



2026:AHC:171223-DB

Judgment Reserved On:-06.07.2026.

Judgment Delivered On:-14.08.2026.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2824 of 2003

Krishnapal And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Jai Prakash Singh, Rohit Ranjan Agarwal, Sah O.P. Agarwal
Counsel for Respondent(s)	: Ankit Kumar Sahu, Brajesh Kumar, Govt. Advocate

Court No. - 43

HON'BLE SIDDHARTH, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Siddharth, J)

1. Heard Sri V.P. Srivastava, learned Senior Counsel assisted by Sri J.P. Singh, learned counsel for the appellant; Sri G.N. Kanaujia, learned AGA-Ist for State-respondent and perused the trial court record and judgment and order passed by the trial court.

2. The present criminal appeal has been filed against the judgment and order dated 31.05.2003 passed by Addl. Sessions Judge (Fast Track) G.B. Nagar, in Sessions Trial No.1617 of 1999. State Vs Krishna and others, convicting and sentencing the appellant No. 1 u/s 302 read with section 34 1.P.C. for life imprisonment and fine of Rs.1000/-; in case of default to further undergo 1 month's simple imprisonments and u/s 307 1.P.C. to undergo 10 years, rigorous imprisonment and Rs.2000/- fine and in case of default further 2 month simple imprisonment. The appellant No. 2 and 3 have been convicted and sentenced u/s 302/307 read with section 34 I.P.C. and directed to undergo life imprisonment and fine of Rs. 5000/- and in case of default 6 month's simple imprisonment and also 7 years of rigorous imprisonment. All the sentences have been directed to run concurrently.

3. The prosecution case is that on January 28, 1996, the complainant, Bijendra ,PW-3, along with his elder brother, Gyanendra (deceased), sister-in-law (*Bhabhi*) Kiran, P.W.-2, and younger brother, Gajendra, PW-1, was going to his dairy in Ghaziabad from his village. As they reached the *Cholas mod (turn)* three-way junction at about 3:00 p.m., the accused, Krishnapal, Brahmpal, and Chandrapal, whom he already knew, suddenly came before him with country-made pistols in their hands and opened fire with the intention to kill the complainant and his family. His elder brother, Gyanendra, died on the spot, and his younger brother, Gajendra (PW-1), got injured and fell down. His sister-in-law (*Bhabhi*) Kiran, PW-2, was also injured in the incident. All three accused fled towards Dadri on a Yamaha motorcycle bearing number DL-1 ST-6210. His sister-in-law, with the help of the police men from Police Outpost (chowki) Kot, took his brother, Gajendra (P.W.1), to hospital. The incident in question was committed in pursuance of a criminal conspiracy hatched by the accused, Dharmveer and Surate, owing to an ongoing land dispute. That fact was within in the knowledge of witnesses, Phire and Harveer (P.W.-4).

4. There are five accused persons in this case out of which one accused, namely, Dharmveer, son of Ratan Singh, has expired. Another accused, Surse, son of Parsadi has been acquitted by the trial court.

5. Date and time of incident is 28,1,1996 at 15.00 hours about which first information report was lodged on the same day at 15.50 hours as Crime No.37 of 1996 at Police Station Dadri District Ghaziabad (now District Gautambudh Nagar). Police Station Dadri is 8 kilometers from the place of incident. Place of incident is Village, Nagla Nainsukh.

6. As stated above there are five accused persons namely Krishnapal son of Parsadi, Bramhpal son of Parsadi, Chandrapal son of Gangadas Goojar, Dharamveer son of Ratan Singh and Surte son of Parsadi. Krishnapal was armed with country made pistol and as per allegationhe has fired on injured witness PW-1, Gajendra and Bramhpal and Chandrapal fired upon deceased.

Deceased is Gyanendra son of Hoshiyar Singh. First information report has been lodged by PW-3 Bijendra. Postmortem on the body of deceased was conducted by PW-5, Dr. A.K. Rastogi, on 21.1.1996 at 3.00 p.m.

7. Prosecution in support of its case has examined 10 prosecution witnesses. PW-1 Gajendra and PW-2 Kiran are injured and PW-3 Bijendra is first informant. PW-4 Harveer who has been declared hostile. These are the witnesses of fact. Other witnesses are formal witnesses. PW-5 is Dr. A.K. Rastogi who has conducted postmortem. PW-6 is Satya Singh who has examined PW-2 Kiran. PW-7 is Dr. S.K. Garg who has examined PW-1 Gajendra. PW-8 is Kalyan Singh who is second Investigating Officer. PW-9 is Mahfooz Khan who is clerk/Head Constable and has prepared chik report. PW-10 is Satendra Singh Chauhan who is also Investigating Officer and has also prepared inquest.

8. In support of its case, the prosecution produced and proved the following documents: the written complaint (Exhibit-Ka-1), Chik FIR (Exhibit-Ka-7), recovery memos (Exhibits-Ka-5, Ka-15, and Ka-16), Medical Reports (Exhibits-Ka-3 and Ka-4), Panchayatnama (Exhibit-Ka-9), Report of Police Station Dadri (Exhibit-Ka-10), Report of the CMO (Exhibit-Ka-11), Form No. 13 (Exhibit-Ka-14), Postmortem Report (Exhibit-Ka-2), Site Plan (Exhibit-Ka-17), and the Charge-sheet (Exhibit-Ka-6).

9. As stated above, there are two injured witness. PW-1 Gajendra who has been medically examined on 28.1.1996 at 3.40 p.m. It is relevant to mention here that he was medically examined prior to lodging of first information report which was lodged at 15.50 hours. He was medical examined on the basis of *Majroobi Chitti* send by the Incharge Police Outpost Kot, Police Station Dadri. Medical examination report of PW-1 Gajendra is Exhibit Ka-4. Another injured is PW-2 Kiran, she was medically examined on 13.2.1996 at 2.45 p.m., which is marked as Exhibit Ka-3.

10. The medical examination of the injuries sustained by the other injured,

namely, Kiran Devi (PW-2) was conducted by Dr. Satya Singh (P.W-6) and examination of the injuries sustained by Gajendra Singh (P.W.-1) was conducted by Dr. S.K. Garg (P.W.-7) and post mortem examination of the body of the deceased, Gyanendra, was conducted by Dr. A.K. Rastogi (P.W.-5). The case was registered as per the written complaint of the complainant, Brijendra and chik FIR (Ex-ka-7) was prepared by H.C.P. Mehfooj Khan (P.W.-9).

11. Inquest started on 28.1.1996 at 16.20 hours and was concluded on the same day at 17.25 hours. First informant, PW-3, Bijendra, is named as witness of inquest.

12. The investigation was taken up by Sub-Inspector, Surendra Singh Chauhan (PW-10) by whom Panchayatnama (Ex-ka-9) was prepared and the dead body was sent for post mortem examination. After collecting plain and blood stained soil, memo (Exhibit-ka-15) was prepared. Empty cartridge and shoe were taken into possession from the spot and Ex-ka-16 was prepared. Site-Map (Exhibit-ka-17) was prepared. The case was investigated by Inspector Kalyan Singh (P.W-8), who recorded the statement of Kiran Devi (P.W-2), and filed the charge sheet (Exhibit-ka-6) against the aforesaid accused after completing the investigation and recording the statements of the accused.

13. A charge sheet u/s 302 and 307 IPC was submitted against the accused Krishnapal, Brahmpal, Chandrapal and charge sheet u/s 302 read with section 120B of the IPC was submitted against the accused Surate. The accused denied the charges and sought trial.

14. Statements of the accused were recorded u/s 313 Cr.P.C., who denied the prosecution's version and rejected it completely. However, no evidence was presented in their defense.

15. P.W.-1, Gajendra (injured), PW-2 Smt. Kiran w/o deceased Gyanendra and P.W-3, complainant Brijendra (brother of the deceased) have been

examined on behalf of the prosecution as an eyewitness and as witnesses of fact, in order to substantiate the alleged offense. PW-1, Gajendra, has stated on oath that on 28.01.1996, at 3:15 pm, he, his brother Gyanendra (deceased), Bijendra and his sister-in-law, (*Bhabhi*) Kiran, were going from their village to their dairy in Ghaziabad. As soon as they reached *Cholas Mod* (turn) near the kot bridge, accused, Krishnapal, Brahmpal and Chandrapal came in front of them with country-made pistols in their hands and threatened to kill them. On being challenged accused, Brahmapal and Chandrapal, shot his brother Gyanendra. As soon as he ran away from the spot, accused Krishnapal fired the third shot at this witness, upon which he ran about 50 steps and fell down. The accused fled on a Yamaha motorcycle. This witness's sister-in-law (*Bhabhi*), PW-2, Kiran, went to the police station and reported the incident, upon which the police arrived. Regarding the motive, this witness stated that she had a dispute with the accused over land, in which Dharamveer of her village was involved. The accused, Surate, Krishnapal, and Brahmasal are Dharamveer's relatives and they all opened fire.

16. PW-2, Mrs. Kiran corroborating the statement of PW-1 Gajendra, stated in brief that on 28th January at about 2.30-3.00 'O' clock, she was going to her dairy from her village in Ghaziabad with her husband, Gyanendra (deceased) and brothers-in-law (*Devar*) Bijendra and Gajendra. As soon as they reached *Cholas Mod* (turn), Brahmpal, Krishan Pal, Chandra Pal suddenly came. Brahmpal and Chandra Pal shot her husband Gyanendra with a gun. Accused Krishan Pal shot her brother-in-law (*Devar*) Gajendra, thereafter all the three accused fled. She also got a little injury in her legs. After this she reached Police outpost (chowki) kot, from where she came with the police and reached there again. The police took her brother-in-law (*Devar*) Gajendra to Dadri Hospital. After that they took Gajendra to Yashoda Hospital, Ghaziabad.

17. The third witness Bijendra (P.W-3), who is the complainant in the case, stated on oath that on 28 January 1996, he along with Gyanendra, Gajendra

and his sister-in-law (*Bhabhi*) Kiran was going to Ghaziabad from his village Nagla Nainsukh. When they reached near the court bridge, Brahmpal alias Pappu, Krishnapal and Chandrapal, all three came in front with country-made pistols in their hands and his brother Gyanendra was shot by accused Brahmpal and Chandrapal and Gajendra was shot from behind by accused Krishnapal due to which he fell down. There was a stampede at the spot when the shot was fired. This witness ran away to save his life. Kiran, the sister-in-law (*Bhabhi*) of the witness, went to the Police Outpost (*Chowki*) and brought to the police personnel, prior to which the accused had fled on a motorcycle. The police took the injured, Gajendra, to Dadari Hospital. The accused persons are relatives of Dharamveer, with whom this witness has an ongoing enmity regarding land. The accused, Surate and Dharamveer, by hatching a conspiracy with the other accused persons, got this murder committed. The report of this incident was got written by him through Sheoraj and submitted as Exhibit Ka-1, on the basis of which the case was registered. While confirming his signature on the Inquest Report (*Panchayatnama*) Exhibit Ka-9, this witness stated that the inquest report was prepared in his presence.

18. The first question raised by the counsel for appellant is that F.I.R. is ante-timed. Whether FIR was lodged at 15.50 hours or not is relevant issue in this appeal. First information report was dictated by PW-3, Bijendra and is written by Shyoraj Singh son of Sriram R/o. Village Dujana, Police Station Dadri, District Ghaziabad. Inquest started at 16.20 on 28.1.1996 and was concluded on the same day at 17.25 hours. As stated above PW-3 Bijendra, the first informant is one of the witness of inquest. Now looking to the statement of PW-3, Bijendra, who stated that he met Shyoraj Singh on the day of incident at 4:00-4:30 p.m., when injured PW-1, Gajendra, was admitted in Yashoda Hospital. He has further stated, that he met Shyoraj Singh in Yashoda Hospital and remained present there for 15-20 minutes. He met Shyoraj Singh at 4.00-4.20 p.m. He has further stated that they were searching Metador to carry PW-1 Gajendra to Hospital at Ghaziabad in

which about 1-2 hours were taken. Thereafter when he returned from Ghaziabad to Dadri, Shyoraj Singh was also with him and he got dictated the first information report to him. This goes to show that the first information report was not lodged at 15.50 hours rather it was lodged much thereafter. Moreover as per inquest report PW-3, Bijendra Singh, remained present where inquest was being conducted on 28.1.1996 at 16.20 to 17.25 hours. If he was present on the spot at the time of inquest, though he met Shyoraj Singh at 4.00 4.30 hours and thereafter he consumed time in going Dadri from Ghaziabad and then lodged first information report and in that way first information report does not appear to have been lodged at 15.50 hours, as stated by prosecution.

19. If time of first information report is doubtful, there is another feature of prosecution case that injured PW-1 Gajendra was medically examined on 28.1.1996 at 3.40 p.m. at Government CHC Dadri, Ghaziabad. At this stage one fact is also necessary to be mentioned that when this murder was committed then PW-2, Kiran, immediately rushed to Police Outpost Kot, Police Station Dadri and informed the police and three police personnels reached on the spot and carried away P.W.-1 to hospital through constable, Shyampal Singh. He was sent by police for medical examination through Majroobi Chitti, purported to be signed by PW-10, Satendra Singh Chauhan, of Police Outpost Kot, Police Station Dadri., who was examined as PW-10. In his statement he has stated that in the case diary there are over writings which he has not made. He said that by mistake he has written 28 in place of 18 as date of incident is dated 18.1.1996. He has further stated that he has not seen injured PW-1 and Majroobi Chitti was prepared through constable at Police Station which was taken from Police Station. He stated that as to who has given Majroobi Chitti is not known. He has said that he has not prepared Majroobi Chitti. He has further stated that as to who has written Majroobi Chitti is not known to me. On Exhibit Ka-4 who has written, he can not tell. He has further said that there is signature thereon. He further stated that crime number is not mentioned on Majroobi Chitti. He

reached on the spot before sending Gajendra to hospital. PW-3, Bijendra, met with him and he remained present through out the inquest. He has consumed one hour in preparing inquest report and that goes to show that till conclusion of inquest no first information report was lodged.

20. Now comes to the statement of PW-1 who is purported to be star witness of the prosecution case. He is injured. His statement also can not be relied upon because in his statement in chief, though he has supported the prosecution case but in the cross examination he has deviated at many occasions. He stated that PW-3, Bijendra, first informant of the case, is in jail in connection with case under Section 307 I.P.C. now in which he is also accused and Surte, one of the co-accused in this case, is first informant of that case.

21. He has further stated that first information report was lodged against Gyanendra (deceased of present case), Nertrapal, Dharmpal, Mahraj Singh about murder of Dharmveer son of Ratan Singh. It goes to show that PW-1, Gajendra, has criminal antecedents along-with deceased. P.W.-1, stated that he is no aware whether Investigating Officer has taken down his statement or not. He has stated that he has informed the police in the hospital at Dadri about name of accused persons. This fact does not seems to be correct because as per injury report of P,W-1, Gajendra, doctor stated that there is bleeding and general condition of patient is low and he is being urgently referred to District Hospital Ghaziabad for urgent hospitalization. No treatment or x-ray and management is on record. In such a precarious medical condition he could not have told the name of accused to Investigating Officer. There is no mention that injured has disclosed the name of accused to PW-10. It is further argued that under what circumstances PW-3, Bijendra, ran away from the spot and met P.W.-1 in Yashoda Hospital has not been explained. P.W.-1 remained at the hospital for 10 days.

22. The learned counsel for the appellants submitted that P.W.-2, Smt. Kiran

and P.W.-3 Bijendra, are the wife and brother of the deceased Gyanendra, who have been made eye-witnesses of the incident. They were not present at the place of occurrence and both the witnesses are interested witnesses, whose evidence is not reliable.

23. The Hon'ble Supreme Court in *State of Punjab vs. Jagraj Singh & Ors. (2002) (1) J.I.C.*, has laid down the proposition of law that the testimony of any witness cannot be excluded merely on the ground of being an interested witness; the evidence of such witnesses ought to be evaluated in the light of other evidence available on record.

24. So far as the question of the evidence of PW-2, Smt. Kiran, is concerned, in this context, it was argued on behalf of the appellants that this witness was not present at the place of occurrence. The prosecution has stated that the first information to the Police Outpost(*Chowki*) kot was given by this very witness, on the basis of which the Police, Outpost(*Chowki*) kot reached the place of occurrence first. As stated by the Investigating Officer, PW-10, Sub-Inspector- Surendra Singh Chauhan and PW-8, Inspector, Kalyan Singh, based on wireless information, half an hour after the incident, all three accused, namely, Brahmpal, Chandrapal, and Krishnapal, were arrested along with the country-made pistols used in the murder. It was argued on behalf of the appellants that on the basis of the information given by Smt. Kiran to the Police Outpost(*Chowki*) Kot and the information transmitted via wireless, PW-8, Inspector Kalyan Singh, is stated to have arrested the accused persons within half an hour of the incident, which were not brought on record. Furthermore, the statement of this witness was recorded seven days after the incident, and the medical examination was conducted after thirteen days. Whereas, according to the witness's own testimony, she remained in contact with the Police Outpost(*Chowki*) Court, Dadri Hospital, Yashoda Hospital, and the police after the incident. Thus, according to the appellant, this witness is neither an eye-witness to the incident nor was she present at the spot.

25. PW-2, Kiran Devi, stated in her deposition that after her husband, Gyanendra and brother-in-law(*Dewar*) Gajendra, were shot by the accused persons, she went to the Police Outpost(*Chowki*) Kot and informed the police, on the basis of which the police reached the spot. In cross-examination she stated that she took her injured brother-in-law(*Dewar*) P.W.-1, Gajendra, to Dadri Hospital along with the police; a policeman was driving the motorcycle, her brother-in-law(*Dewar*) was seated in the middle, and she was holding him from behind. Her brother-in-law had sustained gunshot injury on his back and waist. This witness also stated that after Dadri Hospital, she took her brother-in-law(*Dewar*) Gajendra to Yashoda Hospital, Ghaziabad, where he underwent operation and received treatment. Perusal of the Medical Report, Exhibit Ka-4, of PW-1, Gajendra, which was proved by PW-7, Dr. S.K. Garg. The medical examination of PW-1, Gajendra, was conducted at Dadri Hospital at 3:40 PM, and PW-1 Gajendra was brought to the hospital by Constable. Nowhere is the presence of Smt. Kiran recorded at Dadri Hospital. No medical records pertaining to PW-1, Gajendra, at Yashoda Hospital, Ghaziabad, have been made available on record.

26. PW-2, Kiran Devi, has stated that after the fire was shot, she reached the Police Outpost(*Chowki*) Kot, from where she took the police personnel and reached the spot within ten to fifteen minutes. PW-10, Sub-Inspector-Surendra Singh Chauhan, stated in his deposition on oath that immediately after the incident, Kiran Devi, the wife of the deceased, Gyanendra, came to the Police Outpost(*Chowki*) Kot, whereupon he reached the place of occurrence prior to the registration of the case. In his cross-examination, PW-10, Sub-Inspector, Surendra Singh Chauhan, also stated that he had informed the Inspector(*PW-8*) via wireless that a murder had been committed and the accused persons were fleeing towards Dadri. He also informed the Inspector that certain named persons who committed the murder were escaping on a motorcycle. PW-8, Inspector, Kalyan Singh, stated that the information was received on wireless that three miscreants

were fleeing near the Kot after committing a murder. Neither the names nor the addresses of the miscreants were told. In cross-examination, he stated that he arrested the accused persons at 15:30 hours and lodged the report *vide* Report Entry No. 30, time- 16:30 hours. According to the *Chik* F.I.R. Exhibit Ka-3, the case was registered at 15:50 hours, whereas as per the testimony of these witnesses, the accused persons were arrested by PW-8 the then Inspector, Kalyan Singh, at 15:30 hours itself, prior to the registration of the case. Thus, if PW-2, Smt. Kiran, had given information to the Police at out post, Court, the prosecution should have produced before the Court the information received via wireless that was reduced into writing, which could have corroborated the presence of PW-2, Kiran Devi, at the spot. Once again, on this ground also, the presence of PW-2, Kiran Devi, at the spot becomes doubtful.

27. According to the evidence of PW-8, Inspector, Kalyan Singh, the statement of Kiran Devi was recorded on 04.02.1996, six days after the incident, and her medical examination was conducted on 13.02.1996, 15 days after the incident. Whereas, as per the evidence of PW-2, Kiran Devi, took the injured, PW-1, Gajendra, to Dadri Hospital and from there to Yashoda Hospital, Ghaziabad, where she continuously remained with her brother-in-law(Dewar), and police personnel were also admitting PW-1, Gajendra, in both hospitals. Had PW-2, Kiran, been present in both hospitals, the police personnel would have certainly got her medical examination conducted on the same day. Thus, once again, the presence of Smt. Kiran Devi at the spot is doubtful.

28. PW-2, Kiran Devi, stated that she took P.W.-1, Gajendra, to Dadri Hospital on the motorcycle of the police personnel, Gajendra was sitting in the middle, having sustained a gunshot injury on his waist. Undoubtedly, if Kiran Devi had taken PW-1, Gajendra, to the hospital in this condition, her clothes would have been stained with blood, and the Investigating Officer, by seizing the blood-stained clothes and proving them before the Court,

could have corroborated the presence of P.W.-2, Kiran, at the place of occurrence. Failure to do so once again renders the presence of Kiran at the place of occurrence doubtful.

29. Learned trial court held that comparative evaluation of the evidence of P.W.-2, Kiran, with the evidence of P.W.-1 injured Gajendra for the purpose of corroboration is necessary because the presence of injured, Gajendra (P.W.-1), at the place of occurrence cannot be deemed unreliable in any manner. P.W.-1 Gajendra in his statement regarding the place of occurrence stated that when they reached *cholas Mod* near the kot bridge, the accused persons met them carrying country-made pistols. The site-map Exhibit Ka-17, which was proved by PW-10 Sub-Inspector Surendra Singh Chauhan, shows the accused persons crossing the road from point 'C' to point 'D' and firing upon the injured and the deceased. Similarly, the Site Map does not show the deceased Gyanendra and injured Gajendra crossing the road and waiting for a conveyance at point 'C' or 'F'. PW-1 Gajendra has also not stated so, whereas Kiran Devi in her cross-examination had stated that they all were standing after crossing the G.T. Road. We were standing on the road opposite, waiting for a bus.

30. The trial court has found that statement of P.W.-2 was recorded with delay and her medical examination was conducted fifteen days after the incident. It found that her credibility is doubtful.

31. We are also of the view that the presence of P.W.-2 on the place of incident is completely doubtful. We also do not consider her to be a reliable witness. Therefore the corroboration of statement of P.W.-1 with P.W.-2 by the trial court is not correct approach.

32. As far as PW-3, complainant- Bijendra, is concerned, argument was made by learned counsel for appellants that the First Information Report was got lodged by PW-3 complainant Bijendra. The written report (*tahrir*) Ext.

Ka-1 is in the handwriting of Shyoraj Singh. It has been mentioned that the Chik F.I.R. was registered at 15:50 hours whereas PW-3 Bijendra has stated in his cross-examination that he was present at Ghaziabad Hospital at around 4 or 4:30 hrs where he met Shyoraj Singh and after staying there for 15 to 20 minutes, he came to the police station along with Shyoraj Singh and got the report lodged. Thus, the First Information Report is an ante-timed report as per the appellants. Since, the First Information Report is the backbone of case, being anti-timed, the entire prosecution story becomes unreliable. The incident has been stated to have occurred at around 15 hours during the day and it has been submitted by the prosecution that the First Information Report was lodged at 15:50 hours i.e., 50 minutes after the incident. As per the testimony of complainant of case Bijendra Singh, the scribe of written report (*tahrir*) Ext. Ka-1, Shyoraj Singh met him at Yashoda Hospital, Ghaziabad at around 4 or 4:30 hours, from where Bijendra, after staying there for 15 to 20 minutes, came to the police station along with Shyoraj and got the First Information Report lodged. As per the accused persons, if he was at Yashoda Hospital at 16 or 16:30 hours, then how could it be shown to have been recorded in the F.I.R. at 15:50 hours. Therefore, the F.I.R. is ante-timed.

33. Trial court has held that incident is of 28th January which is the winter season when the sun sets early. The distance from Yashoda Hospital to the police station is around 15 to 20 kilometres and it is on the main road. From Yashoda Hospital, one can reach Dadri in almost half an hour under all circumstances. The witness, Bijendra, has stated the time as 4 or 4:30 hours approximately. No specific time with reference to a watch was put to him during cross-examination. Therefore, this difference of half an hour may be a human error, which is quite natural. On this ground, the First Information Report cannot be held to be ante-timed. The arguments submitted on behalf of accused persons are baseless as per trial court.

34. PW-1, injured, Gajendra, who is injured by fire-arm at the spot, it has been stated on behalf of prosecution, that it is necessary to observe evidence

in the light of medical report available on file. The medical report Ext. Ka- 4 of PW-1 Gajendra was produced before the Court. PW-7, Dr. S.K. Garg, stated on oath while proving the medical report Ext. Ka- 4 that on 28.1.96, he was posted as Medical Superintendent at Government Community Health Centre, Dadri. On the same day, the injured who was brought by Constable, Shyam Pal Singh, at 3:40 p.m. was examined and the following injuries were found on his body: One wound of entry measuring 3 c.m. x 1 c.m. on the posterior part of waist from which blood was oozing out. Due to excessive bleeding, the exit wound could not be examined and there was slight blackening around the said wound. This injury was likely to be caused by a fire-arm. Therefore, PW-1, Gajendra, stated on oath that on 28.1.96, Krishna Pal fired a shot at him from behind while he was running away at about 3 or 3:15 hours. Since, PW-7, Dr. S.K. Garg, found fresh fire-arm injuries and bleeding on PW-1, Gajendra, at about 3:40 p.m. during medical examination and prepared the medical report. Therefore, the aforesaid statement of Gajendra is confirmed in the light of statement of Doctor and medical report ka-4.

35. As far as the statement of injured Gajendra is concerned, he stated that on 28.1.96, the accused persons Brahmpal and Chandrapal shot and killed his brother Gyanendra with a country-made pistol at about 3 or 3:15 hours. In this regard, it is necessary to observe the post-mortem report of deceased Gyanendra and the testimony of Doctor who conducted the post-mortem. The post-mortem report Ext. Ka- 2 of Gyanendra was got confirmed by the testimony of PW-5, Dr. A.K. Rastogi, who while proving post-mortem Ext. Ka-2, has mainly stated that on 29.1.96, he was posted at District Hospital, Ghaziabad. On that day, the dead body of deceased, Gyanendra, was brought by Constable, Rishi Pal, and Rajendra Singh whose post-mortem was conducted on the same day. The death of deceased had occurred approximately one day before. The following ante-mortem injuries were found:-

1. Gun shot wound of entry 1 c.m. x 1 c.m., chest cavity deep up to the

thoracic cavity on the left side on the back in the scapular region. The direction of wound was inwards and forwards. There was tattooing over an area of 27 cm around the wound.

2. Gun shot wound of entry measuring 2 c.m. x 1.5 c.m. in the brain cavity. On the occipital region was on the head, the direction of the same was forward inside and above.

3. Lacerated wound 1 c.m. x 1.5 c.m. muscle deep. The blackening was also present around the finger also.

36. The cause of death of deceased was shock and hemorrhage. The death was caused due to ante-mortem injuries.

37. It is undeniable that the death of deceased was caused due to the ante-mortem injuries suffered by him. What is in dispute is thereafter the deceased was done to the death by the appellants.

38. It has been submitted on behalf of prosecution with regard to offence charge against accused, Surse, u/s 302 read with Section 120B of IPC that the complainant bears enmity with Dharmveer s/o Ratan Singh of his village regarding the land and the accused persons, Surse, Krishnapal and Brahmapal are relatives of Dharmveer. It was further submitted that due to this enmity, Dharmveer and Surse conspired and got the disputed murder committed. The witness PW-1 Gajendra produced on behalf of the prosecution has also stated the fact in his statement on oath and PW-3 Bijendra has further stated on oath that he bears enmity with Dharmveer regarding land. The remaining persons are relatives of Dharmveer. The accused Dharmveer and Surse got this offence committed by conspiring with three accused persons. Phire and Harveer know about it. Harveer has been examined as PW- 4 on behalf of the prosecution who confirmed the old enmity between Dharmveer of the complainant's village and deceased Gyanendra regarding the land. He further stated that Dharmveer's father Ratan Singh was killed in which deceased Gyanendra was made accused. Dharmveer got his sister's marriage solemnized with Surse's son. The accused Surse came to the village three to four days before the murder of

Gyanendra and he did not saw the conversation with Dharmveer nor did he hear that he married his sister with Surse's son as Surse would get Gyanendra killed. Thus, this witness has been declared hostile. In addition to this testimony, no other evidence regarding the conspiracy to kill Gyanendra by accused Surse has been proved by the prosecution. Therefore, the charge of conspiracy to commit murder against accused Surse has not been proved by the prosecution and trial court has already acquitted Surse on this account.

39. As per first information report place of incident is said to be field of Village Nagla Nainsukh whereas dead body of Gyanendra was found in the field of Village Luharasi. No reference has been given as to how Village Luharasi is mentioned and there is no reference in the inquest as to what is the distance between place of incident and the Police Station. In the the Paper Book *STHITI LASH AND MAUKA MUWAINA*, it is mentioned that dead body was found in the field, lying on road going to Luharasi.

40. From the statement of P.W.-3, it is clear that when his brother, Gyanendra, was shot by accused, Brhampal, Chandrapal Pal and Gajendra was shot by accused, Krishnapal, P.W.-3, Brijendra, stated that he ran away from the place of incident and even after the assailant had left the place of incident and P.W.-2 had gone to the police outpost Kot to inform about the incident, P.W.-3 did not returned to help the P.W.-1 or to see whether his deceased brother, Gyanendra, is alive or not and whether he requires any medical help or not. This conduct of P.W.-3 makes his presence doubtful on the spot. He claimed that he ran from the spot and directly came to Yasodha where P.W.-1 was being treated. In his statement, he did not disclosed how he came to know that P.W.-1 was taken to Yasodha Hospital. The discrepancy in his statement regarding the time of lodging of F.I.R. has already been considered hereinabove.

41. Therefore it is clear that the motive of crime set up by prosecution was that Surse and Dharmveer hatched a conspiracy along with the appellants to

cause alleged incident. However, one of the key conspirator, Surse, was acquitted by the trial court and it did not found the allegation of hatching of conspiracy by Surse and Dharamveer, proved.

42. Therefore, in view of the doubt raised regarding the veracity of of F.I.R. in view of its timing, P.W.-1 not fully supporting the prosecution case in cross-examination, P.W.-2, being found unreliable, P.W.-4 being declared hostile and unnatural conduct of P.W.-3 the prosecution case cannot be said to be proved beyond reasonable doubt.

43. Therefore, we are inclined to extend the benefit of doubt to the appellants and acquit them of all charges.

44. The judgment and order of the trial court is **set aside**.

45. The criminal appeal is **allowed**.

46. The appellants are on bail. Their bail bonds are cancelled and sureties are discharged.

47. Let the copy of this judgment along with trial court record be returned to the trial court within a week for necessary compliance.

August 14, 2026
Abhishek

(Vinai Kumar Dwivedi,J.) (Siddharth,J.)