

A.F.R.

Reserved on 09.01.2026

Delivered on 21.01.2026



2026:AHC:15749-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 2683 of 1985**

Ajai Pal Singh and another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Rahul Misra, Rajneesh Tripathi, Ravindra Singh, Salilendu Kumar Upadhyay
Counsel for Respondent(s)	: D.g.a.

In Chamber

**HON'BLE SIDDHARTH, J.
HON'BLE JAI KRISHNA UPADHYAY, J.**

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri Rahul Mishra, learned counsel for the appellant; Sri Gyan Narayan Kanaujia, learned AGA-Ist for State-respondents and perused the trial court record.

2. The above noted criminal appeal has been preferred against the judgment and order dated 4.10.1985 passed by Special Judge (E.C. Act), Mainpuri in Session Trial No.272 of 1982, convicting and sentencing the appellants under Section 302/34 I.P.C. for life imprisonment.

3. Shyam Deo, the complainant, of this case and the above named accused persons reside in village Paharpur within the police circle of Police Station Kurauli, District Mainpuri. Deceased, Shyam Pal, was real brother of complainant, Shyam Deo. P.W.2, Ashok Kumar, is son of deceased, Shyam Pal. All the four accused belong to one and the same group. Prior to the occurrence in question Vinod, brother in-law, of deceased, Shyam Pal, was prosecuted in connection with the murder of Ram Sewak, a resident of village Rajepur. Vinod was living with his brother-in-law, Shyam Pal, at the aforesaid village Paharpur. Ram Sewak was related to accused, Balvir. Accused, Balvir, suspected that Shyam Pal instigated Vinod to commit murder of Ram Sewak. Due to the murder of Ram Sewak, the accused Balvir and others bore serious animus against the deceased. They were full of thirst for revenge and threatened Shyam Pal with dire consequences several times. The complainant, brother of Shyam Pal and his nephew, Ashok, got frightened and, therefore, they left village Paharpur and began to live at village Delahar.

4. It is alleged that on 21.12.1908 early in the morning Shyam Deo, Shyam Pal and Ashok carried their pumping set to Karauli on a bullock cart driven by Hari for repairing purpose. Hari left the pumping set at the work shop of a Sikh in Qasba Kurauli and returned to his house driving bullock cart. The complainant, his brother Shyam Pal and nephew, Ashok, remained busy in getting their pumping set repaired till 4 P.M., but the pumping set could not be repaired. At about 4 P.M. the complainant Shyam Deo, deceased, Shyam Pal and P.W.-2, Ashok, were

returning to their house. Near canal, on way to village Belahar, they met Ram Autar, Nazar Yadav and mother of Ram Babu. They accompanied the complainant. All of them were going on foot. Deceased, Shyam-Pal, had his bicycle with him. He was proceeding a bit ahead of the above named persons. At about 5 P.M. all of them reached near the culvert of canal minor which lies at the out skirt of village Basura Sultanpur within the police circle of P. S. Kurauli District Mainpuri. The above named accused persons were sitting at the culvert of the canal minor. As soon as Shyam Pal reached near them, accused, Ram Vilas exhorted accused, Balvir to kill him. At this accused, Balvir, fired from pistol at Shyam Pal. The shot hit Shyam Pal. Accused Palvir fired from his pistol again. As soon as Shyam Pal was hit by the shot of the pistol, he lost the balance of his body and fell on the ground. At this accused, Ajai Pal, and Agent Singh inflicted knife injuries to Shyam Pal. The witnesses raised alarm and then the accused persons fled away towards village Paharpur. When the accused persons fled away from the place of occurrence the witnesses reached near Shyam Pal. He was found dead. Complainant, Shyam Deo, deputed some persons of the village to take care of the dead body and then he went to P.S. Kurauli, where he submitted written report Ext. Ka. 1 which was prepared by one, Devendra Kumar Misra, on his dictation.

5. The police of P. S. Kurauli recorded F.I.R. Ext. Ka. 4 at 7 P.M. and made necessary entries in G.D. The copy of G.D. is Ext. Ka. 5. S. I. Sri S. R. Sehara, started the investigation of the case. He interrogated the complainant at the police station. Thereafter he alongwith connected

papers and police force reached the place of occurrence. He examined the dead body in the presence of the witnesses. He wrapped the dead body in a sheet of cloth and sealed the same. He prepared inquest report Ext.Ka.6, Specimen impression of seal. Ext.Ka.7, chalan lash, Ext.Ka.8, photo lash, Ext.Ka.9, letter to C.O. Ext.Ka. 10 and letter to R.I. Ext.Ka. 11. The dead body along with connected papers was sent through police constables Ram Saran Singh and Ram Chandra for post mortem examination purpose. S.I. Sri Sehra inspected the place of occurrence. He recovered blood stained as well as simple earth from the place of occurrence and prepared momo Ext.Ka.12. He recovered cycle, bag, a pair of shoes and safi belonging to the deceased from the place of occurrence and prepared meno Ext.Ka. 13. He prepared site-plan Ext.Ka. 14. S. I. Sri Sehra stayed at the place of occurrence in the night and on 22.12.1980 he along with case property in sealed bundles returned to the police station. The case property was deposited in the malkhana and necessary entries were made in G.D. The copy of G.D. is Ext. Ka. 15. Special report was sent to the Officers concerned through / Mahesh Singh on 22.12.1980. This fact was recorded in G.D. The copy of G.D. is Ext Ka. 16. C/ Mahesh-Singh after giving special report to the Officers concerned returned to the police station the same day. This fact was recorded in G.D. The copy of G.D. is Ext.Ka. 17. The investigation of the case was withdrawn from Sri Sehra and entrusted to S. I. Sri J.F. Tyagi. Thereafter the investigation of the case was entrusted to S.I. Gri Jwala Prasad. After completing the investigation of the case S. I. Sri Jwala Prasad submitted charge sheet Ext.Ka. 2 against accused Balvir,

Ajai Pal Singit and Ram Vilas and chargesheet Ext. Ka. 3 against accused gent Singh alias Vikram Singh.

6. Dr. J.P. Gupta on 22.12.1980 at 4.15 P.M. at mortuary Mainpuri conducted post mortem examination on the dead body of Shyam Pal and prepared post mortem examination report Ext. Ka. 18. The blood stained clothes belonging to the deceased and simple earth recovered from the place of occurrence were sent for chemical examination. The Chemical examination reports are Ext. Ka. 19 and Ka. 20.

7. The above named accused persons pleaded not guilty to the charge framed against them and claimed to be tried. The defence case is that deceased, Shyam Pal, was a man of loose character. He kidnapped and outraged the modesty of several women. He enticed away the wife of Ram Shankar Engineer. He was done to death by some unknown persons and the accused persons were falsely implicated in this case due to enmity. Accused, Ram Vilas, pleaded alibi. Accused, Agent Singh alias Vikram Singh, has stated that his name is Vikram Singh. He is not Agent Singh.

8. In support of its case the procecution examined P.W.1, Shyam Deo; P.W.2, Ashok Kumar; P.W.3, S.I. Sri Jual Prasad; P.W.4, S.I. Sri S. R. Sehra and P.W.5 Dr. J.P. Gapta.

9. P.W.1, Shyam Deo, is complainant of this case. He has stated the same facts as have been mentioned above in the prosecution story. P.W.2, Ashok Kumar, child witness and is an eye witness of the incident in

question. He has corroborated the complainant about the occurrence in question.

10. P.W.,³ S.I. Sri Jiwal Prasad and P.W.⁴, S.I. Sri Sehra are Investigating Officers of this case.

11. P.W.⁵, Dr. J.P. Gupta, is a medical witness. On 22. 12. 1980 at 4. 15 P.M. at mortuary Mainpuri he conducted post mortem examination on the dead body of Shyam Pal and prepared post mortem examination report Ext.Ka. 18. Tho anti mortem injuries found on the dead body of Shyam Paal are being reproduced as under:-

"1. Lacerated wound 3 cm x 1 cm X muscle deep over the post surface of scalp right side 6 an below the right ear. Margins lacerated and irregular.

2. Incised wound 3 an 1 on X muscle deep over the face lower part of right ear transverse.

3. Incised wound 2 an X 1 an X bone deep over the nose 1 am below the root of nose, underneath bone cut.

4. Lacerated wound 3 cm X 1 an X bone deep over the right side of face 3 an lateral to right eye. Transverse underneath bone fractured.

5. Lacerated wound 1.5 cm x 0.5 an X muscle deep over the right side of face 2 ai below the injury No.4 transverse.

6. Lacerated wound 3 an X 1 on X muscle deep over the right side of fore-head just above to lateral part of eye brow.

7. Gun shot wound of entry 1.5 on X 1 cm. X cavity deep over the posterior surface of abdomen right side 9 an from mid line just above the iliac crest.

8. Gun shot wound of exit X 2.5 cm X cavity deep over the left side of waist 8 an below the anterior superior iliac spine descending towards injury No.7. Lumbar vertebra 4 & 5 eroded, underneath bone fractured."

12. The medical witness stated that he noted the length of anti mortem of injury No.8 in the post report. Eut the post mortan examination report is torn at the place where he noted the length of injury No.8. He, further stated that injury No.8 is exit wound of injury No.7 and, therefore, the length of exit wound could not be more than that of entry wound.

13. In his opinion the cause of death was shock and hemorrhage resulted from ante mortem injuries. He has categorically stated that there was possibility of the injuries having been caused to the victim on 21.12.1980 at 5 P.M. He has further stated that gun shot wounds were caused by some fire ams and there was possibility of incised wounds having been caused by knives and lacerated wounds by violent fall.

14. On the other hand in support of their defence the accused examined D. W.1, Hari Singh; D.W.2, Surat Singh; D.M.3 H. C. Raj Pal Singh; D.W.4, Sant Sewak Yadav and D.W.5 C/ Avadhesh Narain and filed documents Kha-1, Kha 2, Kha 3 and Ext. I.

15. After hearing the rival contentions; going through the material on record of the trial court and perusal of the judgment and order of the trial court, we find that initially apart from the appellants, another co-accused, Ram Vilas, was implicated in this case, but on the same evidence, the trial court has acquitted Ram Vilas and convicted the appellant no.1, Ajai Pal Singh and appellant no.2, Ajant Singh @ Vikram Singh. During the pendency of above noted appeal, appellant no.1, Ajay Pal Singh, has died and the appeal has already been dismissed as abated regarding the appellant no.1. Co-accused, Ram Vilas, who has been acquitted by the trial court, was also charge-sheeted under Sections 302/34 IPC like the surviving appellant no.2. In the present case, FIR with regard to the incident dated 21.12.1980, which took place at about 05:00 p.m., was lodged by the first informant at 07:00 p.m., which creates doubt about veracity of the FIR. The first informant stated that after unfortunate incident of murder of Shyam Pal, he sent information to his village Belahar and after the wife of the deceased came at the place of incident, he went on foot to lodge the FIR. The police station was stated to be at a distance of 6 km. He got the FIR scribed by Devendra Kumar Mishra and it was lodged at 7:00 p.m.

16. We find from the record that no case crime number was mentioned on the inquest report and related papers. Investigating Officer admitted that he sent the dead body of the deceased for post mortem at 10:30 p.m. on the date of incident itself, after inquest proceedings were conducted in gas light, but he also stated in his statement that he stayed at the crime

scene for whole night and came back on the next morning. Therefore, there appears to be strong possibility of FIR being ante-timed.

17. The deceased-appellant no.1, Ajay Pal Singh, was assigned the country-made pistol while appellant no.2, Ajant Singh and Balvir, were assigned knives and Ram Vilas was not assigned any weapon in the prosecution case. The deceased was found to have suffered eight injuries, which included one gun shot wound of entry, one gun shot wound of exit, two incised wounds and four lacerated wounds. The doctor opined that the aforesaid wounds could have been caused by a hard and blunt object. The doctor further found that fractures were found underneath the lacerated wounds. There is a possibility of the deceased falling fatally more than once. Prosecution failed to explain lacerated wounds suffered by the deceased.

18. As per the prosecution case, the deceased was caused a fatal gun shot injury from very short range from left side, but the entry wound of fire was found on the right side of the body of the deceased without any blackening, tattooing and scorching around the wound.

19. Initially guess of the prosecution was of causing two gun shot injuries to the deceased, as per the statement of witnesses recorded under Section 161 Cr.P.C., but later after post mortem the witnesses of prosecution did not supported the second fire arm injury caused to the deceased.

20. At the time of post mortem of the body of the deceased, there was presence of food in his stomach and his small intestine proved that the

deceased had taken food within five hours, but as per the prosecution case he left his house at 08:00 a.m. to get his engine repaired at village Kurauli and while he was returning he was killed at 5:00 p.m. Only two witnesses of fact, i.e. PW-1, Shyam Dev, real brother of the deceased and other witness, PW-1, Ashok, aged about 8 years and the son of the deceased were produced in the witness box. The witnesses, who were accompanying the deceased at the time of incident, namely, Ram Pyari and Nazar Yadav, gave affidavits in favour of accused. As per both the eye-witnesses, the deceased was carrying a bicycle at the time of the incident; however, he was on foot and was walking 10–12 steps ahead of them. The reason for the deceased travelling on foot was explained by PW-2, who stated that the bicycle had developed a defect. From the bicycle of the deceased, a bag was recovered hanging when he was attacked by the accused, but the bag was empty and it appears that the deceased was going to purchase something when alleged incident was caused.

21. PW-2 is a child witness, was aged about 8 years at the time of incident and at the time of his examination before the trial court, he claimed his age as 13 years. The trial court has not satisfied itself whether the child witness was explained the court proceedings and was competent to understand the questions being put to him.

22. Child witness testimony plays a crucial role in criminal trials, particularly, in cases, where the child is the sole or key eyewitness to the

crime. However, courts must ensure that such testimony is reliable and free from external influence or tutoring.

23. Regarding children, the law does not set a specific age at which they are automatically excluded from giving evidence due to a presumed lack of understanding. There is also no strict rule about the level of intelligence and knowledge required for a child to be considered a competent witness. Decisions in such cases largely rely on the judgment and discretion of the presiding judge. In practice, children as young as eight or nine are often allowed to give testimony as long as they have an appropriate degree of comprehension.

24. Before a child is examined as a witness, the court should assess their intellectual ability by asking a few simple and straightforward questions. The court should also document a brief record of this inquiry to ensure that the court can be assured of the child's ability to provide reliable evidence.

25. In India, the competency of a child witness is evaluated under Section 124 of Bharatiya Sakshya Adhiniyam, 2023 (Section 118 of Evidence Act, 1872) which states that a child of tender age can be a witness if the court determines that they possess the intellectual ability to comprehend questions and provide rational answers. Section 124 of BSA, outlines specific conditions that must be met for a person who has witnessed an event to be considered capable of testifying.

- i. The witness must be deemed suitable to give testimony.
- ii. They should comprehend the questions posed to them

iii. They must provide answers which is logical irrespective of their age, mental or physical issues or any other comparable reason.

26. Section 124 of the Bharatiya Sakshya Adhiniyam governs the admissibility of testimony by minors. It states:

“All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions due to tender years, extreme old age, disease—whether of body or mind—or any other cause.”

Thus, there is no strict age restriction on who can testify. Instead, the court must evaluate whether the child understands the duty of speaking the truth.

27. The Oaths Act, 1969, under Section 4, allows a judge to determine whether a child under 12 years should take an oath before testifying. Even if no oath is administered, their testimony is admissible as long as the court is convinced of their credibility.

28. Indian courts have established that while child witnesses can be competent, their testimony must be approached with caution due to their susceptibility to external influences.

29. We find that the competence of child witness to give his testimony before the court has not been tested by the trial court, while relying upon his statement. In this case, the incident in dispute took place on 21.12.1980 and the statement of PW-2, Ashok, the child witness, recorded on 28.8.1984 after about four years. The Apex Court has cautioned in the case of *State of Madhya Pradesh Vs. Balveer Singh*, 2025 NSC 261, that

the statement of child witness should be recorded promptly to minimize the risk of external influence and it should be corroborated by independent evidence whenever possible. The statement of child witness is required to be carefully assessed where the child is under the guardianship of party hostile to the accused. Clearly in this case, child witness (PW-2) is nephew of PW-1, the only other eye-witness of the incident and son of the deceased and was aged about 8 years at the time of alleged incident and when his statement was recorded before the trial court he was aged about 13 years. The trial court did not evaluate the witness for his possible tutoring by making preliminary judicial assessment as per the judgment of Apex Court in the case of ***Pradeep Vs. State of Hayana, 2023 SCC Online SC 777.***

30. We have gone through the statement of PW-2 on record and find that despite being a very important witness of fact, apart from PW-1, his uncle, the court has not made any preliminary assessment of child witness before proceeding to record his statement. The child witness has admitted that he was studying in Class II at the time of unfortunate incident. The school hours are from 10 a.m. to 4 p.m. but on the date of incident he had not gone to the school and has informed his teacher that he will accompany his father to Kurauli. He could not inform the court in which season the incident took place. In his statement recorded under Section 161 Cr.P.C., the fact that he had not gone to school on that date was not mentioned. During his cross-examination, he has admitted that he did not inform the Investigating Officer, who recorded his statement under Section 161 Cr.P.C., that the bullock cart on which his father and uncle had taken the

engine for repairs returned immediately after unloading the engine. He also did not inform that his father was walking on foot while carrying his bicycle along with him, as it was not in working condition. His father got the same repaired at Karauli, but he did not inform the Investigating Officer in this regard. Again while returning from Karauli, his father was walking with his bicycle because road was very bad, but he did not inform the Investigating Officer in this regard. He further stated that his father was shot from front by accused by extending his hands towards him. Accused, Balveer, was standing on the culvert and however standing over on the same, he fired on his father. After suffering gun shot, his father went back 2-3 paces and fell down. He did not fall down at the place where the bullet hit him. He further stated that he had informed the Investigating Officer that the country-made pistol was of 3 not 3, but he cannot say why this fact was not mentioned in his statement. He further stated that only one fire was made and he cannot say who informed the Investigating Officer that another fire was made after his father fell down. He could not say before the court that how many knife injuries were caused to his father. He cannot state whether his father fell on his back or on his stomach after suffering fatal gun shot injury. He denied that he has been tutored by the police. He stated that he does not know about the 12 bore or 3 not 3, but only knows that country-made pistol is 3 not 3. He further stated that he does not know his uncle Ram Pal. He further stated that he does not know whether his agricultural field is in Pahadpur and adjacent to the field of accused, Ram Vilas. He further stated that no dispute took place between his uncle and accused, Ram Vilas regarding agricultural

field. The statement of PW-1 read with statement of PW-2. indicates that in the statement of PW-1 recorded under Section 161 Cr.P.C. he did not informed the Investigating Officer that at the time of incident, PW-2, Ashok, was accompanying the deceased and PW-1 and he was also the eye witness of the incident. He stated that Investigating Officer wrongly mentioned that only deceased and PW-1 were present when the alleged incident took place.

31. Therefore the presence of the child witness was not corroborated from the statement of PW-1 recorded by the Investigating Officer. The Courts have held that where testimony of child witness is doubtful, it should be corroborated from some other independent evidence. Here we find that there is no independent evidence and presence of PW-2 was initially not admitted by PW-1 at the time of recording of his statement by Investigating Officer. In the case of ***Dattu Ramrao Sakhare Vs. State of Maharashtra, (1997) 5 SCC 341***, the Apex Court has held that it is a rule of prudence, which advises that testimony of child witness should be considered with caution, but it is not mandatory. However, we find that where there is doubt regarding the presence of child witness on the place of incident and there are inconsistencies in his statement apart from his statement recorded by the Investigating Officer and there appears to be improvement made by the witness during recording his testimony before the trial court, the court must seek corroboration of the testimony of child witness. In this case we have not found any independent evidence, which may corroborate the statement of PW-2. PW-1 is himself the brother of the deceased and uncle of PW-2, who is also son of deceased and

interested witness. We further find that neither PW-1 nor PW-2 have explained four lacerated wounds suffered by the deceased.

32. It has come in the evidence of DW-1 that the deceased was not married and was living with a woman, who was wife of Ram Shanker Pandit. Ram Shankar Pandit got his wife arrested, but deceased again abducted her. DW-1 stated that deceased had also enticed away his daughter-in-law and he had lodged the FIR against him. He also stated that deceased did not had any engine and he used to irrigate his crops from canal. DW-2 also testified that the deceased was involved in a criminal case with him. Therefore the prosecution case that the deceased had gone to get his engine repaired was cooked up. Two incised wounds suffered by the deceased on the face and over nose were not found fatal for the deceased. The deceased could not have died because of suffering only two incised wounds, which may have been caused by the appellant no.2, Ajant Singh or co-accused, Balvir. It was also clearly proved that it was the appellant no.2, who caused two incised wounds of the deceased. Four lacerated wounds suffered by the deceased were not explained by the prosecution at all. There was no recovery of any weapon made from the pointing out of appellant no.2.

33. Learned counsel for the appellant has also submitted that name of the appellant no.2 is Vikram Singh and in the FIR name of Ajant Singh s/o Raja Ram was mentioned as accused and not Vikram Singh. In the judgment and order of the trial court, he was not named as Vikram Singh. PW-3 and PW-4 stated before the trial court that during

investigation, they know that appellant no.2 is brother of accused, Ram Vilas. Therefore, he has been falsely implicated in this case.

34. We are afraid that we cannot sort out this issue at this stage in the absence of any evidence led before the trial court by appellant no.2.

34. Under the totality of facts and circumstances of this case, we find that prosecution has failed to prove its case beyond reasonable doubt against appellant no.2. Therefore appellant no.2 deserves to be extended benefit of doubt. We are of the opinion that findings recorded by the trial court convicting and sentencing the appellant no.2 are not based on proper appreciation of the material on record and are set aside.

35. Accordingly, the judgment and order of the trial court is set aside.

36. Appellant no.2 is on bail and he need not surrender. His bail bonds are cancelled and sureties are discharged.

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

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

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

January 21, 2026
Ruchi Agrahari