



**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**CRIMINAL APPEAL No. - 1608 of 1990**

Umrao Singh and others

.....Appellant(s)

Versus

State

.....Respondent(s)

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|                           |                                                                                                                         |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------|
| Counsel for Appellant(s)  | : Ashok Kumar Nigam, Bharat Singh,<br>Divya Jyoti Pandey, Pradeep Kumar<br>Pal, R.u. Rinki Renu, Ranjeet<br>Kumar Yadav |
| Counsel for Respondent(s) | : A.G.A.                                                                                                                |

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**Reserved on 24.07.2026**  
**Delivered on 07.08.2026**

**Court No. - 44**

**HON'BLE SIDDHARTHA VARMA, J.**  
**HON'BLE ACHAL SACHDEV, J.**

**Per: Achal Sachdev, J.**

1. This criminal appeal is directed against the judgment and order of sentence dated 20<sup>th</sup> August, 1990 passed in Sessions Trial No.57 of 1988 whereby the appellants namely; Umrao Singh, Ved Pal, Rishi Pal, Khub Chandra, Buddhi Singh, were convicted under Sections 148, 307/149 and 302/149 IPC and were sentenced to two years' rigorous imprisonment (Section 148 IPC), five years' rigorous imprisonment (Section 307/149 IPC) and imprisonment for life (Section 302/149 IPC). The appellant, Om Pal Singh, was convicted under Sections 148, 307/149 and 302 IPC, the last substantively, as he was alleged to have fired the fatal shot and was sentenced to two years' rigorous imprisonment (Section 148 IPC), five years' rigorous imprisonment (Section 307/149 IPC) and life imprisonment (Section 302 IPC). The

appellant, Binnami, was convicted under Sections 147, 307/149 and 302/149 IPC and sentenced to one year's rigorous imprisonment (Section 147 IPC), five years' rigorous imprisonment (Section 307/149 IPC) and life imprisonment (Section 302/149 IPC). All sentences were directed to run concurrently.

2. The appellants were on bail during the trial and continued on bail at the time of judgment.

3. During the pendency of the appeal the appellants namely; appellant no.1 Umrao Singh S/o Roop Singh, appellant no.3 Khub Chandra @ Khub Chandi S/o Bhoop Singh and appellant no.5 Buddhi Singh S/of Khub Chandi died and the appeal has abated as to them. It survives in respect of appellant no.2 Ved Pal, appellant no.4 Rishi Pal, appellant no.6 Om Pal Singh S/o Umrao Singh and appellant no.7 Binnami Singh S/o Khub Chandi.

4. On a written report (tahrir) lodged by the informant Prem Pal Singh S/o Dafedar Singh, First Information Report No.101-A of 1987 was registered at Police Station Patwai, District Rampur, on 6th July, 1987 at 7:15 p.m., under Sections 147, 148, 149, 307 and 302 IPC, against seven persons Umrao Singh S/o Ram Singh; Om Pal Singh S/o Umrao Singh; Vedpal Singh S/o Umrao Singh; Rishipal Singh S/o Umrao Singh; Khub Chand Singh S/o Bhup Singh; and Buddhu Singh S/o Khub Chand Singh and Binnami Singh S/o Khub Chand Singh all residents of Village Maiyanagla, Police Station Patwai.

5. As per the written report (Exhibit Ka-1), a plot of Gram Sabha land had earlier been allotted to the informant, possession of which had been delivered to him by the Lekhpal with police assistance and he had since remained in cultivating possession of it.

6. On 6<sup>th</sup> July, 1987 at about 6:00 a.m., the informant, his brothers Dharampal Singh and Kumar Pal Singh went to plough the field with a tractor and harrow. Laturi Singh was ploughing his own adjoining field nearby. The informant's nephew Bantu @ Jitendra, brought food to the

field; after the meal, the party sat under a guava tree smoking bidis, where Laturi Singh joined them after coming to drink water.

7. At about 8:00 a.m., the accused arrived at the spot, armed with following weapons: Umrao Singh with a Tabbal, Om Pal Singh with a Gun, Vedpal Singh with a Country-made Pistol, Rishipal Singh with a Ballam, Khubchand Singh with a Ballam, Buddhu Singh with a country-made pistol, and Binnami Singh with a Lathi. They abused the informant's party and objected to their cultivation of the disputed land. On exhortation of Umrao Singh to kill them, Om Pal Singh fired at Bantu @ Jitendra with intent to kill him; Vedpal Singh fired at Laturi Singh; and a shot fired by Buddhu Singh accidentally struck Om Pal Singh. The remaining accused assaulted members of the informant's party with their weapons, causing injuries; it was also alleged that some of the accused sustained injuries from their own side's weapons during the assault.

8. On the alarm being raised, Sukhpal Singh S/o Laturi Singh), Jaipal Singh S/o Sarupi Singh and Kumarpal Singh S/o Ramchandra Singh reached the spot, witnessed the incident and intervened. Bantu @ Jitendra died at the spot. The injured were taken to the District Hospital, Rampur by Ashok Singh S/o Natthu Singh, Satyapal Singh S/o Nannu Singh and Chandrapal Singh S/o Murli Singh. This hospitalization prevented the informant from lodging the report immediately, and the written report was accordingly submitted to the Superintendent of Police, Rampur, who forwarded it to Police Station Patwai for registration.

9. The written report (tahrir) is Exhibit Ka-1 and the Chik FIR is Exhibit Ka-8. The corresponding General Diary entry has also been proved on record.

10. The First Information Report is a vital piece of evidence for assessing the oral evidence led at trial, since prompt lodging secures the earliest account of the offence, the culprits, the weapons used and the eyewitnesses present. Delay in lodging an FIR often results in

embellishment born of afterthought and must be satisfactorily explained (*Thulia Kali v. State of Tamil Nadu, (1972) 3 SCC 393*). Equally, an inordinate or unexplained delay in the FIR's dispatch to the Magistrate under Section 157 Cr.P.C. is a relevant circumstance bearing on the possibility of the report having been ante-timed (*Meharaj Singh v. State of U.P., (1994) 5 SCC 188*). Whether the explanation offered here that the informant's party was preoccupied with hospitalizing the injured satisfactorily accounts for the interval between the 8:00 a.m. occurrence and the 7:15 p.m. lodging of the report is a matter for consideration on the evidence as a whole.

11. Investigation was taken up by S.I./S.O., K. C. Lavania, Police Station Patwai, who received the report alongwith the Superintendent of Police's forwarding letter (Exhibit Ka-7). The Chik FIR (Exhibit Ka-8) was prepared by Constable Clerk Hori Lal. The Investigating Officer proceeded to the spot on 7<sup>th</sup> July, 1987 and conducted the inquest on the body of the deceased Bantu @ Jitendra (Exhibit Ka-9). The challan nash, photo nash, specimen seal (namuna mohar), the report of the Revenue Inspector, and the letter to the Chief Medical Officer were also prepared and have been proved as Exhibits Ka-10 to Ka-14.

12. He recorded the statements of witnesses, inspected the spot and prepared the site plan (Exhibit Ka-15) and recovered blood-stained and plain earth from the spot under a recovery memo (Exhibit Ka-16). He took into possession the revenue records pertaining to the field where the occurrence took place (Exhibits Ka-17 and Ka-18) and the blood-stained clothes of Dharampal, Kumar Pal Singh and Laturi Singh under a further recovery memo (Exhibit Ka-19). On completion of investigation, he submitted the charge-sheet (Exhibit Ka-20).

13. PW-5 Dr. R. K. Khanna, then posted as Medical Officer, Orthopedic Department, District Hospital, Rampur, conducted the autopsy on the body of the deceased Bantu @ Jitendra S/o Dharampal aged about 14 years, resident of Village Maiyanagla, Police Station Patwai on 7th July, 1987 at 1:15 p.m. The body was sent by the S.O., Police Station Patwai

in a sealed condition accompanied by Constable Uma Shankar and Home Guard Lalman and was identified by Constable Uma Shankar before the seals were opened. Rigor-mortise had passed off from both the upper and lower limbs, suggesting death about a day and a quarter prior to the postmortem; postmortem staining was present below the waist and hips.

14. On external examination, a gunshot entry wound consisting of multiple pellet wounds each about 0.2 x 0.2 c.m. without blackening, tattooing or scorching was found within an area of about 11 x 6 c.m. on the left side of the chest and abdomen, 10 c.m. below the left axilla. On dissection, injury to the lungs was noted; fourteen pellets were recovered from the thoracic cavity and intestine and the tenth and twelfth ribs were fractured. Internal examination showed about 150 grams of semi-digested food in the stomach. The cause of death was recorded as shock and hemorrhage due to the ante-mortem gunshot injury to the chest and abdomen. The postmortem report (Exhibit Ka-2) records the doctor's opinion that the injury could have been caused on 6th July, 1987 at about 8:00 a.m. by a country-made pistol and was sufficient in the ordinary course of nature to cause death.

15. The injured Laturi Singh, Kumar Pal Singh, Dharampal Singh and the informant Prem Pal Singh were medically examined on the same day at District Hospital, Rampur by Dr. B. R. Jaiswal, who was examined as PW-7.

(i) Injured Laturi Singh was examined at 10:45 a.m. (Exhibit Ka-3):-

| No. | Description                                                                                                                                                                                     | Site                                                              | Probable Weapon                    | Age of Injury                               |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------|---------------------------------------------|
| 1   | Firearm injury over an area of about 25 x 10 cm; blackening around some of the wounds but no scorching; fresh bleeding; movement of the limb restricted; kept under observation, X-ray advised. | Left upper arm below the elbow to the upper third of the forearm. | Firearm (gun/country-made pistol). | Fresh — possible at 8.00 a.m. the same day. |
| 2   | Abrasion, 1 x 0.6 cm.                                                                                                                                                                           | Outer lower chest, left side, 4 cm above the lower rib.           | Hard blunt object (e.g. lathi).    | Fresh — possible at 8.00 a.m. the same day. |

## (ii) Injured Kunwar Pal Singh examined at 10:55 a.m. (Exhibit Ka-4):-

| No. | Description                                                                                                                  | Site                                                              | Probable Weapon                      | Age of Injury                               |
|-----|------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------|---------------------------------------------|
| 1   | Lacerated wound, 4 x 0.5 cm, muscle-deep.                                                                                    | Right side of head, 5 cm above right eyebrow.                     | Blunt object (butt end of a weapon). | Fresh — possible at 8.00 a.m. the same day. |
| 2   | Lacerated wound, 5 x 0.5 cm, muscle-deep.                                                                                    | Left side of head, 8 cm above left ear.                           | Blunt object (butt end of a weapon). | Fresh — possible at 8.00 a.m. the same day. |
| 3   | Lacerated wound, 3 x 1.5 cm, muscle-deep.                                                                                    | Back of head, right side, 9 cm above right ear.                   | Blunt object (butt end of a weapon). | Fresh — possible at 8.00 a.m. the same day. |
| 4   | Irregular wound, 0.8 x 0.6 cm, depth not measurable; surgical emphysema beneath the wound indicating underlying lung injury. | Lower right chest, 8.5 cm below right nipple, 7 o'clock position. | Sharp pointed weapon (e.g. ballam).  | Fresh — possible at 8.00 a.m. the same day. |

## (iii) Injured Dharampal Singh examined at 11:05 a.m. (Exhibit Ka-5):-

| No. | Description                                                                                                 | Site                                                       | Probable Weapon       | Age of Injury                                          |
|-----|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|-----------------------|--------------------------------------------------------|
| 1   | Irregular wound, 1.5 x 0.8 cm, depth not measurable; fresh bleeding; kept under observation, X-ray advised. | Chest, 3.5 cm outside the left nipple, 2 o'clock position. | Sharp pointed weapon. | Fresh — possible shortly after 8.00 a.m. the same day. |

## (iv) Injured Prem Pal Singh (informant), aged about 30 years examined at 11:20 a.m. (Exhibit Ka-6):-

| No. | Description                                             | Site                                             | Probable Weapon                  | Age of Injury                               |
|-----|---------------------------------------------------------|--------------------------------------------------|----------------------------------|---------------------------------------------|
| 1   | Incised wound, 3 x 0.3 cm, muscle-deep; fresh bleeding. | Left side of head, 4 cm above left ear.          | Sharp-edged weapon (e.g. sword). | Fresh — possible at 8.00 a.m. the same day. |
| 2   | Lacerated wound, 0.8 x 0.5 cm, muscle-deep.             | 1 cm above Injury No. 1.                         | Blunt object (butt end).         | Fresh — possible at 8.00 a.m. the same day. |
| 3   | Lacerated wound, 2 x 0.5 cm, muscle-deep.               | Front of left thigh, 18 cm above the knee joint. | Blunt object (butt end).         | Fresh — possible at 8.00 a.m. the same day. |

16. On 04.08.1989, the then Additional Sessions Judge, Rampur framed the following charges against the accused, which the accused denied, claiming trial:-

(i) Section 148 IPC - against Umrao Singh, Ved Pal, Rishi Pal Singh, Khub Chandra @ Khub Chandi, Buddhi Singh and Om Pal Singh.

(ii) Section 147 IPC - against Binnami Singh.

- (iii) Section 307 read with Section 149 IPC - against all the accused.
- (iv) Section 302 read with Section 149 IPC - against Umrao Singh, Vedpal Singh, Rishipal Singh, Khubchand, Buddhi Singh and Binnami Singh.
- (v) Section 302 IPC (substantively) against Om Pal Singh, he being alleged to have fired the fatal shot.

17. The accused were on bail throughout the trial. The prosecution examined seven witnesses in support of its case.

18. PW-1, Prem Pal Singh (informant), in examination-in-chief reasserted the facts set out in his written report (tahrir). Being himself an injured witness, he maintained in cross-examination that he, together with the injured Laturi Singh and others was resting under a guava tree after ploughing their field when on 6th July, 1987 at about 8:00 a.m., the accused arrived, abused them and attacked them with the weapons they carried. His evidence indicates that the attack was unprovoked, the informant's party having ploughed land allotted to them by the Government, possession of which had been obtained with police assistance.

19. PW-2, Kunwar Pal Singh (Kumar Pal Singh), another witness of fact, himself injured in the occurrence, has supported the prosecution case.

20. PW-3, Sukhpal Singh S/o the injured Laturi Singh, who reached at the spot on the alarm being raised, witnessed the occurrence, and later took the injured to the hospital in his vehicle.

21. PW-4, Dr. G. K. Jain, Radiologist, who proved injured Laturi Singh's X-ray report and marked the same as Exhibit Ka-2 recording numerous radio-opaque objects of metallic density in the left elbow and arm. [The Exhibit No. Ka-2 has also been assigned to post-mortem report prepared by PW-7 Dr. R. K. Khanna. To avoid any confusion as to number

assigned to post-mortem report, the Exhibit Ka-2 given to post-mortem report shall now be referred to Exhibit Ka2-A].

22. None of the eye-witnesses has stated that Binnami Singh used the lathi he is alleged to have carried, and none of the injured bears a contusion, all the injuries being attributable to fire-arms or sharp-edged weapons. While Binnami Singh's presence at the spot may be accepted, in the absence of evidence of his participation in the assault, it has not been shown that he shared the common object of the remaining accused.

23. It is also to be noted that the accused led no evidence that a cross-case instituted by Umrao Singh was pending, nor was the attention of any witness of fact, or of the Investigating Officer, drawn to this circumstance in cross-examination. The land in question stood allotted to the informant and the accused have shown no enmity between themselves and Laturi Singh, who has named the accused in his statement without any suggested reason to falsely implicate them.

24. Where a party intends to rely on a fact or a prior statement to contradict or discredit a witness, the witness's attention must first be drawn to it in cross-examination, so that he has an opportunity to admit, deny or explain it, before that material can be used against him or in support of the defence, a foundational requirement of Section 145 of the Evidence Act (*Tahsildar Singh v. State of U.P.*, AIR 1959 SC 1012). As none of the prosecution witnesses, nor the Investigating Officer, was confronted with the pendency of the cross-case said to have been instituted by Umrao Singh, this circumstance is not available to the accused in aid of their defence, that foundation not having been laid.

25. Learned counsel for the appellants has submitted that the prosecution case to examine PW-3 Sukhpal Singh S/o the injured Laturi Singh, but assigned no cogent reason for not examining Laturi Singh himself an independent witness of fact who could have spoken directly to what transpired at the time of the occurrence and to who was the aggressor. It is further argued that the prosecution has shown no more than the bare presence of Binnami Singh at the place of occurrence, without assigning

any overt act to him, which is said to belie the prosecution story as a whole; and that this deficiency, going as it does to the credibility of the prosecution witnesses on a material point, attracts the doctrine of *falsus in uno, falsus in omnibus*, so as to discredit their evidence against the remaining accused as well.

**Correlation of Alleged Weapons with Medical Findings:-**

26. The reliability of the ocular account can be tested, accused by accused, against the injuries actually found on record:-

| Accused / Weapon Alleged                      | Corresponding Medical Finding                                                                                                                                                                    | Correlation                                                                                                                                                           |
|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Om Pal Singh — gun.                           | Postmortem (Exhibit Ka-2): multiple pellet wounds of entry, 14 pellets recovered from the thoracic cavity — a pattern specific to a pellet-firing gun, as opposed to a single-projectile pistol. | Strong — the injury pattern itself distinguishes a gun from a pistol and matches the weapon attributed to no one else.                                                |
| Vedpal Singh — country-made pistol.           | Laturi Singh ( Exhibit Ka-3, Injury No. 1): firearm injury, left arm.                                                                                                                            | Strong — direct correspondence of weapon type and injured party named in the FIR.                                                                                     |
| Rishipal Singh and Khubchand — ballams (two). | Kumar Pal Singh (Injury No. 4) and Dharampal Singh (Injury No. 1): both opined possible from a sharp, pointed weapon such as a ballam.                                                           | Corroborated generally; the medical evidence confirms ballam-type wounds were inflicted, though it cannot isolate which of the two ballam-bearers caused which wound. |
| Umrao Singh — tabbal.                         | Informant Prem Pal Singh (Injury No. 1): incised wound, possibly from a sharp-edged weapon.                                                                                                      | Tentative — a tabbal is capable of producing an incised wound of this kind, but the correlation is not as specific as for the firearm injuries above.                 |
| Binnami Singh — lathi.                        | None. No contusion — the injury ordinarily produced by a blunt weapon — was found on any of the four persons examined.                                                                           | None                                                                                                                                                                  |

27. After the prosecution evidence was concluded, the statements of the accused were recorded under Section 313 Cr.P.C. All of them denied the prosecution evidence. Their common ground was that the disputed land belonged to them, that the informant's party said to number about a dozen persons armed with ballam, sooja, gun and country-made pistols had come to take forcible possession of it and Dharmendra Pal had fired

a gun-shot which hit Bantu @ Jitendra thereby causing his death and that a cross-FIR lodged by Umrao Singh in respect of the same occurrence had resulted in a final report on account of collusion between the Investigating Officer and the informant's side, against which a complaint was pending before the competent court. Beyond this common ground, the accused took the following individual pleas:-

- (i) Umrao Singh: stated that on a shot fired by Dharampal, Bantu was accidentally hit, and that Om Pal Singh (his son) also sustained a fire-arm injury in the same exchange; pleaded false implication.
- (ii) Vedpal Singh: denied being present at the place of occurrence and asserted that the prosecution witnesses had deposed falsely.
- (iii) Rishipal Singh: denied involvement, reiterated that the informant's side had attempted to take forcible possession of the land and stated that he, Om Pal Singh and their father Umrao Singh were themselves injured and that Bantu died from a shot fired by Dharampal.
- (iv) Om Pal Singh: denied the evidence against him and attributed his implication to village rivalry, describing the prosecution witnesses as related to one another and interested.
- (v) Buddhi Singh: denied the evidence against him and stated that he had been falsely implicated because he was a witness in the case instituted by Umrao Singh.
- (vi) Binnami Singh: pleaded alibi, stating that he was at his sasural (in-laws' house) at the time of the occurrence and that he had been falsely implicated because his father, Khubchand, was a witness in the case instituted by Umrao Singh.

28. An accused examined under Section 313 Cr.P.C. is not required to prove his defence beyond reasonable doubt but only by a preponderance of probability; the statement is a facet of the constitutional right to a fair trial under Article 21 and the court must adequately consider it and either accept or reject it for reasons recorded (*Reena Hazarika v. State of*

*Assam*, 2018 INSC 1029). As regards the specific plea of alibi taken by Binnami Singh, the burden lies entirely on him to establish it with such certainty as to completely exclude the possibility of his presence at the scene — a mere preponderance of probability does not suffice (*Binay Kumar Singh v. State of Bihar*, (1997) 1 SCC 283).

29. In defence, the accused examined two witnesses. DW-1 Lajpat Singh proved the certified copy of the First Information Report lodged by Umrao Singh on 6th August, 1987 at 1:00 p.m., registered as Case Crime No.101 of 1987, under Sections 147, 148, 149, 307 and 323 IPC at Police Station Patwai, in respect of the cross-case. DW-2 Dr. A. K. Garg, Medical Officer, District Hospital, Rampur, has stated that on 6th July, 1987 he medically examined Umrao son of Ram Singh aged 70 years, resident of Village Maiya Nagla, Police Station Patwai, and proved his report as Exhibit Kha-2 of the cross-case (on File No. 179/89) recording two fresh injuries:-

| No. | Description                                                               | Site                | Probable Weapon            | Age of Injury |
|-----|---------------------------------------------------------------------------|---------------------|----------------------------|---------------|
| 1   | Incised wound, 2.5 x 0.5 cm, muscle-deep, near the angle of the mandible, | Right side of neck. | Sharp-edged weapon.        | Fresh.        |
| 2   | Lacerated wound 2 x 5 cm, flesh deep, on back of head                     | Head                | Blunt object (e.g. lathi). | Fresh.        |

30. The same day at 3.20 p.m., he examined Om Pal Singh, son of Umrao, aged 25 years, resident of the same village, on whose body five injuries were noted (proved as Exhibit Kha-3):-

| No. | Description                                                              | Site                                                        | Probable Weapon           | Age of Injury |
|-----|--------------------------------------------------------------------------|-------------------------------------------------------------|---------------------------|---------------|
| 1   | Incised wound, 3 x 0.5 cm, muscle-deep, on the back of head              | Head.                                                       | Hard and Blunt object     | Fresh.        |
| 2   | Contusion, 4 x 3 cm.                                                     | Left side, 4 cm above the elbow.                            | Hard and Blunt object.    | Fresh.        |
| 3   | Incised and piercing wound 1/3 x 1/3x 3 cm deep                          | Outer aspect of left arm 3 cm above left elbow              | Pointed, piercing object. | Fresh.        |
| 4   | Multiple firearm injuries, 1/3 x 1/3 x depth not probed — X-ray advised. | On the outer aspect of left knee and thigh, in continuation | Hard and Blunt object     | Fresh.        |
| 5   | Contusion 3 cm x 3 cm on the back                                        | Scapular region right side                                  | Hard and Blunt object     | Fresh         |

31. All the injuries were kept under observation. On the same day at 3:10 p.m., he examined Rishipal Singh S/o Umrao Singh, aged 18 years, on whose body one injury was found a lacerated wound, 4 cm x [measurement not on record], 7 cm above the inner part of the ear — proved as Exhibit Kha-4.

32. According to Dr. Garg, the injuries of all three injured Umrao Singh, Om Pal Singh and Rishipal Singh were possible on 6th July, 1987 at about 10.00 a.m.

33. Where cross-cases arise out of the same occurrence, the Supreme Court has directed that they be tried, so far as practicable, by the same judge, who is to hear arguments and reserve judgment in the first case, then record evidence and hear arguments in the cross-case, and thereafter pronounce both judgments deciding each case solely on the evidence recorded in that case, uninfluenced by the evidence or arguments in the other (*Nathi Lal v. State of U.P.*, 1990 Supp SCC 145).

34. After the conclusion of evidence, the trial court heard arguments on behalf of the prosecution and the defence. Having considered the material on record, it held the charges framed to be proved and convicted the accused as set out in Part I above.

35. Learned counsel for the appellants has denied their involvement in the occurrence and submitted that they have been falsely implicated. It is urged that the informant, along with about twelve other persons, came to forcibly occupy land in the possession of the appellants; that Umrao Singh and his family resisted this attempt, resulting in a scuffle; that Dharampal, who was armed with a gun, fired the shot that killed Jitendra alias Bantu on the spot; and that Umrao Singh and his family members were themselves injured in the occurrence. It is submitted that they lodged a First Information Report the same day, registered as Case Crime No.101 of 1987 under Section 307 IPC, but that on completion of investigation the police submitted a final report, against which the informant's protest petition was converted into a complaint case bearing

Complaint Case No.179 of 1989, Umrao Singh v. Dharampal Singh now pending before the Special Judicial Magistrate.

36. It is further submitted that the FIR in the present case was lodged belatedly with no reasonable explanation for the delay; that it was lodged with the aid of the Superintendent of Police rather than by the informant presenting himself at the police station; and that this reflects administrative interference in the case.

37. Learned AGA has opposed these submissions and contended that the time taken in lodging the FIR was on account of the informant and his family members having to be admitted to the District Hospital for treatment of their injuries and that the informant approached the Superintendent of Police with a written application as soon as he was able to do so, which has been proved as Exhibit Ka-13. It is submitted that Police Station Patwai was about 10 kms. from the District Hospital, that the informant did not go back to the police station out of fear for his life, and that, with his relatives hospitalized, approaching the Superintendent of Police directly was the more reasonable course.

38. It is further submitted that had the case genuinely favoured the appellants, the Investigating Officer would not have submitted a final report in the cross-case; that the injuries relied upon by the appellants appear fabricated, since Om Pal Singh's fire-arm injury is on the thigh and the piercing wound is on the arm, with no injury on any vital part of the body; and that it was for this reason the police did not find it fit to submit a charge-sheet on the informant's version. It is also submitted that the Investigating Officer has proved the khatauni (revenue) entries as Exhibits Ka-17 and Ka-18, showing that the informant's name was recorded in the revenue records and that he was in possession and cultivation of the disputed land on the date of the occurrence.

39. It is further submitted that on a perusal of the injury reports of the accused Umrao Singh, Om Pal Singh and Rishipal Singh, none of the injuries found on them was dangerous to life. Although the Investigating Officer submitted a final report in Case Crime No.101 of 1987 (the

cross-case) and Umrao Singh's subsequent complaint was taken on file, there is nothing on record to show that the informant or the other injured persons from his side were ever tried or the case was committed for being tried jointly with the Sessions Trial case instituted on report of the informant Prempal Singh. It is pointed out that the occurrence took place on 6th July, 1987 at about 8:00 a.m. and that the injured were immediately rushed to the District Hospital and that the informant's nephew, Bantu @ Jitendra died in the occurrence, whereas the cross-FIR lodged by Umrao Singh was recorded at 13:00 hrs on the same day. The injured on Umrao Singh's side were medically examined only later that day, and their injuries being on non-vital parts are submitted to raise suspicion as to their true origin; it is submitted that the trial court itself disbelieved that they were caused in this occurrence. Where an accused is shown to have sustained injuries in the same occurrence, the prosecution's failure to explain those injuries is ordinarily a material defect that may suggest suppression of the true origin and genesis of the occurrence, a consideration that assumes greater weight where the witnesses are interested and the defence version competes in probability with that of the prosecution. This principle, however, does not apply with the same force where the injuries on the accused are minor or superficial, or where the prosecution's evidence is otherwise so clear, cogent, disinterested and creditworthy that it outweighs the omission (*Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394*) wherein Supreme Court has made a critical observation 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:- (i) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (ii) 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; (iii) 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.”

40. 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.

41. Whether the injuries on Umrao Singh, Om Pal Singh and Rishipal Singh none of which is shown to have been dangerous to life and whether they have in any event been adequately accounted for by the prosecution's explanation that they were sustained when some of the accused were struck by their own side's weapons, must be tested against this standard, along with the competing explanation of the delay in lodging the FIR discussed above.

42. The submission that a final report was made in the cross-case and that Umrao Singh's subsequent complaint bearing Complaint Case No.179 of 1989 is pending before the Special Judicial Magistrate was advanced by learned counsel for the appellants at the Bar but was not proved as evidence at trial. DW-1 Lajpat Singh proved only the certified copy of the cross-FIR; no witness, document or other evidence was led to establish the subsequent final report or the registration and pendency of the complaint case, nor was any prosecution witness or the Investigating Officer confronted with these facts in cross-examination.

43. An appeal against conviction is decided on the evidence on record under Section 386 Cr.P.C.; submissions of counsel, however, forceful are not a substitute for proof and a fact never established at trial cannot be treated as established merely because it is asserted in argument before the appellate court. The proper course for an appellant seeking to rely on such a fact is to invoke Section 391 Cr.P.C., which empowers the appellate court to take, or direct taking of, additional evidence where necessary to prevent a failure of justice not to make good a gap that a party had every opportunity to fill at trial (*Rajeswar Prasad Misra v.*

*State of West Bengal*, AIR 1965 SC 1887) while, correspondingly, an appellate court ought not to be unduly reluctant to admit evidence that is genuinely crucial to a just decision (*Brig. Sukhjeet Singh (Retd.) v. State of U.P.*, 2019 SCC OnLine SC 72).

44. In the present case, this Court mindful that the final report and the complaint case had not been proved at trial, afforded the appellants ample opportunity to place the relevant record before it. On their request, letters were issued calling for the record of Complaint Case No.179 of 1989 from the court concerned; the record, however, has been reported untraceable. The appellants cannot, in these circumstances, be faulted for want of diligence the difficulty is not one of a party having sat on evidence it could have led at trial but of a decades-old record that can no longer be located despite a bona-fide effort made with this Court's own facilitation to trace it.

45. That said, the untraceability of the record, however diligently pursued, does not convert an unproved fact into a proved one. The burden of proving the existence and continued pendency of the complaint case lay on the appellants, who asserted it (Sections 101 to 103 Evidence Act); the loss or unavailability of an old record with the passage of time is ordinarily attributable to the routine retention and weeding practices of subordinate courts rather than to suppression by either side, and does not by itself warrant an adverse inference against the prosecution any more than it can supply proof in favour of the defence. In these circumstances, the final report and the pendency of Complaint Case No.179 of 1989 remain unproved, and the submission built upon them cannot be treated as an established fact for the purposes of this appeal. This does not affect the separate and independent right of the parties to that complaint case to have it considered on its own merits, should its record be traced or reconstituted.

46. The witnesses of fact are consistent in their accounts of the presence of Umrao Singh, Vedpal Singh, Rishipal Singh, Khubchand, Buddhi Singh, Om Pal Singh and Binnami Singh at the place and time of the

occurrence. That presence has not been denied by any of the accused in their statements under Section 313 Cr.P.C. nor was it suggested to any witness of fact in cross-examination that a particular accused was absent. Accordingly, the question for consideration is narrower than the presence of the accused whether they assaulted the informant's party while armed with deadly weapons, intentionally and without provocation, as the prosecution alleges, or, as the defence would have it, whether it was the informant's side that was the aggressor, attempting forcibly to occupy land belonging to the accused.

47. The testimony of a witness who is himself injured in the same occurrence carries a built-in guarantee of presence at the scene and is generally entitled to great weight, since such a witness is unlikely to spare the actual assailant and falsely implicate another; it is not to be discarded except for compelling reasons (*Abdul Sayeed v. State of Madhya Pradesh*, (2010) 10 SCC 259). Four of the persons medically examined above - Laturi Singh, Kumar Pal Singh, Dharampal Singh and the informant are themselves prosecution witnesses to the occurrence, and their evidence must be assessed in that light. Equally, while ocular testimony ordinarily prevails over medical opinion, a conflict between the two is a relevant factor in evaluating the evidence, and the ocular account may be disbelieved only where the medical evidence renders it wholly improbable and rules out the possibility of its being true (*Abdul Sayeed v. State of Madhya Pradesh*, (2010) 10 SCC 259; *Darbara Singh v. State of Punjab*, (2012) 10 SCC 476).

48. Read as a whole, the medical evidence corroborates the ocular account for every accused whose alleged weapon corresponds to a matching injury and is silent only with respect to Binnami Singh. That selective silence itself supports, rather than undermines, the credibility of the medical and ocular evidence taken together: had the account been fabricated or exaggerated to over-implicate the accused, one would expect injuries corresponding to every alleged weapon, not a pattern that closely corroborates some allegations while leaving one unsupported.

49. The informant, in his examination-in-chief, has stated that on 6th July 1987 at about 6.00 a.m. he went to plough the fields allotted to his family by the Government. While they were resting under a guava tree after their morning's work, the accused arrived armed with deadly weapons and assaulted them. His nephew, Jitendra @ Bantu was shot by accused Om Pal Singh and died on the spot. This account is corroborated, weapon for weapon, by the medical evidence already correlated above: the gunshot wound that killed Bantu, the firearm injury on Laturi Singh, and the *ballam-type* wounds on Kumar Pal Singh and Dharampal Singh each match a weapon the FIR attributes to a named accused. The informant's own scalp wound is consistent with the sharp-edged tabbal attributed to Umrao Singh. As to the non-examination of Laturi Singh, the prosecution is not bound to multiply witnesses on the same point, and non-examination of an available witness is fatal only where it leaves a genuine gap in the prosecution case where a material witness who alone could unfold the genesis of the occurrence, or supply some deficiency in it, has been withheld (*Takhaji Hiraji v. Thakore Kubersing Chamansing*, (2001) 6 SCC 145). No such gap arises here: Laturi Singh's presence, his injuries and their probable cause and timing are independently before the court through his injury report (Exhibit Ka-3) and through the X-ray evidence of PW-4, and the genesis and course of the occurrence are separately spoken to by PW-1 and PW-2, both of whom were present with him throughout. His testimony, had it been led, would at best have been cumulative on points already covered by other witnesses and by the medical record.

50. Although the accused have taken the defence that it was the informant's side that was forcibly trying to occupy their field, no evidence, no revenue record, khatauni entry, or other document of title or possession has been led by the accused/appellants to show that the field belonged to them, in contrast to the informant's own khatauni entries (Exhibits Ka-17 and Ka-18, recording him as the person in cultivating possession. A defence that amounts, in substance, to a claim of the right of private defence of property cannot succeed on bare

assertion; the burden of proving it, on a preponderance of probability, lies on the accused who set it up (Section 105, Evidence Act), and it has not been discharged here even to a prima facie degree.

51. Even taking the defence version at its highest, that the accused genuinely believed the land to be theirs the informant is shown to have been in settled, cultivating possession, delivered to him by the Lekhpal with police assistance (Part II above). No one, not even a true owner, has the right to dispossess by force a person in settled possession of land; unless evicted in due course of law, such a person even a trespasser is entitled to defend that possession, and the remedy of one who claims a better title lies in approaching the courts, not in retaking possession by force (*Munshi Ram v. Delhi Administration, AIR 1968 SC 702; Puran Singh v. State of Punjab, (1975) 4 SCC 518*). On the facts alleged, even by the defence, the informant's party was not in the course of taking possession when the accused arrived they were at rest under a guava tree, their ploughing for the day already done so there was no ongoing trespass for the accused to repel; what is described is, at best, an attempt to alter by force a settled state of affairs, which the law required the accused to challenge before the revenue authorities rather than at the point of a gun.

52. Nor can the manner and scale of the assault be reconciled with any exercise of a genuine right of private defence, even assuming one existed in law. Seven persons arrived together, variously armed with a gun, two country-made pistols, two ballams, a tabbal and a lathi, against a group that was unarmed and at rest; one victim was shot dead, another sustained a firearm injury to the arm, and others sustained lacerated and incised wounds, one with an accompanying lung injury. The right of private defence does not extend to retaliation, is subject to the requirement that no more harm be inflicted than is necessary, and is forfeited where it is exceeded; the number and gravity of the injuries inflicted, the disparity in arms, and the absence of any injury on the informant's side consistent with a defensive reaction from an unarmed

party are all relevant to identifying the true aggressor (*Darshan Singh v. State of Punjab*, (2010) 2 SCC 333). Measured against these principles, the assault described here pressed with lethal weapons, in numbers, against persons taken by surprise while at rest is not capable of being explained as an exercise of private defence, whatever view is ultimately taken of the underlying land dispute.

53. Binnami Singh stands convicted simpliciter under Section 147 IPC not Section 148, which was reserved for appellants alleged to have carried firearms or piercing weapons and, additionally, under Sections 307 and 302, both read with Section 149 IPC. His liability under the latter two provisions is therefore wholly constructive: there is no allegation that he fired a shot or wielded a sharp-edged weapon, and his conviction can stand only if the prosecution has proved that he was a member of the unlawful assembly and shared its common object within the meaning of Sections 141 and 149 IPC.

54. The prosecution's own case is that Binnami Singh arrived at the scene armed with a lathi. Yet, on review of the ocular evidence discussed in Part VI above, none of the witnesses of fact PW-1 Prem Pal Singh, PW-2 Kunwar Pal Singh or PW-3 Sukhpal Singh has attributed to him any act beyond presence at the scene; none has stated that he in fact used the lathi he is said to have carried. This gap is not merely one of omission: it is affirmatively corroborated by the medical evidence, which records the injuries of all four persons examined namely- Laturi Singh, Kunwar Pal Singh, Dharampal Singh and the informant as attributable either to a firearm or to a sharp-edged weapon. Not one of the recorded injuries is a contusion, which is the injury ordinarily expected from a blunt weapon such as a lathi. The medical record is thus silent on, and to that extent inconsistent with, the only overt act capable of connecting Binnami Singh to the assault.

55. It is well settled that to fasten liability on an individual accused for membership of an unlawful assembly, two ingredients must be independently established: first, that the person was one among those

constituting the assembly, and second, that he entertained, along with the other members, the common object defined in Section 141 IPC (*Masalti v. State of U.P.*, AIR 1965 SC 202). While *Masalti* also holds that no specific overt act need be proved against each individual member once membership and the shared common object stand established since a court cannot realistically expect a witness to assign a distinct role to every person in a large and fluid crowd the same judgment cautions that some acceptable evidence, direct or circumstantial, connecting the particular accused with the assembly and its object must still be brought on record. The relaxation as to overt act is not a relaxation as to individual connection; the two are analytically distinct, and the latter cannot be presumed merely from the former.

56. This distinction traces back to *Baladin v. State of U.P.*, AIR 1956 SC 181, where the Supreme Court held that mere presence in an assembly even presence explained by the accused living in a house adjoining the scene of occurrence does not by itself make a person a member of an unlawful assembly, unless it is shown that he did something, or omitted to do something, that marks him out as a member, or unless the case falls within Section 142 IPC. Although *Masalti* clarified that this observation in *Baladin* must be read in the context of its own facts and is not an unqualified proposition of universal application, the underlying caution that courts must scrutinize the case of each individual accused separately, so that persons who happen to be near the scene by reason of kinship or vicinity are not automatically branded as members of the unlawful assembly continues to hold the field and has been repeatedly applied, including in cases where the accused's presence was attributable to nothing more than being a relative or neighbour of a co-accused.

57. In the present case, the only material said to connect appellant Binnami Singh to the common object of causing death and grievous hurt is the allegation that he carried a lathi. This allegation is not corroborated by the medical evidence; no injury on any of the victims deceased Jitendra alias Bantu or injured Prem Pal Singh, Kunwa Pal

Singh, Laturi Singh and Dharampal Singh is attributed by the medical witness, Dr B.R. Jaiswal, to a blunt weapon consistent with a lathi blow. It is true that the law does not require mechanical correspondence between every injury and every weapon named by the prosecution, and that minor variations between ocular and medical evidence do not by themselves displace the primacy of eyewitness testimony (*Solanki Chimanbhai Ukabhai v. State of Gujarat*, (1983) 2 SCC 174; *Darbara Singh v. State of Punjab*, (2012) 10 SCC 476). But that principle governs the credibility of the occurrence as a whole; it does not answer the narrower and more specific question here namely, whether the one solitary fact relied upon to link a particular accused to the common object of the assembly is itself belied by the medical record. Where the entirety of the evidence connecting an individual accused to the common object is a single allegation of a weapon carried, and the medical evidence affirmatively rules out any injury of that description on any victim, that allegation cannot be treated as the "acceptable evidence" *Masalti* requires to fasten individual liability; it stands negated rather than merely unproved.

58. This is reinforced by the recent reiteration of the principle in *Naresh @ Nehru v. State of Haryana*, 2023 LiveLaw (SC) 880, where the Supreme Court held that a conviction under Section 149 IPC requires the prosecution to establish, by evidence, both that the accused shared the common object and was a member of the unlawful assembly, and that he was aware that the offence in question was likely to be committed in prosecution of that object. Relying on *Roy Fernandes v. State of Goa*, (2012) 3 SCC 221, and *Lalji v. State of U.P.*, (1989) 1 SCC 437, the Court reiterated that the common object of an assembly is to be gathered from the nature of the assembly, the weapons used, and the conduct of its members before and at the scene. Correspondingly, where an accused is shown to have had no part in the underlying dispute or enmity that motivated the assembly, no common object can be attributed to him merely by his presence among the other accused. The same reasoning applies here. There is nothing on record to show that appellant

Binnami Singh, or his father, co-accused Khoobchand, had any land dispute or other enmity with informant Umrao Singh or his sons—the very dispute said to have generated the common object of the assembly. Mere presence, even if proved, does not by itself establish that the appellant shared the common object of causing death or grievous hurt, nor can he be burdened with the vicarious liability that Section 149 IPC casts only upon those who are shown, individually, to have shared that object.

59. As to the appellant's defence that he was at his *sasural* at the time of the occurrence, this is, in law, a plea of alibi, and the burden of establishing it rests on the accused under Section 103 of the Indian Evidence Act, 1872 (*Dudh Nath Pandey v. State of U.P.*, (1981) 2 SCC 166). That burden, however, is not free-standing; it arises, and becomes material, only once the prosecution has first discharged its own initial and independent burden of proving the accused's participation in the unlawful assembly and his sharing of its common object. Where the prosecution's own evidence fails at that threshold as it does here, given the absence of any overt act attributed to the appellant and the negative corroboration furnished by the medical evidence the question whether the alibi is independently established becomes academic. The prosecution cannot divert the Court's attention to the accused's burden of proof before first discharging the burden that the law places upon it.

60. It is, therefore, the duty of the prosecution, even where it succeeds in placing an accused in the vicinity of the occurrence, to further establish that the particular accused shared the common object of the unlawful assembly. Appellant Binnami Singh is the son of accused Khoobchand, and it is nowhere shown that either the appellant or his father was in any manner concerned with the land dispute said to have generated the common object attributed to the remaining accused. In these circumstances, whether or not the alibi is independently established, the prosecution has failed to prove, beyond reasonable doubt, that Binnami Singh shared the common object of the unlawful assembly.

61. Accordingly, the conviction of appellant Binnami Singh under Sections 147, 307/149 and 302/149 IPC, and the sentences of imprisonment imposed thereunder, cannot be sustained and are set aside. He is given the benefit of the doubt and is acquitted of all charges. He is on bail; he need not surrender, and his bail bonds stand discharged.

62. As regards Binnami Singh, the submission that no overt act is assigned to him is well founded and has been accepted, resulting in his acquittal. It does not, however, follow that the evidence of PW-1, PW-2, and PW-3 must be rejected in its entirety as against the remaining accused. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) has never been accepted as a rule of evidence in India. It is, at best, a rule of caution and has not attained the status of a rule of law. The Court's duty is to separate the grain from the chaff, accepting so much of a witness's testimony as is found trustworthy in relation to each accused and rejecting only that part which is not (*State of Rajasthan v. Kalki*, (1981) 2 SCC 752; *Ugar Ahir v. State of Bihar*, AIR 1965 SC 277).

63. A court hearing a first appeal against conviction is duty-bound to reappraise the entire evidence for itself and, where two views are reasonably possible on the material relating to a particular accused, may take a view different from that of the trial court (*Lal Mandi v. State of West Bengal*, (1995) 3 SCC 603). Applying that standard, and unlike the case of Binnami Singh, the record does not disclose a comparable evidentiary gap in respect of the remaining three appellants.

64. Appellant Om Pal Singh is the only appellant convicted substantively under Section 302 IPC, rather than under Section 149 IPC, on the specific allegation that he fired the fatal shot that killed Bantu alias Jitendra. This version is corroborated by PW-1, the informant, himself an injured witness whose account carries considerable evidentiary weight, as well as by the post-mortem findings, which disclose fourteen pellets recovered from the thoracic cavity, consistent with the multiple-pellet wound of entry recorded on the body and

corresponding to a firearm of the kind ("gun") attributed to Om Pal Singh rather than the country-made pistols attributed to Vedpal Singh and Buddhi Singh. In his statement under Section 313 Cr.P.C, Om Pal Singh did not deny his presence at the spot, resting his defence instead upon an unparticularised plea of village rivalry. His injuries, which the prosecution explains as having been sustained when Buddhi Singh's shot accidentally struck him, do not detract from the prosecution case. On this record, the conviction of Om Pal Singh under Sections 148, 307/149 and 302 IPC is not shown to be unsafe and is accordingly affirmed.

65. Appellant Vedpal Singh is alleged to have fired at Laturi Singh with a country-made pistol. Laturi Singh's medical records disclose a firearm injury over a substantial area of the left arm, consistent with this allegation. Laturi Singh, himself an injured witness, has named Vedpal Singh without any enmity or apparent motive to falsely implicate him. In his statement under Section 313 Cr.P.C, Vedpal Singh did not set up a specific alibi but offered only a bare denial of his presence, asserting that the witnesses had deposed falsely. Such a bare denial does not displace direct ocular evidence corroborated by the corresponding firearm injury. The conviction of Vedpal Singh under Sections 148, 307/149 and 302/149 IPC is affirmed.

66. Appellant Rishipal Singh is alleged to have been armed with a *ballam*. Unlike the position with Binnami Singh's lathi, the medical evidence does disclose injuries consistent with a sharp, pointed weapon of this kind. Kumar Pal Singh's Injury No. 4 and Dharampal Singh's injury were both opined to be possible by a pointed weapon such as a *ballam*. The allegation regarding the weapon is therefore not left uncorroborated on the record, although it is not possible to attribute either specific wound individually to Rishipal Singh as distinct from Khoobchand, the other *ballam*-bearer named in the FIR. In his statement under Section 313 Cr.P.C, Rishipal Singh did not deny his presence at the spot. Indeed, he expressly admitted it, asserting that he, Om Pal Singh, and Umrao Singh had themselves sustained injuries in the same

occurrence and that Bantu died from a shot fired by Dharampal. His defence thus relates to the origin and justification of the occurrence rather than to his presence or membership of the unlawful assembly. Applying *Masalti v. State of U.P. (supra)*, the combination of his admitted presence and the corroborated use of *ballams* during the assault constitutes sufficient and reliable evidence connecting him with the common object of the unlawful assembly. The conviction of Rishipal Singh under Sections 148, 307/149 and 302/149 IPC is affirmed.

67. For the reasons recorded above:-

(i) The appeal is **allowed** in respect of appellant no.7 Binnami Singh S/o Khub Chandi. His conviction under Sections 147, 307/149 and Sections 302/149 IPC, and the sentences imposed thereunder, are set aside and he is acquitted of all charges by extending to him the benefit of the doubt. He is on bail; he need not surrender, and his bail bonds stand discharged.

(ii) The appeal is **dismissed** in respect of appellant no.2 Ved Pal, appellant no.4 Rishi Pal S/o Umrao Singh and appellant no.6 Om Pal Singh S/o Umrao Singh. Their convictions and sentences, as recorded by the trial court, are affirmed.

(iii) As the appeal is dismissed as **abated** on account of the deaths of appellant no.1 Umrao Singh S/o Roop Singh, appellant no.3 Khub Chandra @ Khub Chandi S/o Bhoop Singh and appellant no.5 Buddhi Singh S/of Khub Chandi during its pendency. Since no application under proviso to Section 394(2) Cr.P.C. has been preferred within the stipulated period of time by their near relatives to continue with the hearing of the appeal against them, hence, no order is required to pass in respect of them.

(iv) appellant no.2 Ved Pal, appellant no.4 Rishi Pal S/o Umrao Singh and appellant no.6 Om Pal Singh S/o Umrao Singh, being on bail, are directed to surrender before the trial court forthwith to serve out the remainder of their sentences, failing which the trial court shall take appropriate steps to secure their custody in accordance with law.

(v) Let the lower court record, together with a certified copy of this judgment, be transmitted to the trial court forthwith for compliance.

(Achal Sachdev,J.) (Siddhartha Varma,J.)

**August 7, 2026**  
Zafar