



2026:AHC:13155-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

Criminal Appeal No. - 742 of 1989

Ram Sewak And
Another

.....Petitioners(s)

Versus

State

.....Respondents(s)

Counsel for Petitioners(s)	: Dileep Kumar
Counsel for Respondent(s)	: A.G.A.

Judgement Reserved on November 25, 2025

Judgement Delivered on January 20, 2026

In Chamber

HON'BLE SIDDHARTH, J.

HON'BLE LAKSHMI KANT SHUKLA, J.

(Delivered by Hon'ble Lakshmi Kant Shukla, J.)

1. Heard Mr. Dileep Kumar, learned Senior Counsel assisted by Mr. Rajarshi Gupta, learned counsel for the appellants; Ms. Manju Thakur, learned AGA-I on behalf of State and perused the trial court record.

2. The instant criminal appeal has been preferred by the appellants **Ram Sewak** and **Jabar Singh** against the judgment and order dated 28.03.1989 passed by Second Additional Sessions Judge, Etawah in Sessions Trial No. 179 of 1987 whereby the learned trial court has

convicted and sentenced the appellants under section 302 IPC read with Section 34 IPC for life imprisonment.

3. The facts in brief as contended in the FIR are that the PW-1 namely Man Singh son of Nathuram/informant lodged an FIR at Police Station Ikdil, District Etawah, stating therein that his maternal uncle Bhajanlal Sharma (hereinafter referred to as deceased), Principal of Higher Secondary School, Kilo Sultanpur, Village Mahnepur had enmity regarding the land with appellant no. 1/Ramsevak S/O Birbal Pal of the same village. Due to that enmity, the said village Pradhan, Ramsevak, was looking for an opportunity to kill the deceased. On 08.06.1987 at about 8:00 am when the deceased along with Mansingh of Village Mahnepur/PW-2, Virendra Singh Lodhi Rajput/PW-3 as well as informant/PW-1 were going to Etawah market. As soon as all of them reached at the Bambay turn in front of Village Manikpur Mikhan, appellant no. 2, namely, Jabar Singh, who belongs to the same village, came from their back side on a Bullet motorcycle bearing No. UHK 2634 along with appellant no. 1/Ramsevak Pradhan, who was pillion rider. The appellant no. 1/Ramsevak, was holding a double barrel 12 bore gun in his hand. A little ahead of the turn, Jabar Singh stopped the motorcycle and said, what are you waiting for now Pradhan ji, when will you get a better opportunity than this to kill the deceased. On the aforesaid exhortation the appellant no. 1/Ramsevak started firing at the deceased with his gun with the intention to kill him. Jabar Singh also took out his pistol and started firing. Both of them riddled the deceased's body with bullets, due to which he succumbed on spot. Due in fear of guns, all of them hid in a nearby ditch to save their lives and watched the entire incident.

4. After receiving the information, the Chik FIR was registered on 08.06.1987 at 10:00 AM. Upon obtaining the written report, an FIR was duly lodged as Crime No. 97/1987, under Section 302 of the Indian Penal Code. The Chik FIR No. 75 was recorded, and a corresponding entry was immediately made in the General Diary (GD) at Rapat No. 14,

dated 08.06.1987 at 10:00 AM. Thereafter, the investigation was promptly entrusted to the competent Investigating Officer in accordance with law.

5. The Investigating Officer conducted a thorough investigation of the case. An inquest over the dead body of the deceased was prepared in accordance with law, and thereafter the dead body was sent to the mortuary for post-mortem examination, which was duly conducted.

6. During the course of investigation, the accused persons were arrested. The firearm allegedly used in the commission of the offence was recovered on the pointing out of appellant no. 1 & 2 respectively. The Investigating Officer recorded the statements of the witnesses and collected other relevant materials. The blood-stained articles and recoveries made from the place of occurrence, along with the recovered firearm, were sent to the Forensic Science Laboratory for examination and comparison. Upon receipt of the FSL report, the same was made part of the case diary.

7. After completion of the investigation, the Investigating Officer submitted the charge-sheet against the accused persons before the concerned Magistrate. Cognizance of the offence was taken on 10.07.1987, and the case was committed to the Court of Session on 07.12.1987, being exclusively triable by the Sessions Court.

8. Charges were thereafter framed against the appellants, to which they pleaded not guilty and claimed trial. Consequently, the trial commenced. In support of its case, the prosecution examined eleven witnesses and proved twenty-five documentary exhibits, including the chick FIR, General Diary entry, inquest report, post-mortem report, FSL report, site plan, and other relevant documents.

9. After considering the oral and documentary evidence on record and upon hearing the submissions advanced by the learned counsel for the

accused-appellants as well as the learned Government Advocate, the learned Trial Court found the appellants guilty of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Consequently, the appellants were convicted and sentenced to undergo imprisonment for life.

10. Being aggrieved by the aforesaid judgment of conviction and order of sentence passed by the learned Trial Court, the appellants have preferred the present criminal appeal, assailing the impugned judgment on various grounds as set out in the memorandum of appeal.

11. Before we proceed to notice the rival submissions, in order to have clear understanding of the context in which those submissions have been made, it would be apposite to notice the testimony of the prosecution witness. The testimony of the prosecution witness is as follows:-

12. **Mansingh S/o Nathuram (PW-1/complainant)** stated in his examination-in-chief that the deceased, Bhajanlal, was his maternal uncle. He served as the village head from 1972 to 1982. In the year 1974, he established a school in the village known as Janata Junior High School and became its President. He had the qualifications of M.A. and B.Ed., and he has been serving as the Principal of Janata Junior High School since 1976. Prior to this, he was the Principal of Kitlo Sultanpur Junior High School. The accused, Ramsevak, is a resident of village Mahnepur. He was previously employed as a constable in the police force but later resigned from service and contested the election for the post of village head. This election was contested between Ramsevak and the deceased Bhajanlal, in which Ramsevak emerged victorious. Subsequently, elections were held for the Executive Committee of Janata Secondary School, in which both Ramsevak and Bhajanlal participated. An election was subsequently held for the post of Manager of the school, in which the deceased Bhajan Lal was elected. Other members were also elected along with him to the Managing Committee. During the tenure of

Bhajan Lal as Manager, the school obtained due recognition from the competent educational authorities.

13. When Ramsevak was defeated in the said election, he established another school in the same village. The deceased, Bhajan Lal, submitted a written objection against the establishment of the said school to the District Inspector of Schools. Copies of the said objections were also submitted to other concerned education authorities. The said application was personally delivered to the District Inspector of Schools on 5 December 1985. He accompanied Bhajan Lal to his office at that time. Copies of the application were also personally submitted to the District Basic Education Officer and the Women's Education Officer, and their signatures were obtained on the office copy in acknowledgment of receipt. He has the office copy of the said application before him, which is typed and annexed along with the earlier application. The deceased Bhajan Lal affixed his signature on the said document in his (witness) presence. The same has been marked as Exhibit Ka-1. The seal of the School Manager is also affixed below the signature. Thereafter, the Managing Committee of the school instituted a civil suit against the State Government and other concerned education authorities before the Court of the Additional District Judge. In the said suit, Sarla Devi, representing the Manager of the Secondary School, was impleaded as a party. The said suit is still going on.

14. On 1 July 1986, when Janata Vidyalaya commenced functioning, an incident of robbery took place at the school premises. The accused Ramsewak, accused Jabar Singh along with several other persons, committed the said robbery. At the time of the incident, he and other teachers were present at the school. The accused persons were armed with guns, pistols, and rifles. Immediately thereafter, he went to the concerned police station to lodge a report regarding the said robbery. However, his report was not registered by the police. On the same day, he submitted a written application to the Senior Superintendent of Police (SSP). The said application was typed in several copies and he affixed

his signature on the original application as well as on the accompanying carbon copy. Upon being shown paper No. 26A, he stated that the same was the office copy and that it bore his signature. Despite submission of the said application, no action was taken thereon by the SSP or by the police authorities. Subsequently, on the following day, he signed another copy of the said application and dispatched the same by registered post. He also informed the deceased Bhajanlal about the incident of robbery. In his capacity as Manager of the school, Bhajanlal also submitted a written application by registered post. The said application was typed and signed by Bhajanlal in his presence. Bhajanlal also signed the carbon copy of the said application as well as office copies numbered 283/1 and 283/2 in his presence. The postal receipt relating to the said registered dispatch is available on record and is marked as paper No. 29A on the file.

15. He further stated that the accused Jabar Singh is the nephew of accused Ramsewak. A case is still going on against the accused Ramsewak, Jabar Singh, and others for the robbery of the atomic school. Bhajanlal and the accused had strained relationship because of this school.

16. He next stated that it was 8 o'clock in the morning on 8th June 1987, he was coming from his village to Etawah market with his maternal uncle Bhajanlal, along with Mansingh and Virendra of village Mahnepur. When they reached near the Bamba turn in front of village Manikpur Bhikhan, appellant no. 2 Jabar Singh belongs to the same village came from their back side on a motorcycle bearing No. UHK 2634 Bullet alongwith accused Ramsewak who was pillion rider armed with a double barrel gun, came and stopped the motorcycle ahead to them. Accused Jabar Singh said to Ramsewak that Pradhan ji what are you waiting for now, shoot the bastard. After saying this, both the accused got down from the motorcycle. Accused Ramsewak fired at Bhajanlal from his double barrel gun. The bullet hit Bhajanlal. Hearing the sound of the gunshot they ran and hid in a nearby ditch. Accused Jabar Singh came

near Bhajanlal and started firing with his pistol. Accused Ramsewak also fired more shots from his double barrel gun at Bhajanlal. Bhajanlal died on the spot as a result of the gunshot injuries. He further submits that due to fear of the firearms carried by the accused persons, they were unable to go near the deceased or render any assistance. Both accused thereafter fled from the place of occurrence on the motorcycle in the direction of Etawah.

17. After the accused had left, they came out from the nearby ditch and proceeded towards the village raising alarm. After walking about 15–20 steps, they found Meghsingh. They returned to the place of occurrence along with Meghsingh. By that time, about 20–25 persons who were passing along the road had gathered at the spot where Bhajanlal lay dead. Thereafter, Virendra Singh, Meghsingh, Mansingh, and some other persons remained at the spot, and he proceeded to Ikdil Police Station on the bicycle of Virendra Singh to lodge a report of the incident. He got the paper in Ikdil town, wrote the report and then went to the police station. After perusing the written report, he signed the same and submitted it at Ikdil Police Station. The said written report was authored by him and has been marked and proved as Exhibit Ka-2.

18. After lodging the report, he returned to the place of occurrence. The Investigating Officer reached the spot at about 11:00–12:00 noon. He conducted the Panchayatnama (inquest) of the dead body of Bhajanlal and thereafter returned his bicycle to him (informant).

19. At the place where Bhajanlal sustained the injuries and where his dead body was lying, blood had fallen on the ground. The Investigating Officer collected and sealed both blood-stained soil and plain soil from the spot in his presence. From the place of occurrence, the Investigating Officer seized four empty cartridges and the bicycle belonging to the deceased. Separate recovery memos were prepared in respect of each seizure, and the empty cartridge were duly sealed.

20. Thereafter, at about 2:00 p.m., the dead body of Bhajanlal was dispatched from the place of occurrence for post-mortem examination.

21. On the same day, his statement was recorded at the spot by Station Officer Dhruvlal Yadav.

22. **PW-2 Mansingh S/o Bhim Lal** in his examination-in-chief stated that the incident took place on 8 June 1987, at about 8:00 a.m. On that day, he was proceeding from his village to Etawah for shopping purposes. At that time, the deceased Bhajanlal, Mansingh/first informant and Virendra Singh were accompanying them on bicycles. They were travelling on three bicycles: one bicycle was being ridden by Mansingh/first informant, the deceased Bhajanlal was riding the second bicycle, and he along with Virendra Singh were riding the third bicycle. When they reached the road near the Bamba turn, proceeding towards Manikpur Bhikhan, a Bullet motorcycle came from behind them. The said motorcycle was being driven by accused Jabar Singh, and accused Ram Sewak was seated on the pillion. Both the accused persons are residents of his village and were present in Court that day. At that time, he clearly noticed that accused Ram Sewak was carrying a double-barrel gun. As soon as the motor cycle came near them, after going a little ahead it stopped, accused Jabar Singh said, shoot that bastard Pradhan ji, when will we get a better opportunity than that. After stopping the motor cycle, both the accused got down from the vehicle and Ram Sewak started firing from his gun. The bullet hit Bhanj Lal. Out of fear, they ran for cover and hid behind the Thura that had been built in the nearby ditch. These Thura were built for planting trees. These Thura were on the southern side of the road. Accused Jabar Singh also took out his pistol and both accused fired at Bhajan Lal. When they thought Bhajan Lal was dead, they started their motorcycle and fled toward Etawah. When the accused fled, they ran toward the village and raised an alarm.

23. He further states that after running about 20-25 steps, they met Megh Singh, who stopped them and asked why they were running. Then they

asked Megh Singh to go to the place where the incident had occurred. Then, the witnesses and Megh Singh arrived at the scene and found Bhajan Lal dead. Blood was gushing from his body, dripping onto the ground. They approached the scene from the west. Jagannath had arrived. Meanwhile, some unknown persons had also gathered at the place of occurrence.

24. Mansingh (the first informant) had gone to the police station to lodge the report of the incident.

25. He next stated that there was an ongoing dispute regarding land, inasmuch as Ganesh Dutt Jakholi had earlier executed a deed in favour of the deceased Bhajan Lal, and subsequently the same land was entered in the name of accused Ram Sewak, in respect of which litigation was pending. The marriage of the son of deceased Bhajan Lal had been fixed for 11–12 June 1987, i.e., a few days after the incident. His brother's marriage was also scheduled for 17–18 June 1987.

26. He next stated that after the occurrence, due to fear, he did not stay in the village until the accused persons appeared before the Court. However, on certain occasions, he would visit the village for one or two hours to see the children.

27. When sealed bundle of clothes was shown to the witnesses, which was opened in the Court, he stated that at the time of the incident the deceased was wearing a kurta (Exhibit-1), pyjama (Exhibit-2), angocha (Exhibit-3), and a towel (Exhibit-4). He further stated that the deceased was also wearing an undergarment and a vest, but he could not identify the same as those were inner garments.

28. In his cross examination he stated that on the asking of Megh Singh, they returned to the place of occurrence. Upon reaching there, they saw Bhajan Lal lying dead.

29. He next stated that he had no prior enmity or animosity against the accused persons. Even on the day of the incident, the accused did not attempt to harm or kill him. However, due to fear of the accused, he did not reside in the village and would visit only for short period of time. During this period, he was aware that first informant/Mansingh and the witness Virendra Singh were living in the village.

30. During this time, he stayed with his relatives sometimes in Etawah and sometimes with his sister in Bharthara, District Mainpuri.

31. He did not approach the Ikdil police station to report on account of fear because no one had instructed him to do so. Similarly, during this period, he did not contact the Superintendent of Police, Deputy Superintendent of Police, or any other police officer in Etawah regarding this matter.

32. **PW-3 Virendra Singh** stated in his examination-in-chief that the deceased Bhajan Lal was his uncle. He owned agricultural land in village Mahnepur, where their family would live jointly. Prior to the incident, Bhajan Lal had constructed a permanent house in Ashok Nagar, a small town in Etawah, where he and his family mostly resided at the time of the incident. Ashok Nagar is at the entry point of Etawah upon coming from the village.

33. He has been working as a teacher in the school located in his village, of which the deceased Bhajan Lal was the Manager, since 1980, prior to the incident. This incident occurred on 8 June 1987. On that day, his uncle Bhajan Lal (deceased), Mansingh, son of Nathuram, and Mansingh, son of Bhim Lal, were traveling from their village towards Etawah. When they reached the bambay turnoff, proceeding straight towards Manikpur Bhikhan village, a Bullet motorcycle, driven by accused Jabar Singh with Ram Sewak pillion rider, passed them and stopped. As soon as they stopped, Jabar Singh exhorted as, Pradhanji, what are you looking at now? Shoot the bastard! Ram Sewak fired first

with his double-barreled gun. As they dismounted from their bicycles and attempted to flee, Bhajan Lal fell down and died on the spot. Being terrified, they abandoned their bicycles and took cover behind a tree-lined trench on the southern side of the road. Jabar Singh armed with a pistol, and Ram Sevak approached Bhajan Lal and fired more shots at him. Bhajan Lal died instantaneously. Thereafter, the accused started their motorcycles and fled towards Etawah. They (witnesses) raising alarm, ran towards the village. Seeing some passersby, they stopped and returned with them to the place where the dead body and their bicycles were lying.

34. From the scene of the incident, Mansingh, son of Nathuram, went to Ikdil police station to report the incident. Upon seeing the two accused, Jabar Singh and Ram Sewak, the witness identified them that both accused were present in court today.

35. PW-4, the Doctor who conducted the autopsy on the body of the deceased, has stated on oath that on 9 June 1987, he was posted as a medical officer at Police Hospital, Etawah. On that day, at about 4:30 PM, he conducted the post-mortem examination of the dead body of Bhajan Lal, son of Lotan Lal, resident of Mahnepur, who was brought by Constable 817 Brij Bihari Tiwari and Home Guard Birwal of Ikdil Police Station. The deceased was properly identified, and the dead body was sealed. The seal affixed on the dead body tallied with the specimen seal.

36. On examination, it was noted that the deceased had died within approximately 12 hours prior to the examination. Rigor Mortis was present. The following ante-mortem injuries were observed on the body:

1. A lacerated wound, measuring approximately 18 cm x 8 cm, involving muscles and bone, located on the left side of the upper right forearm extending to the lower part of the upper arm. The anterior and posterior surfaces were surrounded by multiple

pellet-abrasion injuries, with entry marks varying in size from 0.5 cm x 0.5 cm (skin-deep) to 3 cm x 3 cm (skin-deep). The wounds exhibited blackening and tattooing, and scorching present on upper part of wound margins are lacerated underlined by muscles and vessels are lacerated.

2. A lacerated wound, measuring approximately 2 cm x 2.5 cm, penetrating muscle tissue, located on the lateral and upper part of the back of the right palm, surrounded by blackening over the back of the right hand.

3. A gunshot entrance wound, measuring approximately 3 cm x 3 cm, chest cavity deep below xiphia sternum joint, about 10 cm below and medial to both nipples. The wound margins are inverted blackening and charring present.

4. A gunshot entrance wound, measuring approximately 5 cm x 4 cm, located on the upper and front part of the left side of the chest, about 7 cm above the left nipple. The wound margins were inverted.

Injuries No. 6 and 4 are communicating, diverted from above downward and posteriorly towards the left side.

5. A gunshot entrance wound, measuring approximately 3 cm x 2 cm, penetrating deep into the abdomen on left lateral side of lower part of left side of chest on middle axillary lower part. Margins are inverted blackening and scorching present.

6. Gun shot wound of exit 6 cm x 4 cm on left lower lateral and posterior part of left side chest and upper part of abdomen interlines loops are protundintg out. Margins are inverted. Injury no. 5 and 6 are through and through diverted from above downward.

7. Gun shot wound of exit 6 cm x 3 cm on left side of back of chest posterior lateral part of lower part. Margins are inverted injuries no. 5 and 7 are communicating diverting downward from above.

8. Gun shot wound of entrance 1cm x 1 cm chest cavity deep 5 cm above from injury no. 7. margins are inverted.

9. Gun shot wound of entrance 1.5 cm x muscle deep on left side of chest at upper and middle part posterior and axillary fold upper part blackening and tattooing present.

10. Gun shot wound of exit 6 cm x 5 cm on posterior lateral aspect of lower part of lateral aspect of chest margins are inverted injuries no. 85 and 10 are through and through directing above downwards.

11. Gun shot wound of entrance 2 cm x 2 cm chest cavity on left side back upper part of chest. Margins are inverted.

37. Internal examination revealed that all ribs on the left side from 1 to 11 were broken, both in front and back. The pleura were lacerated on both sides. There was a bilateral rupture. Both lungs were ruptured. The pericardium and heart were ruptured. Blood vessels were torn.

38. The chest cavity contained approximately 5 ounces of thick blood. The peritoneum was lacerated. The abdominal cavity contained approximately 10 ounces of coagulated blood, undigested food, and fecal matter. The stomach, small intestine, large intestine, liver, and gall bladder were ruptured. The pancreas, spleen, and kidneys were all ruptured.

39. At the time of autopsy, he prepared the report, which bears his handwriting and signature. The cause of death was hemorrhage and shock due to antemortem injuries, all of which were sufficient in the ordinary course of nature to cause death. He took a vest, a kurta, a towel, a angocha, a pyjama, a black and brown coloured under wear black and brown colour from the dead body in his possession and after putting them in a separate sealed bundle, handed over to the police officials who had brought the dead body. Post mortem report exhibited as Exhibit Ka-9. During the examination of the dead body, a large piece of deformed metals, 11 pellets and a piece of wadding were found in the body, which were sealed in a separate envelope and given to the police officials who brought the dead body. It is possible that the antemortem injuries of the deceased came at 8 am on 08.06.1987, death must have occurred instantly due to those injuries.

40. In his cross examination, he stated that the Panchayatnama was also brought before him along with the dead body. The time of death of the deceased is written as 09:00 AM in the Panchayatnama. His signature is also there on the Panchayatnama. Scorching occurs due to the flame of the fire-arm and scorching may occur when firing is done from a distance of one inch to six inches. At the time of Panchayatnama, he challan form of the dead body is also before him along with the dead body and Panchayatnama, he had signed on that too. In its section, in which the time of death is recorded, 09:00 AM is clearly written. There is no overwriting or cutting on it.

41. Except injury No. 11, all entry wound injuries must have been caused by firing from very close range.

42. **PW-5 Head Constable Ram Nath Singh** in his examination-in-chief stated that in June 1987, he was posted as a Head Mohrir at Police Station Ikdil. On 8 June 1987, at 10:00 AM, he received a written report from Mansingh S/O Nathuram at Police Station Ikdil. This written complaint is marked as Exhibit Ka-2. On the basis of that written report, he prepared a chik FIR, which bears his handwriting and signature. This is marked as Exhibit Ka-10. On the basis of this information, at GD Report No. 14 at 10:00 AM under Section 302 IPC and Section 27 Arms Act, a case was registered as Case No. 97/1987. The original GD Report is in his custody and is correct. Its copy bears his handwriting and signature, marked as Exhibit Ka-11. Its carbon copy along with the original one was scribed in same process. The diary related to this case was sent on 9 June 1987, in the morning.

43. **PW-6 S.I. Jaishankar Dubey** of Police Station Ikdil, District Etawah gave his statement that in June 1987, he was posted as Sub Inspector at Ikdil police station. On 08.06.1987, this incident was reported at 10:00 am in his presence at Ikdil Police Station. Its investigation was entrusted to him. He left for the scene of the incident after copying the chik report and GD in the case diary. He reached the scene of the incident on Bharthana Road. The women and men of the deceased's family were found there. He took the dead body into his custody and prepared a Panchayatnama. Those who were appointed as Panchas had their signatures on it. The dead body was stamped and handed over to Constable Brij Bihari Tiwari and Home Guard Beerbal. For conducting the post mortem, necessary documents along with photo nash, challan lash, and letter to CMO etc were given, his signatures are on all of them. The Panchayatnama is written and signed by him as Exhibit Ka-12. The photo nash, the challan lash and the chitthi lash are in the writing of S.I. Chandrashekhar Gupta, on which his signatures are also there. Ext. Ka-13 to Ext. Ka-15 have been inserted respectively. S.I.

Chandrashekhar was busy in patrolling the area and during that course he reached there. The original binder of the Panchayatnama was kept in a sealed condition in the court and opened in the court. Its page number 21 has a carbon copy of the first page of the original Panchayatnama in which in the column of cause of death “गोली मारकर मृत्यु करना” on 08.06.1987 at 8.00 AM. In the file, the number 8 in the time of 08.00 AM on 08.06.1987 has been changed to 9. That was not made by him. He did not do that. In Exhibit Ka-14 (Challan lash), the time of death is written as 9.00 AM, which was mistakenly written by S.I. Chandrashekhar. He took the bicycle of the deceased into possession through a recovery memo, prepared and signed by him and the signatures of the witnesses were also taken on it, the said was marked as Exhibit Ka-16. Another bicycle from nearby was also taken into custody and its supurdginama marked as Exhibit Ka-17 was prepared in his writing. The cycle was handed over to the informant. He had taken blood stained and plain soil from the place of incident through memo written and signed by him, the signatures of the witnesses are also there, the same is marked as Exhibit Ka-18. Both the soils were sealed in separate plastic bottles. Material Exhibit 5 and 6 were marked on the plastic bottles. From the place of incident, he recovered four empty cartridges, the memo of which is written and signed by him and the witnesses' signatures were also obtained, which is marked as Exhibit Ka-19. These empty cartridges were also sealed and stamped on the spot. When he left the police station for the place of occurrence, the Head Constable in the police station office gave the copies of the chick report and GD entry to him. He received a copy of Exhibit Ka-11 and the copy of Exhibit Ka-20 from the police station. He sent both of these documents for the post-mortem. Exhibit Ka-20 is a copy prepared along with the original chick, which also bears his signature. After the informant and witnesses left with the dead body, Dhruv Lal, Sub Inspector of Ikdil Police Station, arrived at the scene and took over the investigation. After that, he returned to the police station at 09:10 pm with the confiscated material and recorded all the goods in his possession and submitted them in the

police station in sealed condition. He made a reference to this in G.D. Report No. 34 dated 8.6.1987 in his own handwriting at the police station. The original G.D. is before him. The correct copy is in his handwriting and was proved it's carbon copy as Exhibit Ka-21.

44. PW-7 Constable Ram Singh has stated in his examination-in-chief that in August-September 1986 he was posted as a constable in police station Ikdil. Clothes of deceased, blood stained soil, plain soil, DBBL gun used in incident, country made pistol of 12 bore used in incident and empty cartridges in separate bundles in sealed condition he took to storehouse of police station and got it numbered and getting marking of "sent to CJM court". He again got these articles from CJM court in two sealed bundles having papers plain and blood stained soil in one bundle and DBBL gun, country made pistol and cartridges in other bundle and brought it back to police station and deposited it in storehouse.

45. On 02.09.1987 all these articles taking from storehouse of police station he took to Lucknow for examination. On 03.09.1987 bundle of papers and both soil deposited in Forensic Science Laboratory, Mahanagar Lucknow. And the second bundle having impugned gun was returned back due to non mentioning in docket. After getting the short coming in Court on 04.09.1987 he again took those articles to police station and deposited in its storehouse. Again on 06.09.1987 along with dockets the impugned bundle of gun after receiving from storehouse he took it to Lucknow and on 07.09.1987 submitted in Forensic Science Laboratory, Mahanagar Lucknow. Until those articles remained with him its seal was intact.

46. PW-8 Bateshwari son of Bachanlal resident of Mahanepur Police Station Ikdil District Etawah has stated that about 24-25 days after the murder of Bhajan Lal, he was returning home from Chitbhavan village along with Jawahar Lal from his village. On their way from Chitbhavan, at a culvert on the road, the police officer, accompanied by a constable, and the accused Jabar Singh, was in a police vehicle. He called both of

them and asked where they lived. They said that they lived in Mahanepur. He asked if they knew Jabar Singh. They replied that he was from their village. The officer said, "Look at what Jabar Singh is telling you." Jabar Singh said, "He had hidden the pistol that was used in the murder. He could give the pistol that was used in the murder." (On that an objection was raised by the accused advocate). Thereafter Jabar Singh proceeded ahead, followed by the police and the witnesses, to the guava orchard. Jabar Singh entered the orchard, removed the soil from near the trunk of the tree and taken out the pistol. The police made a paper for it. The pistol was sealed in a cloth. He identified his signature on the paper No. 14 K/2 as Exhibit KA-22, the witnesses identified the pistol as Exhibit 9.

47. **PW-9 Azab Singh** in his examination-in-chief has stated that about one and a half year ago, Bhajan Lal of his village was murdered. About 20-25 days after the murder, the Senior Police officer, Ikdil Police Station and some constables arrived in the village along with accused Ramsewak. Ramsewak was handcuffed on one hand and shackled on his feet. He was sitting near Gauri. The Police Officer beckoned both of them. He said, "This accused has something to say, listen to him." Ramsewak replied, "The police officer has brought him here in connection with the recovery of a gun. He will tell them where the gun is." Then Ramsewak proceeded ahead, followed by the police personnel. Ramsewak opened the door of the first room of his house. It was filled with straw. Ramsewak moved some of the straw aside and the gun's barrel began to shine. He then took out the gun. Seeing the gun, he said that this was the gun he had taken out. As material Exhibit 10 recorded recovery of the gun. The inspector had written a document regarding the recovered firearm. After looking at and reading it, the witness stated, "This is the document. It bears his signature, Gauri Shankar's thumb impression, and the signature of the accused, Ramsewak which is exhibited as Exhibit Ka-23. The firearm was sealed on the spot.

48. **PW-10 Om Prakash Mani Tripathi**, the Ballistic Expert Forensic Science Laboratory Uttar Pradesh Lucknow, stated that he has been testing firearms for the past 13 years. He completed his training at the State Laboratory in Lucknow. The material in this case was received for testing from Constable Ram Singh on 07.09.1987. Three sealed bundles were recovered, from one bundle Four empty cartridges, one country-made pistol and one double-barreled gun number 29918 were recovered. He marked fired cartridges as E.C. 1, E.C. 2, E.C. 3, and E.C. 4, the country-made pistol as 1/88, and the double-barreled gun as 2/88. He made two test fire from a country-made pistol and marked them as T.C. 1 and T.C. 2. Six test fires from the double barrel gun were made and marked as T.C.-3 to T.C.-8. Comparison was made for the markings on the disputed cartridges E.C.-1 to E.C.-4 with T.C.-3 to T.C.-8. He did this scientifically using a microscope and came to the following conclusion:

- (1) The cartridge E.C.-1 was fired from the left barrel of double barrel gun No. 29918 and the cartridge E.C. 2 was fired from the right barrel of the same gun.
- (2) The cartridges fired were E.C.-3 and E.C.-4 from country made pistol marked 1/88.

49. During the examination, he prepared photographs of the marks, the negatives and prints. On the basis of the negatives, photographs were prepared in the laboratory under his supervision and these bore his signature. Material Exhibit-11 was put on the negative and Material Exhibit-12 to 17 on the photographs. In this regard, he got his report typed under his direction on 05.03.1988. These also bore his signature. The carbon copy, which was prepared along with the original was in front of him at that time with his signature. Original copy is in record as Exhibit Ka-24. The gun is exhibited as Material Exhibit 10 and the pistol is exhibited as Material Exhibit 9. The empty cartridges that were sent to him are numbered 7 and 8, and exhibited as Material Exhibit 18 and 19.

The eight cartridges which were used by him, are numbered as Exhibit 20 to 27.

50. **PW-11 Dhruv Lal Yadav**, Inspector of Police, A.D.M., Civil Supplies, Allahabad, has stated in examination-in-chief that he was posted as S.O. Ikdil in June and July 1986. This case was filed at the police station in his absence and its investigation was initiated by Jaishankar Dubey. He took up the investigation on 08.06.1987 itself. He reached at the place of incident on the same day. On reaching there, he took statements from Mansingh son of Nathuram, Jagannath and Meghsingh. When he searched for other witnesses of the FIR, he came to know that they had come with the dead body. On the directions of the informant, he inspected the spot and prepared a map, which is in his handwriting and signature. The Khasra is recorded. It is exhibited as Exhibit Ka-25. On 09.08.1987, while searching for the accused, he came to the court and filed an application for issuance of process under section 82-83 Cr.P.C. He received the documents for Section 82 Cr.P.C. On 10.06.1987, when he went to village Mahnepur to execute the warrant, he found out that the accused Ramsewak and Jabar Singh has fled away to avoid their arrest. On 10.06.1987, he came to the court and obtained the documents under Section 83 Cr.P.C. The same day, he returned to the village and seized the house of both the accused. S.I. Jaishankar Dubey and S.I. Yogesh Kumar Rohit seized the accuseds' property in their presence. S.I. Jaishankar Dubey and S.I. Yogesh Kumar Rohit have been posted with him, he recognize their writings and signatures very well. The attachment report is in the handwriting and signatures of accused Jabar Singh, Yogesh Kumar and S.I. Rohit exhibited as Exhibit Ka-26. The attachment report is in the handwriting and signatures of Ramsevak and S.I. Jaishankar Dubey exhibited as Exhibit Ka-27. On 12.06.1987, he recorded the statement of Birendra Singh. On 19.06.1987, the statements were taken from the accused Ramsewak and Jabar Singh in the court lock-up. On the same day, an application was filed for remand of both the accused. On 01.07.1987, the accused were granted three-days remand by the court. After receiving medical examinations from the

District Jail, they were brought to Ikdil police station. On 02.07.1987, accused Ramsewak spoke about recovering the gun, so he was taken to Auraiya. The motorcycle used in the incident could not be found there. Regarding the gun, he told it would be found at another location. On 03.07.1987, he inquired about accused Jabar Singh explained so that he can make recovery of country made pistol. Then they took Jabar Singh to the place as stated by him near the guava orchard in village Mahnepur, accused Jabar Singh asked to stop the vehicle, then accused Jabar Singh proceeded into the guava orchard, dug out the soil beneath the guava tree, retrieved the pistol, and handed it to him. The pistol is exhibited as Material Exhibit 1 and its memo (in writing and signature of witness) exhibited as Exhibit Ka-22. Thereafter he along with accused Jabar Singh and a bundle of pistol came back to the police station. The accused was taken into custody. The goods were deposited in the police station's Malkhana, till then the bundle of country made pistol was with him. On 04.09.1987, he inquired Ramsevak, who explained that he had given a wrong statement yesterday due to nervousness, motorcycle is there and he kept the gun in the straw room of his house, he may made it recover. Then the accused Ramsewak along with police personnel by a jeep came to village Mahnepur. Where witnesses Ajab Singh and Gauri Shankar were called before him, the accused Ramsevak told the above incident in front of the witnesses as well. Then he went ahead and opened the latch of the straw room of his house, removed the straw, took out the gun and gave it to him. On seeing the gun, the witnesses said that this was the same gun which has been exhibited as Material Exhibit 10. The recovered gun was wrapped and sealed at the spot. In the presence of the witnesses, he wrote a memo, read it before them and got their signatures on it. The memo is in his handwriting and signature which is exhibited as Exhibit Ka-23. Statements of witnesses Ajab Singh and Gauri Shankar were taken on the spot.

51. He went back to the police station with accused Ramsewak and the bundle of guns. Accused Ramsewak was locked up in the lockup and the articles were kept in the storeroom of police station. As long as he had

the bundle of guns, the seal of the guns were remained intact. On 04.07.1987, the statement of Mansingh, son of Jagannath, was taken. The investigation was completed on the same day, he filed the charge sheet against the accused persons in his letter and writing which is exhibited as Exhibit Ka-28. On 03.07.1987, the above mentioned accused Jabar Singh along with the sealed bundle of pistol was deposited at the police station. Regarding this, Head Constable Ramsevak made its entry at report no. 27 in the GD of police station on 03.07.1987 at 10.30 am. Ramsevak was posted with him, due to which he is well conversant with his writing and signature. The original GD is before him, it's true copy is on record, which is exhibited as Exhibit Ka-29. On 04.07.1987, the Head Constable Ramsevak deposited the recovered bundle of guns at Ikdil police station. Regarding this, Head Constable Ramsevak has made entry at report no. 9 at 06.45 pm on 04.07.1987 in the GD of Ikdil police station, which is exhibited as Exhibit Ka-30.

52. Thereafter the statement of accused persons under section 313 Cr.P.C. were recorded wherein they denied all the allegations against them. Accused Ram sewak has stated that he was in police service. Deceased Bhajan Lal of his village had enmity with him due to land dispute, he had been murdered. Informant Mansingh is the nephew of deceased. Being in collusion and conspiracy with Daroga, the informant cooked false evidence and initiated a false case against him. It is also evident that the witnesses stated only false that at the time of recovery he was handcuffed and shackled but the truth is that the evidence of recovery is totally fabricated. Neither he was handcuffed nor was he taken to anywhere for recovery. As he worked in police service, he was well versed with the rules that a man having shackled cannot be handcuffed, that is why there is no entry in police Malkhana about issuance of handcuff. Complainant Mansingh & witness Virendra are relatives of deceased and are in his party and related to school, for that reason they deposed false. The person who might arrange the murder of deceased is Ganesh Dutt who borrowed Rs. 40,000/- from deceased and

did not paid back. Regarding which a case was lodged by Bhajan Lal in which Ganesh Dutt was arrested and remained in jail for number of days.

53. After appreciating the evidence available on record the trial court came to the conclusion that the prosecution witnesses are trustworthy and reliable. The offence punishable u/s 302 IPC read with Section 34 IPC for causing the murder of Bhajan Lal is proved against the accused persons. They are found guilty u/s 302 IPC read with Section 34 IPC and thus, the trial court convicted and sentenced them for the said offences by the impugned judgment and order. Being aggrieved with the impugned judgment and order of conviction and sentence passed by the learned trial Court, the appellants-accused preferred the instant appeal before this Court.

54. The judgment of the trial Court has been assailed before us by Sri Dileep Kumar, learned Senior Counsel assisted by Sri Rajarshi Gupta, learned counsel for the appellants contended that testimonies of the witnesses is full of material contradictions and are not reliable. He submitted that convict-appellants were falsely implicated in the case due to previous enmity. The trial court has wrongly believed the prosecution evidence and, therefore, conviction and sentence of appellants is bad in law and liable to be set aside. There are contradictions in the statements of witnesses, which have not been appreciated by trial court and, therefore, impugned judgment is liable to be set aside.

55. Learned counsel appearing on behalf of appellants submits that appellant no. 1, Ram Sewak, is presently aged about 75 years, while appellant no. 2, Jabar Singh, is about 68 years of age. It is further contended that the chik report of the impugned First Information Report categorically shows that the case was registered under Section 302 IPC. However, upon a careful perusal of the inquest report (panchayatnama), particularly page 15 of the paper book, it is evident that the inquest proceedings commenced at 11:30 a.m. and concluded at 01:45 p.m., and on the very first page of the inquest report, the offences are shown as

under Section 302 IPC and Section 27 of the Arms Act. Similarly, page no. 2 of the inquest report also mentions the offences as Section 302 IPC read with Section 27 of the Arms Act. According to learned counsel, the aforesaid circumstances clearly indicate that some other First Information Report had come into existence prior to the point of time, which has been deliberately withheld by the prosecution. It is argued that the impugned FIR has been subsequently brought into existence as an ante-time document with a view to falsely implicate the appellants on false and misconceived allegations.

56. Learned counsel appearing on behalf of the appellants submits that the FIR in the present case is ante-timed. In support of his contention, reliance is placed on the time of death mentioned in the inquest report. Initially, the time of death was recorded as 8:00 a.m., which was later overwritten to 9:00 a.m. It is further noteworthy that Police Form No. 13, prepared subsequent to the inquest report, which mentions the time of death as 9:00 a.m. on 08.06.1987. As a matter of common prudence, when two events occur in sequence, the later event must necessarily follow the earlier one; it is illogical for a preceding event to be based upon its subsequent result. This principle flows from the settled procedure of investigation. Proceedings under Section 174 of the Cr.P.C. are intended to ascertain the apparent cause of death in cases of unnatural death. In the normal course, the inquest report is prepared first, followed by other police papers, including Form No. 13, and thereafter the dead body is sent to the mortuary for post-mortem examination. Thus, the preparation of the inquest report necessarily precedes the preparation of subsequent documents.

57. PW-6, the officer who prepared the inquest report, has categorically denied having recorded the time of death as 9:00 a.m. He has consistently maintained that he initially mentioned the time of death as 8:00 a.m. and that the entry was subsequently overwritten to 9:00 a.m. by some other person. He further deposed that in the police papers, namely the challan nash, the time of death was mistakenly mentioned as

9:00 a.m. by S.I. Chandrashekhar. However, there is no evidence on record to establish as to who actually overwrote the entry time as 09:00 a.m. in place of 08:00 a.m. in the inquest report. In these circumstances, if there was any inconsistency between the two entries and the prosecution intended to rectify the same, the correction would ordinarily be made in the challan nash but not in the inquest report, which had already been prepared. The inference, therefore, that logically follows is that advantage was sought to be derived by the defence from the entry of 9:00 a.m. appearing in the challan nash, and that at some stage the inquest report was manipulated to bring it in line with the said entry. It is a settled principle that no party would ordinarily act against its own interest. Consequently, the overwriting in the inquest report cannot be attributed to the prosecution and appears to have been managed to confer undue benefit upon the defence.

58. It is also pertinent to mention that the Hon'ble Apex Court in the case of *Narayan Yadav Vs. State of Chattisgarh passed in Criminal Appeal No. 3343 of 2025*, has observed in paragraph 34 of its judgment dated 05.08.2025 that the inquest report is not a substantial evidence. For ready reference the same is reproduced herein below:-

“In the aforesaid context, we may refer to an rely upon the decision of this Court in Murli Vs. State of Rajasthan, reported in (2009) 9 SCC 417, which held that the contents of the panchnama are not the substantive piece of evidence. It reads thus;

34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person or the person concerned in the witness box(....)”

59. Furthermore, the incident is stated to have taken place at 8:00 a.m. on 08.06.1987, and nothing contrary to this version could be elicited in the cross-examination of the prosecution witnesses so as to discredit their respective statements. No material inconsistency has been brought to the notice of the Court to cast doubt on this position. A mere minor clerical error committed by S.I. Chandrashekhar in the police papers cannot, by itself, efface or undermine the credibility of the ocular testimony, particularly when no other contradictions or infirmities are found in their evidence. In the absence of any substantive inconsistency, the submission advanced by learned counsel for the appellant on this score is wholly devoid of merit.

60. The second contention raised by the learned counsel for the appellant is that there are contradictions between the ocular testimony and the medical evidence. In support of this contention, learned counsel referred to the statement of PW-3, Virendra Singh, wherein he stated that when he and the deceased attempted to flee on their bicycles, Bhajan Lal fell down after sustaining a firearm injury inflicted by the accused Ram Sewak. Out of fear, PW-3 ran away, leaving the bicycle behind and hid himself in a ditch on the southern side of the road behind shrubs. According to PW-3, the accused Jabar Singh fired from a pistol and thereafter Ram Sewak approached Bhajan Lal and fired additional shots at him, as a result of which Bhajan Lal succumbed on the spot. Thereafter, the accused started their motorcycle and fled towards Etawah, while PW-3 and others ran towards the village raising alarm. He further stated that the distance between him and the place of occurrence was about fifteen steps. PW-3 also stated in his cross-examination that he disclosed for the first time before the Court that the accused had gone close the deceased and fired at him. He admitted that in his statement recorded by the Investigating Officer, he did not mention that the accused had got down from the motorcycle, walked towards the deceased, and then fired. He explained that since the Investigating Officer did not specifically ask him about firing from two different places, he did not state the same at that time.

61. Upon a conjoint reading of the medical and ocular evidence, no inconsistency of such magnitude is discernible as would undermine the prosecution case. The post mortem report indicates the presence of blackening, tattooing, charring, scorching, and the lodging of cartridge wads in the body, which unmistakably suggest that the firearm injuries were caused from a close range. These medical findings are duly supported by the testimony of the autopsy surgeon, who opined that the shots were fired from close proximity. The ocular witnesses have consistently stated that the accused persons came close to the deceased before firing. Merely because the witnesses elaborated upon this aspect during their deposition before the Court does not render their testimony unreliable or amount to a material improvement. It is well settled that minor elaborations, which do not affect the core of the prosecution case, cannot be treated as contradictions. The essential version that the accused approached the deceased and fired at close range remains intact and stands fully corroborated by the medical evidence. The presence of prior enmity, by itself, cannot be a ground to discard otherwise cogent and reliable ocular testimony, particularly when the same is supported by scientific and medical evidence. On the contrary, the medical evidence lends assurance to the truthfulness of the prosecution witnesses, and the alleged discrepancy pointed out by the defence is inconsequential and does not dent the credibility of the prosecution case.

62. Whenever an incident occurs, it is committed by the culprits, and such acts generally do not take place in the presence of eyewitnesses by design. An injured or eyewitness, when confronted with a sudden and unexpected occurrence, is not in a position to observe or retain every minute detail of the incident. In such circumstances, it cannot be expected that the witness would accurately note the exact time, precise distance, or each individual act during the course of the occurrence. Their testimony is therefore bound to be approximate in nature. If a witness deposes with absolute precision on every aspect of the incident, such testimony would raise suspicion and the witness might be termed as a tutored or "interested" witness. It is a settled principle that a natural

witness cannot be expected to narrate the incident with mathematical accuracy. In the present case, I do not find any material contradiction in the statement of PW-3. Even assuming that certain inconsistencies exist, they are minor in nature and do not go to the root of the prosecution case. Further, the statements of other ocular witnesses, namely PW-1 and PW-2, cannot be discarded merely on the basis of such minor inconsistencies in the testimony of PW-3. Accordingly, I do not agree with the contention raised by the learned counsel for the appellant in this regard.

63. Learned counsel for the appellants further raised the point that in the instant matter the Investigating Officer did faulty investigation and argued that from the careful perusal of the evidence which has been brought forth through the investigating officers, it clearly transpires that in the present case, various interpolations and tempering of the evidences by way of tearing dates in the case diaries have been done, which has been admitted to these prosecution witnesses, which clearly goes to show that the investigation has been deliberately done in connivance with the complainant party with the sole view to falsely implicate the accused persons and to create evidence as against them, and it is written large on the face copy record that the investigation has been completely tainted and not impartial, and done deliberately to the detriment of the accused persons, and as such in the facts and circumstances of the present case, the benefit of the faulty investigation would accrue in favour of the accused persons. In support of his arguments he placed reliance upon the judgment of Hon'ble Apex Court in the Case of ***Lakhwinder Singh and others Vs. State of Punjab reported in (2002) 10 SCC 295*** wherein the Hon'ble Apex Court has held that the faulty investigation will create the serious doubt on the prosecution case. Paragraph 30 to 39 of the said judgment is quoted here in below:-

"(30) The evidence discussed above, therefore, leads us to hold that the investigation has not been conducted in a fair and impartial manner. There is an interpolation in the first

information report inserted with a view to explain the injuries on Paramjit Singh. The investigation conducted on the morning of 25th December, 1996 by PW 18 is highly doubtful and it appears that neither PW 11 Jagir Singh, who is a witness to all the seizure memos of that date nor Darshan Singh, PW 14 with whose assistance the rough site plan was prepared with marginal notes and who attested the inquest report, were present at the place of occurrence. [Obviously these seizure memos, site plan, inquest report etc. have not been prepared at the place of occurrence and may be, they were prepared in the police station, as alleged by the defence. The recoveries of spent cartridges of SLR and AK-47 rifle, therefore, is rendered doubtful and we do not consider it safe to attach any credence to the recoveries made and seizures effected on 25th December, 1996 by PW 18.

(31) Counsel for the appellants submitted that in the facts and circumstances of the case the prosecution was bound to explain the injuries suffered by appellant Paramjit Singh. The High Court has rejected the contention holding that it is not necessary that in all cases the prosecution is bound to explain the injuries on the person of the accused. Moreover the High Court has, in fact, doubted the fact that Paramjit Singh had suffered any such injury. In our view the finding recorded by the High Court is not justified by the evidence on record.

(32) As observed earlier, PW 18, the investigating officer had come to know atleast on 25th December, 1996 that Paramjit Singh was admitted in a hospital and that he was admitted at 11.45 p.m. on 24th December, 1996. For reasons best known to him, he did not visit the hospital where Paramjit Singh was admitted and he claims that he deputed S.I. Jagir Singh to visit the hospital. We find that SI Jagir Singh, PW 11 in the course of his deposition has not said a word about his having gone to

see Paramjit Singh on the direction of the investigating officer. Moreover we have held earlier in this judgment that the investigating officer already knew of the fact that Paramjit Singh was seriously injured and that was the reason why he interpolated the last sentence in the first information report to explain his injuries.

(33) From the evidence of Dr. Balwinder Singh, DW1, medical officer, PHC, Sudhar, it appears that on 24th December, 1996 at about 11.30 p.m. Paramjit Singh was brought to the health centre with injuries on his person. The entry report shows that there were as many as 19 injuries on his person mostly contusions and lacerations. He kept some of the injuries under observation while he found the remaining injuries to be simple in nature, all caused by blunt weapons. The duration of the injuries was within 6 hours. A photocopy of the medico legal report was marked as exhibit PDW-1.A. He further stated that he had conducted the X-ray examination of the injuries on the person of Paramjit Singh. After X-ray report and having looked at the skiagrams, he declared injuries no.7 and 17 to be grievous. X-ray showed fracture of body of scapula besides fracture of manible on left side. He sent intimation to the SHO of PS Sudhar. The skiagrams were also sent to the police station alongwith the bed ticket. In his cross-examination, he stated he had not seen the X-ray register and the skiagrams. He asserted that the injuries could not be self- suffered.

(34) Dr. Subhash Batta, DW 3, surgical specialist at the civil hospital, Ludhiana deposed that on 27th December, 1996, Paramjit Singh was admitted in the hospital. He had examined the patient on 30th December, 1996 and referred him to the dental surgeon for further management. No suggestion has been put to any of these two witnesses that in fact Paramjit Singh had not suffered injuries, as alleged. Apart from this, it

is not even the case of the prosecution that Paramjit Singh was not injured in the course of the same incident. The High Court has rejected the testimony of Dr. Balwinder Singh, DW 1 on the basis of the sole statement in his cross-examination that he had not seen the X-ray register and the skiagrams, completely ignoring the clear assertion made by him in his examination-in-chief that he had conducted the X-ray examination and had declared the injuries to be grievous only after looking at the X-Ray reports and the skiagrams. It appears to be quite possible that the witness may have stated about his having not seen the X-ray register and the skiagrams under some confusion. Reading the evidence as a whole, we have no manner of doubt that DW 1 had got the X-ray done and only after looking at the X-ray report and the skiagrams, he had declared the injuries to be grievous.

(35) The next question is, in a case of this nature, whether the prosecution was bound to explain the injuries appearing on the person of Paramjit Singh. In our view, having regard to the facts and circumstances of this case, it was the duty of the prosecution to explain the injuries suffered by Paramjit Singh which were 19 in number and two of them resulting in fractures. It is not as if the prosecution did not know of these injuries and that they were manufactured later to support the case of the defence. The facts disclose that even by the time the first information report was finalised and before the special report was despatched, the investigating officer had knowledge of the fact that Paramjit Singh had suffered injuries and was admitted in a hospital for treatment. We, therefore, hold that the failure of the prosecution to explain the injuries on Paramjit Singh leads to the inference that the prosecution has not disclosed the true genesis and the manner of occurrence.

(36) It is not in dispute that on the date of occurrence i.e. 24th December, 1996 the informant PW 14 did not know the names of any of the gunmen who had taken part in the assault. Similarly, PW 15 also did not know the names of the gunmen of Ranjit Singh and his father. Admittedly PW 14 came to know of their names 3-4 days later. We have earlier noticed that despite the fact that they did not know the names of any of the gunmen, the name of Paramjit Singh finds place in the first information report as well as in the marginal notes of the site plan, both prepared at the instance of PW 14. That apart, since the assailants were not known to this witness by name, there appears to be no reason why a test identification parade was not held. It is not in dispute that no test identification parade was held to identify the assailants and this also is a serious lacuna in the case of the prosecution.

(37) Learned counsel for the appellants submitted that the reliance placed by the High Court on exhibit PN which contains a list of fire arms entrusted to the gunmen of Jagdev Singh Talwandi and Ranjit Singh, is misplaced because exhibit PN does not furnish sufficient particulars about the weapons so as to identify which weapon was entrusted to which particular gunman. He further submitted that the report of the forensic science laboratory also is of no avail to the prosecution, even if it is accepted that some of the spent cartridges were fired from some of the weapons. It may not advance the case of the prosecution because it is not known to whom that particular weapon was entrusted. We do not wish to go into this question for the reason that we have suspected the recoveries and seizures of the spent cartridges from the place of occurrence. We have noticed serious lapses in the investigation of the case and we have recorded a finding that the investigation was not fair and impartial. In this view of the

matter we do not wish to examine the submission urged on behalf of the appellants in this regard.

(38) We may, however, notice the fact that even according to the report of the forensic science laboratory, the deformed jacket of a bullet sent to the laboratory for examination appeared to be a part of 9 mm bullet. If this was the metallic piece which was found embedded in the injury of Chamkaur Singh, then even the report of the forensic science laboratory does not support the case of the prosecution that the injury suffered by him was a result of the shot fired from AK-47 rifle. The report of the forensic science laboratory disclose that AK-47 rifle had 7.62 mm. bore and not 9 mm. If that is so then the entire prosecution case that Jit Singh @ Parmi fired from AK-47 rifle of Paramjit Singh falls to the ground. Moreover, the report discloses that a spent cartridge of a carbine was amongst the items sent for examination. No explanation is forthcoming as to how a spent cartridge of a carbine was recovered and seized from the place of occurrence, because it is no ones case that a carbine had been used in the incident,

(39) In view of our findings that eye witnesses, PW 14 and PW 15 are not wholly reliable and the third witness PW 17 is wholly unreliable, that the investigation of the case is tainted and not fair and impartial, that the recoveries and seizures made are suspect, that the prosecution has failed to explain the injuries on Paramjit Singh which it was bound to explain in the facts and circumstances of the case, and lastly that no test identification parade was held even though informant and eye witness PW 14 did not know the names of the assailants on the date of occurrence, coupled with the fact that the High Court disbelieving the eye witnesses accepted the plea of alibi of Ranjit Singh and did not believe the eye witnesses with regard to the participation of Gurmit Singh and Kulwant

Singh, this appeal must succeed. It is accordingly allowed. The conviction and sentence of the appellants are set aside. The appellants shall be released forthwith unless required in connection with any other case."

64. The Court is now required to examine whether the investigation in the present case was conducted in a faulty manner. The learned counsel for the appellants first relied upon the overwriting in the inquest report, wherein the time of death was initially recorded as 8:00 a.m. and subsequently overwritten as 9:00 a.m. However, this aspect has already been satisfactorily explained earlier. Therefore, no further discussion on this point is warranted, and merely on the basis of such overwriting, the investigation cannot be held to be defective or tainted.

65. The learned counsel for the appellants further placed reliance on the statement of PW-4, the doctor who conducted the post-mortem examination, wherein he expressed the opinion that except injury no. 11, all other injuries were firearm entry wounds. I fail to appreciate how, on the basis of this isolated statement of the doctor, the entire investigation can be branded as faulty. The medical opinion, even if accepted as it stands, does not by itself demonstrate any serious lapse or deliberate defect in the investigation, nor does it discredit the prosecution case as a whole. In para 13 of ***Solanki Chimanbhai Ukabhai Vs. State of Gujarat (1983) 2 SCC 174***, the Hon'ble Apex Court has observed as follows:-

"13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries: taking place in the manner alleged by eye witnesses,

the testimony of the eye witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.”

66. The learned counsel for the appellants next drew the attention of this Court to the statement of PW-11, the Investigating Officer, wherein he stated that the first parcha relating to Jai Shankar Dubey was entered by him in the case diary, but the portion relating to the date of entry was found torn, whereas the month and year remained intact. He further stated that it was incorrect to suggest that the date was torn on his advice or that any correction or fabrication in the case diary had been concealed by him. The Investigating Officer explained that the tearing of a portion of the case diary was merely the result of careless maintenance of records and nothing more. If the Investigating Officer had intended to conceal any manipulation or fabrication, he would not have left the relevant portion of the date blank or partially intact. Moreover, there is no material on record to establish that the tearing of the relevant portion of the case diary was deliberately caused or managed by the Investigating Officer with any oblique motive. In the absence of any cogent evidence suggesting mala fide conduct or intentional suppression of material facts, this contention raised by the learned counsel for the appellants appears to be trivial and devoid of substance, and does not in any manner render the investigation unreliable. It is also pertinent to mention that case diary is not a substantial piece of evidence but it can only be used to corroborate or contradict the testimony of witnesses and for nothing more and tearing of a little corner of one page of case diary does not amount any serious contradiction in ocular evidence.

67. Learned counsel for the appellant further argued that in the present case the recovery of the weapon said to have been made at the behest of the appellants is without following the proper procedure. Further there is a settled preposition of law, that when the other evidences do not point out towards the guilt of the appellants, mere recovery can not be sole basis of conviction. This factum is further of importance, when the

investigation has been found to be completely tainted and done in a manner so as to show the connivance with the complainant as wholly apparent to the detriment of the accused persons. And in the present case without following the settled preposition of law and rules pertaining to the recovery of incriminating articles, no credence can be attached to the aforesaid recoveries, which are alleged to have been made at the behest of the accused persons. In support of his arguments he placed reliance upon the judgment of Hon'ble Apex Court in the Case of ***Radhey Shyam & Ors vs state of Rajsthan, SC, 2023*** in which the Hon'ble Apex Court has opined that the conviction cannot be sustained only on the basis of the alleged recovery. Paragraph 9 of the said judgment is reproduced herein below:-

"We are, therefore, of the considered opinion that the identity of the named accused assailants of the deceased has not been established in the Court beyond a reasonable doubt. Then what remains is the evidence of the alleged recovery of the weapons of assault at the instance of the accused. The conviction cannot be sustained only on the basis of the alleged recovery."

68. The identity of the named accused in the present case is not in dispute. The ocular witnesses, including the PW-2 and PW-3, as well as the accused Ram Sewak and Jabar Singh, are residents of the same village and were well acquainted with each other. In such circumstances, the question of mistaken identity does not arise.

69. Consequently, the law laid down in ***Radhey Shyam (supra)***, which was rendered in a materially different factual context, is not applicable to the present case. Owing to the clear distinction in facts, reliance placed upon the said judgment by the learned counsel for the appellants is misplaced, and the contention raised in this regard is wholly untenable.

70. The next contention of learned counsel for the appellants is that from the careful perusal of the evidence on record, it clearly transpires that the statements of PW-1, PW-2 Have been taken by the investigating officer after unexplained/ inordinate delay 90 and 28 days respectively, which is clear from the evidences of PW-1, PW-2. This unexplained/considerable delay creates a serious shadow of doubt regarding the presence of these witnesses and veracity of their depositions as it has been settled by the honorable supreme court of india in the case **(SHAHID KHAN VS STATE OF RAJSTHAN, (2016) 4 SCC 96** wherein unexplained delay of 3 days was found to be fatal. An as such in the present case, considering hat the witnesses are highly interested and inimical, their reliability is hugely dented and no credence can be attached. to their statements. In support of his arguments he placed reliance upon the judgment of Hon'ble Apex Court in the case of **Harbeer Singh vs Sheespal & Ors, (2016) 16 SCC 418** wherein the Hon'ble Apex Court has held that the delay in recording of statements of the prosecution witnesses u/s 161 Cr.P.C would cast a doubt upon the prosecution case. Relevant paragraphs of the same i.e. Paragraph Nos. 15, 16 and 17 are quoted hereinbelow:-

"15. We have given careful consideration to the submissions made by the parties and we are inclined to agree with the observations of the High Court that PW3 and PW9 were not witnesses to the alleged conspiracy between the accused persons since not only the details of the conversation given by these two prosecution witnesses were different but also their presence at the alleged spot at the relevant time seems unnatural in view of the physical condition of PW9 and the distance of Sheeshpal's Dhani from Sikar road. Besides, it appears that there have been improvements in the statements of PW3. The Explanation to [Section 162 Cr.P.C.](#) provides that an omission to state a fact or circumstance in the statement recorded by a police

officer under [Section 161](#) Cr.P.C., may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. Thus, while it is true that every improvement is not fatal to the prosecution case, in cases where an improvement creates a serious doubt about the truthfulness or credibility of a witness, the defence may take advantage of the same. [See [Ashok Vishnu Davare Vs. State Of Maharashtra](#), (2004) 9 SCC 431; [Radha Kumar Vs. State of Bihar](#) (now Jharkhand), (2005) 10 SCC 216; [Sunil Kumar Sambhudayal Gupta \(Dr.\) & Ors. Vs. State of Maharashtra](#), (2010) 13 SCC 657 and [Baldev Singh Vs. State of Punjab](#), (2014) 12 SCC 473]. In our view, the High Court had rightly considered these omissions as material omissions amounting to contradictions covered by the Explanation to [Section 162](#) Cr.P.C. Moreover, it has also come in evidence that there was a delay of 15-16 days from the date of the incident in recording the statements of PW3 and PW9 and the same was sought to be unconvincingly explained by reference to the fact that the family had to sit for shock meetings for 12 to 13 days. Needless to say, we are not impressed by this explanation and feel that the High Court was right in entertaining doubt in this regard.

16. As regards the incident of murder of the deceased, the prosecution has produced six eye-witnesses to the same. The argument raised against the reliance upon the testimony of these witnesses pertains to the delay in the recording of their statements by the police under [Section 161](#) of Cr.P.C. In the present case, the date of

occurrence was 21.12.1993 but the statements of PW1 and PW5 were recorded after two days of incident, i.e., on 23.12.1993. The evidence of PW6 was recorded on 26.12.1993 while the evidence of PW11 was recorded after 10 days of incident, i.e., on 31.12.1993. Further, it is well-settled law that delay in recording the statement of the witnesses does not necessarily discredit their testimony. The Court may rely on such testimony if they are cogent and credible and the delay is explained to the satisfaction of the Court. [See [Ganeshlal Vs. State of Maharashtra](#), (1992) 3 SCC 106; [Mohd. Khalid Vs. State of W.B.](#), (2002) 7 SCC 334; [Prithvi \(Minor\) Vs. Mam Raj & Ors.](#), (2004) 13 SCC 279 and [Sidhartha Vashisht @ Manu Sharma vs. State \(NCT of Delhi\)](#), (2010) 6 SCC 1].

17. However, Ganesh Bhavan Patel Vs. State Of Maharashtra, (1978) 4 SCC 371, is an authority for the proposition that delay in recording of statements of the prosecution witnesses under [Section 161](#) Cr.P.C., although those witnesses were or could be available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case. [See also [Balakrushna Swain Vs. State Of Orissa](#), (1971) 3 SCC 192; [Maruti Rama Naik Vs. State of Maharashtra](#), (2003) 10 SCC 670 and [Jagjit Singh Vs. State of Punjab](#), (2005) 3 SCC 68]. Thus, we see no reason to interfere with the observations of the High Court on the point of delay and its corresponding impact on the prosecution case."

71. He also placed reliance upon the judgment of Hon'ble Apex Court in the Case of **Shahid Khan vs state of Rajsthan, (2016) 4 SCC 96** wherein the Hon'ble Apex Court has held that the delay in recording the

statement u/s 161 Cr.P.c casts a serious doubt about their being eye-witnesses to occurrence. Relevant paragraphs of the same i.e. Paragraph Nos. 6 and 11 are quoted hereinbelow:-

"6. Mr. Sushil Kumar Jain, Senior Advocate appearing for the appellants contended that PW 25 Mirza Majid Beg and his driver PW 24 Mohamed Shakir who claimed to have witnessed the occurrence are chance witnesses whose presence at the place of occurrence is doubtful and their conduct in not informing the relatives of the deceased and not lodging police complaint is quite unnatural and their statements were recorded after 3 days of the occurrence for which there is no explanation and the prosecution case was conceived and constructed after a good deal of deliberation and it is doubtful. It is further contended by him that PW 25 Mirza Majid Beg implicated the appellants falsely because his son-in-law Khalid was tried for committing the murder of Kallu and in the said case the present appellant-Banti gave evidence against him as prosecution witness, resulting in conviction. It is his further submission that the courts below have erroneously believed the uncorroborated testimonies of the eye-witnesses and conviction and sentence imposed on the appellants are not sustainable in law and liable to be set aside. In support of his submission reliance was placed on various decisions of this Court.

11. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they are not examined for 3 days. It is also not known as to how the police came to know that these witnesses

saw the occurrence. The delay in recording the statements casts a serious doubt about their being eye-witnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, does not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and re-appreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt."

72. The cumulative ratio laid down in both the aforesaid decisions is that an unexplained and inordinate delay in recording statements of witnesses under Section 161 Cr.P.C. may cast a serious doubt on their presence as eyewitnesses to the occurrence. Relying upon this principle, the learned counsel for the appellants referred to the statement of PW-1, wherein he stated that upon reading his statement, he came to know that the Daroga had not mentioned the name of witness Man Singh therein.

73. However, as already discussed, this statement of PW-1 does not establish that the statement of Man Singh was recorded with delay. It merely indicates that PW-1 noticed an omission in his own statement at a later stage. The evidence on record clearly shows that the statement of Man Singh had already been recorded by the Investigating Officer.

Therefore, the principle relating to delay in recording statements under Section 161 Cr.P.C., as enunciated in the relied-upon judgments, is not attracted to the facts of the present case. On page 34 of his statement PW-1 states that "जब मैंने अपना बयान पढ़ा तब मालूम पड़ा कि दरोगा जी ने मेरे बयान में मानसिंह गवाह का नाम नहीं लिखा है। घटना के करीब तीन माह में बाद अपना बयान धारा 161 Cr.P.C. में गवाह मानसिंह का नाम दरोगा जी ने नहीं लिखा है कि तो यह बात दरोगा जी से कही थी।"

74. He further stated that after about three months of the incident, he read his statement recorded under Section 161 Cr.P.C., whereupon he noticed that the name of witness Man Singh had not been mentioned therein by the Daroga. The learned counsel for the appellants appears to be under a misconception that this witness himself got his statement recorded after a delay of three months. In fact, what the witness stated was that he read his statement after three months, and not that his statement was recorded after such delay.

75. This position is further clarified from his subsequent statement, wherein he stated that the Daroga had informed him that he had already recorded the statement of witness Man Singh. Consequently, he did not take Man Singh to the Daroga for recording his statement, as Man Singh himself had told him that his statement had already been recorded earlier.

76. Thus, it is evident that when this witness came to know that the name of Man Singh was not mentioned in his statement under Section 161 Cr.P.C., the statement of Man Singh had already been recorded by the Investigating Officer. Therefore, it cannot be said that the statements of the witnesses were recorded with undue delay.

77. Accordingly, this argument advanced by the learned counsel for the appellants is devoid of merit and deserves to be rejected.

78. Learned counsel for the appellants further argued that in the case in hand from the careful perusal of the evidence on record, it transpires that the dead body of the deceased has been dispatched on 13:45 However

the investigating officer who had prepared the site plan had categorically stated that he was mentioned the dead body in site plan to be present there, this factum clearly goes to show that the entire documentations done by the prosecution is wholly tainted and no credence can be attached to the same and the prosecution has deliberately suppressed the true and material facts, and the story has been created subsequently with a view to falsely implicate the accused persons on suspicion alone. In support of his argument he placed reliance upon the judgment of Hon'ble Apex Court in the the Case of ***Mahavir Singh vs state of M.P, (2016) 10 SCC 220***. Relevant paragraph of the same i.e paragraph nos. 23 and 24 are quoted herein below:-

"23. In view of contradictory statements by the prosecution witnesses coupled with the unmatched medical evidence, delay in recording of statements of witnesses by the I.O., non-availability of proper site plan and in the absence of authenticated ballistic expert report that the bullet had been fired with the seized gun of the appellant, the Trial Court had to decide the case against the prosecution and discharge the appellant from the charges. The High Court, upon carrying the exercise of reappraisal of evidence, formed the view that the reasons for delay in recording the statements of witnesses have been properly explained; that as soon as the bullet struck on the abdomen of the deceased, he immediately fell down from the platform. It further observed that though the name of Shanti Devi (PW 8) was not mentioned in the FIR, there is positive evidence on record to establish her presence at the time of incident along with other eyewitnesses and this fact has been established by their corroborative statements and there is no reason to disbelieve their statements. Here it is worthwhile to mention that both the Courts below formed a common opinion that the prosecution has failed to prove the charges under [Sections 148](#) and [302/149](#) of IPC against the co-accused and discharged them from those charges. The disagreement between the Trial Court and the High Court is only in respect of the charge under [Section 302](#), IPC against the appellant.

24. It is the duty of the Apex Court to separate chaff from the husk and to dredge the truth from the pandemonium of Statements. It is but natural for human beings to state variant statements due to time gap but if such statements go to defeat the core of the prosecution then such contradictions are material and the Court has to be mindful of such statements [See : Tahsildhar Singh v. State of UP, AIR 1959 SC 1012; [Pudhu Raja v. State](#), (2012) 11 SCC 196; [State of UP v. Naresh](#), (2011) 4 SCC 324]. The case in hand is a fit case, wherein there are material exaggerations and contradictions, which inevitably raises doubt which is reasonable in normal circumstances and keeping in view the substratum of the prosecution case, we cannot infer beyond reasonable doubt that the appellant caused the death of the deceased."

79. The learned counsel for the appellants further drew the attention of this Court to the statement of PW-11, the Investigating Officer. In his deposition, PW-11 stated that Inspector Jai Shankar Dubey left the place of occurrence about 10–15 minutes after his arrival at around 2:00 p.m. and thereafter at about 2:15 pm, he started recording the statement of the informant. He further stated that whatever he noted in the site plan (spot plan) that was based upon what he personally observed at the place of incident and what was disclosed to him by the witnesses.

80. PW-11 further stated that during the spot inspection he mentioned the presence of the dead body at the place of occurrence. He admitted that, in fact, the dead body was not present at the spot at the time of inspection and explained that the said mention was a clerical or handwriting mistake. Exhibit Ka-12, being the site plan prepared by him, also depicts the presence of the dead body of the deceased Bhajan Lal, which, according to him, was again an inadvertent mistake, as the dead body had already been removed.

81. He further clarified that the omission to specifically mention in the first-day papers that the dead body had been removed prior to his arrival was not deliberate. He denied the suggestion that he intentionally

suppressed this fact or that such omissions rendered the investigation doubtful. These discrepancies, being minor and clerical in nature, do not affect the core of the prosecution case nor do they render the investigation unreliable.

82. As per the statement of this witness (PW-11), he reached at the place of occurrence at about 2:00 p.m. According to Exhibit Ka-12, the inquest proceedings were conducted between 11:30 a.m. to 1:45 p.m. It is well settled that after completion of the inquest, the dead body is dispatched to the mortuary only after preparation of the requisite accompanying papers, which naturally consumes additional time. The officer conducting the inquest ordinarily leaves the spot only after completing all statutory formalities.

83. In these circumstances, it is reasonable to conclude that when this witness (PW-11) reached at the place of occurrence, the subsequent formalities connected with the inquest proceedings such as preparation of photo nash, challan lash, letter to C.M.O. and R.I., specimen seal, sealing of the dead body, after stitching in clothes etc. were still underway, and the dead body was in fact present at the spot at that time and after conclusion of inquest proceeding the dead body was removed from that place and sent to mortuary at the earliest. It is a statement of PW-11 that when he started spot inspection the dead body was not there but it is not in his statement that when he reached at spot the dead body was not there. This explains why he mentioned "Place A" in the site plan as the place where the dead body was lying.

84. It appears that although the site plan was prepared after the removal of the dead body, the earlier position of the dead body was inadvertently shown therein, resulting in a clerical or factual error. In light of the above facts and circumstances, such an omission or mistake cannot be said to be of such magnitude as to discredit the prosecution case or to render the investigation doubtful. The discrepancy is minor in nature and does not affect the core of the prosecution version.

85. *Per contra*, Ms. Manju Thakur, learned AGA-I on behalf of State submitted that both the appellants were involved in the present case. The incident was witnessed by the informant (PW-1), as well as by the eye-witnesses PW-2 and PW-3. The weapon of assault i.e. pistol and double barrel gun were recovered at the pointing out of the appellants. The testimony corroborates the post mortem report of the deceased. The deceased received as many as eleven injuries on his body. There is no evidence on record which remotely indicates that the accused-appellants were falsely implicated. The appellants have murdered the deceased and this Court may not take a lenient view on the quantum of sentence.

86. We have carefully perused the entire evidence on record and find that in Sessions Trial No. 179 of 1987, the appellants were convicted under Section 302 read with Section 34 IPC and sentenced to imprisonment for life for the murder of one Bhajan Lal. It is evident from the record that PW-1, PW-2, and PW-3 are ocular witnesses. All three witnesses consistently stated that they, along with the deceased Bhajan Lal, were proceeding towards Etawah for the purpose of marriage-related marketing. When they reached at the place of occurrence, the accused-appellants Ram Sewak and Jabar Singh arrived from behind on a motorcycle, which was being driven by Jabar Singh, with Ram Sewak as a pillion rider. After overtaking the witnesses and the deceased, Jabar Singh stopped the motorcycle and exhorted Ram Sewak to kill Bhajan Lal. Acting upon this exhortation, Ram Sewak opened fire with his gun, causing firearm injuries to the deceased. Out of fear, the witnesses ran for their lives and concealed themselves in a ditch situated at some distance. Thereafter, the accused persons approached Bhajan Lal, who had already fallen to the ground after sustaining firearm injuries, and fired upon him again from close range. As a result, Bhajan Lal succumbed to his injuries on the spot. On the pointing out of accused Ram Sewak, the DBBL gun used in the incident was recovered, and on the pointing out of accused Jabar Singh, a country-made pistol was recovered. From the place of occurrence, four empty cartridges were also recovered. All the recovered articles were sent to the Forensic Science

Laboratory, Lucknow, for examination. PW-10 conducted eight test firings—two from the country-made pistol recovered at the instance of Jabar Singh and six from the DBBL gun recovered at the instance of Ram Sewak. Upon examination, it was found that out of the four empty cartridges recovered from the spot, two had been fired from the recovered DBBL gun and the remaining two from the recovered country-made pistol. The post-mortem examination of the deceased Bhajan Lal revealed eleven injuries, out of which eight were firearm entry wounds and three were exit wounds. This indicates that at least eight shots were fired at the deceased, three of which were fired from very close range, while the remaining were from some distance. This medical evidence fully corroborates the testimony of the ocular witnesses, who stated that after Ram Sewak got down from the motorcycle, both accused subsequently approached Bhajan Lal and fired upon him at close range.

87. In view of the foregoing discussion and considering the overall facts and circumstances of the case, we are of the considered opinion that the ocular witnesses have remained consistent and reliable in their statements. All three witnesses have fully supported the prosecution case, and their testimony stands duly corroborated by the expert evidence, i.e. the Forensic Science Laboratory report and the post-mortem report. It is, therefore, established beyond reasonable doubt that the accused-appellants Ram Sewak and Jabar Singh were the very persons who opened fire at the relevant date, time, and place of occurrence upon the deceased Bhajan Lal, who succumbed to his injuries on the spot. The incident was witnessed by the three ocular witnesses, namely PW-1, PW-2, and PW-3.

88. Upon a deep consideration of the aforesaid facts and circumstances of the case, this Court is of the considered view that the learned trial Court has rightly, and in accordance with law, held that the prosecution has proved the offence punishable under Section 302 IPC against the accused-appellants beyond reasonable doubt. The learned trial Court has

correctly convicted the appellants and, after affording them an opportunity of hearing, sentenced them to imprisonment for life.

89. This Court finds itself in complete agreement with the findings recorded and the conclusions drawn by the learned trial Court. Nothing has been pointed out before this Court which may persuade it to take a different view from the one taken by the trial Court on the facts and circumstances of the case. The present appeal has been filed on misconceived and baseless grounds and is, accordingly, liable to be dismissed. It is remarkable that the trial court has held guilty the appellants for the offence of murder with common intention under section 302 IPC read with section 34 IPC but the applicability of section 34 IPC common intention comes into light when, the main role in committing offence is played by few persons while other than active culprit, some other accused is/are present on spot and the offence has been committed in furtherance of common intention of all of them and in that condition all the persons in furtherance of whose common intention the offence was committed are held liable for committal of all offence as individual liability but in present case, there are two accused/appellants and both have been assigned active role in the matter. Evidence depicts that both the accused appellants fired upon deceased with their respective fire-arms in such situation there is no need of applicability of section 34 IPC, hence the conviction order is liable to be modified as the accused-appellants Ram Sewak and Jabar Singh, are hereby held guilty of committing offence under section 302 IPC i.e., murder of deceased Bhajan Lal and the conviction order deserves to be upheld. However the sentence awarded by the trial court is not enough according to law because section 302 IPC puts an obligation on court to award a convict of murder, with capital punishment or with life imprisonment along with fine. The trial court has awarded life imprisonment to the appellants but ignored the imposition of fine which must be rectified in the manner of imposing fine on appellants in addition to sentence of life.

90. The appeal is, accordingly, **dismissed**. The impugned judgment and order passed by the learned trial Court to the extent it relates to section 302 IPC is upheld and accused **Ram Sewak** and **Jabar Singh** are sentenced to undergo life imprisonment and to pay a fine to the tune of Rs. 10,000/- each under section 302 IPC. In aforementioned case crime in default of payment of fine, they both shall further undergo imprisonment for a term of two years.

91. The accused – appellants are on bail. The bail bonds are cancelled and sureties are discharged. They shall surrender before the trial court within a week, to undergo the remaining sentence awarded to them by the trial court, failing which, the trial court is directed to adopt coercive measures for securing their presence, in accordance with law.

92. Let the trial court record along with a copy of the judgment be sent to the trial court within ten days.

(Lakshmi Kant Shukla,J.) (Siddharth,J.)

January 20, 2026

Arti