

Reserved on 17.11.2025
Delivered on 08.01.2026



2026:AHC:4464-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 2968 of 1987

Ram and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Ankur Mishra, Aushim Luthra, Oshe Luthra, Shiv Bahadur Singh, Sunil Vashisth
Counsel for Respondent(s)	:	D.g.a.

In Chamber

HON'BLE SIDDHARTH, J.
HON'BLE PRASHANT MISHRA-I, J.
(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri S.B. Singh, learned counsel for the appellant No. 3, Sri Aushim Luthra, learned counsel for appellant no.7; Learned AGA for State-respondents and perused the trial court record.

2. The above noted Criminal Appeal has been preferred before this Court against the Judgment and order dated 14.12.1987 passed by Additional Sessions Judge, Farrukhabad, in Sessions Trial No. 276 of 1983 (State Vs. Shree Ram and others), Police Station Mohammdabad, District Farrukhabad, convicting and sentencing each of the appellants for committing offences under Section 148 I.P.C. for one year's rigorous

imprisonment and a fine of Rs. 2000/- (in default of payment of fine to further undergo six months additional imprisonment); under Section 302/149 I.P.C. for life imprisonment; under Section 307/149 I.P.C. for five year each rigorous imprisonment and a fine of Rs. 2000/- (in default of payment of fine to further undergo six months additional imprisonment); all the sentence are to run concurrently.

3. The prosecution case is that house of Brijraj Singh, complainant, P.W.1, is towards extreme South East of village, Basantpur, within the circle of P.S. Mohammadabad, District. Farrukhabad. The exit of the house of Brijraj Singh is also towards North. On the date of occurrence, there was no fixation of door of the complainant. There is yet another door of the house of the complainant towards South East in which door was fixed and it was locked from inside. The '*Baithaka*' (drawing room) of the complainant is attached to his house towards east. Towards west is *Sehan* (appurtenant land) of this *Bethaka* and then towards west of this *Sehan* are the *Verandah*, rooms etc. There are only 20-25 houses in village Basantpur. Village, Sarai Agat is at a distance of 2 kilometres towards North from village, Basantpur. Village, Sarai Agat, lies within the circle of P.S. Aliganj Distt. Etah. Whereas village, Basantpur, lies within the circle of P.S. Mohammadabad, Distt. Farrukhabad.

4. Deceased, Lala Ram, was the father of the complainant and Jadunath Singh was the real elder brother of the complainant. Injured, Ujir Singh, P.W-2 is also real brother of the complainant, Brijraj Singh. Hamir Singh, one of the accused of this case, has already expired and accused,

Puran Singh and Pirthi Raj, are his sons. Accused, Raja Ram, is the brother-in-law of Beni Ram. Accused, Jai Ram and Shree Ram, are residents of the village Basantpur, whereas accused, Pati Ram and Raghubir, are residents of village, Mehmadpur of Distt. Etah. All the accused persons were known to the complainant and his family members from before. There had been litigation between the complainant's side and deceased, Hamir Singh and also accused Shree-Ram, in consolidation courts in which the complainant side had won. The deceased, Lala Ram, had purchased a piece of Abadi land under the registered sale deed from Yaqub Ali and others and lies in village Saraia gat. The said piece of land lies (the sale deed is Ext. Ka 1) on record. Hamir Singh, deceased and his sons, who are the accused in this case, also wanted to purchase this piece of land from Yaqub Ali and others and since it was purchased by Lala Ram, deceased, it was taken ill by Hamir Singh and his sons. This sale deed was executed 2-1/2-3 months prior to the present occurrence. Another piece of Abadi land was agreed to be purchased and settled by the complainant side. The accused, Puran Singh and others also wanted to purchase this land. There was an open auction and neither of the party could purchase it. This was also taken ill by the accused persons, who are the members of one and the same group. It is how that there was illwill between the complainant side and the accused persons.

5. It is further alleged that in the night between 22/23.10.1981 in village, Basantpur Mauza Sankisa within the circle of P.S. Kaimganj Distt. Farrukhabad, at about mid-night, the complainant Brijraj Singh, his

brother Maharaj Singh alongwith their family members were lying inside their house and in the attached '*Baithaka*' Lala Ram, his son Jadunath Singh, Ujir Singh and Kunwar Singh were lying. A lantern was hanging and burning on a *Khunti* of the wall of the *Varandah*. In the *Baithak* as well, a lantern was burning as usual and as such there was more than sufficient light inside the house of the *Baithaka*. At about mid-night, about 12 miscreants entered into the house and fired. 2 or 3 shots, As a result of which the complainant, Brijraj Singh and his brother, Maharaj Singh woke up and they saw the accused persons and three unknown persons inside the house. Out of them Hamir Singh had already been expired. The accused Jai Singh, Puran Singh and Pati Ram had guns with them whereas accused Raja Ram and Raghuvir were armed with country-made pistols. Rest of the accused were having. lathis and dandas with them. On the noise of firing, Jadunath Singh, Lala Ram, Ujir Singh and Kunwar Singh, who were in the *Baithaka* also came in the *Sehan* of the house and all of a sudden the accused, Puran Singh, Jai Singh, Pati Ram, Raghubir and Raja Ram opened fire with guns and country made pistols, as a result of which Jadunath Singh, Ujir Singh and Lala Ram sustained fire arm injuries. Jadunath Singh as a result of these injuries died on the spot itself whereas Ujir Singh, Lala Ram sustained injuries and were taken to the hospital. The complainant Brijraj Singh then took his injured brother, Ujir Singh and father, Lala Ram in a bullock cart to village, Sarai Agat, leaving behind the dead body of Jadunath Singh lying inside the house. Within short time the complainant could arrange a bus in the village, Sarai Agat, and in the mean time he prepared a

written report Ext. Ka 2 of the occurrence and took it to the police station, Kaimganj alongwith injured, Ujir Singh and Lala Ram. It is alleged that on way to the hospital Lala Ram also succumbed to his injuries.

6. On the basis of the written report Ext. Ka 2 a chik report Ext. Ka 15 was prepared and a case against the accused was registered vide G.D. entry copy Ext. Ka 16. The Investigating Officer took up the investigation of the case. He reached the scene of occurrence, recorded the statements of the witnesses and prepared site plan Ext. Ka 18. The Investigating Officer prepared the Panchayat Nama Ext. Ka9 of the dead body of Jadunath Singh. He also prepared the challan lash Ext. Ka 10, photo lash Ext. Ka 11, letter to C.M.O. Ext. Ka 12, and letter to R.I. Ext. Ka 13. In the mean time the injuries of Ujir Singh were medically examined in the Emergency Ward of District Hospital Fatehgarh vide injury report Ext. Ka 4. The Investigating Officer also took used cartridges from the scene of occurrence and prepared the memo Ext. Ka 17 thereof. He also took the simple and blood stained earth in two separate tins and prepared memo Ext. Ka 20 thereof. The Investigating Officer further inspected the torches of the witnesses and handed them over in *Supurdgi* after preparing the memo Ext. Ka 21. The Investigating Officer also inspected the lanterns burning on the scene of occurrence and prepared mammo Ext. Ka 22 thereof. The Investigating Officer further prepared the Panchayat Nama Ext. Ka 23 of the dead body of Lala Ram. He also prepared the challan lash Ext. Ka 24 photo lash Ext. Ka 25, letter to R.I. Ext. Ka 26 and letter to C.M.O. Ext. Ka 27. The post mortem of

the dead bodies of Jadunath and Lala Rem was conducted in the District Hospital Fatehgarh vide post mortem reports Ext. I Ka 7 and Ka 3. After completing the necessary formalities and the investigation, charge sheets Ext. Ka 29 and Ka 30 were submitted against the accused persons.

7. The accused persons pleaded not guilty to the charges framed against them and claimed to be tried. Their defence is that they have been falsely implicated in this case due to enmity.

8. In support of its case, the prosecution examined 8 witnesses in all. They are complainant, Brijraj Singh, P.W.1; Ujir Singh, injured, P.W.2; Dr. C.N. Bhalla, P.W. 3; Medical Officer, Dr. A.K. Dubey Medical Officer, P.W.4; S.I. Lala Ram P.W.5; S.H.O., Suraj Mal, P.W. 6; Const. Ramjital, P.W. 7 and Const. Prakash Narain P.W. 8.

9. The defence also examined Const. Rajendra Singh as D.W. 1 and one Chhotey Singh as D.W. 2. The defence also relied upon the identification memo Ext. Kha 1 and copy of the applications Ext. Kha 2.

10. Birraj Singh, P.W. 1, is the complainant and the first informant. He is the real brother of Jadunath Singh and son of deceased, Lala Ram. He has stated on oath that there had been illwill between his family and the family of the deceased, Hamir Singh. There had been litigation between two families in the consolidation courts and further there had been bad blood between the two parties in respect of sale of some piece of land in village, Sarai Agat. In the night between 22/23.10.1981 he was inside his house alongwith the family members whereas his father, Lala Ram and younger brother were inside *Baithak*, about 12 miscreants entered into

his house at about mid night. They including, Hamir Singh, deceased, the present accused persons and 3 more persons, whom he could not identify. All of a sudden, the miscreants fired 3 or 4 shots. The accused Jai Singh, Puran Singh and Pati Ram were armed with guns Whereas accused Raja Ram and Raghubir were armed with country made pistols. Rest of the miscreants were having *Lathis* and *Dandas* with them. On the noise his father and brother also came into Sehan of the house and the accused persons fired at them, as a result of which his brother Jadunath Singh died on the spot whereas his father, Lala Ram and brother, Ujir Singh, sustained fire arm injuries. His father, Lala Ram, later on succumbed to those injuries. He had identified all the accused persons in the light of torches and lanterns. Subsequently, he got written report Ext. Ka 2 prepared and took it to the police station alongwith the injured. The report was lodged at the police station itself and the injured were taken to the hospital.

11. P.W. 2, Ujir Singh, is the real brother of Brijraj Singh, P.W. 1, and he is the injured. He has also narrated the whole prosecution story and has corroborated the statement of Brijraj Singh, P.W. 1, on all points. He has stated that he was inside his *Baithaka* when at about mid night he heard the noise of firing inside his house. He, his brother and father went inside the house and there he saw the accused persons and their companions armed with fire arms and other weapons. Accused persons and their companions opened fires, as a result of which he, his brother, Jadunath Singh and father, Lala Ram, sustained injuries. Later on he got his injuries medically examined in the District Hospital, Fatehgarh.

12. Dr. C.N. Bhalla Medical Officer, District Hospital Fatehgarh P.W. 3 has stated on oath that on 24.10.1981 he had conducted the post mortem on the dead body of Jadunath Singh at about 3 p.m. and found the following ante mortem injuries on his persons-

1- One G.S.W. of entry 4 cm. x 3.5 cm. X chest cavity to abdomen cavity deep on left side of chest margins are lacerated inverted and echymosed blackening present on the skin around the wound. The wound 2 Cm. away from left nipple at 7 '0 clock position.

11. According to doctor the cause of death is due to shock and hemorrhage as a result of ante mortem injuries. The post mortem report is Ext. Ka 13 on record.

12. This doctor also had examined Ujir Singh on 23.10.1981 and the found the following injuries on his person:-

I- One G.S.W. of entry 4 Cm X 3 cm on outer side of left Arm. Margines are lacerated inverted and echymosed 15. Cm below the left shoulder joint blackening around the wound is present.

II. One G.S.W. of exit on inner side of lert arm 5 Cm x 4 Cm. The margins are everted and lacerated. The tag of muscles having up. The underlying bone (Humerus) is fractured. Blood oozing is present.

III-Multiple G.S.W. of entry skin to muscle deep to chest cavity deep. Probing not done being in vital part and few slip shots in an area of 7 Cm x 6 Cms left lateral aspect of the chest 10 cm. below axilla 0-25 Cm x 0.25 Cm 0-30 Cm. 0.3 cm, 0.3 cm. x .3 cm.

13. The doctor opined that the injuries were caused by fire arms and were fresh. The injuries were kept under observations and X-ray was advised. The injury report is Ext. Ka 4 on record.

14. The Dr. A.K. Dube, Medical Officer, District Hospital Fatehgarh P.W. 4, has stated on oath that on 23.10.1981 at about 1 p.m., we had conducted the post mortem of the dead body of Lala Ram and found the following ante morte injuries on his person.

I- G.S.W. of entry 1/2" x 1/4" x abdominal cavity deep on the back of left side 4" above iliac crest and 342" away from mid line margins inverted blackening present direction back to front.

II- Multiple G.S.W. of entry 2" around the wound of entry each measuring 1/8" x 1/8" x skin to muscle deep.

15. According to the doctor, the cause of death had been shown hemorrhage as a result of ante mortem injuries, The postmortem report is Ext. Ka 7 on record.

16. S.I., Lal Ram Sharma, P.W. 5 is the Investigating Officer of the case. He has stated that on 23.10.1981 he was posted at police station Mohammadabad. He went to the scene of occurrence. He prepared the Panchayat Nama Ext. Ka 9 of the dead body of Jadhunath Singh. He also prepared the challan lash, photo lash, letter to C.M.O. and letter to R.I. of the dead body of Jadhunath Singh. He has also stated that he sealed the dead body of Jadhunath Singh and handed it over to the Constable for being taken for post mortem in the district hospital Fatehgarh. He has

further stated that on 25.10.1981 he had arrested the accused, Pati Rem from his house and took his licensed gun in possession which was sealed and a memo Ext. Ka 14 thereof was prepared. He also took the blood stained clothes Ext. 24 and 25 of the dead body of Jadunath Singh.

17. P.W. 6, Suraj Mal, is also investigating Officer of the case. He has proved the chik report Ext. Ka 15 and the G.D. entry Ext. Ka 16. He has stated that he had recorded the statement of Brijraj Singh at the police station itself and he had also recorded the statement Ext. Ka 17 of Lala Ram at the police station. He has further stated that Lala Ram was brought to the police station in injured state. He was speaking and was very much conscious. Later on Lala Ram died on way to the Hospital. He then went to the scene of occurrence, inspected the same and prepared the site plan Ext. Ka 18. He also took the 7 used cartridges from the scene of occurrence, sealed the same and prepared memo Ext. Ka 19 thereof. The said cartridges are material Ext. 26 to 33. He also took sample and blood stained earth from the scene of occurrence in two separate tins vide memo Ext. Ka 20. He also inspected the torches of the witnesses and also the lanterns and prepared memos Ext. Ka 21 and Ka 22. He also prepared the Panchayat Nama of the dead body of Lala Ram, challan lash, photo lash and other papers were also prepared. After completing the necessary formalities and investigation charge sheets Ext. Ka-29 and 30 were submitted against the accused.

18. The statement of Const., Ramji Lal, is that of formal nature and by his affidavit he has proved that he took the injured, Lala Ram and Ujir

Singh, to the District Hospital Fatehgarh from the police station. He has also proved that on way to the hospital Lala Ram had died. The statement of this witness is of formal nature.

19. Similar is the statement of Const. Prakash Narain, who took the dead body of Jadunath Singh to the Hospital for post mortem.

20. D.W. 1, Constable, Rajendr Singh, has proved the identification memo Ext. Kha 1 which was prepared by the then Magistrate. By this document the defence has intended to prove that after the alleged incident, some accused were put to identification and in that identification, the witnesses, Brijraj Singh, P.W. 1 and Ujir Singh, P.W. 2 had clearly stated before the Magistrate concerned that a dacoity was committed at their house and it was not a case of murder. D.W. 2, Chhotey Singh, has also stated on oath that on the fateful night a dacoity was committed at the house of Lala Ram.

21. During the pendency of above noted appeal, all the appellants except appellant nos. 3 and 7, namely, Prithi Raj and Pati Ram, have died. Hence appeal has been heard only with regard to appellant nos. 3 and 7 by us.

22. After hearing the rival submissions, going through the material on record and perusal of the judgment and order passed by the trial court, we find that while appellant no.3, Prithi Raj, was assigned the role of having lathi/danda in his hand, appellant no.7 was assigned the role of having gun in his hand and make firing. All the accused persons are well known to the complainant and his family members from before except

three unknown persons. Appellant no.3, Prithi Raj, has not been assigned any specific role and only omnibus allegations of having lathi/danda has been assigned to him. Appellant no.3 was not having any motive to commit the alleged offence and there was ill-will of accused, Hamir Singh and Shree Ram with complainant due to previous litigation regarding land. Enmity is a double-edged weapon. On the one hand, enmity may provide a motive for the commission of a crime; on the other hand, it does not rule out the possibility of false implication. The appellant no.3 is not resident of the same village as of the complainant. During test identification parade, the complainant informed the Magistrate about the commission of dacoity in his house, which was supported by DW-1 and DW-2. PW-1, Brij Raj Singh, does not appear to have been present on the place of incident since PW-2, Ujir Singh, has not stated anything about his presence at the time of incident. From the post mortem report of the deceased and the injured, there does not appear to be any fatal injury caused by danda/ lathi to any of them. From the statement of appellant no.3 made before the trial court, under Section 313 Cr.P.C. his age was 25 years in the year 1987 and now he is aged about 63 years.

23. Regarding appellant no.7, Pati Ram, we find that he was assigned the role of having gun in his hand alongwith accused, Jai Singh and Puran Singh, while Rajaram and Raghubir were assigned country-made pistol in their hands. Other accused were assigned lathi/danda. Jadunath Singh died on the spot after suffering gun shot injury and Lala Ram died later. Ujir Singh was injured witness. The earliest version of the incident, as

recorded in the identification memo, shows that PW-1 and PW-2 described the incident as a dacoity, with no allegation of any murderous assault by known enemies. The character of the incident as to whether it was result of enmity or of a dacoity is doubtful. The prosecution relied upon the motive of enmity between the family of deceased, Lala Ram and accused, Shree Ram, Puran Singh, etc. to set up the motive of the crime but as considered earlier, motive is always a double-edged weapon.

24. In the present case, there was land dispute between Lala Ram's family and Hamir Singh's family. Appellant no.7, Pati Ram, is resident of another village, Mehmampur, District Etah and not the resident of the village of the informant and was not having direct participation in the land dispute between the parties. There was no independent witness produced before the trial court to prove any motive against appellant no.7. PW-1 and PW-2 are both the sons of of Lala Ram and also the witnesses of fact. The incident took place around mid night and no source of light in the form of lantern and torch were recovered by the Investigating Officer or any recovery memo was made. When the court is made to believe the prosecution case regarding the incident in the night being proved only by the related witnesses with admitted enmity, independent witnesses were required for corroboration. The appellant has been implicated with the help of Section 149 IPC on the assumption that all the accused forming unlawful assembly with common object committed the alleged offence, when the offence was committed in the execution of common object by all the members of unlawful assembly.

No specific role of firing has been assigned to appellant no.7, Pati Ram, nor he was not assigned any role in committing the alleged offence. Mere presence with a gun alongside three named accused in an incident, which may have been a dacoity, is insufficient to prove that he shared a common object to commit double murder with the other accused. There was no ballistic examination report of weapon or cartridges allegedly recovered from appellant no.7 or from the body of the deceased. Therefore, there is no scientific evidence to corroborate the prosecution's case. The incident appears to involve both a possible murderous assault and a dacoity. It is settled law that where two views are possible, the one favourable to the accused should be accepted. On the basis of the statement of appellant no.7 recorded under Section 313 Cr.P.C. he was aged about 50 years in 1987 and has now attained the age of about 88 years. We are of the opinion that findings recorded by the trial court convicting and sentencing the appellant nos. 3 and 7 are not justified.

25. The judgment and order of the trial court is set aside.

26. Appellant Nos. 3 and 7 are on bail and, therefore, they need not surrender. Their bail bonds and sureties are discharged.

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

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

(Prashant Mishra-I,J.) (Siddharth,J.)

January 8, 2026
Ruchi Agrahari