



2026:AHC:42416-DB

Reserved on 03.02.2026
Delivered on 25.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1684 of 1987

Sukhlal And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Pranvesh, Chandra Kant Bharadwaj,
Pradeep Pandey, Raghuvansh Misra,
Yagyadhar Tripathi

Counsel for Respondent(s) :

In Chamber

HON'BLE SIDDHARTH, J.
HON'BLE JAI KRISHNA UPADHYAY, J.
(Delivered by Hon'ble Siddharth, J.)

1. Heard Mr. Raghuvansh Misra, Mr. Ashwini Tripathi and Mr. Pranvesh, Amicus Curiae, appointed in this case because of earlier absence of counsel for appellants; Mr. Sushil Kumar Pandey, learned AGA-I for State-respondent; perused the record of the trial Court and judgment and order passed by the trial Court.

2. This criminal appeal has been preferred against the judgment and order dated 29.6.1987 passed by Ist Additional Sessions Judge, Bareilly, in Sessions Trial No. 293 of 1985, convicting and sentencing the appellants to undergo for life imprisonment under Section 302/34 I.P.C.

3. The prosecution case, in brief, is that in the intervening night of 20/21.7.84 complainant, Pooran Lal, P.W.1, resident of village Sarawat Gauntia, a hamlet of village Bara Sirsa, under police circle Aliganj, District Bareilly and his son, Shiv Singh, were sleeping under the thatched structure placed in front of their house at point 'F' as shown in site-plan Ex. Ka.7 and Bani Singh, cousin of Pooran Lal and other

inmates were sleeping inside the house of Bani Singh which is adjacent to the house of Pooran Lal as shown in site-plan Ex.Ka.7. At about 3.00 a.m. in the said night Pooran Lal woke up after hearing the sound of gun shot fire and cries of Bhu Devi, wife of Bani Singh (P.W.2) and his sister Shakuntla, P.W.3 and in the meantime one more shot was fired and thereupon Pooran Lal and his son, Shiv Singh, rushed towards the house of Bani Singh and saw that accused, Sukh Lal, armed with a gun, accused, Rajpal, carrying a torch and a lathi and accused, Shishupal, carrying a country made pistol, all residents of the same village, came out of the house of Bani Singh and were running away. Complainant, Pooran Lal and his son, Shiv Singh, recognized them in the moon light and chased them for some distance. Accused threatened them of dire consequences with fire-arms and escaped. Complainant and his son went inside the house of Bani Singh and saw that a kerosene oil '*Dibbi*' was burning and Bani Singh was lying-dead on a cot placed inside the thatched structure. Bhu Devi and Shakuntla told them that just now accused, Sukhlal, who was armed with a gun; accused, Shishupal, who was armed with a country made pistol and accused Rajpal, who was armed with a lathi and torch, committed murder in the manner that accused, Rajpal, flashed light from his torch and accused, Sukhpal and Shishupal, fired shots from their respective fire arms from close range at Bani Singh, who was sleeping on the cot and they recognized the accused in the light of moon and light emitted from burning kerosene oil *Dibbi*. They also informed that Dori Singh was also sleeping on the cot of Bani Singh but he also woke up at the sound of first fire. The motive for committing the crime, as mentioned in the report, is that about one month prior to this occurrence, gun of one, Ram Singh, was stolen and Ram Singh named Bani Singh and Shiv Singh as well as their other relations as accused for committing the theft and this

Ram Singh is a relation of Karan Singh, father of Shishupal and Nem Chand, father of other two accused, Sukhlal and Rajpal.

4. The complainant went to Police Station Aliganj which is situated about 8 miles away from the village and lodged the F.I.R. Ex. Ka.1 on 21.7.84 at 7.00 a.m. orally which was recorded by constable- Clerk Jagdish Prasad. He also made an entry in the G.D. at serial No.58 the same time whose copy Ex. Ka.3 is on record.

5. The prosecution examined Pooran Lal, P.W.1, complainant, who proved his report Ex.Ka.1 as a witness who allegedly saw the accused at the time of their escape and came to know details of the occurrence just after occurrence from other eye witnesses. Smt. Bhu Devi and Shakuntla, P.W.2 and P.W.3, respectively are alleged eye witnesses of occurrence. Dr. F.B.Singh, P.W.4, proved postmortem report Ex.Ka.2. I.O. Surendra Kumar Saxena, P.W.5, proved F.I.R. Ex.Ka:1, copy of G.D. Ex.Ka. 3, inquest report Ex.Ka, photo-lash Ex.Ka. 5, Challan-lash Ex.Ka.6, site-plan Ex.Ka.& 7 memo of blood stained earth and unstained earth Ex.Ka.8, memo in respect of clothes Ex. Ka.9, memo of kerosene oil *Dibbi* Ex. Ka.10, charge-sheet Ex.Ka.11 and material Exts.quilt Ex.1, towel Ex.2, shirt Ex.3, blood stained earth Ex.4 and unstained earth Ex.5.

6. Pooran Lal, P.W.1, has clearly stated that about two years two months ago in the Hindi month of *Sawan* he and his son, Shiv Singh, were sleeping inside a thatched structure placed in front of his house in the fateful night of occurrence and in the said night Bani Singh was sleeping inside his thatched structure placed in front of the *Kotha* of his house and at about 2.30 and 3.00 a.m. he and his son woke up after hearing the sound of one gun shot fire and as soon as second shot was fired he and his son reached at the main door of the house of Bani Singh and saw accused,

Sukhlal, armed with a double barrel gun, Rajpal, accused, carrying a lathi and a torch and Shishupal armed with a pistol, hurriedly coming out of the house of Bani Singh and escaping towards the south. He further stated that accused were about two paces away from him when he recognized them in the moonlight at the the time of their escape and they also threatened him with dire consequences and he also recognized them from their voices. He further stated that thereafter he and his son went inside the house of Bani Singh and saw Bani Singh lying dead on the cot and a kerosene oil *Dibbi* was burning inside the thatched structure and Bhu Devi and Shakuntla were present and they told him about the occurrence and also said that Sukhlal and Shishupal fired one shot each from their fire arms at Bani Singh and at that time Rajpal flashed light from his torch. He also stated that he proceeded to the Police Station at the time of sunrise and reached there the same day at about 9.00 a.m. and lodged the report Ex.Ka.1.

7. Smt. Bhu Devi, P.W.2, wife of the deceased, Bani Singh, has stated that accused, Sukhlal, Shishupal and Rajpal were known to her from before and about two years ago in the night, in the Hindi month of '*Sawan*' she and her husband Bani Singh were sleeping under a thatched structure placed in front of the *Kotha* of her house and in the said night her '*Nand*' Shakuntla was sleeping in the inner courtyard and her son, Dori Singh, was sleeping on the cot of Bani Singh. She further stated that at about 2.00 a.m. she and her '*Nand*' and her son, Dori Singh woke up after hearing the sound of gunshots fire and at that time small kerosene oil lamp was burning inside the thatched structure and it was moonlit night and she saw that accused, Sukhlal, armed with a gun fired a shot at her husband causing injury on his neck and Shishupal, armed with a country

made pistol, fired a shot at Bani Singh causing firearm injury on his person and accused, Rajpal, was also along with the accused who, was carrying a lathi and a torch and he flashed light from his torch at the time of occurrence. She, stated that she and her *Nand* raised cries and thereupon her 'Jeth' Pooran Lal and his son, Shiv Singh, arrived there and accused escaped and Bani Singh died on the cot where he was sleeping and blood oozed out which fell on the cot and the ground and he told the names of the accused to Pooran Lal and Shiv Singh. Smt. Bhu Devi. She was cross-examined at length but trial court found that nothing has come out in her cross-examination to disbelieve the testimony on the point that the accused, Sukhlal and Shishupal, fired one shot each from the gun and a country made pistol respectively at Bani Singh in the fateful night of occurrence and she clearly recognized the accused in the light emitted from a small kerosene oil *Dibbi* which was burning at the time of occurrence and moon light and also in the light flashed from torch by accused Rajpal. In para 6 of her cross-examination this witness undoubtedly, stated that her 'Jeth' Pooran Lal remained at the house till the arrival of the police which arrived at about 10.00 a.m. in the following morning while Pooran Lal P.W.1 stated that he himself went to Police Station by a 'Tonga' and he reached the Police Station at about 9.00 a.m and lodged the report. The trial court has held that Smt. Bhu Devi, P.W.2, might have been in shock on account of the death of her husband and might not have noticed that Pooran Lal, P.W.1, himself went to Police Station to lodge the report. Merely, on the ground that she has stated that Pooran Lal, P.W.1, did not go to the Police Station till the arrival of the police at 10.00 a.m. her testimony cannot be disbelieved.

8. Smt. Shakuntla, P.W.3, has stated that she came to her parents' house

from her husband's village Sirsa, District Budaun about two months prior to the occurrence and in the fateful night in the month of '*Sawan*' she was sleeping inside inner courtyard of the house and her brother, Bani Singh, and sister-in-law, Bhu Devi, were sleeping inside the thatched structure placed in front of the *Kotha* and Dori Singh, son of Bani Singh, was sleeping on the cot of Bani Singh and a small kerosene oil lamp was burning inside this thatched structure kept in the '*Tak*' of the *Kotha*. She further stated that at about 2:00 or 2.30 a.m. in the said night she woke up after hearing the sound of gun shot fire and saw that Bhu Devi and Dori Singh were standing near the cot and accused Sukhlal, armed with a gun and Shishupal, armed with a pistol and Rajpal, carrying a lathi and torch, were present there and Rajpal flashed light from his torch and Sukhlal took out an empty cartridge from his gun and therefore, she was sure that it was Sukhlal, who fired the first shot and thereafter Shishupal fired the second shot at Bani Singh and both fires caused injuries on the person of Bani Singh. She further stated that she and Bhu Devi raised a cry and thereupon his another brother, Pooran Lal, arrived there and accused escaped. She further stated that it was moonlit night and she clearly recognized the accused in the light emitted from kerosene oil lamp and moon light. She further stated that Bani Singh died of gunshot injuries on the cot and blood fell on the cot and on the ground. She further stated that she narrated the occurrence, but she did not herself tell the names of the accused to Pooran Lal. In her cross-examination she undoubtedly stated that there was some consultation before lodging the report and Chowkidar was sent to the Police Station and Police Inspector came in the following morning about 8.00 or 9.00 a.m. in the village. The trial court has held that that PW-3 has given statement under unguraded moment that assailants were wrapping a piece of cloth around their mouths but she has

given a categorical statement that she clearly recognised the accused on the spot.

9. On 22.7.84 at 3.00 p.m. Dr. F.B.Singh, Medical Officer, district Hospital Bareilly performed autopsy on the dead body of Bani Singh and gave postmortem report Ex.Ka.2.

10. P.W.4, Dr. F.B. Singh, deposed that on 22.7.1984 he was the Medical Officer at District Hospital Bareilly and on this date at 3.00 p.m. he performed an autopsy on the dead body of Bani Singh which was brought by constables Reoti Prasad and Suresh Chandra in sealed bundle who identified the same. From the testimony of Dr. F.B.Singh and postmortem report Ex.Ka.2 proved by him it is clear that Bani Singh was about 35 years of age of average built. Rigor mortis was present in lower limb and had passed off in upper limbs. The abdomen was distended, decomposition had set in Blisters were present. The eyes were half open. The doctor found following antemortem injuries on the person of Bani Singh:-

i. Gunshot wound of entry 2 cm x 2 cm x mouth cavity deep on the right side of back of neck upper part 2 cm. behind the right ear, Blackening, tattooing and scorching were present. Margins were inverted. Direction was right to left.

ii. Gunshot wound of entry 2 cm. in diameter on the upper part of right side of chest 3 cm below the middle of right shoulder. Margins inverted, blackening, tattooing and scorching present. Direction down ward.

11. In internal examination doctor found base of skull fractured into pieces and one Gatta piece and 18 pellets were found. The doctor found the right clavicle and first and 2nd ribs fractured. The pleura was lacerated on both sides. One litre blood stained fluid present. One Gatta

and 25 pellets found. The doctor found both lungs lacerated and removed four pellets from right lung and 3 pellets from left lung. Doctor found heart punctured at two places and removed two pellets. Heart was found empty and weighed 200 grams. The pericardium punctured at places. Large blood vessel lacerated on right side heart. Peritoneum cavity did not contain anything. Doctor found fractures of upper and lower jaw zygomatic and nasal bones and found 20 pellets. The tongue was found lacerated. Doctor found faecal matter and gases in intestines. Gall bladder and bladder half full. In the opinion of doctor death was due to shock and hemorrhage due to ante mortem injuries which could have been caused on 21.7.84 at about 3.00 a.m. In his cross-examination he stated that in the estimate of time of death there could be a difference of 6 hours on either side and death could be instantaneous and at the most within 10 or 15 minutes after sustaining ante mortem injuries. Trial court held that nothing has come out in the cross-examination of doctor F.B. Singh to belie the prosecution case. From inquest report Ex. Ka.4, prepared by I.O. S.K. Saxena P.W.5 and from statements of Pooran Lal, P.W.1, Smt. Bhu Devi, P.W.2 and Shakuntla, P.W.3, it is also established that Bani Singh died in the night between dated 20/21.7.1984 due to gun shot injuries sustained by him in the occurrence. The prosecution has proved the death of Bani which is not denied by the accused.

12. PW.5, Sri Surendra Kumar Saxena, S.O., P.S. Aliganj who was present at the time of the lodging of the report. He also put his signatures on F.I.R. and took the statements of Pooran Lal and C/C Jagdish Prasad immediately at the Police Station. He alongwith relevant papers and police force reached the place of occurrence the same day and prepared inquest report Ex. Ka.4 after taking the dead body in police custody and

appointing Panches. He prepared photo-lash Ex. Ka.5, and challan-lash Ex. Ka.6 and duly sealed the dead body and sent it to the Bareilly mortuary through constables Reoti Prasad Gupta and Suresh Chandra. He recorded statements of witnesses, Bhu Devi, Smt. Shakuntla, Dori Singh and Shiv Singh and prepared site-plan Ex.Ka.7 of the place of occurrence. He took blood stained and unstained earth from the spot and kept it in separate containers, are prepared memo Ex. Ka.8 in this respect. He took one blood stained quilt Ex.1, one towel Ex.2 and shirt Ex.3 from the cot and prepared memo Ex. Ka.9 in this respect. He took kerosene oil *Dibbi* from the spot and after, examining the same gave into *Supurdgi* of Smt. Bhu Devi after preparing *Supurdginama* Ex. Ka.10 in presence of witnesses. The I.O. searched for the accused but they were not traceable.

13. The accused have denied their guilt in their statements, recorded under Section-313 Cr.P.C. They stated that they were implicated by Pooran Lal in a false case on account of illwill. They denied their relationship with Ram Singh while Pooran Lal (P.W.1) in para 8 of his statement stated that Ram Singh and Nem Chand, father of accused Sukhlal and Rajpal accused, are *Sarhoo* (brother-in-law) as parents of their wives are of one village Dharampur and of same Gotra and Khandan. The accused have also filed copy of statement Ex.Ka.1 of Nem Chand, father of accused, Sukhlal and Rajpal, which shows that he was a witness in Criminal Case No.4/84 in the Court of Munsif-Magistrate Bareilly and he deposed as prosecution witness and gave statement in favour of Ram Singh. From this statement, it also comes out that Nem Chand was married in village Dharampur and second marriage of Ram Singh was also performed in village Dharampur.

14. Learned counsel for the appellant has submitted that in this case real

genesis of the incident was suppressed and the sanctity of FIR is doubtful; PW-2 and PW-3 are the eye-witnesses of the incident, but they did not receive any injury in the incident when they were near the deceased at the time of alleged incident; the prosecution witnesses of fact are interested and partisan and therefore, their testimonies were not required to be accepted by the trial court as genuine; it is a case of night incident and source of light and identification of accused was not believable; no incriminating recovery made from the appellants nor was the motive assigned to them was fully proved; no injury caused by *lathi* was found on the person of the deceased, when the appellant, Rajpal, was stated to be armed with lathi.

15. Learned AGA has opposed the submissions advanced by learned counsel for the appellant and has submitted that from the evidence led before the trial court, the prosecution case was fully proved. The trial court has rightly believed the testimonies of PW-1, PW-2 and PW-3 and discarded the defence set up by the accused before the trial court with cogent reasons for the same. The judgment and order passed by the trial court is well merited and may not be interfered with.

16. After considering the rival submissions and perusing the trial court record as well as the judgment and order passed by the trial court, we find that the issue regarding the real genesis of the incident and the sanctity of FIR is required to be dealt with. The FIR was registered on 21.7.1984 at 7:00 a.m. on the basis of oral information given at the police station by PW-1 by Constable Jagdish Prasad. PW-1 claimed that he reached the Police Station Aliganj at Aliganj at 09:00 a.m. in the morning, whereas it is on record that the FIR was registered at 7:00 a.m. on the next day following the incident on 21.7.1984. PW-2 stated before the trial court

that information was sent to the police by Mool Chand, Chowkidar and police came to the place of incident at about 10:00 a.m. on the next day and till then Pooran Lal (PW-1), her brother-in-law, remained in the house. PW-1 stated that he went to the police station by a 'Tanga' and reached there at 09:00 a.m. and then got the FIR lodged there. The finding of the trial court that since PW-2 was shocked, she might not have noticed the presence of PW-1 in the house cannot be accepted. Since PW-1 himself admitted that he reached the police station at 09:00 a.m. when the FIR was lodged at 07:00 a.m. Prosecution failed to explain this anomaly in the statements of PW-1 and PW-2 and the recital in the FIR.

17. The genesis of the incident also appears to be doubtful since PW-3 admitted that after the incident consultation took place before lodging the FIR and the Chowkidar was sent to the police station and if the FIR is read alongwith the statements of PW-1 and PW-3, the genesis of the incident seems to be doubtful. It was claimed that inquest was conducted at 11:30 a.m. at the place of incident, whereas according to PW-2 all the proceedings and paperwork were done at the police station. Therefore, it appears that FIR was shown to be lodged at 07:00 a.m., but in view of the statements of PW-1, PW-2 and PW-3, it appears that it was ante-timed and registered after due deliberation and consultation in collusion with the police.

18. Learned counsel for the appellant has relied upon the judgment of Apex Court in the case of ***Marudanal Augusti Vs. State of Kerala, (1980) 4 Supreme Court Cases 425*** and has submitted that once FIR was found to be fabricated or brought into existence long after the occurrence, the entire prosecution case collapses and in such cases benefit of doubt should be extended to the accused.

19. In this regard, reliance has been placed on the judgment of Apex Court in the case of ***Babu Sahebagouda Rudragoudar Vs. State of Karnataka, (2024) 8 SCC 149, paragraph No.47 herein is quoted below:-***

“47. Apparently, thus, the close relatives of the deceased had gone to the police station in the late hours of 19th September itself. If this version was true then, in natural course, these persons were bound to divulge about the incident to the police and their statement/s which would presumably be about an incident of the homicidal death would have mandatorily been entered in the Daily Dairy of the police station if not treated to be the FIR. However, the Daily Diary or the Roznamcha entry of the police station corresponding to the so called visit by the relatives of the deceased to the police station was not brought on record which creates a grave doubt on the genuineness of the FIR(Exhibit P-10). The complainant(PW-1) admitted in cross examination that the Poujadar came to his house and he narrated the incident to the officer who scribed the same and thereafter, the complainant appended his signatures on the writing made by the Poujadar. However, ASI Tikota Police Station(PW-18) testified on oath that complainant(PW-1) came to the police station and submitted a written report which was taken as the complaint of the incident. He did not state anything about any complaint being recorded at the house of the complainant prior to lodging of the report. Thus, there is a grave contradiction on this important aspect as to whether the report was submitted by the complainant(PW-1) in the form of a written complaint or whether the oral statement of complainant(PW-1) was recorded by the police officials at his home leading to the registration of FIR(Exhibit P-10). The non- production of the Daily Dairy maintained at the police

station assumes great significance in the backdrop of these facts. Apparently thus, the FIR(Exhibit P-10) is a post investigation document and does not inspire confidence.”

20. Further reliance is also placed on the Division Bench judgment of Lucknow Bench of this Court in the case of ***Bisram Vs. State, reported in 1986 SCC Online All 23.***

21. We have gone through the aforesaid judgments cited on behalf the appellant and agree with the ratio laid down therein.

22. The second limb of the argument advanced by learned counsel for the appellant, regarding the veracity of the versions of eye-witnesses and prosecution witnesses of fact, who are alleged to be interested and partisan, requires consideration. P.W.-3 mentioned assailants had covered their faces with cloth, therefore, identification of the assailants was not possible. Neither of the witnesses had blood stains on their clothes. P.W.-2, wife of the deceased, claimed to have fallen on the body of her husband but not a single stain of blood was found on her clothes. The version of P.W.-2 is not corroborated by medical evidence. As per P.W.-2, deceased had been shot in supine position. That being so, the first shot could not have hit him on the back of his neck causing fracture of the base of skull with pellets found inside. The assailants who were allegedly armed with double barrel gun and country made pistol made no attempt to cause injuries to the eye witnesses. In fact Dori Singh, 8-to-9 year old son of the deceased, who slept with him and was about 4 feet 9 inches tall miraculously did not suffer any injury. However, a blood stained shirt of Dori was strategically planted as per the defence to lend credence to the prosecution story. Dori Singh was not examined as a witness. The assailants had an equal motive against Shiv Singh (son of P.W.-1) and

therefore it was unlikely that when Shiv Singh and P.W.-1 were present near the place of incident, yet they did not suffered injuries though they would have been main targets of the attack. P.W.-1 being the cousin of deceased, P.W.-2, being his widow and P.W.-3, being sister of the deceased, were interested and partisan witness therefore their evidence had to be treated with circumspection. The accused had no motive to commit the offence, since the prosecution failed to establish any relationship between them and deceased, Ram Singh. On the contrary P.W.-1 had sufficient reason to falsely implicate the appellant, as Sukhlal was a witness in the theft case registered against Shiv Singh (son of P.W.-1) and deceased. The accused, Rajpal was the brother of accused, Sukhlal and Shishupal his cousin. As per defence P.W.-1 had in fact orchestrated the false implication of the appellants.

23. The adequate source of light is doubtful. On one hand it is claimed that the witnesses were sleeping under the thatched roof as it was the rainy season while on the other it is alleged that the witnesses identified the assailants in moonlight. P.W.-1 admitted that there were intermittent clouds. The exact location of the lamp was not properly shown in the site plan. Testimony of witnesses regarding the composition of the lamp is inconsistent which renders its presence at the site doubtful. P.W.-1 said the *Dibbi* was earthen while P.W.-2 stated it to be made of glass, and P.W.-3 said that it was an earthen 'diya'. It has come in the evidence of PW-1 that it was month of *Sawan*, but moonlight was present. He admitted that scattered clouds were in the sky. The only source of light was the *Dibbi* burning inside the house of the deceased.

24. The incident took place in the night at about 3:00 a.m. when PW-2 and PW-3 were sleeping in the same house alongwith the deceased. The

deceased and his son, Dori Singh, were sleeping together on the same cot, but Dori Singh did not suffer any injuries. His blood stained shirt was recovered, but it appears that it was not sent for forensic examination by PW-5. The Dori Singh could have been the most reliable witness, who was sleeping with his father, the deceased, but he was not produced as witness before the trial court. PW-2 and PW-3 were sleeping at a distance and they woke up soon after hearing the sound of firing. PW-3 had stated that after hearing the sound of gunshot fire, she woke up and saw that Dori Singh was standing near the cot and the accused Sukhlal, armed with a gun and Shishupal, armed with a pistol and Rajpal, carrying a lathi and torch, were present there; moreover Rajpal flashed light from his torch and Sukhlal took out an empty cartridge from the gun and therefore, she was sure that it was Sukhlal, who fired the first shot and thereafter Shishupal fired the second shot at Ram Singh. The statement of PW-3, that empty cartridge was removed from the gun by Sukhlal after she woke up and thereafter the second shot was fired by deceased by pistol, does not inspire the confidence. The accused committed the murder after entering inside the house of the deceased. It is not possible that after firing the first shot, Sukhlal would have remained at the scene to remove the empty cartridge from his gun, and thereafter the accused, Shishupal, fired at deceased from his pistol. The assailants, after committing an such offence, would have immediately rushed away from the place of incident and would not have been required to drop any empty cartridge at the place of incident since no second fire was made from the gun. The Investigating Officer, PW-5, did not recovered any empty cartridge from the place of incident as clear from the list of exhibits on record. Therefore, statement of PW-3 does not seems to be probable.

25. The motive for the crime assigned to the appellants was also not proved. We have considered above that PW-1 had motive to falsely implicate the accused since accused, Sukhpal was witness in a theft case registered against his son, Shiv Singh and the deceased. The accused, Rajpal, was brother of Sukhpal and Shishupal, his cousin. If the statement of PW-3 is considered in this case like her statement about some consultation before lodging of FIR has significance in the light of the motive, which PW-1 had against the accused persons.

26. Regarding the criminal antecedent of the deceased and his possible murder by some other persons appears to be credible from the statement of PW-1, wherein he admitted that the deceased, Bani Singh, was implicated in the case of dacoity 8-9 years ago. Thereafter, a case under Gangsters Act was initiated against the Bani Singh and PW-1 after one year of the case of dacoity. PW-1 admitted that another case of dacoity got registered against Bani Singh in 1974, but he was exonerated after his test identification parade failed. PW-1 further admitted that PW-3, Shakuntala, was married to Sawanti and had been living in the house of Bani Singh, for the last two years. Her husband, Sawanti, was implicated in the case of murder, but was acquitted. She was living in the house of deceased, Bani Singh for last about 2 years. PW-1 admitted that he was sleeping under the thatched roof when it was drought, which shows that he has tried to justify the presence of the source of light as moonlight at the place of incident at the relevant time.

27. Place of occurrence was not proved, as no telltale signs of firing were found at the site. No memo of the blood stained mattress was prepared. The '*bana*' of the cot was not collected. No report of the serologist was produced regarding the blood stained earth collected from the spot. The

witnesses of memo of blood stained earth were not examined during trial.

P.W.-2 stated that all the paper work was done at police station only.

28. Under the totality of facts and circumstances of the case, we are of the view that prosecution has failed to prove its case beyond reasonable doubt and hence appellants are entitled to benefit of doubt. Accordingly, judgment and order passed by the trial court is set aside.

29. The appellants are on bail, their bail bonds are cancelled and sureties are discharged. They need not to surrender.

30. The above noted criminal appeal is **allowed**.

31. Office is directed to send back trial court record and notify this judgment to the trial court within two weeks.

32. Mr. Pranvesh, Amicus Curiae, appointed by this Court earlier is entitled to professional fees of Rs.10,000/-, which shall be paid to him within period of one month from the date of submission of the bill.

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

February 25, 2026

Ruchi Agrahari