3:00 PM, autopsy examination was conducted on the dead body of the deceased by Dr. S.C. Mittal (PW-2). He estimated, death had been caused about two days earlier, as a result of shock and hemorrhage due to ante-mortem gun shot injuries. Those, ante mortem injuries were noted by the said doctor as below:-

"1 cm. X 1 C. X 1. Gun shot wound of entry content deep on the back of left side chest well .3 Cm. away from mid-line and 2 Cms. down from top of back of game chest. Abraded collar present. Inverted margin, no blankening no charring and no tattooing.

2. Gun shot wound of exit 1.5 One. X 10. X chest content deep on the front of left side chest 2 Ins. down from left nipple at 510 clock position. Mrugins evertel. On section- 5th rib over chest we and was found fractured and lower lobe of left lung perforated below. The wall of heart(Left ventricle) was showing gutter shaped injury. About one litre blood was found in left side chest cavity. Direction- from back to front and upwards and little downwards.

3. Gunshot wound of entry on the upper lip and lower lip of mouth on right side measuring 1.1. muscle deep and on upper lip over 1.3 Cms. X 1 Cm. X muscle deep and lower lip. Mrgins were inverted. Abraded collar present. On both injuries blackening was present on mouth, nose and face of left side. small part of charring al tattooing also present.

4. Six gunshot wound of exit each measuring 1. X 1 Cm. size on the right side of face and neck (area about 9 Cms. 6 Oms.) one side from front of right ear, and down to right side neck. Tongue and lower jaw and maxilla of right side and teeth were be lly fractured. Direction- left to right partly de inwards. One vad wie recovered from the muscles of mouth and neck.

5. Multiple abrasions in an area of 2 Cas. X 2. Cms. on the right side of face 2 Omm. ray from angle of mouth.

6. One lacerated wound oval shaped 2 Oms. X 1 Cm X muscle deep on the left side of skull 4 Cas. above left ear.

7. Abrasion 1.5 Cms. X 1.5 Cms. X .5 Cm. X .5 Cm. on the mastoid part of left neck and pinna of ear."

The Autopsy Report is Ex.Ka-2 at the trial.

8. Upon completion of investigation, the second Investigation Officer - Sri. Shyam Das Singh Rana (not examined at the trial) submitted the chargesheet.

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

Against Ram Babu, Chhota and Raja

“Firstly, that you along with 3 others on 16.1.1985 at 4.30 p.m. near the field of Kallu Dhaturaha in village Tandura P.S. Bisanda, district Banda were a member of an unlawful assembly, and, in prosecution of the common object of such assembly viz., in committing the murder of Ram Lal, committed the offence of rioting and thereby committed an offence punishable under section 147 I.P.C. and with--in the cognizance of this court of Session.

Secondly, On the said date, time and place you did commit murder by intentionally causing the death of Ram Lal in prosecution of the common object of the unlawful assembly, and thereby committed an offence punishable U/S. 302/149 I.P.C. and within the cognizance of the court of Session.”

Against Raja Babu, Ram Milan and Radhey Shyam

“Firstly, that you along with three others on 16.1.1985 at 4.30 p.m. near the field of Kallu Dhaturaha in village Tandura P.S. Bisanda, district Banda were a member of an unlawful assembly, and did, in prosecution of the common object of such assembly, viz. in committing the murder of Ram Lal, commit the offence of rioting and at that time were armed with a deadly weapon to wit guns and Barchhi respectively, and thereby committed an offence punishable under section 148 I.P.C., and within the cognizance of the Court of Session.

Secondly, that on the same date time and place did commit murder by intentionally causing the death of Ram Lal in prosecution of the common object of that assembly, and thereby committed an offence punishable U/S. 302/149 I.P.C. and within the cognizance of the court of Session.”

10. At the trial, besides relying upon the above documentary evidence, the prosecution led oral evidence through six witnesses. In that, two were presented as witness of fact - both eye witnesses. Thus, Laxmi Prasad, father of the deceased Ram Lala was examined as PW-1. He proved, both sides were related, being collaterals. Fifteen days prior to this occurrence Gulbada, father of Raja Babu (Appellant No.1) in Criminal Appeal No. 2052 of 1985 and Ram Babu (Appellant No. 2) in Criminal Appeal No. 1653 of 1985 had been killed. On the date of the

present occurrence, his daughter Ranno, his son Babu Prasad (PW-3), himself i.e Laxmi Prasad (PW-1) and Ram Lala (the deceased) were walking - one behind the other, in that order, towards their own agricultural field. The present appellants ambushed the deceased near the agricultural field of Kallu Dhaturaha. In that all four appellants (in Criminal Appeal No. 1653 of 1985), armed with wooden staff/ '*lathis*' and '*barchi*' exhorted others to kill while the deceased Ram Lala was shot at by Raja Babu and Ram Milan (both appellants in Criminal Appeal No. 2052 of 1985). On that assault being caused, the witness alongwith his daughter Ranno and younger son Babu Prasad (PW-3), fled towards the village pond, whereas the deceased ran west. On being hit, the deceased fell. The assailants surrounded him and killed him. On alarm being raised, other villagers arrived. At that time, the accused fled east. The deceased had received injuries. His clothes were soaked with blood and he died.

11. Thereafter witness narrated, leaving the dead body in the care of the villagers, he left for Bisanda where he prepared the Written Report at the house of village Pradhan Salig Bhaiya, on his dictation to the said scribe. That Written Report was signed and presented at the Police Station. He proved the Written Report. Thereafter, he proved that the Inquest Report was prepared the next morning, and thereafter the dead body was sent for autopsy examination.

12. Also, Babu Prasad son of Laxmi Prasad (PW-1) was examined as PW-3. He proved the occurrence in similar manner as Laxmi Prasad (PW-1).

13. Thereafter, Dr. S.C. Mittal was examined as P.W. 2. He proved that the deceased had received four firearm injuries. Injury no. 1 was an entry wound on the right side of his back, behind the chest while injury no. 2 was an exit wound caused on the front side of the chest, connecting to injury no. 1. Those, injuries had perforated the lungs of the deceased.

14. Injury nos. 3 and 4 were also noted to be firearm injuries with injury no. 3 an entry wound on the right side of the face of the deceased, caused on the upper and the lower lip, with blackening, charring and tattooing.

Injury no. 4 was also a firearm injury, it being exit wound caused on the right side on the face and neck of the deceased. In that, the tongue was ruptured and maxilla bone was fractured and few teeth were found missing. That injury was caused from left to right. Piece of wadding were also recovered inside those injuries. Besides those injuries, two abrasion injuries and one lacerated wound was also noted by the doctor. In his opinion, injury no. 6 i.e a lacerated wound may have been caused as the deceased may have fallen on a hard blunt object while injury nos. 5 and 7 i.e. abrasion injuries may have been caused while the deceased may have struggled upon receiving the other firearm injuries.

15. Head Constable - Ram Singh was examined as PW-4. He proved that the First Information Report was registered at 6:30 p.m. on 16.01.1985. Check Report was prepared by him. The Written Report was marked as Ex.Ka-1 and the FIR was proved and marked as Ex.Ka-3. He also proved G.D entry-27 to establish that case was registered at the time 6:30 p.m. Thereafter, he proved the Special Report was dispatched to the concerned Magistrate through Homeguard Lotan Ram (not examined at the trial) on 16.01.1985 at 7:10 PM. However, that dispatch could not be completed as Homeguard Lotan Ram could not find appropriate conveyance. He returned to the Police Station and left with the Special Report, the next morning i.e on 17.01.1985 and returned the same day in the evening.

16. Constable Ganga Charan Awasthi was examined as PW-5. He proved the transportation of the dead body. Last, first Investigation Officer S.I. Jagmohan Pandey was examined as P.W-6. He proved the investigation. Second Investigation Officer, Shyam Das Singh Rana was not examined at the trial. However, there is no plea raised on that ground. Thereafter, the statement of the accused persons was recorded under Section 313 Cr.P.C. In that they suggested that they had been falsely implicated for reason of maintaining social boycott of the victim side for upon the mother of Laxmi living with someone else, outside her marriage.

17. In such evidence, the learned Court below has convicted the present appellants and sentenced them, as noted above.

18. Submission of the learned Senior Counsel for the appellant is, that the FIR is wholly ante-timed. Doubt exists, though the occurrence is described to have been caused at 4:30 PM on 16.01.1985 and the FIR is claimed to have been registered at 6:30 p.m., the same day, neither the Special Report was dispatched that day nor it is believable that the Special Report was dispatched through Homeguard Lotan Ram, on 17.01.1985, in the morning. Lotan Ram was deliberately not produced by the prosecution to avoid his cross-examination which would have brought out the truth. It is otherwise unbelievable that Homeguard Lotan Ram would have taken the whole day to present the Special Report to the learned Magistrate before returning to the Police Station Bisaunda, by late evening. It is also clear from the fact that the Inquest Report was not prepared the same day but the next day, between 08-10 AM as also from late dispatch of the dead body of Ram Lala for autopsy examination (that was delayed by more than almost 48 hours), that the FIR is ante-timed. Though the G.D. entry may have been blocked - to suit the prosecution story, the story itself emerged much later, after preparation of not only the Inquest Report, but the autopsy examination as well.

19. Besides the above, it has been submitted, no independent witness has been examined by the prosecution in support of its story. Both Laxmi Prasad (PW-1) and Babu Prasad (PW-3) are highly interested witnesses. They are chance witnesses, inasmuch as on their own showing they had no work or reason to follow the deceased Ram Lala, 15 minutes behind, that too with his daughter. Babu Prasad (PW-3) was a school going child whose school gave over at about 3:00 PM. His presence at the exact time, at the same place with Laxmi Prasad (PW-1), is a pure chance and not believable. He has been set up by the prosecution to give colour to the otherwise blind murder that was caused, much later. In that regard reference has been made to the cross-examination statement of Dr. S.C. Mittal who did not deny the possibility of death caused 6-8 hours before or after the time estimated by him. In short, death was caused during night. No body saw the occurrence. Yet, a false prosecution narration emerged, much after the occurrence.

20. Third, absolutely no motive existed with the appellants to murder Ram Lala. During the cross examination of Laxmi Prasad (PW-1), it clearly came out that Chunubad, the father of accused Raja Babu and Ram Babu was allegedly murdered by Rajwa and Pancha Chamar and that no report had been made against the informant side, in that case. Referring to the cross-examination of Laxmi Prasad (PW-1) and the statement made under Section 313 Cr.P.C., it has been stated that the informant side may carried grudge for reason of social boycott by them (of the informant side), as has given rise to a false prosecution story, wherein all adult family members of the appellant side have been implicated.

21. Last, it has been submitted, in any case, the main role of firing has been assigned to the accused persons Raja Babu and Ram Milan. Ram Milan is dead. No recovery of firearm was made and in any case, no injury caused with a wooden staff / '*lathi*' or '*Barchi*' / spear has either been disclosed by any ocular witness or it is corroborated through medical evidence.

22. In the entirety of the facts and circumstances of this case, it has been submitted, this is a case of false implication and in any case over implication. Absolutely, no material exists to convict the appellants Radhey @ Radhey Shyam, Ram Babu and Chhota who were assigned a general role of exhortation.

23. On the other hand, learned AGA would submit, the present case is a case of direct evidence. It is wholly common that in the cases involving heinous offence of murder, it is the close family members of the deceased, who testify as witnesses even though others may also have witnessed the occurrence. In such occurrences, independent witnesses are hard to get. It is a behavioural pattern in our society that people who may not have suffered any personal loss in such occurrences are hesitant and reluctant to appear as witnesses, in Courts.

24. To the extent, the presence of Laxmi Prasad (PW-1) and Babu Prasad (P.W.-3) is wholly natural, their depositions may not be doubted on

simple suspicions and on account of their close relationships with the deceased. In that regard, it has been further stressed, it is common amongst villagers to walk some distance from their residence / Abadi areas to their agricultural fields without any particular work. An agricultural field is not a defined work place as an industrial area. To the extent it is not denied that the agricultural field of Laxmi Prasad (PW-1) and his family was nearby, it cannot be doubted that they were visiting their agricultural field even though no specific work could be described by the witnesses - for which they were visiting their agricultural field. It has been further stressed, the time of the occurrence is around 4:30 p.m. Therefore, the presence of the witnesses cannot be doubted.

25. To the extent the witnesses Laxmi Prasad (PW-1) and Babu Prasad (PW-3) have offered wholly consistent account of the occurrence, wherein the assailants Raja Babu and Ram Milan are described to have shot at the deceased from close quarters, the medical evidence wholly corroborates such narration.

26. As to the FIR being delayed, strong objection has been raised by the learned AGA. She would submit, the FIR was lodged wholly promptly within two hours of the occurrence. The Special Report was attempted to be dispatched wholly promptly, the same date. Since, the last bus for the District Headquarter at Banda had left around 7:00 p.m., the Special Report could be dispatched, only on the next date. There is no doubt that such dispatch was made. Merely because the Homeguard Lotan Ram (not examined at the trial) may have taken more time than reasonable efficiency may otherwise commend, may also not be a ground to doubt that fact. Even though the Home Guard Lotan Ram was not produced, it cannot be said - either that it was mandatory on part of the prosecution to produce that witness or that his not production was deliberate effort to hide the truth. To the extent internal and external checks are shown to have been substantially complied - to establish that the FIR was registered at 6:30 p.m. on 16.01.1985, there may exist no reason to doubt that fact.

27. During the winter, it may be accepted - the sun would have set early. Considering the year when the occurrence was caused as well as the poor means of transportation, scanty sources of light generally available, both to citizens and the police authorities, it is not surprising that the Inquest Report was prepared the next morning. It is normal to expect that the Inquest Report may have been prepared, next morning,

28. As to the alleged delay in preparation of the Autopsy Report, no doubt emerged during the cross-examination of any of the witnesses as may allow the Court to entertain any reasonable doubt that the FIR was not lodged at the time disclosed.

29. In face of such reliable ocular account, motive may remain secondary. To the extent the presence of all the accused has been firmly established by the prosecution and their common intention has also been proven, no indulgence may be granted on that count either.

30. Having heard the learned counsel for the parties and having perused the records, the primary submission of learned Senior Counsel for the appellants is that the FIR was ante-timed. Though, the occurrence may have taken place later on 16.01.1985 i.e. after sunset, the prosecution story emerged much later after at least the Inquest Report had been prepared. We are not impressed by the submission thus advanced inasmuch as in the first place, internal checks are seen to be satisfied. Not only Laxmi Prasad (PW-1) led credible evidence to establish that he got the Written Report prepared by scribe Shankar Ram Dwivedi which was lodged at 6:30 p.m., his cross-examination on that count does not raise any doubt. Neither, he was questioned as to the time and distance that he travelled to first get the scribe to prepare the Written Report nor there is any reason to doubt that it was not possible for him to prepare the Written Report as may have allowed the FIR to arise at 6:30 p.m., on 16.1.1985. Second, the Head Constable Ram Singh (P.W.-4) also proved that the FIR was registered on 16.01.1985 at 6:30 p.m. He also proved the corresponding G.D. entry. Besides those internal checks that are seen to be satisfied, insofar as the external checks are concerned, in the first place, considering that the occurrence was caused about more than 40

years ago in the peak of winter, on 16.01.1985, it is not difficult to imagine that sun would have set by the time the FIR was registered. With poor lighting in villages and on roads, as was common in those days, the lack of source of light to prepare the Inquest Report cannot be denied. To the extent no cross-examination exists as may even remotely suggest availability of light or the lack of discovery of the dead body of Ram Lala on 16.01.1985, we are not in a position to therefore accept that the occurrence was caused late in the night and therefore the Inquest Report came to be prepared at 8:00 a.m in the morning.

31. On the second aspect of the external checks, though learned Senior Counsel would content that there was delay in submission of Special Report, we find that the same was submitted within 24 hours of the occurrence. In the first place, no inordinate delay may be seen to exist, in that fact. The requirement of law is not that the Special Report must necessarily be sent within an hour or two hours of the FIR being lodged but that it must be submitted within reasonable time. It is also not the law that a Special Reports dispatched within reasonable time may be unnecessarily doubted.

32. Second, in the present facts, no adverse inference may be drawn that such dispatch was not attempted on 16.01.1985 itself, because the Homeguard, Lotan Ram was not examined. The Head Constable, Ram Singh (P.W.-4) specifically proved that the Special Report was dispatched on 16.01.1985 on 7:10 p.m. but that the said Homeguard returned to the Police Station for lack of conveyance available. During his cross-examination, he proved that the Special Report was dispatched on 17.01.1985, through the same Homeguard, Lotan Ram who returned to the Police Station at 7:35 p.m. No other question was put to the said witness as may doubt the prosecution narration that such dispatch had been made. Also, the first Investigation Officer, Jagmohan Pandey merely stated that there was a metalled road from the Police Station to the District Headquarter. Existence of such road may not lead to an inference that therefore, the Special Report was not attempted to be dispatched on 16.01.1985. It remained a matter of conveyance being

available as may have allowed the Home Guard to travel to and reach the District Headquarter, within such time as may have allowed him to present the Special Report to the learned Magistrate.

33. Third, to the extent it is not doubtful that the Special Report was dispatched to the learned Magistrate, the next morning, merely because the Homeguard, Lotan Ram may have returned in the evening and may have acted with some inefficiency, it may not be inferred that he first attempted to deliver the Special Report late in the evening, on 17.01.1985. There is absolutely no material or basis to entertain that doubt.

34. The fact that the autopsy examination was conducted at around 3:00 p.m. on 18.01.1985, is practically extraneous to the issue being raised. To the extent we are convinced that the FIR came to be registered at the time disclosed and to the extent it cannot be doubted that the Special Report had been dispatched and received by the learned Magistrate on 17.01.1985, the fact that the autopsy examination was conducted later is also of no help to the defence. Once the FIR had come into existence and the occurrence had been informed to the learned Magistrate through the Special Report, it cannot be said that the delayed autopsy examination is evidence of the FIR being ante-timed.

35. What then survives is the credibility or reliability of the ocular account. Though stress has been laid that wholly interested and therefore, partisan witness - Laxmi Prasad (PW-1) and Babu Prasad (PW-3) have been relied by the prosecution, their presence cannot be doubted because they were closely related to the deceased Ram Lala. Generally speaking, existence of that relationship may lean in favour of truthfulness of such witnesses who are presumed to lead evidence against the real assailant and not hide him. The well recognized exception is their lack of presence.

36. In the present facts, Laxmi Prasad (PW-1) narrated that the deceased Ram Lala had started for his agricultural field, about 15 minutes earlier. The said witness was following his younger daughter Ranno and his younger son Babu Prasad (PW-3), behind Ram Lala. Basically, there is

nothing to doubt that the entire family of Laxmi Prasad (PW-1) pursued agriculture as their vocation. It is also not denied that they had an agricultural field. The fact that Laxmi Prasad (PW-1) and his younger daughter Ranno would have started from their home, is therefore not tainted with any reasonable doubt. The fact that an agriculturist or a farmer may visit his agricultural field is not the test that we may effectively apply to establish the presence of Laxmi Prasad (PW-1). Villagers pursuing agricultural activities may not be expected to sit at their dwelling houses, if they have no particular agricultural activities to engage in on their agricultural field. They sow, grow and reap - a reward of their labour and earn their livelihood and a place in the society, only by pursuing that activity. Their attachment to the soil and their crops is enough to establish their presence on their agricultural field, during normal working hours, even though, they may not have any particular work to perform. Unless it was seriously doubted that the occurrence was caused during night hours, we do not find any reasonable doubt exist in that part of the prosecution story. Therefore, to the extent Laxmi Prasad (PW-1) has specifically narrated that he was following his son, at about 4:30 p.m., it was a wholly natural occurrence.

37. Insofar as Babu Prasad (PW-3) is concerned, to the extent he has not described any fact in addition to the fact proven by Laxmi Prasad (PW-1), his evidence is purely corroborative. For the present purpose, we first look at the evidence led by Laxmi Prasad (PW-1) who is the first informant. He had lodged the F.I.R. wholly promptly which further corroborates his presence at the time and place of the occurrence.

38. As to lack of motive, we find no room exists to test the same in face of credible ocular account offered by Laxmi Prasad (PW-1). His narration of the occurrence has found strong corroboration through medical evidence as well. Starting from FIR narration that was prompt and ending with his examination by the Court, he consistently narrated that Ram Babu and Ram Milan had shot at the deceased with their firearms. There are two entry wounds and two exit wounds suffered by the deceased. At the same time, absolutely no other injury as may have

been caused with wooden-staff (*lathi*) or '*Barchi*' / Spear had either been proved by ocular account and there is no indication of any other injury suffered by the deceased with use of any other weapon except firearm. To that extent, Dr. S.C. Mittal (PW-2), in his cross-examination further proved that injury no. 6 - lacerated wound may have been suffered by the deceased upon fall on a hard and blunt object while injury nos. 5 and 7 - abrasion wounds may have been suffered on the deceased struggling after he was hit by a firearm.

39. Therefore, insofar as the accused person Ram Babu is concerned, specific role has not only been alleged but proven at the trial. The fact that his firearm may not have been recovered, may not be of any avail. To the extent, the wholly reliable ocular account of Laxmi Prasad (PW-1) exists, it has to be accepted that he was equally involved in killing of deceased Ram Lala wherein the deceased was shot at, twice. Though cross-examined at length, neither any material improvement emerged the narration of Laxmi Prasad (PW-1) nor there is any material contradiction or inconsistency in the role assignment made by the said witnesses. Therefore, we find no reason to interfere with the order of conviction against the appellant Raja Babu (Criminal Appeal No. 2052 of 1982.)

40. At the same time, with respect to the surviving appellants Radhey @ Radhey Shyam, Ram Babu and Chhota (Criminal Appeal No. 1653 of 1983) other than the general role of exhortation assigned to them, there is absolutely no fact proven or established by the prosecution as may allow us to sustain the conviction of those appellants. Though described to be armed with wooden-staff (*lathi*) and spear (*Barchi*), neither any role has been assigned to them by Laxmi Prasad (PW-1) of causing or attempting to cause any injury to the deceased with those weapons, nor there is any possibility to admit of their participation in the occurrence, on the strength of corroborative evidence led by Dr. S.C. Mittal (PW-2). Those accused persons have been convicted only with the assistance of Section 149 I.P.C. In a case such as this, wherein only two firearm injury have been caused to the deceased and those are ascribed to the other accused persons, in absence of any other or further evidence led to

firmly establish active participation of the appellants Radhey Shyam, Ram Babu and Chhota in that said occurrence, their conviction may not be sustained. To that extent, they may remain entitled to a benefit of doubt.

41. In the result Criminal Appeal No. 1653 of 1985 succeeds on benefit of doubt. These appellants Radhey @ Radhey Shyam, Ram Babu and Chhota are acquitted.

42. These appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged. However, appellants are 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.

43. Criminal Appeal No. 2052 of 1985 of appellant Raja Babu lacks merits and is accordingly dismissed. Since that appellant has remained on bail for very long, he is directed to surrender before the learned court below on or before 17.10.2025, to serve out remaining sentence. Failing that, the learned court below is directed to take coercive steps in accordance with law. Subject to the appellant Raja Babu surrendering within the time stipulated, his bail bonds shall stand cancelled and sureties discharged. Appropriate compliance report be also submitted by the learned court below. Let lower court record be returned, forthwith.

44. Office is directed to keep the compliance report on record.

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

September 08, 2025

PS/Manoj