



2025:AHC:167133-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
GOVERNMENT APPEAL No. - 1235 of 1991

State of U.P.

Appellant

Versus

Ram Singh And Others

Respondent

Counsel for Appellant	: A.G.A.
Counsel for Respondent	: Faya Nath Dubey,Hemant Shukla,Lav Srivastava,Vikas Mishra

Reserved on : 17.05.2025

Delivered on : 18.09.2025

Court No. - 46

HON'BLE RAJIV GUPTA, J.
HON'BLE HARVIR SINGH, J.

(Delivered by Hon'ble Harvir Singh, J.)

1. Heard Shri Arun Kumar Pandey, learned AGA for the State/appellant, Shri V.P. Srivastava, learned Senior Advocate assisted by Shri F.N. Dubey, learned counsel for the accused-respondents and perused the record.

2. This appeal, under Section 378 Cr.P.C. at the behest of the State, has been preferred against the judgment and order dated 14.03.1991, passed by the learned III-Additional Sessions Judge, Fatehpur, in Session Trial No.9 of 1987 (State vs. Ram Singh and another), whereby learned trial Judge acquitted accused persons from all the charges.

3. Brief facts of this case are that the complainant, Sheo Narain, is a resident of village Lalpur whose nephew (*Bhanja*) the deceased Udai Veer son of Rampal, resident of village Gauspur, P.S. Kalyanpur, district Fatehpur, was married to Uma Devi, the daughter of Moti Lal (the complainant's brother), who had been living for four years, at the residence of the complainant's brother on account of being issueless. There was old enmity, between the family members of the complainant and the accused persons, Ram Singh and Raja Ram, due to litigation. Therefore, both accused persons were looking for an opportunity to commit murder of the complainant's family members.

4. On November 9, 1985, at about 7 a.m., when the deceased Udai Beer was going to the garden from the southern door of the house, the accused Ram Singh, armed with a rifle, and Raja Ram, armed with a gun were lurking in bush of cotton plants and they fired one shot each upon Udai Beer Singh, as a result of which he fell down and started to groan. At that time, the complainant, his brothers Sarju Prasad, Moti Lal, and Uma Devi (Udai Veer's wife) PW-3 were present in the garden and witnessed the occurrence. Upon hearing the sound of fire, Ram Dhani, Ram Kishun, Sipati, and Pama Lal PW-2, residents of the village, reached there and saw both the accused, armed with a rifle and gun, running towards the eastern side. Due to fear of firearms, the witnesses could not follow them. When the complainant and his family members were immediately taking the injured Udai Beer to District Hospital, Fatehpur, by bullock-cart, he succumbed to his injuries near Shadipur Naka. Then the complainant left the deceased under the supervision of other persons and came to Police Station Malwan on the same day at 11:30 a.m. He lodged the report (Ext. Ka-1), which was written by Ram Das.

5. Based on the written report, Constable Moharrir Surendra Prasad Jaiswal prepared the Chik F.I.R. (Ext. Ka.3) and registered the case at serial No. 11 of the G.D. of the same date and time, the carbon copy of which is Ext.Ka.4. The investigation of the case was entrusted to S.I.

Uma Shankar Dwivedi (PW-5), who reached at the place of occurrence on the same day at 2:00 P.M. along with other police personnel, including constable Mathura Prasad and after inspecting the dead body of the deceased prepared the inquest report (Ext. Ka-5) and other papers – Photonash (Ext. Ka-6), Challan Nash (Ext. Ka-7), two letters to C.M.O. one for returning the clothes found on the dead body and the other for transmitting the postmortem report (Ext. Ka-8 & Ka-9), Letter to R.I. (Ext. Ka-10) relating to the postmortem and after keeping the dead body in sealed cloth, prepared the sample of seal (Ext. Ka-11) and handed over the dead body to constable Mathura Prasad along with the said connected papers, including copy of the F.I.R. and extract of G.D. and thereafter the Investigating Officer inspected the place of occurrence and prepared its site plan (Ext. Ka-12) and took one empty cartridge of rifle and one empty cartridge of 12 bore gun and prepared its memo (Ext. Ka-13) and kept both the cartridges in sealed bundle.

6. For ascertaining the cause of death, the dead body of the deceased was sent to mortuary, which was received by the Dr. S.S. Dwivedi (PW-4) on 9.11.1985 at 15:55 P.M. but the papers were received by the doctor on the next day, i.e. 10.11.1985 at 2:30 P.M. and at the same time, he conducted the postmortem of the dead body of the deceased Udai Beer Singh.

7. On November 10, 1985, the investigation of this case was taken up by S.O. Haseen Ahmad Siddiqi (P.W.6). On the same day at about 10 A.M., he arrested the accused Ram Singh near the Masjid of Jageshwar Purwa. However, the other accused, Raja Ram, escaped and ran away, leaving his gun and belt of Niwar having 9 live cartridges (Material Exts. 4 to 14) and 3 empty cartridges. From the personal search of accused Ram Singh, one rifle and 3 live cartridges (Material Exts. 1 to 3) were recovered. After the receipt of the Ballistic Expert's report, the rifle of the accused Ram Singh was given into his custody. The S.O. prepared the recovery memo (Ext. Ka.14) on the spot and kept the recovered

articles in 2 sealed bundles. The site plan (Ext.Ra.15) of this place of arrest and recovery was also prepared by him.

8. The Investigating Officer sent the recovered arms and ammunitions to the ballistic expert for examination. The report of the ballistic expert is marked as Ext. Ka-17. During investigation, the statements of witnesses were recorded and after completing the investigation, the Investigating Officer has submitted chargesheet, which is marked as Ext. Ka-16, against the accused persons. Learned Magistrate after taking cognizance of the same, committed the case to the Court of Session. Charge under Section 302 read with Section 34 I.P.C. was framed against accused by III Additional Sessions Judge, Fatehpur on 29.5.1987. The accused denied the charge and claimed to be tried.

9. In order to prove its case, the prosecution has examined six witnesses namely, Shiv Narain (PW-1), Panna Lal (PW-2), Uma Devi (PW-3), S.S. Dwivedi (PW-4), Uma Shankar Dwivedi (PW-5) and Haseen Ahmad Siddiqui (PW-6), who relied on certain documents, those were sought to be proved by the oral testimony of the witnesses.

10. After completion of prosecution evidence, statements of accused persons were recorded under Section 313 Cr.P.C., in which they denied the evidence and stated that false evidence has been led against them. No witness was examined in defence.

11. PW-1 Shiv Narayan in his examination has deposed that the deceased Udayveer Singh was his nephew and he was murdered one year and nine months ago, at 9:00 O'clock in the morning. His brother Motilal's daughter Umadevi was married to the deceased Udayveer. Motilal had no son and Udayveer also had no son, due to this reason Udayveer lived in Motilal's house. He further deposed that prior to the said incident, some litigation was going on between our family, i.e. accused persons, as well father of the deceased, due to that reason the

accused had personal grudge and were planning to kill their family and due to their fear, his elder brother Sarju Singh lived in Fatehpur. On the date of incident at about 7:00 A.M., Udaiveer came out of his house from the south of *Phulwadi* and stood up to urinate from Ramdulare's field. The accused Ram Singh and Rajaram were hiding behind the cotton plants, which was east of *Phulwadi*, with their licensed gun and rifle. They came out and Ram Singh fired one shot at Udaiveer from his rifle and Rajaram fired one shot at Udaivir from his gun. Both the shots hit Udaivir, as a result of which, Udaiveer fell down. He further deposed that upon hearing the sound of firing they saw the accused running away towards the east after hitting him. Apart from him, Motilal, Uma Devi, Sarju Prasad who were in *Phulwadi*, and Panna, Lal Ramkishun, and Ramdhani saw this incident. He further deposed that Udayveer did not die on the spot. They rushed towards Udaiveer and tied a towel around his neck and took him on a bullockcart to Fatehpur. Upon reaching near Sadipur Nala, Udayveer succumbed to his injuries. They stopped the cart there, then a written complaint was prepared by Ramdas. He wrote the same, whatever he was told to write. He read it out and then signed it. The witness identified his signature and identified Ramdas's writing and signature. Ex-1 was filed on this. He further deposed that he went to Malwan police station with the complaint and got registered a case there and returned back. Police reached at the spot and conducted the inquest of the dead body of the deceased and after sealing the dead body, sent it to the mortuary for postmortem.

12. PW1 in his cross-examination, has deposed that this incident did not happen at 9:00 A.M. but at 7:00 A.M. His statement was recorded on 10.8.1987. In his examination in chief, he did not mention the time as 9:00 A.M. but he mentioned it as 7:00 A.M. He could not tell how 9:00 A.M. was written in the examination in chief. He further deposed that, when Udaiveer was going towards south of his house in the field of Ram Dularey to urinate, the accused fired and on firing, he fell on the flowerbed. At that time, he was at his door. Sarju, Moti and Umadevi

were in the flowerbed. This was the fact, what he had written in the report. He did not get it written in the report, that when Udaiveer fell on the flowerbed, he was also in the flowerbed. When the report was read out to the witness, he said, he could not tell, how it was written. Motilal, Umadevi and Sarju saw the assailants firing upon the deceased. He had written it in the report and told the Investigating Officer. If the same was not written in the report and his statement recorded under section 161 Cr.P.C., then he cannot assign any reason for it. He further deposed that, witnesses Ramdhani, Ramkishan and Bachalal had only seen the accused running away. A day before the incident, Sarju had come to the village from Fatehpur. He lived in Fatehpur due to fear of the accused. Udayveer did not raise any alarm after firing. Upon hearing the sound of firing, they ran to save them. All the accused persons had fled away. The witnesses came to the spot after he reached there. He further deposed that the house in which Udayveer lived, was connected to the south by a flower garden (*fulwari*). After that flower garden, Ram Dulare's field was adjacent to the south. This field was 25-30 steps away from the house. Ram Dhani's field was to the south of this field. There was a flower garden to the west of these two fields. There was a boundary around the flower garden. Animals etc. could not go inside it. It was a dense flower garden. No one chased the accused. The blood that had fallen in the flower garden was shown to the Investigating Officer. It was shown at 7:00 A.M. in the morning. Thereafter, he took Udaiveer to the hospital. Udaiveer died at Shadipur Naka. Shadipur Naka was 3 km away from his village; it took one hour to reach there. There were many doctors' clinics, between his village and Shadipur Naka. But he did not consult anyone. To reach Fatehpur city from his village, one had to travel on Fatehpur Bahua road. Hariharganj police post and Kotwali Fatehpur were on its road. Further ahead was Sadar Hospital.

13. PW-1 has further deposed that when he reached the spot, Udayveer was only breathing and was unable to speak. He had fallen by his stomach. He did not know, whether the Investigating Officer took

soil from the place, where the deceased had fallen. There was nothing except soil and the dead body at the place where the deceased had fallen. There was whispering of writing a report at the spot, where the deceased had fallen. They left the spot 10-5 minutes after the incident. He, Umadevi, Panna and Ram Pratap had left from there. The manner of incident was not prewritten at home, but wrote it at Shadipur Naka. Sarju did talk about writing a report at the spot. The incident took place in his presence. Sarju was also present at that time. He further deposed, that the report was written by Ram Das. Ram Das was the same person, who was the peon of District Judge, Fatehpur. This Ram Das was the elder brother of his son-in-law Babu. Babu was the husband of his daughter Usha Devi. Ramesh Chandra Vakil was the son-in-law of his brother Sarju. Ramdas lived in Devi Ganj, city Fatehpur and Ramesh Chandra Vakil lived in Shadipur Naka, city Fatehpur. Ramesh Chandra's father was Jagmohan. Ramesh Chandra and Jagmohan were witnesses in this case. No treatment could be given to Udaiveer to rescue him, as he died at Shadipur Naka city Fatehpur. He also deposed that his brother Motilal's in-laws were in Itgaon. He had no brother-in-law. Motilal and his wife looked after the property and farming there. They made all arrangements. At the time of the incident, it was the time of paddy harvest. Motilal had a tube well in his village. Their agriculture and irrigation were all separate. Deceased Udayveer used to manage Motilal's agriculture work in his village.

14. PW-1 in his cross-examination further deposed that his daughter Usha Devi got married after Uma Devi's marriage. Motilal did not have a son, so he got married Udaiveer. In his community, sometimes nephews married their maternal uncle's daughter. He belonged to the Lodh caste. It was incorrect to say that, there was no tradition of marrying a maternal cousin. Deceased Udayveer did not have any illicit relationship with his daughter Usha Devi, prior to marriage. He and Udaiveer had no quarrel regarding taking of water from tube well. It is incorrect to say that, at the time of Udaiveer's murder, Motilal and his wife (mother-in-law and

father-in-law) were in the village. Then he stated that, only mother-in-law was in the village harvesting paddy. He further deposed that the deceased had received only firearm injuries. He and his son Bhuvnesh had no enmity with Udayveer regarding tube well's water and Udayveer's affair with Usha. It is incorrect to say that he had been falsely implicated due to enmity with the accused and the incident occurred in the manner he was narrating it. It is also incorrect to say, that the report was prepared after consultation, to save himself and his son Bhuvnesh.

15. PW-2 Panna Lal in his examination has deposed that, both the accused namely, Rajaram and Ram Singh are the native of his village and prior to the said incident, he knew them very well. The incident had taken place about 4 to 4½ years ago. He was heading towards his door. His father, mother, small kids and other family members were present there. It was 7:00 o'clock in the morning. He heard the sound of firing from the direction of Sarju's house. Upon hearing it, he had gone towards Sarju's house and found that Udayveer had been shot and he was lying in the bushes to the south of his house. The two accused Raja Ram armed with gun and Ram Singh armed with rifle had been running towards East. When he had seen them running, he had called out, "Who are you people?", upon which both of them had turned towards him, abused him, and said, "Keep quiet, or we will shoot you too."

16. PW-2 in his cross-examination has deposed that he had told the Investigating Officer that Rajaram was having a gun in his hand and Ram Singh was armed with rifle. He had also told the I.O. that, when both the accused had been running, he stopped them and asked who are you, upon which they had turned back, abused him, and threatened to shoot him. He could not explain, as to why the Investigating Officer had not recorded it, in his statement under Section 161 Cr.P.C. He did not chase the accused, since they were armed with firearm. He further deposed that his house is situated in the west of the village and Sarju's house is situated to the east of his house. There had been no other house

between his house and Sarju's house, and the distance between the two houses is about 70 steps. It was incorrect to state that there had been 10–12 other houses between them. He further deposed that the incident had taken place, facing the south window of Motilal's house. Udayveer had been lying in injured condition about 15–20 steps away from the window. He succumbed to the injuries on the way, while he was being taken to Fatehpur from Shadipur. The witness had also been with him at that time.

17. PW-3 Uma Devi in her examination has deposed that her father, Moti Lal, had two brothers Sarju Prasad and Shiv Narayan. Her father was still alive, but Sarju Prasad had died. Sarju Prasad had been murdered about a year ago, and a report of the murder had been filed against the accused Ram Singh. About 9–10 years ago, her marriage was solemnized with Udaiveer (the deceased). She had no brother. Her husband lived in Lalpur, but he was permanent resident of Gauspur. Since her father had no son that's why her husband started living in his matrimonial home and used to take care of farming. She further deposed that prior to the said incident in this case, her father-in-law Rampal had beaten accused Rajaram. She did not know, whether there had been any enmity between him and Ram Singh. There had been a flower garden in the south-west corner of her house, in which she, her father, and Sarju Prasad were present. At around 7:00 O'clock in the morning, her husband came out to urinate at the back of the house and towards the south. He had come near Ram Dulare's field. Ram Dulare's field had been to the east of the flowerbed. Accused Ram Singh and Rajaram could be seen from behind the cover of cotton trees. Rajaram was having a gun in his hand, and Ram Singh was having a rifle in his hand. Both of them had fired 1–2 shots from their respective weapons at her husband. At that time, her husband had been standing and urinating. The accused had fired from a distance of about 15–20 steps. The bullet hit her husband in the stomach. As soon as the bullet hit her husband he groaned loudly and then had fallen down. Upon hearing the sound of gunfire and his groan, all of them had rushed to the spot. At that same

time, her uncle Shiv Narayan, Panna Lal, and Ram Dhani had also reached at the spot. She had seen both the accused running towards the east with weapons in their hands. She further deposed that, when they had reached near her husband, he was still alive. They took him on a bullock cart to the hospital for treatment, but en route to hospital he died near Shadipur Naka. From there, her uncle Shivnarayan had gone to the police station to lodge report of the incident. The police arrived there the same day and had taken the body into custody.

18. PW-3 in her cross-examination has deposed that, the Investigating Officer had interrogated her about the incident and it was told by her that, she went along with her injured husband and her husband died near Shadipur Naka, however she could not state, as to why the Investigating Officer had not stated the said fact in her statement. She further deposed that she could not see the place, where her husband was urinating, as there was a ditch in between the *phulwadi* and the place, where she was standing. She had seen her husband from a distance of 4-6-10 paces. Her husband was lying in the southern ditch of the Ram Dular's field and was struggling. Blood was lying there on the earth. She has seen both the accused running away. PW-3 in examination-in-chief has deposed that, she had seen both the accused from the back side. Ramdhani and Ram Kishun told her that, they were the accused persons. They came from same direction, where the accused persons had gone. She further deposed that she had told the Investigating Officer that, when her husband was urinating at the very point of time, he was fired upon. She further deposed that, she did not tell the Investigating Officer that the assailants fired the shot from a distance of about 15-20 paces. She further deposed that due to sorrow, neither she nor her father had gone to the police station for lodging of the first information report. When the dead body of the deceased was taken over by the Investigating Officer in his custody, she was present there, but the Investigating Officer did not record her statement and her statement was recorded after 5-6 days of the incident in her village. The Investigating Officer has inspected the place of occurrence in her presence. She further deposed that, it is

incorrect to say that the report of the incident was lodged after due deliberation and consultation. It is also incorrect to say that no such incident has ever taken place and her husband was murdered at night and the assailants were not identified and the accused have been falsely implicated.

19. PW-4 Dr. S.S. Dwivedi in his examination has stated that on 10.11.1985, he was posted as a Medical Officer at District Hospital, Fatehpur. On that day, he conducted the postmortem examination of the dead body of Udaibeer Singh, son of Rampal, aged about 25 years, resident of Lalpur, Police Station Malwan. The dead body had been brought by Constable Mathura Prasad, CP 181, Police Station Malwan, in a sealed condition with all the relevant documents. The postmortem was conducted at 2:30 P.M. As per external examination, the deceased was of average height and built. At the time of postmortem, stiffness was present in the lower part of the body, but had disappeared in the upper part. The mouth was open and eyes were closed. The following antemortem injuries were observed:

(1) A firearm entry wound measuring 1" x 1" x abdominal depth, with lacerated and inverted margins, located on the right side of the abdomen, 2.5 inches lateral to the umbilicus, direction: anterior to posterior. No blackening, tattooing, or charring was found.

(2) A firearm entry wound of size 3/10" x 3/10", muscle deep, with rounded, torn, and inverted margins, located 0.5 inches lateral to injury no. 1 at the 11 o'clock position on the right side. No blackening or tattooing observed. Direction. Anterior to posterior direction.

(3) Firearm entry wound measuring 3/10" x 3/10", muscle deep, located 1 inch from injury no. 1 at the 7 o'clock position. No. B/T seen. Margin of wound inverted and lacerated collar. Direction as above.

(4) Contusion around the neck collar, measuring 10" x 4" all around neck interiorly.

From the internal examination, it was found that both lungs were pale, heart was empty. The abdominal wall was found perforated below firearm injury no. 1 to 3 respectively. Peritoneum was also perforated. The abdominal cavity was full of clotted blood and haemolized blood. Stomach was empty. Small intestine was punctured and intestinal contents were leaking. The large intestine was empty and gas came out from it. Kidney was also punctured and clotted blood was present around the wound. In the opinion of the doctor, the death was caused due to shock and haemorrhage as a result of antemortem injuries. The duration of death was estimated to be approximately 1 to 1¼ days prior to the post-mortem.

20. PW-4 has further deposed that during the post-mortem, three metallic fragments were recovered from the stomach. Two were small pieces, and one was a bullet measuring 1½" x 3/10", with a base of 3/10". These were sealed in an envelope and sent to the Superintendent of Police (SP). The clothes removed from the body (a coat, a bust, and a community cloth) were sealed and handed over to the constable. He further deposed that he had prepared the post-mortem report in his own handwriting and under his signature during the examination. The report was marked as Exhibit A-2. The original report along with eleven police documents, which he had briefly signed, were handed over to the concerned constable. All eleven enclosures were placed before the court and bore his brief signature. He also deposed that, it was possible that the deceased had died at around 7 A.M. on 09.11.1985. The injuries sustained had come from the front, and could have been caused by a rifle or a gun. These injuries were sufficient to cause death. Regarding Injury No. 4, he opined that, if a person is rubbed against a hard object, such contusion may result.

21. PW-4 in his cross-examination has deposed that he clarified that the estimated time of death might vary by 4 hours in either direction. He reiterated that he had personally sealed the clothes found on the deceased and handed them over to the concerned constable (marked as (Ext.Ka-2). Injuries no. 1 to 3 would have resulted in heavy bleeding, and the

deceased could have died immediately, possibly within 15 minutes, due to injury to a vital organ. Regarding Injury No. 4, he stated that it could be caused as a result of rubbing against a hard object. He further clarified that the deceased died due to shock and blood loss, which may last for more than 15 minutes. However, he could not say exactly how long the deceased had remained alive after the injuries. He could not specify which firearm had caused the specific injuries, and it was possible that each of the three firearm wounds had been caused by separate shots.

22. PW-4 in his cross examination has deposed that the injury Nos. 2 and 3 were close to each other only about 1 inch apart on the same side, so it was possible that they had been caused by a single shot, while Injury No. 1 might have resulted from a different shot.

23. PW-5, S.I. Uma Shankar Dwivedi in his examination has deposed that On 9.11.85, he was posted as SI in Police Station Malwan. This case was registered by C/M Surendra Jaiswal in his presence on the basis of the complaint of complainant Shivnarayan, Exhibit A-1. Its copy was in the handwriting and signature of the said Constable Muharrir of the FIR, but his signature was also there. He had seen Surendra Jaiswal's written scripts and he was familiar with his handwriting and signature, Exhibit A-3 was marked on it. Its disclosure was written by the same constable on the report no. 11 of the general diary of 9.11.85 at 11.30 A.M. The original diary was carbonized, the carbon copy of which was included in the copy of the diary, which was in the handwriting of the said constable. Through this report, he conducted the investigation of the case. The diary was a carbon copy of the original. He certified it with his signature. He wrote the statement of the writer and the complainant in the police station itself and then along with constable Mathura Prasad and SI Ramashankar Singh, he reached Jagmohan's wood depot in Shadipur Naka, where the dead body was kept in the bullock cart. He inspected the dead body and appointed Panchan and prepared inquest report in his handwriting and put his signature on it. He further deposed that he prepared the documents related to postmortem, photonash,

challannash, two letters to CMO, letter to RI in his handwriting and signature, which was before him. The dead body was sealed and sample seal was prepared in his handwriting and signature and has been proved and is marked as Ext. Ka-11. He handed over the deadbody to Constable Mathura Prasad for postmortem along with the above documents and copy of First Information Report and GD.

24. PW-5 has further deposed that, thereafter he reached the incident site village Lalpur and inspected the incident site and prepared its map on the pointing out of the complainant, which was in his handwriting and signature and proved to be correct. The indication mark was recorded, Exhibit A-12 had been inserted. He seized one used shell of 315 bore brass from the incident site. He also recovered one shell cartridge of 12 bore from the spot and took it in his possession. He prepared the report in his own handwriting and signature, which was before him. Witnesses were also made to testify on this and proved and marked as Exhibit A-13. Both the above mentioned empty cartridges were sealed on the spot. At night, he and Ramashankar Singh stayed in the same village and kept on finding out the accused. In the morning on 10.11.1985, he met the Station Officer in Fatehpur. He had come there in search of the accused and took over the investigation of this case from him. He further deposed that the Station Officer received an information, that the accused of this case Chandrapal son of Babuli Lodh resident of Jageshwar was present in the house of Purwa, on which they raided his house, however both the criminals ran away from the house, however he apprehended one of the accused Ram Singh by overpowering him alongwith the magazine of the rifle. The other accused Rajaram ran away throwing away his gun with the strap in which cartridges were loaded. They were taken into possession and a rifle with a magazine and three cartridges and a licence were recovered from the accused Ram Singh. The recovery report was prepared by Station Officer himself in his writing and signature and the recovered goods were sealed and stamped on the spot. The said recovery report was made before the police personnel and two public witnesses Raghuveer Singh and Surajpal. The

testimony of all co-accused was made part of the report. The witness identified the signature of S.O. Haseen Ahmed Siddiqui after seeing the original recovery report, which is marked as Ext.Ka-14.

25. PW-6 Haseen Ahmad Siddiqui in his examination has deposed that he had been SHO, Malwan from 10.11.85 to 30.11.85. This case had been registered in his absence and prior to that, S.I. Uma Shankar Dwivedi had started investigation. On 10.11.85, when the said S.I. had been searching for the accused, he met me at the crossroads near Shriman Singh's bungalow and informed him about this case, then I had taken over the investigation from him and had started searching for the accused. S.I. Uma Shankar Dwivedi had received information about the accused being present in Jageshwar Purwa, hence they headed towards said Purwa, however both the accused Ram Singh and Raja Ram had ran out of Chandra Pal's house towards the west. Ram Singh was apprehended near the mosque at around 10:00 A.M., but Raja Ram managed to escape leaving behind his gun and cartridge case. He further deposed that on search, a licensee rifle had been recovered from the possession of Ram Singh, which had three cartridges in its magazine. After receiving the report of (Ballistic expert), the rifle had been returned to the accused. The three cartridges, which had been recovered from his possession were before him and marked as Ext. Ka-1 to Ka-3. A sealed bundle had been opened, in which the above-mentioned three cartridges and 4 empty cartridges (all of the rifle), one live cartridge and six empty cartridges of 12 bore, a box of waste paper containing 9 live cartridges and a gun had been found. This material had been sent to the Ballistic expert for its report. He further deposed that after seeing the above-mentioned material, the witness had stated that all this material and Ram Singh's rifle had been sent to the Ballistic expert for investigation, which had been mentioned in the case diary dated 8-12-85.

26. PW-6 has further deposed that the gun and the cartridges left behind by accused Raja Ram was recovered from the spot was taken in possession and marked as exhibits 4 to 14 respectively. The six empty cartridges were marked as EC-1, EC-3, EC-4, EC-5 and two empty

cartridges were marked as TC-2, TC-3 while one live cartridge has been marked as TC-1. He could not identify the three empty cartridges found in the box. The recovery memo, which is marked as Ext. Ka-14, had been prepared on the spot, which was in his handwriting and he marked his signature on the same and the details of the said recovery had been mentioned. The recovered goods had been put in two bundles and sealed and stamped.

27. PW-6 further deposed that earlier S.I. Umashankar Dwivedi was the Investigating Officer, who investigated the case, thereafter he had taken over the investigation from him. He had prepared the site plan of the place of arrest of the accused and the recovery made from their possession in his handwriting and marked his signature, which is marked as Ext. Ka-15. He also deposed that he had recorded the statement of the witnesses of recovery and then, after completing the investigation, the chargesheet had been sent in his handwriting after putting his signature on 30.11.85, which is marked as Ext. Ka-16. PW-6 in his cross examination has deposed that the place of arrest would have been about 3-1/2 furlongs south from the crossing near Bangla of Mansingh. On 15.11.1985, he had recorded the statement of Panna Lal, but his full statement was not available in the case diary due to missing page, hence he could not state, if Panna Lal had deposed “जब यह दोनों मुल्जिम भागे जा रहे थे तब मैंने टोका कि तुम लोग कौन हो जिस पर इन दोनों ने पीछे मुड़कर गाली देकर कहा कि चुप मारे रहो नहीं तो तुम्हें गोली मार दूंगा। पूरा बयान न उपलब्ध होने के कारण यह भी नहीं बता सकता कि गवाह ने यह बताया था कि नहीं जब मैं उदय वीर के पास पहुंचा तब दोनों मुल्जिमान भागे जा रहे थे ----- उदयवीर (Sic) मैं पड़े थे। वह (उदयवीर अपने मकान के दक्षिण खिड़की के सामने 10-15 कदम की दूरी पर पड़े थे। चोटहिल के साथ मैं भी आ रहा था।”

28. PW-6 in his cross examination has further deposed that he had also recorded the statement of witness Uma Devi on 15-11-85. She, in her statement has not stated that, she also accompanied her injured

husband. She further stated “पेशाब करने के लिए फुलवारी होकर राम दुलारे के खेत के उत्तर तरफ जो फुलवारी से बिलकुल मिला हुआ है खड़ा हुआ कि फुलवारी में कपास के पेड़ की आड़ में छिपे हुए राम सिंह व उसके साथी राजाराम पासी ----- दोनों व्यक्तियों ने एक एक फायर उदयवीर पर कर दिया था। इसने यह नहीं बताया था कि उदयवीर पेशाब कर रहा था। जब उस पर फायर हुए। परन्तु उक्त बयान से यह स्पष्ट है कि उदयवीर पेशाब ही कर रहा था।”

29. PW-6 has further deposed that the recovered rifle and cartridges etc. had been sent to ballistic expert for examination on 4-12-1985. Before sending the recovered articles to ballistic expert, the same were kept in the malkhana. He further denied the suggestion that the arrest of Ram Singh and recovery of rifle etc. has not been made from the place and time pointed out by him and false recovery has been shown by calling him from his house. It is also incorrect to say that, he had concocted false evidence after firing some cartridges from his rifle. It is also incorrect to say that, he had filed a fake chargesheet by concocting false statements.

30. Learned A.G.A. for the State has submitted that the judgment passed by the learned trial court is illegal, arbitrary and without appreciation of credible evidence against the accused persons. The acquittal of the accused, rendered by the judgment is not based on correct facts, as much as, the learned trial court failed to appreciate the evidence in depth and in letter and spirit. The series of events and corroboration of prosecution witnesses clearly establishes the guilt of the accused persons. It may be seem that PW-1 who was present nearby the place of occurrence and had seen the assailants firing upon the deceased. Thus, corroboration of PW-1 becomes relevant and valuable piece of evidence for convicting the accused persons.

31. Similarly PW-2 namely, Panna Lal stated that both the accused persons Rajaram and Ram Singh are the native of his village and well known to him. PW-2 has specifically stated that he has seen the incident, when he was heading towards his house and both Rajaram armed with

gun and Ram Singh armed with rifle were running towards East and when he had seen them running, he had asked them “who are you people?”, then both of them abused the witness-PW-2 saying that keep quite, or we will shoot you also, thus the evidence of PW-2 is sufficient and clear, which establishes the involvement of accused persons in committing the offence of murder.

32. Learned A.G.A. has further submitted that PW-3 namely, Uma Devi has stated that there was some rivalry between her father-in-law Rampal and accused Rajaram. She has further stated that there is a flower garden in south-west corner of her house, where her father and Sarju Prasad were present and it was early morning at about 7:00 O'clock, when her husband came out to urinate at the back of her house and stated that Rajaram was having a gun in his hand and Ram Singh was having a rifle in his hand, the bullet was fired by both the assailants upon her husband, when her husband was urinating, he died, as a result of bullet injuries on his body. Though, the witness has stated that her husband was alive for quite some time, the family members took him for treatment up to the Village Shadipur Naka however the deceased died near the village called Shadipur Naka.

33. Learned A.G.A. has further submitted that the deceased sustained fire arm injuries and died due to antemortem injuries inflicted upon his body. The fire arm injuries reveals that the deceased was killed by no other weapons, but from the bullet fired from the rifle. He further stated that three metallic fragments were recovered from the stomach of the deceased.

34. On the other hand, learned counsel appearing on behalf of the respondents-accused-persons argued that the judgement and order passed by the learned trial court is in accordance with law, in as much as the learned trial court has fully appreciated the evidence on record and there is no infirmity, whatsoever in the judgement passed by the learned trial court, rendering the acquittal of the accused persons herein. The learned trial court has considered each and every aspects of evidence led during

the course of trial and by taking into consideration the series of events and the contradictions recorded during trial, in as much as, there is no coercion, and compulsion in the statements of the witnesses recorded during the course of trial. There are major contradictions in the statements of the alleged eye witnesses and the ground taken by the learned trial court that the eye witnesses were not present at the time of occurrence, rather they arrived at the later stage when the assailants have already escaped from the place of incident. Thereafter the witnesses have been implanted to strengthen the case of the prosecution and falsely implicate the accused persons herein.

35. It has come in the corroboration of PW-3 that there was some rivalry between the assailants and the deceased and therefore, the accused-persons have been falsely implicated in order to seek revenge and wreak vengeance against them.

36. On the other hand, PW-3 has stated that she has seen the assailants running away from the place of incident after committing the offence however she further stated that the incident was narrated to her by two persons, namely, Ram Dhani and Ram Kishun of the village, which creates a suspicion. Had the incident been witnessed by the PW-3, then there was no occasion to state, that the incident was narrated to her by two other persons namely Ram Dhani and Ram Kishun, which implies that PW-3 was not present, when the incident occurred, but she later came to know from other persons, that such incident had taken place in which her husband has been killed. Thus, the statement of PW-3 becomes a hearsay evidence. The statement of PW-3 further becomes unbelievable, in as much she herself stated that at the relevant time her husband was urinating at the place, where there was a ditch and therefore, it was not possible to witness the incident from a distance and the deceased could not be seen at all. Thus, there are material contradictions and variations at large in the statements of PW-3 as well as PW-1 and PW-2 as recorded by trial court. All the three witnesses have narrated the incident as per their own convenience and just to give it a colour of murder at the hands of the assailants, but that is not the

case. Learned counsel for the respondent has relied upon the judgements of the Hon'ble Supreme Court in the case of *Vijay Singh @ Vijay Kr. Sharma vs. State of Bihar*, 2024 INSC 759, *Dhirubhai Bhailalbhai Chauhan vs. The State of Gujarat*, 2025 INSC 381, *Raja Khan vs. State of Chhattisgarh*, 2025 INSC 167, *M. Sambasiva Rao vs. The State of Andhra Pradesh*, 2025 INSC 868 and *Ramu Appa Mahapatar vs. State of Maharashtra*, 2025 INSC 147 and argued that, if there are material contradictions in the testimony of witnesses and no independent witness has been examined, then the same stands fatal to the case of prosecution and therefore, the accused persons are entitled for such benefit of doubt. He lastly argued that, there is no infirmity, illegality or impropriety in the impugned judgement passed by learned trial court and the same is based upon correct appreciation of evidence, facts etc. and calls for no interference by this Court. The learned trial court has very consciously and carefully considered all aspects, such as material contradictions, variations and the deposition of the witnesses, the chain of events is not so complete, which clearly suggested that the assailants and no body else have murdered the deceased.

37. The finding recorded by the learned trial court by acquitting the accused persons is in accordance with law and no interference is required by this Court.

38. The present appeal is devoid of merits and the same is accordingly dismissed. It is directed that the trial court record be remitted at the earliest.

(Hon. Harvir Singh, J.)

(Hon. Rajiv Gupta, J.)

September, 18, 2025.

Faridul.