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A.F.R.



2026:AHC:186785-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1872 of 2007

Sukhram and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Rajrshi Gupta
Counsel for Respondent(s)	: Ajay Yadav, Brij Raj, Govind Saran Hajela, Rajiv Lochan Shukla, S.k.dubey, Sanjeev Kr.gupta, Umesh Chandra Misra, V.c.mishra, Yogendra Pal Singh

Court No. - 42

**HON'BLE ATUL SREEDHARAN, J.
HON'BLE ACHAL SACHDEV, J.**

Per : Achal Sachdev, J.

1. Heard Sri Rajrshi Gupta and Sri Rizwan Ahamad, learned counsel for the appellants, Sri Kamal Krishna, learned Senior Counsel assisted by Sri Ghanshyam Das, learned counsel for the informant and Ms. Divya Ojha, learned A.G.A.-I for the State.

2. The instant appeal has been preferred under **Section 374(2) of the Code of Criminal Procedure, 1973** against the judgment and order of sentence dated **26.02.2007**, passed by the learned Additional District & Sessions Judge, Fast Track Court No. 1, Mainpuri, in **Sessions Trial No. 86 of 2006 (State of U.P. Vs. Sukhram and others)**. By the impugned judgment, the three appellants were convicted under **Section 302 read**

with Section 34 of the Indian Penal Code and sentenced to **imprisonment for life**, together with a fine of **Rs.10,000/- each**, with a further sentence in default of payment of fine.

3. At this stage itself, it is clarified at the outset that the co-accused **Manuraj Singh** was tried separately in **Sessions Trial No. 86-A of 2006**, and convicted by a distinct judgment dated **25.11.2011**. His appeal, **Criminal Appeal No. 7002 of 2011**, lies outside the scope of the present adjudication, for the following cumulative reasons:

1. The judgments impugned were separately delivered on different dates.
2. The Sessions Trials were separately numbered, viz., 86 of 2006 and 86-A of 2006.
3. The evidence in the two trials, though arising from the same occurrence, was separately recorded, with witnesses deposing on different occasions and subject to distinct cross-examination.
4. A distinct and unresolved question of juvenility attaches only to Manuraj Singh's case, necessitating a separate factual inquiry that has no bearing on the present appellants.

4. Accordingly, each appeal, even if arising from a common occurrence, must be decided on its own evidence and record. This judgment is confined to the present appeal alone.

5. In the instant appeal, the appellants, Sukhram and Jeetraj were released on bail by this Court vide order dated 12.01.2009. Aushan Singh was released on bail by this Court vide order dated 19.05.2022. The appellants' counsel, Sri Rajrshi Gupta, informed this Court of Sukhram's death, and further stated that his death had first been brought to the Court's notice on 26.10.2016, and that the CJM's report dated 22.03.2022 verified that Sukhram had died on 13.11.2014.

6. Sukhram died during the pendency of the appeal, and the appeal against him stands abated vide order dated 19.05.2022 of this Court. The

present appeal survives only in respect of appellants, Jeetraj and Aushan Singh.

7. The prosecution case, as per the record, is that on 03.08.2005 at about 08:00 a.m., the deceased Veerpal Singh and his cousin Khushiram were standing together on the *chabutra* in front of Veerpal's house, engaged in conversation. It is alleged that four persons, Sukhram, Aushan Singh, Jeet Raj and Manuraj Singh, arrived armed with firearms and took position on the *kharanja* adjoining the *chabutra*. According to the prosecution version, Sukhram and Jeet Raj were armed with rifles, while Aushan Singh and Manuraj Singh carried 12-bore guns. It is alleged that the four accused abused and threatened Veerpal and Khushiram, attributing their hostility to a previous enmity between the families, and thereafter opened fire upon them. Veerpal sustained firearm injuries and was being taken to the hospital when, according to the First Information Report, he died on the way. The written report of the occurrence was lodged by Khushiram at Police Station- Bewar at about 09:30 a.m. the same day, and the case was registered as Case Crime No. 397 of 2005.

8. The F.I.R. is stated to have been lodged at 09:30 a.m. on 03.08.2005 at Police Station- Bewar, District- Mainpuri, on the written report of Khushiram (PW-1). The investigation was initially undertaken by Sub-Inspector Raj Narayan Dubey (PW-7). After his transfer, Rajendra Prasad Mishra (PW-5) took over the investigation. The inquest proceedings were conducted at the Community Health Centre, Bewar, commencing at about 09:45 a.m. and concluding at about 11:15 a.m. The inquest report recorded firearm injuries as the apparent cause of death. The dead body was thereafter sent for postmortem examination, conducted on the same day i.e. 03.08.2005, at about 5:00 p.m., at the District Hospital, Mainpuri, by K.C. Bhardwaj (PW-4). PW-7, SI Raj Narayan Dubey, the first Investigating Officer, prepared the site plan of the place of occurrence, the recovery memo relating to blood-stained and plain earth lifted from the spot, and a separate recovery memo

concerning an empty cartridge recovered at the scene. Aushan Singh was arrested on 04.08.2005 at about 04:30 a.m. in the Madhyapur/Kali Nadi area. Manuraj Singh and Jeet Raj surrendered before the Chief Judicial Magistrate on 18.08.2005; Sukhram surrendered on 01.09.2005. The investigation was formally taken over by Rajendra Prasad Mishra (PW-5) on 05.09.2005, and the charge-sheet under Section 302 I.P.C. was thereafter filed. Cognizance was taken on 29.10.2005, and the case, being exclusively triable by the Court of Session, was committed to the Sessions Court for trial.

9. Charges were framed against Sukhram, Aushan Singh and Jeet Raj in Sessions Trial No. 86 of 2006 under Section 302/34 I.P.C. The accused denied the charges and claimed trial.

10. Manuraj Singh was proceeded against separately in Sessions Trial No. 86-A of 2006.

11. The prosecution examined seven witnesses in all.

12. PW-1 Khushiram is the informant and a cousin of the deceased, and is the principal ocular witness on whom the prosecution case substantially rests. He deposed that he and Veerpal were standing on the *chabutra* discussing the forthcoming Panchayat election at the time of the occurrence. According to his testimony, the accused were standing approximately fifteen paces away, on the south-eastern side of the *kharanja*; Sukhram and Jeet Raj are said to have carried rifles, and Aushan Singh and Manuraj Singh, 12-bore guns. He stated that at the point when the accused were abusing and threatening the two of them, his own back was turned towards the accused while Veerpal was facing them directly, and that it was only when the firing commenced that he turned his neck towards the accused. He, thereafter, ran towards the north. He stated that the firing continued for about one minute, and that none of the relatives who were with him at the time sustained any injury.

13. PW-1 further stated that he was, at the relevant time, the Headmaster of a Government Primary School situated at Mudai,

approximately two to three kilometres from Shiv Singhpur, and that the school ordinarily functioned in the month of August from about 07:00 a.m. to noon. Confronted with the apparent inconsistency between his official duty hours and his presence at the scene at 08:00 a.m., he sought to explain his presence by reference to leave taken by him and to the filing of nomination or related forms for the Panchayat election. He admitted in cross-examination that the asserted Panchayat-election rivalry, now offered as an explanation both for his presence and for a possible motive for the attack, found no mention in the F.I.R. and was not stated in his first statement to the Investigating Officer, having surfaced only in a subsequent statement. He also admitted that the earlier enmity dating to 1986 had been settled between the parties, who had thereafter lived together amicably until the present occurrence.

14. PW-1 additionally described the physical layout of the place of occurrence in some detail: Veerpal's house was surrounded by habitation, with a *chabutra* in front of it and a *kharanja* beyond, with other houses situated around the locality; Sukhram's own house was said to be about fifty to sixty paces to the south-east. He stated that the accused did not step onto the *chabutra* itself but remained at a distance on the *kharanja*, and that Harish Chand, Shri Chand and Narottam arrived at the spot only after hearing the sound of firing. His evidence contains material admissions bearing on his physical position relative to the accused at the crucial moment, the absence of injury to any of the persons said to have accompanied him, the belated character of the election-motive explanation, and the prior settlement of the older family dispute, each of which is examined further below.

15. PW-2 Navratan Singh, the brother of the deceased, broadly supports the prosecution version. He deposed that on 03.08.2005 at about 08:00 a.m., Harish Chand and Shri Chand were sitting in the verandah while Veerpal and Khushiram were on the *chabutra*, and that the four accused arrived at the *kharanja* in front of the house. He attributed rifles to Sukhram and Jeet Raj and 12-bore guns to Aushan

Singh and Manuraj Singh, and stated that all four fired upon Veerpal. According to him, the accused fled after being challenged, and Veerpal was thereafter taken on a tractor-trolley towards the hospital.

16. In cross-examination, PW-2 furnished a fairly detailed account of the route taken to the hospital and thereafter to the police station, but his account is not free from internal variance: at different points in his testimony, he described the deceased as having been taken towards the hospital, as having been declared dead there by a doctor, and as having thereafter been taken to the police station, with the body being carried in the same vehicle throughout. He also stated that he, together with Harish Chand and Shri Chand, could see Veerpal and Khushiram from the place where they were sitting, a claim that must be tested against PW-1's own account of the seating and movement of these persons. He acknowledged the existence of the old enmity between the families but affirmed that no fresh violent incident had occurred between the parties in the intervening period. He supported the prosecution's explanation for the absence of one Shishupal from the scene, stating that Shishupal had already left for work that morning.

17. PW-2 also confirmed that Khushiram and Veerpal were discussing the election because nomination forms were due to be filed that day, thereby lending some corroboration to PW-1's explanation, though, as noted, that very explanation is itself a subsequent improvement absent from the F.I.R. He acknowledged that no independent village witness had, to his knowledge, been examined by the prosecution despite the evidently populated character of the locality. He gave evidence regarding the licensed status of the rifles and 12-bore guns allegedly used. His testimony, however, also contains discrepancies as to precisely when Harish Chand and Shri Chand emerged from the house, and as to whether the individual acts of firing attributed to each of the four accused were, in fact, specifically communicated to the Investigating Officer at the time of his statement.

18. PW-3, Jawahar Lal, is a formal witness who proved the chik F.I.R. and the corresponding General Diary entry recording receipt of the written report. The prosecution relied on his evidence principally to establish the fact and time of registration of the case and the receipt of information at the police station.

19. PW-4, K.C. Bhardwaj, conducted the postmortem examination of the deceased on 03.08.2005 at about 05:00 p.m. He recorded five ante-mortem firearm injuries, consisting of multiple firearm pellet entry wounds over the chest, shoulder and upper limb and the right side of the body, together with a separate distinct firearm entry injury over the chest. Internally, multiple ribs were found fractured, both lungs were damaged, and the heart was injured; metallic projectiles and pellets were recovered from within the body and were duly exhibited. The medical evidence conclusively establishes a homicidal death caused by firearm injuries. It is, however, of central importance to the appellate assessment that the prosecution did not, at any subsequent stage of the investigation, establish a reliable forensic connection between the metallic material recovered from the body and any specific weapon attributed to any of the appellants, a gap examined further below.

20. PW-5, Rajendra Prasad Mishra, took over the investigation from PW-7 on 05.09.2005 and thereafter filed the charge-sheet. His evidence proves the relevant police documents generated after the transfer of investigation and the steps taken by him in that capacity, though, being a successor Investigating Officer, he was naturally unable to speak from personal knowledge to the events and omissions occurring during the earlier, more critical phase of the investigation conducted by PW-7.

21. PW-6, Bharat Singh Yadav, conducted, and in his deposition, proved the inquest proceedings concerning the deceased, including the preparation of the inquest report.

22. PW-7, Raj Narayan Dubey, was the initial Investigating Officer and, by consequence, the witness whose evidence bears most directly

upon the several procedural infirmities pressed by the defence. He deposed that on 03.08.2005, he proceeded upon information received through the wireless (RT) set, reached Police Station- Bewar at about 8:30 a.m., but neither made an arrival entry at the police station nor communicated the RT-set information to the Head Moharrir there, proceeding instead directly to the hospital. He stated that the inquest was, at that stage, already being prepared. He, thereafter, proceeded to the place of occurrence, where he prepared the site plan and the recovered documents referred to above.

23. In cross-examination, PW-7 made a series of admissions of considerable significance. He admitted that firing marks were visible on the walls at the place of occurrence but were not depicted in the site plan. He admitted that no pellet and no wad was recovered from the spot, the sole recovery being a single empty cartridge. He admitted that he did not send the projectiles recovered from the body for forensic ballistic comparison, and that he similarly did not send the firearms alleged to have been used for ballistic examination. He further admitted that he did not record the statement of the doctor who is said to have declared Veerpal dead at the hospital, explaining this omission by stating that the F.I.R. itself recorded that the deceased had died on the way to the hospital rather than after arrival, an explanation that does not, however, account for the failure to examine the doctor on the question of the sequence of events at the hospital, a matter that assumed independent importance in light of the defence version discussed below.

24. PW-7 further admitted that a General Diary entry indicated that the dead body was lying at the gate of the police station, whereas he himself had found the body at the hospital; he candidly conceded that he did not investigate how the body came to move between the hospital and the police station, or under whose authority such movement occurred. He also acknowledged the appearance of a reference to Crime No. 396/2005 in the contemporaneous material, even though the case ultimately proceeded upon registration as Crime No. 397/2005.

25. PW-7 additionally stated that, during the course of investigation, he learned that the firearm licensed to Sukhram and the rifle attributed to Aushan Singh had, prior to the occurrence, been deposited with an arms dealer or gun house at Etawah. Sukhram's firearm was subsequently brought and deposited at the police station, but no ballistic examination of it was thereafter carried out; Aushan Singh's rifle was likewise never subjected to forensic comparison. PW-7 also acknowledged that he did not verify Aushan Singh's precise duty location at Farrukhabad by examining the relevant duty, attendance or movement records maintained by the police department.

26. Finally, PW-7 stated that Khushiram had disclosed to him that the 1986 murder of one Ramnaresh had been the origin of the enmity between the families, but that the parties had subsequently compromised and, thereafter, lived together without incident. He also recorded, at a later stage of investigation, the emergence of the election-related motive concerning rival candidates for the office of Gram Pradhan, a motive which found no mention either in the F.I.R. or in PW-1's first statement to him.

27. After conclusion of prosecution evidence, the statement of the accused were recorded under Section 313 Cr.P.C., wherein the accused have denied the prosecution evidence and have stated that they have been falsely implicated in the case out of old enmity that subsisted between the families of the informant and them.

28. Thereafter, the accused examined two witnesses in support of their contentions.

29. DW-1, Shri Krishna Singh, described himself as a neighbour of the deceased and furnished an entirely alternative account of the occurrence, according to which it was Balram and Shishupal who were involved in a quarrel with Veerpal, and that the firing took place between them rather than between Veerpal and the present appellants. He stated that Veerpal was taken to the hospital, declared dead there, and thereafter

taken to the police station, where the body was placed near the gate, before being taken once again to the hospital on the direction of the police. This portion of his testimony has a bearing on the chronology of the movement of the deceased's body, a matter otherwise dependent upon the admissions of PW-7 and the General Diary entry discussed above.

30. However, DW-1's evidence suffers from serious infirmities. He admitted that no police officer had ever recorded his statement during the investigation, that he had not himself made any report to the police, and that he learned only much later that the present accused were the persons who had been made to face trial. He was, moreover, illiterate, and stated that the contents of his own affidavit had not been read over to him before he signed or affirmed it. For these reasons, his testimony cannot safely be treated as a reliable, independent account establishing that Balram and Shishupal were the actual assailants. It retains relevance, however, only to that limited extent, insofar as it touches upon the chronology of the deceased's movements, a matter capable of independent testing against the prosecution's own admissions.

31. DW-2, Lakhan Singh, also furnished an account attributing the firing to Shishupal and Balram. He admitted, however, that he had never informed the police of this version at any stage of the investigation. He came forward to depose only after being informed of the date of hearing by defence counsel, and after discussions in the village about the alleged false implication of the accused. His evidence is accordingly substantially delayed and demonstrably influenced by developments subsequent to the occurrence, and it cannot be treated as a dependable, contemporaneous eyewitness account capable of displacing the prosecution's version.

32. The defence, drawing upon the admissions extracted from the prosecution witnesses and upon the infirmities of the investigation, has advanced the following principal contentions, each of which is examined on its merits below :

- i) The F.I.R. was ante-timed and was, in truth, prepared only after consultation and deliberation among the informant's side, rather than at the time and in the manner it purports to record.
- ii) The inquest material either contains no crime number at all, or bears the number Crime No. 396 rather than the eventual Crime No. 397, raising a doubt as to the true sequence in which registration and investigation proceeded.
- iii) The deceased was first taken towards the hospital and, according to some material, was declared dead there, whereas the police records simultaneously refer to the body being found at the gate of the police station, an unexplained and internally inconsistent chronology.
- iv) PW-1 was the Headmaster of a school that ordinarily commenced at 7:00 a.m., and his presence at the scene at 8:00 a.m. was never objectively verified through school attendance or leave records.
- v) The election-related motive constitutes a clear improvement upon the original case, being absent both from the F.I.R. and from PW-1's first statement to the police.
- vi) The prosecution witnesses are closely related to the deceased, and no independent eyewitness was examined despite the populated character of the locality in which the occurrence is said to have taken place.
- vii) No weapon was recovered pursuant to any pointing-out by the accused, and no firearm was ever forensically linked with the recovered cartridge or with the projectiles removed from the body.
- viii) The firearms attributed to Sukhram and Aushan Singh had, on the prosecution's own showing, been deposited with an arms dealer or gun house at Etawah prior to the occurrence, a circumstance requiring explanation that the prosecution has not furnished.

ix) Aushan Singh was posted at Farrukhabad at the relevant time, and the Investigating Officer did not verify his exact duty status on the date and at the hour of the occurrence.

x) The Investigating Officer failed to record the statement of the doctor who allegedly declared the deceased dead at the hospital, failed to explain the movement of the body between the hospital and the police station, and failed to properly document the firing marks observed at the scene.

xi) The defence has suggested that Shishupal and Balram were the actual assailants; although this alternative version was not disclosed to the police at an early stage and suffers from delay, it is submitted that the prosecution's own case must independently stand or fall on its own proof, irrespective of the strength or weakness of this alternative theory.

33. Learned counsel for the State (A.G.A.) has met each of these contentions with the following broad submissions. It is contended, first, that an inquest conducted under Section 174 of the Code of Criminal Procedure is limited in its purpose to ascertaining the apparent cause of death and is not substantive evidence bearing upon the guilt of the accused; consequently, discrepancies internal to the inquest material cannot, by themselves, be treated as fatal to the prosecution case. It is submitted, second, that the precise sequence in which the deceased was taken to the police station or to the hospital, even if not free from ambiguity, ought not to be treated as destructive of the prosecution version so long as the F.I.R. and the medical evidence together establish the fact and cause of the occurrence.

34. It is further submitted that related witnesses cannot be discarded merely on account of their relationship to the deceased, since a relative is, in the ordinary course of events, often the most natural witness to a crime committed within or near the family home; and that defective investigation, standing alone, cannot result in an acquittal where credible ocular evidence is otherwise available on record. The prosecution has

additionally relied upon the promptness of the F.I.R., upon the broad consistency of the accounts given by PW-1 and PW-2 as to the manner of occurrence, and upon the medical evidence, which conclusively establishes that the death was homicidal and was caused by firearm injuries.

35. The Court is conscious of the settled position that relationship with the deceased is not, by itself, a ground for the rejection of testimony; indeed, a related witness may often be the most natural and immediate witness available to a crime of this nature. Equally, the absence of independent witnesses does not, without more, necessarily destroy a prosecution case. The correct approach, well established in the appreciation of ocular testimony, is to examine whether the evidence tendered is cogent, internally consistent, and receives reasonable assurance from the surrounding circumstances and contemporaneous documents, rather than to apply any rigid or mechanical rule of exclusion or acceptance based on relationship alone.

36. Applying that approach to the present record, however, the concerns are not isolated but cumulative. PW-1's own opportunity to observe the accused at the critical moment was materially affected by his admission that his back was turned towards them while the alleged abuse and threats were being issued, and that he turned to face them only when the firing had already commenced, after which he ran from the scene. His presence in the village at an hour when, by his own admission, he ought ordinarily to have been at his school was never independently or objectively verified through the available and readily obtainable school records, notwithstanding that such verification lay well within the reach of a diligent investigation. His explanation by reference to the Panchayat election was, on his own admission, a subsequent development, absent from both the F.I.R. and his first statement to the Investigating Officer.

37. PW-2 does lend a measure of support to the presence of PW-1 at the scene, and his account of the broad manner of occurrence is not without corroborative value. Yet his account of the presence and arrival

of Harish Chand and Shri Chand diverges in material respects from that given by PW-1, and from the account otherwise suggested by the F.I.R. Neither Harish Chand nor Shri Chand (persons who, on the prosecution's own case, were in a position to witness the occurrence and were unrelated, or less closely related, to the deceased than PW-1 and PW-2) was examined by the prosecution as an independent eyewitness, notwithstanding the populated character of the locality and the availability of these individuals.

38. The Court must further draw a careful distinction between the broad allegation that four armed persons were present at the scene, which finds some support in the ocular accounts and in the medical evidence, and the considerably more specific allegation that each individual appellant discharged his own weapon and thereby contributed to the fatal injuries. The prosecution has failed to establish any forensic link between the weapon attributed to any particular appellant and the ammunition or projectiles actually recovered. The medical evidence conclusively establishes that the deceased met a homicidal death by firearm injury; it does not, and cannot by its own nature, identify the individual assailants responsible for inflicting that injury.

39. The promptness with which an F.I.R. is lodged is ordinarily an important circumstance strengthening the reliability of the prosecution version, since it reduces the opportunity for embellishment or false implication. That promptness, however, cannot be assessed merely by reference to the time recorded on the face of the Chik F.I.R. in isolation; the surrounding contemporaneous record, including the General Diary and the conduct of the Investigating Officer in the immediate aftermath, must equally be considered before the claim of promptness can be accepted at face value.

40. In the present case, PW-7's own admissions create a chronology that has not been satisfactorily explained. He admits to having received information through the RT set, to having reached the police station at about 8:30 a.m., and yet to having made no arrival entry there and to

having proceeded directly to the hospital without communicating the information to the Head Moharrir. This, taken together with the General Diary's reference to the body being found at the gate of the police station (a location and circumstance inconsistent with PW-7's own account of finding the body at the hospital) and with his candid admission that he did not investigate how or under whose authority the body moved between these two locations, discloses a chronology that remains materially unresolved on the record as it stands.

41. The failure to examine the doctor who is said to have declared the deceased dead at the hospital assumes particular significance in this context. PW-7 himself admits that such a declaration is alleged to have occurred, yet the doctor was never examined to clarify the point. The prosecution cannot, consistently with its own burden, rely upon the hospital event as forming part of the chronology of the case while simultaneously leaving unexamined, without satisfactory explanation, the very witness best placed to speak to that event from contemporaneous, professional observation.

42. As to the discrepancy between Crime No. 396/2005 and Crime No. 397/2005, the Court is mindful that such a discrepancy, viewed in isolation and in the ordinary run of cases, might properly be regarded as no more than a clerical slip of no real consequence. In the present case, however, where ante-timing of the F.I.R. and prior consultation are specifically and squarely alleged by the defence, the discrepancy cannot be dismissed in isolation; it must instead be assessed cumulatively, alongside the other chronological infirmities noted above, as one strand within a larger pattern that the prosecution has not dispelled.

43. The old enmity dating to 1986 is established, to a degree, as a historical fact on the record; neither side has manufactured it or wholly denied it. The prosecution's own investigative material, however, indicates that the parties had, in the years following that enmity, arrived at a settlement and had, thereafter, lived together without further incident until the date of the present occurrence. The subsequently asserted

motive, rivalry arising from the Panchayat election, is, as already noted above, absent from both the F.I.R. and PW-1's first statement to the police, and surfaces only at a later stage of the investigation.

44. In these circumstances, motive cannot be said to be wholly absent from the case; but neither can it be said to furnish the ocular account any real measure of independent corroboration. It bears emphasis that the existence of an old, settled enmity between two families is, by its very nature, a double-edged circumstance: it is capable of furnishing a motive for the commission of the crime itself, and it is equally capable of furnishing a motive for the false implication of persons belonging to the rival family. Absent independent evidence tilting the balance one way or the other, motive in the present case must accordingly be treated as, at best, a neutral circumstance, and at worst, a weak and inconclusive one, certainly not one capable of shoring up an otherwise doubtful identification.

45. The prosecution case attributes rifles specifically to Sukhram and Jeet Raj, and 12-bore guns specifically to Aushan Singh and Manuraj Singh. This is a precise and individuated allegation, not a generalised one, and it was, therefore, incumbent upon the prosecution to support it, so far as possible, with objective forensic material. No such material was, however, placed on record. The firearms said to have been used were never forensically compared with the recovered cartridge or with the projectiles removed from the deceased's body during postmortem. The metallic projectiles and pellets recovered from the body were never sent by PW-7, the Investigating Officer principally responsible for the collection of evidence, for ballistic examination. Compounding this omission, the licensed weapons attributed to Sukhram and Aushan Singh had, on the prosecution's own showing, been deposited with an arms dealer or gun house at Etawah prior to the date of occurrence, a fact that called for explanation as to how and when, if at all, those weapons came back into the appellants' hands in time to be used in the offence; no such explanation appears on the record.

46. In these circumstances, no scientifically established chain connects any particular weapon with the injuries found on the person of Veerpal Singh. The recovery of a single empty cartridge from the scene is consequently of limited corroborative value in the absence of any ballistic comparison, and without such comparison, the cartridge cannot be said to establish that it was fired from a weapon belonging to, or used by, any particular appellant. Similarly, while the presence of firearm injuries on the deceased's body is not in question, the mere fact of such injuries cannot, without more, establish which among the four named accused actually caused them. The gap between the general allegation of joint presence and firing, and the specific allegation of individual authorship, is thus left substantially unbridged by the forensic evidence, or, more accurately, by its near-total absence.

47. Two related but distinct omissions in the investigation merit separate treatment, since each concerns a fact that was objectively capable of verification and yet was left unverified by the Investigating Officer. The first concerns PW-1 Khushiram. The Investigating Officer did not collect the attendance register or the leave record of the school at which PW-1 was admittedly serving as Headmaster, in order to determine whether he was, in fact, present at the school, or on leave, at the hour of the occurrence. This omission is significant precisely because the fact was readily verifiable through ordinary institutional records and staff enquiry, and because PW-1's presence at the scene (as opposed to at his official post) lies at the very heart of the prosecution's identification evidence.

48. The second concerns Aushan Singh. Although it stands admitted that he was, at the relevant time, posted at Farrukhabad, neither the prosecution nor the defence placed on record any documentary material (duty roster, attendance register, or movement record) establishing where he actually was on the morning of 03.08.2005. Mere proof of posting at a given station does not, by itself, establish presence at that station at a specific hour on a specific date, particularly for personnel whose duties

may involve movement away from their nominal place of posting. The Investigating Officer's failure to verify the duty roster, attendance, and movement records concerning Aushan Singh is nevertheless a material investigative omission, for precisely the same reason as in the case of PW-1: the fact was objectively verifiable and was never verified.

49. Neither of these two omissions, taken by itself, proves the factual assertion advanced by either side: the prosecution cannot claim the benefit of an unverified posting as proof of presence, and the defence cannot claim the benefit of an unverified school schedule as proof of absence. Their combined importance lies elsewhere: in the fact that a prosecution case which depends substantially, if not entirely, upon eyewitness identification was investigated in a manner that failed to secure readily available objective material capable of either strengthening or weakening that identification evidence, at a stage when such material could still have been reliably obtained. That failure operates to the detriment of the case that bears the burden of proof, namely the prosecution.

50. The alternative theory advanced through DW-1 and DW-2 (that Shishupal and Balram, rather than the present appellants, were the actual assailants) is not independently established on the record. Both defence witnesses are delayed witnesses who did not disclose their version to the police during the course of investigation, and whose evidence emerged only after the passage of considerable time and, in the case of DW-2, only after discussions in the village and communication with defence counsel. Their evidence cannot, therefore, be accepted as furnishing a positive and reliable basis for a finding that Shishupal and Balram were, in fact, the persons responsible for the death of Veerpal Singh.

51. It must, however, be emphasized, and this is a point of some importance to the disposal of the appeal, that the accused are under no obligation to prove any alternative theory of the crime, or to establish the identity of an alternative assailant, in order to secure an acquittal. The burden throughout remains upon the prosecution to prove its own case

against the named appellants beyond reasonable doubt, on the strength of its own evidence. The weakness of the defence version, standing by itself, is therefore incapable of curing, and does not in any manner, cure the deficiencies that independently attend the prosecution's proof, as discussed above.

52. The trial court's duty is to adjudicate on the criminal act itself, not on peripheral irregularities, unless those irregularities directly affect the fairness or reliability of the prosecution's case :

a) **Burden of proof** : The prosecution must establish guilt beyond reasonable doubt; that burden never shifts to the accused, and nothing in this judgment should be read as diluting it.

b) **Peripheral issues** : Minor contradictions, investigative lapses, or procedural irregularities are immaterial unless they go to the root of the matter, that is, unless they are capable of shaking the Court's confidence in either the identity of the offender or the basic sequence of events establishing the offence.

c) **Judicial focus** : Courts must ensure that justice is not derailed by "side issues" that do not affect the substantive guilt or innocence of the accused.

53. The Court turns to the guiding principle laid down in **Gautam Lal v. State, 1981 Cr.L.J. 1187**, which restated, in paragraph 11, a basic rule of criminal law:

“An accused can only be convicted when the evidence lets the court reach a definite conclusion, beyond reasonable doubt, that he committed the offence charged. A conviction can't rest on mere possibility, and courts shouldn't guess at what “really” happened. If both sides come to court with untrue facts and hide the real truth, that's on them — they can't expect the court to reach a firm conclusion on evidence that isn't reliable either way. The court will try to separate the truth from the falsehood, but only where that's actually possible. Sometimes it isn't — particularly where neither side's evidence can be safely relied on, even in part. The result may be that the accused gets the benefit of the doubt — that can't be helped. The blame for that lies

with poor investigation and the parties' conduct. In such a case, there's no question of a conviction."

54. Read together, the "peripheral issues" framework and the **Gautam Lal (supra)** principle point in the same direction, but guard against opposite failures: the former warns against letting minor, non-material defects defeat an otherwise sound case; the latter warns against convicting where the evidence, taken as a whole, is genuinely too unreliable to support a definite conclusion. The task is therefore to locate each of the defence's grounds, and the preliminary objection, correctly on this spectrum, asking, for each, whether what is being pointed to is a peripheral defect that leaves the "grain" of the case intact, or a defect serious enough to prevent the grain from being separated from the chaff at all.

55. It is well settled that a court is not required to examine every discrepancy in a body of evidence in isolation, nor to treat minor and natural inconsistencies (inevitable in any human account of a fast-moving and violent occurrence) as fatal to an otherwise credible case. The present case, however, is not one of ordinary or minor inconsistency. It presents a combination of circumstances that, taken together, extend well beyond the range of discrepancies that a court may properly overlook. Where a homicidal death by firearm injury is conclusively established by medical evidence, but the prosecution's identification evidence rests substantially upon the testimony of related witnesses whose opportunity of observation and whose very presence at the scene are themselves subject to material and unresolved doubt, and where the investigation additionally fails to secure readily available objective corroboration, such as school-attendance or duty records capable of independently verifying the presence of key witnesses, ballistic examination capable of linking a weapon to the crime, a coherent and internally consistent F.I.R./General Diary chronology, and reliable documentation of the movement of the dead body, the cumulative effect

of these deficiencies may properly give rise to a reasonable doubt as to the participation of the accused in the offence charged. In such circumstances, the fact that the defence has not conclusively established an alternative assailant does not, and cannot, substitute for proof by the prosecution beyond reasonable doubt, which remains the prosecution's own and non-transferable burden throughout.

56. These circumstances include: the disputed and unverified presence of the principal informant-witness at a time when he ought, by his own admission, to have been elsewhere; the subsequent and unexplained emergence of the election motive, absent from the earliest version of events; the absence of any independent eyewitness despite a populated locality; material differences between PW-1 and PW-2 as to the arrival of other named witnesses; the unexplained movement of the dead body between the hospital and the police station; the unresolved police-station/General Diary chronology; the Crime No. 396/397 discrepancy, assessed cumulatively rather than in isolation; the failure to examine the doctor who allegedly pronounced death at the hospital; the failure to verify readily available school-attendance and police-duty records; the complete absence of ballistic examination; the consequent absence of any forensic weapon linkage; and the unexplained pre-occurrence deposit of the alleged firearms with an arms dealer at Etawah.

57. Taken together, these circumstances do not merely demonstrate an investigation that fell short of an ideal or exhaustive standard, a deficiency that, by itself, would rarely justify interference with an otherwise sound conviction. They operate, cumulatively, to substantially reduce the independent assurance that would ordinarily be required before the ocular testimony of related witnesses could safely be accepted as sufficient, by itself, to sustain a conviction for murder founded on common intention. The medical evidence conclusively proves that the deceased suffered a homicidal death by firearm injury; it does not, however, and cannot by its nature, establish the identity or the individual participation of the present appellants in the causing of that death. The

weakness and delayed character of the defence evidence, for the reasons already given, cannot substitute for, or cure, this deficiency in the prosecution's own proof.

58. Upon a cumulative appreciation of the entire evidence on record, this Court is satisfied, and so holds, that the prosecution has proved beyond reasonable doubt that Veerpal Singh died a homicidal death as a result of firearm injuries sustained on 03.08.2005. The Court is not, however, satisfied that the prosecution has established beyond reasonable doubt that the present appellants (Sukhram, Aushan Singh and Jeet Raj) were the persons who, acting in furtherance of their common intention, caused that death. That benefit of doubt, on settled principle, must enure to the accused. It bears reiteration that the defence version need not itself be established as a positive and proven fact where, as here, the prosecution has failed to cross the threshold of proof beyond reasonable doubt on its own evidence.

59. The Criminal Appeal No. 1872 of 2007 is hereby, **allowed**. The judgment and order dated 26.02.2007 passed by the Additional Sessions Judge, Fast Track Court No. 1, Mainpuri, in Sessions Trial No. 86 of 2006, State of UP Vs. Sukhram & others, convicting Sukhram, Aushan Singh and Jeet Raj under Section 302 read with Section 34 of the Indian Penal Code, and sentencing them to imprisonment for life together with fine, is set aside. The appellants are acquitted of the charge under Section 302 read with Section 34 I.P.C., the benefit of doubt being extended to them. Their bail bonds, if any, shall stand discharged, subject to compliance with the applicable statutory requirement concerning the furnishing of bonds for appearance before the higher court, if and to the extent required by law.

60. It is clarified that the present adjudication is confined strictly to Criminal Appeal No. 1872 of 2007. No finding recorded in this judgment shall prejudice the independent adjudication of Criminal Appeal No. 7002 of 2011 preferred by appellant, Manuraj Singh, including the determination of his pending claim of juvenility. That appeal shall be

decided independently, on the evidence and the legal issues arising therein, uninfluenced by any observation made herein.

(Achal Sachdev,J.) (Atul Sreedharan,J.)

Septemer 8, 2026
KS