



2026:AHC:44056-DB

AFR

Judgement reserved on 05.02.2026
Judgement delivered on 26.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2926 of 1985

Ramchandra and another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: ABL Gaur, Raj Kumar Vaishya
Counsel for Respondent(s)	: A.G.A.

Court No. - 48

**HON'BLE CHANDRA DHARI SINGH, J.
HON'BLE DEVENDRA SINGH-I, J.**

PER Hon'ble Chandra Dhari Singh, J

1. This criminal appeal has been filed against a judgement and order dated 18.10.1985 passed by the learned Sessions Judge, Bareilly in Sessions Trial No. 489 of 1984, under Section 302 IPC, police station Baheri, district Bareilly whereby the learned Judge convicted and sentenced both the appellants Ram Chandra and Babu Ram to life imprisonment under

section 302 IPC or in the alternative under Section 302/34 IPC for committing the murder of Damodar.

2. Both the appellants were also convicted and sentenced to imprisonment for life under Section 302 IPC or in the alternative, under Section 302/34 IPC for committing the murder of the deceased Chandra Pal.

3. However, both the sentences, were directed to run concurrently.

Facts of the case

4. The facts that formed the bedrock of the present criminal appeal, in short compass, are that an oral information was given by the first informant Maya Devi, wife of Damodar Gaderia at the police station Bahedi, district Bareilly that she is the resident of village Rajpura, police station Bahedi. Her father-in-law was three brothers, namely Munna Lal, Dhani Ram and Chunni Lal. Munna Lal had three sons namely Ram Chandra, Babu Ram and Om Prakash. Chunni Lal had one son namely Beche Lal. After the death of first wife of her father-in-law, he brought another lady, who has two sons namely her husband Damodar and Chandrapal. Her uncle-in-law (*Chachiya Sasur*) Jhodi had a field of one Bigha, in which, this year there was a crop of sugar cane, which was being ploughed and cultivated jointly. The crop was harvested by Ram Chandra, Babu Ram and Om Prakash. On enquiry by her husband Damodar and brother-in-law Chandrapal, they

told that Jhodi had made an agreement of the said filed in their favour. Due to that reasons, there had been certain altercation between her husband and brother-in-law on one side and Ram Chandra, Babu Ram and Om Prakash on other. In the field of nine bighas which was being ploughed and cultivated by Ram Chandra and his real brothers, whereas all the sons of her three father-in-law are the shareholders. A few days ago, when her husband and brother-in-law demanded their share in the property, Ram Chandra denied.

5. The first information report further recounts that today at 09:00 PM, a Panchayat was convened for the partition of field in which several persons of the village have participated. In the Panchayat, lantern and *Tabri* were burning. In the panchayat, her husband Damodar and brother-in-law Chandra Pal had asked Ram Chandra and Babu Ram that they got a forged agreement of the land of Jhodi done. Thereupon, Ram Chandra and Babu started abusing and attacked her husband Damodar and brother-in-law Chandra Pal by knife and lathis. The first informant and her sister-in-law Smt Ram Wati made hue and cry. Her husband ran towards Masjid, whereas her brother-in-law ran towards his *Ghair*. Ram Chandra and Babu Ram chased Chandra Pal and assaulted him badly by knife and lathis and fled away. When injured Chandra Pal was being taken to the police station, he succumbed to the injuries. Beside the Masjid, his husband was also found dead. The FIR also alleges that her husband Damodar (hereinafter referred to as the

deceased-Damodar) and brother-in-law Chandra Pal (hereinafter referred to as the deceased Chandra Pal) have been assassinated by Ram Chandra and Babu Ram assaulting by knife and lathis. The incident was witnessed by Roshan Gaderia, Khem Karan Gaderia, Jameel and Khem Karan Gangwar and several other persons of the village in the lantern, Tabri and Torches.

6. On the basis of the aforesaid oral information given by the first informant Smt. Maya Devi, a case was registered by the Head Muharrir Ram Prakash Gangwar, Ext. Ka-2, on which the first informant put her thumb impression.

7. After the registration of the case, the law set into motion and investigation of the case was taken up by PW-3 SI Laxmi Narain. On 03.07.1985, after completing formalities in respect of registration of the FIR, he recorded the statement of Head Muharrir Ram Prakash. He copied the relevant papers in the Case Diary and left for the place of occurrence along with Constable Puran Singh, Ram Pal and Shakil Ahmad. On the way, the dead bodies of Damodar and Chandra Pal were found. He inspected the spot and prepared site plan, Ext. Ka 5. After appointing *Panch* (witnesses of inquest), he got the inquest on the bodies of the deceased conducted, Ext. Ka-6 and Ext. Ka-7. After getting the inquest conducted, he recorded the statements of the first informant Smt. Maya Devi and witness Khem Karan. PW-3 collected bloodstained earth and simple earth

from the place where body of the deceased-Damodar was lying, which was marked as Ext. Ka-8. He also collected bloodstained earth and simple earth from the place where deceased-Chandra Pal was lying, Ext. Ka-9. He also recorded the statement of witnesses Ram Wati, Mala, Jameel and Ajay in the case diary. After preparing necessary documents, he handed over both the dead bodies to Constable Puran Singh and Constable Ram Pal for getting the postmortem examination done. PW-3, SI Laxmi Narain on 04.07.1984 raided the house of the appellants. However, no articles relating to the crime was recovered. He also inspected the torch of the informant, witnesses Jameel and Pradhan Khem Karan, which were found in working conditions and have been given in Supurdgi Exts. Ka. 3, Ka-11 and Ka-1. He came to know that on 07.07.1985, accused surrendered before the Court and have been sent to jail.

8. Pursuant to the order of Circle Officer dated 19.07.1984, the investigation of the case was transferred to SI Maan Singh. On 19.07.1984, PW-3, SI Laxmi Narain accompanied SI Maan Singh to the place of occurrence and took into possession the Lantern and *Dibbi*, which were found in working condition and made memos thereof. On 04.08.1984 SI Maan Singh recorded the statements of the accused-appellants in jail and after completing necessary formalities, SI Maan Singh submitted charge sheet against the accused-appellants, which has been marked as Ext. Ka-13.

9. As the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 489 of 1984. The learned Sessions Judge, Bareilly framed the charges against the accused-appellants under Section 302 IPC vide order dated 21.05.1985, which were read over and explained to the accused in Hindi.

10. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as four witnesses, out of which PW-1, Khem Karan Lal and PW-2 Maya Devi are the witnesses of facts, whereas PW-3, Laxmi Narain is the first investigating officer, who carried out almost all the investigation, and PW-4, Dr. M.C. Sharma, who conducted autopsy on the bodies of the deceased.

11. PW-1, Khem Karan Lal, son of Seva Ram, in his examination-in-chief deposed that he is the Gram Pradhan of village Narain Nagla. The murdered took place in village Rajpura. He is Gangwar by caste. He knows accused-appellants as well as deceased Damodar and Chandra Pal. At the time of incident, appellants and the deceased were residing separately. The land of Karat of appellants and the deceased were joint, which was being ploughed and cultivated separately. Two bighas of land belonging to Jodhi, who was uncle of the accused-appellant and deceased, was also being cultivated by the accused and the deceased.

The standing crop on the said land of Jodhi was harvested by accused Ram Chandra, on which deceased Damodar objected. In addition to the aforesaid land, there was a field of 09-10 bighas, which was being harvested by Ram Chandra and he does not allow the deceased to harvest. Deceased Chandra Pal and Damodar have purchased four bighas of land from Chhadmi Lal. In the said land, accused-appellant wanted to make drainage, due to which quarrel took place between the accused and the deceased a day prior to the incident of murder. He further deposed that a Panchayat was convened at the *Chaupal* of of Ram Autar at 09:00 PM, which was attended by this witness along with Roshan Lal, Jameel Ahmad, Khem Karan and 24-25 other persons. Accused-appellants also participated in the Panchayat. At the place of Panchayat, lantern was burning. *Dibri* was also burning at the Chabutra (a raised platform) of Momsen, a place of deity. In addition to the aforesaid lantern and *Dibri*, this witness along with Jameel Ahmad and one Mala Devi was also having torch. PW-1, further deposed that as soon as the Panchayat started, deceased-Damodar asked the accused Ram Chandra that he has wrongly done the agreement. On hearing this accused Ram Chandra slapped him and thereafter Ram Chandra and Babu started assaulting the deceased Damodar and Chandra Pal with lathis. As soon as accused-appellant started assault, stampede broke out. Both the accused-appellants assaulted deceased Damodar and Chandra

Pal by knife. After being injured deceased-Damodar ran towards Masjid. Chandra Pal was shielding Damodar, both the accused assaulted him with knife. After being injured, Chandra Pal ran towards his *Gher* where he was assaulted by the accused-appellant by knife. This incident was witnessed by this witness in Lantern, Dibiya and torches. When, he reached there, Chandra Pal was alive, who told his sister-in-law (first informant) to take him to Bahedi. As soon as he reached near Masjid, he found the dead body of the deceased-Damodar. Chandra Pal after seeing the dead body of Damodar, also breathed his last.

12. PW-2, Maya Devi, in her examination-in-chief, deposed that deceased-Damodar was her husband and deceased-Chandra Pal was her brother-in-law, who were killed by accused Ram Chandra and Babu. There was a dispute over two bighas of sugar cane filed. The field initially belonged to Jodhi. The standing crops on the said field had been harvested by accused Ram Chandra, which have been ploughed and cultivated by deceased Damodar. In addition to the aforesaid land/field, there had been a filed of about 09-10 bighas, which was being cultivated by the accused Ram Chandra, Babu and Beche Lal and they did not allow the deceased to cultivate, whereas all have equal share. This witness further deposed that deceased Damodar and Ram Chandra have purchased four bighas of land, accused-appellant wanted to make drainage in the said land, due to which quarrel took place between the

accused-appellants and the deceased a day prior to the incident of murder. In order to settle the dispute between the parties, a Panchayat was convened at 09:00 PM on the date of incident at the *Chaupal* of Ram Autar. The Panchayat was attended by Jameel, Vishan Lal, Khem Karan and others. A lantern and a Dibiya were burning at the place of Panchayat. She was also present at the place of Panchayat along with her sister-in-law (*Devrani*) Smt. Ram Wati and *nand* Mala. In the Panchayat both the appellants and both the deceased were also present. She was having a torch. Jameel and Chairman were also having torch. PW-2 Smt. Maya Devi further deposed that deceased-Damodar asked the accused Ram Chandra that he has wrongly done the agreement. On hearing this, accused Ram Chandra slapped him and thereafter Ram Chandra and Babu started assaulting the deceased Damodar and Chandra Pal with lathis. Thereafter, both the accused-appellants assaulted deceased Damodar and Chandra Pal by knife. After being injured deceased-Damodar ran towards Masjid. Deceased-Chandra Pal ran towards north to the *Gher*, where he was assaulted by the accused-appellants by knife. This witness also went to Gher and saw that Chandra Pal was alive. While he was being taken to hospital and as soon as she reached near Masjid, she found her husband lying dead. On the way to Bahedi, injured Chandra Pal succumbed to the injuries.

13. PW-4, Dr. M.C. Sharma, in his examination-in-chief deposed that on 03.07.1984, he was posted as Senior Surgeon in district Hospital, Bareilly. On that date at about 04:30 PM, he conducted postmortem on the body of the deceased-Damodar and found the following ante-mortem injuries on his person:

- 1. Stab wound 2 cm x 1 cm x chest cavity deep right side of back of chest 9 cm below lower border of scapula.*
- 2. Stab wound 2 cm x 1 cm x chest cavity deep on back of chest $\frac{1}{2}$ cm from midline, 27 cm below root of neck.*
- 3. Stab wound 2 cm x 1 cm x chest cavity deep on back of chest, $\frac{1}{2}$ cm lateral to midline, 25 cm below root of neck.*

14. On internal examination, puncture of both sides in pleura, puncture in lower lobe of right lung and puncture in lower lobe of left lung were noticed. It was also observed that semi digested food was present in the stomach and gases and faecal matter were present in the large and small intestines.

15. In the opinion of the doctor, the death of the deceased might have occurred due to shock and haemorrhage on account of ante-mortem injuries caused with a sharp edged weapon like knife about $\frac{3}{4}$ day prior to the time of medical examination. He was also of the opinion that the death might have occurred

at about 10:00 PM on 02.7.1984 subject to variation of about 4 to 6 hours either side.

16. PW-4, Dr. M.C. Sharma conducted postmortem examination on the same day at about 05:00 PM on the body of the deceased Chandra Pal and found the following ante-mortem injuries.

1. *Incised wound 1 cm x 1 cm x muscle deep, on back of right elbow upper part.*
2. *Incised wound 5 cm x 2 cm x muscle deep on right back of elbow.*
3. *Incised wound 8 cm x 2 cm x muscle deep on right forearm back, 4 cm below elbow joint.*
4. *Three linear incised wounds 5 cm x $\frac{1}{2}$ cm , 2 cm x $\frac{1}{4}$ cm, 1 cm x $\frac{1}{4}$ cm , on back of right forearm below elbow.*
5. *Four incised wounds in an area of 8 cm x 6 cm , 2 cm x $\frac{1}{2}$ cm , 3 cm x 1 cm, 2-1/2 cm x $\frac{1}{2}$ cm x 1 cm x $\frac{1}{2}$ cm, all muscle deep, on back of right side of abdomen, 10 cm above base of sacral region, 2 cm from midline.*
6. *2 incised wounds 2 cm x $\frac{1}{2}$ cm , 3 cm x 2 cm x muscle deep on left back, 3 cm from midline, 8 cm above the sacral region .*
7. *Incised wound 8 cm x $\frac{1}{2}$ cm x muscle deep on midline o back, 2 cm above sacral region.*
8. *Incised wound 2 cm x 1 cm x muscle deep, back of right buttock upper part.*

9. *Contused abrasion 2 cm x 2 cm, on the upper part of buttock fold in between.*
10. *Three incised wound 3 cm x 1 cm, 1 cm x ½ cm, 1 cm x ½ cm, all muscle deep on back of right thigh in the middle.*
11. *Incised wound 6 cm x 2 cm x muscle deep, on right iliac fossa.*
12. *Incised wound 6 cm x 2 cm x cavity deep on left loin with a tailing of 13 cm long (cutting the kidney).*
13. *Incised wound 3 cm x 1 cm x muscle deep on arm, lower 1/3rd back left.*
14. *Incised wound 2 cm x 1 cm x muscle deep back of left elbow.*
15. *Incised wound 2 cm x ½ cm outer side of back of elbow left side.*
16. *Contused abrasion 2 cm x ½ cm outer side of back.*
17. *Incised wound 1 cm x ½ cm x bone deep, on back distal side phalanx middle finger left.*
18. *Incised wound ½ cm x ½ cm x bone deep on back of ring finger left hand.*
19. *Abrasion with contusion 5 cm x 4 cm, on front of left knee.*
20. *Contusion 7 cm x 4 cm on middle of right thigh inner side.*
21. *Incised wound 2 cm x ½ cm x muscle deep on inner left foot.*

22. Incised wound $\frac{1}{2}$ cm x $\frac{1}{2}$ cm x muscle deep front of left leg upper part.

23. Lacerated wound 3 cm x 2 cm x muscle deep front of lower 1/3rd of right leg.

17. In the opinion of the doctor, incised wounds might have been inflicted with some sharp edged weapon like a knife while contusions etc. might have been inflicted with a blunt weapon like a lathi. Doctor further opined that death of the deceased Chandra Pal might have occurred due to shock and haemorrhage on account of ante-mortem injuries about $\frac{3}{4}$ day prior to the medical examination.

18. Evidence of PW-3, SI Laxmi Narain has already been discussed above.

19. After the closure of the prosecution evidence, the statements of the accused-appellants Ram Chandra and Babu Ram were recorded under section 313 Cr.P.C. in which he denied the circumstances appearing against them and stated that they have been falsely implicated in this case at the instance of Pradhan.

20. In this case three defence witnesses have also been examined, namely DW-1, Ram Autar, DW-2, Roshan Lal and DW-3, Khem Karan.

21. DW-1, Ram Autar has deposed that he knows the accused-appellants and both the deceased as they are the resident of his village. Both the deceased had good

relation with Khem Karan, who is the Chairman. They were having visiting terms. Deceased has no enmity with the appellants. He further deposed that a day prior to the incident, neither any Panchayat was held in his *Chaupal* between the accused-appellants and the deceased nor any quarrel took place. On the date of occurrence, he was present in his house throughout the day and night and when he woke up in the morning, he came to know that Damodar and Chandra Pal have been done to death. There is no other person in the village in his name and parentage. He further deposed that on 16.09.1985, when he along with Khem Karan, son of Ghanshyam and Roshan Lal, were going to Court, they were arrested by the police and kept them in the police station till 20.09.1985 where they were being beaten at the instance of Khem Karan.

22. DW-2, Roshan Lal, son of Jorawar, deposed that he is the Vice-Chairman, whereas Khem Karan is Chairman. There is no other person of his name and parentage in the village. Khem Karan, Chairman has good relation with the deceased. He does not know whether any Panchayat was convened at the *Chaupal* of Ram Autar or not. No body has come to call me. Deceased Damodar and Chandra Pal have not been assassinated before him. He further deposed that on 16.09.1984, when he was going for his evidence, a constable from police station Bahedi came to him and took him to the police station. Thereafter, Ram Autar and Khem Karan also went to the police station. In the police station,

they have been detained for four days where they were being abused and beaten.

23. DW-3, Khem Karan, son of Ghanshyam, deposed that there is no other person in the village of his name and parentage. He knows deceased and the appellants. Khem Karan is the Chairman of his village. Deceased had good relation with Khem Karan. He further deposed that no Panchayat was held either in his house or in the house of Ram Autar. Police have detained him for four days in the police station.

24. Learned Sessions Judge, Bareilly after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

25. Being aggrieved and dissatisfied with the aforesaid judgement and order, the appellants have preferred the instant appeal.

Submission on behalf of the appellants

26. Shri Raj Kumar Vaishya, learned counsel for the appellants submits as under:

(a) That place of incident and presence of the witnesses at the place of occurrence is highly doubtful.

(b) That weapon of assault have not been recovered from the appellant, which makes the entire prosecution story doubtful.

(c) That only two witnesses namely Khem Karan Lal and Smt. Maya Devi have been examined during the trial, whereas as per prosecution case Roshan Gadariya, Khem Karan Gadariya and Jameel were shown to have witnessed the occurrence, but they have not been produced.

(d) That there is contradiction in the statement of PW-2, Maya Devi.

(e) That the evidence of defence witnesses have demolished the prosecution case.

Submissions on behalf of the State

27. On the other hand, Shri S.K. Ojha, learned Additional Government Advocate-Ist submitted as under:

(a) From the evidence of the prosecution witnesses, the place of incident and presence of witnesses at the place of occurrence is fully established.

(b) Non-recovery of weapon of assault from the accused-appellants may be a lapse on the part of investigating officer, the benefit of the same cannot be extended to the appellants.

(c) Minor contradictions should not be given unnecessary weightage.

(d) That the learned Trial Court has convicted and sentenced the appellants on the basis of cogent and concrete evidence.

Analysis and conclusion

28. Heard learned counsel for the appellants and learned Additional Government Advocate representing the State and perused the record of the case.

29. As per the evidence of two eyewitnesses namely PW-1, Khem Karan and PW-2, Smt. Maya Devi, the attack on the deceased was launched at the Chaupal of Ram Autar from where deceased Damodar started running away and his dead body was found near the mosque (Masjid), which is situated at a distance of about 77 paces from the Chaupal in question, whereas deceased Chandra Pal ran to his *Gher* and was also attacked there. The *Gher* of the deceased-Chandra Pal is situated at a distance of about 25 paces as per the evidence of the PW-3, Laxmi Narain, the investigating officer of the case. PW-3, Laxmi Narain, the investigating officer of the case, in his examination-in-chief deposed that he collected bloodstained earth and simple earth from the place where body of the deceased-Damodar was lying, which was marked as Ext. Ka-8 and the boxes were marked as Ext. 1 and 2. He also collected bloodstained earth and simple earth from the place where deceased-Chandra Pal was lying, Ext. Ka-9, the boxes were marked as Ext. 3 and 4. At the time of post-mortem examination, the Medical Officer, took off bloodstained Baniyan Ext. 5, Bloodstained underwear Ext. 6 and bloodstained Kurta Ext. 7 from the body of the deceased-Damodar and duly

sent the same to the investigating officer in a sealed packet. Similarly at the time of post-mortem examination of the deceased-Chandra Pal, the Medical Officer (Dr. M.C. Sharma, PW-4) removed some bloodstained clothes from the body of deceased Chandrapal, i.e. shirt, Ext. 8, Baniyan, Ext. 9 and underwear Ext. 10 and sent the same to the investigating officer after getting the same duly sealed. The aforesaid items were sent to the Forensic Science Laboratory. The Serologist report dated 19.02.1982 confirmed the presence of human blood on the bloodstained earth collected by the investigating officer, Ext. 1 from the place where the dead body of the deceased Damodar was lying and Ext. 2 from the place where place where the dead body of deceased Chandra Pal was lying. The report further indicates that on Ext. 3 to 8 , which relate to the clothes of the deceased large bloodstained was found, measuring 70, 45, 25, 50, 40 and 25 cms. From the above facts, statements of the PW-1, Khem Karan and PW-2, Smt. Maya Devi that the accused have been murdered by the accused-appellants and that the dead body of deceased Damodar was found near the mosque, situated at a distance of about 77 paces from the *Chaupal* of Ram Autar as also the dead body of deceased Chandra Pal was found from his hut, which is situated at a distance of about 25 paces from the *Chaupal* of Ram Autar, certain drops of blood must have

spilled on the way, which must have been disintegrated/effaced by the movement of the people.

30. So far as contention of learned counsel for the appellants that weapon of assault has not been recovered from the appellants, it is to be noted that after the registration of the case on 03.07.1984, the investigation of the case was taken up by PW-3, Laxmi Narain on 03.07.1985. In his examination-in-chief, he stated that during the course of investigation, he recorded the statement of Head Muharrir Ram Prakash. He inspected the spot and prepared site plan, Ext. Ka 5. After appointing *Panch* (witnesses of inquest), he got the inquest on the bodies of the deceased conducted, Ext. Ka-6 and Ext. Ka-7. After getting the inquest conducted, he recorded the statements of the first informant Smt. Maya Devi and witness Khem Karan. He also collected bloodstained earth and simple earth from the place where bodies of the deceased-Damodar and Chandra Pal were lying, prepared necessary documents and handed over both the dead bodies to Constable Puran Singh and Constable Ram Pal for getting the postmortem examination done. PW-3, SI Laxmi Narain has specifically mentioned that on 04.07.1984, he raided the house of the appellants, but neither accused-appellants could be apprehended nor any articles relating to the crime was recovered. PW-3- further stated that search of the accused was made in several places in Bareilly, but they could not be arrested. He came to know that on 07.07.1985, accused surrendered

before the Court and have been sent to jail. On the order of the Circle Officer, the investigation of the case had been transferred to SI Maan Singh on 19.07.1984. It is also mentioned that although SI Maan Singh has been transferred to Shahjanpur, but he did not take charge and was on leave. On 04.08.1984, SI Maan Singh recorded the statements of the accused-appellants in jail and next day, i.e. 05.08.1984, he submitted the charge sheet.

31. As a general principle, it can be stated that error, illegality or defect in investigation cannot have any impact unless miscarriage of justice is brought about or serious prejudice is caused to the accused. In the instance case, no prejudice is caused to the accused by non-recovery of the weapon of assault when the testimony of PW1, Khem Karan Lal and PW-2 Smt Maya Devi, is seen cumulatively, their versions can be seen to be corroborating each other. Both of them being eyewitnesses what is material to be seen is that their stand is consistent when they said that it was accused-appellants, who were responsible for assaulting and inflicting blows on both the deceased. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been raised by the defense. Admittedly, there was an enmity between the deceased and the appellants and accused and the

witnesses were well acquainted with each other being close relatives.

32. In **Karnel Singh Vs. State of M.P.**, 1995 SCC (5) 518, Hon'ble Supreme Court held as under:

"Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."

33. In **Ram Bihari Yadav v. State of Bihar**, J.T. (1998) 3 SC 290, Hon'ble Supreme Court, held as under:

"In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

34. In **Paras Yadav and others Vs. State of Bihar**, 1999 Cr.L.J, 1122, it was held that if the lapse or

omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

35. In a recent judgement, Hon'ble Supreme Court in **Edakhandi Dineshan alias P. Dineshan and others Vs. State of Kerala**, 2025 Live Law (SC) 25, held as under"

"Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. It has been a consistent stand of this court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough

corroboration to drive home the guilt of the accused persons.....”

36. The next contention of learned counsel for the appellants is that only two witnesses namely Khem Karan Lal and Smt. Maya Devi have been examined during the trial, whereas as per prosecution case Roshan Gadariya, Khem Karan Gadariya and Jameel were shown to have witnessed the occurrence, but they have not been produced. This contention of the learned counsel is totally mis-conceived. It may be noted that the presence of aforesaid persons at the spot cannot be denied as PW-3, Laxmi Narain, in his examination-in-chief has stated that he inspected the torch of Jameel and handed over the same in his Supurdgi vide Ext. Ka 11, but looking to the manner in which both the deceased were done to death, no one can dare to depose against the accused. Moreover, it cannot be denied that persons avoid to testify in such cases as they do not want to involve in a criminal case much less in the crime of the present magnitude. Therefore, it was quite natural that they did not come forward to assist the prosecution.

37. The next contention of the learned counsel for the appellants is that there are contradictions in the evidence of PW-2, Smt Maya Devi inasmuch as in her cross-examination, which was done on 26.08.1985, PW-2, Smt Maya Devi has deposed that the accused-appellants gave 4-5 lathis blows on both the deceased

and when the accused-appellants inflicted knife on her husband-Damodar, he fell down whereas her brother-in-law-Chandra Pal ran towards his *Gher*. However, PW-2, in her cross-examination, which was done on 28.08.1985, she deposed that after receiving knife blow, her husband (deceased-Damodar) did not fell and ran towards mosque (Masjid).

38. The contradictions pointed out by the learned counsel for the appellants is very trivial in nature. In the depositions of witnesses there may always be some normal discrepancies. These discrepancies are due to lapse of time and mental disposition such as shock and horror at the time of the occurrence. Material discrepancies are those which are not normal and go to the root of the prosecution case and not expected of a normal person. Therefore, such a minor contradiction pointed out by the learned counsel for the appellant is of no help to the appellant. Further the discrepancies pointed out by the learned counsel for the appellants is very trivial in nature, which does not, in any way, affect the foundation of the prosecution case.

39. In **State of Rajasthan Vs. Kalki** (1981)2 SCC 752, High Court of Rajasthan acquitted the accused on the grounds that PW-1 was highly interested witness because she is the wife of the deceased and that there was discrepancies in her statement. Against the order of High Court, State of Rajasthan preferred a Criminal Appeal. Hon'ble Supreme Court set aside the order of

the High Court and convicted the accused. The Court in paragraphs 5, 6 and 7 held as under:

5. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.

6. The second ground on which the High Court refused to place reliance on the evidence of P.W. 1 was that there were "material discrepancies". As indicated above we have perused the evidence of P.W. 1. We have not found any "material discrepancies" in her evidence. The discrepancies referred to by the High Court are, in our opinion, minor, insignificant, natural and not 'material'. The discrepancies are with regard to as to which accused "pressed the deceased and at which part of the body to the ground and sat on which part of the body; with regard to whether the respondent Kalki gave the axe blow to the deceased while the latter was standing or lying on the ground, and whether the blow was given from the side of the head or from the side of the legs. In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. As indicated above we have not found any

material discrepancies in the evidence of the P. W. 1.

7. Learned counsel for the respondent submitted that the appeal involved only appreciation of evidence and this Court may not interfere with the findings of facts resulting from appreciation of evidence. It is true that in an appeal under Article 136 of the Constitution this Court normally does not interfere with findings of facts arrived at by the High Court. But when it appears that the findings of facts arrived at are bordering on perversity and result in miscarriage of justice, this Court will not decline to quash such findings to prevent the miscarriage of justice.”

40. In **State of U.P. Vs. M.K. Anthony**, (1985)1 SCC 505, Hon’ble Supreme Court held as under:

“While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is

against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the : root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined

the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.”

41. In **State represented by Inspector of Police Vs. Saravanam and another**, (2008) 17 SCC 587, Hon'ble Supreme Court held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.

42. Three defence witnesses have also been produced in this case, namely DW-1, Ram Autar, DW-2, Roshan Lal and DW-3, Khem Karan. DW-1, Ram Autar deposed inter alia that no Panchayat had been held at his *Chaupal* in the night in question nor did any incident occurred there. DW-2, Roshan Lal testified that any Panchayat at the Chaupal of Ram Autar had not been attended by him nor did the incident in question take place in his presence, whereas DW-3, Khem Karan of village Rajpura has deposed that no Panchayat was held at the *Chaupal* of Ram Autar in the night in question.

43. DW-1, Ram Autar in his deposition, which was done on 24.09.1985 has stated that in the night of the incident in question, he was present in his house and in the morning when he woke up, he came to know that Damodar and Chandra Pal have been done to death. The case of the prosecution from the very beginning was that Panchayat was held at the *Chaupal* of Ram Autar, but he was not present in the Panchayat. PW-2, Smt Maya Devi in her cross-examination, which was done on 26.08.1985 has specifically stated that Panchayat was held at the *Chaupal* of Ram Autar (DW-1) in which about 20-25 persons have participated. Ram Autar was not present in the Panchayat. His wife and children were also not present. PW-3, Laxmi Narain, the investigating officer of the case has specifically stated in his examination-in-chief that he made a search of Ram Autar (DW-1) on whose *Chaupal*, Panchayat was

alleged to have been held, but he came to know that he had gone to Bahedi and therefore, Lantern and *Dibbi*, could not be taken into possession. On 19.07.1985, he again visited the house of Ram Autar (DW-1) in whose Chaupal, Panchayat was allegedly held where lantern and Dibbi were burning, took into possession and given in Supurdgi vide Ext. Ka-12, which was signed by Ram Autar and Brij Lal. Therefore, the evidence of DW-1, Ram Autar that no Panchayat was held at his Chaupal is untrustworthy and cannot be believed.

44. DW-2, Roshan Lal in this evidence has only stated that he was ignorant about the Panchayat and he also stated that he did not meet Ram Autar on the date of occurrence and that he saw Ram Autar 2-4 days after the occurrence. Therefore, the evidence of DW-2 is of no help to the accused-appellants rather it strengthen the case of the prosecution that on the date of occurrence, Ram Autar was not present at his house.

45. DW-3, Khem Karan, son of Ghan Shyam in his evidence has stated that neither Panchayat was held at the *Chaupal* of Ram Autar nor deceased was assassinated in his presence. However, in his cross-examination, he stated that he is not aware in which case, he is deposing against the accused-appellants. The evidence of DW-3, Khem Karan is also not helpful to the appellants.

46. Moreover, all the defence witnesses have stated that they have been detained by the police for four

days in the police station where they have been subjected to harassment and they were also beaten badly by the police, but surprisingly, they have neither made any complaint to the superior police officer nor got themselves medically examined.

47. So far as motive behind the incident is concerned, it is stated by PW-2, Smt. Maya Devi that the incident in question took place over two bighas of land, which belonged to her uncle-in-law (*Chachiya Sasur*) Jhodi, in which crop of sugar cane was cultivated by the deceased-Damodar, but the same had been harvested by the accused-Ram Chandra. In addition to the aforesaid field, there was another field of 09-10 bighas. The said field was being ploughed and cultivated by the accused-appellants Ram Chandra, Babu and Beche Lal and they do not allow her husband to cultivate the same, whereas her husband had share. It is further stated that her husband-Damodar and brother-in-law Chandra Pal had purchased four bighas of land. In the said land, accused-appellants wanted to make drainage, due to which quarrel took place between the accused and the deceased a day prior to the incident of murder and to settle the said dispute, a Panchayat was convened.

48. PW-1, Khem Karan Lal, in his evidence has also stated that two bighas of land belonging to Jodhi, who was uncle of the accused-appellants and deceased, was also being cultivated by the accused and the deceased.

The standing crop on the said land of Jodhi was harvested by accused Ram Chandra, on which deceased Damodar objected. In addition to the aforesaid land, there was a field of 09-10 bighas, which was being harvested by Ram Chandra and he does not allow the deceased to harvest. Deceased Chandra Pal and Damodar have purchased four bighas of land from Chhadmi Lal. In the said land, accused-appellant wanted to make drainage in, due to which quarrel took place between the accused and the deceased a day prior to the incident of murder for which Panchayat was convened.

49. The aforesaid facts have not specifically been denied by the accused-appellants in their statements recorded under Section 313 Cr.P.C. During the course of statement, a specific question was put to the accused that "it has come in the evidence of the prosecution that 09-10 bighas of land, in which the mother of the deceased is shareholder, was being ploughed and cultivated by the accused-appellants and they do did not allow the deceased to cultivate. In reply to this question, accused-appellant Ram Chandra has specifically stated that in the filed in question there is no share of the deceased, **but their mother is the share holder.**

50. In reply to the same question, accused-Babu Ram has not specifically denied and stated that he is not aware about the share of the mother of the deceased.

51. From the perusal of the aforesaid statements of the two accused-appellants namely Ram Chandra and Babu Ram, it is manifestly clear that both the deceased namely Damodar and Chandra Pal were not allowed by the accused-appellants to cultivate their mother's 1/3rd share in the joint land having an area of about 09-10 bighas of land as accused alone were exercising possession over the said land. Therefore, the evidence of PW-1, Khem Karan and PW-2, Smt Maya Devi that the entire land having an area of 9-10 bighas of land was being cultivated by the two accused persons and their cousin Bachey Lal and both the deceased were prevented by the accused-appellants from cultivating any part thereof, has substance and worth acceptance.

52. In addition to the aforesaid land, four bighas of land, which the deceased had purchased on their own and in the said land, accused-appellants wanted to make drainage, due to which quarrel took place between the accused and the deceased a day prior to the incident of murder, which resulted in the incident in question in which both the deceased Damodar and Chandra Pal have been assassinated.

53. In view of the aforesaid facts, it can be inferred that both the deceased were excluded from the joint property/land by the two accused persons, despite the fact that they could exercise possession over 1/3rd share of the land in question on behalf of their mother. Further, the accused-appellants were also making

drainage on the filed of the deceased, which they had purchased from Chhadmi Lal. In order to get the matter settled, they might have thought of entering into some sort of settlement with the accused persons through some influential persons of the village and accordingly a Panchayat was convened, which resulted in the incident in question wherein both the deceased have been done to death by the appellants.

54. It was a gruesome murder in which two persons have been assassinated in a dare devil manner. Perusal of postmortem shows that the both the deceased were mercilessly attacked. Severity of injuries clearly demonstrate the brutality of the attacks.

55. We have carefully scrutinized and examined the evidence of prosecution witnesses and we find that they have been correctly marshalled and assessed by the learned Trial Court.

56. In view of what has been indicated above, we are of the view that the prosecution has successfully proved its case beyond all reasonable doubt against both the accused-appellants.

57. Accordingly, the criminal appeal is dismissed.

58. The appellants Ram Chandra and Babu Ram are on bail. Their bail bonds are cancelled and sureties are discharged. They are directed to surrender before the Court concerned within three weeks to serve out the sentence awarded to them by the learned Trial Court.

59. Office is directed to send a copy of this order to the court concerned along with necessary documents for compliance and compliance report be submitted to this Court within two months.

(Devendra Singh-I,J.) (Chandra Dhari Singh,J.)

February 26, 2026
Ishrat