



2026:AHC:19603-DB

Reserved On :- 20.01.2026

Delivered On :- 29.01.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2116 of 1984

Surendra Singh And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Anil Kumar Singh, -----, Anil Kumar Singh, Ranjeet Singh, V.S. 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 Rajarshi Gupta, Sri Anil Kumar Singh and Sri Y.C. Dubey, learned counsel for surviving appellant nos. 1 and 3 and Sri Sushil Kumar Pandey, learned A.G.A for the State.

2. The criminal appeal against the judgment and order dated 31.07.1984 passed by Special judge (E.C. Act), Mainpuri in Sessions Trial No. 298 of 1982 convicting and sentencing of the appellants under Section 302 read with Section 34 IPC for life imprisonment and further convicting and sentencing the appellants under Section 307 read with Section 34 IPC for a period of 7 years rigorous imprisonment

3. The prosecution case is that complainant, Baladin, S/o Sri Banwari Lal (P.W.1) and his uncle, Roop Lal, reside in village Nagthari within the police circle of P.S. Bewar, District Mainpuri. Deceased, Shiv Ram Singh, was son of Roop Lal. Deceased, Badan Singh, was son of Guru Dayal Singh a residents of village Raupura, P.S. Bewar District Mainpuri. Natthu Singh (P.W.3), real uncle of the complainant, lives in village Hanuman Garhi P.S.-Kishni, District Mainpuri. Shyam-Singh (P.W.2) is son of Natthu Singh (P.W.3). Sone Lal, real brother of complainant, Baladin, is living in village

Kusum-Haran P.S. Kishni, District Mainpuri.

4. Accused, Surendra Singh and his father, accused, Shiv Mangal Singh, are living in village Alawalpur, P.S.-Kishni, District Mainpuri. Accused, Virendra Singh and his real brother, accused, Arjun Singh, are inhabitants of village Tejganj, P.S.Bewar, District Mainpuri. All the four accused belong to one and the same group. They are *Thakurs* by Caste.

5. Village Nagthari and village Alawalpur are at a distance of about four furlongs from village Hanumangarhi. The fields belonging to Gajadhar, Suldwasi and Natthu-Singh lie at a distance of about 100 yards to the South of the aforesaid village Hanumangarhi. There is a *nali*. The field belonging to Gajadhar lies to the north of the *nali* whereas fields of Natthu Singh and Sukhwasi lie to the South of the *Nali*. At the time of the occurrence in question *araha* crop was standing in the field of Gajadhar whereas wheat crop was standing in the fields of Sukhwasi and Natthu Singh. These fields lie on way from village Hanuman- Garhi to village Kusum Haran. Village Kusun Haran is at a distance of about two furlongs from village Hanumangarhi.

6. The Election of village-Pradhan of village Hanuman-Garhi and Alawalpur was scheduled on 10.4.1982. Accused Surendra Singh and P.W.-3, Natthu Singh, were candidates for the office of the village- Pradhanship. There had been some enmity between deceased, Shivram Singh, on the one hand and P.W.-3, Natthu, Singh on the other hand. Due to long standing enmity deceased, Shivram Singh, was full of a thirst for revenge. He wanted to defeat Natthu Singh in the Election. So he asked accused, Surendra Singh, to file nomination paper against P.W.3, Natthu Singh, for the Election of village Pradhan. Consequently accused, Surendra Singh, filed nomination papers.

7. It is said that on 8.4.1982 at 5 p.m., P.W.3, Natthu-Singh, called a Panchayat at his residence in village Hanumangarhi. Baladin (complainant), Natthu Singh (P.W.3), Shyam Singh(P.W.2), Badan Singh (deceased), Guruprasad, Jor Singh, Shivram Singh (deceased), Collector alias Raja Ram and Lale all Ahirs by Caste participated in the Panchayat. The members of the Panchayat requested Shivram-Singh to vote and support Natthu Singh in the Election. Shivram Singh is said to have assured the Panchayat that he would vote and support Natthu Singh after consulting his elder brother, Sone

Lal, who was living in village, Kusumharan. At this all the members of the Panchayat at about 8 P.M. proceeded to village Kusumharan. Somehow the accused persons came to know about the Panchayat called by Natthu-Singh. They got enraged and in order to take revenge from Shivram Singh, they hid in the *araha* field of Gajadhar mentioned above. When the members of the Panchayat came up at the *nali* mentioned above, the above named accused persons came out of the hiding. Accused, Surendra Singh and Shiv Mangal Singh, had S.B.B.L. guns whereas accused, Virendra Singh and Arjun Singh were armed with rifle and country made pistol respectively. Accused, Surendra Singh, is said to have abused Shivram Singh saying "*Pahale to hame khara kar dia, Ab apne chacha panchayat kar raha hai, hem dhokha dene bale aur panchayat karane wale ko jinda hahi chhorenge*" At these words accused Surendra Singh fired his gun at Shivram Singh. Shivram Singh sustained gun shot injuries, fell down in the field and died. Accused, Surendra Singh, is said to have ordered accused Shivismangal Singh, Virendra Singh and Arjun-Singh to fire at the members of the Panchayat. At this all these accused persons fired from their fire arms at the members of the Panchayat with intent to kill them. As a result of this firing Natthu Singh, Shivram Singh, Shyam Singh, Badan Singh and Guru Prasad sustained gun shot injuries. Complainant, Baladin, Collector alias Rajaram, Lale Singh and Jor Singh somehow managed to escape from there. Badan Singh also died on spot. After committing murder of Shivram Singh and Badan Singh and causing injuries to Natthu-Singh, Shyam Singh and Guru Prasad, the accused persons fled away from the place of occurrence. The complainant and the witnesses feared the removal of the dead body by the accused persons and, therefore, the dead bodies were taken from the place of occurrence to the *Baithaka* of Natthu Singh.

8. The complainant was afraid of the accused persons and, therefore, he did not go to the police-station in order to lodge report with the police soon after the occurrence in question. At about 3 a.m., complainant Baladin accompanied by Natthu Singh and Shyam Singh proceeded from village Hanuman garhi for reporting at Police-Outpost Kusumharan in order to lodge report with the police. He reached the Police-Out-Post at 5.10 a.m. He submitted written report Ext. Ka. 1 there. The police of police-out-post recorded F.I.R. Ext.Ka. 23 and made necessary entries in G.D. The copy of G.D. is Ext.Ka. 24. Thereafter, the complainant went to P.S.Kishni.

9. S.I., Sri S.K. Awashthi, P.W.-7, started the investigation of the case. He

interrogated the complainant, at the police station Kishni. Thereafter, he reached police out post Kusumharan. He interrogated Shyam Singh and Natthu Singh at Police-Outpost Kusumharan. He took the blood stained Kurta of Natthu Singh into police custody, sealed the same and prepared memo Ext.Ka.6. Natthu Singh and Shyam Singh were sent for medical examination. Dr. Suresh Thariyani at District Hospital Mainpuri examined the injuries of Natthu Singh and Shyam Singh and prepared injury reports Ext. Ka. 2 and Ka. 3 relating to them respectively. Thereafter, S. I. Sri S.K. Awasthi, reached the *baithak* of F.W. Natthu Singh where the dead bodies of Shivram Singh and Badan Singh were lying on cots. In the presence of the witnesses he sealed the dead bodies. He wrapped them in clothes and sealed. He prepared inquest report Ext.Ka.7, photolash Ext. Ka. 9, challan-lash Ext. Ka. 10, letters Ext.Ka. 11, and Ka. 12 and sample of seal Ext.Ka. 13 relating to the dead body of Shivram Singh. He prepared inquest report Ext.Ka 8, photonash Ext.Ka., challen-lash Ext.Ka. 15, letters Ext. Ka. 16 and Ka. 17 and sample of seal Ext.Ka. 18 relating to the dead body of Badan Singh. He sent the dead bodies from the *baithaka* of Natthu Singh to mortuary Mainpuri for post mortem examination. The dead bodies alongwith connected papers were taken by Constable Asgar Abbas and Home Guard, Jagdish Singh. They identified the dead bodies at the time of the post mortem examination.

10. Dr. S. C. Agrawal, conducted post mortem examination on the dead bodies of Badan Singh and Shivram Singh, and prepared post mortem examination reports Ext.Ka. 4 and Ka. 5 relating to their dead bodies respectively. S.I. Sri S.K. Awasthi reached the place of occurrence. He inspected the place of occurrence and prepared site-plan Ext.Ka. 19. He recovered blood stained as well as simple earth from three places. He sealed the same and prepared memo Ext.Ka. 20. Thereafter, he interrogated witnesses and tried to search the accused persons. He returned to the police station alongwith case property. This fact was recorded in G.D. The copy of G.D. is Ext.Ka. 21. He did not send blood stained earth to chemical examiner in order to ascertain as to whether or not it contained human blood. After investigation he submitted charge-sheet Ext.Ka. 22.

11. The above named accused persons pleaded not guilty to the charges framed against them and claimed to be tried. The defence case is that notorious dacoits Sobaran Singh and Greesh committed murder of Shivram Singh and Badan Singh and the accused persons were falsely implicated in

this case due to election rivalry.

12. In support of its case the prosecution examined P.W.1, Beladin, P.W.2; Shyam Singh, P.W.3; Natthu Singh, P.W.4; Constable, Asgar Abbas; P.W.5, Dr. Suresh Tharriyani; P.W.-6, Dr. S. C. Agrawal and P.W.7 & S.I., Sri S.K. Awasthi.

13. Learned defence counsel admitted the genuineness of injury report Ext.Ka. 25 relating to Guru Prasad and, therefore, the prosecution did not examine Dr. N.K. Tiwari who examined the injuries of Guru Prasad.

14. P.W.1, Baladin, is complainant of this case. He has stated that the same facts as have been mentioned above in the prosecution story. P.W.2, Shyam Singh and P.W.3, Natthu Singh are eye-witnesses of the occurrence in question. They have corroborated the complainant about the occurrence in question.

15. P.W.4, Constable Asgar Abbas, took the dead bodies from the *baithaka* of Natthu Singh to mortuary Mainpuri for post mortem examination purpose. P. W.7, S.I. Sri S.K. Awasthi is Investigating Officer of the case. The substratum of his evidence has been given above. He claims to know the hand writing of H.C.,Hoshiyar Singh who recorded F.I.R. and G.D. at Police- Out Post Kusmara. He proved F.I.R. Ext. Ka. 23 and extract of G. D. Ext.Ka. 24. On 22. 4. 1982 he sent Guru Prasad for medical examination.

16. On 9.4.1982 at 3.30 P.M. at District Hospital Mainpuri, Dr. Suresh Thariyani, P.W.5, examined the injuries of Natthu Singh and Prepared injury report Ext. Ka. 2. The injuries found on the person of Natthu Singh are being reproduced as under: -

"1. Gun shot wound of entry 1/3 cm X 1/3 cm. X 4 cm on the front of the Rt upper arm 5 cm above to elbow joint. Direction in upwards backwards or laterally. margins lacerated, inverted Blackening tattooing & scorching absent.

2. Gun shot wound of entry 1/3 Cm X 1/3 cm × depth lost into deep tissue on the back & medial side on the Rt fore arm 12 cm down to wrist joint. margins lacerated and inverted. Blackening, tattooing and scorching absent. Direction not clear.

3. Gun shot wound of entry 1/3 cm X 1/3 cm X depth lost into deep tissue on

the back & medial side of right elbow joint. Margins lacerated and inverted. Blackening, tattooing and scorching absent. Direction not clear.

14. In his opinion the injuries were caused by some fire arm. At the time of medical examination the injuries were 3/4 day old.

15. On the aforesaid day at 3 P.M. he examined the injuries of Shyam Singh and prepared injury report Ext.Ka. 3. The injury found on the person of Shyam Singh is being reproduced as Under:-

1. Gun shot wound of entry 14 cm X 8 cm X depth lost into deep tissue on the left side back on the outer side. low bleeding. Margins lacerated & inverted. Blackening and tattooing present around the wound. Direction not clear.

16. In his opinion, the injury is caused by some fire arm. At the time of medical examination the injury was 3/4 day old. He has stated that there was possibility of the injuries having been caused to the victims on 8.4.1982 at 8 P.M. The injury sustained by the victim were dangerous to life.

17. On 10.4. 1982 at 2 P.M. at mortuary Mainpuri Dr. S. C. Agrawal conducted post mortem examination on the dead body of Badan Singh and prepared post mortem examination report Ext.Ka. 4. Ante mortem injuries found on the dead body of Badan Singh are being reproduced as under:-

1. Four oval gun shot wounds of entrance of size each .3 cm X.3 cm X cavity. No black charring or tattooing. Margins inverted.

(i) one on the rt side of face 2 on lateral of right ear.

(ii) one in the centre of the rest of neck.

(iii) one on the front of middle lower end of sternum.

(iv) one on the right side of abdomen lower part in the right Iliac fossa.

18. In his opinion cause of death was shock and hemorrhage as a result of ante mortem injuries.

19. On the aforesaid day at 3 P.M. at mortuary, Mainpuri he conducted post mortem examination on the dead-body of Shivram Singh and prepared post-mortem examination report Ext.Ka. 5. The ante mortem injuries found on the

dead body of Shivram Singh are being reproduced as under: -

"1. One oval G s.w. of entry 3 cm x 3 cm X thoracic cavity on the Rt side of front of upper part of chest 3.5 cm above the Rt Nipple. Blackening charring present around wound, margins inverted.

2. 3 Oval s.w.s entry in an area of 8 cm x 4 cm on the Rt side of lower part of chest 4 cm below the right nipple. each size 1 cm X 1 cm X cavity. margin inverted. No blackening charring or tattooing.

3. One oval gun shot wound 1 cm X 1 cm. X through and through on the left side of lower part of chest in relation injury no. 2.

4. Multiple oval gun shot wound of entry on the outer side Rt Arm in an area of 10 cm X 4 cm each size 5 cm X.5 cm X through and through No blackening, charring and tattooing. margins inverted.

5. Multiple oval gun shot wound of exit on the inner side of right arm in an area of 12 cm X 6 cm each size .8 cm X .8 cm X through and through. No blackening, charring and tattooing. margins inverted.

6. One oval gun shot wound on the back of middle of right fore arm, size 5 cm X.5 cm X through and through. No blackening, charring and tattooing margins inverted wound of entry.

7. One oval gun shot wound of exit 8 cm X 8 cm X through and through on the middle of inner side of right fore-arm. No blackening, charring or tattooing. margins inverted.

8. Two oval gun shot wound of entry on the back of left elbow in an area of 6 cm X 9 cm each side. 5 cm X.5 cm X through and through." No blackening, charring and tattooing. margins inverted.

9. Two, oval gun shot wound of exit on the front of upper part of left fore arm in an area of 10 cm X 4 cm each size 8 cm X .8 cm X through and through, margins inverted."

20. In his opinion cause of death was shock and hemorrhage as a result of ante mortem injuries. He has stated that there was possibility of death having

been caused to Shivram Singh and Badan Singh on 8.4.1982 at 8 P.M. He has further stated that the injuries sustained by Shivram Singh and Badan Singh were caused by some fire arm.

21. According to injury report Ext. Ka. 25, following injuries was found on the person of Guru Prasad :-

"1. Healed Scar mark, on the left side of back 3 cm X 1 cm oval in shape white granulation tissue present. Colour of the scar is white as compare to general body. 4 cm away from the upper border of left scapula. Healed margins is was irregular and not defined."

22. The medical witness examined the injury of Guru Prasad on 22.4.1982 at 12.30 P.M. at P.H.C., Kishni, district Mainpuri. In his opinion the injury was simple in nature and caused by some blunt object. At the time of medical examination the injury was more than a week old.

23. On the other hand in support of their defence case the accused examined D. W. 1 Inspector Singh and filed documents Ext. Kha. 1 and Kha. 2. The defence evidence shall be discussed when and where it is relevant.

24. Learned counsel for the appellants has submitted :-

(i) The prosecution case is that the complainant party was fired upon by the accused persons who had intercepted them while the complainant party was going to meet Sone Lal, who was the brother of Shiv Ram Singh. It has come in the testimony of the first informant, Baladin Yadav, that four accused made one fire each and did not repeat the fire and the deceased, Shiv Ram Singh, received fire arm injuries caused by the four accused. On the basis of the aforesaid testimony the deceased, Shiv Ram Singh, would have received four gun shot wounds. The medical evidence on this point is clear as the post-mortem of the deceased, Shiv Ram, was proved by P.W-6, Dr. S.C. Agarwal, which categorically states that there were as many as 7 gun shot entry wounds on the body of deceased, Shiv Ram Singh. This medical fact completely belies the ocular testimony of P.W.1, Baladin Yadav, who claims that 1 shot each without any repeated shot were fired by four accused. Hence there only four shots were made while deceased, Shiv Ram Singh, alone had seven gunshot wounds. Further more the second deceased, namely, Badan Singh, also had gun shot wounds as mentioned in

post-mortem report duly proved by P.W.6, Dr. S.C. Agrawal. Aforesaid gunshot wounds were quoted hereinbelow :-

- "1. On the right side of his face*
- 2. On the center of his neck.*
- 3. On the middle of the chest towards sternum.*
- 4. On the lower right side of the stomach."*

(ii) Not only this two injured namely, Natthu Singh, received three gun shot wounds where as the other injured, namely, Shyam Singh, also received gunshot wound. These facts clearly go to show that more than four gunshots were made on the deceased as well as on the injured persons which contradict the ocular testimony of the prosecution witnesses which creates shadow of doubt on the prosecution story and veracity of the depositions of these witnesses.

(iii) P.W. 7, the investigating officer, has categorically stated in his testimony that from the place of the incident 2 empty cartridges 12 bore and 3 *tiklis* were found. This factum further creates serious shadow of doubt regarding the place of incident in as much as the fact that two deceased and injured persons sustained multiple gunshot wounds and recovery of any two empty cartridges do not reconcile hence the place of incident becomes highly doubtful. It is also germane to mention that as per the prosecution witnesses they had taken the dead body of the deceased persons to their house where the *panchayatnama* was also conducted and as such the prosecution has not been able to firmly establish the place of incident as alleged by it. The prosecution has utterly failed to show the source of light in which the witnesses would have seen the incident. P.W.1 in his testimony for the first time stated that the night of the incident was the moon lit night and as such he was able to identify the assailant. He has not made any such statement either in the FIR or during interrogation and confronted on the said point in his testimony. On the contrary P.W.3 in his testimony categorically stated that on the night of the incident it was cloudy and there was apprehension of rain. P.W.7 the investigating officer has also categorically stated in his testimony that the prosecution witness never told him that the night of incident was moon lit night. From the above it is clearly transpires that the presence source of light as alleged by prosecution witnesses become highly doubtful which creates serious shadow of doubt on the prosecution story and veracity of the testimony of the witnesses. Prosecution has failed

to prove the nature of weapons as alleged by it, nor any recovery of weapon has been made from the accused person which clearly creates doubt about the prosecution story.

(iv) The prosecution has utterly failed to prove any motive of the accused to carry out the incident. On the contrary prosecution witnesses admit the fact that the deceased persons were having family property dispute with the informant party and it can safely be inferred that the informant party had reason to murder the deceased person. The bodies of the deceased were present at the house of the informant party and they had not given any plausible explanation as to how the dead bodies of the deceased were brought at the house of the informant and as such it belies the entire prosecution story.

(v) The defence has produced one, Inspector Singh who was the *sarpanch* of Gram panchayat. He has categorically stated that on date of the incident, on hearing the sound of gunshot, he reached the place of the incident and found the two dead bodies on the verandah of the Nathu Singh (informant party). Further he had categorically stated that the night of the incident was cloudy night and not a moon lit night and his testimony has completely brushed aside by the trial court.

(vi) The first informant, Baladin Yadav, stated in the FIR and in his testimony that one of the injured, named, Guru Prasad, was injured by the bullet fired by the accused persons but the medical report of the Guru Prasad reflects that the injury was simple in nature and it was caused by the blunt object the said medical report and the injured, Guru Prasad, was also not examined by the trial court. From the careful perusal of the above facts the prosecution story becomes highly doubtful.

(vii) As per the prosecution story there were total 4 eye witnesses other than 3 injured witnesses, present on the scene of occurrence and they have not been examined during the trial and the prosecution has not given any explanation as to why the said four star witnesses have not been examined during the trial despite the fact that they were eyewitnesses of the incident.

(viii) Two appellants are aged about more than 70 years and having no previous criminal antecedent and are suffering from various aged related ailments.

(ix) In the totality of the circumstances the prosecution has failed to prove beyond reasonable doubt. There is gaping hole in this story and as such the benefit of doubt may be extended to accused persons, and order/judgment of conviction and sentence of the sessions trial be set aside.

25. Learned A.G.A has vehemently opposed the submissions made by learned counsel for the appellants. He has submitted that the prosecution has proved its case beyond reasonable doubt. The arguments advanced by learned counsel for the appellants are without substance.

26. After considering the rival submissions, going through the material on record and the findings recorded by the trial court in its judgment and order we find that where there is medical evidence but it partly does not matches with the oral testimonies, the prosecution case cannot be disbelieved. In his examination-in-chief, P.W.-1, did not specified the number of firings made by the accused persons but in his cross-examination, it appears he got confused.

27. P.W.-2, did not stated that all the four accused made one fire each nor P.W.-3 specified the number of fires made by the accused persons. He has further submitted that indiscriminate firing was made by the appellants which resulted in death of two persons while the three injured suffered gun shot injuries.

28. In this case it is not a case of appellants that two deceased and the injured did not suffered any fire arm injury, rather the defence of the appellants is that P.W.-1 admitted in his cross-examination that all the four appellants made one firing each when the deceased, Shiv Ram Singh, suffered six entry wounds while deceased, Badan Singh, suffered four gun shot wounds, the injured, Natthu Singh, suffered three gun shot injuries while injured, Shyam Singh, suffered single gun shot injury. Guru Prasad also suffered injury but he was not examined before the trial court. Therefore, there is no dispute that no gun shot injury was suffered by any of the deceased or the injured. The only dispute raised is that P.W.-1 claimed that four fire arm shots were fired but considered together, all the deceased and injured suffered about 14 gun shot injuries.

29. The Apex Court in the case of ***Sunil Kundu and Another vs. State of Jharkhand*** reported in (2013) 4 SCC 422 held that where there was allegation of causing injury by fire arm or iron rod but no such injury was

found by the doctor, the accused were acquitted since they were charged for pelting stones, using pistols, iron rods and knives against the appellants. Police did not recover a single empty cartridge, therefore, the ocular evidence of the witnesses was disbelieved being in contradiction with the medical evidence. But in the present case, there is allegation of causing fire arm injuries to two deceased and the three injured and injuries of fire arms have been found on the person on the body of deceased and the injured. Corroborative recovery of two empty cartridges and three 'tickles' have also been made. Therefore, there is no contradiction regarding the weapon used in the crime and the nature of the injuries caused by the aforesaid weapon.

30. The Apex Court in the case of **Thaman Kumar vs State Of Union Territory Of Chandigarh (2003) 6 SC 380** has discussed the categories of conflict between oral and medical evidence as follows :-

" the conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eye-witnesses. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third category no such inference can straightway be drawn. The manner and method of assault, the position of the victim, the resistance offered by him, the opportunity available to the witnesses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony".

31. The Apex Court in the case of **Gangabhavani vs Rayapati Venkat**

Reddy & Ors, 2013(15) SCC 298 held that in case there is contradiction between medical and ocular evidence, though the ocular testimony of eye-witness has greater evidentiary value vis-a-vis medical evidence but where the medical evidence goes so far that it completely rules out all the possibility of the ocular evidence, the ocular evidence may be disbelieved. In this case the Apex Court has held that even where the empty cartridges recovered from the spot did not match with the weapon recovered, there was no contradiction between the medical and ocular evidence since the witnesses stated that the accused fired at the deceased with a gun and killed him. Even if the gun recovered by the police turns out to be a different gun, not use in the alleged crime, this does not creates any contradiction. Though broadly it may amount to contradiction in prosecution case. In the present case, it is not the prosecution case that the injuries were caused by fire arm but injuries found on the bodies of the deceased and injured were not of fire arms. Rather it is admitted that the deceased and the injures suffered fir arm injuries but the number of firing have not been correctly stated by P.W.-1.

32. The incident took place on 08.04.1982 at 05:00 p.m., when the investigating officer of this case, P.W.-7, went on the scene of occurrence on 09.04.1982 in the morning and he returned to the police station at 10:30 p.m in the night, therefore, he must have reached the place of incident around noon or in the evening and by that time the empty cartridges on the spot might have been removed or displaced by people passing through the place of incident in the morning to the afternoon. Natural agents like wind may have displayed the empty cartridges from the scene of incident. Had the investigating officer went on the spot to collect the empty cartridges and 'ticklees' from spot promptly more recovery could have been made.

33. The argument regarding the contradictions in the statement of witnesses that it was moonlit night or cloudy and rainy night is not of much importance since both the sides are well-known to each other. Moreover in the month of April there is sufficient light at 05:00 for identification of the persons causing an incident of crime by the witness. The appellants had motive to commit the alleged offence since the deceased, Shiv Ram Singh, had breached his promise made to Surendra Singh as clear from the statements of witness of fact.

34. Regarding the argument of dead body being found in the verandah of Natthu Singh, P.W.-3, and not on the place of incident, creating doubt about

the prosecution case and the place of incident, it is clear from the record that the incident and dispute took place at 05:00 p.m on 08.04.1982 and F.I.R of the incident was lodged at 05:10 a.m on 09.04.1982 by the informant, Baldev, P.W.-1. The two dead bodies were found lying on two cots in the verandah of Natthu Singh by the investigating officer. It is common in the villages to carry the injured / ailing / deceased person on cot. In the year 1982, there was no availability of ambulance readily and therefore, the cots were used like stretchers to carry two dead bodies from one site to the other.

35. The argument of learned counsel for the appellants that there is no explanation how the two dead bodies were brought to the verandah of Natthu Singh is explained by the presence of two dead bodies on two cots. It appears that soon after the murder of Shiv Ram Singh and Badan Singh, their bodies were brought to the house of Natthu Singh since both the deceased were well-known and closely related to the injured and other person accompanying them. The statement of Inspector Singh, D.W.-1, does not inspire confidence of this court. From the site plan, it is clear that the house of Natthu Singh was at the distance of 125 feet, in village-Hanumangadhi, from the place of incident. Therefore, it cannot be said that it was such a long distance as could not have been easily covered in the month of April at about 05:00 to 06:00 p.m since it is quite visible in the month of April. Mere non-examination of Guru Prasad (injured) since he suffered simple injuries by blunt object cannot be a ground to disbelieve the whole prosecution case. There are two injured witnesses proving the prosecution case wherein two persons have also lost their lives. The mere fact that the appellants are aged more than 70 years cannot be a ground for their acquittal. It is for the State Government to take care of this fact.

36. We find that the prosecution has proved the prosecution case against the appellants by proving the motive and the incident by eye-witness account. Only because of partial discrepancy in the cross-examination of P.W.-1, regarding number of firings made by all the four accused, the appellants cannot be absolved of all charges when from the other evidence on record, the prosecution case stands fully proved.

37. The criminal appeal lacks merit and it hereby dismissed.

38. The appellants are on bail. Their bail bonds are cancelled and sureties are discharged.

39. The appellants shall surrender forthwith and carry out the remaining sentence.

40. A copy of this judgment shall be notified to the trial court along with trial court record.

January 29, 2026
Rohit

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