



2025:AHC:172556-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3388 of 1984

Parmatma And Others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	G.P.Mathur, V.P.Mathur
Counsel for Respondent(s)	:	A.K.Misra, M.P.Singh

Court No. - 44

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

1. Heard Sri V.P. Mathur, learned counsel for the appellants and learned AGA for the State.
2. Present criminal appeal arises from the judgement and order dated 05.12.1984 passed by Sri P.N. Rai, learned IIIrd, Additional Sessions Judge, Basti, in Sessions Trial No.102 of 1984 (State vs. Parmatma, Devi Prasad and Vijay Bahadur). Thereby the learned court below has convicted the accused-appellants for offence under Section 394 read with Section 34 I.P.C. and awarded punishment of 10 years rigorous imprisonment. Also, all the three appellants have been convicted for offence under Section 302 I.P.C. and sentenced for life.
3. All the appellants are on bail.
4. The prosecution story emerged on the Written Report dated 20.03.1984 submitted by Bhabhuti Prasad (P.W.-1). The father of the deceased Shyam Bihari. The Written Report is in the writing of Ram Dheeraj Pathak (not examined). In that Written Report it was narrated, the first informant had old animosity with the accused persons. On 20.03.1984, at about 5:00 p.m., all the accused persons ambushed the deceased in a wheat field while he was returning from Babhnan, in the north-east corner of the village. Hearing the commotion, the first informant Bhabhuti Prasad (P.W.-1), his son Shiv Kumar, Sharda Prasad, Ram Dheeraj (not examined), Gudri (P.W.-3) and many others rushed to help the deceased Shyam Bihari. They scolded the assailants. At that time, the assailants snatched the single-barrel gun of the deceased who fled from the spot. The Written Report is Ex.Ka-1. On that Written Report, F.I.R. was registered at Police Station Paikoliya, Basti, on 20.03.1984, at about 7:15 p.m. It is Ex.Ka.-6. On that F.I.R. lodged, recovery of samples of blood stained and plain earth were made from the spot, on

21.03.1984. That Recovery Memo is Ex.Ka.-2 at the trial.

5. In the meantime, on 20.03.1984 at 10:30 p.m., the injured Shyam Bihari was examined by Dr. R.C. Parashar (P.W.-7) at District Hospital, Basti. In that, he noted the following 10 injuries received by the deceased :-

1. Lacerated wound 6 cm x 0.5 cm x bone deep on head left side 10 cm above left ear. Advised X-ray of skull.

2. Lacerated wound 7 cm. X 0.5 cm. x bone deep on head left side 9 cm. away from left ear. Advised X-Ray Skull.

3. Lacerated wound 4 cm. X 0.5 cm. x bone deep on left side head 6cm. above left ear. Advised X-ray skull.

4. Lacerated wound 3 cm. X 0.5 cm. x bone deep in left side fore-head 4 cm, above left eye brow. Advised X-ray skull.

5. Lacerated wound 2 cm. x 0.5 cm. x muscle deep on left side face just to left eye. Advised X-ray skull.

6. Contused swelling on whole left side face and head and bleeding from left ear. Advised X-ray skull.

7. Contusion 3.5 cm. x 1.5 cm. on right fore-arm 10 cm. below right elbow joint. Advised X-ray right fore-arm.

8. Lacerated wound 3cm. x 0.5cm. x muscle deep on left fore-arm 11 cm. above wrist joint.

9. Contusion 11cm. x 1.5cm, on left side back 6 cm, below top of left shoulder.

10. Contusion 7cm. x 1 cm. on back on right side 6 cm. below injury no. 9.

6. On such injuries noted, he made the following observation :

Keep under observation caused by blunt object dimension is about 1/4 day old. Injury nos. 1, 2, 3, 4, 5, 6 & 7. Advised for X-Ray.

The Injury Report of Shyam Bihari is Ex.Ka-9.

7. Shyam Bihari died early morning, next day at 6:20 a.m., at District Hospital, Basti. Though, no Bed Head Ticket and documents of admission or treatment of Shyam Bihari were proven at the trial, it does appear, the

Inquest Report was prepared after the death of Shyam Bihari at the mortuary of the District Hospital, Basti, between 12:40 – 01:50 p.m. on 21.03.1984. In that there is no reference or mention of the F.I.R. lodged. The Inquest Report is Ex.Ka.-11.

8. Also, on 21.03.1984 Autopsy Examination was conducted by Dr. Uma Shanker Mishra (P.W.-8). In that, he noted the following 18 injuries :

- 1. Lacerated wound 5cm, x 1 cm. x bone deep left side, head 6cm. above left ear.*
- 2. Lacerated wound 7cm. x 2cm, x bone deep, back of head 10 cm. left ear and 10 cm, behind Right Ear on occipital area.*
- 3. Lacerated wound 3 cm. x 1 cm. x muscle deep right side head 9 cm. above right ear.*
- 4. Lacerated wound 9 cm x 2-1/2 cm x bone deep on left side head 9 cm. above left ear.*
- 5. Lacerated wound 7 cm. X 2 cm x bone deep on left side head 11 cm. above left ear 9 cm. above left eye brow.*
- 6. Lacerated wound 3cm. x 1 cn, x bone deep on left side head just above injury no.5.*
- 7. Lacerated wound 4cm. X 1 cm. x bone deep left side forehead 3 cm, above left eye brow*
- 8. Lacerated wound 3 cm. x 2 cm. x muscle deep on outer angle of left eye.*
- 9. Lacerated wound 1 cm. x. 5 cm. x musale deep on left side of face 2 cm. below injury no.8.*
- 10. Contusion 5 cm. x 4 cm. over left eye involving upper and lower lid.*
- 11. Abraded contusion 6 cm. x 4cm. infront of forehead 4 cm. above root of nose.*
- 12. Lacerated wound 3 cm. x 1 cm. x muscle deep on back of left fore-arm 10 cm. below left elbow joint.*
- 13. Abraded contusion 6 cm, x 4 cm. on the back of left forearm just above left wrist joint.*

14. *Multiple abraded contusion in an area of 20 cm. x 16 cm., back and outer part of right forearm just below right elbow joint, under neath radius broken.*

15. *Lacerated wound 5 cm. x 1 cm. x muscle deep between left thumb and left index finger.*

16. *Multiple contusion in an area of 40 cm. x 20 cm. on the back of left side chest and abdomen, largest measuring 12 cm. x 3 cm, smallest measuring 3cm. X 2cm.*

17. *Traumatic swelling 20 cm. X 15 cm. on left side face and lamporal regivest.*

18. *Multiple contusions in an area of 30 cm. x 12 cm. on the back of right side chest largest measuring 12 cm. x 3 cm., smallest measuring 3 cm x 3cm.*

The Autopsy Report is Ex.Ka-10 at the trial.

9. Also, on 26.03.1984, the Investigation Officer recovered the license of the gun of the deceased, together with live cartridges, from the house of the first informant. That Recovery Memo is Ex.Ka.-4.

10. Upon conclusion of Investigation, charge sheet was submitted against the appellant, by the Investigation Officer S.I. Ram Sewak Singh (P.W.-5).

11. Upon the case being committed for trial to the court of Sessions, following two charges came to be framed against the appellant :

"1stly. That you on 20.3.84 at about 5.00 P.M. in the north east, corner of village Basthanwa, P.S. Paikolia, Distt. Basti, committed murder, intentionally causing the death of Shyam Bihari and thereby committed an offence punishable u/s. 302 of the Indian Penal Code and within the cognizance of the court of Sessions.

Secondly: That you on the aforesaid date, time and place, in the prosecution of your common intention, voluntarily caused hurt to Shyam Bihari in committing robbery of S.B.B.L. No. 4664 of 12 bore and that you thereby committed an offence punishable u/s. 394 of the Indian Penal Code read with section 34 of the Indian Penal Code and within the cognizance of the court of Sessions."

12. At the trial, besides relying on the above documentary evidence, the prosecution relied on oral evidence led through 10 witnesses. In that, the first informant Bhabhuti Prasad - the father of the deceased Shyam Bihari, and

was also the village Pradhan in the year 1980, was examined as P.W.-1. First, he proved that he had lodged civil proceedings against Parmatma and Devi Prasad (both accused in this case) under Section 115 (C) U.P. Z.A.& L.R. Act. For that reason, the accused side developed animosity. They lodged an F.I.R. against the deceased in the year 1981. They also named Shyam Bihari as an accused in the murder of Atma Prasad the brother of Parmatma and Devi Prasad. However, Shyam Bihari was acquitted in that case.

13. He proved that at the time of occurrence he was irrigating his agricultural field situated in northern corner of the village. Thereafter, he had turned off the pumping set. At that time Shyam Bihari, who was returning from Babhnan, was assaulted by the accused persons near the Mahuwa tree. In that, he also narrated that the accused were hiding in the wheat field, from before. They assaulted Shyam Bihari with *lathis*. As the latter called for help, he saw Shyam Bihari was standing while the accused were assaulting. He, also his son Shiv Kumar, Shiv, Gudri, Sharda Prasad, Ram Dheeraj and many others ran to the place of occurrence. About 5 to 10 paces from there, they saw accused Vijay Bahadur Mishra snatched the gun from Shyam Bihari and threatened the witnesses and others to stay away or they would also be killed. The assailants continued to assault Shyam Bihari with *lathi* on his head. Thereafter, when Parmatma felt that Shyam Bihari was dead, he uttered words to that effect and asked the other assailants to leave. They fled.

14. Thereafter, he narrated, he sent Akhilesh to Ram Dheeraj with a message to bring his tractor. He returned with a tractor with paper and pen on which the Written Report was prepared and signed by the first informant.

15. They carried the injured to the Police Station Paikoliya. There, the Inspector sent them to the doctor at Harraiya alongwith a Constable. At Harraiya, doctor opined that the condition of Shyam Bihari was serious. He was referred to Civil Hospital Basti. The first informant returned to his village on the tractor to arrange money whereas others carried the injured to the District Hospital Basti. Thereafter, the Inspector arrived at the village at about 3:00 a.m. He collected samples of blood stained and plain earth and also recorded the statement of first informant. By that time, the said witness reached Basti, he learnt that Shyam Bihari died at about 4:00 a.m.

16. Lastly, the said witness stated, two days prior to the occurrence, the deceased had told him that the dispute had arisen between him and Parmatma wherein latter threatened him that he would not escape though he had been acquitted in the criminal case.

17. During his cross-examination, he was specifically questioned as to the improvements made about threat held out by Parmatma to Shyam Bihari about 2 - 3 days prior to the occurrence, with respect to the order of acquittal in the murder of Atma Prasad. The witness admitted that he had not made such narration in the F.I.R. He also admitted that in the murder of Atma Prasad, both sons of Shiv Kumar (not examined) and Shyam Bihari (deceased) were accused alongwith one Baitholey. While Shiv Kumar and Baitholey had been convicted, the deceased was acquitted.

18. Also, suggestions were thrown at the said witness with respect to multiple animosity that may have existed against the deceased. One with reference to Triloki and Shyam Bihari wherein Triloki had been arrested on the information given to the police by the deceased. Second, with respect to another case against the deceased under Section 379 I.P.C.; third with reference to F.I.R. lodged by Ram Dheeraj against Daya Shankar, in response thereto Daya Shankar had lodged F.I.R. against Ram Dheeraj, Shyam Bihari (deceased) and Shiv Kumar (not examined); fourth, with respect to a case lodged by the State against Daya Shankar wherein Shyam Bihari (deceased) was *paikar* and; fifth another case lodged by Shyam Bihari against Ram Dev under Section 379 I.P.C.

19. Besides the above, it was also suggested that the deceased had not gone out for any work. In that regard, the witness could not specify the nature of work for which the deceased may have gone to Babhnan, on foot. It was also stated by the said witnesses that the place of occurrence was barely half a kilometer from his house.

20. Further, it was specifically admitted to the witness that no injury whatsoever was attempted or caused to him in the occurrence. He denied the suggestion that the occurrence may have been caused later in the night when no body had seen and the F.I.R. was lodged after due consultation.

21. Thereafter, Shiv Kumar son of Duwar was examined as P.W.-2. He claimed that he responded to the cries for help by Shyam Bihari. He ran and saw the occurrence alongwith Bhabhuti Prasad (P.W.-1), Gudri (P.W.-3), Shiv Kumar, Sharda, Swami Dayal, Ram Dheeraj (not examined). In that, the appellant Vijay Bahadur threatened to kill anyone who came in their way. Thereafter the entire village had gathered. The assailants fled alongwith their *lathi* and the gun of the deceased.

22. During his cross-examination, suggestions were thrown at him that he had culled favour from Bhabhuti Prasad (P.W.-1) i.e. village Pradhan. For that reason, he had falsely implicated the accused. At the same time, he

admitted that the place of occurrence was about 30 Kattha (*less than 45 -50 feet*) from his field and that initially 4 to 6 people responded while many others arrived later. At the same time, he also admitted that his statement was recorded 4 - 5 days after the occurrence.

23. Thereafter, Gudri was examined as P.W.-3. During his examination-in-chief, he narrated that on the date of occurrence, he had gone to the market. While returning, he met up with the deceased. On reaching the village, he went towards his agricultural field whereas the deceased went towards the Mahuwa tree. He saw the accused armed with lathies hiding in wheat field. They assaulted the deceased with *lathies*. He saw the occurrence from about 20 feet. Parmatma and Devi Prasad caught the deceased after he fell and Vijay Bahadur snatched his gun. Thereafter, they continued to assault the deceased with *lathies*.

24. Last, he narrated, the occurrence was seen by Bhabhuti, Ram Dheeraj, Shiv Kumar (P.W.-2) and Sharda and by many villagers. Before fleeing, Vijay Bahadur threatened the witnesses to not intervene or else they would be killed. During his cross examination, he admitted that he had been allotted the agricultural field on lease and that, he and Shyam Bihari had gone to Babhnan market, on their own, separately. They met up near the village. He also admitted that his statement was recorded for the first time after about 4 days. At this stage, he denied having seen the assailants hiding in the agricultural field but had only seen that they were assaulting the deceased. He maintained, he was threatened not to intervene. At this stage, he claimed that the other villagers arrived, after the occurrence was over and that he was the first to reach the place of occurrence.

25. Thereafter, Constable Devnath Verma was examined as P.W.-9. He proved the movement of the dead body of the deceased and custody of the dead body before autopsy. Investigation Officer, S.O. Ram Sewak Singh was examined as P.W.-5. He proved that he was on examination duty and took up the investigation, the next day. In that, he reached the place of occurrence at about 3:00 a.m. and recorded the statement of first informant Bhabhuti Prasad and also collected the samples of blood stained and plain earth. Further, he proved, other steps of investigation and submission of charge sheet. Thereafter, Head Constable Suresh Prasad was examined as P.W.-6. He proved the registration of F.I.R. and relevant G.D. entries.

26. Dr. R.C. Parashar was examined as P.W.-7. He proved the 10 injuries noted by him in the Injury Report prepared at 10:30 p.m. on 20.03.1984 (Ex.Ka-9). During his cross examination, he admitted possibility of those injuries having being caused around 8:00 p.m. Thereafter, Dr. Uma Shankar

Mishra was examined as P.W.-8. He proved the autopsy examination and his findings therein. He further proved, Shyam Bihari died at the government Hospital, at 6:00 a.m. on 21.03.1984. S.I. Jai Shankar Prasad was examined as P.W.-10. He proved the preparation of the Inquest Report.

27. Thereafter, the statement of the accused persons were recorded under Section 313 Cr.P.C. They denied involvement in the occurrence and disputed the facts proven by the prosecution. They cited previous animosity as the reason for their false implication. In that state of the evidence, the present appellants have been convicted and sentenced, as noted above.

28. Submission of learned counsel for the appellants is, the occurrence was not seen by any person. All the witnesses of facts produced by the prosecution, namely Bhabhuti Prasad (P.W.-1), Shiv (P.W.-2) and Gudri (P.W.-3) are not natural witnesses inasmuch as none had gone with the deceased to Babhnan. Therefore, they remained chance witnesses inasmuch as the deceased was returning on foot, from Babhnan, not following any routine. In that while Gudri (P.W.-3) described that he went towards his field, the deceased walked towards the Mahuwa tree i.e. the place of occurrence. That itself was a chance. In that context, it is wholly unlikely that three assailants would have been hiding in a wheat field waiting, to act such chance occurrence where they would pounce on the deceased, 'if' he happened to come in their direction. Further, Vijay Bahadur Mishra is not related to the other accused Parmatma and Devi Prasad. He is a resident of district Gonda whereas the other appellants are the residents of district Basti and they have been falsely implicated merely on account of their friendship.

29. Keeping in mind the fact that the house of Bhabhuti Prasad (PW-1) was barely half a kilometer from the place of occurrence, he could reach the place of occurrence later but claimed his presence. Second, the inherent falsity / improbability exists in the prosecution story wherein at least five persons, two very close relatives namely father and brother of the deceased and three others including the scribe claimed to have seen the occurrence wherein others than assault with '*lathis*', no other injury was caused. Yet, all five remained intellirent and did not intervene or stop the occurrence. In an occurrence of this nature, it is unlikely that the father and son of the injured (later deceased), would have been mute spectators.

30. Referring to the statements of the three eye witnesses, it has been further stated that not only the five persons named by Bhagwati Prasad (PW-1), but a large number of villagers had also arrived when the assault was being caused. None of assailants caused any deadly weapons. Thus, prosecution story suffers from inherent improbability.

31. Third, the allegation of the prosecution that the firearm of the deceased had been snatched by accused Vijay Bahadur Mishra, is equally false. Absolutely, no recovery came to be made of that firearm. If it is assumed that such firearm was being carried by the deceased, it is equally improbable that he would have suffered such nature of injuries without defending himself with that firearm, specially when his near and dear ones and also many other villagers had gathered at the place of occurrence.

32. Fourth, reference has been made to the material improvement and contradictions made by eye witnesses inasmuch as Bhabhuti Prasad (PW-1) introduced Shiv (PW-2) during his examination-in-chief. He had not been named in the F.I.R. Then, he introduced threat held out to Shyam Bihari shared with the said witness, two days earlier. Had those facts existed, certainly they would have found narration in the F.I.R. Similarly, Gudri (PW-3) offered material improvement by suggesting that he was returning with the deceased Shyam Bihari from Babhnan. That narration did not exist in the F.I.R. and that fact was not stated by Bhabhuti Prasad (PW-1), in his statement to the Court. Then, unreliability crept in his version for reason of self contradicted statements made by him, first that the assailants were hiding inside the wheat field and second with respect to the time when the witnesses arrived. Though, it was first suggested by the prosecution witnesses that they arrived together near about the same time, later, during his cross-examination, Gudri (P.W.-3) stated that he reached first.

33. Similarly, doubts have been raised as to the reliability of Bhabhuti Prasad (PW-1), in view of the suggestions thrown at him, with respect to multiple animosity suffered by the deceased, involving multiple parties. Also, it was a proven fact that the brother of the deceased namely Shiv Kumar was convicted in the murder of the brother of the appellants Parmatma Prasad and Devi Prasad. That has been cited as the real motive to lodge a false prosecution.

34. Then, it has also been submitted, there are eight injuries noted in the Autopsy Report that do not find any mention in the Injury Report. They remained unexplained. To the extent, the Inquest Report does not record any detail of the F.I.R. and in fact mentions that the deceased was found injured, it clearly indicates that he had been discovered in that state and that no one had seen the occurrence. By way of corroboration, the Inquest Report does not make any mention of the manner of the assault.

35. On the other hand, learned A.G.A would submit that the present case is a case of direct evidence. The FIR was lodged promptly within two hours of the occurrence by the father of the deceased. It was lodged only under

Section 394 I.P.C. It clearly indicates that the same was lodged before Shyam Bihari died, early next morning. The I.O. Ram Sewak Singh (PW-5) also proved that he reached the place of occurrence around 3:00 a.m. and recorded the statement of the first informant - Bhabhuti Prasad (PW-1), therefore, the FIR was lodged wholly promptly.

36. Referring to the eye witnesses, it has been submitted, as to the occurrence there is no material improvement or contradiction as may lead to any reasonable doubt in the prosecution story. Minor embellishments and inconsistencies or contradictions carry no evidentiary value and in any case may not give rise to any reasonable doubt in the prosecution story. Insofar as the presence of injuries is concerned, it has been submitted, it is a matter of medical opinion formed by two doctors. The time difference between the injuries being examined and the death being caused that too while Shyam Bihari was admitted to the hospital, may not give rise to any reasonable doubt as to how eight more injuries came to be suffered. Insofar the Inquest Report is not a piece of substantive evidence, no undue importance may be given to the same.

37. As to non-recovery of the firearm, it has been submitted that may not give rise to inherent falsity in the prosecution story. Also, it has been submitted, without any specific role assignment, the learned court below has erred in convicting all the appellants under Section 302 I.P.C. without aid of Section 34 of I.P.C.

38. Having heard learned counsel for the parties and having perused the record, in the facts as proven by the prosecution, to the extent it cannot be disputed that the F.I.R. was lodged under Section 394 I.P.C. and the Injury Report of Shyam Bihari was prepared by Dr. R.C. Parashar (PW-7) at 10:30 p.m. on 20.03.1984, to whom he was taken by the police Constable C.P. 465, we are not inclined to draw any inference to the F.I.R. being ante-timed, by a long margin of time. At the same time, Dr. R.C. Parasher (P.W.-7), did not rule out the possibility of the occurrence having been caused at around 08:00 p.m. against 5:00 p.m. disclosed by the prosecution.

39. At the same time, it also cannot be disputed, there existed strong animosity between the parties wherein the brother of the deceased Shyam Bihari namely Shiv Kumar had been convicted for the murder of Atma Prasad - brother of Parmatma Prasad and Devi Prasad (both accused in this case) and further the deceased himself was an accused in that case, pre-existence of animosity is well established.

40. Yet, it cannot be lost sight that not one but multiple suggestions were

thrown at Bhabhuti Prasad (PW-1) father of deceased - Shyam Bihari of existence of many cases instituted by and against the deceased Shyam Bihari not only by the present appellants or their families but third parties. That fact is also admitted.

41. Third, it also cannot be lost sight that the house of said Bhabhuti Prasad (PW-1) was barely half kilometre from the place of occurrence. In the cumulative effect, by way of possibility, it cannot be denied that upon the discovery of the injured Shyam Bihari, Bhabhuti Prasad (PW-1) had ample time to reach that place and institute the F.I.R. at 7:50 p.m. or thereabout, as disclosed.

42. Keeping in mind the pre-existing animosity wherein son of Bhabhuti Prasad (PW-1) had been convicted for offence under Section 302 I.P.C. involving the murder of Atma Prasad, brother of Parmatma Prasad and Devi Prasad (both accused), it is equally possible that the present appellants came to be named for that reason as well, in that F.I.R.

43. Keeping that fact in mind, we test the prosecution evidence led by three eye witnesses. In the first place, the brother of Shyam Bihari namely Shiv Kumar was never examined. Similarly, Sharda Prasad and Ram Dheeraj (scribe) also named in the FIR were not examined by the prosecution. On the other hand Shiv (PW-2) [who was not named in the FIR as a person who had seen the occurrence], was examined at the trial. All the three witnesses including [Gudri (P.W.-3)] first narrated that they along-with other villagers had reached the place of occurrence and saw the assault as was being caused inasmuch as they stated that the deceased Shyam Bihari was standing when they first saw the assault. In all, at least 10 to 18 blows are described to have been caused, many on the head region.

44. Thus, the witnesses claimed that they practically saw the occurrence from the beginning. In that though they alongwith unnamed villagers far outnumbered the three assailants, no intervention was offered and no effort was made to apprehend the culprits. They remained mute bystanders including the father of the deceased - Bhabhuti Prasad (PW-1) and Shiv Kumar, brother of the deceased (not examined). That itself creates a doubt that the conduct offered by the witnesses is not natural.

45. That doubt is strengthened by the fact that the prosecution story is based on the narration that the three accused were hiding in a wheat field from before waiting to assault Shyam Bihari, if he came that way. Yet, Bhabhuti Prasad (PW-1) specifically stated that he did not know for what work the deceased - Shyam Bihari had gone to Bhabhnan. Gudri (PW-3) who claimed

to have accompanied the deceased while returning from the Bhabhnan market, also did not describe that work. At the same time, he narrated, when the two reached near the village, Gudri (PW-3) went towards his agricultural field while the deceased walked towards the Mahuwa tree. It is in that nature of evidence led, that doubt exists how and in what circumstance would the assailants have prior knowledge - both of the time and the route that the deceased would have taken as may have allowed them an opportunity to hide at a particular spot from where they could quickly launch an assault on the deceased, if he came that way. It is not a case that assailants had followed the deceased from Bhabhnan or that they had found him near their own agricultural field or that they were waiting on his agricultural field. In that regard Bhabhuti Prasad (PW-1) narrated that, that evening he had irrigated his agricultural field and switched off the pumping set before the occurrence. However, he had not seen the assailants till the occurrence. Hence, he was clearly not aware of their presence, from before.

46. Also, none of the prosecution witnesses have been able to describe which of the assailants mounted the attack first and who caused any particular injury. Yet, without that evidence and consequently without any finding to that effect and without any medical evidence led as to the injury that caused the death, the learned Court below has convicted all the appellants for offence under Section 302 I.P.C without the aid of Section 34 I.P.C. In that regard, we also note that Dr. Uma Shankar Mishra (PW-8) also did not prove which injury was fatal.

47. In such facts, we also take note of the fact that Dr. R.C.Parashar (PW-7), who first examined Shyam Bihari at 10:30 p.m. on 20.03.1984 did not exclude the possibility of injuries being caused a little later, here described by him as 8:00 p.m.

48. In that appraisal of evidence, in the context of pre-existing disputes and animosities and the doubts that cannot be resolved, as also in view of the technical error committed by the learned lower Court below by pronouncing the judgment convicting the appellants for offence of murder wherein all been convicted under Section 302 I.P.C simplicitor without the aid of Section 34 I.P.C., though it has not been found that any particular injury had been caused by any of the accused, we find benefit of doubt has arisen to the appellants. Here, we also note, the occurrence is of 45 years ago. At present, appellants are about 80 years old.

49. Consequently, this appeal succeeds and is **allowed** on a benefit of doubt. The judgement and order dated 05.12.1984 passed by Sri P.N. Rai, learned IIIrd, Additional Sessions Judge, Basti, in Sessions Trial No.102 of 1984

(State vs. Parmatma, Devi Prasad and Vijay Bahadur) under Sections 394 and 302 I.P.C. against the appellants is set aside, on a benefit of doubt. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged. However, the 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.

50. A copy of this judgment alongwith the trial court record be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court, at the earliest. Office is directed to keep the compliance report on record.

September 17, 2025
Manoj

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