



2026:AHC:35250-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 460 of 1988

Vinaya Kumar Dubey

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Priyanshi Gupta (A.C.), A.C.Chaturvedi, Sunil Kumar Srivastava
Counsel for Respondent(s)	:	A.G.A.

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CRIMINAL APPEAL No. - 462 of 1988

Suresh Appellant(s)

Versus

State Respondent(s)

Counsel for Appellant(s) : T. Rathore

Counsel for Respondent(s) : A.G.A.

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

1. Heard Sri Pankaj Srivastav, learned counsel for the appellant in Criminal Appeal No. 460 of 1988 and Ms. Priyanshi Gupta, learned Amicus Curiae appearing for appellant in Criminal Appeal No. 462 of 1988 and Sri Prem Shankar Prasad, learned A.G.A for the State and perused the record as well as the judgment and order passed by the trial court.

2. The prosecution story according to the written F.I.R Ext. Ka-2 is that on 24.12.1981 complainant, Ravindra Singh, along with his brother, Dharendra Singh (deceased of the case) went to the Christian Inter College field to watch Sundi Memorial Tournament. They were sitting on the western wall of the ground watching the match. Satish Pal Singh, Sadan Mishra and Piyush Kumar, were also sitting on the same wall near them in the field a number of persons gathered there at about 11:30 a.m., namely, Vinaya Kumar Dubey armed with hockey, his brother, Dipak Kumar armed with country made pistol sons of Dr. Agam Prakash Dubey and Suresh, Vinaya

Verma along with two others unknown armed with hockey sticks came there and pounced upon them. Dipak Kumar opened fire at Dhirendra which injured him. Dhirendra as a result he fell down on the ground. The motive to commit the offence is alleged that Dhirendra and Dipak were inimical to each other since a long time and on 23.12.1981 at about 04:30 p.m on Devi Road in front of the hospital of Dr. Purang, there was some heated conversation between Dipak Kumar and Dhirendra, Piyush Kumar, Satish, Ravindra and Dipak Kumar hold out a threat to "see them in future." After causing the gun shot injury to Dhirendra, all the accused started to run towards station road and the complainant and the other witnesses chased them making hue and cry. At the same time, constables, Harnarain Singh, Prahlad Singh and Shayan Mohammad Khan, who were on duty, at that time also chased them and after a distance of about one furlong arrested accused, Vinaya Kumar Dubey, along with his hockey stick. A police jeep also arrived at the place of occurrence by which Dhirendra was taken to the district hospital, Mainpuri and P.W.-1, Ravindra Singh along with the accused, Vijay Kumar Dubey went at the police station where he handed over the F.I.R., Ex. Ka-1, on the basis of which H.M. Suresh Pal Singh noted down the chik report, Ex. Ka.4, and also registered the case in the G.D. vide Ex. Ka.-5 at 12:30 p.m. The hockey stick which was recovered from the possession of accused, Vijay Kumar Dubey, was also taken into custody by the head moharrir, who prepared memo, Ex. Ka-1. The case was registered under Sections- 147, 148, 149, 307 and 323 IPC. However, Dhirendra died at the hospital of which the intimation was made by the hospital authorities to the S.H.O., Kotwali where at 12:25 p.m the case was altered into under Section 302 IPC vide Ex. Ka.6. The investigation of the case was entrusted to S.I., Mahendrapal Singh and S.I., R.K. Gupta, was entrusted with necessary papers to conduct the inquest report of the deceased. He went there and after appointing pachas prepared inquest report, Ex. Ka-9, and after sealing the dead body handed over the same to constables Veerpal Singh and Prem Shankar for getting the post mortem along with the letter to C.M.O., letter to R.I., Chalan Nash, Photo Nash and sample of seal, Ex. Ka-10 to Ka-14, respectively. The post mortem of the dead body of deceased, Dhirendra was conducted by Dr. A.K. Upadhyay who found, one gunshot wound on the body of the deceased and prepared the post mortem report, Ex. Ka.-3. In his opinion, the death was caused due to shock and hemorrhage as a result of ante-mortem injuries. Satish Pal Singh and Ravindra Pal Singh, were also medically examined on the same day by Dr. S.C. Verma, who

noted down their injuries in the inquiry reports, Ex.Ka-7 and Ka-8 respectively.

3. The investigation of the case was completed by S.I., Mahendra Pal Singh, Chakra Lal Sharma, who transcribed out the necessary papers into the case diary, recorded the statements of the witnesses, inspected the spot and prepared the site plan, Ex. Ka.16. In order to substantiate the charges levelled against the accused persons, the prosecution has examined Ravindra Pal Singh, P.W.1; Satish, Pal Singh, P.W.2, the witnesses of the fact and other witnesses including; Dr. A.K. Upadhyay, P.W.3; H.M. Suresh Pal Singh, P.W.4; Dr. S.C. Verma, P.W.5; S.I. Rajan Lal Sharma, P.W.7; S.I. R.K. Gupta, P.W.6; S.I. Surendra Pratap Singh, P.W.7, C/s Veerpal Singh, P.W.9. The court has also examined Dr. D.P. Bhatnagar, Chief Medical Officer, Mainpuri as C.W.1 while Agam Prakash Dubey C.W.2 proved exhibits, noted above.

4. The accused were examined under section 313 Cr.P.C. The accused, Suresh, has submitted that Satish Pal Singh, Sadanand, Piyush and other persons were watching the match and being a witness in a case under section 307IPC, he was beaten by Satish Pal Singh, Piyush and Sadanand with hockey sticks and *dandas* in the field of Christian College and this occurrence took place between 11 p.m and 12 a.m and he got him medical examined at 12 or 12:30 in the night. The accused, Vinay Kumar Dubey, has stated that he has committed no crime and has been falsely implicated in the case on account of enmity of co-accused, Deepak with Piyush. About his arrest, he stated that he was taken from his house at 2:30 or 3 p.m. He further submitted that Piyush and Deepak had quarreled in Agra and due to that Piyush was inimical to him and he being the brother of Deepak has been falsely implicated in this case and the witnesses are deposing falsely against him. In their defence, the accused have examine Dr. S. Thariyani, D.W.-1 and Ramesh Chandra, D.W.2.

5. P.W.1, Ravindra Singh, in his examination-in-chief, has stated on oath that he knows accused, Vinay Kumar Dubey and Suresh. He further stated that they were five brothers but Dhirendra has been murdered. He has further stated that at about 10.30 a.m., he along with his brother, Dhirendra, were watching cricket match in the Christian Inter College field, Mainpuri. The tournament was being held by Sundi Memorial Society. He further stated that along with them, Satish Pal Singh, Piyush Kumar and Saha Anand

Mishra, were also watching the tournament. A large crowd had gathered there. They were witnessing the match by sitting on the western wall of the boundary of the field which runs from north to south. At the same time, Vinay Kumar Dubey, Deepak Dubey, Suresh, Vinay Verma, and two unknown persons came over there. Out of them, Deepak was armed with a country made pistol and rest were armed with hockey sticks. They came and pounced upon them to committing '*maarpeet*' till they tried to become alert. These accused were beating them and they were trying to save themselves. First, they beat Dharendra with a hockey stick and later Deepak opened a fire with the country made pistol at him and caused him injuries. In their defence, the accused caused injuries to Suresh, which were caused by Satishpal Singh. As his brother sustained fire arm injuries the accused started to run towards station road, but they and three constables, present there, chased them and succeeded in arresting Vinay Kumar Dubey along with the hockey stick. At the same time, a jeep passed by that way, which was stopped and his brother Dharendra was taken to the hospital. He along with accused, Vinay Kumar Dubey, and some other persons went at the police station, where he handed over the F.I.R., Ex.Ka.2 and also handed over the hockey stick and the accused to the police. The head moharrir prepared the memo for the hockey stick, Ex.Ka.1, which was witnessed by him. Regarding the motive he has submitted that one day before the occurrence there was some hot talks between him, his brother, Dharendra, Satish and Piyush with Vinay Kumar Dubey, Deepak Dubey and Suresh on Devi Road in front of the hospital of Dr. Purang in Mainpuri city.

6. P.W.-2 is Satishpal Singh, who stated on oath that he knows accused present in the court and also knew deceased, Dharendra Singh. One day before the occurrence, in the evening, deceased, Dharendra, Piyush and Ravindra had hot talks with Deepak Dubey, Vinay, Dubey and Suresh and Deepak Dubey threatened to Dharendra to see him in future. He further stated that on 24.12.1981 at was about 11 a.m when they were witnessing the match played at the Christian field sitting on the western wall of the playground, Ravindra, Dharendra, Piyush and Sata nand were also seeing the match. The match was arranged by the Sundi Memorial Tournament Committee. When they were watching the match, Deepak, armed with a country made pistol and Vinay Dubey, Suresh, Vinay Verma, and two others armed with hockey came there and started to commit '*maarpeet*' to them. He and Ravindra sustained the injuries of hockey. He snatched the hockey of

Suresh and in his defence committed 'maarpeet' to him. Suresh caused injuries to him by a brick bat. Later on Suresh snatched the hockey from him. Deepak Dubey opened a fire at Dharendra, which inflicted on the right side of his chest. He fell down. At the same time, the accused started to run towards station road. They were chased by them and three constables on duty arrested accused Vinay Kumar Dubey with his hockey after some distance. By that time, a police jeep passed, wherein Dharendra was taken to the hospital and Ravindra Pal Singh and Piyush took Vinay Kumar Dubey to the Police Station, where Ravindra Pal Singh lodged the F.I.R. He also submitted that he was medically examined at the hospital.

7. P.W.3, Dr. A.K. Upadhyay, stated on oath that on 24.12.1981 he was posted at District T.B. Hospital, Mainpuri. On that date, at about 4:15 p.m he conducted the post mortem on the dead body of deceased, Dharendra who was brought by constables, Veerpal Singh and Prem Shankar in the sealed condition. The probable age of the deceased was about 18 years who died in the hospital on the same day at 12:05. On his examination, he found the following injuries on his person :-

(i) Fire arm wound of entry 2cm x 1cm x cavity deep, left side chest in mediaxillary line 12 cm below from apex of left auxiliary. Margins inverted and lacerated. Blackening and tattooing present around the wound. Direction left to right oblique backward. One conical metallic bullet recovered from left phasic vertebral musculature at level of T.8th.

8. On the internal examination, he found that the plura was ruptured. The left lung was also ruptured and blood was present in the thorax cavity. He opined that the deceased died as a result of shock and hemorrhage caused by gunshot injury. He further stated that he found a metallic bullet in the injury and after sealing the same he send it to the S.S.P., Mainpuri. He also sealed the shirt, sweater and underwear, one pair of plastic shoes, one bandage stained with blood in a sealed bundle and handed over the same to the constable who brought the dead body.

9. P.W.4, H.M. Suresh Pal Singh, stated on that on 24.12.1981, when he was posted at police station- Kotwali on the basis of F.I.R., Ex.Ka-2, he noted down chik report, Ex.Ka.-4 and registered the case at 12.10 p.m vide Ex.Ka-5. He further submitted that on the same day, he received information regarding the death of Dharendra and altered the case under Section 302 I.P.C vide Ex.Ka.6. He also stated that he took into possession one hockey

and prepared memo, Ex. Ka.1.

10. P.W.-5, Dr. S.C. Verma, stated on oath that on 24.12.1981 when he was posted as Radiologist at District Hospital, Mainpuri, he medically examined, Satishpal Singh, son of Adarshpal Singh at 01:35 p.m and found the following injuries on his person :-

(i) Traumatic swelling 2cm x 1cm in back of skull mid line about 10 cm from right ear.

(ii) Lacerated wound 1.5cm x 0.2 cm x skin deep in the medical side of plantar aspect of right foot.

(iii) Linear abrasion 11cm in the lateral part of right left.

(iv) Contused abrasion in the area of 3cm x 1.5cm just below the medial malleolus of left foot. Colour read.

In his opinion, these injuries were simple and would have been caused by some blunt object. He also proved the injury report, Ex.Ka.7.

11. On the same day he also examined, Ravindra Pal Singh at 1:40 p.m and found the following injuries on his persons :-

(i) C/o pain in the left lower side back but no mark of injury seen.

He also proved the injury report, Ex.Ka.8. He opined that all the injuries would have been caused by the hockey sticks and brick-bats and would have been caused on the same day at 11:30 a.m.

12. P.W.-6, S.I., R.K. Gupta, stated on oath that on 24.12.1981 when he was posted as S.I., P.S.-Kotwali on the basis of G.D. Ex. Ka.6 at 12:35 p.m., he proceeded to the District Hospital, Mainpuri, for preparing the inquest report of the dead body of deceased, Dharendra. On 12:50 p.m he reached there and after appointing the panches prepared the inquest report. Ex. Ka.9. He also prepared letter to C.M.O., letter to R.I., Chalan nash, photo nash and sample of seal. Ex.Ka 10 to Ka-14 respectively. He further stated that after sealing the dead body he handed over the same to constables, Prem Shankar and Veerbal, for getting the post mortem done and also handed over them, Ex. Ka.-10 to Ka-15.

13. P.W.-7, S.I., Rajan Lal Sharma, stated on oath that on 01.09.1982 after completing the investigation, he submitted charge sheet against accused,

Vinay Kumar Dubey, Deepak Dubey, Suresh and Vinay Verma which is Ex. Ka. 15.

14. P.W.-8, S.I., Surendra Pratap Singh, stated on oath that on 24.12.1981 when he was posted as Sub-Inspector, police station- Kotwali, he was entrusted with the investigation of this case. He recorded the statements of Satish Pal Singh and H.M. Suresh Pal Singh. Thereafter, he proceeded to the District Hospital, Mainpuri and found S.I., R.K. Gupta, preparing the inquest report at the dead body of the Dhirendra. Later, he recorded the statement of Satish Pal Singh, Ravindra Pal Singh, he also inspected the place of occurrence and prepared the site plan Ex.Ka.6. He also recorded the statement of constables, Sayan Khan, Prahlad Singh and Narain Singh. After receiving the post mortem report he noted down the same in the case diary. On 29.01.1981 he recorded the statement of C/Dr. Rajpal Singh and after that the investigation was taken by Inspector Incharge of police station- Kotwali.

15. P.W.-9, C/s Veerbal Singh, stated on oath that on 24.12.1981, when he was posted at out-post Ganesh Burj, and the dead body of deceased Dhirendra along with the necessary papers, was handed over to him for getting the postmortem done. He took the dead body to the mortuary and gave the necessary papers to the authorities, and till the time the dead body remained in his possession, none was allowed to interfere with it.

16. C.W.-1, Dr. D.P. Bhatnagar, Chief Medical Officer, Mainpuri and C.W.-2, Agam Prakash Dubey, whose statements are not relevant for the case against the accused as they were produced only to prove the age of accused Deepak.

17. D.W.-1, Dr. S. Tharayani, witness has proved the injury report of accused, Suresh Chandra. He stated on oath that on 24/25.12.1981 at about 12:30 p.m he examined accused, Suresh and found the following injuries on his person :-

(i) lacerated wound 2cm x 3/4cm x muscle deep in swelling around on the left forehead 1 - 1/2 cm lateral to outer end of the left eye brow cloted. Injury kept U/o. Advised X-ray.

(ii) Lacerated wound 2cm x 1/2 cm x scalp deep on the top and back of the skull to 24 cm above.

(iii) Abraded contusions red 3cm x 1-1/2 cm on the left side deep 8cm from left ear 20cm above to left eye brow.

(iv) Abrasion 1/2 cm x 1/2 cm proximal end of the thumb at the left hand dorsally.

(v) Abrasion 1cm x 1/3 cm dorsum side of the right finger on the left hand.

(vi) Abrasion 6cm x 1/8 cm dorsum of the right hand with complaint of pain.

(vii) Abrasion 3cm x 1cm on the upper and outer part of the right thigh.

(viii) Contusion 3cm x 1cm on the right side back on scapular region red.

(ix) Complaint of pain all over body. No other visible injury seen.

He opined that the injuries were about half day old and also proved the medical report. Ex.Kha.1.

18. D.W.-2, Ramesh Chandra, stated on oath that he is the owner of 70-80 bighas land situated in village Udaypur and is Yadav by caste and resident in city Mainpuri in front of the house of Agam Prakash Dubey. He further stated that he knows his son, Vinay Kumar Dubey, who was arrested before him on 24th of December by 3-4 constables from his house.

19. Learned counsel for the appellant has submitted that this case falls within the domain of private defence; genesis of the incident has been concealed by the prosecution since the injuries suffered by appellant, Suresh and duly proved by D.W.-1, were not explained by the prosecution. The conviction of the appellant with the help of Section 149 IPC was unwarranted in this case, since the unlawful assembly of all the accused was not proved before the trial court beyond the reasonable doubt; the defence taken by the accused and their statements under Section 313 Cr.P.C were not considered by the trial court. The appellant, Vinay Kumar Dubey, has been implicated because of being brother of the main accused, Deepak Dubey, in this case.

20. Learned A.G.A has opposed the submissions made by learned counsel for the appellant and has submitted that the plea of private defence has only been raised before this court, whereas all the accused formed unlawful assembly and caused the alleged incident of murder. He has further submitted that the appellant, Suresh, suffered injuries somewhere else and

not in the present incident. The judgment of the trial court is based on the material on record and may be confirmed.

21. After hearing the rival submissions and the material on record, we gathered in impression that it was not a one sided assault made by the appellant's side on the defence side but rather both the parties entered into violence and assaulted each other. The injury suffered by appellant, Suresh, was duly proved by D.W.-1 before the trial court with reference to the time of the incident. The prosecution witnesses, in their testimonies did not revealed anything about the injuries sustained by the defence, nor did they have disclosed the genesis of the occurrence though they deposed about the incident they remained silent throughout about its real genesis. The defence has proved its injuries and the fact that they were caused to the appellant, Suresh, in the same incident. Therefore, an adverse inference can be drawn against the prosecution for not affording any explanation much less a plausible one. The prosecution has not brought on record the correct version of the incident.

22. The Hon'ble Supreme Court in ***State of Rajasthan vs. Madho and others. AIR 1991 SC 1065***, had observed that:

"If the prosecution witnesses shy away from the reality and do not explain the injuries caused to the respondents herein, it casts a doubt on the genesis of the prosecution case since the evidence shows that these injuries were sustained in the course of the same incident. It gives the impression that the witnesses are suppressing some part of the incident".

23. Reference to the observations of the Hon'ble Apex Court in ***Lakshmi Singh and others vs. State of Bihar. (1976) 4 SCC 394***, would be apt wherein it has been held that:

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

"(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore, their evidence is unreliable:

(3) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case."

24. Recently, the Honb'le Supreme Court by reiterating the observations as referred above in ***Nand Lal and others vs. State of Chhatisgarh (2023)2 SCR 276***, had held as under:

"Omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes improbability with that of the prosecution more particularly when some of the witnesses have lied by stating that they did not see any injuries on the person of the accused"

Thus non-explanation of injuries, on the persons of the accused, creates a doubt, as to whether, the prosecution has brought on record, the real genesis of the incident. Such non-explanation, however, is a factor which is to be taken into account in judging the veracity of the prosecution witnesses, and the Court has to scrutinize the evidence with care. Each case presents its own features. In some case, the failure of the prosecution to account for the injuries of its story, while in others it may have little or no adverse effect on the prosecution case. It may also, in a given case, strengthen, the plea of private proposition of law of universal application that as soon as it is found that the accused had received injuries in the same transaction in which the complainant party was assaulted, the plea of private defence would stand prima facie established and the burden would shift to the prosecution to prove that those injuries were caused to the accused in self defence by the complainant party.?

25. Now, considering the implication of the accused with the help of Section 149 IPC , the provision needs consideration. Section 149 of the Code deals with common object. To attract this provision there must be evidence of an assembly of five persons or more with the common object becoming an unlawful one. The concept of constructive or vicarious liability is brought into this provision by making the offense committed by one member of the unlawful assembly to the others having the common object. It is the sharing of the common object which attracts the offense committed by one to the other members. **Therefore, the mere presence in an assembly per se would not constitute an offense, it does become one when the assembly is unlawful It is the common object to commit an offense which results in the said offense being committed. Therefore, though it is committed by**

one, a deeming fiction is created by making it applicable to the others as well due to the commonality in their objective to commit an offense. Thus, it is for the prosecution to prove the factors such as the existence of the assembly with a requisite number, the common object for everyone, the object being unlawful, and an offense committed by one such member. Courts will have to be more circumspect and cautious while dealing with a case of accused charged under Section 149 IPC, as it involves a deeming fiction. Therefore, a higher degree of onus is required to be put on the prosecution to prove that a person charged with an offense is liable to be punished for the offence committed by the others under section 149 IPC. The principle governing the aforesaid aspect is taken note of by Apex Court in *Ranjit Singh Vs. State of Punjab, (2013) 15 SCC 752:32. Baladin v. State of U.P. [AIR 1956 SC 181: 1956 Cri LJ 345]* which was one of the early cases in which Apex Court dealt with Section 149 IPC. It held that mere presence in an assembly does not makes a person a member of the unlawful assembly, unless it is shown that he had done or omitted to do something which would show that he was a member of the unlawful assembly or unless the case fell under Section 142 IPC.

26. The observations made in *Baladin case [AIR 1956 SC 181: 1956 Cri LJ 345]* were considered in *Masalti v. State of U.P. [AIR 1965 SC 202: (1965) 1 Cri LJ 226]* where this Court explained that cases in which persons who are merely passive witnesses and had joined the assembly out of curiosity, without sharing the common object of the assembly stood on a different footing; otherwise it was not necessary to prove that the person had committed some illegal act or was guilty of some omission in pursuance of the common object of the assembly before he could be fastened with the consequences of an act committed by any other member of the assembly with the help of Section 149 IPC. The following passage is apposite in this regard: (Masalti case [AIR 1965 SC 202: (1965) 1 Cri LJ 226], AIR p. 211, para 17)

"17.... The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined entertain the common object of the assembly. It is in that context the assembly as a matter of idle curiosity without

intending to that the observations made by this Court in Baladin [AIR 1956 SC 181: 1956 Cri Lj 345] assume significance, otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly".

27. Again in ***Bajwa v. State of U.P. ((1973) 1 SCC 714]*** Apex Court held that while in a faction-ridden society there is always a tendency to implicate even the innocent with the guilty, the only safeguard against the risk of condemning the innocent with the guilty lies in insisting upon acceptable evidence which in some measure implicates the accused and satisfies the conscience of the court.

28. In a faction-ridden community, there is a tendency to implicate innocents also along with the guilty, especially when a large number of assailants are involved in the commission of an offence is a matter of common knowledge. Evidence in such cases is bound to be partisan, but while the courts cannot take an easy route by rejecting such evidence out of hand instead they ought such evidence out of hand to approach the depositions carefully and scrutinize the evidence more closely to avoid any miscarriage of justice.

29. We further finds that in the F.I.R and statement of witnesses, the clear role of causing the only fatal fire arm injury to the deceased was assigned to Dipak Dubey, brother of appellant, Vinay Kumar Dubey and P.W.-3 proved that the deceased suffered solitary fire arm injury on his left chest and the same proved fatal for his life. Simple injuries were suffered by Satish Pal Singh as per P.W.-5. The motive of crime was the enmity between the deceased, Dharendra and Dipak Dubey, who had long standing enmity and on 23.12.1981 at about 04:30 p.m hot talks took place between them and Dipak extended threat to Dharendra and his companions to see them in future. It is alleged that the appellant, Vinay Kumar Dubey, was arrested

with hockey in his hand which D.W.-2 disputed but we find that no fatal injury was suffered by the deceased, Dharendra, caused by hockey. He died because of suffering a solitary fire arm injury on left side of his chest which was clearly attributed to Dipak Dubey. The injuries suffered by Satish Pal Singh and Ravindra Pal Singh, were simple in nature and no specific allegations were made against any of the accused of causing them the aforesaid injuries. The prosecution also did not explained how the appellant, Suresh, suffered 9 injuries proved by D.W.-1.

30. From the judgment of the trial court it appears that although the trial court has mentioned in the judgment that statements of the accused were recorded under Section 313 Cr.P.C., their defence has not been considered by the trial court in his judgment at all.

31. The non consideration of the statement of the accused-appellant recorded in Section 313 Cr.P.C by the trial court is a serious omission.

32. The Apex Court in the case of ***Rattan Singh vs. State of Himachal Pradesh, AIR 1997 SC 768*** has held that examination of Section 313 Cr.P.C is not mere formality. Answers given by accused to question up to him are for the purpose of affording opportunity to the accused to explain the incriminating circumstances against him. This helps the court in appreciating the entire evidence produced before the court during trial. Even in a case of death sentence, the accused were exonerated by this court because of non-consideration of the statement of accused under Section 313 Cr.P.C by the trial court in the case of ***Adil vs. State of U.P., 2008 (62) ACC 151 (All)*** relying the judgment of the Apex Court in the case of ***Ajay Singh vs. State of Maharashtra, 2007(58) ACC 1061 (SC)***.

33. In view of the overall consideration of the facts and circumstances of the case, this court finds that the prosecution failed to prove its case beyond reasonable doubt against the appellants and therefore the appellants deserves to be extended benefit of doubt and acquitted of all charges.

34. The judgment and order of trial court is hereby set aside.

35. The appellants are on bail. Their bail bonds are cancelled and sureties are discharged. They need not surrender.

36. Both the criminal appeals are allowed.

37. Let the lower court record be returned along with copy of the judgment of trial court.

38. Learned Amicus Curaie, Ms. Priyanshi Gupta, shall be paid an amount of Rs. 10,000/- towards her professional fees within three weeks from the date of raising of bill.

February 17, 2026
Rohit

(Jai Krishna Upadhyay,J.) (Siddharth,J.)