



2026:AHC:109691-DB



**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL APPEAL No. - 1665 of 1989**

Havaladar Singh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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|---------------------------|------------------|
| Counsel for Appellant(s)  | : Prashant Verma |
| Counsel for Respondent(s) | : G.A.           |

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Reserved on : 12.2.2026

Delivered on : 12.5.2026

**Court No. - 42**

**HON'BLE SIDDHARTHA VARMA, J.  
HON'BLE CHAWAN PRAKASH, J.**

**(Per Chawan Prakash, J.)**

1. The present criminal appeal has been filed by the convicts/appellants challenging the judgment and order of conviction and sentence dated 29.07.1989 passed by the Special Judge (E.C. Act), Mainpuri, in Sessions Trial No. 360 of 1985 under Sections 147, 148, 149, 436, 307, 302 I.P.C., Police Station Kishni, District Mainpuri,

whereby the learned Sessions Judge convicted and sentenced the appellants Havaladar Singh, Atar Singh, Puttu Singh, Raghubir Singh, Jamadar Singh, Ratnesh, and Ranpal to one year rigorous imprisonment under Section 147 I.P.C.; five years rigorous imprisonment under Section 307/149 I.P.C.; three years rigorous imprisonment under Section 436/149 I.P.C.; and imprisonment for life under Section 302/149 I.P.C. Appellants Nawab Singh and Brijendra Singh were sentenced to two years rigorous imprisonment under Section 148 I.P.C.; five years rigorous imprisonment under Section 307/149 I.P.C.; three years rigorous imprisonment under Section 436/149 I.P.C.; and imprisonment for life under Section 302/149 I.P.C.

2. Feeling aggrieved by the aforesaid judgment and order passed by the Special Judge (E.C. Act), Mainpuri, in Sessions Trial No. 360 of 1985 under Sections 147, 148, 149, 323, 436, 307, 302 I.P.C., Police Station Kishni, District Mainpuri, the present criminal appeal has been preferred by the appellants.

### **Factual Matrix**

3. Against the backdrop of the present appeal, briefly, on 14.2.1985 at about 9 a.m., oral information was given by Kunji Lal (P.W.-1) at Police Station Kishni, District Mainpuri, stating that he had gone to throw filth from his house into the manure pit located on the gram sabha land near the flour mill (atta chakki) of accused Havaladar Singh. The accused Havaladar began abusing him, stating that he had lodged a report against his nephew Ranpal regarding the outrage of the modesty of his daughter. He asked the accused not to abuse him. The accused Havaladar came with lathi and started chasing him. He ran away to his house, where the accused was restrained by Mulaim Singh, Ahibaran, Ram Bharosey, Ram Swaroop, Vir Sahai, and Jagannath. The accused Havaladar Singh raised an alarm and called his other family members. Thereafter, the accused Atar Singh, Puttu Singh, Raghubir Singh, Nawab Singh-all sons of Kanchan Singh Jamadar Singh; son of Suba Singh,

Indra Pal, and Ranpal, son of Jamadar Singh, Ratnesh, son of Havaladar, Gajendra, and Brijendra Singh, sons of Atar Singh, armed with lathis, ballams, and pharsas, came to his house and started beating him, Vir Sahai, and Jagannath. The informant Kunji Lal, Vir Sahai, and Jagannath sustained injuries. The accused Ratnesh set fire to the thatched shed of Ram Bharosey. When the informant party restrained the accused persons, the accused Havaladar asked the others accused persons to bring their guns. On his exhortation, Gajendra came with his father's gun, the accused Indra Pal came with his uncle Puttu Singh's gun, and accused Nawab Singh came with his own gun. The accused Brijendra Singh also came with a licensed gun. Thereafter, the accused persons started firing from their guns from the field of Ishwari Dayal near the Khajoor and Jamun trees. The informant and others took shelter behind the room of Ahibaran Singh. His brother, Mulaim Singh, climbed onto the roof of Ahibaran Singh's house and pacified the accused persons by folding his hands and requesting them not to commit the crime. The accused persons fired shots from their guns at Mulaim Singh, who sustained firearm injuries and fell down from the roof of the house of Ahibaran Singh. Mulaim Singh died due to firearm injuries. Thereafter, accused persons ran away from the place of incident. The informant, along with Vir Sahai and Jagannath, went to the police station and gave an oral application.

4. A First Information Report (FIR), Ex. Ka-2, was registered as Case Crime No. 19 of 1985 under Sections 147, 148, 149, 436, 307, and 302 of the Indian Penal Code at Police Station Kishni, District Mainpuri, against eleven accused persons, namely Havaladar, Attar Singh, Puttu Singh, Raghuveer Singh, Nawab Singh, Jamadar Singh, Inder Pal, Ranpal, Ratnesh, Gajendra Singh, and Brijendra Singh. The entry of the same was made in the General Diary as G.D. No. 15 dated 15.02.1985 at 9:00 a.m. The injured persons, namely Kunji Lal, Vir Sahai, and Jagannath, were medically examined at the District Hospital on 04.02.1985 at about 10:00 a.m. by Dr. N.K. Tiwari (P.W.-2). The doctor prepared their medical examination reports, which were marked as Ex. Ka-3, Ka-4, and Ka-5.

5. After the registration of the FIR, the investigation was commenced by Sub-Inspector Hotilal Sharma, S.H.O., Police Station Kishni. He recorded the statements of the informant Kunji Lal, Vir Sahai, and Jagannath and thereafter proceeded to the place of occurrence. Under his instructions, Sub-Inspector Om Veer Singh prepared the inquest report, which was marked as Ex. Ka-7. He also got prepared the relevant papers, including the photographs, letter to the Chief Medical Officer (CMO), and the challan for the dead body, which were marked as Ex. Ka-8, Ex. Ka-9, and Ex. Ka-10 respectively.

6. The dead body of the deceased was sealed and handed over to Constable No. 614 Ravindra Singh and Constable No. 188 Lakhan Singh for post mortem. The Investigating Officer collected plain soil and blood-stained soil from the place of occurrence and prepared the recovery memo Ex. Ka-11. He also collected ashes and thatch, which had been set on fire by accused Ratnesh, and prepared the memo thereof as Ex. Ka-12. Further, he recovered seven empty cartridge cases allegedly fired by the accused persons and prepared the recovery memo Ex. Ka-13. The Investigating Officer also prepared the site plan (Ex. Ka-14) at the pointing out of the informant Kunji Lal (P.W.-1). During the course of investigation, he conducted a search at the aata chakki (flour mill) of accused Havaladar and recovered three lathis, two ballams, and two pharsas from there, for which a recovery memo (Ex. Ka-15) was prepared.

7. On 14.02.1985, the Investigating Officer conducted a search of the houses of accused Jamadar Singh, Nawab Singh, Raghubir Singh, and Atar Singh; however, no incriminating articles were recovered from their houses. The Investigating Officer prepared separate search memos as Ex. Ka-16 to Ex. Ka-19. During the course of investigation, the Investigating Officer recorded the statement of prosecution witness Ram Badan. Subsequently, on 23.08.1985, he recovered a gun from the house of accused Atar Singh and prepared the recovery memo Ex. Ka-20. Vidya Devi, wife of accused Nawab Singh, produced the licensed gun of accused Nawab Singh, which was inspected by the Investigating Officer,

and prepare memo Ex. Ka-21. Similarly, the licensed gun of accused Puttu Singh was produced by his wife, Laxmi Devi, which was seized by the Investigating Officer and a memo Ex. Ka-22 was prepared.

8. The autopsy on the dead body of the deceased was conducted by Dr. M.L. Gupta (P.W.-3) on 15.02.1985 at about 2:00 p.m., and he prepared the post-mortem report, Ex. Ka-6. According to the doctor's opinion, the death was caused due to ante-mortem injuries and excessive blood loss, resulting from the firearm injuries. The injuries found on the body of the deceased were firearm injuries, which, according to the doctor, could have been caused on 14.02.1985 at about 7:30 a.m. Two large bullet fragments were recovered from the body of the deceased, which were sealed in an envelope and sent to the Senior Superintendent of Police, Mainpuri. The clothes of the deceased, including one shirt, one kurta, one lungi, one handkerchief, and one pair of plastic shoes, all stained with blood, were sealed in a bundle and handed over to the concerned police personnel.

9. After completion of the investigation, the Investigating Officer, Inspector Hoti Lal Sharma (P.W.-4), submitted a charge-sheet against the accused persons namely Havaladar, Attar Singh, Puttu Singh, Raghuveer Singh, Nawab Singh, Jamadar Singh, Inder Pal, Ranpal, Ratnesh, and Brijendra Singh under Sections 147, 148, 149, 323, 302, 307, and 436 of the Indian Penal Code. However, no charge-sheet was filed against accused Gajendra Singh. Since the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions.

10. The learned Sessions Judge framed charges against the accused Havaladar, Attar Singh, Puttu Singh, Raghuveer Singh, Nawab Singh, Jamadar Singh, Inder Pal, Ranpal, Ratnesh, and Brijendra Singh under Sections 147, 323/149, 302/149, and 307/149 I.P.C. Charges under Section 148 I.P.C. were framed against Nawab Singh, Inder Pal, and Brijendra Singh. A charge under Section 436 I.P.C. was framed against accused Ratnesh, and a separate charge under Section 302 I.P.C. was framed against accused Inder Pal vide order dated 05.10.1985. The

charges were read over and explained to the accused persons in Hindi, to which they pleaded not guilty and claimed to be tried.

11. After recording the examination-in-chief of P.W.-1 Kunji Lal, the prosecution filed an application under Section 319 of the Cr.P.C., and the accused Gajendra Singh was summoned to face trial under Section 319 of the Cr.P.C. Thereafter, charges against him were framed under Sections 148, 307/149, and 302/149 I.P.C. on 07.08.1986. The charges were read over and explained to him in Hindi, and he also pleaded not guilty and claimed to be tried.

12. To bring home guilt of the appellants beyond hilt, the prosecution has examined P.W-1 Kunji Lal (first informant, eyewitness of the case), P.W.-2 Dr. N.K. Tiwari (medically examined injured Kunji Lal, Vir Sahai, and Jagannath), P.W.-3 Dr. M.L. Gupta (who conducted autopsy of the deceased Mulaim Singh), and P.W.-4 Sub Inspector Hotilal Sharma (investigated the matter and filed charge sheet).

13. Following documentary evidence was filed by prosecution, and proved by leading evidence:

|     |                                             |                                                 |           |
|-----|---------------------------------------------|-------------------------------------------------|-----------|
| 1.  | FIR                                         |                                                 | Ex. Ka-1  |
| 2.  | Oral Report                                 | Kunji Lal (P.W.-1)                              | Ex. Ka-2  |
| 3.  | Injury Report                               | Dr. N.K. Tiwari (P.W.2)                         | Ex. Ka-3  |
| 4.  | Injury Report                               | Dr. N.K. Tiwari (P.W.4)                         | Ex. Ka-4  |
| 5.  | Charge-Sheet                                |                                                 | Ex. Ka-4  |
| 6.  | Injury Report                               | Dr. N.K. Tiwari (P.W.2)                         | Ex. Ka-5  |
| 7.  | P.M. Report                                 | Dr. M.L. Gupta (P.W.3)                          | Ex. Ka-6  |
| 8.  | Inquest Report                              | Sub-Inspector Om Veer Singh                     | Ex. Ka-7  |
| 9.  | Recovery Memo of Blood Stained & Plain Soil | Sub-Inspector Hoti Lal Sharma, S.H.O., (P.W.-4) | Ex. Ka-11 |
| 10. | Recovery Memo of Ashes                      | Sub-Inspector Hoti Lal Sharma, S.H.O., (P.W.-4) | Ex. Ka-12 |
| 11. | Recovery Memo of Empty Cartridge            | Sub-Inspector Hoti Lal Sharma, S.H.O., (P.W.-4) | Ex. Ka-13 |
| 12. | Site Plan                                   | Sub-Inspector Hoti Lal Sharma,                  | Ex. Ka-14 |

|     |                                                               |                                                 |           |
|-----|---------------------------------------------------------------|-------------------------------------------------|-----------|
|     |                                                               | S.H.O., (P.W.-4)                                |           |
| 13. | Search Memo of House & Recovery Memo of Lathi, Ballam & Farsa | Sub-Inspector Hoti Lal Sharma, S.H.O., (P.W.-4) | Ex. Ka-15 |
| 14. | Search Memo of the House                                      | Sub-Inspector Hoti Lal Sharma, S.H.O., (P.W.-4) | Ex. Ka-16 |
| 15. | Search Memo of the House                                      | Sub-Inspector Hoti Lal Sharma, S.H.O., (P.W.-4) | Ex. Ka-17 |
| 16. | Search Memo of the House                                      | Sub-Inspector Hoti Lal Sharma, S.H.O., (P.W.-4) | Ex. Ka-18 |
| 17. | Search Memo of the House                                      | Sub-Inspector Hoti Lal Sharma, S.H.O., (P.W.-4) | Ex. Ka-19 |
| 18. | Recovery Memo of Gun                                          | Sub-Inspector Hoti Lal Sharma, S.H.O., (P.W.-4) | Ex. Ka-20 |
| 19. | Recovery Memo of Gun                                          | Sub-Inspector Hoti Lal Sharma, S.H.O., (P.W.-4) | Ex. Ka-21 |
| 20. | Recovery Memo of Gun                                          | Sub-Inspector Hoti Lal Sharma, S.H.O., (P.W.-4) | Ex. Ka-22 |

14. P.W.-1 Kunji Lal, the first informant and brother of the deceased, stated in examination-in-chief that he had taken the accused persons well before the incident. They are Thakurs, and he belongs to the Kori community. He has two daughters, Kishna and Reshma. About 25 days before the incident, he filed a report against accused Ranpal, son of Jamadar Singh. His daughter Reshma had gone to collect flour from the Aata Chakki of accused Havaladar, where the accused Ranpal molested her. She informed him about the incident. He subsequently, filed a report against accused Ranpal, and as a result, the accused persons developed enmity towards him and his family. The witness proved the FIR at Ex.Ka-2 by stating that the contents were provided by him. He further stated that approximately 2½ years ago at about 7:30 am, when Mulaim Singh was killed, he had gone to dispose of the garbage near the Gram Sabha land in the manure pit. While returning, accused Havaladar saw him and said, "You bastard, you falsely implicated my nephew Ranpal. I

will break your limbs." He did not respond to this provocation, but accused Havaladar came with a lathi and started chasing him. The accused Havaladar called his family members: accused Atar Singh, Nawab Singh, Puttu Singh, Raghuvir Singh, Jamadar Singh, Gajendra, Brijendra, Inder Pal, Ranpal, and Ratnesh. They came to his doorstep. Inder Pal and Ranpal were carrying spears, Brijendra and Gajendra were carrying rods, accused Atar Singh, Nawab Singh, Puttu Singh, Raghuvir Singh, and Havaladar were carrying lathis; accused Jamadar was carrying a rod; and accused Ratnesh was carrying a lathi. They started beating him, Jagannath, and Vir Sahai with lathis. All of their sustained injuries. He further stated that upon hearing their cries, Sri Ram, Babbu Ram, and Rajendra Singh arrived. They restrained the accused persons, during which Ratnesh set on fire the thatched roof of his brother Ram Bharose's house. The accused gathered near the pond of Ishwari. The accused Havaladar exhorted his sons to bring guns. Accused Nawab Singh brought his gun, Gajendra Singh brought his father's gun, Brijendra Singh brought his own gun, and Puttu Singh came with his gun. Accused Puttu Singh gave his gun to accused Havaladar, and they started firing their guns from the field of Ishwari Dayal. The informant and the other persons took shelter behind the room of Ahibaran Singh. The deceased Mulaim Singh died after sustaining firearm injuries. Thereafter, the accused persons fled from there. The witness further stated he went to the police station along with Vir Sahai and Jagannath and gave oral information to the police. A First Information Report, Ex.Ka-2, was lodged by the police constable.

15. Dr. N.K. Tiwari (P.W.-2), who medically examined injured persons namely, Kunji Lal, Vir Sahai, and Jagannath, stated in examination-in-chief that on February 14, 1985, he was posted as M/O Incharge at P.H.C., Kishni. On that day, C/ Rajkishore brought injured persons Jagannath, Kunji Lal, and Vir Sahai.

He medically examined Jagannath at 10:00 a.m., and found the following injuries:

(i) contusion on the back of the left arm, measuring 1.5 cm x 1 cm, with bleeding (oozing blood). The injured complained of pain in the right leg, but no visible injury was noted. The injuries were simple, fresh, and caused by rubbing.

On the same date, at 10:15 a.m., he examined Kunji Lal and found the following injuries were found:

(i) A lacerated wound on the left side of the head measuring 1 cm x 0.5 cm x 0.2 cm, located 7 cm above the upper part of the left ear, with bleeding present. The injured complained of pain in the right thigh, but no visible injury was found. This injury was simple, fresh, and could have been caused by a blunt object.

On the same day, at 10:30 a.m., he examined the injuries of Vir Sahai and found the following injuries:

(i) A bruise on the left hand measuring 11 cm x 3 cm in length, red in color, bordered by red color, starting 1 cm above the left wrist and extending to the back of the hand.

(ii) Contusion on the little finger of the right hand measuring 1.5 cm x 1 cm, with bleeding on the external dorsal part.

All these injuries were simple and could have been caused by a blunt object, contusion, or rubbing. All injuries were fresh.

He proved the medical report as Ex-Ka 3, Ex-Ka 4, and Ex-Ka 5.

He further stated that the injuries of Vir Sahai and Kunji Lal could have been caused by a stick.

16. Dr. M.L. Gupta (P.W.-3) stated in examination-in-chief that on 15.2.1985, he was posted as Medical Officer at District Hospital Mainpuri. On that day, at about 2 p.m., he conducted the postmortem examination of the dead body of Mulaim Singh, aged about 38 years. The body was brought by Constable 614 Ravindra Singh and Constable 188 Lakhan Singh in sealed condition. The estimated time of death was 1¼ day before the post-mortem.

**External examination:**

The deceased was of average build. Rigor mortis was present all over the body. Postmortem staining was present on the body. The eyes of the deceased were closed.

**Ante-mortem injuries:**

- (i) Gunshot entry wound, 1.2 cm x 1 cm x cavity deep, located on the right forehead 6 cm above the right eyebrow; edges were torn and turned inward; blackening and charring were absent. Direction was from front to back and towards the right side. The frontal bone beneath the wound was fractured.
- (ii) A scratch 0.5 cm x 0.4 cm on the right side of the head, 3 cm above injury number one.
- (iii) A lacerated wound 1 cm x 0.6 cm x scalp deep on the back part of the head on the right side, 12 cm away from the ear upwards.
- (iv) A lacerated wound 1 cm x 0.8 cm x muscle deep near the lower corner of the right side of the lip, 2 cm to the right side.
- (v) Gunshot entry wound 0.5 cm x 0.5 cm x muscle deep, on the posterior surface of the right forearm, 8 cm below the right elbow; edges were inverted inward and blackening and charring were absent. The direction was from back to front.
- (vi) Gunshot exit wound 1 cm x 1 cm located opposite injury number 5, on the anterior surface of the right forearm, 4 cm below the elbow joint; edges everted outward, with no blackening, swelling, or charring.
- (vii) Gunshot entry wound 0.8 cm x 0.5 cm x muscle deep, on the right side of the abdomen near the groin line, 7 cm above the upper edge of the right hip bone; horizontal in direction, outer edges were turned inward and inner edges outward, with no blackening, swelling, or charring. Direction was from right to left.
- (viii) Gunshot entry wound 1 cm x 0.5 cm x muscle deep, on the right side of the abdomen at the 11 o'clock position on the clock face, 4 cm away from the umbilicus; horizontal; edges inverted inward externally and everted outward internally; no blackening, swelling, or charring. The direction from right to left.

(ix) Gunshot entry wound 1 cm x 1 cm x cavity deep on the front of the chest on the left side at the 4 o'clock position on the clock face, 4 cm away from the left nipple. Edges inverted inward; no blackening, swelling, or charring. The left fifth rib beneath the wound was fractured. The direction was from left to right and obliquely backward.

**Internal examination:**

(i) The frontal bone and right parietal bone of the skull were fractured. The meninges of the brain were torn, and the brain was lacerated and soaked in blood.

(ii) Approximately 1½ ounces of blood were present in the cranial cavity, with a large portion of a bullet fragment recovered from the cranial cavity. The left fifth rib was fractured anteriorly. The pleura and lungs on both sides were ruptured. The pericardium and heart were ruptured; the heart was empty. A large bullet fragment was recovered from the right thoracic cavity. Approximately 9 ounces of blood was present in the thoracic cavity on both sides.

The death of the deceased was caused by shock due to injuries sustained before death and excessive blood loss.

The post-mortem report proved as Ex. Ka-6. This witness further stated that two large bullet fragments were recovered from the deceased's body, sealed in an envelope, and sent to S.S.P. Mainpuri. A sealed bundle of clothes, including one shirt, one kurta, one underwear, one lungi, one handkerchief, and one pair of plastic shoes-totaling six items-all stained with blood, were sealed and handed over to the concerned police personnel.

The injuries found on the deceased's body could have been caused by gunfire on the morning of 14.2.85 around 7:30 AM.

The related documents received along with the post-mortem report were delivered to the concerned constable.

17. S.H.O., Hotilal Sharma (P.W.-4) started the investigation and filed the charge sheet against the accused/appellants. He stated in

examination-in-chief that in February 1985, he was posted as Station House Officer at police station Kishni. This case was registered in his presence, and he personally started the investigation. On 14.2.1985, he reached the crime scene with police personnel. The dead body of Mulaim Singh was found at the place of occurrence. He orally directed the Sub Inspector Omveer Singh to conduct the inquest proceeding. He proved the inquest report as Exhibit Ka-7. The dead body was sealed and handed over to Constables 614 Ravindra Singh and 188 Lakhani Singh for post-mortem. This witness proved the letter to CMO, challan etc. as Exhibit Ka-8 to Ka-10 respectively. He further stated that the dead body was given in a sealed condition. The sample seal was proved as Exhibit-1. He further stated that he collected blood-stained soil and plain soil from the place of occurrence, where the corpse of Mulaim Singh was lying, and sealed the same in two boxes and he prepared the memo and proved the same as Exhibit Ka-11. He collected the burnt ashes from the roof of Ram Bharose's house and prepared memo in his handwriting and signature. He proved the said memo as Exhibit Ka-12.

He recovered 7 empty cartridges near a Jamun tree adjacent to Ishwar Dayal Jatav's field and seized the same. He prepared the memo and proved the same as Exhibit Ka-13. This witness further stated that he prepared the site plan as Exhibit Ka-14 at the instance of informant Kunji Lal (P.W.-1). Thereafter, he went to the Aata Chakki of accused Havaladar Singh and made a search. He recovered 3 lathies, 2 clubs, and 2 parangs and prepared the memo Ex. Ka-15. He further stated that on 23.2.1985, he recorded the statements of witnesses Shri Ram and Budh. On 14.2.1985, he made a search at the houses of accused Jamadar Singh, Nawab Singh, Raghuveer Singh, and Atar Singh but found nothing about the case. He prepared memo about the same as Ex. Ka-16 to Ex. Ka-19 and proved the same.

18. He further stated that on 23.2.1985, he went to the place of occurrence and made an inquiry from the wife of accused Atar Singh about his licensed gun, which she produced before him. The gun was seized and memo as Exhibit K-20 was proved. Vidya Devi, wife of

Nawab Singh, produced her husband's licensed gun before him, which was seized; a memo was prepared. He proved the same as Exhibit Ka-21. Lakshmi Devi, wife of Puttu Singh, produced her husband's licensed gun before him, which was seized and a memo was prepared. He proved the same as Exhibit Ka-18. The Disclosure report no. 15 dated 9 A.M., 14.2.1985, prepared by clerk no. 600 Lajjaram was proved as Exhibit Ka-23. The oral information provided by Kunji Lal (P.W.-1) was recorded in writing by Constable Lajjaram. The handwriting and signatures of Lajjaram were identified by him, as he had seen him writing and proved the same as Ex. Ka-2. After investigation, charge sheet was filed. He proved the same as Exhibit Ka-24.

19. After the closure of prosecution evidence, statements of the accused persons were recorded under Section 313 Cr.P.C. They stated that they were falsely implicated and the witnesses have deposed against them due to enmity.

20. No defence evidence was produced by the accused-appellants. The Learned Special Judge (E.C. Act), after hearing the parties and assessing, evaluating, and scrutinizing the evidence on record, convicted and sentenced the appellants as indicated hereinabove.

21. Pursuant to the order dated 15.10.2025, the appeal on behalf of appellants No. 1 to 7 namely, Havaladar Singh, Atar Singh, Puttu Singh, Raghubir Singh, Nawab Singh, Jamadar Singh, and Ranpal stands abated. This Court is now deciding the appeal on behalf of appellant No. 8 Ratnesh and appellant No. 9 Brijendra Singh.

**Submissions on behalf of appellants**

22. Learned counsel for appellants submitted that the informant Kunji Lal (P.W.-1) has falsely implicated them due to previous enmity. He did not provide any written tehrir at the police station, the FIR was lodged by the Constable Lajjaram Yadav based on the oral information given by Kunji Lal. This fact itself indicates that the First Information Report was lodged as an afterthought, following as per the advice given by the police; thus, the said FIR cannot be relied upon.

23. It is further submitted that the testimony of the sole eyewitness P.W.-1 Kunji Lal, who is the real brother of the deceased, is not reliable as he is an interested witness. The conviction of the appellant cannot be sustained only on the basis of his sole testimony.

24. The prosecution has not produced injured witnesses Vir Sahai, Jagannath, and other public witnesses who were present at the place of occurrence; therefore, the prosecution story cannot be believed. There are material contradictions between the medical and ocular evidence. The prosecution has not been able to prove the motive for the commission of the crime. The present case is not a case of murder. If the prosecution case is accepted as true, the offence was committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner. At most, the case falls under Sub Section 4 of Section 300 of I.P.C. and the case is covered under Section 304 part-ii instead of 302 I.P.C.

25. He further submitted that there are major contradictions in the statement of P.W.-1 Kunji Lal, which show that he is not a reliable, trustworthy witness, and the appellants cannot be convicted solely on the basis of his testimony. The appellants are entitled to the benefit of doubt and should be acquitted from the charges; accordingly the appeal is liable to be allowed.

#### **Submission on behalf of State**

26. Per contra, the learned A.G.A. submitted that the contradictions pointed out by the learned counsel for the appellants are minor and trivial in nature. P.W.-1 Kunji Lal is both an eyewitness and an injured witness. After the incident, P.W.-1 Kunji Lal went to the police station and gave oral information to the police, on the basis of which the First Information Report was registered in a timely manner without delay. P.W.-1, being injured, has duly proved the prosecution case.

27. He further submitted that in the depositions of a witness, some normal discrepancies may always occur these discrepancies are due to

lapse of time and mental disposition, such as shock and horror at the time of the occurrence. Material discrepancies are those which are not normal and go to the root of the prosecution case and are not expected from a normal person. Therefore, such a minor contradiction pointed out by the learned counsel for the appellant is of no help to the appellant. Further, the discrepancies pointed out by the learned counsel for the appellant are very trivial in nature, and do not, in any way, affect the foundation of the prosecution case.

28. He further submitted that, as a general rule, the Court can and may act on the testimony of a single eye witness if he is reliable. There is no legal impediment to convict a person on the that witness testimony of a single witness. This is the principle underlying Section 134 of Indian Evidence Act. However, if there are doubts regarding the testimony, the Court may instinctively require corroboration. It is not the number or the quantity, but quality of evidence that is material in the this case. The evidence of P.W.-1 Kunji Lal is reliable and that cannot be discarded solely because the prosecution has not produced the other injured or public witnesses. Evidence of P.W.-1 is wholly reliable and is supported by the medical evidence. He further submitted that this case does not fall within exception 4 of Section 300 I.P.C. and such benefit cannot be extended to the appellants. The prosecution has been able to prove it case beyond reasonable doubt, and the trial court has rightly convicted the appellants, thereafter, the appeal deserves to be dismissed.

### **Analysis and Conclusion**

#### **First Information Report**

29. Learned counsel for appellants vehemently argued that no reliance can be placed upon the First Information Report, as it was lodged based on the oral information provided by P.W.-1 Kunji Lal. The First Information Report was lodged after discussion with the police, which raises a serious doubt about the prosecution story.

30. Per contra, learned AGA argued that the First Information Report is first in point of time line. The alleged incident occurred on 14.2.1985

at about 7:30 a.m. whereas the First Information Report was lodged at about 9:00 a.m., just after 1½ hours. He further submitted that there is no legal requirement that information provided to the police must be in writing. The prosecution has been able to prove the First Information Report beyond reasonable doubt.

31. According to the facts of this case, the First Information Report was lodged at Police Station Kishni, District Mainpuri on 4.2.1985 at about 9:00 a.m. The alleged incident occurred at about 7:30 a.m. The distance from the police station to the place of occurrence is about 12 Kms. P.W.-1 Kunji Lal, in his statement, clearly and categorically stated that on 4.2.1985 at about 7:30 a.m. when he went to dispose of his household waste in a compost pit situated near the Aata Chakki of accused Havaladar, the accused Havaladar asked him why he lodged the case against his nephew regarding the abuse of his daughter. Thereafter, accused Havaladar called other accused persons. His brother, Mulaim Singh was killed by them. He went to the police station and gave oral information about the incident and the First Information was recorded by the Constable.

32. He further stated that he received a carbon copy of the First Information Report; the same was read over and explained to him, and he put his thumb impression. During cross-examination, P.W.-1 stated that the whole incident occurred within 2-4 minutes. Subsequently, he went upstairs and found the dead body of his brother lying there. He remained there for 10 to 15 minutes; thereafter, they went to the police station. He further stated that he came back to the place of occurrence with the police. He stated that everything he stated to the police, was accurately recorded in the First Information Report. S.I. Hotilal Sharma (P.W.-4) stated that in February 1985, he was posted at Police Station Kishni as S.H.O. The case was registered in his presence. He also stated that after registration of the FIR, he recorded the statements of Kunji Lal, Vir Sahai, and Jagannath under Section 161 Cr.P.C. He completed the inquest proceeding and proved the same as Ex.-Ka-7. The defence has not put any question to the Investigating Officer (P.W.-4) that could

doubt on the First Information Report. Based on the evidence available on record, the prosecution has been able to prove the First Information Report, and it cannot be said that the same was got registered after legal discussion with the police.

**Interested witnesses**

33. Learned counsel for appellants argued that P.W.-1 Kunji Lal is the real brother of the deceased. He has an interest in the present case, and his evidence should be discarded as he is a close relative of the deceased. He is highly interested and prone to falsely implicate the accused in the present case.

34. Per contra, learned AGA submits that the statement of P.W.-1 should not be discarded solely on the basis that he is brother of the deceased. The relationship per se does not affect the credibility of the witness.

35. According to several judgments passed by the Hon'ble Supreme and various High Courts, it has become a principle of law that a witness is to be considered independent, unless he or she originate from sources likely to be tainted, that is, unless the witness has a cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last person person to screen the real culprit or to falsely implicate an innocent person. It is true that when emotion run high and there is personal cause for enmity, there is a tendency to implicate innocent persons against whom a witness has a grudge along with the guilty. However, a foundation must be established for such criticism. The mere fact of relationship, far from being a basis of distrust, is often a strong guarantee of truthfulness. It is also a settled principle of law that the evidence of an interested or partisan witness has to be weighed carefully by the court, but it would be unreasonable to refuse to consider solely because it is given by a partisan or interested witness.

36. P.W.-1 Kunji Lal is the brother of the deceased, and this relationship in itself does not affect the credibility of this witness. However, the evidence of this witness requires careful scrutiny, and if after such scrutiny his evidence is found to be intrinsically reliable, inherently probable, and wholly trustworthy, conviction may be based solely on the testimony of this witness, but this Court will have to see whether the statement of this witness is reliable or not, and her statement requires careful consideration.

37. The main point is whether the prosecution has succeeded in proving the charges against the appellants beyond a reasonable doubt. The charges against the appellants, namely, Bijendra Singh and Ratnesh, have been framed under Sections 147, 148, 149, 436, 307/149, 302/149 I.P.C.

38. To prove the charges framed under Section 307/149 I.P.C. the prosecution has produced the Kunji Lal (P.W.-1 ) and Dr. N.K. Tiwari ( P.W.-2).

39. The appellants Ratnesh and Brijendra also charged under Sections 307/149 of the I.P.C. It is to consider whether the prosecution has been able to prove these charges against the two appellants.

40. According to the prosecution's story, P.W.-1 Kunji Lal, Vir Sahai, and Jagannath sustained injuries and were medically examined by Dr. N.K. Tiwari (P.W.-2). Dr. N.K. Tiwari states in his examination-in-chief, that on February 14, 1985, he was posted as M.O. Incharge at P.H.C., Kishni. On that day, Ct. Rajkishore brought the injured persons Jagannath, Kunji Lal, and Vir Sahai. The examination of the injuries on their bodies was conducted. The examination of Jagannath's injuries was performed at 10:00 a.m. on that date, with the following findings: a contusion on the back of the left arm, measuring 1.5 cm x 1 cm, with bleeding (oozing blood). The injured complained of pain in the right leg, but no visible injury was noted. The injuries were simple, fresh, and caused by rubbing. At the time of examination, the identification mark of the injured was noted as L.T.I.

At 10:15 a.m. on the same date, the injuries on the body of Shri Kunji Lal were examined, and the following was observed:

(i) A lacerated wound on the left side of the head measuring 1 cm x 0.5 cm x 0.2 cm, located 7 cm above the upper part of the left ear, with bleeding present. The injured complained of pain in the right thigh, but no visible injury was found. The injury was simple, fresh, and could have been caused by a blunt object.

On the same day, at 10:30 a.m., he examined the injuries of Veersahay and found the following:

(i) A bruise on the left hand measuring 11 cm x 3 cm in size, red in color, bordered by red, starting 1 cm above the left wrist and extending to the back of the hand.

(ii) A contusion on the little finger of the right hand measuring 1.5 cm x 1 cm, with bleeding on the external dorsal part.

All these injuries were simple and could have been caused by a blunt object, contusion, or rubbing. All injuries were fresh. At the time of examination, identification marks of the injured were noted. The injury report was written by him, and the examination was recorded at that time.

The report was written and signed by him and is marked as Ex-K 3, Ex-K 4, and Ex-K 5.

The injuries of Vir Sahai and Kunji Lal could have been caused by a stick. All these injuries could have occurred on February 14, 1985, at around 7:30 a.m.

The injuries of Jagannath could have been caused by the rubbing of a hard object, such as a stick.

41. As per the medical examination, the injuries inflicted on P.W.-1 Kunji Lal, Vir Sahai, and Jagannath were simple in nature. The doctor has stated that these injuries were not grievous or dangerous in nature.

42. To convict any person under Section 307 I.P.C., it is necessary that bodily injuries be capable of causing death. The injuries of Jagannath

were simple. The injuries of Kunji Lal and Vir Sahai were also simple in nature. These were caused by a hard object such as a stick or lathi. It is not a case of prosecution that any of the appellants fired upon Kunji Lal or that any of the injuries were caused by firearms. Hence, the injuries of Kunji Lal are not of such nature as to prove charges framed under Section 307 I.P.C. The appellants are liable to be acquitted from the charges of Sections 307/149 I.P.C.

43. According to the prosecution case, P.W.-1 Kunji Lal, Vir Sahai, and Jagannath were present at the place of occurrence along with other persons, and these persons sustained injuries; they were medically examined, but the prosecution has produced P.W.-1 Kunji Lal.

44. It is now to consider whether the prosecution has been able to prove the charges framed under Sections 147, 148, 436, 302/149, against the appellants.

45. Learned counsel for appellants submitted that the prosecution produced only P.W.-1 Kunji Lal, an eyewitness of the present case, while Vir Sahai and Jagannath, who sustained injuries, were not produced by the prosecution. There are material considerations in the statement of P.W.-1, and the appellants cannot be convicted solely on the basis of testimony of P.W.-1 Kunji Lal.

46. Per contra, learned AGA submitted that appellants can be convicted on the basis of the sole testimony of P.W.-1 as his statement is reliable and trustworthy. The contradictions are not of such nature as to disbelieve the prosecution case.

47. Before proceeding to decide the fate of the appellants, it is appropriate to take note of certain principle relevant to this appeal. It is permitted to observe, that these principles have evolved over the years and crystallised into settled law. These are :

(a). Section 134 of Indian Evidence Act, 1872, enshrines the well-recognized maxim that evidence has to be weighed and not counted. In other words that evidence is to be weighted not counted. As a sequitur,

even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and trustworthy, may lead to conviction.

(b). Generally speaking, oral testimony may be classified into three categories, viz.:

(i) Wholly reliable;

(ii) Wholly unreliable;

(iii) Neither wholly reliable nor wholly unreliable.

The first two category of cases may not pose serious difficulty for the court in arriving at its conclusion(s). However, in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

(c). Discrepancies do creep in, when a witness deposes in a natural manner after lapse of some time, and if such discrepancies are comparatively of a minor nature and do not go to the root of the prosecution story, then the same may not be given undue importance.

48. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

“I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences tom out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short

time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."

49. When the evidence of an injured eye-witness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

50. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it

is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

51. Hon'ble Supreme Court in catena of judgments has held that conviction can be based on the evidence of solitary eye witness.

52. In the case of **Vadivelu Thevar vs. State of Madras, A.I.R. 1957 S.C. 614 (V 44 C 91 Sept.)**, Hon'ble Supreme Court has held that:

"In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses in any case, be required for the proof of any fact". The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence-9th Edn., at Pages 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our

Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact."

53. It has been highlighted in **Sunil Kumar vs. State Govt. of NCT of Delhi (2003) 11 SCC 367** that:

"As a general rule, the Court can and may act on his testimony of single witness provided he is wholly reliable. There is no legal impediment in convicting a person on a sole testimony of single witness. This is the logic of Section 134 of Indian Evidence Act, 1872 (in short "the Evidence Act"). But, if there are doubts about the testimony the Courts will insist on corroboration. It is for the Courts to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise."

54. In **Mahesh and Another vs. State of Madhya Pradesh (2011) 9 SCC 626**, it has been held by Hon'ble Supreme Court that:

"There is no necessity for prosecution to multiply witnesses to prove and establish prosecution case. There is no requirement in law of evidence that any particular number of witnesses is to be examined to prove something. Evidence has to be weighed and not to be counted."

55. Now it is to be considered whether the evidence of P.W.-1 Kunji Lal is reliable and trustworthy. P.W.-1 in his examination-in-chief has stated that he knew the accused persons well before the incident. They are Thakurs, and he is from the Kori community. He has two daughters, Kishna and Reshma. About 25 days before the incident, he filed a report against accused Runpal, son of Jamadar Singh, as his daughter Reshma had gone to take flour from the Aata Chakki of accused Havaladar, where accused Ranpal molested her. She informed him about the incident. He filed a report against accused Ranpal; due to this, accused persons were having enmity with him and his family. He further stated that approximately 2½ years ago, at about 7:30 am, when Mulaim Singh was killed, he had gone to throw the garbage near the Gram Sabha land in the manure pit.

While returning from there, the accused Havaladar saw him and said, "You bastard, you falsely implicated my nephew Ranpal. I will break your limbs." He did not respond to his provocation, but accused Havaladar came with a lathi and started chasing him. The accused Havaladar called his family members: accused Atar Singh, Nawab Singh, Puttu Singh, Raghuvir Singh, Jamadar Singh, Gajendra, Brijendra, Inder Pal, Ranpal, and Ratnesh. They came to his doorstep. The accused Inder Pal and Runpal were carrying spears; Brijendra and Gajendra were carrying rods; accused Atar Singh, Nawab Singh, Puttu Singh, Raghuvir Singh, and Havaladar were carrying lathis; accused Jamadar was carrying a rod; accused Ratnesh was carrying a lathi. They started beating him, Jagannath, and Vir Sahay with lathis. They all sustained injuries. He further stated that upon hearing their cries, Sri Ram, Babbu Ram, and

Rajendra Singh arrived. They restrained the accused persons, but accused Ratnesh set fire to the thatched roof of his brother Ram Bharose's house. The accused gathered near the pond of Ishwari Singh. The accused Havaladar exhorted his sons to bring guns. Accused Nawab Singh brought his gun, Gajendra Singh brought his father's gun, Brijendra Singh brought his own gun, and Puttu Singh came with his gun. Accused Puttu Singh gave his gun to accused Havaladar, and they started firing from their guns. The accused persons started firing shots from their guns from the field of Ishwari Dayal. The informant and the other persons took shelter behind the room of Ahibaran Singh. The deceased Mulaim Singh died after sustaining firearm injuries.

Thereafter, the accused persons fled away from there. The witness further stated he went to the police station along with Vir Sahay and Jagannath. At the police station, he gave oral information to the police. A First Information Report was lodged by the police constable, which is marked as Ex. Ka-2.

56. During cross-examination, P.W.-1 stated that all the accused belong to the same family and their houses are also located near each other. The Aata Chakki of accused Havaladar is situated near the houses of other accused persons. He further stated that accused Havaladar scolded him when he was 7-8 steps away from him. Accused Hawaldar is older than him and he called him as uncle. He stated that he did not write in the report that accused Havaladar stated that he would break his hands and feet, he further stated that he included these lines in his report. The accused persons have beaten him along with Vir Sahai and Jagannath; all the accused were carrying sticks. He cannot specify how long the accused persons were beating the three of them. He sustained injuries to his skull, but no blood fell on the ground. Some of his clothes were stained with blood. He went to the police station and thereafter reexamined medical treatment.

During cross-examination, he further stated that, during the period, accused Ratnesh set fire to Ram Bhrose's hut. The hut he set on fire, was about 15 hands long and 4 to 5 hands wide. The hut's roof was

made of wooden sticks and bamboo with bamboo at the centre on the right side. Because the accused were beating them, they could not put water on the fire. The fire caused soot marks on the walls. The hut was completely burnt. He further stated local persons threw 2 to 4 buckets of water were thrown by local persons.

This witness further stated in cross-examination that accused Nawab Singh, Rajendra Singh, Brijendra Singh, and Puttu Singh went to take their guns. He has stated to the Investigating Officer that Puttu Singh brought his gun and gave it to the accused Inderpal, but he cannot explain why this was not mentioned in the report. He further stated that the accused brought the guns while they were standing at the door of our house. He did not go inside the house but tried to hide himself. He was standing behind the wall of Radheyshaym's house. He further stated that he could not see whether any pellet hit the wall, as 5-6 shots were fired towards his brother. He saw his brother, and told that bullets were flying and asked him to sit down, but his brother stood with folded hands. When his brother reached the roof, the accused then started firing. The accused persons came with weapons and challenged; thereafter, his brother went on the roof. 2 to 3 shots were fired while his brother was on the roof. The entire incident occurred within two to four minutes. After the accused left from there, he went to the roof where his brother's dead body was lying. He stayed on the roof for about 10 to 15 minutes. They remained in the village for ½ hour; then he went to the police station.

57. In the deposition of witness P.W.-1 Kunji Lal, there are some discrepancies regarding certain facts. These discrepancies are due to lapse of time and mental disposition such as shock and horror at the time of occurrence. Material discrepancies are those that are not of a normal nature, go to the root of the prosecution's case, and are not expected from a normal person. Therefore, such a minor contradiction arising during the cross-examination of P.W.-1 do not assist the appellants. Further, the discrepancies that arose during cross-examination are trivial in nature and do not, in any way, affect the foundation of the prosecution's case.

58. In **State represented by Inspector of Police Vs. Saravanam and another, (2008) 17 SCC 587**, Hon'ble Supreme Court held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.

59. Hon'ble Supreme Court in **Shivaji Vs. State of Maharashtra, AIR 1973 SC 2622**, held thus:

"The scene of murder is rural, the witnesses to the case are rustic and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumption about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of various witnesses, we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishment in essential parts cannot mitigate against the veracity of the core of the testimony provided there is impress of truth and conformity of probability in the substantial fabric of testimony delivered."

60. Further, we find that P.W.-1 Kunji Lal, who is the first informant in the case, is an illiterate and rustic villager. It is evident from his deposition that he provided oral information about the incident at the police station and put his thumb impression on the First Information Report. Therefore, such a trivial contradiction is of no assistance to the appellants.

61. Learned counsel for the appellants contended that the medical evidence is inconsistent with the ocular evidence of the complainant. The prosecution's case, however, is that the incident occurred at three

different locations. P.W.-1 Kunji Lal had gone to dispose of household waste in a manure pit situated on Gram Sabha land near the flour mill (atta chakki) of accused Havaladar Singh. At that time, accused Havaladar Singh questioned P.W.-1 Kunji Lal why he had lodged a report against his nephew. He then started abusing him and also threatened to break his hands and feet. Subsequently, the accused, armed with a lathi, chased him up to his house. The deceased Mulaim Singh, Vir Sahai, and Jagannath intervened and restrained accused Havaladar from assaulting him.

62. Thereafter, accused Havaladar called other accused persons, namely Atar Singh, Nawab Singh, Puttu Singh, Raghuvir Singh, Jamadar Singh, Gajendra, Brijendra, Inder Pal, Ranpal, and Ratnesh. The accused Atar Singh, Nawab Singh, Puttu Singh, and Raghubir Singh came to his house armed with lathis. The accused Inder Pal, Gajendra, and Brijendra arrived at the house of P.W.-1 Kunji Lal armed with dandas, whereas accused Inder Pal and Ranpal came there with ballams. The accused Ratnesh was carrying a lathi.

63. Thereafter, the accused persons started assaulting informant Kunji Lal, Jagannath, and Vir Sahai, causing them to sustain injuries. The accused Ratnesh set fire to the thatched shed of Ram Bharosey. Hotilal Sharma, S.H.O. (P.W.-4) states in his statement that he proceeded to the place of the incident where he found the thatched shed of Ram Bharosey burnt. He collected ashes, prepared the memo, and proved the same memo as Ex. Ka-12. P.W.-1 Kunji Lal stated in his statement, stated that accused Havaladar told the accused persons to bring their guns. Thereafter, accused Nawab Singh, Gajendra, Brijendra, and Inder Pal came with their guns. They started firing from the field of Ishwari Dayal near the Jamun tree. The deceased Mulaim Singh requested the accused persons not to commit any crime and was pacifying them with folded hands. Accused Nawab Singh, Gajendra, Brijendra, and Inder Pal fired their guns; as a result, deceased Mulaim Singh sustained injuries, fell down on the roof, and died.

64. Dr. M.L. Gupta, who conducted the autopsy on the body of the deceased Mulaim Singh, found nine firearm injuries on the body. He further stated that these injuries could have been inflicted by firearms. During cross-examination, Dr. M.L. Gupta (P.W.-3) stated that it is not certain that injuries No. 2 and 3 could have been inflicted solely by firearms; they could have been sustained by fire or by a blunt weapon. Injury No. 2 is an abrasion; injuries No. 3 and 4 are lacerated wounds. These injuries could have been caused by pellets from the shots fired by the accused persons. This witness also stated during cross-examination that these injuries could have been caused by gunfire when the accused persons were on the ground and the deceased was on the roof. Injuries No. 2 to 4 clearly indicate that they were inflicted by shots fired from a lower level than of the deceased.

65. The Investigating Officer, Hotial Sharma, S.H.O., during his examination-in-chief, stated that he collected blood-stained soil and plain soil from the scene of occurrence near the dead body of Mulaim Singh, who was lying on the roof of Ahibaran Singh. He sealed the samples in two boxes and proved the memo as Ex. Ka-11. He further stated that he recovered seven empty cartridges near a Jamun tree adjacent to Ishwary Dayal Jatav's field, which he proved as Ex. Ka-13. He also proved the site plan as Ex. Ka-14. This witness further stated that he conducted a search at the flour mill (atta chakki) of the accused Havaladar Singh and recovered three lathis, 2 clubs, and 2 parangs and proved the memo as Ex. Ka-15. He further stated that the wife of accused Atar Singh produced a gun which was seized by him; Vidya Devi, wife of accused Nawab Singh, also produced his licensed gun; and Smt. Laxmi Devi, wife of Puttu Singh, also handed over his gun. This witness proved the memos as Ex. Ka-20 and 21. During cross-examination, this witness also proved the inquest proceedings, nothing emerged that could help the appellants or cast doubt on the alleged recoveries.

66. It is an admitted case of the prosecution that P.W.-1 Kunji Lal, Vir Sahai, and Jagannath were injured; however, the prosecution did not produce Vir Sahai and Jagannath in the present case. It is a settled principle of law that the Court may act on the testimony of a single eyewitness provided the witness is wholly reliable. There is no legal impediment to convicting a person on the sole testimony of a single witness. This aligns with the logic of Section 134 of the Indian Evidence Act. However, if there are doubts about the testimony, the Court may seek corroboration. It is not the number or quantity, but the quality of evidence that is material. The evidence of P.W.-1 Kunji Lal is reliable and found to be corroborated by medical evidence. The evidence of P.W.-1 Kunji Lal is reliable and cannot be discarded solely on the basis that the prosecution did not produce the other injured witnesses. The evidence of P.W.-1 is wholly reliable and supported by medical evidence.

#### **EXCEPTION 4 TO SECTION 300 OF THE I.P.C.**

67. We shall now deal with the submission as regards the applicability of the fourth Exception to Section 300 of the IPC.

68. In order to appreciate the question, it will be profitable to refer to the definition of murder as provided in Section 300 of the Indian Penal Code which is quoted below:

**"300. Murder.** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Secondly. If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly. If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death,-

Fourthly. If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and

without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation. It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5. Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent. Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

69. Thus, the sine qua non for the application of an Exception to Section 300 always is that it is a case of murder but the accused claims the benefit of the Exception to bring it out of that Section and to make it a case of culpable homicide not amounting to murder. We must, therefore, assume that this would be a case of murder and it is for the accused to show the applicability of the Exception. Exception 4 reads as under:-

*"Exception 4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."*

70. A perusal of the provision would reveal that four conditions must be satisfied to bring the matter within Exception 4:

- (i) it was a sudden fight;
- (ii) there was no premeditation;
- (iii) the act was done in the heat of passion; and, that (iv) the assailant had not taken any undue advantage or acted in a cruel manner.

71. On a plain reading of Exception 4, it appears that the help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found.

72. We have already noticed the extent of injuries suffered by the deceased, as it appears from the deposition of the PW 3 Dr. M.L. Gupta

who carried out the post mortem. Having regard to the nature of the injuries caused by dangerous weapons like guns which, were applied on the vital part of the body, there is no escape from the conclusion that it is a case of Section 302 of the IPC.

73. It is very difficult for us to accept the submission of the learned counsel appearing for the appellants that the case would fall within the Exception 4 to Section 300 of the IPC and such benefit be extended to the accused. Assuming for the moment that the incident had occurred in the heat of the moment and fight was also sudden, we should not overlook the fact that the appellants herein inflicted as many as nine injuries with a dangerous weapon on the deceased who was unarmed and was helpless. For cases to fall within clause (3) of Section 300 of the IPC, it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature, **Rajwant Singh v. State of Kerala reported in AIR 1966 SC 1874** is an apt illustration of this point.

74. In the overall view of the matter, we are convinced that no case is made out by the appellants to interfere with the impugned judgment and order of the learned Trial Court.

75. It was a gruesome murder, perusal of post-mortem report shows that the deceased mercilessly attacked. Severity of injuries clearly demonstrate the brutality of the attacks.

76. We have carefully, scrutinized and examined the evidence of P.W.-1 Kunji Lal and found that he is a sterling, reliable and trustworthy witness. He had not even shaken during the cross-examination. His presence at the place of occurrence cannot be doubted. The prosecution has been able to prove the charges under Sections 147, 148, 302/149, 436/149 I.P.C. against both the appellants.

77. In view of what has been indicated above. We are of the view, that the prosecution has successfully proved it is a case beyond reasonable

doubt that the appellants Ratnesh and Brijendra with a common object along with other accused (since dead) formed an unlawful assembly, committed riot, armed with deadly weapons and set fire at the hatched shed of Ram Bharosey. The prosecution has been able to prove the charges under Section 147, 148, 302/149, 436/149 I.P.C. but we are also of the view that the prosecution has not been able to prove the charges under Section 307/149 I.P.C. and the appellants are liable to be acquitted under Section 307/149 I.P.C.

78. Accordingly, the appeal is partly **dismissed** vis-a-vis the charges u/s 147, 148, 302/149, 436/149 I.P.C. No case however for punishing the appellants u/s 307/149 I.P.C. is made out.

79. The appellants Ratnesh and Brijendra Singh are on bail. Their bail bonds are cancelled and sureties are discharged. They are directed to surrender before the Trial Court within four weeks to serve out sentence awarded to them by the learned Trial Court.

80. Office is directed to send a copy of this order to the Court concerned for compliance and compliance report be submitted before this Court within two months.

81. The Trial Court record be sent back and the file is consigned to record as per the rule.

**(Chawan Prakash,J.) (Siddhartha Varma,J.)**

**May 12, 2026**

Md Faisal