



2026:AHC:193710

**RESERVED ON: 24.07.2026**

**DELIVERED ON:16.09.2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL APPEAL No. - 1544 of 1984**

Daya Shanker Dubey And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

---

|                           |                                                                                 |
|---------------------------|---------------------------------------------------------------------------------|
| Counsel for Appellant(s)  | : Bhavya Sahai, Brijesh Sahai(Senior Adv.),<br>Shirish Kumar Dwivedi, T.Rathore |
| Counsel for Respondent(s) | : A.G.A.                                                                        |

---

**Court No. - 90**

**HON'BLE ABDUL SHAHID, J.**

1. Heard learned counsel for the appellants and learned A.G.A. for the State.
2. The learned counsel for the appellant submitted that the alleged incident took place on 14.09.2018 at 12:00 noon, and the F.I.R. was lodged on 14.09.2018 at 2:00 P.M. The appellants have been convicted and sentenced under Section 304 Part I/34 I.P.C. for a period of five years, and under Section 323 I.P.C. for a period of six months. He submitted that P.W.-1 and P.W.-2 are eye-witnesses, while P.W.-4 is the injured witness who turned hostile. He further submitted that the F.I.R. was lodged against Daya Shankar, Onkar Nath, Dev Narain, and Hiramani.
3. The present appeal was filed by Daya Shankar and Onkar Nath. Daya Shankar (appellant No. 1) died during the pendency of the present appeal; hence, the proceedings of the criminal appeal against him stand dismissed as abated.
4. Now, only the appellant Onkar Nath remains alive. He further submitted that there is no explanation for the injuries on the accused, and no independent witness to the alleged incident has been examined. P.W.-1 and P.W.-2 are interested witnesses, rendering their statements inadmissible. P.W.-4 (Girija Shankar), who is alleged to be the injured witness in the incident, turned hostile and did not support the prosecution's version. Finally, he submitted that the prosecution failed to prove the injuries caused to the accused, which is fatal to the prosecution's case.
5. Learned counsel for the appellant further submitted that Ram Krishna Pandey, who is the son-in-law of the deceased, was not an eye-witness, although he was presented as an eye witness. His statement under Section 161 Cr.P.C. was recorded after a significant delay of 24 to 25 days, rendering his testimony unreliable.

6. Learned counsel for the appellant has relied upon the law laid down by the Supreme Court in ***Nand Lal and others v. State of Chhattisgarh (Criminal Appeal No. 1421 of 2015, decided by a Three-Judge Bench on 14.03.2023)***. He specifically relied upon paragraphs 26 and 27 of the aforesaid judgment, which are quoted hereinbelow:"

"26. We will first consider the issue with regard to non- explanation of injuries sustained by accused No. 11 Naresh Kumar. In the case ***of Lakshmi Singh and Others v. State of Bihar, (1976) 4 SCC 394*** which case also arose out of a conviction under [Section 302](#) read with [Section 149](#) of the IPC, this Court had an occasion to consider the issue of non-explanation of (1976) 4 SCC 394 injuries sustained by the accused. This Court, after referring to the earlier judgments on the issue, observed thus:

"12. ....It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

- "(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in ***State of Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384]*** there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises."

27. A similar view with regard to non-explanation of injuries has been taken by this Court in the cases of ***State of Rajasthan v. Madho and Another, 1991 Supp (2) SCC 396***, ***State of M.P. v. Mishrilal (Dead) and Others, (2003) 9 SCC 426***, and ***Nagarathinam and Others v. State (Represented by Inspector of Police), (2006) 9 SCC 57.***"

7. Learned counsel for the appellant submitted that the prosecution miserably failed to prove its case beyond reasonable doubt. The prosecution failed to explain or prove the injuries sustained by the accused. Furthermore, the prosecution has miserably failed to offer any explanation for the delay in recording the statement of the alleged eye-witness Ram Krishna Pandey, who deposed as P.W.-5. Consequently, the judgment and order passed by the

learned trial court are perverse and liable to be set aside, and the criminal appeal deserves to be allowed.

8. Learned A.G.A. has opposed the criminal appeal and submitted that the site plan of the incident is absolutely clear. The eye-witnesses have supported the prosecution's story, and the prosecution has proved its case beyond reasonable doubt. Therefore, the criminal appeal is liable to be dismissed.

9. The genesis of the present case arose from criminal complaint Ext. Ka-1, dated 14.09.1980. The complainant is Sangam Lal Dwivedi. He submitted a written complaint to the Station In-charge, Police Station Karchhana, District Allahabad, stating that at 12:00 noon, towards the eastern side of his village near the mango tree of Umadutt Vaishya and behind the said tree, his cousin Girija Shankar was beaten by Daya Shankar, Onkar Nath, Dev Narain, and Hiramani over a dispute regarding a *halwaha* (ploughman).

10. In a nearby orchard, his grandfather Brij Kishore was grazing animals. He reached the spot and scolded Daya Shankar. Thereupon, Daya Shankar, Onkar Nath, Hiramani, and Dev Narain started beating his grandfather. Onkar Nath, Hiramani, and Daya Shankar were armed with *katwasas* (chopping blades), and Dev Narain was holding a *lathi* (heavy stick). When his grandfather screamed, the complainant, along with his brother Dhananjay Lal and Ram Krishna Pandey (the son-in-law of his grandfather), reached the spot. Several co-villagers also ran over, exhorted the assailants, and witnessed the assault, whereupon all four accused persons fled towards the east.

11. When they reached the spot, they saw that his grandfather had sustained head injuries caused by *lathis* and *katwasas*. His grandfather collapsed at the scene and died. Girija Shankar also suffered injuries to his head and body. They brought the dead body of their grandfather, along with the injured Girija Shankar, to their doorstep. The complainant requested the police to register the case and initiate legal proceedings.

12. On the basis of this written complaint (Ext. Ka-1), a check F.I.R. was registered on the same day, i.e., 14.09.1980 at 14:15 hours against all four accused persons.

13. After completion of the investigation, a charge-sheet was filed against all four accused. The accused Dev Narain absconded, and in his absence, the charge-sheet was filed against him as well.

14. The learned trial court framed charges against three accused, namely, Daya Shankar, Onkar Nath, and Hiramani, under Sections 323 and 304 I.P.C. Girija Shankar suffered simple injuries. His injury report, marked as Ext. Ka-5 and dated 14.09.1980, details the following injuries.

**"Injury report**

*Examined Shri Girija Shankar aged about 30 years s/o Shri Ram Pragas R/o Vill Manaiya, P.S. Karchhana Allahabad on 14.09.1980 at 2:45 PM. Brought by Sri Jagan Nath Mishra, C.P. No. 20 P.S. Karchhana Alld.*

*M.I.- a black til on lt. side of face distance 3cm from lt. angle of mouth.*

**No. of Injuries:-** (1) lacerated wound 3.5 cm x ½ cm x ½ cm on lt. side of head distance 8 cm from top of lt. ear with irregular margins and blood oozing out.

(2) Incised wound 1.5 cm x ¼ cm x ½ cm in between little and ring finger of lt. hand with regular margins and blood oozing out.

(3) Bruise 11 cm x 2 cm on lt. side of back in scapular region distance 2 cm from spine.

(4) Bruise 1 cm x 1 cm on lt side of back distance 12 cms below post fold of axilla.

(5) Complaint of pain and tenderness on lt. side of back in lumbar region just above iliac crest.

(6) Bruise 4 cm x 3.5 cm on outer surface of lt. thigh distance 30 cm above knee joint.

*All injuries No.1 to 6 are simple and caused by blunt object except injury no. (2) which is caused by sharp edged object.*

**Duration-** About ¼ days old."

15. The post mortem report of the deceased Brij Kishore is Ext. Ka-6. He was aged about 75 years at the time of the incident. The cause of death is shown as died due to shock and hemorrhage due to head injury. The post mortem report is dated 15.09.1980. The ante mortem injuries which were found on his dead body are as follows:

(i) I.W.- 6 cm  $\frac{3}{4}$  cm x bone deep on the left side of head in the middle parietal bone fracture below the injury. Brain material coming out.

(ii) I.W.- 4/2 cm x ½ cm x below deep on the left side of head ¼ cm left to injury no. (1).

(iii) Abrasion 1 cm x 1 cm on the back of the right elbow."

16. Sangam Lal (complainant) deposed as P.W.-1. He is the complainant as well as an eye-witness to the incident. He deposed that he knows the accused present in the court, namely, Daya Shankar, Onkar Nath, and Hiramani. The accused Hiramani is the *halwaha* (ploughman) of accused Daya Shankar. Girija Shankar (witness) and accused Daya Shankar are real brothers. Girija Shankar has now colluded with his brother and is not interested in recording his deposition in this case.

17. The incident took place on 14.09.1980 at around 12:00 noon. Sangam Lal, his brother Dhananjay Lal, and Sri Ram Krishna Pandey (the son-in-law of the deceased) were sitting under a neem tree near their *dera* (farmhouse/shelter) in Manaiya Village. His grandfather (his father's elder brother, namely, Brij Kishore) was grazing his animals in a nearby field. Girija Shankar was cutting fodder in the *khalihan* (threshing floor), which is adjacent to the agricultural field. At that time, all four accused persons, namely, Daya Shankar, Onkar Nath, Dev Narain, and Hiramani suddenly arrived, initiated a conversation with Girija Shankar and started beating him.

The beating commenced under Umadutt's mango tree, located near their *dera* towards the south. Dev Narain was armed with a *lathi*, while the other accused persons Daya Shankar, Onkar Nath, and Hiramani were carrying *katwasas* (chopping blades).

18. The motive behind the dispute was regarding the *halwaha*. Girija Shankar had engaged a *halwaha*, and Daya Shankar insisted that he wanted to keep the *halwaha*. On this issue, an altercation ensued. Thereupon, the complainant's grandfather, Brij Kishore (the deceased), reached the spot and tried to mediate, telling them not to quarrel with each other. Upon this, all four accused turned on his grandfather and began beating him. Onkar Nath struck his grandfather on the head with a *katwasa*, and thereafter Dev Narain hit him with a *lathi*. His grandfather sustained injuries, fell to the ground, and died immediately.

19. This witness specifically stated that Onkar Nath struck the head of the deceased with a *katwasa*, which is a sharp/incised weapon. As noted in the ante-mortem injury report, the deceased suffered incised wounds on his head. The injuries were grave: the middle parietal bone was fractured, the brain material oozed out, and there were two bone-deep incised wounds on his head. Due to these severe injuries, he died instantaneously.

20. He further stated that the incident was witnessed by Shesh Narain, Ambika Prasad, Siddh Narain, Ram Aadhar, Girija Shankar, Rajaram, and others, besides himself. They all raised an alarm, exhorted the assailants, and chased them, whereupon all the accused persons fled towards the east. Thereafter, Ram Aadhar, Dhananjay Lal, and the complainant brought the dead body of Brij Kishore to their doorstep. The complainant then prepared a written report of the incident at his house and submitted it at the police station. He verified the written complaint as Ext. Ka-1. He also stated that Girija Shankar accompanied him to the police station, having sustained injuries himself. This witness fully supported the prosecution's story in his examination-in-chief.

21. In his cross-examination, he stated that the witness Dhananjay Lal is his real brother. The wife of Brij Kishore (deceased) executed a registered deed of his entire property in favor of the complainant, Dhananjay Lal, and Girija Shankar. This registry was executed after the *terahavi* (thirteenth-day post-death ritual) of Brij Kishore. Girija Shankar is the same person with whom the quarrel took place and is a witness in this case. Altercations had occurred several times between Girija Shankar and Daya Shankar regarding the *halwaha*, but both *halwahas* had not left their employment with Daya Shankar to join Girija Shankar.

22. After the assault, the complainant spoke to Girija Shankar and asked him to contest the case, but Girija Shankar avoided it, stating that Daya Shankar

was his real brother and he would not testify against him. The complainant further clarified that the name 'Dev Shankar' mentioned earlier was a human error and should be read as 'Dev Narain'. Dev Narain and Hiramani are father and son (Dev Narain being the father and Hiramani the son) and belong to the Kol caste. Dev Narain and Hiramani had left Girija Shankar's employment as *halwahas* approximately 2 to 5 months prior to the incident and had joined Daya Shankar. Girija Shankar tried to persuade them to work for him, but they did not agree. At the time of the incident, Dev Narain and Hiramani were going to work as *halwahas* with Daya Shankar. It is true that Girija Shankar did not pay proper wages to Dev Narain and Hiramani and threatened them, which led them to leave him and join Daya Shankar.

23. The deceased, Brij Kishore, had no sons and only one daughter, Angur Devi. She is married to the witness Ram Kishun (Ram Krishna Pandey) at Village Nidauri, which is approximately 5 to 6 miles away from Manaiya Village (the place of incident). The deceased was the exclusive owner of 10 to 11 *bighas* of agricultural land. It is belied to state that Brij Kishore intended to give his land to Onkar Nath, as his wife and daughter were alive. After the death of Brij Kishore, the complainant's father, Ram Chander, and Girija Shankar obtained a registered sale deed from the widow of the deceased. The sale deed was executed in favor of the complainant's six brothers and Girija Shankar. The complainant, his brothers, and Girija Shankar paid the consideration amount for the deed. Daya Shankar did not pay any money; hence, his name is not in the sale deed.

24. The population area of Manaiya Village is located approximately 500 yards east of the place of incident. The accused are also residents of Manaiya Village. On the day of the incident, the complainant and others had been sitting at the *dera* since 10:00 A.M. The complainant and his brother were cutting fodder using a machine, while his brother-in-law, Ram Krishna Pandey, was sitting nearby. He did not mention in his report that he and his brother were cutting fodder and Ram Krishna was sitting, as it was omitted due to an oversight. (It is settled law that an F.I.R. is merely the baseline of the prosecution's case and need not contain every detail).

25. Brij Kishore was grazing his animals (cows, buffaloes, and calves) 10 paces away from the spot. When the Investigating Officer came to the scene, the complainant showed him the location where they were cutting fodder and where the machine was installed. He did not specifically point out the exact spot where he and Dhananjay were standing while cutting fodder, but he showed him the overall place of incident.

26. The accused persons arrived and initially beat Girija Shankar. An altercation and beating occurred between the accused and Girija Shankar without any prior conversation. All four accused started beating Girija

Shankar with the weapons they carried. Girija Shankar sustained several injuries from *katwasas* and *lathis*, as detailed above, receiving *katwasa* /incised wounds on his head and *lathi* injuries on his body.

27. The complainant and Dhananjay started running from the location where they were cutting fodder, and Ram Krishna ran alongside them. Ram Krishna had arrived at their place after taking a bath in the River Ganga. He had inquired about them at their home and, upon learning they were at the *dera*, came over. Brij Kishore ran from the spot where he was grazing animals, carrying a *lathi*. The complainant, Dhananjay, and Ram Krishna ran towards the spot unarmed. Brij Kishore fell to the ground, and 4 to 5 paces away from him, Girija Shankar also collapsed after sustaining injuries. Blood oozed onto the ground at both spots where they fell, and the complainant showed both bloodstained spots to the Investigating Officer.

28. In his examination-in-chief, the complainant stated that the incident was witnessed by himself and several others, including Shesh Narain, Ambika Prasad, Siddh Narain, Ram Aadhar, Girija Shankar, and Rajaram. He explained that he did not record all these names as eye-witnesses in his initial report because he considered two witnesses to be sufficient. (This omission is not fatal to the prosecution's case, as it is not a mandatory requirement for every minute detail to be mentioned in the F.I.R.). The Investigating Officer recorded his statement regarding the incident, and the complainant provided the names of all the persons who saw the occurrence. However, those names were not recorded by the Investigating Officer, for which the complainant could offer no specific explanation.

29. The complainant forgot to mention the names of Dhananjay and Ram Krishna as witnesses during his examination-in-chief. He also forgot to show the Investigating Officer the exact spot from where he and the other witnesses observed the incident. When Brij Kishore (deceased) arrived, he scolded all the accused and asked why they were beating Girija Shankar. The complainant informed the Investigating Officer that Brij Kishore had scolded the accused for the assault. Brij Kishore did not do anything else apart from telling them to stop and scolding them. As soon as Brij Kishore scolded them, accused Onkar Nath Dubey, Daya Shankar Dubey, and Hiramani struck him with *katwasas*, and Dev Narain hit him with a *lathi*.

30. The complainant was unable to state specifically how many times Brij Kishore was struck with *katwasas*. The *lathi* was swung only once, but it struck the *katwasa* held by Onkar Nath rather than hitting Brij Kishore's body directly. The complainant observed two *katwasa* injuries on Brij Kishore's head—one caused by Onkar Nath, and the other caused either by Hiramani or Daya Shankar, as both were armed with *katwasas*. He had explicitly mentioned in his report that Brij Kishore sustained head injuries

due to Onkar Nath's *katwasa* blow. However, when confronted with the written complaint, it was pointed out that the specific allegation that Onkar Nath caused the head injury was not explicitly mentioned in the written complaint, for which the complainant could offer no explanation. When Brij Kishore was attacked with *katwasas* and *lathis*, he wielded his *lathi* in self-defense. When the complainant first saw the accused persons, they were beating Girija Shankar. All the accused persons beat Girija Shankar for a duration of 3 to 4 minutes. Girija Shankar was holding a *khurpa* and a *lathi*, and he used his *lathi* for 2 to 3 minutes in defense. Meanwhile, the complainant's grandfather arrived at the spot.

31. The complainant noticed blood oozing from the head of accused Daya Shankar as he fled. He admitted that he did not state in his report or in his statement to the police officer that Daya Shankar had sustained a head injury and was bleeding, explaining that this detail was inadvertently omitted. After the incident, the accused persons fled towards the east. The complainant did not mention to the Investigating Officer that villagers arrived from the west side.

32. It is belied to state that Brij Kishore wanted to give his entire property to Onkar Nath because of his affection for him or because Onkar Nath was caring for him. It is further belied to state that Girja Shankar and I were annoyed with Brij Kishore for this reason. It is also belied to state that on the day of the incident, Girja Shankar and I initiated a quarrel with Brij Kishore.

33. It is belied to state that Girja Shankar and I assaulted Brij Kishore with a *lathi* and a *khurpa*, or that Brij Kishore used a *lathi* in self-defense causing injuries to Girja Shankar. In fact, as per the Injury Report of Girja Shankar (Ext. Ka-5), he sustained six distinct injuries comprising one lacerated wound, one incised wound, three bruises, and a complaint of pain which stand duly proved and identified.

34. It is belied to state that after Brij Kishore's death, we colluded with the police to file a false report against the accused persons due to prior enmity. It is completely belied to state that no incident took place at the time and place mentioned by me.

35. Dhananjay Lal Dwivedi deposed as P.W.-2. He is an eyewitness to the said incident. He stated that on 14.09.1980, at around 12:00 noon, he was at his *dera* in Manaiya village. He, along with his brother Sangam Lal and brother-in-law Ram Krishna, was sitting under a neem tree near his *dera*. His *Dada* (paternal grandfather) was grazing his cattle approximately 30 paces south of the *dera*. At that time, Girja Shankar was cutting fodder 20 paces west of their *dera*. Meanwhile, Daya Shankar, Onkar Nath, Dev Narain, and Hiramani arrived from the south. Dev Narain was armed with a *lathi*, while Daya Shankar, Onkar Nath, and Hiramani were armed with *katwasas*.

(chopping blades). These accused persons came towards Girja Shankar to assault him. Girja Shankar also used his *lathi* in defense. The accused reached him and commenced beating him; all four accused persons assaulted Girja Shankar.

36. Brij Kishore ran to intervene and restrain the accused persons from beating him. Thereupon, the accused turned towards the witness's grandfather and started beating him. Onkar Nath struck the grandfather on his head with a *katwasa*, and Dev Narain hit him with a *lathi*. The grandfather screamed and fell to the ground, dying instantaneously. He succumbed to his injuries under the mango tree of Uma Dutt Vaidya. This incident was witnessed by the deponent, his brother Sangam Lal, and his brother-in-law Ram Krishna. They exhorted the assailants unarmed and rushed towards them, whereupon the accused persons fled the scene. Other individuals working in nearby fields also saw the accused persons running away. Daya Shankar and Onkar Nath are present in court today. Hiramani is absent, and Dev Narain is absconding. The ploughman (*halwaha*) of Girja Shankar had left his service and joined Daya Shankar, due to which Girja Shankar frequently lodged complaints with the accused persons

37. We brought the dead body of Brij Kishore and the injured Girja Shankar to our house. Thereafter, my brother Sangam Lal prepared the written report of the incident. We went to the police station along with the injured Girja Shankar, where my brother lodged the report. The injured Girja Shankar and the accused Daya Shankar are real brothers.

38. In his cross-examination, this witness stated that Brij Kishore (the deceased) was the real uncle of the accused Daya Shankar. Brij Kishore had no son. The accused Onkar Nath is the son of Daya Shankar. There was no dispute between Daya Shankar and Brij Kishore, nor did Brij Kishore have any enmity with the accused Hiramani and Dev Narain. The witness further stated that his *dada* (grandfather) was grazing his seven animals from 8:00 A.M. on the day of the incident. The Inspector recorded the witness's statement on the date of the incident at 5:00 P.M.

39. The witness stated that he had informed the Inspector that 'the *halwaha* (ploughman) of Girja Shankar had left his service and joined Daya Shankar.' He offered no explanation as to why this statement was not recorded by the Inspector. He added that Girja Shankar consistently complained to the accused persons regarding this matter, and that this fact was also disclosed to the Inspector. He could not explain why it was omitted from his recorded statement. Finally, the witness testified that no quarrel had taken place between Girja Shankar and the accused persons prior to the date of the incident.

40. A *katwasa* is an instrument used to cut tree leaves. It features an incised

blade, slightly tilted, which is fixed onto a bamboo pole. A *katwasa* is a heavy weapon. All four accused were holding weapons in their hands and beat Girja Shankar, who sustained injuries as a result of the beating. When Brij Kishore arrived at the scene, all four accused struck him with their respective weapons. I saw Onkar Nath's *katwasa* hit Brij Kishore (the deceased) on the head, and Dev Narain's *lathi* also struck him along with the *katwasa*.

41. P.W.-1 and P.W.-2 both specifically stated that it was the accused, Onkar Nath, who struck the head of the deceased with his *katwasa*. The *katwasa* is a sharp-edged, incised weapon that struck Brij Kishore's head. His skull was fractured, brain matter oozed out, and he sustained two incised wounds to the head.

42. The incident involved a sharp-edged weapon, which was in the hands of Onkar Nath. The eyewitnesses explicitly testified that Onkar Nath struck the deceased, Brij Kishore, on the head, causing severe injuries. The incised head wounds, fractured skull, and oozing brain matter fully corroborate both the eyewitness testimony and the ante-mortem/injury reports of the deceased. The other injured person, Girja Shankar, suffered lacerated wounds, bruises, and body pain, which also aligns with the medical report and eyewitness statements.

43. The widow of Brij Kishore executed a sale deed for his entire property in favor of Girja Shankar, Dhananjay Lal, Sangam Lal, Sri Kant, Brahm Dutt Murari, Shyam Murari, and Krishna Murari. Thereafter, it was stated that some property still remained. Daya Shankar was excluded from the sale deed because he had committed the murder of Brij Kishore. The widow of Brij Kishore stated, 'I will not execute the sale deed in favour of Daya Shankar.'

44. Chatur Singh Mishra deposed as P.W.-3. He was posted as Head Moharrir. He verified the written complaint (Ext. Ka-1), the check F.I.R. (Ka-2), and the General Diary (Ka-3). He further stated, 'In the General Diary (G.D.), I recorded the arrival of the injured Girja Shankar, noted his injuries, and dispatched him for a medical examination accompanied by Constable No. 20, Jagannath Mishra, to PHC Karchhana. In the same G.D., I also recorded the departure (*rawanagi*) of the Investigating Officer (I.O.).' He also recorded the arrival of the I.O. on September 15, 1980, at 8:15 A.M. under Report No. 17 to enter the recovered material, which he verified as Ext. Ka-4. He is a formal witness.

45. In his cross examination, he has stated that the distance between the village Manaiya and police station Karchhana is about 3 miles. There is only one way of going to Manaiya from the Police Station.

46. It is belied to state that prior to the registration of the FIR at the police

station, information regarding the incident had already been received without mentioning the names of the accused. The Investigating Officer (I.O.) in this case was Sripal Singh. It is belied to state that upon receiving the aforesaid information, the Sub-Inspector (S.I.) left for the place of the incident. It is further belied to state that the S.I., after having the report written by the complainant, personally brought both the written complaint and the complainant to the police station. It is also belied to state that the registration of this case is ante-time.

47. Girja Shankar, who is stated to be the injured party in the said incident, has deposed as P.W.-4. He has not supported the prosecution's version. According to the prosecution, he is the real brother of the accused, Daya Shankar, and is fully aware of the facts. The injury report of Girja Shankar, as mentioned hereinabove, is dated 14.09.1980. It is corroborated by the statement of the Head Moharrir (P.W.-3), who recorded Girja Shankar's injuries in the General Diary (G.D.) and sent him for a medical examination to PHC Karchhana. The Medical Officer of PHC Karchhana, Allahabad, submitted Girja Shankar's injury report, dated 14.09.1980, having examined his injuries at 2:45 P.M.

48. Girja Shankar (P.W.-4) stated: *"The accused, Daya Shankar, is my real brother. The accused, Onkar Nath, is my real nephew, and Brij Kishore was my uncle. The incident occurred just after sunrise near a mango tree by the nala of Manaiya village, where the murder took place. I did not see anyone commit the murder of Brij Kishore. It is belied to state that at the time Brij Kishore (deceased) was murdered, I was also beaten and sustained injuries."*

49. The prosecution declared him hostile, and he was cross-examined by the Public Prosecutor. He further stated: *"It is belied to state that on the day Brij Kishore was murdered, the accused persons present in court beat me at around 12:00 noon near the mango tree of Uma Dutt Vaidya with a katwasa and lathis over a halwaha dispute. I did not go to the police station with Sangam Lal to register the F.I.R."*

50. Whereas, the P.W.-1 Sangam Lal has stated that he has gone to the police station and it is also verified by P.W.-3 who has prepared the general diary (G.D.) and recorded the arrival of this witness and sent him for medical examination for the registration of his injuries. It is belied to state that the police report was registered before myself and thereafter I had been sent for medical examination at PHC Karchhana. There is no other person in the village bearing my name and my father's name. The doctor has not examined myself at PHC. The Inspector did not record any statement from me regarding the incident; he recorded my name on his own to support the prosecution's case. I never gave any statement. I had not recorded the

statement that, *"Meanwhile, my real brother Daya Shankar, nephew Onkar Nath, Hiramani, and Dev Narain arrived carrying a katwasa and lathis, and began beating me due to a dispute regarding a servant. My grandfather objected to the beating and scolded them, whereupon they turned on him and began beating him as well. Onkar Nath struck my grandfather on the head with the katwasa, and at the same moment, Dev Narain hit him with a lathi just above the wound, forcing the katwasa into his head. He collapsed, screaming, and died."*

51. I had not given this statement to the inspector. The inspector has recorded his statement immediately after the incident, and he supported the entire prosecution story in his statement under Section 161 Cr.P.C. However, before the court, he denied this entire statement, even though the documentary evidence and circumstances contradict his testimony, showing that he went to the police station with the complainant, Sangam Lal, and was sent for a medical examination for injuries at PHC Karchhana. He stated that 2 to 3 days after the incident, he came to know that his name was falsely mentioned as an eyewitness, but he did not take any action to have his name removed as a witness to the incident. It is probable that being the real brother of Daya Shankar, he had colluded with his brother to give a false statement to save him.

52. When he was cross-examined by the learned counsel for the accused, he stated that his uncle, Brij Kishore, did not have any sons; he had only one daughter. At the time of Brij Kishore's murder, his age was approximately 73 to 74 years. His nephew, Onkar Nath, was residing with Brij Kishore, looking after his agricultural fields, serving him, and taking care of him. Brij Kishore had immense love and affection for Onkar Nath for this reason. Brij Kishore owned personal property totaling 9 to 10 bighas in Manaiya village and Mungari village. On previous occasions, Brij Kishore used to say that he would give his property to Onkar Nath.

53. It is belied to state that for this reason, he, Sangam Lal, Dhananjay Lal, and Brij Kishore's son-in-law (Ram Krishna Pandey) were annoyed with the deceased, Brij Kishore. We all told Brij Kishore that since we were his successors, he should not give his property exclusively to Onkar Nath. It is belied to state that on the day of the incident, he was cutting animal fodder in the field. Fodder is cut using a Hasiya, Gadasa, or Khurpa, all of which cause incised wounds. On the date of the incident, Ram Krishna (Brij Kishore's son-in-law) had not visited their village, Manaiya; he was not seen in the village that day. Dev Narain and Hiramani belong to the Kole caste, and Hiramani is the son of Dev Narain. Dev Narain and Hiramani were working as halwaha (ploughman) for Daya Shankar. Even prior to the incident, no dispute had taken place between him and Dev Narain or

Hiramani regarding their work as halwaha, nor had any dispute occurred between him and Daya Shankar.

54. After the death of Brij Kishore, Sangam Lal, Dhananjay, and others without paying any consideration and after threatening Brij Kishore's widow had a sale deed for the entire property executed in their favor. He claimed that if his name was included in that sale deed, he was unaware of it. It is completely unbelievable that his name was included in the sale deed without his knowledge, especially when other witnesses specifically stated that Girja Shankar's name was also included in it. Subsequently, he admitted that his name was indeed included in the sale deed, suggesting he sought to protect Sangam Lal and gave a false statement after concealing the truth.

55. He stated that while he was cutting fodder, Brij Kishore was grazing his animals a short distance away. It is belied to state that he and Sangam Lal had engaged in any quarrel with the deceased, Brij Kishore, over his property. It is also belied to state that during the quarrel, he and Sangam Lal were on one side while Brij Kishore was on the other side. Furthermore, it is belied to state that he beat Brij Kishore with a Khurpi and Sangam Lal hit him with a lathi, or that Brij Kishore simultaneously hit him with a lathi, causing him to suffer injuries. He claimed he did not suffer any injuries on the date of the incident; however, this is demonstrably false, as his injuries were proven by the medical examination report from that date, which was also discussed. The inspector arrived at the scene of the incident at 12:00 PM on the day of the occurrence. Brij Kishore had already died by that time. The inspector talked with him, Sangam Lal, and Dhananjay about the incident. In consultation with the inspector, the report against the accused persons was prepared in the village. It is correct that the inspector then took him and Sangam Lal to the police station. His statement is self-contradictory. Previously, he stated that he had not visited the police station. He then further stated that the documentation took place at the police station, and he was sent for a medical examination from the police station to PHC Karchhana. He claimed his injuries were not examined because he had suffered none, which directly contradicts both documentary and circumstantial evidence. If the inspector recorded something, he claimed he was unaware of it.

56. Ram Krishna, who is the son-in-law of the deceased Brij Kishore, was produced by the prosecution as an eyewitness (P.W.-5). In his examination, he stated that the incident occurred on September 14, 1980, which was a Sunday, at around 12:00 noon. At the time of the incident, he was sitting under a neem tree alongside Sangam Lal and Dhananjay Lal. His father-in-law, Brij Kishore, was grazing animals approximately 30 paces away from where they were sitting. Girja Shankar was about 20 paces away from them,

cutting fodder with his khurpa. He stated that he saw Dev Narain, Heera Mani, Daya Shankar, and Onkar Nath coming from the south. Dev Narain was armed with a lathi, while the other three were carrying katwasas. All the accused, except Dev Narain, were present in court. Upon seeing these men, Girja Shankar grabbed his lathi, whereupon the accused began beating him. Seeing this, his father-in-law, Brij Kishore, came over and scolded them. The accused persons then turned towards Brij Kishore and began beating him instead. Onkar Nath struck Brij Kishore on the head with a katwasa. Dev Narain, who had a lathi, struck the upper part of the katwasa. He noted that he was unsure where else the lathi blows landed.

57. His father-in-law died instantly at the scene under the mango tree of Uma Dutt Vaishya. He was murdered on that spot. When they saw the assault, they ran towards the scene, prompting the accused persons to flee towards the east. Girja Shankar was lying about 4 to 5 paces away, having also sustained injuries. They brought Brij Kishore's body to the doorstep of his house. Sangam Lal drafted the report at his house and subsequently left for the police station, accompanied by Girja Shankar, Dhananjay, and Ram Aadhar. Girja Shankar was carried on a cot. The dera (farmhouse/shelter) of Sangam Lal and Brij Kishore is the same. The incident occurred in Manaiya village.

58. He clarified that he is a resident of Nidauri village, located approximately 5 miles south of Manaiya. On the day of the incident, his wife and children were at Nidauri. He mentioned that he used to visit Manaiya village every Sunday to take a bath in the Ganga, on that day, he had come solely for that purpose. After his bath, he went to Brij Kishore's house, had breakfast, and inquired about the whereabouts of Sangam Lal and Dhananjay Lal. Upon being informed that they were at the dera, he went there as well.

59. He further stated that Daya Shankar and Girja Shankar are both his cousin brothers-in-law. He was sitting on a cot conversing with Sangam Lal and Dhananjay Lal when the incident began. He noted that Girja Shankar was not beaten at the exact spot where he was cutting fodder; after spotting the accused, Girja Shankar had moved 4 to 5 paces east to grab his lathi. The Investigating Officer recorded his statement under Section 161 of the Cr.P.C. approximately 24 to 25 days after the incident. Consequently, it is argued that he is not a genuine eyewitness and his statement is highly belated.

60. He is not the sole witness to the incident. There are several eyewitnesses, and the circumstances are further corroborated and verified by the injury report and medical records. Merely recording a statement after a delay of a few days cannot form the sole basis for the fatality of the entire prosecution case. He specifically stated: "My father-in-law, Brij Kishore, was grazing

animals with a lathi. All four accused persons struck him with their weapons for 1 to 2 minutes. Whether he suffered injuries from the weapons of all four accused, I am unable to give a specific reply, but he did suffer injuries. Girja Shankar had kept his lathi under the mango tree of Uma Dutt. When he went to collect it, he was beaten at that location and fell to the ground. The accused persons then ran toward Girja Shankar. When the four accused ran to beat Girja Shankar, we did not immediately run to save him. Even when they began beating him, I, Sangam Lal, and Dhananjay did not run to his rescue. Girja Shankar did not raise an alarm, shout, or call for help because everything happened so suddenly that he had no time to react. However, Brij Kishore raised his voice to save himself. Brij Kishore, who was grazing animals nearby, rushed from that spot with his lathi to save Girja Shankar. As Brij Kishore arrived to save him, all the accused turned and began beating Brij Kishore with their weapons. At that point, myself, Dhananjay Lal, and Sangam Lal ran to save him; we exhorted the assailants and ran toward them, scolding them. When Girja Shankar and Brij Kishore were being beaten, no other person was present in the nearby fields. When the accused began beating Brij Kishore, Brij Kishore did not raise an alarm. However, when we raised an alarm, the villagers heard the noise and rushed to the spot; by that time, the accused persons had fled. Those villagers saw the accused persons as they were fleeing. We brought the dead body to the house, after which I returned to my own home. I returned to the spot on the same day at 6:00 PM after bringing my wife (the daughter of the deceased, Brij Kishore). When I returned, the Inspector was not present in Manaiya village, though the dead body of Brij Kishore was still there. The Inspector did not visit that night. Around 7:00 PM on the same day, four constables took the dead body of Brij Kishore, which had been sealed.

61. He further stated in his cross-examination: *"I met the Inspector after 24 days. In the meanwhile, I did not meet him. The police neither came to my house nor sent anyone to summon me. Brij Kishore was beaten by all four accused persons for 1 to 2 minutes. It is belied to suggest that I was not present at the dera of Sangam Lal on the day and time of the incident or that I did not witness it. It is equally belied to stated that Sangam Lal and Dhananjay Lal, in consultation and conspiracy with the police personnel, fabricated the report against the accused persons and recorded false statements."*

62. Dr. A.K. Kochhar, who examined Girja Shankar on 14.09.1980, stated that he medically examined the injuries of Girja Shankar on 14.09.1980 at 2:45 P.M. at PHC Karchhana. He also verified the fact that the injured was brought by Constable Jagannath Mishra (C.P. No. 20) of the police station. This is corroborated by the statement of P.W.-3 (Head Moharrir), who sent

the injured for medical examination. Jagannath (C.P. No. 20) specifically mentioned all the injuries of the injured, as recorded in Ext. Ka-5, and verified the following injuries:

**"Injury report**

*Examined Shri Girija Shankar aged about 30 years s/o Shri Ram Pragas R/o Vill Manaiya, P.S. Karchhana Allahabad on 14.09.1980 at 2:45 PM. Brought by Sri Jagan Nath Mishra, C.P. No. 20 P.S. Karchhana Alld.*

*M.I.- a black til on lt. side of face distance 3cm from lt. angle of mouth.*

**No. of Injuries:-** (1) lacerated wound 3.5 cm x ½ cm x ½ cm on lt. side of head distance 8 cm from top of lt. ear with irregular margins and blood oozing out.

(2) Incised wound 1.5 cm x ¼ cm x ½ cm in between little and ring finger of lt. hand with regular margins and blood oozing out.

(3) Bruise 11 cm x 2 cm on lt. side of back in scapular region distance 2 cm from spine.

(4) Bruise 1 cm x 1 cm on lt side of back distance 12 cms below post fold of axilla.

(5) Complaint of pain and tenderness on lt. side of back in lumbar region just above iliac crest.

(6) Bruise 4 cm x 3.5 cm on outer surface of lt. thigh distance 30 cm above knee joint.

*All injuries No.1 to 6 are simple and caused by blunt object except injury no. (2) which is caused by sharp edged object.*

**Duration- About ¼ days old."**

63. He opined that all the injuries were simple in nature. Except for injury No. 2, which was caused by a sharp-edged/incised weapon, all other injuries were caused by a hard, blunt object. At the time of examination, all the injuries were approximately 6 hours (¼ day) old. These injuries could have been caused to the victim at around 12:00 noon on September 14, 1980. Injury No. 2 was possibly caused by a katwasa, whereas all the other injuries appeared to have been caused by a blunt object, such as a lathi.

64. During cross-examination by the learned counsel for the accused, he stated that he had prepared the injury report on plain paper provided by the police station, rather than on a printed form. The requisition received from the police station mentioned neither a case number nor a crime number. He further admitted that the injuries could have occurred 2 to 3 hours prior to 12:00 noon and injury No. 2 could also have been caused by a sharp piece of iron, tin, or glass. He had not asked the injured person how he sustained these injuries. He verified the injury report of Girja Shankar as Exhibit Ka-5, which corroborates the statements of the eyewitnesses and the overall prosecution narrative.

65. Jagannath Prasad was examined as P.W.-7. He stated that he was posted as a constable and on September 14, 1980, at 2:45 P.M., he took the injured, Girja Shankar, to the Primary Health Center (PHC) for a medical examination. He further identified and verified the injured Girja Shankar before the doctor.

66. There is no dispute regarding these statements that Girja Shankar had his injuries examined by the doctor at PHC Karchhana at 2:45 P.M. on the date of the incident, September 14, 1980. This is fully corroborated by the prosecution's story and the testimonies of the eyewitnesses, as well as the deposition of P.W.-7, who took the injured from the police station to PHC Karchhana for his medical examination.

67. Despite being given the opportunity to cross-examine, the accused chose not to cross-examine this witness; hence, this testimony remains uncontroverted and fully admissible.

68. Dr. K.K. Bhargava (P.W.-8), who conducted the post-mortem examination of the deceased on September 15, 1980, at 3:20 P.M., observed the following ante-mortem injuries:

**"A.M. Injury:**

*(i) I.W.- 6"x 3/4x bone deep on the left side of head in the middle parietal bone fractured below the injury. Brain material coming out.*

*(ii) I.W.- 4"x 1/2x below deep on the left side of head 1/4" left to injury no. (1).*

*(iii) Abrasion 1"x1" on the back of the right elbow."*

69. He has also stated that the death of the deceased occurred at approximately 12:00 noon on 14.09.1980. The injuries inflicted on the deceased by an incised weapon could have been caused by a katwasa, and Injury No. (3) may have been caused by a blunt object such as a lathi.

70. In his cross-examination, he stated that there may be a variation of 4 to 6 hours on either side regarding the time of death. The deceased suffered two separate head injuries, which were caused by two distinct attacks. The injury to the head of the deceased was inflicted by a heavy incised weapon, though it could also have been caused by a lighter incised weapon, such as a katwasa, if used with sufficient force.

71. There is medical corroboration regarding the injuries, the weapon used, and the statements of the eyewitnesses that the injury could have been caused by a katwasa if struck forcefully. When explicitly questioned by the court, the doctor affirmed that Injury No. (1) was ordinarily sufficient to cause death in the ordinary course of nature. This point was not disputed by the defense during cross-examination. Although an opportunity for cross-examination was provided, the doctor was not cross-examined by the accused persons, and his cross-examination was accordingly recorded as nil.

72. P.W.-9/Sripal Singh, Investigating Officer (I.O.), conducted the investigation. He was posted as Sub-Inspector at Police Station Karchhana

on the date of the incident on 14.09.1980. He stated that this case was registered in his presence and he received information regarding the said case. He first prepared the inquest report of Brij Kishore (deceased), and thereafter, he prepared the *panchayatnama*, *challan lash*, and *chalan photo lash*. These documents were verified by him as Ext. Ka-7 to Ext. Ka-9. He had also written a letter to the Medical Officer, verified by him as Ext. Ka-10, and another letter to the Medical Officer for taking possession of the clothes from the body of the deceased to be sent to the police station. The entry regarding the receipt of the clothes at the police station was written by him, which has been exhibited as Ext. Ka-11.

73. He had also prepared the memo of the blood-stained *angocha* (towel/cloth) of the deceased, verified by him as Ext. Ka-12. Thereafter, he recorded the statements of the complainant and other witnesses at Manaiya village. He then inspected the site of the incident at the pointing out of the complainant and prepared the site plan, verified by him as Ext. Ka-13. He collected sample soil and blood-stained soil, kept them in separate containers/boxes, and verified the memo as Ext. Ka-14. He executed the attachment warrant against Dev Narain on 18.09.1980 and prepared the memo, which is verified by him as Ext. Ka-15. Thereafter, upon completion of the investigation, he submitted the charge-sheet, which is verified by him as Ext. Ka-16. He had also sent the collected blood-stained clothes of the deceased as well as the sample soil to the Forensic Science Laboratory (FSL), Agra, for chemical examination. He further stated that he recorded the statement of Girja Shankar, who was seriously injured and is the real brother of the accused Daya Shankar. He recorded the statement on 15.09.1980 at 7:00 A.M. in corroboration of the said incident. He also verified that after registration of the F.I.R., he sent the injured witness, Girja Shankar who had arrived along with the complainant to PHC Karchhana for medical examination accompanied by a constable. He verified the recorded statement of Girja Shankar, which reads: "इसी बीच मेरा सगा भाई दया शंकर गिरकर मर गया (is beech mera saga bhai Dayashankar girkar mar gaya)". A copy of this statement was filed by him and exhibited as Ext. Ka-17. He stated that he recorded the statement of Ram Krishna Pandey on 09.10.1980 at 7:30 A.M. on the road near the PHC. He further stated that this witness had not met him prior to that date.

74. In his cross-examination, he stated that the complainant, Sangam Lal, along with witnesses Dhananjay and Ram Adhar, and the injured Girja Shankar, came to the police station for registration of the F.I.R. He was present at the police station at that time. They reached the police station at 2:15 P.M. during the day. He did not record the statements of the complainant and the witnesses at that time at the police station because he

preferred to prepare the inquest report at the earliest. He stated that they reached village Manaiya at about 3:15 P.M. The dead body of the deceased was lying in front of the door under a neem tree. He commenced the preparation of the inquest report at 3:15 P.M. and completed it at 4:15 P.M. He recorded the statements of the witnesses after the preparation of the inquest report, which took approximately 1 to 1¼ hours. He did not find any *lathi* either at the place of incident or at the house of the deceased, belonging to either Brij Kishore or the injured Girja Shankar, nor did anyone hand over a *lathi* to him. The *khurpa* (sickle) of Girja Shankar was neither shown to him by anyone nor did he see it himself.

75. After preparing the inquest report, he recorded the statements of the complainant, Sangam Lal, and witness Dhananjay, and did not record the statement of any other eyewitness at that time. He inspected the spot and prepared the site plan at the pointing out of Sangam Lal and witness Dhananjay. He did not prepare the site plan at the pointing out of any other person. He did not mention any agricultural field of *chari* at the place of incident, nor did he mark specific locations where the witnesses were standing or sitting in the site plan. He did not find any fodder-cutting machine at the place of incident. He did not show the route or direction towards the east through which the accused arrived and departed because no one had informed him about it. He did not mark the place where the deceased, Brij Kishore, was grazing his animals because no one pointed out that location to him. The inspection of the place of incident took him approximately one hour.

76. After inspecting the place of incident, he recorded the statements of 3 to 4 persons; these persons were not eyewitnesses, but were witnesses to the inquest report and the recovery memo of the blood-stained soil. Between reaching village Manaiya and leaving the village the next morning, witness Ram Krishna Pandey did not meet him. He remained in the village until 5:00–5:30 A.M. the following morning, after which he went to the hospital to record statements. He did not record the statements of Shesh Narain, Ambika Prasad, Siddh Narain, Ram Adhar, and Rajaram as eyewitnesses. He had recorded the statements of only Ambika Prasad and Ram Adhar, but they were not eyewitnesses.

77. He went to the house of Ram Krishna Pandey during the investigation, but the witness was not found there; however, he did not record this detail in his case diary. He did not send any constable to the house of Ram Krishna Pandey to summon him for recording his statement. He asked Sangam Lal and Dhananjay to provide the names of any other persons who had witnessed the incident, but they did not mention or provide the names of any other villagers. He made independent efforts to ascertain who else had witnessed

the incident, but was unable to obtain any further information. He further stated that during the preparation of the inquest report, he took the blood-stained clothes from the body of the deceased and sealed them. When the sealed bundle was opened before him and the *angocha* of the deceased was shown to him, he stated that it was the same *angocha* that had been recovered by him from the dead body of the deceased, which is exhibited as Ext. Ka-1. He had also removed the blood-stained *ganji*, blood-stained *janeu* and blood-stained *dhoti*. These items were produced before him and identified by him, which are exhibited as Ext. Ka-2, Ext. Ka-3, and Ext. Ka-4, respectively.

78. During his inspection of the place of incident, he collected blood-stained soil and plain sample soil, placed them in two separate boxes, and sealed them. These items were produced before him and identified by him, which are exhibited as Ext. Ka-5 and Ext. Ka-6. Upon returning on 15.09.1980 from the place of incident to the police station, he deposited the three sealed bundles in the *malkhana* vide General Diary (G.D.) Entry No. 17.

79. In his cross examination, he has further stated that he has not taken the signature of the witnesses on these boxes. The statement of Onkar Nath who is the sole alive appellant and the person who has hit with katwasa on the head of the deceased, thereby, the deceased died at the spot. He has stated that Hiramani was working as ploughman with us. He was not working as ploughman with Girja Shankar. He has denied all the evidences recorded against him. He has stated that charge sheet has been wrongly filed against him. He stated that the evidence was recorded against him due to enmity and that the prosecution had proceeded against him out of spite. In response to the general query, he stated that his defense was the same as the statement of his father, Daya Shankar.

80. Meanwhile, the appellant Daya Shankar (who died during the pendency of the appeal) had stated in his examination under Section 313 Cr.P.C. that the deceased, Brij Kishore, was his uncle. He stated that Brij Kishore intended to give his entire property to his son, Onkar Nath, which caused annoyance to Girja Shankar, Sangam Lal, and Dhananjay Lal. Consequently, Girja Shankar and Sangam Lal entered into a quarrel and committed an assault, during which Brij Kishore sustained injuries and they had been falsely implicated in the case.

81. In the instant case, Girja Shankar is an injured person who turned hostile and did not support the prosecution case regarding his injuries. Although he supported the prosecution version during the investigation, he subsequently turned hostile and resiled from his earlier statement during the trial stage before the Sessions Court.

82. The accused, Daya Shankar, and the injured witness, Girja Shankar, are

real brothers. It is the specific case of the prosecution that Girja Shankar turned hostile due to collusion with his real brother, Daya Shankar, as he did not wish to testify against him. Girja Shankar is not an accused in the present case; he is only an alleged injured witness.

83. The Hon'ble Supreme Court in **State of Haryana Versus Chandvir and others, 1996 SCC(CRI) 728**, has held that the Court has to endeavour to separate the grain from the chaff and accept that part of the evidence which is found to be truthful and consistent. The Hon'ble Supreme Court in **Mani @ Udattu Man and others Versus State represented by the Inspector of Police, 2009(67) ACC 526 (SC)** has held that the Court is duty bound to separate chaff from gain. Evidence not to be disregarded in all respect. Part of evidence found worthy of acceptance. May be used for conviction of the accused.

84. The Hon'ble Supreme Court in **Sheo Shankar Singh Versus State of Jharkhand, AIR 2011 SC 1403**, has held that the examination of witness where there is delay of 1 and ½ month in recording the statement of the witness who had come to the place of occurrence 7-8 minutes after occurrence, would not ipso facto render testimony of witness suspect or affect prosecution version. The Hon'ble Supreme Court in **Abuthagir vs The State (represented by the Inspector of Police, Madurai), 2011 (1) SCC (Cri) 970**, has held that, in the matters of criminal trial the approach of the Court in the appreciation of evidence must be integrated and not truncated or isolated. The court must analyze and assess the evidence of yard stick of probabilities, its intrinsic value and animus of witnesses and thereafter reach its conclusion. It is held by the Hon'ble Supreme Court in **Brahm Swaroop and Anr. v. State of Uttar Pradesh and others, AIR 2011 SC 280** that if there is omission in the inquest report to mention crime number, name of the accused, penal provisions under which offences have been committed, it is not fatal to prosecution. Some omission do not lead to inference that F.I.R. is ante timed. Evidence of eye-witness cannot be discarded if their names do not figure in inquest report. The inquest report is not substantive evidence, but may be utilized for contradicting witness of inquest.

85. It is held by the Hon'ble Supreme Court in **Animireddy Venkata Ramana & Ors. v. Public Prosecutor, High Court of Andhra Pradesh, 2008 (2) SCC (Cri) 600** that F.I.R. need not be encyclopaedic. Each and every

need not be encyclopaedic. Each and every detail of the incident need not be stated.

86. In view of these facts and circumstances and upon proper appreciation of the evidence, there is categorical evidence against the accused/Onkar Nath

that he had hit with katwasa. It has been corroborated by the ante mortem injuries recorded in the post mortem of the deceased as well as by the testimony of the eyewitnesses to the incident.

87. The prosecution has proved its case beyond reasonable doubt against the accused/Onkar Nath Dubey son of Jai Shankar Dubey. The judgment and order dated 28.05.1984 passed by learned Additional Sessions Judge, Allahabad in S.T. No. 96 of 1983 against Onkar Nath Dubey is entitled to be confirmed. It is hereby confirmed.

88. The present criminal appeal filed by the Onkar Nath Dubey/sole living appellant in the present appeal is liable to be dismissed.

89. The present appeal of still living appellant Onkar Nath Dubey is hereby dismissed.

90. The appellant is presently on bail. The appellant, Onkar Nath Dubey, is directed to surrender before the learned Trial Court within 15 days from today to complete the sentence imposed on him. The previous period spent in jail will be adjusted. Upon his surrender, his bail bonds and personal bonds shall stand cancelled and the sureties shall be discharged. If the appellant fails to surrender within the stipulated period before the learned Trial Court, the learned Trial Court shall forthwith proceed in accordance with law to take him into custody to undergo the sentence imposed upon him.

91. A copy of this order shall be sent to the learned trial court for necessary compliance.

**September 16, 2026**  
K.K. Maurya

**(Abdul Shahid,J.)**