



2026:AHC:27836-DB

Reserved on 21.01.2026
Delivered on 09.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3260 of 1985

Vijay Singh

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Ajai Kumar Singh, Ashwini Kumar Awasthi, Dga, R. P. Singh Parihar, Tarun Pratap Singh
Counsel for Respondent(s)	: Ram Pd. Singh

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri Manish Tiwary, learned Senior Counsel assisted by Sri Atharva Dixit and Sri Aushim Luthra, Learned Senior Counsel for the appellant; Sri G.N. Kanaujia, learned A.G.A.-Ist for the State and perused the trial court record.
2. The above noted criminal appeal has been filed against the judgment and order dated 03.12.1985 passed by Additional Sessions Judge, Kanpur, in Sessions Trial No.63/M of 1984 sentencing and convicting the appellant under Section 302 IPC for life imprisonment.
3. The prosecution case is that Vijay Singh had a separate quarter in Munna Lal Street, Parade, Beconganj Kanpur. His other brothers lived in another house in the vicinity. Smt. Viddya is said to be the kept of Vijay Singh. Ajay Singh, the deceased, entered the quarter of Vijay Singh

accused on 4.11.1983 at about 5 P.M. and opened the fridge to take out the articles of food. Smt. Viddya objected to it. This led to an altercation between Ajay Singh, deceased and Smt. Viddya. Smt. Viddya was physically assaulted by Ajay Singh, who came out of the quarter hurling abuses at her. The altercation and abuses attracted Ashok Singh another brother of Ajay Singh, his *Bhabhi*, Indra and friend, Subodh Saxena to the place of incident. Smt. Viddya also followed Ajay Singh and retaliated by returning abuses. In the meantime Vijay Singh, accused, who had gone to make Deepawali purchases returned. Smt. Viddya complained to him about the conduct of Ajay Singh and beseeched that she was being ill treated inspite of the fact that he is there and has a licensed pistol and when would it work. This enraged Vijay Singh commanded Ajay Singh to go away from his sight otherwise he would be shot dead. Ajay Singh did not obey the commands of his elder brother and on the other hand, he retaliated by saying that his brother, Vijay Singh, has kept a woman of ill reputed with the result the family reputation is at stake. He also felt enraged and insisted that he would turn out the ill reputed women falling in the category of prostitute. Saying this he proceed towards Smt. Viddya. The latter exhorted Vijay Singh to pierce a shot through the chest of the deceased so that she may feel relieved. Thereupon Vijay Singh took out pistol from his pocket and opened indiscriminate fire on Ajay Singh.

4. This happened at about 5.15 P.M and Ajay Singh dropped dead on the ground near a *Neem* tree in the open land. Two constables on picket duty near the place of incident came over there and challenged Vijay Singh. They made attempt to apprehend and capture Vijay Singh but the latter hurdled a brick bat which resulted in injuries to one of the constables. Vijay Singh was successful in escaping but was perused by one of the

constables. Vijay Singh entered the hostel of P.P.N. College but was surrounded by the local police and the public men. Somehow he came out of the hostel room and was apprehended and arrested along with the pistol material Ex. I, by S.I., Dharmendra Singh in presence of Constable Aniruddh Singh, P.W.8 and other public witnesses.

5. A report of the incident, was lodged by Ashok Singh, P.W.1, the real brother of the deceased at P.S. Beconganj, which is at a distance of about two and a half furlongs from the place of incident at 6.10 P.M. on the same day. Ex.Ka-15 (Ex.Ka-B) is the copy of the F.I.R. The original written report is said to have been lost and therefore the secondary evidence was led. An entry of the crime was made at serial no. 30 of the General Diary Ex. Ka-16 (Ha-9) maintained at the police station.

6. After the registration of the crime the case was taken up for investigation by Sri Dharmendra Singh, Station Officer, P.W.9. S. I. Doongar Singh, P.W.4, who was then posted at P.S. Beconganj, went to the spot and held an inquest on the dead body of the deceased and prepared the inquest memo Ex.Ka-1. He also prepared challan lash Ex.Ka-2, sketch of the dead body Ex.Ka-3 showing the approximate location of the injuries and addressed a letter Ex.Ka-4 for arranging the autopsy on the dead body of the deceased. He also took into possession the blood soaked clothes put on by the deceased under memo Ex.Ka-5. He also seized five brass empty cells on the bottom of which LAPUA-7.65 was embossed from the situs of the crime and prepared a seizure memo Ex.Ka-6. He also collected blood stained and simple earth under memo Ex Ka-13.

7. The Station Officer, Sri Dharmendra Singh, P.W.9, who had apprehended the memo accused from P.P.N. College Hostel prepared

memo of attaching .32 bore Pistol No.623310 made in Czechoslovakia-48 from the possession of the accused. The pistol Ex.I and the empties gathered from the place of offence were sent for examination by the ballistic expert. The report of the Ballistic Expert, Sri Om Prakashmani Tripathi, P.W.6, is Ex. Ka-10. Sri Dharmendra Singh, who visited the place of incident during the course of investigation prepared site-plan Ex.Ka-12. The injured constable, Sri Rajnesh Kumar, P.W.5 was sent for medical examination from the police station with a Letter. He was medically examined by Dr. R. B. Singh C. W.1 on the same day at 8.30 P.M. The injury reports Ex.C1 shows that there was an abrasion 1 cm x 1 cm on the middle of the front of the right fore-am. The injury was fresh and blood oozing was present. An abraded contusion 8 cm x 4 cm on left side of the lower back just lateral to the mid line just above the portion superior iliac spine. Both these injuries in the opinion of Dr. Singh were simple and were caused by some blunt and hard object and friction.

8. The autopsy on the dead body of the deceased was conducted by Dr. R.P.Bajpai P.W.7 on 5. 11. 1983 from 1.45 P.M. onwards. The dead body was identified by constable Raghubir Singh and Zildar Singh. The deceased was of average built body, rigor mortis was present in both extremities. Post Mortem stunning was present on which of the back, buttock and thighs and abdomen was distended. The post mortem certificate prepared by Dr. Bajpai is Ex.Ka-7. The following ante-mortem injuries were found on the body of the deceased:-

- i) Gun shot wound of entry margins 1 c.m. x 1 c.m. with inverted margins on left side of neck, 1 1/2 c.m., (one and half) above the left sternoclavicular joint directed backwards.
- ii) Gut shot wound of entry 1 c.m. x 1 c.m. with inverted margins just

above the left angle of mandible directed backwards.

iii) Gun shot wound of entry 1 c.m. x 1 c.m. x cavity deep on left side of chest 14 cms, below the left nipple, margins inverted, directed backwards.

iv) Gun shot wound of entry 1 c.m. x 1 c.m. x cavity deep on left side of chest 14 cms below the left nipple margins inverted, directed backwards.

v) Gun shot wound of exit 1 c.m. x 1 c.m. x cavity deep on the right side of back 13 cms below the last cervical vertebrae, directed towards the front margins everted.

vi) Gunshot wound of exit 1 c.m. x 1 c.m. x cavity deep on left side of back, margins everted, 19 cms below the angle of left scapula, directed towards the front.

vii) Multiple contusions is an area size 26 c.m x 8 cm on outer aspect of the left thigh 7 cm above left knee.

viii) Contusion 6 cm x 3 cm on front of right leg, 15 cm below right knee joint.

9. On internal examination the autopsy surgeon found that pleura was punctured through and through, the right and left lungs were punctured through and through and one and a half litre. blood was present in both the cavities. The heart was empty. Peritoneum was punctured through and through. Abdomen cavity had one and half litres, blood. The Gall Bladder was perforated through and through and was pale. It was half full. Two bullets were recovered from the lower and upper part of back and neck of the deceased. They were kept in a sealed packet and entrusted to police men concerned for investigation and transmission along with other papers. In the opinion of Dr. Bajpai, the death had occurred due to shock

and haemorrhage as a result of fire arm injuries.

10. The investigating interrogated number of persons and after completing necessary formalities during the course of investigation submitted charge-sheet Ex. Ka.-14 against the two accused persons Vijay Singh and Smt. Viddya on 14.10.83. The committal proceedings were taken by Sri B.L. Sachdeva, Chief Metropolitan Magistrate, Kanpur, who by his order dated 7.2.1984 committed the accused persons to stand trial before the court of sessions.

11.. Accused, Vijay Singh, was charged of the offence punishable u/s.302 I.P.C. while accused Smt. Viddya was charged of the said offence with the aid of section 34 I.P.C. They denied the charges and sought trial.

12. The plea of the accused persons is that of total denial. Accused, Vijay Singh, stated that he was not present at the house at the time of the incident. At about 7 or 7.15 P.M. when he returned to his house, he came to know that some police Inspector had taken away his pistol from the house. Subsequently he and his brother, Astok Singh, were taken to the Police Station for interrogation and on some writing the signatures of Ashok Kumar were taken under threat. Smt. Viddya has pleaded her ignorance about all the material facts, she has stated that she was arrested from her own house at about 11 or 12 P.M. On behalf of accused no oral evidence was led. A copy of *challani* report in case no.214 of 1984 u/s. 107/116 Cr.P.C. has been filed to show that the local police had a pique against accused Vijay Singh.

13. At the trial the prosecution has examined as many as 12 witnesses. Four more persons were examined as Court witnesses. Ashok Singh, P.W.1; Subodh Saxena P.W.2 and Smt. Indra P.W.3 are the eye witnesses

of the incident. They have turned hostile and have not supported the prosecution story. P.W.4 is S.I. Doogar Singa, who had prepared the inquest memo and other documents to arrange the autopsy on the dead body of the deceased. P.W.5, Rajnesh Kumar and P.W.8, Aniruddh Singh, are the constables, who were on picket duty at the time of the incident at Parade Crossing. They are also alleged to be the eye witnesses of the incident as according to them the deceased was fired upon by the accused, Vijay Singh in their full view. P.W.6 is Sri Om Prakashmani Tripathi, ballistic expert, who has proved the ballistic report Ex.Ka-10 prepared by him and the cartridges and bullets as well as the pistol sent to him for his opinion. Dr. R.K.Bajpai, P.W.7, is the autopsy surgeon. The Investigating Officer Sri Dharmendra Singh who had also apprehended accused, Vijay Singh, is P.W.9. He has proved the various documents on record and the formalities completed by him during the course of investigation. P.W. 10 is head constable, Laxmi Swarup Khare, who had prepared the chik F.I.R. and had made entry of the crime. P.W.11, Santosh Kumar and P.W. 12, Ram Nsrain, are the constables, who were summoned to prove the loss of the original F.I.R. and the chik F.I.R. Dr.R.B.Singh C.W.1 has been examined to prove the injury report Ex.C-1 relating to the injuries found on the person of Rajnesh Kumar, P.W. 5. Indra Narain Dwivedi, C.W.2, is the Arms Clerk Collectorate, Kanpur. He has been examined to prove that Vijay Singh has a licence for possessing Pistol Ex. I. C.W.3, Constable, Moti Lal and C.W.4, constable, Viddya Kant Shukla, have also been examined to prove the loss of original written report and the chik F.I.R.

14. P.W. 1, Ashok Singh; P.W. 2, Subodh Saxena and P.W. 3, Smt. Indira, who were witnesses of fact and also eye-witnesses of the incident, have specifically denied the prosecution story and they were declared

hostile by the prosecution. P.W.1 is the brother of the deceased and the first informant in the present case and as narrated by the prosecution, a report of the incident was lodged by the first informant at 6.10 pm on 4.11.1983. However, from his testimony it is quite evident that the witness wrote whatever he was told to write at the police station and his testimony also goes on to reveal that he was not present when his brother was shot but saw him lying on the ground only at 6 pm when he returned to his house. P.W.2 is Subodh Saxena, a friend who was allegedly present at the scene of the incident but his testimony would also go on to reveal that he has very clearly stated that Vijay Singh has not killed Ajay Singh, the deceased. P.W.3 is Smt. Indira and a perusal of her testimony would go on reveal that she has clarified that Vidhya Devi was her servant and not Vijay Singh's mistress and thus the story narrated by the prosecution is completely baseless. Furthermore, she has gone on to state that she did not see who killed Ajay Singh and did not hear any fire shots. The original copy of the First Information Report or the incident report was never made available by the police station officers which creates a cloud of suspicion with respect to the prosecution version. In furtherance to the same the P.W.1 who is supposedly the first informant has clearly stated that whatever he wrote in the report was narrated to him by the police officers.

15. The other two alleged eye witnesses of the incident are P.W. 5, Rajneesh Kumar and P.W. 8, Anirudh Singh, the constables, who were placed at picket duty at the Parade Crossing, on the date of the incident, which is around 300 paces form the place of occurrence. However, it is important to note that there was no record to substantiate the fact that the constables were assigned the picket duty at the crossing. The entries of

departure and reporting back to the police station are always recorded and maintained in the General Diary but the same was not brought on record which makes it highly improbable that the constables were actually present at the place of occurrence so as to be the eye witness in the present case. Furthermore, the place of occurrence was 300 paces from the Parade Crossing where the two constables were allegedly posted and no plausible explanation had been given by the witnesses as to how and why did they leave the place of their duty and reached the place of the incident and then saw Vijay Singh firing at the deceased person and then chased him in an attempt of arresting him. Moreover, the fact regarding the presence of both the constables are not mentioned in the First Information Report or in the site-plan prepared by the Investigating Officer which would have been able to explain the fact that from where exactly the two constables witnessed the alleged crime. As alleged by the P.W. 5, Rajneesh Kumar, after witnessing the crime, he along with P.W. 8, Anirudh Singh tried to apprehend Vijay Singh when he started pelting bricks due to which P.W. 5 was injured and the same has been proven through the injury report marked as Exhibit C1. However, according to the witness namely Rajneesh Kumar, due to the pelting, he had injured his foot whereas, in the injury report, it has clearly been stated that there was an abrasion 1 cm X 1 cm on the middle of the front of the right forearm and there was an abraded contusion 8 cm X 4 cm on the left side of the lower back. He has further submitted that the doctor who treated P.W. 5 after he had been injured, has been examined as C.W. 1 and a perusal of his testimony would go on to reveal that he has reiterated whatever he had mentioned in the injury report. However, the witness was examined as a witness called in by the Court and was not presented from the prosecution's side to prove the medical examination report.

16. Learned Senior Counsel for the appellant has submitted that ocular version is falsified from the medical evidence available on record. The ante mortem injuries no. 7 and 8 of the deceased have been mentioned as contusions sustained by the deceased and a perusal of the ocular version set forth by the prosecution would go on to reveal that as per the ocular version the appellant merely discharged his firearm weapon. Thus the injury no.7 and 8 of the deceased totally remain unexplained as per the testimony of the alleged eye witnesses which casts serious clouds of suspicion over the manner of occurrence as stated by the prosecution witnesses. As per the examining doctor who was examined as P.W.7 has categorically stated that injury no.s 7 and 8 could have been caused by repeated fall or owing to deceased falling in a drain however no such fact has been alleged by any prosecution witness.

17. Ballistic report is not supporting the prosecution story. The ballistic expert, P.W.6, Sri Om Mani Tripathi, who has proved in his report that five empty cartridges were allegedly recovered from the place of occurrence, pursuant to which a seizure memo was prepared by the P.W. 4, S.I. Doongar Singh. The said report further proceeds to state that out of the recovered cartridges, two cartridges bearing numbers E.C.-2 and E.C. 3 were found not to have been fired from the pistol allegedly recovered from the accused, whereas cartridges bearing numbers E.C.-1, E.C.-4, E.C.-5 and E.C.-6 were opined to have been fired from the said pistol. The ballistic expert, in his testimony has candidly stated that two different fire arms were used at the time of occurrence of offence i.e. a rifle and a gun while as per the ocular version it has merely been stated that the appellant discharged all the bullets from his licensed pistol. It also surfaced on record of the present case that some of the empty cartridges

recovered from the place of occurrence were not fired from the pistol of the accused which clarifies that there must be a second fire arm used in the commission of crime, which once again goes on to establish the fact that the alleged occurrence did never take place in the manner as alleged by the prosecution. There was a delay of 11 weeks in dispatching the empty cartridges and the fire arm to the expert and therefore the evidence portrayed by the prosecution in reference to the seizure of the articles from the accused and from the place of occurrence, is all rendered as doubtful. As per the testimony of P.W. 9, though the appellant was arrested on a spot along with the alleged firearm weapon used in the commission of the crime, however the investigating officer did not secure/preserve the finger prints of the appellant from the fire arm weapon recovered which would once again go on to suggest that the prosecution deliberately suppressed the material evidence which could have unearthed the falsity and frivolity of the prosecution story.

18. Learned Senior Counsel for the appellant has submitted that test identification parade of appellant was not done. The prosecution itself asserts that the alleged incident is stated to have occurred in broad daylight in an open yard and, therefore, claims that there was no possibility of any mistake in identifying the accused. However, this very assertion demolishes the necessity and fairness of identification, as no Test Identification Parade was ever conducted during investigation. The omission to conduct TIP, especially when the accused was subsequently shown to the witnesses during investigation or court proceedings, renders such identification highly unsafe, tainted and legally unreliable. Mere assertion of "daylight" or "open space" does not dispense with the mandatory requirement of a fair identification process, particularly when

the prosecution seeks to rely upon dock identification alone, which is inherently weak and cannot form the sole basis of conviction.

19. Learned AGA has vehemently opposed the submissions made by learned Senior Counsel the appellant and has submitted that it is a case of broad daylight murder of one real brother by the other. The witnesses, PW-1 and PW-3, are real brother and sister-in-law of the deceased but they have denied the prosecution case. After realizing that one brother, Ajay Singh, has already died and now another brother, the accused, Vijay Singh, will remain in jail for his life and hence they have denied the prosecution case to save the accused-appellant. He has further submitted that the testimonies of PW-5 and PW-8 are worthy of credence and they have proved the prosecution case. The accused was arrested soon after the incident in the presence of PW-8. Therefore, the prosecution case stood fully proved before the trial court. The judgment and order of conviction of the appellant passed by the trial court may be confirmed and the appeal may be dismissed.

20. After hearing the rival submissions, going through the material on record and judgment and order of the trial court, we find that PW-1 and PW-3 have denied the prosecution case; however, there is justification for the same, as PW-1 is the real brother of the deceased and PW-3 is the real sister-in-law (*bhabhi*) of the deceased. PW-2 is a common family friend and has, therefore, denied the prosecution case only to avoid enmity with any member of the family of the deceased or the appellant. The conduct of PW-2 cannot be said to be unnatural, as being a common family friend, he did not wanted to invite trouble for himself by giving a statement in favour of one party or the other. He only stated before the court that murder of Ajay Singh did not took place before him. In his cross-

examination, he denied that his statement was ever recorded by the Investigating Officer that Vijay Singh committed the murder of Ajay Singh. PW-1 and PW-3, with the passage of time, lost their zeal to prosecute the appellant being a member of the same family. This is not unusual. In the cases where a close family member causes the murder of another close family member, with the passage of time, other family members, who are witnesses to the crime, often resign themselves to fate and turn hostile before the court to save the surviving member, realizing that the deceased will not return.

21. Regarding the competence of PW-5, Constable Rajneesh Singh, and PW-8, Anirudh Singh, Constable, to prove the prosecution case, we find that the only argument advanced is that, although they were posted on picket duty at Parade Crossing on the date of the incident, close to the place of occurrence, there is no entry of their arrival and departure to and from the place of occurrence in the general diary. We find that there is non compliance of the provisions of police regulations, but it is only irregularity, which cannot made the basis of disbelieving the eye witness account before the court. The trial court has recorded a clear finding that it has scanned the testimony of both the witnesses in all meticulous details in its quest to reach the truth. The trial judge has recorded the clear finding that the court has observed the demeanour of witnesses very cautiously and found them to be truthful and straightforward and their depositions before the court. The trial judge has found them quite natural and probable witnesses against whom no allegation was made that they harboured any grudge against the appellant. The trial judge has found that their depositions were that they have seen the crime. The trial Judge has also found that regulation no. 195 of U.P. Police Regulation provides for

recording the departure and return of the police officer on and from the duty in the general diary. PW-9, S.I. Dharmendra Singh has proved that PW-5 and PW-8 were posted on picket duty at Parade Crossing, but by mistake entry could not be made. He further proved that the aforesaid witnesses were on picket duty because it was the day of *Deepawali* festival and special arrangements were made to facilitate the smooth movement of the traffic and to maintain law and order. We also find that there is no evidence led before the trial court that it were not PW-5 and PW-8, who were on picket duty but some two other policemen.

22. We pause to record that a trial judge has additional advantage *vis-a-vis* the appellate court. A trial judge has several advantages over the appellate court because he conducts judicial process where facts are established with the help of oral as well as documentary evidence. The appellate court focuses on errors of law and fact committed by the trial judge but it is the trial judge, who is in the unique position to evaluate the credibility of witnesses and the evidence adduced before the trial court firsthand.

23. The trial judge can watch the demeanour, body language and tone of voice of the witness for arriving at the truth. The impressions that a trial court can gather by observing a witness during cross-examination are not available to the appellate court. The appellate court can only read the statements recorded by the trial court, which do not convey the crucial non-verbal cues observed firsthand by the trial judge.

24. The trial judge reads the faces of witnesses and therefore, their findings of fact regarding the demeanour and conduct of witness are not easily disturbed in appeal unless grossly wrong or illegal.

25. The argument of learned Senior Counsel for the appellant regarding the report of ballistic expert also needs consideration. It has come in the statement of PW-6 that five empty cartridges were recovered from the place of incident. According to him, the cartridges gave smell of being fired. Two bullets were recovered from the body of the deceased by Autopsy doctor. Bullets and the empty cartridges were sent to PW-6 in four sealed bundles. After testing and examination, PW-6 came to the conclusion that EC-1, EC-4, EC-5 and EC-6 were fired from the pistol of the accused and EC-2 and EC-3 were not fired from the aforesaid pistol. He could not give any definite opinion regarding the bullets extracted from the body of the deceased, numbered as EB-1 and EB-2. The argument of learned Senior Counsel for the appellant is that PW-6 admitted that two weapons were used in the crime and not only one (pistol recovered from the accused). The trial court has also considered this argument and had found that the opinion of the ballistic expert is not destructive of the prosecution case, if otherwise the testimony of the other reliable and trustworthy witnesses who have no animus against the accused is believed and accepted. We also are of the same view.

26. The indiscriminate firing made by the appellant on the deceased from his pistol was proved from four entry wounds and two exit wounds found on the body of the deceased. Ex.Ka -5, memo of clothes of the deceased, was prepared by S.I. Doonger Singh wherein *Kurta*, *Paizama* and vest of the deceased were sealed. Five holes with blackening of gun powder were found on the *Kurta* of the deceased.

27. Further argument of learned Senior Counsel for the appellant is that Investigating Officer did not secured/preserved finger prints of the appellant on the recovered weapon though he was arrested on spot by

PW-9. This lapse proves falsity of the prosecution case and also deserves consideration.

28. This argument is commonly raised, but the cases of finger prints recovered from firearms are very few. The reasons are related to number of factors; the manner of handling of the arms, the nature of metallic surface of the arms, whether conditions like humidity, rain and extreme temperature were cause rapid evaporation of moisture from finger print make it too dry for forensic powder to stick. Rough surface of the gun creates further problem for finger print expert. If the trigger and grip of the gun are not rough, number of overlapping prints are found on the surface. It is settled law that even non recovery of weapon is not fatal to the prosecution case, where there is direct, credible and unimpeachable oral evidence. Therefore, even in the absence of fingerprints recovered from the recovered pistol, the conviction of the appellant can still be upheld keeping in view the reliable testimony of PW-5 and PW-8, [*See- Rakesh and another Vs. State of U.P. AIR 2021 SC 3233; State Vs. Laly @ Mani Kandan, AIR 2022 SC 5034 and Goverdhan Singh Vs. State of Chattisgarh, (2025) INSC 47.*]

29. The last submission of learned Senior Counsel for the appellant regarding non conduct of test identification parade of the appellant is also without any substance since accused, Vijay Singh, after commission of the crime was chased by PW-5 and PW-8. He threw brick bat on PW-5 and got him injured but PW-8 continued chasing him, till he entered in hostel of P.P.N. College and locked himself in a room from inside. Dharmendra Singh, PW-9, Station Officer, after getting information, reached at P.P.N. College where PW-8, Anuruddh Singh, was already there alongwith persons of public gathered around. After Vijay Singh

came out from the room, he was arrested with his pistol. He was clearly seen by PW-9 and PW-8 and also by PW-5 at the time of commission of the crime. The eye-witness, PW-5, was not cross-examined on the question of identification of accused by him. PW-8 was not confronted with any question in this regard and he identified the accused in court too.

30. Much objection has been taken to the competence of PW-5 and PW-8 to the eye-witness account of the incident. It has been objected that being police personnels, they could not have been examined as witness in support of prosecution case. The argument is not correct. It is settled law that there is bar for a police officer to appear as eye-witness in a case which he himself is investigating. The testimony of such eye-witness should be looked with great caution. However, where police personnels are produced before the trial court only as eye-witness of the incident, this law does not applies. A Division Bench of this Court and the case of ***Chandrabhal Vs. The State [Criminal Appeal No.400 of 1955 (All.)]*** has held that where a police officer is an eye-witness of the incident, the progress of investigation of case by the same officer has to be looked with disfavour by the Court. In the present case, PW-5 and PW-8 are not Investigating Officers or anyone connected with the investigation of the aforesaid case, therefore, their testimonies are only of eye witness of incident and cannot be doubted by this Court.

31. In view of the above, we find that prosecution succeeded in proving its case against the appellant beyond reasonable doubt. The trial court has rightly convicted and sentenced the appellant for committing offence under Section 302 IPC of murder of his real brother. Findings recorded by the trial court do not suffer from any perversity and are hereby confirmed.

32. The above noted criminal appeal is dismissed. The judgement and order passed by the trial court is confirmed.

33. The appellant is on bail. His bail bonds are cancelled and sureties are discharged. He will surrender forthwith and carry out the remaining sentence.

34. Office is directed to send back trial court record and notify this judgment to the trial court forthwith.

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

February 9, 2026

Ruchi Agrahari