



2025:AHC:169519-DB

Reserved on 25.8.2025

Delivered on 22.9.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3527 of 1984

Uttam

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Rajesh Kumar Nishad, Shashi Kant Shukla
Counsel for Respondent(s)	:	D.G.A.

Court No. - 47

HON'BLE SIDDHARTH, J.

HON'BLE SANTOSH RAI, J.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri Shashi Kant Shukla, learned counsel for the appellant; learned AGA for State-respondent and perused the material on record.

2. The above noted criminal appeal has been preferred against the judgement and order dated 3.12.1984 passed by Sessions Judge, Banda, in Sessions Trial No.737 of 1984 convicting the appellant under Section 302 IPC and awarding him sentence of imprisonment for life.

3. The prosecution story is that father of the informant, Ranjeet Kewat, had appeared as prosecution evidence about 13-14 months ago against the appellant, Uttam, in murder case of Constable Kailash Nath Mishra, but accused, Uttam, was acquitted in the aforesaid trial and released from jail. Uttam had enmity and motive against the father of the informant, Ranjit, because of the aforesaid case. On 15.7.1984 informant alongwith his father, Ranjeet, Kallu, s/o Prabhu, his Bua's son and Ramswaroop, s/o Gajju, after having their food, were going to village, Mahilapurwa to Khale Ke Dera, hamlet of Gaurikala to the house of Dharmpal Singh for keeping his Chhappar. When at about 2-2 and 1/2 p.m. he reached near Khale Ke Dera and his father was near Peepal tree and other companions were behind 25-30 steps, Uttam fired on him from behind Peepal tree by country-made pistol in his right hand, from a distance 2-3 steps only which struck on the left side of

the neck of his father, who fell down on the ground and died. Assailant was challenged by the informant and others, but he threatened them escaped. Number of persons of the village gathered after hearing sound of firing. Informant and other persons accompanying him saw the appellant causing the alleged incident. Accused left his slippers on spot while escaping. After keeping the dead body in the custody of Kallu and Ramswaroop, FIR was got lodged by the informant.

4. The prosecution produced PW-1, Ganga Charan, the informant, son of the deceased; PW-2 Kallu; PW-3, Dr. A.K. Agrawal; PW-4, Ramswaroop; PW-5, Sub Inspector, K.V. Singh and PW-6, Constable, Shyam Babu, before the trial court to prove the prosecution case.

5. The accused was examined under Section 313 Cr.P.C. before the trial court wherein he denied his complicity and participation in the alleged crime of murder of Ranjit.

6. P.W. 1, Ganga Charan, corroborated the prosecution version and specifically stated that when his father, Ranjit, reached the field of Ram Kripal and Gajodhar, near the Peepal tree at a distance of 50-60 paces from the Khale Ka Dera which these three persons following him at a distance of 25-30 paces and when his father reached beneath the Peepal tree then accused Uttam appeared from behind Peepal tree holding pistol in his right hand and fired at his father which struck him in the left portion of the neck fell down on the ground. They made hue and cry. Then Uttam ran towards south after committing murder of his father. He specifically stated that after escape of the accused from the spot on hearing their noise of cries villagers had arrived after 10-15 minutes duration of their making noise and in the meanwhile it had started raining. A pair of Chappal of blue colour of the accused was left on the spot. Then he left Ram Swaroop and Kallu near the dead body and went to police out post for lodging the FIR. He got scribed written report Ext.Ka 1 by Jang Bahadur on his dictation lodged it at police station and it was read over to him which he endorsed and identified his thumb impression and it was marked as Ext.Ka 1 and the pair of the Chappal was marked as material Rx.. 1. On the point of motive he stated that about 12-13 months prior to the murder of his father, constable Kailash Chandra Mishra, was murdered and this accused was tried and his father was eye witness of the aforesaid murder case, wherein he appeared as prosecution witness against him in the murder case of that constable. About one month prior to this murder this accused was acquitted in the murder case of the constable, as such he had enmity with his father. This motive was clearly

established as once this accused was acquitted and the deceased had appeared as prosecution witness deposing about his complicity in the murder of the constable would lead to the irresistible conclusion about the motive of this accused to commit murder of the deceased. The learned counsel for the accused argued that when he was acquitted then he would not have any motive to commit murder of the deceased but that contention did not carry any force as irrespective of the result of the trial for the murder this deceased had appeared as witness against this accused. As such in our opinion he had motive to commit murder of the deceased. In his cross-examination PW-1 stated that the place of incident was at a distance of one kilometre from his Purwa towards east. He added that they had gone to keep Chhappar a day before the occurrence and had not been to Khela Ka Dera earlier. He also specified that he had gone alone a day before for keeping Chhappar to Khale Ka Dera and his father did not accompany him on the earlier day. He added that all these four persons started together from their houses and in the way he did not notice anybody else going for keeping Chhappar at Khela Ka Dera. He also specified that the accused had no other enmity or motive against his father except that the deceased had appeared as prosecution witness in the murder case against him. He did not know whether police had demolished the house of accused after the murder of that constable or not, although the accused was resident of his Purwa. He added that the accused did not own any house in his Purwa at the time of the murder of his father and he did not know where he had been residing earlier. Kallu was son of Prabhu resident of village Narain who was serving in railway department at Delhi for last 6-7 years. Agricultural land of Kallu was situated in village Narain which was at a distance of 20 kms from his Purwa. He denied that Kallu was residing in village Narain and was carrying cultivation of the plots. He specified that his family members had been cultivating the plots. He also admitted that this Kallu, P.W.2 was son of Kalèshia his father's real sister or his Buwa. The occurrence took place during rainy season and Kharif crop was already sown. There was a Peepal tree in the field of Ram Kripal where the occurrence had taken place but no crop was sown till then in that plot. He did not know if Bindu Singh owned his plot towards east of the field of Ram Kripal. He added that the plot of this accused was situated at a distance of 50 paces towards east from the place of the occurrence. Then he added that there was water drain towards east of the field of Ram Kripal but he did not know if any Nala was situated at a distance of 10-15 paces from the eastern drain or not. This Peepal tree was at a distance of about 30 paces from the eastern Nali. He stated that all the four persons had been going together from the village upto distance of 30-40 paces. Then these three persons were left behind and his father had

gone ahead leaving distance of 25-30 paces between them and his father was going ahead of them. He stated that a Mahuwa tree was at a distance of 25-30 paces towards west from the Peepal tree and no other tree was standing near the Peepal, tree. They were going on Chak road which had been cultivated and included in the plots of the farmers. This Peepal tree was at a distance of 3-4 paces from the Chak road. Uttam had concealed himself behind this Peepal tree in its southern corner and the peepal tree was at a distance of 30-40 paces from the Khale Ka Dera where from this Peepal tree was visible. He further stated that the accused fired from a distance of 3 paces which would come to more than 4 feet and as such absence of blackening or charring in the wood stood self-explained. He saw that the distance or range, between barrel of pistol and the neck of his father at the time of firing was 3-4 hands. Other villagers had reached after escape of the accused from the spot and two to four persons had come from Khale Ka Dera and others had reached after he had left for the police out post Jaspura. He admitted that his father was convicted and sentenced for seven years R.I. which he had served out. He further admitted that his father was falsely prosecuted in a case punishable under Sections 399/402 by police of Mara district Fatehpur. He admitted that Badlu of Karaura was killed in encounter as he was bad character. But he did not know if his father was a police witness in that case or not. He denied that his father was murdered by his enemies in the darkness of night and no body had seen the commission of the murder. He stated that there were no rains or winds before the commission of the murder of his father and rains started after the murder. First they had chased the assailant but then it started raining and the accused managed to escape. He admitted that Dharampal was educated person in village Khale Ka Dera who had himself reached on the spot after the murder of his father, but he did not ask Dharampal to scribe the written report. First he went to his Purwa from the spot and after reaching Jaspura he got scribed the written report Ext.Ka 1 from Jang Bahadur and then went to the police out post. He denied that first he direct went to police out post Jaspura where the police had called Jang Bahadur and got scribed this written report Ext. Ka 1. He and Badlu had gone to Jaspura together. The Investigating Officer had reached at 9 P.M. on the spot on the same day and had started preparing documents in morning and not in the night time. He was interrogated next day by the I.O. The I.O. had returned back in the night time from the spot and did not stay in the village and reached again on the spot at 6 A.M. next morning. It had heavily rained after the murder of his father and much water had flown in the field. They did not carry the dead body to the village and it remained on the spot. He denied that the accused did not commit murder of his father and this witness did not see committing the murder of his father.

7. P.W.2 Kallu knew the accused and his maternal uncle, Ranjit, deceased. About four and half months ago, he, Ranjit, P.W.1 Ganga Charan and P.W.4 Ram Swaroop were going for keeping Chhappar at the place of Dharampal in village Khale Ka Dera and when they reached near the Peepal tree in the field of Gajodhar and when his maternal uncle was at a distance of 30 paces from them and was ahead of them. Uttam, who was concealing himself behind the Peepal tree and when Ranjit reached near the peepal tree, then he holding pistol in his right hand came from behind the Peepal tree and after proceeding 2-3 paces further fired bullet striking on the left side neck of his maternal uncle who fell down on the ground and died. On hearing noise of firing they also proceeded ahead and made hue and cry. Then the accused threatened them that if they would proceed further they would be shot dead. Then the accused fled away towards south leaving his Chappal on the spot. After escape of the accused from the spot several villagers had reached and he and Ram Swaroop stayed there to look after the dead body and Ganga Charan had gone to lodge report at the police station. He also corroborated about motive of the accused for committing murder of the deceased which was undisputed and the motive was denied by the accused but he proved by the same corroborated testimony of both the witnesses of fact namely P.W.1 Ganga Charan and P.W.2 Kallu. He admitted that the accused was acquitted in the murder of the constable prior to the commission of the murder. In his cross-examination he stated that distance of Khale Ka Dera from the place of the murder was 30-40 paces. He admitted that his wrist watch was stolen prior to the commission of the murder of Kailash Nath Mishra and he had nominated Uttam as accused and as thief of his wrist watch. He denied that his maternal uncle had called police for recovery of the wrist watch and he also denied to be having any motive with the accused due to theft of the wrist watch which could not be traced out till today. But there was no evidence or circumstance to prove that Ganga Charan P. W.1 would be under the undue influence of the police to falsely nominate this accused in the written report Ext.Ka 1. He further stated that the deceased was lying with his back on the ground and head towards west. The dead body of the deceased was not touched by anybody after his murder on the spot till the I.O. had not reached there by 8 P.M. on. that very day. The I.O. did not get lifted and removed the dead body from the place of the murder to any other place. The proceedings did not start in the night time of this murder by the I.O. who had returned back to Jaspura during night time. However, the police constables remained on the spot and the I.O. had reached there next morning. After firing at Ranjit and escape of the accused from the spot Mattu, Parsan, Gopal, Suraj r/o Mahila Purwa had arrived. Subsequently the

I.O. had interrogated these persons. He stated before the I.O. that on hearing noise of their cries and firing villagers, Mattu Parsan, Gopal, Suraj Shiva Lal and several other persons of Khale Ka Dera had reached. He also stated before the I.O. that villagers had chased the accused to arrest him. Dharampal had reached on the spot after murder at whose place they were going to keep Chhappar. He specified that 15-16 persons had arrived on the spot after commission of the murder till P.W. 1 Ganga Charan remained on the spot. He denied that the deceased was killed in the darkness of night by his villagers and nobody had witnessed the commission of the murder.

8. Dr. A.K. Agrawal P.W.3 who conducted autopsy of the dead body of the deceased on 17.7.84, when he was posted as Medical Officer, district hospital Banda at 12 noon. Board was brought with seal intact by constables, Rampal and Nirmal Singh of P.S. Pailani and had identified before him. The deceased was of about 50 years of age and two days had passed since his death. Rigor mortis had passed from the body and decomposition had set in and he found following ante mortem injuries on the person of Ranjit :

I. Gun shot wound of entry 3 cm x 12 cm x muscle deep on left face of neck 2 cm from left side corner of jaw, margins inverted.

In the internal examination he found that the heart was empty and the left side carotid vessels lacerated below injury. He found 4 oz semi digested food in the abdomen. In his opinion cause of death was due to shock and haemorrhage as a result of ante mortem injury. He proved post mortem report Ext.Ka 2 prepared at the time of conducting autopsy. He also recovered blood stained underwear, banyan, from the dead body which were sealed and sent to S.O. Pailani through the constables. Death could have caused on 15.7.84 at 2 or 2.30 P.M. and the injury found on the person of the deceased was sufficient in the ordinary course of nature to cause his instantaneous death.

9. P.W. 4, Ram Swaroop, who knew accused Uttam present in the dock and the deceased, Ranjit, deposed that about 4 months ago at about 2 or 2.30 P.M. he, Ganga Charan informant, Kallu and the deceased, Ranjit, were going from their Purwa to the place of Dharampal for keeping Chhappar at Khale Ka Dera. Ranjit was going ahead and rest three persons were moving about 25 or 30 paces behind Ranjit who had reached near the peepal tree. Then accused, Uttam, fired at the deceased with his pistol and the pellet struck and Ranjit had fallen down. Three persons following him proceeded further and made hue and cry. Then the accused threatened them that they

would come forward then they would also be shot dead. The accused ran away after leaving a pair of Chappal on the spot. Thereafter it rained heavily, with fast winds and the accused had run away from the spot. Then they went near the deceased who was lying dead and blood was coming out from his injury. In his cross-examination he stated that Mansha father of Ranjit and his grandfather, Jangalia, were real brothers. As such the informant was his first cousin. His house was situated at a distance from the house of Ranjit. He was illiterate. He left at about 2.15 P.M. from his house to Khale Ka Dera and had accompanied other persons simultaneously. Subsequently these three persons remained behind and Ranjit had reached ahead of them. He was unable to state distance between his house and the house of the deceased but 6 or 7 houses intervened. He further denied to have gone with these persons for keeping Chhappar earlier than on the date of the occurrence. However, he specified that he had gone to Khale Ka Dera a day before the occurrence with one boy which was situated at a distance of one kilometre from his Purwa. He did not know correct distance being illiterate although he had stated distance of his Purwa of one kilometre approximately and he had no assessment about distance. However, he correctly stated that now it was 3.30 P.M. It was rainy season and sowing and ploughing was going on, but the crop was not sown. On the point of topography of the spot he specified that the Peepal tree existed in the field of Gajodhar and no other trees had existed around this Peepal tree. Khale Ka Dera was at a distance of two trees from the Peepal tree and there was no obstruction in between two places. He was unable to state if the plot in which the Peepal tree was standing was ploughed or not. However, he frankly stated that he did not notice the accused prior to hearing the noise of bullet fire and saw the accused subsequently after he had made fire. He did not know whom were the cultivators of those fields, situated around field of Gajodhar. He did not know if Ganga Charan, informant, got scribed written report Ext.Ka 1 on the spot or not. He did not know how much agricultural land was owned by the deceased but he had denied that he had 8 or 9 bigha land. The I.O. had reached on the spot at 8 or 9 P.M. in stead of 11 P.M. as stated by the I.O. The I.O. had written something in the night time and did not stay in village Mahila Purwa during the night and stayed at Khale Ka Dera in the night time. He added that after stopping of the rains 10 to 50 persons had gathered at Mahila Purwa and Khale Ka Dera on the spot after hearing the noise of firing. Therefore, they could not have opportunity to witness the occurrence of the commission of the murder of Ranjit as it rained for about an hour with fast winds. He was interrogated u/s 161 Cr.P.C. on 17.7.84 but he denied to have stated before the I.O. that on hearing their noise of cries and firing his villagers Satak, Parsan, Kirpal, Duraj, Sripal and other persons of Khale Ka

Dera had come. He denied that the deceased was murdered at lonely place by his enemies and he was telling lie being nephew of Ranjit. He denied that he did not witness the commission of the murder of the deceased and was telling lie under the influence of the police. He was declared hostile by the prosecution and when cross-examined on behalf of the State he deposed that the deceased was murdered by the accused and he had seen him committing murder with his own eyes. He further explained that he stated earlier when cross-examined on behalf of the accused that he did not see Uttam D Rank committing murder of any body else. He denied that he was telling lie being won over by the accused. It appears that this witness had stated of about fact by some misunderstanding, but he had corroborated on record that Ranjit was murdered by firing pistol firing at 2-or 2.30 P.M. near the Peepal tree in the field of Gajodhar when they were going for keeping Chhappar at the house of Dharampal in Khale Ka Dera. All these facts are well established on record without any ray of doubt or suspicion. But the complicity and participation of this accused in the testimony of P.W.4 Ram Swaroop could not be held. Hence he was declared hostile on this point.

10. P.W.5 S.I. K.B. Singh was posted as such at P.S. Pailani from 7.7.83 and the case was registered at P.S. Jaspura in his presence. Chick report was scribed by constable Moharrir Shyam Babu dated 15.7.84. He was entrusted with the investigation of the case which he started on 15.7.84 and reached to police out post Jaspura at 7.30 P. M. and received relevant papers and reached at 9.30 P.M. at Mahila Purwa, interrogated the witnesses at the house and then he went to the spot but due to night he could not prepare inquest report. Then it was prepared at 6 A.M. in the next morning on 16.7.84 and also prepared photo lash challan lash, letters which were marked as Exts.Ka 5 to Ka 9 and sent the sealed dead body for post mortem through constables Rampal and Nirmal Singh. He also found one pair of shoe of plastic from the dead body during the preparation of inquest report which was taken into custody vide recovery memo Ext.Ka 10. Thereafter on the pointing out of the informant he inspected the spot and prepared site plan Ext. Ka 11 which was correct and plan Ext.Ka 11 which was correct and contained necessary index. He also recovered plain and blood stained earth from the spot and kept them in two different containers vide recovery memo Ext.Ka 12 and also took in his custody one pair of Chappal of the accused vide recovery me mo Ext.Ka 13. Then he interrogated witnesses Kallu etc and on 17.7.84 he interrogated Ram Swaroop witness. There-after the investigation was handed over to N.K. Chaudhari, S.I., who had submitted charge-sheet in his own writing and signatures which he had identified and was marked as Ext.Ka 14. In his cross-examination he stated that on 15.7.84

no S.I. was incharge of P.S. Jaspura which was at a distance of 8 kms. from Pailani across winds started. As such he could manage to escape and could not be arrested on the spot. He did not find any tikly on the spot. The dead body remained lying on the spot and a constable was left for looking after the dead body. Therefore evidently the investigation was quite fair and prompt and reasonable and alleged motive on the part of the investigating police personnel to falsely implicate this accused Uttam due to commission of the murder of constable Kailash Nath Kishra did not appear reliable or natural. The a reason being that Uttam was prosecuted for the murder of constable and was acquitted after trial. Therefore, the police would not be after him to falsely implicate in the murder of Ranjit who admittedly appeared as prosecution witness of Ranjit who admittedly appeared as prosecution witness against this accused in the murder case of Kailash Nath Mishra constable. Further why the informant would falsely nominate the accused in the FIR Ext.Ka 1 and would eliminate the actual assailant of his father if he was eye witness and present on the spot. Chances of commission of murder before 11.30 A.M. and in the night at 9 or 10 P.M. on 15.7.84 did not eliminate and would not cause any doubt about correctness of the prosecution case.

11. P.W.6 constable Shyam Babu was posted on 15.7.84 at police out post Jaspura when at 4.30 P.M. the informant lodged written report Ext.Ka 1 at the police out post Jaspura and he scribed chick report Ext.Ka 3 and registered a case in the G.D. vide report no.12, the extract of which was marked as Ext.Ka 4. He added that no S.I. was present at the police out post at that time, as such he sent information about this murder by radiogram to P.S. Pailani and also sent FIR through post office on 16.7.84 for endorsement of the crime no. on the FIR. In his cross-examination he admitted that constable Kailash Nath Mishra was murdered and this accused was prosecuted and was acquitted in that trial about a year ago. However, he was not posted at police out post Jaspura at the time of the murder of constable Kailash Nath Mishra. He did not know the scribe of the written report Ext.Ka 1. He denied that Ranjit was murdered in the night time.

12. The accused was examined under Section 313 Cr.p.C. before the trial court wherein he denied his complicity and participation in the commission of murder of Ranjit although he admitted that constable Kailash Nath Mishra was murdered about 13-14 months prior to the murder of Ranjit victim of the case and that he was posted at police out post Jaspura, P.S. Pailani and this accused was prosecuted and Ranjit had appeared as a prosecution witness against him in the murder case of Kailash Nath Mishra and the accused was

acquitted in that trial and he was actually released from the jail 12 months before the commission of the murder of Ranjit. But he denied any motive or enmity against Ranjit to have committed murder of the deceased Ranjit. He also denied that the pair of Hawai Chappal did not belong to him. He further specified under Section 313 Cr.P.C. that he was acquitted from the murder case of Kailash Nath Mishra constable on 28.5.84 and due to fear of the police he ran away to district Baitul, M.P. to his sister's place and his wife's brother came in village Patha Kheda district Baitul about 24 days after his acquittal and release from jail and informed that he had been again falsely implicated due to enmity by his enemies and he was produced in court on 24.7.84. This alibi that the accused was staying in village Patha Kheda, district. Baitul, M.P. on 15.7.84 was not consistent to the statement of the accused as he stated to have been informed by his wife's brother about his false involvement in the murder case due to enmity after 21.6.84 while the murder took place on 15.7.84 i.e. on 22nd day.

13. Learned counsel for the appellant has raised following submissions:-

- i. Jang Bahadur Singh, Scriber of Tahrir (FIR) was not examined.
- ii. Alleged witnesses recovery of alleged Chappal (Sleeper) of accused and collection of blood stained & plain soil from the spot from the place of incident namely Badalu S/o Baiju Kewat and Ram Lal Son of Manbodhan Kewat were not examined.
- iii. Alleged pellet/bullet was neither found in the dead body nor from the place of incident, and there is no exit wound in the dead body.
- iv. Alleged Tamancha, which is said to be weapon of murder, has also not been recovered.
- v. The criminal case, which was against the accused and in which the deceased was witness, the accused appellant was acquitted prior to the incident, so there can be no motive to commit murder of the deceased. Thus, the motive is not reliable.
- vi. The deceased was informer in the encounter case of Badalu Ghewar and his family member were also having enmity with the deceased and as such, there is possibility that they would have committed murder of deceased.

vii. P.W.-2 Kallu is direct relative of deceased being his Bhanja and as such no reliance can be placed on his testimony. Moreover, his village Narayan is about 2.5 Kms. away and at the time of incident he was residing at Banda and he is also employed in Railway at Delhi,

viii. P.W.-2 has stated that accused had stolen his watch, which may be the reason for his appearance as witness.

ix. Age of the accused/appellant is about 70-72 years.

x. P.W.-1 and P.W.-2 are the interested witness as P.W.-1 is son and P.W.-2 is Bhanja of deceased. They have alleged that they had seen the incident from 25-30 Steps i.e., about 50-60 Feet that too at that time there was thunder storm so it is difficult to recognize the person who shot the deceased, as stated in the F.I.R..

xi. P.W.-1 and P.W.-2 alleged that they saw the incident, but they did not try to take the injured/deceased to the hospital.

14. Learned AGA has opposed the submissions made by learned counsel for the appellant and has submitted that prosecution has proved its case beyond all reasonable doubt on the basis of motive and eye-witness account of the incident. The judgement and order of conviction passed by the trial court deserves to be confirmed.

15. We have considered the rival submissions made by the parties. Perused the judgment passed by the trial court vis-a-vis the evidence on record.

16. After venturing into the facts, evidence and arguments, we have considered the power of the appellate court provided under Section 386 Cr.P.C. in the case of ***Gowrishankara Swamigalu Vs. State of Karnataka and Another, (2008) 14 SCC 411***, it has been held by the Supreme Court that the powers to be exercised by an Appellate Court are as wide as of the trial court. The Appellate Court can review the whole evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused, but where two views are possible on same evidence and the findings recorded by the trial court are not perverse, the appellate court should not interfere with the findings of the lower court.

17. Thus, the appellate court, firstly, to appreciate the evidence on record;

and secondly, should interfere with the findings only when the view of appellate court is different from the trial court. Coupled with the observation that the finding recorded by the trial court is perverse.

18. It is also observed by the Supreme Court in the case of ***Jitendra Kumar Mishra alias Jittu Vs. State of M.P., (2024) 2 SCC 666***, that the appellate court should be slow in interfering with conviction recorded by the trial court, but where evidence on record indicates that the prosecution has failed to prove the guilt of accused beyond reasonable doubt and that is a plausible view, different from the one expressed by the trial court, can be taken. The appellate court then should not shy away in giving benefit of doubt to the accused.

19. The judgment of conviction is also challenged on the ground that the witnesses of fact are related witnesses, whose testimony is to be considered carefully. It is a settled position of law that the testimony of witness in a criminal trial cannot be discarded merely because the witness is a relative or family member of the victim. In such cases, Court has to adopt a careful approach in analyzing the evidence and if the testimony of related witness is found credible, the accused can be convicted. In the celebrated case of ***Ashok Kumar Chaudhary Vs. State of Bihar, (2008) 12 SCC 173***, it is observed by the Supreme Court that the Court cannot lose sight of the ground realities that the members of the public are generally insensitive and reluctant to come forward to report and depose about the crime, even though it is committed in their presence. It is in this backdrop that the Supreme Court has held, not to brushed aside the testimony of the related witnesses, merely because they are interested, but a duty is cast on the court to scrutinize such evidence with greater care and caution. This judgment is also considered by the trial court. The law on the point of related witness is also dealt with by the Supreme Court in the cases of ***M. Nageswara Reddy Vs. State of Andhra Pradesh and others, (2022) 5 SCC 791***, & ***State of Punjab Vs. Gurpreet Singh and others, (2024) 4 SCC 469***, wherein, it is held that the testimony of the witness cannot be discarded merely because the witness is related.

20. As such, the witnesses of fact are not only trustworthy and consistent in their statements, but their presence at the place of incident is also probable and they are the eye witnesses of the incident. They have also established the identity of the accused-appellant and his role of firing at the deceased.

21. Statements of formal witnesses have also established the place of incident, the time of incident and the presence of witnesses on the place of incident.

22. We have considered the entire evidence on record, which are clinching in nature. The matter pertains to direct evidence, where the motive of the crime was established. The trial court has considered the entire evidence in right perspective. There is no infirmity in appreciation of evidence carried out by the trial judge. It has been rightly held that the offence of murder was committed by the accused-appellant. Therefore, we did not find any reason to interfere with the findings of the trial court. The grounds raised in the appeal are not tenable in the eyes of law. The appeal deserves to be dismissed.

23. Regarding non recovery of bullet from the dead body of deceased and non recovery of weapon of crime, it is settled law that they do not falsify the prosecution case which was otherwise proved from reliable evidence.

24. The above noted criminal appeal is **dismissed**.

25. Before parting, we have found that the trial court while convicting and sentencing the appellant under Section 302 IPC has not imposed any amount as fine, which is mandatory.

26. Keeping in view the fact that this is an old appeal of 1984, we direct the appellant is also liable to pay fine of Rs.2000/- only. In default of payment of fine, the accused shall further undergo rigorous imprisonment for a period of 17 days.

27. Since we have not enhanced the sentence awarded to the appellant by the the trial court but only complied the mandatory provision of section 302 IPC, therefore, no notice is required to be issued to the appellant for the same.

28. We are also conscious of the age of the appellant, but it is for the State government to consider his case for remission.

29. The appellant is on bail. His bond is cancelled and sureties are discharged. He is directed to surrender and carry out the remaining sentence.

30. Office is directed to return the trial court record, within a week and notify this judgement too to the trial court.

September 22, 2025
Ruchi Agrahari

(Santosh Rai,J.) (Siddharth,J.)