



2026:AHC:18971-DB

Reserved On :- 09.01.2026

Delivered On :- 28.01.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1757 of 1985

Dulichand And Another

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s) : Manvendra Singh, R.B.Sahai, Sanjeev
Pratap Singh

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

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Delivered By Hon'ble Siddharth, J.)

1. Heard Sri Manvendra Singh, learned counsel for the appellant no. 2, Bhura; Sri Prem Shanker Prasad, learned A.G.A for the State-respondents and perused the trial court record.

2. This criminal appeal has been preferred against the judgment and order of Sessions Judge, Fatehpur dated 06.07.1985 in Sessions Trial No. 29 of 1985 convicting the deceased-appellant no. 1, under Section- 323 IPC and sentencing him to fine of Rs. 500/- and in default of payment of fine to undergo 3 months rigorous imprisonment and convicting the appellant no. 2, under Section 302 IPC and sentencing him to imprisonment for life and to pay a fine of Rs. 500/- and in default of payment of fine to undergo in 3 months rigorous imprisonment and further convicting appellant no. 2 under Section 307 IPC and sentencing him to seven years rigorous imprisonment and to pay a fine of Rs. 500/- and in default of payment of fine to undergo 3 months rigorous imprisonment and all the sentences shall run concurrently.

3. According to the prosecution case, the injured Kamal Singh (P.W.-2), the informant Bir Singh (P.W.-1), as well as the accused persons, are residents of village Itara, within the jurisdiction of Police Station Chandpur, District Fatehpur. The deceased, Shiv Narain, also belonged to the same village.

Kamal Singh and Raju (P.W.-4), who are real brothers, are stated to be nephews of the informant, Bir Singh, their ancestors being common several generations ago. There had been an ongoing dispute between the informant, Bir Singh, and his brother, Babu Singh, on one side, and the three accused on the other, regarding a field situated towards the north-east of village Itara, for about three months prior to the incident of murder to which the present case relates. The accused persons, armed with *lathi*, ballam, and pistol, had forcibly attempted to cultivate the said plot, which was objected to by Babu Singh. A report in this regard was also lodged by Babu Singh with the police. A day prior to the present incident, exchange of abuses had also taken place between the accused, Bhora and Raju.

4. On the date of the incident, i.e., 10.10.1984, at about 6:30 p.m., Raju was returning to his house from the riverside after attending the call of nature and taking a bath. When he reached near the electric pole situated close to the house of Banta Domar, accused Bhoora and Jagdish, who were standing there, accosted him. Jagdish caught hold of his right arm while Bhoora caught hold of his left arm and stated that since he had abused them on the previous day, he should be beaten. Thereafter, both the accused slapped him four or five times, upon which he raised alarm. Hearing the same, Bir Singh, Kamal, and Shiv Narain reached the spot. Kamal caught hold of Jagdish and Shiv Narain caught hold of Bhoora, thereby saving Raju from their further assault. In the meantime, accused, Duli Chand, came from the direction of his house carrying a lathi in his hand. He exhorted to assault Shiv Narain and his companions and himself inflicted lathi blows upon Kamal. Accused Bhoora then stepped back four to five paces, took out a pistol from the waistband of his *tahmat*, and fired a shot at Shiv Narain. The shot struck him in the chest and abdomen. Uttering that "run away, firing is being done," Shiv Narain ran towards the west but fell down at a distance of about 70–75 steps near a neem tree situated at the door of the house of Kalidan and died on the spot. Thereafter, accused, Bhoora, reloaded his pistol and fired another shot at Kamal, causing injury at his left thigh. Kamal also ran towards his house to save himself. Besides these persons, the incident was also witnessed by Baijnath (P.W.-3), who had reached the place of occurrence on hearing the alarm. After the incident, all the three accused went towards their houses. About ten minutes thereafter, the *chhappar* of accused, Duli Chand, situated near his house, was seen burning. After the incident, the informant set out to arrange a conveyance to go to the police

station. His bullock cart, the parts of which had been kept unbolted due to the rainy season, was reassembled, and after a gap of more than two hours, the informant, along with the injured Kamal, Jagpal, and Gorelal, proceeded to the police station in the said bullock cart. On reaching Chandpur, which is at a distance of about 14 kilometers from the place of occurrence, the informant obtained paper from the shop of one Shukla situated on the outskirts of the town and prepared the written report (Ext. Ka-1) regarding the incident. The informant reached the police station at about 5:00 a.m. on 11.10.1984 and gave the said report, on the basis of which the First Information Report was registered naming the three accused, and the necessary General Diary entry was made.

5. The injured, Kamal Singh, was sent to the Amauli hospital along with a constable but as the doctor was not available there, he was taken to the district hospital, Fatehpur where he was medically examined by Dr. Lal Virendra Pratap Bahadur Singh, Medical Officer at 02:00 p.m on 11.10.1984 and the following injuries were found :-

(i) Firearm wound of entry 1cm x 1cm circular on the lateral aspect of left thigh. Margins were inverted and ecchymosed. Blackening and tattooing around the wound was absent. Depth of wound was muscle deep. Probing was not done. The wound was 20 cms. above the left knee joint. Big pea size pellet was palpable on the medial side of left thigh 23 cms above the left knee joint.

(ii) Skin abrasion 1 cm x 1/2 cm on left thumb scab was not formed.

(iii) Contusion on 2 1/2 cm x 1 cm on the right scalp 10 cms above the pinna.

In the opinion of the doctor all the injuries were simple and were about 18 hours old.

6. The investigation of the case was entrusted to Sub-Inspector, Sri Ram Singh (P.W.-5), who was then the second officer at Police Station Chandpur. He recorded the statement of the informant, Bir Singh, at the police station and, along with S.O., R.D. Bajpayee, proceeded to police outpost Amauli. After taking constables from there, he went to the place of occurrence and reached the spot at about 9:00 a.m. on 11.10.1984. There, the Investigating Officer conducted the inquest on the dead body of Shiv Narain, which was lying beneath a neem tree near the house of Kalidin, and prepared the

inquest report, challan lash, photo lash, and letters addressed to the R.I. and the C.M.O. The dead body was thereafter sealed and sent for post-mortem examination to the Sadar with constables Netra Narain and Suleman. He recorded the statement of Baijnath Singh and prepared the site plan (Ext. Ka-1) of the place of occurrence on the pointing out of the informant and the witnesses. He also arrested the accused, Duli Chand and Jagdish, from their residences and thereafter returned to the police station. The accused, Bhoora, could not be apprehended, and accordingly, the Investigating Officer submitted a report under Sections 82 and 83 Cr.P.C. against him. The post-mortem examination on the dead body of Shiv Narain was conducted by Dr. R.D. Dikshit on 13.10.1984, as per post-mortem report Ext. Ka-15 (admitted by the defence). The cause of death was found to be firearm injuries sustained about three days prior to the examination.

7. Accused, Bhura, surrendered on 27.10.1984 and the investigating officer submitted charge sheet Ext. Ka-12 to the court on 05.11.1985, which led to the committal of the accused persons before the court of Sessions.

8. Accused Bhoora was charged in the trial for offences punishable under Sections 302 and 307 IPC. Accused Jagdish and Duli Chand were charged under Sections 302/34 and 307/34 IPC. All the three accused pleaded not guilty to the charges and claimed to be tried. They denied all the prosecution allegations regarding the incident as well as the events allegedly preceding it.

9. The defence version, as put forward during the cross-examination of the prosecution witnesses, is that the murder of Shiv Narain took place at some other place and at some time during the night, when it was not witnessed by anyone. It was further alleged that the injuries shown on Kamal Singh were fabricated with a view to project him as an eye-witness and that the case against the accused has been instituted on the basis of an imaginary and concocted story of the incident. No evidence in defence was led by the accused persons.

10. The prosecution, in the present case, examined a total of seven witnesses besides producing documentary evidence. Out of the witnesses examined, P.W.-1, the informant Bir Singh, P.W.-2, the injured Kamal Singh, P.W.-3 Baijnath, and P.W.-4 Raju were produced as eye-witnesses. P.W.-5, Sub-Inspector Ram Singh, is the Investigating Officer, who deposed regarding

the factum of investigation and proved the check F.I.R. (Ext. Ka-2), the General Diary entry (Ext. Ka-3), the Chitthi Majroobi of Kamal Singh (Ext. Ka-4), the inquest report and connected papers (Exts. Ka-5 to Ka-10), the site plan (Ext. Ka-11), and the charge-sheet (Ext. Ka-12). He further stated that certain mistakes had occurred in recording the statements of the prosecution witnesses, which, according to him, happened while copying the F.I.R. into the case diary and also at the instance of S.O.R.D. Bajpai.

11. P.W.-6, Dr. L.V.P.B. Singh, Medical Officer, District Hospital, Fatehpur, stated that he had examined the injuries of P.W.-2, Kamal Singh, on 11.10.1984 at about 2:00 p.m. and proved the existence of the injuries already mentioned above. He also proved the injury report (Ext. Ka-13) and stated that injury no. 1 could have been caused by a firearm, while the remaining injuries could have been caused by a blunt object. According to him, the injuries could have been sustained at about 6:30 p.m. on 10.10.1984, and he denied the suggestion that injury no. 1 could have been fabricated by using an iron rod.

12. P.W.-7, Dr. S.C. Srivastava, Radiologist, District Hospital, Fatehpur had x-rayed the injury on the left side of Kamal Singh vide X-ray plate Ext.-1 and his report Ext. Ka-14 dated 12.10.1984 and found a pellet embedded in the said thigh.

13. Out of the witnesses of fact examined by the prosecution, P.W.-1, Bir Singh, the informant of the case, stated that about three months prior to the incident there had been a dispute and quarrel between the accused Duli Chand, Jagdish, and Bhoora regarding a plot situated towards the north-east of the village, which belonged to him and his brother Babu Singh. The accused persons, claiming to have obtained a *patta*, forcibly tried to cultivate the said plot, which was objected to by Babu Singh, who also lodged a report with the police. This dispute, according to the witness, formed the background of the present incident. On the date of the incident, at about 6:30 p.m., when the sun was about to set, the witness was sitting in front of his house. He saw Raju (P.W.-4) coming from the direction of the river towards his house. The house of Raju is situated to the west of the house of the witness. When Raju reached near the house of Banta Domar, at a distance of about 20 steps north of the informant's house, he raised an alarm stating that he was being beaten. When the informant ran towards that side, he saw accused Jagdish and Bhoora catching hold of Raju and saying that he had

abused them on the previous day. In the meantime, Kamal Singh (P.W.-2) and the deceased Shiv Narain also reached there. In their presence, Bhoora and Jagdish slapped Raju once each. Kamal Singh caught hold of Jagdish and Shiv Narain caught hold of Bhoora and freed Raju. Meanwhile, accused Duli Chand, the father of Bhoora and Jagdish, came from the direction of his house carrying a lathi and exhorted, saying "*maro salon ko jo nahin maante,*" and assaulted Kamal Singh with the lathi. At this stage, Bhoora went four or five steps back and, taking out a pistol from the fold of his *tehmat*, fired at Shiv Narain. The shot struck Shiv Narain in the left side of his abdomen and chest, whereupon he ran towards the west and fell beneath a neem tree near the house of Kalidin, at a distance of about 75 steps from the place of occurrence. The witness also ran from the spot and stood near the said neem tree. Thereafter, Bhoora reloaded his pistol and fired at Kamal Singh, causing an injury to his left thigh. The accused persons then left the place of occurrence. Shiv Narain was found to have died as a result of the injuries at the place where he had fallen. It took about two hours for the witness to reassemble his bullock cart, after which he, along with Kamal Singh, Jagpal, and Gorelal, proceeded to the police station. He prepared the written report (Ext. Ka-1) after obtaining paper from the shop of one Shukla at Chandpur and lodged the same at the police station in the early morning hours. He stated that blood had oozed from the injuries of Kamal Singh. He further stated that he had not mentioned in his statement under Section 161 Cr.P.C. that accused Duli Chand had a pistol or that he fired from it. He had, however, stated before the Investigating Officer that Duli Chand had caused *lathi* injuries to Kamal Singh, but the Investigating Officer did not record the same for reasons unknown to him. He admitted that he had forgotten to mention this fact as well as the fact of exhortation by Duli Chand in the F.I.R. In cross-examination, he stated that while the deceased Shiv Narain and the injured Kamal Singh were running from the place where firing took place, some drops of blood had fallen on the way, though he did not see any blood at the place where the firing occurred or at the place where Shiv Narain fell and died. He stated that he had shown the drops of blood on the way to the Investigating Officer.

14. P.W.-2, Kamal Singh, stated that on the date of the incident, at about 6:30 p.m., he was giving fodder to his bullocks when he heard the alarm raised by Raju from the eastern side. He ran towards the spot, closely followed by Bir Singh and Shiv Narain. He saw Bhoora and Jagdish holding

Raju and slapping him once each. On reaching there, the witness pushed back Jagdish, while Shiv Narain pushed Bhoora and restrained them from beating Raju. Thereafter, Raju ran away from the place of occurrence. Meanwhile, accused Duli Chand arrived there carrying a *lathi* and assaulted the witness from the side by inflicting two or three blows, as a result of which the witness sustained injuries. At this stage, Bhoora stepped back by three or four paces and, taking out a pistol from the fold of his *dhoti*, fired a shot at Shiv Narain from a distance of about three to four steps. The shot struck Shiv Narain, who ran while shouting "*bhago, goli chalane lagi.*" In the meantime, accused Bhoora also fired a shot at the witness with his pistol, causing injury at his left leg. He stated that he did not see Bhoora reloading the pistol as his eyes were closed for a few seconds. Shiv Narain, while running away, fell beneath a neem tree situated near the house of the witness. He also ran towards his house after sustaining the firearm injury and sat at the door of his house. Besides the victim, the incident was also witnessed by Baijnath and Shiv Narain. After the incident, the accused persons went towards their house, and about ten minutes thereafter, they set fire to their own house. After about two to two-and-a-half hours, Bir Singh arranged his bullock cart, and at about midnight, all of them left for the police station, where the F.I.R. (Ext. Ka-1), which Bir Singh had written near the shop of one Shukla at Chandpur, was lodged. From the police station, P.W.-2 was sent to Amauli Hospital, and since no doctor was available there, he was taken to the Sadar Hospital, where he was medically examined and admitted for three days. He further stated that his statement was not recorded by the Investigating Officer at the police station. He did not see any blood at the place of occurrence nor near his house where he sat after the incident. Some blood was present on the *tehmat* he was wearing at the time of the incident, but the same was not taken into possession by the police. He saw blood on the clothes of Shiv Narain, but not at the place where Shiv Narain was fired at or where he had fallen. He further stated that he did not see any resident of the houses near the place of occurrence at the time of the incident. He denied the suggestion that he and Shiv Narain were attacked and injured at some other place and in the darkness of night, or that they could not recognise the assailants and, due to enmity and to exert pressure regarding the disputed plot, the accused persons have been falsely implicated.

15. P.W.-3, Baijnath Singh, a resident of village Itara, stated that his house

is situated at a distance of about 70–75 steps from the electric pole near the house of Banta Domar. At the time of the occurrence, at about 6:30 p.m., he was standing at the door of his house when, on hearing an alarm, he ran towards the house of Banta Domar. He saw the accused persons, namely Bhoora, Duli Chand, and Jagdish, standing on one side and abusing Shiv Narain, Bir Singh, and Kamal Singh. He did not see Raju at the spot. Shiv Baran also reached there. The witness and Shiv Baran intervened and asked the accused persons not to quarrel. At this stage, accused Duli Chand, who was carrying a *lathi*, exhorted to attack Shiv Narain and others. Accused Bhoora then stepped back by three or four paces and, taking out a pistol from his *phent*, fired a shot at Shiv Narain. Shiv Narain was hit and ran towards the south. Thereafter, Bhoora put the empty cartridge in his pocket, reloaded the pistol, and fired at Kamal Singh, who had just turned to run away, causing injury to his left leg. Kamal Singh went to his house and sat in front of it, while Shiv Narain fell dead near the neem tree. He further stated that as soon as Duli Chand exhorted to attack, the witness stepped back and, while retreating, stood in a small pit at a distance of about 15–20 steps, from where he witnessed the incident. He also stated that upon the exhortation by Duli Chand, Shiv Narain or those accompanying him did not attempt to retreat or run away. He further stated that no blood had fallen at the place of occurrence or at the place where the deceased fell or where the injured sat after the incident. He denied having stated before the Investigating Officer, in his statement under Section 161 Cr.P.C., that Duli Chand had fired any shot.

16. P.W.-4, Raju Singh, aged about 18 years, stated that on the date of occurrence, about seven to eight months prior, when the sun was about to set, he was returning home after easing himself and taking a bath in the river. When he reached near the electric pole situated in the vicinity of the house of Banta, accused Bhoora and Jagdish caught hold of his right arm and Bhoora caught hold of his left arm. In retaliation for the witness having abused Bhoora a day earlier, the two accused slapped him four or five times. He raised an alarm, upon which Bir Singh, Kamal Singh, and Shiv Narain reached the spot. Kamal Singh caught hold of Jagdish, and Shiv Narain caught hold of Bhoora, thereby freeing the witness, who then ran towards his house. About two to six minutes after he reached inside his house, he heard two sounds of firing, but he did not come out. In his cross-examination, he stated that when the Sub-Inspector reached the village, he was not present, as

on the next morning he had gone to village Lodhipur, District Hamirpur, to inform Shiv Balak and Chandan Singh, the two brothers of the deceased Shiv Narain, who were residing there. As stated earlier, the statement of this witness was also not recorded by the Investigating Officer.

17. According to the accused persons, the plot situated towards the north-east of the village belongs to accused, Duli Chand, who has obtained *patta* (lease) thereof and is in possession of the same. It was stated that Babu Singh, the brother of the informant Bir Singh, had put his *ghoor* (garbage) in the said field, which was objected to by Duli Chand, and that no quarrel had taken place. They further denied that any altercation had taken place between Raju and accused, Bhoora, or that on the date and time of the occurrence Bhoora and Jagdish caught hold of Raju and assaulted him. They also denied the allegation that Duli Chand caused injuries to Kamal Singh by *lathi* or that Bhoora fired the fatal shot at Shiv Narain or caused injuries to Kamal Singh by firing from a pistol. According to the accused persons, they have been falsely implicated in the present case in order to pressurize them to yield possession of the disputed plot.

18. Submissions advanced by learned counsel for appellant no. 2 are :-

(i) The alleged incident took place on 10.10.1984 at 6:30 hours and F.I.R. has been lodged on 11.10.1984 at 5:00 a.m., while distance from the place of incident to the police station is 14 kilometers and no explanation about delay has been given.

(ii) From the perusal of the First Information Report it is clear that the First Information Report was not lodged by Bir Singh, because in the body of First Information Report the informant has mentioned that we Kamal Singh, Shivrinarayan and Bir Singh reached on spot.

(iii) The injured, Kamal Singh, was medically examined on 11.10.1984 at 2.00 p.m. time and delay in medical examination, which has cutting, has also not been properly explained.

(iv) In the Panchayatnama, in last page, there are cuttings and overwritings on the serial number of document which also shows that it is ante-timed.

(v) In the postmortem report Doctor has specifically mentioned that he has received papers on 13.10.1984 at 1.00 p.m. when dead body was received 12.10.1984 at 12.10 p.m., which clearly shows that alongwith dead body no

documents were sent and documents were sent after one day of sending the dead body after manipulation.

(vi) In the First Information Report and statements recorded under section 161 Cr.P.C. there is no allegation that the injured was assaulted by *lathi* but for first time before court, P.W. 1, Bir Singh, stated that Dulichand assaulted Kamal Singh with *lathi* and this improvement was made just to explain contusion and abrasion received by Kamal Singh.

(vii) The alleged incident had taken place near house of Banta Domar, but no person belong to family of Banta Domar was examined.

(viii) No blood was found from the spot where Shivnarayan and Kamal Singh were shot and even no blood was found from the place where the dead body of Shivnarayan was lying.

(ix) No recovery of cartridges was made which also falsifies the prosecution case.

(x) After the incident the family members of deceased, Shivnarayan, were present on the spot but no First Information Report was lodged by family members of Shivnarayan and no family members of Shivnarayan was produced before court.

(xi) P.W. 1, Bir Singh, has stated that he has not told the Investigating Officer in the statement u/s 161 Cr.P.C. that Kamal Singh was also assaulted with *lathi*.

(xii) During the investigation the witnesses have stated that the fire was made by Dulichand whereas in the statement before court the story was changed and role of firing was assigned to appellant, Bhoora.

(xiii) The appellants were having no enmity with the deceased, Shivnarayan and injured, Kamal Singh, and they were not having any motive to kill Shivnarayan and injured, Kamal Singh.

(xiv) P.W. 1, Bir Singh, has stated that prior to the incident quarrel took place between the accused persons and his brother, Babu Singh, which also shows that the appellants were having no enmity with the informant, Bir Singh. The informant has also not been able to state the identity of land regarding which dispute took place between Babu Singh and

appellants. He has also stated that he went to Police Station from bullock-cart and in the way he took the papers from the shop of one Shukla and wrote the First Information Report but he further stated that he does not know the name of Shukla which also shows that false statement was made to support the prosecution story.

(xv) Even from the statement of P.W. 1, Bir Singh, if it is assumed that the appellants were having enmity with him, then it is highly unnatural and improbable that the appellants will spare the informant and will make fire on other persons with whom they were having no dispute and enmity.

(xvi) P.W. 2, Kamal Singh, has stated that he has not seen whether Bhoora reloaded the country made pistol. He has also stated that his statement was not recorded by investigating officer during the investigation. No bloodstained clothes were handed over to the Investigating Officer. He has further stated that for the first time he is telling this fact before court and till then he has not told these facts to any one. He has also stated that after the incident the wife and brother of Shivnarayan had come on spot but no talk took place between Bir Singh and family members of Shivnarayan. He has also stated that at the time of incident he has not seen any one of nearby residence on the place of incident.

(xvii) P.W. 3, Baijnath, has stated that when he reached on spot he has not seen Raju on spot. He has also stated that the appellant no. 2 reloaded country made pistol and has kept empty cartridge in his pocket and this fact was not stated by P.W. 1, Bir Singh and P.W. 2, Kamal Singh. He has also not stated that Dulichand has assaulted P.W. 2, Kamal Singh, with *lathi* and further stated that during the investigation he has stated that appellant, Bhura, has made fire but he does not know how the Investigating Officer has mentioned that Dulichand has made fire with country made pistol. He has further admitted that he has given evidence in a case filed by Ganga Charan against Dulichand and in this case Babu Singh, the brother of Bir Singh (P.W. 1), was also a witness.

(xviii) P.W. 4, Raju Singh, has stated that he is illiterate person and on the date of incident Bhura and Jagdish have caught him and assaulted him and when he raised alarm his uncle, Bir Singh, Kamal Singh and Shivnarayan, came. Thereafter he went to his house and heard noise of two fires but he did not come out which shows that he has not seen any incident.

(xix) During the investigation the statement of P.W. 1, Bir Singh, under section 161 Cr.P.C. was also not recorded and he has stated that he has gone to some other village after the incident and after he returned back ,the Investigating Officer has already left.

(xx) P.W.-5, S.I., Ram Singh (Investigating Officer), has also stated that during the investigation no statement of P.W. 2 Kamal Singh and P.W. 4, Raju Singh, could be recorded as they were not traceable and P.W. 5 has also stated that during the investigation the witnesses have stated that Dulichand has made fire and witnesses have not stated that Dulichand has assaulted P.W. 2, Kamal Singh, with *lathi*. He has further stated that after Panchayatnama of dead body was sent at 10.30 to 11.00 a.m. on 11.10.1984 and from the perusal postmortem report the dead body was received on 12.10.1984 at 12.10 p.m. and papers were received on 13.10.1984 at 1.00 p.m.

19. Learned A.G.A has opposed the submissions made by learned counsel for appellant and has pointed out to the relevant material on record which we shall discuss hereinafter:

20. After considering the rival submissions, material of the trial court and the findings recorded by the trial court and its judgment and order, we find that the argument of the learned counsel for the appellant that the incident took place at 06:30 hours and F.I.R. was lodged on the next day at 05:00 hours and there is no explanation of the same and there is also delay in the medical examination of injured, Kamal Singh, is not correct. We find that P.W.-1 has given explanation in this regard in his statement recorded before the court. He has stated after the incident, he reassembled his bullock cart which was lying unassembled within two hours and thereafter, he along with Kamal Singh, Jagpal and Gore Lal proceeded to the police station. They reached the police station in the early morning hours and, thereafter, taking a paper from the shop of Shukla at Chandpur, an application was written and F.I.R. was lodged at 05:00 a.m on the next day of the incident. Thereafter, they took the injured, P.W.-2, to Amauli Hospital, where no doctor was available and he was taken to Sadar Hospital where he was medically examined at 2:00 p.m. After lodging the F.I.R. they again traveled in bullock cart from Amauli Hospital to Sadar Hospital where only the doctor was available. The medical examination of the injured, Kamal Singh, was conducted at 2:00 p.m., on 11.10.1984. There does not appears to be lack of explanation on the part of

prosecution regarding delay in lodging of F.I.R. and the delay in medical examination of P.W.-2, injured. The speed of bullock cart is not such that a distance of 14 kms can be covered within 2-4 hours. The travel by bullock cart was all through the night and some time must have also been spent in scribing the F.I.R after collecting paper. In police station of village the registration of F.I.R is only done when the S.H.O permits his subordinates to do so.

21. Further argument regarding cutting and over writing in the serial number of the documents mentioned in panchayatnama cannot be made the basis of ante-timing of the F.I.R., since the documents are mentioned in the inquest report but only because of cutting in their serial number sthe same cannot be disbelieved.

22. Regarding argument that the dead body of the deceased were received on 12.10.1984 at 12:10 p.m., but the autopsy doctor received papers on 13.10.1984 at 1:00 p.m., it can be considered to be lapse on the part of investigating officer/S.H.O., concerned since it is clearly mentioned in the inquest report that all the documentation was done at the time of inquest on 11.10.1984 and the documents have been mentioned in the inquest report clearly from serial no. 1 to 8. Hence it cannot be said that when the dead body of deceased was sent for post mortem, the documents were not in existence and were subsequently made. Moreover the veracity of the post-mortem report of the deceased has been admitted by the defence. It is true that such delay in sending of papers to the autopsy doctor makes the prosecution case doubtful. But in present case it is not so. On account of admission of the genuineness of post-mortem report defence it appears to be case of procedural lapse only. No benefit of the same can be extended to defence. The fact that death of Shiv Narain was caused by fire arm injuries on 10.10.1984 besides being proved by the oral and medical evidence of the prosecution is also admitted by the defence. As already stated above the defence has admitted the genuineness of the post-mortem report Ext. Ka. 15 which shows that death of the deceased was caused some time in the afternoon of 10.10.1984 due to the following fire injuries :-

"(i) Fire arm wound of entry 0.5 cm x 0.5 cm x cavity deep situated 0.10 cm below right nipple, inverted margins. No B and T.

(ii) Fire arm wound of entry 0.5 cm x 0.5 cm x cavity deep on right side of abdomen at 8 o'clock position. No B and T. Inverted margins.

A perusal of the cross-examination of the eye-witnesses would go to show that while the exact time and place of incident has been challenged, the above fact has not been challenged.

23. The argument that in the first information report and the statements recorded under section 161 Cr.P.C., there was no allegation that injured was assaulted by *lathi*, but before the court P.W.-1, Bir Singh, assigned such a role to Dhulichand of assaulting Kamal Singh with *lathi* which was an improvement to explain contusion and abrasion received by Kamal Singh is not well funded. In his cross-examination P.W.-1 stated that he has informed this fact to the investigating officer, but if he did not mentioned the same in his statement, he cannot reason for the same.

24. The argument that the incident took place near the house of Banta Domar but no person from his family was examined has no force. It is common experience that no third person wants to get involved in dispute between two parties and non-examination of any family member of Banta Domar cannot be fatal for prosecution case.

25. The argument that no blood was found from the spot nor any cartridges were recovered which falsify the prosecution case is also not of much weight. No recovery of blood at the scene of incident is a significant argument often raised in criminal cases, but Courts have ruled that it is not fatal for the prosecution case, if other strong evidence in the form of eye witness account and medical report confirms the event.

26. Blood might soak into the clothes or in the ground. If the scene of incident is traveled by number of persons, the evidence may be wiped out specially on upper surface of soil. Sometimes on account of lapse on the part of the investigating officer such a mistake occurs during investigation and only on this account the accused cannot be acquitted.

27. This is also the case where the cartridge/weapon used in the crime was not recovered from the scene of incident or later on the pointing out of the accused. In the case of circumstantial evidence, it is considered to weaken the prosecution case, but in the case of direct evidence, its effect gets diluted.

It cannot be a ground for automatic acquittal of accused ignoring all the other evidence on record.

28. The argument that family members of Shiv Narayan, who were present on the spot, did not lodge the F.I.R, is factually incorrect. P.W.-1 has clearly stated that after the incident the mother and brother of Shiv Narayan came on the scene of incident and they were not present at the time of incident.

29. The argument that appellants had no enmity with deceased, Shiv Narayan and injured, Kamal Singh, and they were not having any motive to assault them is fallacious, since P.W.-1 has clearly stated that three months prior to the incident the accused tried to forcibly plough his field and his brother, Babu Singh, and thereafter report was lodged at police station, since the accused persons came armed with *lathi*, ballam and country made pistol. This was the reason the nephew of P.W.-1, Raju (P.W.4), was caught hold and beaten by the accused persons and on his shrieks, P.W.-1, Kamal Singh and Shiv Narayan, went to save Raju where Bhura caused the fatal gun shot injury to Shiv Narayan and made attempt on the life of Kamal (P.W.-2). It has nowhere been stated by the P.W.-1 that the land in dispute between the parties was not owned by his brother, Babu Singh.

30. The argument regarding the non-disclosure of identity of the land in dispute and the shop of one Shukla would not belie the prosecution case in its entirety. The statement of P.W.-2 that he has seen that Bhura reloaded the country made pistol cannot be read against the prosecution case since after the fatal shot was made on the deceased by Bhura, P.W.-2, Kamal, might have been frightened and could not see the fact of reloading of the gun by Bhura but he suffered gun shot injury on his thigh. The statement of P.W.-3 that he has not seen Raju on the spot is of no consequences since P.W.-4, Raju, stated that as soon as he was freed by Kamal and Shiv Narayan from the clutches of accused, he ran away and entered inside his house. After entering into his house he heard the sound of firing, but he did not come out of his house.

31. The arguments regarding the non recording of the statement of P.W.-2, Kamal Singh and P.W.-4, Raju, by the investigating officer under section 161 Cr.P.C., is fallacious since from the statement of P.W.-5 the investigating officer, it is clear that he recorded the statement of P.W.-1, Bir

Singh and P.W.-3, Baijnath Singh. He stated during his cross-examination that he could not record the statement of P.W.-2 because he was admitted in the hospital for treatment of his injury and on 18.10.1984 when he went to the Sadar Hospital, Fatehpur, P.W.-2, was discharged. He went to his village 3-4 times but he was not found in the village. Regarding P.W.-4, Raju, he stated that he did not find him to be an important witness. In the cross-examination of P.W.-1 and P.W.-3 they were not cross-examined regarding the fact of non recording of their statements by the investigating officer. However, P.W.-1, clearly stated before the investigating officer that Shiv Narayan after suffering a fatal gun shot injury cried and ran away, but fell down later after 7- 0 75 paces.

32. P.W.-3 also stated in his cross-examination that he had informed the investigating officer that Bhura had fired on Kamal Singh and Shiv Narayan and he never stated that firing was made by Dhuli Chand. Therefore the statement of P.W.-1 and P.W.-3 were recorded by the investigating officer under section 161 Cr.P.C., and they were also cross-examined by the defence in this regard.

33. After considering the entire evidence on record, we find that the prosecution has succeeded in proving the prosecution case beyond reasonable doubt. We do not find infirmity in the findings recorded by the trial court in its judgment and order. The same is hereby confirmed.

34. The criminal appeal is hereby **dismissed**.

35. Appellant no.2, is on bail, his bail bonds are cancelled and sureties are discharged. He is directed to surrender forthwith and carry out remaining sentence.

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

January 28, 2026

Rohit

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