



2026:AHC-LKO:16277-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 255 of 2005

Shankar And 5 Ors.Appellant(s)

Versus

State of U.P.Respondent(s)

Counsel for Appellant (s) : Smt. Nalini Jain, Adarsh Mehrotra,
Desh Ratan Mishra, Madhu Bala
Srivastava, Rajeev Kumar Mishra
Rudra, Soniya Mishra, Surya Bux
Singh

Counsel for Respondent(s) : Govt. Advocate

Connected with

CRIMINAL APPEAL No. - 254 of 2005

Shiv KumarAppellant(s)

Versus

State of U.P.Respondent(s)

Counsel for Appellant (s) : Smt. Nalini Jain, Amar Nath
Dubey, R K S Chauhan, Soniya
Mishra

Counsel for Respondent(s) : Govt. Advocate

with

CRIMINAL APPEAL No. - 43 of 2005

Ram Prakash And 2 Ors.Appellant(s)

Versus

State of U.P.Respondent(s)

Counsel for Appellant (s) : Dharmendra Singh, Aarif Ali, Akil Imam, Furkan, Hemant Kumar Misra, Shreesh Kumar M, Shreesh Kumar Mishra Atal, Soniya Mishra

Counsel for Respondent(s) : Govt. Advocate

with

CRIMINAL APPEAL No. - 231 of 2005

Mewa LalAppellant(s)

Versus

State of U.P.Respondent(s)

Counsel for Appellant (s) : Dharmendra Singh, Chandra Sekhar Pandey, Chandra Shekher Pandey, Soniya Mishra

Counsel for Respondent(s) : Govt. Advocate

Court No. -10

Reserved on 28.11.2025
Delivered on 27.02.2026
A.F.R.

HON'BLE RAJNISH KUMAR, J.
HON'BLE ZAFEER AHMAD, J.

(Per : Rajnish Kumar, J.)

(1) Heard Shri Adarsh Mehrotra, learned *Amicus Curiae* for the appellants in Criminal Appeal No. 255 of 2005, Shri Amar Nath Dubey, learned *Amicus Curiae* for the appellant in Criminal Appeal No. 254 of 2005, Shri Shreesh Kumar Mishra Atal, learned *Amicus Curiae* for the appellants in Criminal Appeal No. 43 of 2005, Shri Chandra Shekhar Pandey, learned *Amicus*

Curiae for the appellant in Criminal Appeal No. 231 of 2005 and Shri Pawan Kumar Misra, learned A.G.A. for the State.

- (2) All the aforesaid criminal appeals under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as “*Cr.P.C.*”) emanate from common judgment and order dated 18.12.2004 passed by learned Additional Sessions Judge/Special Judge (Essential Commodities Act), Unnao, in Sessions Trial No. 228 of 2001; *State Versus Rampal and 14 others*, arising out of Case Crime No.41 of 2001, under Sections 148, 404, 452, 307/149 and 302/149 of the Indian Penal Code, 1860 (here-in-after referred to as “*I.P.C.*”), Police Station Makhi, District Unnao.
- (3) Since the above-captioned criminal appeals emanate from a common factual matrix/incident, F.I.R. and impugned judgment and order 18.12.2004, therefore, the same are clubbed together and we proceed to decide the same by a common judgment.
- (4) The prosecution case, in short, is that on 12.02.2001, the complainant Guddu had submitted a written report (Ext. Ka.1) at police station Makhi, district Unnao, alleging therein that he is a resident of village Meharavan Khera, a hamlet of Methitikur, police station Makhi, district Unnao. Gajju, Ram Kumar, Ram Kishan and brother-in-law of Raj Kumar, namely, Hari of his village had killed his uncle Kishan about 19 years ago, in which all four accused persons were sentenced to life imprisonment, among whom, Gajju and Ram Kishan have died. Sons of his uncle deceased Kishan, namely, Anil and Siddha Nath and sons of Chotta, namely, Subedar and Ram Bali, had killed Gajju in the year 1999. Due to this family enmity yesterday, on 11.02.2001, around 08:00-09:00 in the night, accused, (1) Ram Pal, (2) Shankar, (3) Shiv Nath, (4) Mishra,

(5) Shiv Ram sons of Shiv Charan Das, (6) Desha, (7) Ram Singh, (8) Babbun, (9) Indrapal sons of Gajju, (10) Shiv Kumar, (11) Manoj sons of Shankar, (12) Ram Prakash (13) Ram Kumar, (14), Ram Vilas sons of Pritam and (15) Mewa Lal son of Hemraj, who all are of his village and belong to his community, came to his doorstep along with 7-8 outsider miscreants carrying a short barreled countrymade gun, countrymade pistol, axes etc. and shot his father Sarju, who was warming himself by the fire, as a consequence of which, his father fell down and died. Then, his brother Chandrika came out of the house and ran. 6-7 miscreants shot him down on dung hill (घूरे पर) in east-north side of his village. Some miscreants entered his house and killed his sister-in-law (भाभी) Smt. Satana, wife of Chandrika and when his brother Mangal shouted, then, they also shot him. Due to fear, he (complainant) hid inside the house and was watching the incident and saw that the miscreants were looking here and there inside the house with torches and they got his nephew Arvind aged 12 years son of Chandrika Prasad, they assaulted him also by butts of the guns and axe. Thereafter, all the miscreants came out from the house and killed his cousin Ram Khelawan son of Tekchand also. Thereafter, all the miscreants, while firing and threatening the villagers, came again into his house and snatched the gold chain from the neck and silver ornaments from the ears of his sister-in-law (भाभी) Satana, who was dead and they also picked four boxes, four wallets (बटुआ) of big pinked (बेघा), four plates (थालिया), tharra, glass and lota and all the miscreants fired 25-30 round and created so much terror that no villager came out of house and all closed windows and doors due to fear. When miscreants went away, then, he came out and saw that his father, brother Mangal and sister-in-law Satana were dead and

nephew Arvind was lying unconscious. When he saw on the east north side of village, he found that his brother Chandrika was lying dead on dung-hill. This collective massacre continued nearly for an hour, which was seen by him, his wife Puppi, his mother Kishana and wife of Ram Khelawan and several villagers had come hearing the sound of fire and they saw and recognized. Due to terror of miscreants, no one came near there. Ornaments, clothes and money were kept in the boxes, about which he does not have complete knowledge. They recognized 7-8 miscreants came from outside by their face and appearance. At the time of incident, lantern and lamp (दीपक) were alight inside the house and fire was burning outside. He, his wife and his mother can recognize the things on seeing, which were taken away by the miscreants. Seeing dead bodies of his both brothers, sister-in-law, father and cousin brother, he became scared and fell unconscious. When he gained consciousness, it was already 12 O'clock in the night and there was no other person available to go along with him, therefore, he could not come to the police station. Three dead bodies are lying in the house and dead body of Chandrika outside of village on east-north and dead body of cousin brother Ram Khelawan is lying in his house. He has come to report. Report may be written and legal action be taken.

- (5) On the basis of aforesaid written report, F.I.R., bearing Case Crime No. 41 of 2001, under Sections 147, 148, 149, 452, 302, 307, 404 I.P.C. was registered at police station Makhi, district Unnao on 12.02.2001 at 07:00 A.M. The investigation of the case was taken over himself by S.H.O. Shri Lajja Ram Yadav (P.W.8), Police Station Makhi, district Unnao.

- (6) The Investigating Officer (P.W.8), after taking copy of chik F.I.R., copy of report, recording of statement of scribe of F.I.R., Constable Deena Nath Singh (P.W.9) and complainant Guddu (P.W.2), proceeded to the place of occurrence at village Meharvan and prepared inquest reports of deceased Ram Khelawan, Sarju, Mangal, Smt. Satana, Chandrika and necessary papers for the purpose of postmortem of their dead bodies as Ext. Ka.12 to Ext. Ka. 34 and handed over the dead bodies in a sealed condition to Constable Daddan Pandey (P.W.5) and Constable Rajesh Pandey (P.W.4). He also collected plain and blood stained soil from the place of occurrence and prepared memos as Ext. Ka. 35 to Ext. Ka.39. He recovered broken wood of butts of gun and gun arc from the place of occurrence under the recovery memo (Ext. Ka.40). He also recovered 13 empty cartridges 12 bore, one empty cartridge 315 bore and a bullet 315 bore under the recovery memo as Ext. Ka.41. On the pointing out of complainant, he inspected the place of occurrence and prepared the site plan as Ext. Ka.42. In the intervening night of 12/13.02.2001 at about 11:00 p.m., he arrested named accused Ram Kumar, Ram Vilas and Mewalal. He recovered one countrymade pistol 315 bore and two cartridges from the possession of accused Ram Kumar; one countrymade pistol 12 bore and two cartridges 12 bore from the possession of accused Mewa Lal; and one blood stained axe from the possession of accused Ram Vilas, under a recovery memo as Ext. Ka. 43. On 14.02.2001, he arrested accused Shivram, Shiv Kumar and Shivnath and from the possession of accused Shivram, he recovered one countrymade pistol 12 bore and two cartridges and on the pointing out of accused Shiv Kumar and Shiv Nath, he recovered axes. On 19.02.2001, he arrested accused Ram Singh and Babbun and on their pointing out, he recovered axe and lathi. On 20.02.2001, he recorded the

statement of accused Shankar in jail, as, accused Shankar had surrendered in Court. On 21.02.2021, on getting information from informer, he arrested accused Deshraj, Indrapal and Mishri Lal and on the pointing out of accused Deshraj, he recovered one countrymade pistol, two cartridges 12 bore and on the pointing out of accused Indrapal, he recovered one countrymade pistol and two cartridges and on the pointing out of accused Mishrilal, one country-made pistol and one cartridge 12 bore, under the recovery memo. On 23.02.2001, he arrested accused Manoj and from his possession, he recovered one lathi with challa (*a bamboo stick with a metal ring at the end*). On 03.03.2001, he arrested accused Pappu and from his possession, he recovered one pistol and one cartridge 12 bore and from his left pocket of shirt, he recovered one pair of silver *jhala jhumki* (bell-shaped drop earring) under the recovery memo.

(7) The postmortem on the dead body of the deceased Ram Khelawan was performed by Dr. Vinay Prakash (P.W.7) on 12.02.2021 at about 08:10 P.M. The doctor found the age of the deceased about 45 years and probable time of death was on 11.02.2001 between 08:00-09:00 P.M.. The deceased was of average built and height. The eyes and mouth were closed and rigor mortis was present in upper and lower extremities. He found following ante-mortem injuries on the body of the deceased Ram Khelawan:-

1. An incised wound size 3.5 cm x 1 cm bone deep on forehead on Lt. side 3 cm above Lt. eye brow. Skull bone Lacerated.
2. An incised wound 4 cm x 3 cm bone deep on Lt. parietal region 8 cm above Lt. ear. Skull bone Lacerated.
3. An incised wound size 8 cm x 2 cm on occipital *Sic* in middle 5 cm below occiput, brain matter coming out, wound is bone deep. Skull bone Lacerated.

On internal examination, Dr. Vinay Prakash found that the skull bones were fractured; the membranes of the brain were also torn; about 100 grams of blood was found inside the skull cavity; and the stomach contained about 150 grams of semi-digested food.

As per the opinion of Dr. Vinay Prakash, the cause of death was due to shock and haemorrhage as a result of ante-mortem head injuries. The ante-mortem injuries could be attributable by a sharp edged weapon like axe.

(8) The postmortem on the dead body of the deceased Sarju was performed by Dr. Vinay Prakash (P.W.7) on 12.02.2021 at about 08:25 P.M. The doctor found the age of the deceased Sarju about 60 years and probable time of death was on 11.02.2001 between 08:00-09:00 P.M.. The deceased was of average built and height. The eyes were closed and mouth was open and rigor mortis was present in upper and lower extremities. He found following ante-mortem injuries on the body of the deceased Sarju:-

1. An incised wound size 8 cm x 1 cm on Lt. temporal regions, bone deep.
2. A firearm entry wound size 1.5 cm x 1.5 cm on Lt. side of chest 3 cm lateral to Lt. Nipple at 4 O'clock position, cavity deep, it goes posteriorly & medially. Margins inverted, blackening present and exit wound size 3 cm x 2.5 cm, on the back 3 cm lateral to spine at the level of inferior angle of scapula. Margins everted.

On internal examination, Dr. Vinay Prakash found that the left lung was ruptured; the membranes of the heart were torn; about 1.5 liters of blood was present inside the chest cavity; and the stomach contained approximately 100 grams of semi-digested food.

As per the opinion of Dr. Vinay Prakash, the cause of death was due to shock and haemorrhage as a result of ante-mortem injuries. The ante-mortem injury no.1 could be attributable by a sharp edged weapon like axe etc. and injury no.2 could be attributable by fire arm like pistol, countrymade gun.

(9) The postmortem on the dead body of the deceased Mangal was performed by Dr. Vinay Prakash (P.W.7) on 12.02.2021 at about 08:50 P.M. The doctor found the age of the deceased Mangal about 35 years and probable time of death was on 11.02.2001 between 08:00-09:00 P.M. The deceased was of average built and height. The eyes were open and mouth was closed and rigor mortis was present in upper and lower extremities. He found following ante-mortem injuries on the body of the deceased Mangal:-

1. A firearm entry wound size 3 cm x 2.5 cm surrounded by multiple pellets entry wound around one cm, cavity deep on the Lt. side of sic 9 cm lateral to Lt. Nipple at 4 O'clock position. Direction of wound is medial and towards Rt. side traversing Lt. lung, heart and Rt. lung.
2. An incised wound 2 cm x 1 cm on occipital region 13 cm above Lt. ear, bone deep.

On internal examination, Dr. Vinay Prakash found that the left lung was ruptured; the membranes of the heart were torn; about 1.5 liters of blood was present in the chest cavity; and the stomach contained approximately 100 grams of partially semi-digested food.

As per the opinion of Dr. Vinay Prakash, the cause of death was due to shock and haemorrhage as a result of ante-mortem firearm injuries. The ante-mortem injury no.1 could be attributable by a firearm like country made gun or pistol and

injury no.2 could be attributable by sharp edged weapon like axe etc.

(10) The postmortem on the dead body of the deceased Smt. Satana was performed by Dr. Vinay Prakash (P.W.7) on 12.02.2021 at about 09:15 P.M. The doctor found the age of the deceased Smt. Satana about 35 years and probable time of death was on 11.02.2001 between 08:00-09:00 P.M. The deceased was of average built and height. The mouth and eyes were open and rigor mortis was present in upper and lower extremities. He found following ante-mortem injuries on the body of the deceased Smt. Satana:-

1. A firearm entry wound size 5 cm x 3 cm on the neck joints lateral to trachea on Lt. side, Blackening & tattooing present. Margins are inverted, direction of wound is downwards and Rt. side and chest cavity deep, medial end of Lt. & Rt. clavicle fractured neck vessels damaged.
2. A firearm entry wound size 6 cm x 4 cm on Lt. Umbilical regions on lateral aspects 3 cm above iliac crest. Blackening & tattooing present, margins are inverted cavity deep, goes medially & right side. Small intestine is coming out from wound.
3. An abrasion size 8 cm x 7 cm on the Lt. knee joints.(cap)

On internal examination, Dr. Vinay Prakash found that the right lung was ruptured; about 750 milliliters of blood was present inside the chest cavity along with one wadding piece and ten small pellets; and the stomach contained approximately 150 grams of blood along with two wadding piece and 12 small pellets and 100 grams of digested food; the right side of the large intestine was full; and the spleen and the left kidney were ruptured.

As per the opinion of Dr. Vinay Prakash, the cause of death was due to shock and haemorrhage as a result of ante-mortem fire arm injuries. The ante-mortem injuries no.1 and 2

could be attributable by a fire arm like country made gun or pistol and injury no.3 could have resulted from a fall.

(11) The postmortem on the dead body of the deceased Chandrika was performed by Dr. Vinay Prakash (P.W.7) on 12.02.2021 at about 09:45 P.M. The doctor found the age of the deceased Chandrika about 40 years and probable time of death was on 11.02.2001 between 08:00-09:00 P.M. The deceased was of average built and height. The mouth was half open and eyes were closed and rigor mortis was present in upper and lower extremities. He found following ante-mortem injuries on the body of the deceased Chandrika:-

1. An incised wound size .15 cm x 1.5 cm on Rt. parietal region of scalp, obliquely placed behind ear, skull bones cut & badly Lacerated brain matter coming out 5 cm behind the Rt. ear.
2. An incised wound size 7 cm x 1 cm on Lt. *sic* region 5 cm posterior to Lt. ear, skull bone badly lacerated and brain matter coming out.
3. An abrasion 2 cm x 1 cm on Lt. side of chest 3 cm below Lt. nipple.

On internal examination, Dr. Vinay Prakash found that the skull bones were fractured; the brain membranes and brain were completely lacerated and 150 grams of digested food was found in the stomach.

As per the opinion of Dr. Vinay Prakash, the cause of death was due to shock and haemorrhage as a result of ante-mortem head injuries. The ante-mortem injuries no.1 and 2 could be attributable by a sharp edged weapon like axe and injury no.3 could have resulted from a fall.

(12) The injuries of injured Arvind were examined by Dr. Satya Prakash (P.W.16) at District Hospital, Unnao on 12.02.2021 at 09:00 A.M. The doctor found the age of the injured about 13

years and probable time of injuries was about half day old. He found the following injuries on the body of injured Arvind :-

1. Lacerated wound multiple on back of skull & back of Left ear of various size X bone deep.
2. Incised wound 7 cm x 1 cm on top of skull at middle.
3. Lacerated wound 2 cm x ½ cm x muscle deep on left side of face.
4. Multiple contusion on Rt. side of face."

As per Dr. Satya Prakash (P.W.16), injuries no. 1, 2 and 4 were kept under observation and advised for x-ray. Injury no.2 could be caused by sharp edged weapon and other injuries could be caused by blunt object. In examination-in-chief, he stated that injuries no. 1, 3 and 4 could be attributable by butts of gun and injury no.2 could be attributable by axe and these injuries could be caused on 11.02.2001 between 8:00-09:00 p.m. In cross-examination, P.W.16 has stated that injuries no. 1, 3 and 4 could be caused by lathi and danda and injury no.2 could be caused by sharp edged weapon.

(13) On 14.04.2001, the Investigating Officer Lajja Ram Yadav (P.W.8) was transferred and, thereafter, SO Kumari Mamta Vidyarthi (P.W.10) took over further investigation of the case, who, after completing the necessary formalities including recording of statements of the witnesses, sent the recovered weapons of assault from the accused for examination at Forensic Science Laboratory on 08.05.2001. On 09.05.2001, after completing investigation, she submitted charge sheet (Ext. Ka.66) against accused (1) Ram Pal, (2) Shankar, (3) Shiv Nath, (4) Mishra alias Mishri Lal, (5) Shiv Ram, (6) Desha alias Deshraj, (7) Ram Singh, (8) Babbun, (9) Indrapal, (10) Shiv Kumar, (11) Manoj, (12) Ram Prakash, (13) Ram Kumar, (14) Ram Vilas, (15) Mewa Lal, (16) Pappu, (17) Kunju, (18)

Mansaram and (19) Chota Raidas under Sections 147, 148, 149, 452, 302, 307, 404, 411 I.P.C. out of which accused no.(7) Ram Singh, (8) Babbun, (9) Indrapal and (11) Manoj were declared juvenile, therefore, their cases were forwarded to the Juvenile Justice Board. In the order dated 21.06.2002, learned Chief Judicial Magistrate, Unnao noted that accused Mansaram appeared in Court, but accused Chota Raidas was absconding, therefore, case lodged against accused Chota Raidas was separated.

(14) Learned Chief Judicial Magistrate took cognizance on the aforesaid charge-sheet and committed the case to the Court of Sessions by means of the order dated 21.06.2002 against accused Ram Pal, Shankar, Shivnath, Mishri Lal, Shiv Ram, Desh Raj, Ram Singh, Babbun, Indrapal, Shiv Kumar, Manoj, Ram Prakash, Ramkumar, Ram Vilas, Mewa Lal, Pappu, Kunji, where the case was registered as Sessions Trial No. 228 of 2001 : *State Vs. Ram Pal and others.*

(15) The learned Sessions Judge, Unnao, by means of the order dated 28.08.2001, framed charges against fifteen accused persons, however, subsequently, by means of order dated 05.10.2001, the learned Sessions Judge referred the case of accused Ram Singh to the Juvenile Justice Board. Accordingly, fourteen accused persons, namely, Ram Pal, Shiv Nath, Shanker, Misra alias Mishri Lal, Shiv Ram, Desha alias Desh Raj, Shiv Kumar, Ram Prakash, Ram Kumar, Ram Vilas, Mewa Lal, Pappu, Kunji and Mansha Ram, have been tried by the learned Sessions Judge in Sessions Trial No.228 of 2001. All aforesaid fourteen accused persons denied their charges and claimed to be tried.

(16) Apart from the aforesaid case, the cases under Section 25 of the Arms Act were also registered and clubbed with the aforesaid case and tried together against the aforesaid accused persons.

(17) In order to prove its case, the prosecution examined sixteen witnesses, which are as under :-

P.W.1-Smt. Agana	Wife of deceased Ram Khelawan
P.W.2-Guddu	Son of deceased Sarju/complainant
P.W.3-Arvind	Injured
P.W.4-Constable Rajesh Pandey P.W.5-Daddan Pandey	Brought sealed dead bodies of the deceased persons for post-mortem
P.W.6-Constable Bhagwan Deen	Prepared the chik F.I.R. on the basis of recovery memo prepared by Investigating Officer Lajjaram Yadav
P.W.7-Dr. Vinjay Prakash	conducted the post-mortem of the dead bodies of the deceased
P.W.8 Lajja Ram Yadav	1 st Investigating Officer
P.W.9-Constable Deenanath Singh	Prepared the chik F.I.R. on the basis of written report of complainant
P.W.10- S.O. Kumari Mamta Vidyarthi	2 nd Investigating Officer, who filed charge-sheet against accused persons
P.W.11-R.D. Singh	Conducted the Investigation of Case Crime No. 68 of 2001 (Sessions Trial No. 234 of 2001) under Section 25 of the Arms Act against accused Ram Prakash
P.W.12-Constable Ram Singh	prepared the chik report No. k4/1 on the basis of recovery memo of Investigating Officer Lajjaram Yadav
P.W.13-Constable Deenanath Singh	registered Case Crime No. 48, 49 and 50 of 2001 under Section 25 of the Arms Act on the basis of recovery memo of Investigating Officer Lajjaram Yadav
P.W.14-S.I. Sonelal	Investigating Officer of Case Crime No. 42 and 43 of 2001 under Section 25 of the Arms Act
P.W.15-S.I. Janardan Prasad Dubey	registered Case Crime No. 58 of 2001 under Section 25 of the Arms Act against accused Pappu
P.W.16-Dr. Satya Prakash	examined the injuries of injured Arvind

(18) Apart from aforesaid witnesses, relevant documents have also been placed on record and proved by the prosecution, which are as under :-

Ext. Ka. 1	Written Report
Ext. Ka.2	Chik F.I.R. of Case Crime No. 42 of 2001

Ext. Ka.3	Carbon copy of G.D.
Ext. Ka.4	Chik F.I.R. of Case Crime No. 44 of 2001
Ext. Ka.5	Post-mortem report of deceased Ram Khelawan
Ext. Ka.6	Post-mortem report of deceased Sarju
Ext. Ka.7	Post-mortem report of deceased Mangal
Ext. Ka.8	Post-mortem report of deceased Smt. Satana
Ext. Ka.9	Post-mortem report of deceased Chandrika
Ext. Ka.10	Inquest report of deceased Ram Khelawan
Ext. Ka.11	Inquest report of deceased Sarju
Ext. Ka.12	Inquest report of deceased Mangal
Ext. Ka.13	Inquest report of deceased Satana
Ext. Ka.14	Inquest report of deceased Chandrika
Ext. Ka.15	Letter to Reserve Inspector Police Line, Unnao, seeking permission for post-mortem of the deceased persons
Ext. Ka.16	Letter to Chief Medical Officer, Unnao for conducting post-mortem of deceased Ram Khelawan
Ext. Ka.17	Police Form No.33
Ext. Ka.18	Photo lash of deceased Ram Khelawan
Ext. Ka.19	Letter to Chief Medical Officer for conducting post-mortem of deceased Sarju
Ext. Ka.20	Letter to Reserve Inspector, Police Line Unnao seeking permission for post-mortem
Ext. Ka.21	Photo lash of deceased Sarju
Ext. Ka.22	Police Form No. 33 of deceased Sarju
Ext. Ka. 23	Letter to Reserve Inspector, Police Line, Unnao seeking permission for post-mortem of deceased Mangal
Ext. Ka. 24	Letter to Chief Medical Officer, Unnao for post-mortem of deceased Mangal
Ext. Ka. 25	Police Form No. 33 of deceased Mangal
Ext. Ka.26	Photo lash of deceased Mangal
Ext. Ka. 27	Letter to Chief Medical Officer, Unnao for post-mortem of deceased Smt. Satana
Ext. Ka. 28	Letter to Reserve Inspector, Police Line, Unnao seeking permsision for post-mortem of deceased Smt. Satana
Ext. Ka. 29	Photo lash of deceased Smt. Satana
Ext. Ka. 30	Police Form No. 33
Ext. Ka. 31	Letter to Chief Medical Officer, Unnao for post-mortem of deceased Chandrika
Ext. Ka. 32	Letter to Reserve Inspector seeking permission for post-mortem of deceased Chandrika
Ext. Ka. 33	Police Form No. 33 of deceased Chandrika
Ext. Ka. 34	Photo lash of deceased Chandrika
Ext. Ka. 35 Ext. Ka. 36 Ext. Ka. 37 Ext. Ka. 38 Ext. Ka. 39	recovery memos of blood stained soil and plain soil collected from the place where dead body of the deceased Ram Khelawan, Sarju, Chandrika, Smt. Satana, Mangal

Ext. Ka. 40	recovery memo of broken wood of butts of gun
Ext. Ka. 41	recovery memo of 13 empty cartridges 12 bore, one empty cartridge 315 bore and one bullet 315 bore
Ext. Ka. 42	Site Plan
Ext. Ka. 43	recovery memo of weapon of assault i.e. two countrymade pistol, cartridge and axe from the accused persons
Ext. Ka. 44	recovery memo of blood stained axe
Ext. Ka. 45	recovery memo of one countrymade pistol
Ext. Ka. 46	recovery memo of one country made pistol 12 bore, two cartridges 12 bore and arrest memo of the accused persons
Ext. Ka. 47	recovery memo of one countrymade pistol and catridges
Ext. Ka. 48	recovery memo of one countrymade gun 315 bore and catridges and arrest memo of the accused persons
Ext. Ka. 49	recovery memo of one countrymade pistol 12 bore and catridges
Ext. Ka. 50	site plan of recovery of weapon of assault
Ext. Ka. 51	F.I.R., Case Crime No. 41 of 2001
Ext. Ka. 52	carbon copy of G.D.
Ext. Ka. 53	copy of raport No.10
Ext. Ka. 54 to Ext. Ka. 65	Form sending for chemical examination
Ext. Ka. 66 Ext. Ka. 67	charge-sheet in Case Crime No. 41 of 2001
Ext. Ka. 68	site plan of arrest of accused in Case Crime No. 68 of 2001
Ext. Ka.69	sanction by the District Magistrate, Unnao for initiation of proceedings against accused under Section 3/25 of the Arms Act in Case Crime No. 68 of 2001
Ext. Ka. 70	charge-sheet in Case Crime No. 68 of 2001
Ext. Ka. 71	chik F.I.R. in Case Crime No. 81 of 2001
Ext. Ka. 72	Carbon copy of G.D.
Ext. Ka. 73	site plan of arrest of accused in Case Crime No. 81 of 2001
Ext. Ka. 74	charge-sheet in Case Crime No. 81 of 2001
Ext. Ka.75	chik F.I.R. in Case Crime No. 59 of 2001
Ext. Ka. 76	carbon copy of G.D. in Case Crime No. 59 of 2001
Ext. Ka. 77	site plan of arrest of accused in Case Crime No. 59 of 2001
Ext. Ka. 78	Charge-sheet in Case Crime No. 59 of 2001
Ext. Ka. 79	chik F.I.R., Case Crime No. 48 of 2001
Ext. Ka. 80	carbon copy of G.D.

Ext. Ka. 81	charge-sheet in case crime No. 48 of 2001
Ext. Ka.82, 83, 84	site plan of arrest of accused in Case Crime No. 48 of 2001
Ext. Ka. 85	charge-sheet in Case Crime No. 42 of 2001
Ext.. Ka. 86	charge-sheet in Case Crime No. 43 of 2001
Ext. Ka. 87 Ext. Ka. 88	order of the District Magistrate Unnao for initiation proceedings against the accused of Case Crime Nos. 42 of 2001, 43 of 2001 under Section 3/25 of the Arms Act
Ext. Ka. 89	chik F.I.R. Case Crime No. 38 of 2001
Ext. Ka. 90	carbon copy of G.D. in Case Crime No. 38 of 2001
Ext. Ka. 91	chik F.I.R. in Case Crime No. 45 of 2001
Ext. Ka. 92	carbon copy of G.D.
Ext. Ka. 93	order of the District Magistrate for initiating proceedings against the accused of Case Crime No. 59 of 2001 under Section 3/25 of the Arms Act
Ext. Ka. 94	charge-sheet in Case Crime No. 44 of 2001
Ext. Ka. 95	order of the District Magistrate for initiating proceedings against the accused of Case Crime No. 44 of 2001 under Section 25 of the Arms Act
Ext. Ka. 96	carbon copy of G.D.
Ext. Ka. 97	site plan in Case Crime No. 44 of 2001
Ext. Ka. 98	order of the District Magistrate for initiating proceedings against the accused of Case Crime No. 81 of 2001 under Section 3/25 of the Arms Act
Ext. Ka. 99	charge-sheet in Case Crime No. 50 of 2001
Ext. Ka. 100	order of the District Magistrate, Unnao for initiating proceedings against the accused of Case Crime No. 50 of 2001 under Section 3/24 of the Arms Act
Ext. Ka. 101	site plan of arrest of the accused in Case Crime No. 51 of 2001
Ext. Ka. 102	charge-sheet in Case Crime No. 48 of 2001
Ext. Ka. 103	order of the District Magistrate for initiating proceedings against the accused of Case Crime No. 48 of 2001 under Section 3/25 of the Arms Act
Ext. Ka. 104	site plan in Case Case Crime No. 48 of 2001
Ext. Ka. 106	injuries of injured Arvind
Paper no. 133ka/1 to 133ka/5	F.S.L. Report as paper no.133ka/1 to 133 ka/5

(19) After completion of the evidence of the prosecution, the statement of the accused persons was recorded under Section

313 of Cr.P.C., wherein they denied the occurrence and shown ignorance to many things placed from evidence and stated that police has lodged the false case against them and the evidence has been given on the basis of enmity. They stated that false recovery of weapon on their pointing out has been shown by the police and they have been arrested from home.

- (20) In defence, no evidence either oral or documentary has been led by the accused persons/appellants.
- (21) After hearing the Public Prosecutor and learned Counsel appearing on behalf of the defence and considering the evidence and material on record, the learned Sessions Court, Unnao, acquitted the accused Pappu, Kunji, Munshi Ram from the charges under Section 148, 302/149, 307/149, 452, 404 I.P.C. and acquitted the accused Ram Kumar and Mewa Lal from the charges under Section 25 of the Arms Act in Sessions Trial No. 229 of 2001, accused Shiv Ram from the charges under Section 25 of the Arms Act in Sessions Trial No. 230 of 2001, accused Pappu from the charges under Section 25 of the Arms Act in Sessions Trial No. 231 of 2001; accused Desha alias Deshraj and Mishra alias Mishri Lal from the charges under Section 25 of the Arms Act in Sessions Trial No. 232 of 2001, accused Shankar from the charges under Section 25 of the Arms Act in Sessions Trial No. 233 of 2001, accused Ram Prakash from the charges under Section 25 of the Arms Act in Sessions Trial No. 234 of 2001 and accused Rampal from the charges under Section 25 of the Arms Act in Sessions Trial No. 235 of 2001 and convicted and sentenced the accused Ram Pal, Shanker, Shiv Nath, Mishra alias Mishri Lal, Shiv Ram, Desha alias Deshraj, Shiv Kumar, Ram Prakash, Ram Kumar, Ram Vilas and Mewa Lal in Sessions Trial No. 228 of 2001 arising

out of Case Crime No. 41 of 2001 by means of a common judgment and order dated 18.12.2004 as stated here-in-below :-

- i. Under section 148 I.P.C. to undergo 3 years' R.I.;
- ii. Under section 302 read with section 149 I.P.C. to undergo life imprisonment;
- iii. Under Section 307 read with section 149 I.P.C. to undergo 12 years' R.I.;
- iv. Under Section 452 I.P.C. to undergo 6 years' R.I.;
- v. Under Section 404 I.P.C. to undergo 6 years' R.I.

It has further been directed by the learned trial Court that all the aforesaid sentences shall run concurrently.

(22) Feeling aggrieved by the judgment and order dated 18.12.2004, convicts/appellants Shankar, Desha alias Deshraj, Shiv Ram, Shiv Nath, Mishra alias Mishri Lal and Ram Pal have preferred Criminal Appeal No. 255 of 2005, convict/appellant Shiv Kumar preferred Criminal Appeal No. 254 of 2005, convicts/appellants Ram Prakash, Ram Kumar and Ram Vilas preferred Criminal Appeal No. 43 of 2005 and convict/appellant Mewa Lal preferred Criminal Appeal No. 231 of 2005.

(23) Learned A.G.A. has informed that no appeal, against the acquittal of other accused persons by means of order dated 18.12.2004, has been preferred either on behalf of the State or complainant.

(24) It is pertinent to mention that in Criminal Appeal No. 43 of 2005, appellant no.2-Ram Kumar has died, therefore, Criminal Appeal No. 43 of 2005 filed on behalf of appellant no.2-Ram Kumar was abated by means of order dated 04.04.2025. Now, Criminal Appeal No. 43 of 2005 survives only on behalf of appellant no.1-Ram Prakash and appellant no.3-Ram Vilas.

(25) Shri Shreesh Kumar Mishra Atal, learned *Amicus Curiae* for the appellants in Criminal Appeal No. 43 of 2005 submitted that the impugned judgment and order of the conviction and sentence has been passed by the trial Court without considering and appreciating the evidence and material on record appropriately. He submitted that a large number of assailants have been shown but the injuries are two or three only to the injured and the deceased. No specific role has been assigned to any assailant. He further submitted that recovery of weapons could not be proved, therefore, appellants have been acquitted under Section 3/25 of the Arms Act and once recovery could not be proved, the trial Court has committed material irregularity in convicting the appellants. He further submitted that learned trial Court has failed to consider that there was no source of light at the place of incident and the light shown was not sufficient to recognize the assailants. He further submitted that the alleged incident shown is of 08:00-09:00 in the night of 11.02.2001, but no food has been found in the stomach of the deceased persons, whereas in villages, people normally take food by that time. Thus, the impugned judgment and order is not sustainable in the eyes of law and is liable to be set-aside and appellants are liable to be acquitted.

(26) Shri Chandra Shekhar Pandey, learned *Amicus Curiae* for the appellant in Criminal Appeal No. 231 of 2005 submitted that the F.I.R. is not only belated but ante-time also for the reason that the presence of the complainant (P.W.2-Guddu) at the place of incident is doubtful and from his testimony, it comes out that he was in his in-laws' house at the time of the alleged incident and he has not suffered any injury along with his wife and mother, which is not possible in the kind of massacre by the

appellants alleged by him. It has also been submitted that the scribe of the F.I.R. has not been produced. He further submitted that the testimony of P.W.1-Smt. Agana is not reliable, as, all the accused persons could not have come in a small room as shown by her. P.W.1-Smt. Agana has also admitted that she had child but no child has been shown. He further submitted that P.W.1-Smt. Agana is a related and interested witness and has made improvement after post-mortem. He further submitted that P.W.2-Guddu is the son of brother-in-law of the deceased and his presence at the spot is also doubtful. P.W.3-Arvind is related and interested witness. He further submitted that though P.W.3-Arvind is a injured witness but his testimony is not reliable, as, there was no evidence of sending him hospital by the police and his statement under Section 161 Cr.P.C. was recorded by the Investigating Officer after eighteen days, in which, the Investigating Officer Lajjaram Yadav (P.W.8) has also not disclosed his injuries. It has also been submitted that there is no independent witness and also no evidence of fire of warming by the deceased has been found. Thus, submission is that evidence adduced by the prosecution is only of related and interested witnesses, which was to be considered with care and caution, but the trial Court has failed to consider accordingly. He further submitted that the motive attributed in the F.I.R. as well as by the prosecution is not against the appellants and the mention of old incident in the F.I.R. shows that the F.I.R. was lodged in consultation and after thinking over it, only to implicate the appellants after dacoity and murder by unknown persons. He also submitted that timing of post-mortem of five deceased persons and the gap between them is very short, therefore, it has also not been done appropriately. He also submitted that P.W.2-Guddu has admitted that Mewalal and Ram Vilas were arrested

from his house and if they would have been involved in the alleged massacre by the appellants and were resident of the same village, they would not have stayed at home, particularly, when they were seen by the injured Arvind, complainant and others. He further submitted that it was a case of dacoity with murder of the deceased persons by unknown persons and on account of the enmity, appellants have falsely been implicated in the case. He also submitted that about twenty-five persons have been shown in the F.I.R., who all have been entered into in a small room and killed the deceased Ram Khelawan, which is not possible. He also submitted that it is very strange that no effort was made to provide any medical aid to the injured child. The incident is of the evening between 08:00-09:00 and the injured witness (P.W.3-Arvind) has stated that he went for medical treatment in the morning around 08:00-08:30 a.m., where he was admitted for about eighteen days and his statement was recorded after his relieving from the hospital, whereas there is neither any proof of his admission in the hospital for such a long period nor his injuries show that it was required. Thus, the evidence of injured witness P.W.3-Arvind is also not reliable and his presence is also doubtful. Hence, he submitted that impugned judgment and order is not sustainable in the eyes of law and is liable to be set-aside and the appellants are liable to be acquitted.

- (27) Shri Adarsh Mehrotra, learned *Amicus Curiae* for the appellants in Criminal Appeal No. 255 of 2005 submitted that the contents of the F.I.R. appears to be false. He also submitted that no independent witness has been produced by the prosecution to prove its case. There are numerous inconsistencies in the evidence of the prosecution witnesses. The prosecution has also failed to prove the recovery of weapons. He further submitted

that acquittal under Section 3/25 of the Arms Act by the trial Court, itself demolishes the case alleged in the F.I.R, but the trial Court without considering the evidence and material on record appropriately and recording findings on the basis of presumption and assumption, has convicted the appellants. He further submitted that motive shown by the prosecution is not proved as no enmity with Gajju and Ram Kishore has been proved. He also submitted that F.I.R. was lodged against certain persons along with eight unknown persons but their identity has neither been disclosed nor proved by the prosecution. He further submitted that enmity could have been with Rajesh, who vowed that he will kill the family of Sarju, which has also not been proved by the prosecution witnesses. He also submitted that it is very strange that in such a massacre, complainant Guddu (P.W.2) has not suffered any injury while he admitted that he had seen the accused persons and became unconscious and remained as such for about two hours. He also submitted that evidence of P.W.1-Smt. Agana is not reliable for the reason that on the one hand, she states that she had gone to meet her parents after the massacre in the morning and on the other hand, she says that they had died, therefore, it appears that either she was not present on the spot or lying. P.W.1-Smt. Agana also states that she had gone to mortuary after three days when she came to know the names of the assailants. He further submitted that it is very strange that a married woman, whose husband has been killed in front of her eyes, would go to her parents' house and stay there for three days and thereafter she would go to the mortuary and could find her family members there, whereas the post-mortem was done on the next day. He further submitted that story of dacoity (लुट) and return of assailants after about half an hour after killing Ram Khelawan for the said purpose are also very improbable, as, only one

earring (झुमका) has been recovered from Pappu, who has been acquitted. He also submitted that as per the evidence, the accused persons had covered their faces with towel (अंगोछा), therefore, the question of their recognition by the witnesses does not arise and on this count also, their evidence is not trustworthy. Thus, he submitted that the impugned judgment and order is not sustainable in the eyes of law and is liable to be set-aside and the appellants are liable to be acquitted.

(28) In support of his submissions, Shri Adarsh Mehrotra relied on **Md. Jabbar Ali and others Vs. State of Assam**; 2022 SCC OnLine SC 1440, **Digamber Vaishnav and another Vs. State of Chhatisgarh**; Criminal Appeal Nos. 428-430 of 2019, decided on 05.03.2019, **Nanje Gowda Vs. State of Karnataka by Arkalgud Police**; 2017 CRI.L.J. 2830, **Periyasamy Vs. The State Rep. By the Inspector of Police**; 2024 SCC OnLine SC 314, and **Ram Singh Vs. State of Uttar Pradesh**; (2024) 4 SCC 208.

(29) Shri Amar Nath Dubey, learned *Amicus Curiae* for the appellant in Criminal Appeal No. 254 of 2005 has also raised similar arguments and submitted that prosecution story of massacre and dacoity (लूट) are highly improbable and the evidence of prosecution witnesses is not sustainable in view of contradictions in their evidence. He also submitted that a small room in which P.W.1-Smt. Agana was lying along with her husband is only 5-6 hands long and of similar width, in which it is not possible that all assailants could have entered and killed her husband. Thus, he submitted that the impugned judgment and order is not sustainable in the eyes of law and is liable to be set-aside and the appellants are liable to be acquitted.

(30) Learned Additional Government Advocate vehemently opposed the submissions of the learned *Amicus Curiae* for the appellants in all the four appeals and submitted that in the murder of Ram Kishan, accused Pappu, Kunji and Mansa Ram have been acquitted. He further submitted that merely because motive has been shown in the F.I.R., it cannot be said that the F.I.R. is concocted. There was source of light of lantern and *diyas* (a small cup-shaped oil lamp made of baked clay). He further submitted that there is eye-witness account of the incident and P.W.1-Smt. Agana, P.W.2-Guddu and P.W.3-Arvind, the injured witness, are eye-witnesses, who have proved the incident and when the eye-witnesses are intact, the motive loses relevance. He also submitted that P.W.1-Smt. Agana is a rustic woman of village and the chronology of the events given by her as well as P.W.2-Guddu is natural and merely because there are certain contradictions in their evidence, they cannot be said to be not reliable and their evidence cannot be discarded. He also submitted that certain contradictions are possible due to passage of time and also it differs person to person on account of their capacity to recollect. He also submitted that the plea of dacoity (बूट) and murder of the deceased by unknown persons is misconceived and is not tenable, as, no defence witness has been produced to prove it. He further submitted that enmity has been proved. Thus, the impugned judgment and order of conviction has been passed rightly in accordance with law by the learned trial Court after considering the evidence and material on record and appreciating it appropriately by reasoned and speaking order. There is no illegality or error in the impugned judgment and order passed by the trial Court, which may call for any interference by his Court. All the appeals are misconceived and lacks merit, therefore, liable to be dismissed.

- (31) In support of his submissions, learned A.G.A. relied on **Tahsildar Singh and others Vs. The State of Uttar Pradesh;** AIR 1959 SC 1012, **State of U.P. Vs. Naresh and others;** (2011) 4 SCC 324, **Baban Shankar Daphal and others Vs. The State of Maharashtra;** AIR 2025 SC 599, **Pruthiviraj Jayantibhai Vanol Vs. Dinesh Dayabhai Vala and others;** (2022) 18 SCC 683, **Gangabhavani Vs. Rayapati Venkat Reddy and others;** (2013) 15 SCC 298, **Sucha Singh and others Vs. State of Punjab;** (2003) 7 SCC 643, **Dalip Singh and others Vs. State of Punjab;** AIR 1953 SC 364, **Ravasaheb and Others Vs. State of Karnataka;** (2023) 5 SCC 391, **Om Pal and others Vs. State of U.P. (Now State of Uttarakhand);** MANU/SC/1457/2025, **Haribhau and others Vs. The State of Maharashtra;** MANU/SC/1463/2025, **Lalji and others Vs. State of U.P.;** (1989) 1 SCC 437, and **Masalti and others Vs. State of Uttar Pradesh;** 1964 SCC OnLine SC 30.
- (32) We have heard learned Counsel for the parties and perused the records.
- (33) The learned trial Court, after hearing learned Counsels for the parties, recorded that to consider the case in hand, in which 5 persons have been killed allegedly by 18 persons, the whole case is to be considered on the basis of evidence of P.W.1, P.W.2 and P.W.3. It is a very serious matter, therefore, as argued by learned Counsels for the parties, the evidence is required to be examined deeply. Thus, it is evident that the learned trial Court proceeded to examine the evidence on record, keeping in mind 5 murders in the incident and alleged involvement of 18 persons. The seriousness of the incident cannot be disputed.

However, since the judgment passed by learned trial Court has been assailed, therefore, this Court has to see as to whether the learned trial Court has examined the evidence and material on record appropriately or not.

(34) The F.I.R. of the incident was lodged by P.W.2-Guddu, which starts from a murder of his uncle Ram Kishan about 19 years ago and a murder of Gajju, an accused in murder of his uncle, about two years ago to show the motive of the crime in the incident in the present case. It has been alleged that Gajju, Ram Kumar, Ram Kishan and brother-in-law of Raj Kumar, namely, Hari had killed his uncle Kishan about 19 years back, in which all these accused persons were convicted and sentenced to life imprisonment. Gajju and Ram Kishan have died. Anil and Siddha Nath, sons of his uncle Kishan (deceased) and Subedar and Ram Bali, sons of Chotta had killed Gajju in the year 1999. On account of the said family enmity, incident has been committed on 11.02.2001, at around 08:00-09:00 in the night, by 15 named accused persons along with 7-8 other unknown accused persons, as stated in the F.I.R. and killed five persons of family and injured one child in the manner stated in it.

(35) P.W.2-Guddu stated that the incident is of about eight months ago. It was around 08:00-09:00 in the night when he was going out of the house for warming from fire. He saw that Ram Pal, Shankar, Mishra, Shiv Ram, Shiv Nath, Desha, Indrapal, Badduan, Ram Singh, Shiv Kumar, Manoj, Ram Kumar, Ram Vilas, Ram Prakash, Mewa Lal and 7-8 other persons came. They were armed with अदधी (a short barreled countrymade gun), axe, gun, and lathi. His father was warming from fire under thatch and lantern was alight under the door. The said accused persons fired on his father Sarju, who fell down and

died. His brother Chandrika, upon hearing the noise of fire, came out, then, 7-8 accused persons chased and killed him near dung hill (घूरे) out of the village. Some persons entered into his house and killed his brother Mangal by assaulting him with axe and by firing from gun. His sister-in-law Satana was also killed by the accused persons by firearm shots in the kitchen. His nephew Arvind was feeding the buffalo under the thatch. When he started shouting to save his sister-in-law, the accused assaulted him with the butt of gun, butt of pistol and axe, thereby causing him injuries. Thereafter, the accused persons said, "Let us go to kill Ram Khelawan." Ram Khelawan was his cousin brother. Accused also killed him. After that, the accused persons returned to his house again and then they snatched away the gold chain and earrings from his deceased sister-in-law Satana. Accused persons also took away four purses (बटुआ) kept for the wedding, big plates (थारा), four boxes containing jewellery etc. and while firing shots, the accused ran out of the village.

- (36) P.W.2-Guddu (complainant) further stated that thereafter he and others came out and he fell unconscious, seeing the deceased persons. He regained consciousness at about 12 o'clock in the night. At 4:00 in the morning, he went to Methitikur and from there, he went to Belsi. His in-laws' house is in Belsi. When he informed his relatives, they came to his house. He got the report written from Ram Khelawan in Belsi. Ram Khelawan read over the report to him and then he put his thumb impression on the report. Paper No. Ka 4/3 was read over to him, upon which he stated that this was the same report which he had got written by Ram Khelawan. He further stated that whatever he had told was written by Ram Khelawan and read over to him and thereafter he put his thumb impression on the same. The report is Ext. Ka.

1. Thereafter, he went to police station and handed over the report to Munshi (Constable/Clerk), on the basis of which, F.I.R. was lodged, a copy of which was given to him after taking his thumb impression on the register. He also stated that Radha was his real sister, whose marriage was solemnized with Rakesh of Jamal Nagar. Rakesh had killed his sister Radha by giving poison. He also stated that his statement was recorded by the Inspector in the police station. Thereafter, the Inspector came with him to village, from where the police personnel took his nephew Arvind to the hospital by Jeep.

- (37) In cross-examination, P.W.2-Guddu stated that his father-in-law and brother-in-law are residing in Belsi. He had gone alone to Methitikur, where father of his brother-in-law Pohkar is residing. He informed him and thereafter with him, he went to Belsi. Pohkar stayed in his in-laws' house. He also stated that his earlier statement, that relatives of Methitikur had come to his house, is wrong and the relatives of Belsi came to his house but they had not come with him to his village because he had gone to police station. In his further cross-examination, he stated that Police Station Makhi is in Belsi village, which is two kilometers from his in-laws' house. He reached Belsi at 05:00 in the morning. He stayed ten minutes in in-laws' house. It took about twenty minutes in reaching the police station from his in-laws' house. He went to the house of Ram Khelawan from his in-laws' house. He did not know Ram Khelawan prior to it. His father-in-law told the name of Ram Khelawan. He had not gone to the police station with Ram Khelawan. The F.I.R. of the incident was lodged on 12.02.2001 at 07:00 A.M., therefore, there is time gap between the time stated by P.W.2-Guddu in reaching the police station and lodging of the F.I.R. and also contradiction in his testimony because firstly he says that from

his in-laws' house, it took 20 minutes to reach police station, thereafter, he says that he went to Ram Khelawan from his in-laws' house, about whom his father-in-law had told. The scribe of the F.I.R. Ram Khelawan has not been produced, though his name has been mentioned in the written report as scribe. The report has been written very articulately giving not only the names of accused persons but their parentage in serialim, which creates doubt to have been got written solely by complainant, who would have been in trauma for the whole night due to alleged massacre in which his five family members were killed and one was injured. A normal person would not have over come such a trauma in such a short period to get written an F.I.R. so articulately. Though P.W.2-Guddu stated about the accused of the said murders but in his cross-examination he states that he was quite young at the time of murder of his uncle Kishan, therefore, he cannot tell that Santu Yadav was also murdered by using an axe. He also cannot tell as to whether Santu Yadav had given evidence or not and he also does not know as to whether the accused persons were convicted on the evidence of Santu Yadav. Thus, on the one hand, he got the F.I.R. written connecting the incident of the instant case with the said incident of about 19 years back to show the motive and naming the accused of that case and their relations but he does not recollect as to whether Santu Yadav was an accused or witness or not. Even otherwise, his age at the time of his evidence in the trial Court was 30 years, therefore, at the time of aforesaid incident, he must have been around 11 years of age, which also creates doubt that he would have got report written himself.

- (38)** P.W.2 has also stated that he had got written in the report that lantern was alight outside the house, if it has not been written

by Ram Khelawan in the report as stated above, then, he cannot tell the reason for the same, whereas earlier he had stated in the evidence that after the report was written by Ram Khelawan as told by him, the same was read over to him and thereafter he had put his thumb impression. During the evidence also, the said written report was read over to him and thereafter he stated that it was the same report, which was written as told by him. In view of these contradictions and the time lapse in reaching the police station from his in-laws' house as stated above, it appears that the report was not written as told by him and also that the report was got written by some one else and in any case, the F.I.R. cannot be said to have been got written by the complainant himself, that too without any consultation and assistance and it may not be an afterthought, but the same was submitted by the complainant before the police station for lodging the F.I.R.

- (39) An argument was also raised that Guddu (P.W.2) was not present at the time of alleged incident and he was in his in-laws' house from where he went to lodge the F.I.R. The complainant Guddu stated in his examination-in-chief that on the date of incident at about 08:00-09:00 in the night, he was coming out from the house for warming from fire, when the accused persons, Rampal, Shankar, Mishra, Shivram, Shivnath, Desha, Indrapal, Badduan. Ram Singh, Shiv Kumar, Manoj, Ram Kumar, Ram Vilas, Ram Prakash, Mewa Lal and 7-8 persons came, who were armed with अद्घी (a short barreled countrymade gun), axe, guns and lathies. At that time, his father Sarju was warming from fire under thatch outside the house. Lantern was alight under the door. The said accused persons fired shot upon his father, who fell down. His brother Chandrika, on hearing the noise of fire, came out of the house,

then, 7-8 persons chased him and killed him on dung hill outside the village. Thereafter, he stated as to how other persons were killed, which has been disclosed above. He also stated that after killing his cousin brother Ram Khelawan, they came back and snatched the gold chain and earrings of his sister-in-law Satana and after taking the purses etc. went away. In cross-examination, he stated that after his father was shot, he hid himself near the door. He did not hide outside beside the door, rather he hid himself inside the room beside the door. He further stated that a room is adjacent to the thatch on the back side, under which his father Sarju was warming himself from fire. He remained hid there until the accused persons went away and kept on seeing the incident from there. Thus, his evidence is not consistent and there is contradiction in examination-in-chief and cross-examination. His place of hiding is also contradictory in comparison to site-plan, which has been prepared on his pointing out.

- (40) P.W.2-Guddu further stated that he had shown the place of incident to the Inspector. He had not told him that he was hiding in the room in the east side of the house and he could not tell the reason as to how it has been shown by the Inspector. He also stated that he had not told to the Inspector that he was coming out for warming from fire. He further stated that only one shot was fired at his father and remaining shots were fired in the air and thereafter his father was assaulted with axe and in cross-examination, he also stated that when his father was shot, he hid himself, whereas in the F.I.R. and examination-in-chief, he has stated only about a fire and death on account thereof. It shows that there is contradiction in evidence and in view of post-mortem report, he has made improvement. He further stated that he was hiding and the accused persons were

searching him. On account of fear, he could not tell anything to his brother Chandrika. When he was outside, his brother Chandrika came out and ran away. He further stated that when accused persons attacked on his father Sarju, he had identified the accused persons. However, he further stated that he could not tell the names of the accused persons who had chased his brother. He could not say whether all the accused persons entered the house or how many of them entered the house. He also could not say how many accused persons were searching for him. All the accused persons were lighting torches and searching all inside the house, therefore, he assumed that they were also searching for him. The other accused persons had killed Mangal and his sister-in-law. He further stated that his nephew Arvind was not sleeping at the time of the incident, rather he was feeding fodder to the buffalo. Outside the house towards the north, there is a thatched shed. A buffalo was tied there and his nephew was feeding it. Arvind was beaten under the thatch in the east side. He further stated that at the time of incident, Arvind was sleeping. He had not shown to the Inspector that Arvind was sleeping on the south inside the house, where he was beaten. He could not tell the reason as to how the Inspector shown in the site plan that his nephew was sleeping and beaten on the South inside the house. He further stated that at the time of incident, four lamps (दिया) were alight inside and one lantern was alight outside. He further stated that one lamp (दिया) was alight in the courtyard (चौके), one in the varandah, one in the room and one under the thatch. He further stated that when Arvind ran from outside towards inside, he had thrown डलिया. The accused persons had taken 10-15 minutes in inflicting injuries to his sister-in-law, Mangal and Arvind. He has further stated that when the accused persons came back

again after killing Ram Khelawn and committed looting, he was hiding inside the house at the same place. He was hiding on account of fear. The door of his house was not closed. The accused persons had not told for coming back. The accused persons were searching him in the light of torch but he was hiding behind the gunny bags, therefore, they could not see him. He further stated that he had not told the description of any of the accused persons to the Inspector nor disclosed in report. He had not made any conversation with his mother and nephew after accused persons left from the place of the incident. He has further stated that the names of the accused persons, for the first time, got written by him in the report from Ram Khelawan.

- (41) In view of above, according to the complainant P.W.2-Guddu, he had seen all the accused persons while he was coming out of the house and he has named 15 persons and stated about 7-8 unknown persons. He also stated that while he was coming out from inside the house, accused persons had killed his father, upon which he hid himself. This Court failed to comprehend that as to how a person could count 23-24 persons in that period, which may have been very short and also identified at least fifteen persons. It is also very unobvious that a person, who hide himself inside a room on the back of gunny bags, could have seen all the incident, whereas the different persons have been killed at different places of house and one person in other house at a distant place i.e. his cousin brother that too in the kind of light shown by him and as to how he came to know that accused persons came back after killing him and till then, he would hid himself. It is not believable that a person, who is hiding himself, would have seen such a number of accused persons snatching the jewellery of his sister-in-law, who was

lying somewhere else and going with lot of articles, which appears were kept for some marriage, which has come out of the evidence of witnesses. He has disclosed the relationship of the accused persons with Gajju, who were accused in the murder of his uncle Kishan. Though he stated that Mewalal was accomplice but admitted that there is no enmity with Mewalal and Pritam and his sons. There is contradiction in the place of beating of Arvind in comparison to the statement recorded by the Investigating Officer under Section 161 Cr.P.C. and site plan, which was prepared on his pointing out. Thus, the presence of the complainant P.W.2 at the place of the incident is doubtful. Even if he was present at the place of incident, it cannot be said that he could have seen all the accused persons from the place, where he was hiding himself in a room behind the gunny bags. Thus, the evidence and conduct of the complainant P.W.2-Guddu creates doubt on the prosecution case and truthfulness of his evidence. However, argument in regard to doubt of presence of the complainant at the place of incident has been discarded by learned trial Court on the ground that it is based on imagination, which is not tenable. The learned trial Court also recorded finding that his evidence is consistent and natural on the ground that if on perusing the whole evidence, the truth is inferred, then, on account of any omission in evidence, the deceased persons and injured cannot be punished and the accused would not be benefitted in any manner, whereas in the criminal trial the question of any punishment to the deceased and injured does not arise.

- (42) P.W.1-Smt. Agana, wife of Ram Khelawan, has stated that about eight months back, around 8:00-09:00 in the night, she was sleeping inside the house in room and lantern was alight inside the room. When the door of her house was forcefully

knocked and noise of firing were heard, she woke up. When accused persons started breaking the door of her house, her husband Ram Khelawan went and sat on the wooden beam (टाड़) of the room. When the door was being broken, firing was taking place outside. Shankar, Rampal, Mishri Lal, Shiv Ram, Shiv Nath, Shiv Kumar, Manoj, Desha, Indrapal, Ram Singh, Badduan, Ram Kumar, Ram Vilas, Ram Prakash, Mewa Lal, Mansha Ram, son of Mansha Ram, Kunji and Pappu armed with अद्घी (a short barreled countrymade gun), countrymade pistol, axe, lathi, danda, entered into her house. These persons pushed down her husband from the beam and then they started assaulting her husband with axes, lathi and danda. Her husband died. She recognized the accused persons present in trial Court. From there, accused persons went towards the house of Guddu. In this incident, Satana wife of Chandrika, Chandrika, her father-in-law Sarju and Mangal died. Accused persons went shouting and firing.

- (43) The evidence of P.W.1-Smt. Agana raises serious doubt about her presence and evidence because she states that the aforesaid 18 persons entered into her room, which, according to her, was about 5 to 6 hands long and 5 to 6 hands wide. This Court fails to comprehend that eighteen persons can come in such a small room and a young lady like P.W.1-Smt. Agana can recognize all of them with their names, particularly when according to her, all eighteen persons had covered their faces with towel, even if they were known to her, which although has not been stated by her. She has also stated that after her husband was killed, she had not gone out to see as to what happened because she was having her problem but she went to his parents' house in the next morning to inform about the incident, where she met to her brother as her parents had already died and she stayed there for

two days and on the 3rd day, she directly went to mortuary along with her brother, where she came to know that names of the aforesaid persons have been written in the F.I.R.. Thus, P.W.1-Smt. Agana, for the first time, came to know the names of persons, who were alleged to have been involved in the incident on the 3rd day of the incident in mortuary. The incident is of the intervening night of 11/12.02.2021. Hence, according to her, she went to parents' house in the morning of 12.02.2021 and would have gone to mortuary on 14.02.2021, whereas the post-mortem of the deceased persons were performed in the evening of 12.02.2021, therefore, the question of dead bodies of the deceased persons lying at mortuary on 3rd day of the incident and presence of relatives, there would not arise and it cannot be believed also because once the post-mortem was conducted, the dead bodies must have been received by the family members for cremation and the cremation must have been done on the same day or next day. It is highly improbable that a young lady, whose husband has been killed in such a massacre would leave the dead body of her husband and go to the parents' house and stay there for two days, leaving dead body of her husband.

- (44) P.W.2-Smt. Agana also stated that food was prepared at 07:00-08:00 in the evening on the date of the incident. The food, which was prepared in the noon, was eaten at 04:00-05:00 in the evening. The food, which was prepared in the evening, was eaten by the children and they had not taken the food. In this regard, the contention was raised by learned Amicus Curiae for the appellants that it has deliberately been stated in the evidence after knowing the post-mortem report. Looking to the conduct and kind of evidence of P.W.2-Smt. Agana, the possibility of it cannot be ruled out.

- (45) In regard to the source of light in the examination-in-chief, P.W.1-Smt. Agana stated that lantern was alight inside the room, whereas in the cross-examination, she stated that lantern was hanging on hook (खूंटी) outside the room and its beam just above the door, on which her husband was sitting. Therefore, there is contradiction in her statement in regard to the source of light in her room, as, if the lantern was outside the room, it cannot be accepted that she would have recognized the persons who entered into her room because while they entered in her room, light must have been on their back and as per her evidence, all the persons had got their faces covered with towel (अंगोछा) and only their mouth and eyes were blinking. She also stated that to save her husband, she had fallen on him, on account of which, her bangles in the hands were broken, therefore, she had suffered injuries and blood had oozed out. When she had fallen on her husband, the accused persons had beaten her with lathies on her back, on account of which, she had suffered injuries and blood had also come on her clothes, but neither broken bangles nor the blood stained clothes of P.W.1-Smt. Agana have been recovered, whereas she had stated that she had given it to the Inspector and he had taken away the same, whereas earlier she stated that in the morning, she had gone to parents' house to inform and stayed there, therefore, she would not have present at least at the time, when the Inspector had come in morning.
- (46) On perusal of record, it transpires that there is no medical examination report of P.W.1-Smt. Agana. If the bangles of P.W.1 were broken and if she was beaten by lathies on her back by such large number of persons, she should have suffered serious injuries. She had also stated that after husband was murdered, she had not gone out to see other deceased persons, which is not conduct of a normal person, because normally such

a lady would have gone out shouting for help. The injuries of Ram Khelawan were also not commensurate to her evidence because she stated that her husband was beaten by axes, lathi and danda but there was no injury of lathi and danda. The aforesaid evidence of P.W.1 shows that this witness is not telling the truth. There are material contradictions in her evidence and her evidence is neither consistent nor believable. Thus, either she was not present at the place of incident or she is telling lie and hiding the truth. The learned trial Court even after considering contradictions in her evidence, records a finding that her evidence is consistent, completely natural and believable in totality of evidence without any basis and merely on the ground that the Counsels have not followed the rules of cross-examination and law, which is not sustainable in the eyes of law because the effect of contradictions have not been considered, which we have considered.

- (47) P.W.3-Arvind stated that it was about eight months back around 08:00-09:00 in the night when he was feeding fodder to the buffalo. Rampal, Shankar, Mishra alias Mishri Lal, Shiv Ram, Shiv Nath, Desha, Indrapal, Ram Singh, Babbuan, Shiv Kumar, Manoj, Ram Kumar, Ram Vilas, Ram Prakash, Pappu, Mewa Lal, Mansha Ram and son of Mansha Ram Kunji, who were present in Court, came. They all were armed with अदधी (a short barreled countrymade gun), lathi, axe and gun. His grandfather Sarju was warming from fire under thatch. Rampal fired a shot at his grandfather Sarju, then, his father Chandrika, on account of fear, ran shouting outside the house. 7-8 persons chased him and some of the accused persons entered into his house. His father was killed on dung hill at some distance from the village. The accused persons, who had entered into his house, killed his mother Satana and his uncle Mangal.

Thereafter, accused persons started searching here and there in the light of torch. He was hiding inside the house on the southern side, however, accused searched him and assaulted him with the butt of अद्घी (a short barreled countrymade gun) and axe. He sustained injury. After assaulting him, the accused persons said “*Let us go to kill Ram Khelawan*” and by saying this, they went towards the house of Ram Khelawan. He further stated that lantern was alight in front of his house under the thatched roof and inside the house also, चिराग (lamp) was alight. Subsequently, he came to know that accused persons have killed Ram Khelawan. Thereafter, the accused persons returned and took away his mother’s gold chain, silver earrings and four purses, four boxes etc. He further stated that his injuries were not seen by doctor. Thereafter, he stated that he had come to Uma Shankar Government Hospital, Unnao, where his injuries were examined and he remained admitted in that hospital for twenty days. His statement was recorded after returning from hospital by the police officer.

- (48) The evidence of P.W.3-Arvind shows that he was also chased by 7-8 accused persons, who had beaten him, in which he suffered serious injuries and fell unconscious. It is very strange that a child of the family was beaten by the accused persons, but no effort was made by any body for providing first aid to him throughout the night. It is also very strange that the said accused persons, who had killed five persons of the family, left P.W.3 only after beating and he also had not suffered injuries commensurate to the beating by 7-8 persons shown by him. The medical examination of P.W.3 was conducted on 12.02.2021 at 09:00 A.M. P.W.2 stated that when after lodging the F.I.R., he reached back along with Inspector to the spot, then, P.W.3-Arvind was sent for medical examination by the police by Jeep,

however, no letter in this regard for medical examination of P.W.3 is on record. However, the medical examination of P.W.3 indicates that he was brought by Constable for medical examination. P.W.3 also stated in his evidence that he was admitted in hospital for 20 days and after discharge from hospital, his statement was recorded by the Investigating Officer, whereas there is no report in regard to his admission in hospital, which may indicate that he was admitted for twenty days in Hospital after the aforesaid incident. Thus, it appears that P.W.3 has also not told the truth. This Court fails to comprehend that P.W.3-Arvind, who was a child of about 11 years at the time to incident, would have been left alive by persons, who committed such a massacre, in which they killed five persons of a family, but he has not suffered injuries commensurate to it. The learned trial Court recorded similar finding, as in regard to P.W.1 and P.W.2, in regard to this witness also for accepting his evidence without considering aforesaid aspect, even after recording, therefore, the same is not sustainable.

- (49) An argument was also raised on behalf of the appellants that it is very strange that around eighteen named accused persons and 7-8 unknown accused persons were seen by these three prosecution witnesses and they recognized them in the dark of the night, when there was no source of light. The unknown persons could also not been traced and booked.
- (50) The aforesaid testimony of P.W.2 and P.W.3 indicates that there was a lantern at the door of the house and there were lamps (दिया) in the house at different places, which does not seem to be sufficient for recognizing such large number of assailants by them from the places, they were hiding. There is contradiction

in the evidence of P.W.1 in regard to source or light at the door or inside her room, where she had seen such large number of persons and her husband was killed by the accused persons.

(51) In view of above, the evidence of all the three witnesses of fact raises serious doubts about their evidence and presence and prosecution case. The other witnesses are formal witnesses and the case hinges on the ocular evidence of three witnesses of fact i.e. P.W.1, P.W.2 and P.W.3. Therefore even if there may be any laxity in the investigation, post-mortem, preparation of site plan etc, the prosecution case would have no adverse effect, if the ocular evidence is consistent and intact in support of prosecution, but if the presence of eye-witnesses at the place of incident becomes doubtful or even not trustworthy on the ground that they could not have seen the incident in the manner as described by them, the conviction on that basis cannot sustain. They are also family members and no independent witness has been produced and the evidence of aforesaid witnesses does not inspire confidence.

(52) Upon considering the evidence and material on record, it is apparent that eye-witnesses have stated that on account of fear and terror created by accused persons, no body came out, whereas as per F.I.R., the villagers had come and recognized the accused persons, but none has been produced. It is true that family members would not implicate the innocent persons and leave the actual culprits, but in the present case, the implication is on the ground of enmity due to earlier murders, as discussed above, otherwise, the same would not have shown in the F.I.R. and evidence of the prosecution witnesses, therefore, the said enmity should have been proved with cogent evidence, which the prosecution has failed to do. P.W.2, complainant laid great

emphasis on it. He also disclosed the relationship of the accused persons accordingly but failed to show that the said enmity still persisted and on account of the said incident of 19 years back, accused persons could have committed such a massacre, whereas he had admitted that there was no enmity with the accused Mewalal and Preetam and his sons, but they have also been implicated. It is also very strange that if Mewalal was an accomplice of the accused persons without any enmity, even then he and one of the accused Ram Vilas would stay at home in the vicinity in the village because according to P.W.2, the police had arrested them on the very next day after lodging of the F.I.R. by the Inspector, when he had come with him, whereas, according to Investigating Officer, they were arrested from somewhere else, when they were about to flee but no money was recovered from them. Thus, there is major contradiction in arrest of at least two accused persons. The prosecution has also failed to prove the recovery and connect the cartridges etc. with the crime. No evidence of fire has been found at the place, where Sarju was killed, from which he would have been warming.

- (53) The Hon'ble Supreme Court, in the case of **Haribhau and others Vs. the State of Maharashtra (supra)**, has considered the scope of Section 149 of the Indian Penal Code and observed that *"it is not necessary for each member of the unlawful assembly to have committed a specific overt act. Once participation and sharing of the common object are proved, every member becomes vicariously liable for offences committed in prosecution of that object."* Similar view was taken by the Hon'ble Supreme Court in the cases of **Lalji and others Vs. State of U.P. (supra)** and **Masalti and others Vs. State of Uttar Pradesh (supra)**.

(54) The Hon'ble Supreme Court, in the case of **State of U.P. Vs. Naresh and others (supra)**, has held that the evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted and evidence of injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. The relevant paragraphs 23 and 25 are extracted here-in-below :-

“23. The High Court has disbelieved Balak Ram (PW.5), who had suffered the gun shot injuries. His evidence could not have been brushed aside by the High Court without assigning cogent reasons. Mere contradictions on trivial matters could not render his deposition untrustworthy.

The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. [Vide: Jarnail Singh v. State of Punjab, (2009) 9 SCC 719; Balraje @ Trimbak v. State of Maharashtra, (2010) 6 SCC 673; and Abdul Sayed v. State of Madhya Pradesh, (2010) 10 SCC 259].”

“25. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the

court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence."Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility."

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide: State Represented by Inspector of Police v. Saravanan & Anr., AIR 2009 SC 152; Arumugam v. State, AIR 2009 SC 331; Mahendra Pratap Singh v. State of Uttar Pradesh, (2009) 11 SCC 334; and Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra, JT 2010 (12) SC 287]."

(55) The Hon'ble Supreme Court has considered about the ocular evidence account and testimony of injured witness in the case of **Om Pal and others vs. State of U.P. (Now State of Uttarakhand) (supra)**. The relevant paragraphs 33 and 35 are extracted here-in-below :-

33. The present case before us is not the one based on circumstantial evidence, but is based on ocular evidence. Time and again this Court has held that ocular evidence is the best evidence unless there are reasons to doubt it. This Court in Shahaja alias Shahajan Ismail Mohd. Shaikh (supra) held thus:

"30. To put it simply, in assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence

tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

31. There is nothing palpable or glaring in the evidence of the two eyewitnesses on the basis of which we can take the view that they are not true or reliable eyewitnesses. Few contradictions in the form of omissions here or there is not sufficient to discard the entire evidence of the eyewitnesses."

Emphasis supplied)

.....
35. It is settled that the testimony of an injured eyewitness is accorded a special status in law. As being a stamped witness, his presence cannot be doubted. The testimony of an injured eyewitness has its own relevancy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of the injured eyewitness should be generally given due importance unless there are glaring contradictions."

(56) In the aforesaid case, it has also been held that merely non-recovery of weapon of assault is not fatal to the case of the prosecution as has been in the instant case, where recovery of weapon of assault has been found illegal, in which the accused persons have been acquitted for the offence under Section 3/25 of the Arms Act and the same has not been challenged either by the State or the complainant.

(57) The Hon'ble Supreme Court, in the case of **Dalip Singh and others Vs. State of Punjab (supra)**, has dealt about the veracity of the evidence of closed relatives. Paragraph-26 is extracted here-in-below :-

"26. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an

observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this court endeavoured to dispel in Rameshwar v. The State of Rajasthan: [1952] S.C.R. 377 at 390. We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel."

(58) The Hon'ble Supreme Court, in the case of **Baban Shankar Daphal and others Vs. The State of Maharashtra (Supra)**, also dealt with the interested or related witnesses. The relevant paragraphs-28 and 29 are extracted here-in-below :-

"28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

29. The distinction between "interested" and "related" witnesses has been clarified in Dalip Singh v. State of Punjab; 1954 SCR 14, where this Court emphasized that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case. This position has been reiterated by this Court in:

i. Md. Rojali Ali v. The State of Assam Ministry of Home Affairs through secretary; (2019) 19 SCC 567

ii. Ganapathi v State of T.N.; (2018) 5 SCC 549

iii. Jayabalan v Union Territory of Pondicherry; (2010) 1 SCC 199"

(59) The Hon'ble Supreme Court, in the case of **Nanje Gowda Vs. State of Karnataka by Arkalgud Police (supra)**, has held that there is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eye-witnesses is found to be incredible and not trustworthy. The relevant paragraphs 25 and 25-A are extracted herein-in-below :-

"25. It is to be noted that all the eyewitnesses were relatives and the prosecution failed to adduce reliable evidence of independent witnesses for the incident which took place on a public road in the broad day light. Although there is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eyewitnesses is found to be incredible and not trustworthy. The minor variations and contradictions in the evidence of eyewitnesses will not tilt the benefit of doubt in favor of the accused but when the contradictions in the evidence of prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases accused gets the benefit of doubt.

25A. It is the duty of the Court to consider the trustworthiness of evidence on record. As said by Bentham, "witnesses are the eyes and ears of justice". In the facts on hand, we feel that the evidence of these witnesses is filled with discrepancies, contradictions and Page 21 21 improbable versions which draws us to the irresistible conclusion that the evidence of these witnesses cannot be a basis to convict the accused."

(60) Similar view was taken in regard to interested witnesses in the case of **Gangabhavani Vs. Rayapati Venkat Reddy and others (supra)**, **Md. Jabbar Ali and others Vs. State of Assam (supra)**, **Periyasamy Vs. The State Rep. By the Inspector of Police (supra)** and **Sucha Singh and others Vs. State of Punjab (supra)**, in which it has also been held that *"exaggerated devotion to the rule of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it*

*is better to let hundred guilty escape than punish an innocent.
Letting guilty escape is not doing justice according to law.”*

- (61) The Hon’ble Supreme Court, in the case of **Ram Singh Versus State of Uttar Pradesh (supra)**, has held that “*When there is direct eye witness account which is found to be credible, omission to obtain ballistic report and non- examination of ballistic expert may not be fatal to the prosecution case but if the evidence tendered including that of eyewitnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case but if the evidence tendered including that of eyewitnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case.*”.
- (62) The Hon’ble Supreme Court, in the case of **Pruthiviraj Jayantibhai Vanoi Vs. Dinesh Dayabhai Vala and others (Supra)**, has held that “*Ocular evidence is considered the best evidence unless there are reasons to doubt it and it is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved.*”
- (63) The Hon’ble Supreme Court, in the case of **Digamber Vaishnav and another Vs. State of Chhattisgarh (supra)**, has held that “*It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one*

binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused, should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence”. The relevant paragraphs 15 and 19 are extracted here-in-below :-

“15. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.”

“19. It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused, should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence [See Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808].”

- (64) The Hon’ble Supreme Court, in the case of **Ravasaheb and others Vs. State of Karnataka (supra)**, has observed that *“It is stated that it is the quality and not the quantity of the witnesses that matters”*. Hon’ble Supreme Court has further enumerated the principles essential for consideration of criminal cases. In regard to “Testimony of a close relative”, Hon’ble Supreme Court in paragraph-17.4 has observed that *“A witness being a close relative is not a ground enough to reject his testimony. Mechanical rejection of an even “partisan” or “interested” witness may lead to failure of justice. The principle of “falsus in uno, falsus in omnibus” is not one of*

general application”. In regard to “Preponderance of probabilities”, Hon’ble Supreme Court has held that “*to entitle a person to the benefit of a doubt arising from a duality of views, the possible view in favour of the accused must be as nearly reasonable probable as that against him*”.

- (65) The Hon’ble Supreme Court, in the case of **Tahsildar Singh and Others Vs. The State of Uttar Pradesh (Supra)**, has considered about the cross-examination, which is not much relevant in the present case under the facts and circumstances of the case.
- (66) Adverting to the facts of the present case and the judgment passed by learned trial Court, we find that learned trial Court, after recording the facts and arguments in regard to the false implication, has recorded a finding that there is no force in the arguments of learned Counsel for the accused that the occurrence were committed by any other persons. This finding has been recorded without any reason or independent finding in support thereof. Thus, it is apparent that learned trial Court proceeded thereafter on the basis of assumption that the incident has been committed by the appellants only. Once the Court proceeds on this assumption, after recording categorical finding in this regard, then, it would certainly ignore or reject the contentions regarding innocence for one or other reasons, as the Court would have to justify its finding of involvement of accused persons in the incident recorded by it in the beginning without examining the evidence. In such circumstances, the impugned judgment and order vitiates on this ground alone.
- (67) We also find that findings have been recorded by the learned trial Court on the basis of presumption and assumption. In regard to the source of light, learned trial Court has recorded

that the incident is of between 08:00-09:00 in the night and it would be ludicrous to presume that if the light of *lantern*, *chirag*, *diya* or *dibri* would not be in the homes, then, there would be no source of light. It has further been recorded that lantern was alight in the house. It is not unnatural from any angle and besides it witnesses knew and recognize the accused persons since prior to the incident, therefore, it cannot be said that there would be any mistake in naming the accused persons but learned trial Court has failed to consider that the source of light and manner in which the witnesses have said to have recognized the accused persons as discussed above is not sufficient to record a finding that accused persons/appellants could have been recognized by the witnesses and there is no evidence that they knew them from earlier. Even if they knew them from earlier, this Court is of the view that they could not have been recognized in such light and source of light from where it was coming, when they had covered their faces also and P.W.2 and P.W.3, who were hiding, could also not have seen the incident committed at different places and at different houses from the place of their hiding. P.W.1 has given contrary statement in regard to the source of light, in which recognition of the accused persons is doubtful. Even otherwise, if the finding of learned trial Court is taken to be correct and accused persons were known to the witnesses from earlier, the case of false implication in the facts and circumstances of the case cannot be ruled out. Thus, this Court is of the view that the learned trial Court failed to consider and appreciate the evidence appropriately and recorded the findings to convict the appellants only because it was a case of five murders and the appellants were named.

- (68) It is also noticed that three accused persons, Mansa Ram, Pappu and Kunji Ram, were not named in the F.I.R. but the charge-sheet was filed against them, but, learned trial Court acquitted them on the ground that since they were not named in the F.I.R. but the charge-sheet was filed against them, they cannot be convicted even if witnesses have given evidence against them because even if the involvement of such accused persons may be imagined in a concealed manner, it would not be safe to convict them and they are entitled to benefit of doubt. If this finding of learned trial Court is taken to be correct, then merely because the appellants, who were named in the F.I.R., could also not have been convicted and would be entitled to benefit of doubt, because if, on same set of evidence, certain persons can be acquitted merely because they were not named, the named accused persons cannot be convicted. However, on account of tainted investigation and laxity on the part of investigating agency, the actual culprits could not be booked.
- (69) In view of above and considering the overall facts and circumstances of the case, this Court is of the view that the findings recorded by learned trial Court are not tenable in the eyes of law and the appellants are also entitled for benefit of doubt and the impugned judgment and order passed by the trial Court is liable to be set-aside and the appellants are liable to be acquitted.
- (70) The appeals succeed and are **allowed**. The impugned judgment and order of conviction and sentence dated 18th December, 2004, passed by the learned trial Court, is hereby set aside. The appellants are acquitted. They shall be released forthwith, unless they are required to be detained in connection with any other matter.

(71) Let a copy of this order as well as trial Court’s record be transmitted to the Court concerned forthwith and in any case within ten days from today for information and compliance.

(Zafeer Ahmad, J.) (Rajnish Kumar, J.)

February 27, 2026
Ajit