



A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3252 of 1984

Reserved on: 30.10.2025

Delivered on: 05.02.2026

Mata Din and another

.....Appellants

Versus

State of U.P.

.....Respondent

Counsel for Appellants	:	P.N. Mishra, Rakesh Kumar Rathore, Sanjeev Kumar
Counsel for Respondent(s)	:	D.G.A.

Court No. - 44

**HON'BLE J.J. MUNIR, J.
HON'BLE SANJIV KUMAR, J.
(Delivered by Sanjiv Kumar, J.)**

1. This criminal appeal has been preferred, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), by the appellant/ convicts, Matadin and Ram Kishan against the judgment and order dated 31.10.1984 passed by Mr. K.S. Srivastava, the then 1st Addl. Sessions Judge, Mainpuri in Sessions Trial No. 270 of 1983, State v. Matadin and another (arising out of Crime No.101 of 1983), under Section 302 of the Indian Penal Code (for short, 'IPC').

2. By the impugned judgment and order, both the appellants were convicted on the charge of murdering one Smt. Shyama Devi and sentenced to undergo imprisonment for life.

3. The brief facts of the prosecution case are that the informant, Ujagar Singh son of Ram Dayal, a resident of Village Khirna, Police Station Kurawali, District Mainpuri, lodged a first

information report at Police Station Kurawali, District Mainpuri on 09.04.1983, stating therein that Smt. Shyama Devi, widow of late Daya Ram, was living in the informant's house. A case with regard to a land dispute was pending between her and two brothers-in-law (husband's brother), to wit, Matadin (*Devar*) and Ram Kishan (*Jeth*). On the fateful day at around 11 o'clock in the morning, her *Devar* Matadin and *Jeth* Ram Kishan came over brandishing pistols and both of them shot Smt. Shyama Devi, who was sitting near the hearth (*chulha*). She was hit in the arm and head, in consequence of which she died instantaneously. According to the informant, Mahender son of Guljari, Jivaram son of Ratiram and Ramlal son of Kharge, all residents of his village, were present at his house. All of them had congregated to go over to village Patharua to consider a groom for Jivaram's daughter and had witnessed the incident. All women in the informant's house too had seen the incident. Upon the informant and the witnesses raising alarm and hearing gun fire, a multitude of men came over to the place of occurrence and saw Matadin and Ram Kishan brandishing country-made pistols.

4. Upon this information, *chik* First Information Report (for short, 'FIR'), bearing Case Crime No.101 of 1983, under Section 302 IPC, was lodged at Police Station Kurawali, District Mainpuri, on 09.04.1983 at about 1:00 p.m. against Matadin and Ram Kishan. The investigation commenced. The Investigating Officer reached the place of occurrence and collected samples of blood stained and plain earth. He sealed them in a container and prepared a recovery memo (*fard baramadgi*), (Ext. Ka-10). The inquest was held and an inquest report along with other papers were prepared on the spot. Thereafter, the cadaver was sent for autopsy, where the *post-mortem* examination was done. The Investigating Officer recorded statements of the informant and other witnesses, inspected the place of occurrence and prepared a site-plan at the pointing out of the informant. After completion of

investigation, the Investigating Officer submitted a charge-sheet under Section 302 IPC before the Magistrate.

5. The Magistrate took cognizance of the offence and summoned the accused. They appeared before the Court, whereupon the learned Magistrate furnished them copies of the relevant prosecution papers under Section 207 Cr.P.C. Thereafter, the case was committed to the Court of Sessions for trial on 13.06.1983 by the learned Magistrate.

6. The appellants appeared before the Court of Sessions, where a charge under Section 302 IPC was framed against them, to which they pleaded not guilty and claimed to be tried.

7. The prosecution have examined as many as six witnesses in evidence to prove their case, to wit, PW-1 Ujagar Singh; PW-2 Jivaram; PW-3 SHO Amir Chandra Singh; PW-4 Constable No. 672 Suresh Chandra; PW-5 SI Kamta Prasad and, PW-6 Dr. A.K. Srivastava.

8. PW-1, Ujagar Singh is the first informant and eye-witness of the incident. He has said on oath that Shyama Devi was the late Dayaram's widow, and the appellants, Ram Kishan and Matadin, are Shyama Devi's brothers-in-law, to wit, *Devar* and *Jeth*, respectively. Neksu and Dayaram were other brothers of these appellants. Their father's name was Umrai. Shyama Devi was issueless. After Dayaram's death, his share of the land passed on to Shyama Devi. The appellant Matadin got Shyama Devi's name removed from records and got the land transferred to himself and his brothers. Shyama Devi had instituted proceedings in Court against him. These proceedings were going on in the *Tehsil* at the time of Shyama Devi's murder. Shyama Devi was staying with PW-1 for about three months before the murder. She was murdered at about 11:00 a.m. PW-1 was sitting in his *baithak* (meeting room) in Khirna village. Jivaram, Ramlal, and Mahendra

were also present there. They were sitting on a platform (*chabutara*). They were set to go to village Patharua to find a groom for Jivaram's daughter.

9. Coming down the stairs from the backyard, the appellants, Matadin and Ram Kishan, entered PW-1's home, and Shyama Devi, who was then making *chapati* in the kitchen, leaning against a wall in the courtyard, was shot by the appellants using pistols, as a result whereof she died instantly. PW-1 has said that he had witnessed the appellants killing Shyama Devi. After killing Shyama Devi, the appellants fled towards south from the spot. He got a report scribed by his son, Kripal and thereafter he appended his signature to it, and on the basis of this report, lodged an FIR at Police Station Kurawali. The witness has proved the written report (*tehrir*) (Ex. Ka-1).

10. PW-1 in his cross-examination has said that Dayaram was killed in a police encounter before this incident. PW-1 did not visit Shyama Devi's house, nor did she visit his house earlier. After Dayaram's death, she had given her land to the appellants on lease (*batai*). During those days, Shyama Devi lived separately in her house. PW-1 had no concern with Shyama Devi's property. He does not know that the appellant Matadin had deposed against Mahendra, Ram Lal and Ramdas in a murder case, in which Mahendra was sentenced to undergo imprisonment for life. He knew that Mahendra spent some time in jail.

11. PW-1 has further said that about one year prior to this incident, elections for the post of Gram Pradhan were held. Prior to this election, he himself was Village Pradhan and had contested for another term. He lost the said election to Sovaran Singh. Some others had also contested this election. It is incorrect to say that the appellants opposed him in this election.

12. PW-1 has also said that his house has a staircase, facing eastwards in the courtyard, with a door on the west side and there was no toilet in his house. Dayaram's house is about 50-60 paces away from his house and Ramlal's house is 60 paces away from his house. Shyama Devi came to his house of her own sweet will. She lived in the room next to the hearth, northwest of the courtyard. He had given her a bed to sleep in, and she had told him that once the land dispute was over, she would vacate his house. His kitchen and Shyama Devi's kitchen were separate. He had supplied her utensils to cook meals for herself. The witness said that when he went to Shyama Devi's kitchen after the incident, a cooked dish of pulses was there in the zinc pot (*patili*), wet flour stuck to her hands, a *chapati* was on the pan (*tawa*) and she was sitting on the south side of the hearth, with her back against the wall. When Shyama Devi was shot, blood spilled around her and splattered on the cow-dung. Both the shots were fired from a distance of 3-4 paces by the appellants after approaching from the east. The Investigating Officer had inspected the place of occurrence and observed all these details.

13. PW-1 has further said in his cross-examination that the distance from the platform, where they were sitting and the hearth was 15 paces and the staircase was about 2-3 paces away from the hearth. The witness said that he stayed on the platform until the assailants left. The assailants had passed by him at a distance of 2-1 paces, to wit, the place where he was sitting. The witness says that when he and others on the platform saw the assailants, approaching armed with country-made pistols, they got frightened, moved 2-1 paces away and the assailants went away. He does not know the name of Jivaram's daughter, for whom they had to go to find a groom. The boy, whom they had proposed to see, was his *Samadhi's* son, named Ravi Lal. Firstly, Jivaram came to his house at about 8-10 o'clock. Thereafter, Mahendra and Ram Lal came to him. After 2-3 months, they again went to

Village Patharua to find a groom along with Mahendra and Ram Lal. He went to the police station alone on foot. He remained at the police station for about half an hour. At about 4.00 p.m., the cadaver of Shyama Devi was taken from his house. He does not know, who cremated Shyama Devi. May be the police had cremated the dead body. He has denied that he had illicit relations with Shyama Devi and said that he treated her as his daughter. He has also denied the suggestion that his wife, daughter-in-law and son were annoyed with him for sheltering Shyama Devi in their house and his family members had killed Shyama Devi and the appellants have been falsely implicated in the present case to save the real assailants. He had asked the appellants to accommodate Shyama Devi in their house and cultivate her land. Upon his request, the appellants kept her with them for 4-6 days and then beat her up and threw her out. She wandered here and there, and when she came to the witness, he gave her a room to stay there.

14. PW-2 Jivaram is also said to be an eye-witness of the incident. He has said in his examination-in-chief that on the fateful day at about 11:00 a.m., Shyama Devi was murdered. During those days, Shyama Devi was living in PW-1, Ujagar Singh's house. At the time of her death, he was sitting in front of the *baithak* along with Ujagar Singh, Mahendra and Ram Lal. He had to go to find a groom for his daughter in village Patharua along with Ujagar and that is why he had come to Ujagar's house. At that time, Shyama Devi was making *chapati*. The appellants, Matadin and Ram Kishan, came to the courtyard from the terrace through the stairs armed with pistols and shot Shyama Devi. As a result, she died and the appellants fled away towards the south direction. Subedar, Hajari and Ram Swarup saw them fleeing away from the spot. In his cross-examination, this witness has said that Shyama Devi's husband Dayaram was killed in a police encounter before the incident. Shyama Devi was living in Ujagar's

house 2-3 months prior to the incident. Ujagar Pradhan had told him about a boy for his daughter, 2-3 days prior to the incident. He had no friendship with Ram Lal and Mahendra. He had asked Ram Lal and Mahendra to accompany him to village Patharua. His brothers also reside in the same village, but he did not ask them to accompany him to go to village Patharua for assistance alone. Ram Lal alone was his worker. Mahendra was convicted in a murder case and sentenced to undergo imprisonment for life. Now-a-days, he is on bail. In the case, where Mahendra was convicted, the appellant Matadin had deposed against him. Ram Lal was also tried along with Mahendra in the case.

15. PW-2 has further said that at about 10:00 a.m., he came to Ujagar's house and was sitting on a platform outside the *baithak* of Ujagar's house. Ujagar was already sitting there. After 10-5 minutes, Ram Lal and Mahendra reached there. They had sticks (*danda*) in their hands. Shyama Devi was making *chapati* at the time of incident. While they were sitting on the platform, Ujagar's daughter-in-law (*bahu*) had not closed the doors, because she was sitting with her back to them. He has denied the suggestion that the door was not locked because the inside was not visible from the place, they were sitting. While they were sitting, their faces were towards the courtyard. Upon hearing the sound of gun shot, they got frightened and stayed in place. The appellants, carrying weapons, passed by them at a distance of 6-7 paces. After the shooting, all of them raised alarm and as the assailants were armed, he did not attempt apprehending them.

16. PW-3, SHO Amir Chandra Singh, is a formal witness and the second Investigating Officer of this case. He has filed the charge-sheet in the Court, which he proved as Ex. Ka-2.

17. PW-4 Constable 672 Suresh Chandra is also a formal witness, who had taken the deceased Shyama Devi's cadaver for autopsy to Mainpuri along with related papers. He has said that at

about 5:00 p.m., he proceeded from Village Khirna to Mainpuri, which was 30 kilometers away from there.

18. PW-5 SI Kamta Prasad is the first Investigating Officer of the case. He has stated about the investigation carried out by him and said that he recorded statements of the informant and other witnesses. He reached the place of occurrence at Village Khirna Kalan along with other police personnel. He inspected the place of occurrence and prepared a site-plan, which he proved as Ex. *Ka-3*. Prior to undertaking steps in investigation as aforesaid, the Investigating Officer held an inquest and drew up a report, which he proved in Court. It was marked Ex. *Ka-4*. He has also proved the other related papers, such as, *challan* lash, photo lash, letter to RI and letter to C.M.O. as Ext. *Ka-5* to *Ka-8*, respectively. He has proved the sample seal as Ex. *Ka-9* and said that the corpse was handed over to Constable Suresh Chandra and Rajendra Singh along with relevant papers for the purpose of conveying the cadaver to the doctor concerned for autopsy. He has further said that he collected samples of blood stained earth and plain earth from the place where the corpse was found and sealed them in two separate containers. He has proved these containers as Material Exhibits 1 and 2 and its recovery memo as Ex. *Ka-10*. He has proved the *chik* FIR as Ex. *Ka-11* and G.D. No.16 dated 09.04.1983, registered at 13:00 hours, scribed by Head Moharrir Jawahar Lal, as Ex. *Ka-12*, who, according to this witness, was posted with him. He was well acquainted with his handwriting and signatures. In his cross-examination, this witness has said that he did not find any wet flour stuck to the deceased's hands. When he inspected the kitchen, he did not find baked *chapati*, cooked pulse and the zinc pot there. He did not find any blood stained cow dung at the spot. He found one stove at the place, marked as 'B' in the site-plan. The informant had not told him the place from where the assailants shot the deceased. He did not find Shyama Devi's effects or belongings in the informant's house.

19. PW-6 Dr. A.K. Srivastava is an expert witness, who has conducted the autopsy on 10.04.1983 at 12:45. He has said that rigour mortis was present over the body and the stomach was swollen. The body was average built and the age was about 35 years. He found the following *ante-mortem* injuries over the body:

(1) Gun shot entry and exit wound 19cm x 17cm x brain deep extending from root of nose to just above occipital protuberance. Blood clots were present.

(2) Gun shot entry 23cm x 6cm on inner aspect of right arm extending from just above medial condyle of elbow joint to right axilla pit then entry extending into right chest cavity. Blood clots present.

In the internal examination, he found that all bones of the skull were fractured, the brain lacerated and in pieces with blood present there. Four pellets of the size of a pea were found in the brain matter, right axilla, the first and the second ribs on the right side were fractured, the right lung was shredded into pieces and 14 small pellets and one wad was found in it. In right chest cavity, half a pound of clotted blood was found. The small intestine and stomach were empty, the large intestine was half filled and the uterus empty. The cause of death was shock and hemorrhage, as a result of laceration of brain matter and the death would have occurred about a day before. It could have occurred on 09.04.1983 at 11:00 a.m. PW-5 has proved the autopsy report as Ex. Ka-13.

This witness has said in his cross-examination that the root of nose and occipital protuberance are not at the same level. Occipital protuberance was at a little higher level and upon raising the head, both would be at the same level. Injury No.1 could have been caused while the deceased was sitting and shot by from the same level, and if she raised her head and the person shooting was in the standing position or at a higher level, even then injury No.1 could be caused. If the deceased was in the sitting position, having both her hands in between her knees, while making *chapati*, injury No.2 could be caused or not, was a matter that

could be explained by a ballistic expert. The distance from which injury Nos.1 and 2 were caused, could also be estimated only by a ballistic expert.

20. The prosecution have produced the following documentary evidence, to wit, *chik* FIR, Ext. *Ka-11*; written report (*tehrir*), Ex. *Ka-1*; recovery memo of blood stained and plain earth, Ex. *Ka-10*; *post-mortem* report, Ex. *Ka-13*; inquest report, Ex. *Ka-4*; charge-sheet, Ex. *Ka-2*; police form-13, Ex. *Ka-5*; photo lash, Ex. *Ka-6*; letter to RI, Ex. *Ka-7*; letter to the CMO, Ex. *Ka-8*; sample of seal, Ex. *Ka-9*; copy of G.D. No.16, Ex. *Ka-12*; copy of the application filed by the deceased Shyama Devi before the Naib Tehsildar in Case No. 32 of 1982 under Section 34 LR Act, Ex. *Ka-14*; and, a copy of the order dated 13.01.1983 in the above case, Ex. *Ka-15*.

21. After closure of evidence by the prosecution, statements of the appellants were recorded under Section 313 Cr.P.C., in which they denied the prosecution case and have stated that the witnesses have deposed against them due to enmity and a false case lodged against them. It is admitted that both the appellants are real brothers and the deceased, Shyama Devi was wife of Dayaram, their real brother. She was the appellants' *bhabhi* (sister-in-law). It is also admitted that Shyama Devi was issueless and a widow. It is also admitted that after the death of Dayaram, his share was inherited by Smt. Shyama Devi. It is also admitted that Shyama Devi had filed a case before the Tehsildar, Mainpuri regarding the same land against the appellants. The appellant, Matadin stated that a case under Section 302 IPC was lodged against Ramlal and Mahendra, in which he was a witness. Ujagar Singh, Gram Pradhan, had contested elections to the office of Gram Pradhan, where Matadin had supported the rival party. Ujagar Singh lost the election, and, as such, had harboured animosity against them. In consequence, the appellants have been falsely implicated in this case.

The defence have not adduced any oral evidence and in the form of documentary evidence, a certified copy of the judgment dated 17.11.1978, (Ex. *Kha-1*), passed by the 1st Additional Sessions Judge, Mainpuri in S.T. No.155 of 1978, State v. Ramlala and others, under Sections 302/34, 307/ 34 IPC, Police Station Kurawali, District Mainpuri was produced.

22. The learned Trial Judge, after hearing arguments of both parties and perusing the evidence on record, found that the prosecution have been able to prove their case beyond reasonable doubt. The FIR was lodged promptly and the place of occurrence was established. The witnesses of fact have been consistent and their testimony reliable and trustworthy. There was no contradiction in ocular and medical evidence. There was motive for the appellants to murder Smt. Shyama Devi in order to grab her land. Therefore, the learned Trial Judge found both the appellants guilty of committing Shyama Devi's murder and has, thus, convicted and sentenced the appellants under Section 302 IPC as indicated above.

23. We have heard learned Counsel for the appellants, the learned A.G.A. on behalf of the State and perused the evidence on record.

24. It is submitted on behalf of the appellants that the prosecution have examined PW-1, Ujagar Singh and PW-2, Jivaram, as the witnesses of fact. Both the above witnesses are interested witnesses and also inimical to the appellants. PW-2, Jivaram, is a chance witness. No independent witness has been examined by the prosecution. Therefore, the testimony of PW-1 and PW-2 is highly unreliable. It is further submitted that the appellants had supported Ujagar from the rival party in the election to the office of the Gram Pradhan, where the informant contested and lost. Therefore, he has developed enmity against the appellants, giving him a cause to falsely implicate. It is further

submitted that the informant has had illicit relationship with the deceased, Shyama Devi, and was keeping her in his house, which was a reason for annoyance and bickering between the informant and his family members, who did not accept it. It is the informant's family members, who have killed Shyama Devi and the informant has falsely implicated the appellants to save his family. It is further submitted that the place of occurrence is highly doubtful because in view of the testimony of PW-1 and PW-2 and the Investigating Officer, the utensils, blood stained cow dung, baked *chapati* etc., which the witnesses of fact have said that they were lying at the place of occurrence, were not found by the Investigating Officer, when he inspected it. It is also submitted that the manner in which the incident has occurred, is not supported by medical evidence and, thus, there are contradictions in ocular and medical evidence, falsifying the prosecution story. It is also submitted that the presence of PW-1 and PW-2 at the place of occurrence is highly doubtful because if the incident had occurred in their presence, then their normal reaction would have been to capture the appellants. Sitting tight while the appellants committed the crime fled from the house without any resistance from them is highly unnatural. It creates doubt about the prosecution case. It is also submitted that the firearm was not recovered by the Investigating Officer, which could have corroborated the prosecution case by forensic examination of the weapon and the pellets found from the corpse of the deceased. Lastly, it is submitted that there was no motive for the appellants to commit the said crime. Civil litigation was already pending there in the Court and the murder of the deceased could have been of no benefit for the appellants to grab her property. Thus, the Trial Court has appreciated the evidence incorrectly and reached a wrong conclusion. Therefore, the impugned judgment and order is liable to be set aside.

25. Per contra, the learned A.G.A. has submitted that the prosecution case is proved beyond reasonable doubt; the FIR is prompt; the place of occurrence is established; the eye-witnesses have supported the prosecution case and their testimony is consistent and reliable. There are no major contradictions in ocular and medical evidence. There was motive for the appellants to commit the murder of Shyama Devi in order to grab her property. Thus, the Trial Court has rightly convicted and sentenced the appellants. This appeal has no force and is liable to be dismissed.

26. In view of the evidence led in the case and the submissions of both parties, let us see whether the prosecution have been able to prove their case beyond reasonable doubt.

27. According to the prosecution, the incident occurred on 09.04.1983 at 11:00 a.m. The FIR was lodged on the same day at 1:00 p.m. According to the *chik* FIR, the distance between the place of occurrence and the police station is 3 kilometers. PW-1, Ujagar Singh, is the first informant of the case. He has stated on oath that after the incident, he got the written report (*tehrir*) scribed by his son, Kripal, and thereafter went to the police station and lodged the FIR. PW-1, Ujagar Singh, has proved the written report as Ex. Ka-1 and said that he went to the police station alone on foot. He gave the written report to the Constable at the police station. He remained at the police station for about half an hour. PW-5, SI Kamta Prasad, the Investigating Officer of the Case, has proved the *chik* FIR, Ex. Ka-11 and G.D. No.16 dated 09.04.1983 entered at 13:00 hours and Ex. Ka-12, scribed by Head *Moharrir* Jawahar Lal. It is argued on behalf of the appellants that the FIR is ante-timed, but in this regard the defence have not cross-examined PW-1, Ujagar Singh and PW-5, SI Kamta Prasad. The inquest report was prepared at 3:00 p.m. on 09.04.1983 and there are particulars of case crime number

and sections etc. mentioned on the first page, and on the second, it is mentioned that by G.D. No.16, dated 09.04.1983 registered at 13:00 hours, SI Kamta Prasad reached the place of occurrence, drew up the relevant papers with regard to the inquest and sent the dead body for autopsy to the hospital. In view of the above oral and documentary evidence, it is proved that the FIR was lodged on 09.04.1983 at 1:00 p.m. i.e. after about 2 hours of the incident. Therefore, looking into the facts and circumstances of the case, there is no delay in lodging the FIR. It is prompt and not ante-timed.

28. According to the prosecution, the incident occurred in the courtyard of the informant, Ujagar Singh's house in Village Khirna Kalan, P.S. Kurawali, District Mainpuri. PW-1, Ujagar Singh, is the first informant as well as eye-witness of the case. He has deposed on oath that Shyama Devi was murdered at about 11:00 a.m. by the appellants, coming down the stairs from the backyard, when she was making *chapati* in the kitchen, leaning against a wall in the courtyard. He has said that the appellants had shot her from a distance of 3-4 paces in his courtyard and blood splattered around her. PW-2, Jivaram, is also one of the eye-witnesses of the case. He has also deposed on oath that the appellants entered into the informant's courtyard, after getting down the roof, and shot Shyama Devi while she was making *chapati* there.

29. According to the inquest report, it was drawn up at the place of occurrence that is the courtyard of the informant's house, which corroborates that the incident occurred in the said courtyard. The Investigating Officer has inspected the place of occurrence and drawn up the site-plan, where the place of occurrence is shown as the courtyard of the informant's house.

30. PW-5, SI Kamta Prasad, the Investigating Officer of the case, has said on oath that he took samples of blood stained and plain earth from the place, where the dead body was lying, sealed

them in separate containers and drew up its recovery memo. He has proved these containers as Material Exhibits 1 and 2 and its recovery memo as Ex. Ka-10, which also corroborates that the incident occurred at the place alleged by the prosecution. It is vehemently argued on behalf of the appellants that the place of occurrence is highly doubtful because according to the testimony of PW-1, kneaded dough stuck to the deceased's hands, cooked *chapati* was on the pan, cooked pulse in the zinc pot, the earthen pots and blood stained cow dung etc. were lying at the place of occurrence, whereas the Investigating Officer has said that he did not find or notice any of these things. This shows that the place of occurrence, as propounded by the prosecution, is highly doubtful. We do not find force in this submission. It has come in evidence that the Investigating Officer has found blood splattered around the body of the deceased at the place of occurrence and collected samples of blood stained and plain earth from the said place. He also found Shyama Devi's dead body lying at the place of occurrence. If he failed to notice the more subtle materials, it has no bearing on the case. It may be minor lapse on his part or at the most, an instance of defective investigation. It is settled law that if the prosecution case is proved otherwise from ocular and medical evidence, any lapse on the Investigating Officer's part, would not adversely affect the prosecution case. Here, it is material that the dead body was found at the place of occurrence along with blood splattered there. Therefore, going by clear and telltale evidence, we are of opinion that the place of occurrence is established by the prosecution.

31. The prosecution have examined PW-1, Ujagar Singh and PW-2, Jivaram, as the two eye-witnesses of the incident, who have proved the facts of the case. Looking into the testimony of both these witnesses, it appears that they are consistent in their deposition and there are no major contradictions to hold that they are not reliable or the prosecution case not proved. PW-1, Ujagar

Singh, has supported the prosecution case and deposed that at the time of the incident, he was sitting in his *baithaka* along with Jivaram, Ramlal and Mahendra. The other men were sitting there too, because they had to go to Village Patharua to find a groom for Jivaram's daughter. The appellants came into the courtyard of his house from the backside of the house. Shyama Devi was cooking in the backyard. The appellants shot her. As a result, she died instantly. Thereafter, the appellants fled towards southern side. PW-1 has been cross-examined at great length, but nothing material could be extracted from his cross-examination, which would cast doubt on his veracity. Here, it is pertinent to mention that it is the admitted case of the appellants that both of them are real brothers and the deceased, Shyama Devi was wife of Dayaram, their real brother. It is also admitted that after Dayaram's death, Shyama Devi inherited his share. It is also admitted that Shyama Devi had filed a case in the Tehsildar's Court against the appellants regarding the abovementioned property. It is also admitted that Shyama Devi was living in Ujagar's house at the time of the incident, but it is further stated on behalf of the appellants that she was living in her own house also. In view of the above, admittedly at the time of incident, Shyama Devi was living in the informant's house and PW-1, Ujagar Singh has stated that Shyama Devi had asked him to stay there till her case was decided. PW-1 has said that they were sitting in the *baithaka* in such a position that the place of occurrence was clearly visible to them. It has come in the testimony of PW-1 that he had not shown the place to the Investigating Officer, from where the appellants had stood and shot Shyama Devi. In this regard, it is submitted on behalf of the appellants that non-disclosure of the place, from where the fire was opened by the appellants, is a material lapse on the part of the prosecution, which adversely affects their case. We do not find any force in this submission. It is established from the evidence

that Shyama Devi was shot in the courtyard of the informant's house, while she was sitting near the hearth (*chulha*). The Investigating Officer has shown the hearth and the place, where the dead body was lying. Therefore, not showing the place to the Investigating Officer, from where the appellants had opened fire, is not very material so as to adversely affect the prosecution case.

32. PW-2, Jivaram, has also supported the prosecution case and according to the prosecution, Jivaram reached the informant's house at about 10:00 a.m. and he was sitting along with the informant and two other men, Mahendra and Ramlal in the *baithak*. He has also said that he came to the informant's house because it was agreed between them that they would go to Village Patharua to find a groom for his daughter. Therefore, the reason for Jivaram's presence at the time of the incident is well explained. According to PW-1, the groom whom they were going to meet was his *Samadhi*'s son. Though, it has come in evidence that till the statements of these witnesses were recorded, the marriage of Jivaram's daughter was not settled, but it does not mean that the presence of Jivaram at the informant's house was without reason. There is no material contradiction in Jivaram's testimony, though he has been cross-examined at length.

33. In the appellants' submission, the testimony of PW-1 and PW-2 does not show that they could see the incident from the *baithaka* and reckon what was going on in the courtyard. Looking into the testimony of both these witnesses, it has come in their evidence that the door of the *baithaka* was open and the hearth and the place, where the deceased was sitting, was visible from the door. The Investigating Officer has drawn up a site-plan, where he has shown the place by letter 'A' where both these witnesses were sitting and the place marked by letter 'B' in the courtyard, where the hearth was located and the dead body of Shyama Devi lay. In between letters 'A' and 'B', there is a door

shown, which is straight in line with 'A' and 'B'. This would give clear vantage to one sitting at place 'A', what was happening at place 'B'. The platform is also shown in the *baithaka* and both these witnesses say that they saw the shooting from the *baithaka* and it was the appellants, who shot the deceased employing country-made pistols. The defence have given a suggestion to PW-2, Jivaram, that the *baithaka* door must have been closed because the daughter-in-law (*bahu*) in rural societies stay veiled. Therefore, the suggestion further goes, if Jivaram was present there with his face towards the courtyard and women of the house inside, as a matter of normal practice, door would not be open. Rather, it would have been closed to keep privacy. But, PW-2 has explained this by saying that the back of the daughter-in-law (*bahu*) was towards them, so the door was open. The explanation given by PW-2, Jivaram, appears to be reasonable and it is not unusual in such condition that the door of the *baithaka* was open.

34. It is further submitted on behalf of the appellants that the appellant, Mata Din was witness in a murder case against Ramlal and Mahendra, where they were convicted and sentenced to undergo imprisonment for life. Thus, they harboured animosity against Mata Din and stood witness against the appellants in this case. The defence have filed a certified copy of the judgment passed in the sessions trial against Ram Lal, a reading whereof shows that though Mata Din stood witnesses against Ramlal, but so far PW-2, Jivaram, is concerned, he was not on trial in that case. There is, therefore, no reason shown by the defence why PW-2, Jivaram, would falsely depose against the appellants. Jivaram is an independent witness. His presence on the spot is found reasonable and reliable. It is a day-light murder. There is no reason why Jivaram would give false evidence against the appellants.

35. It is also submitted on behalf of the appellants that according to PW-1 and PW-2, after committing the crime, the appellants emerged from the informant's house using the *baithaka* door, passing these witnesses at a distance of 5-6 paces, where the normal reaction of these witnesses should have been to apprehend the appellants, but the absence of any such reaction of these witnesses sitting in the *baithaka* while the appellants passed by, is not natural and raises suspicion about their presence at the scene. We do not find any force in this submission, because it has come in evidence that the appellants were armed with country-made pistols, which they were brandishing, and these witnesses were scared into staying away from the appellants, who had moments earlier, had shown their propensities to kill.

36. In **Rana Pratap v/s State of Haryana AIR 1983 SC 680, (1983) 3 SCC 327**, the following remarks of O. Chinnappa Reddy J. are relevant:

"Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. The others rush to the rescue of the victim, even going to the extent of counter attacking the assailants. Every one reacts in his own special way. There is no such rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

37. In this view of the matter by not reacting in a particular manner to apprehend the appellants, there cannot be any suspicion about the witnesses' presence at the place of occurrence, particularly, when the appellants were armed with pistols.

38. It is further submitted on behalf of the appellants that there were elections around for the office of Gram Pradhan and the

informant, a former Gram Pradhan, contested the election. The appellants supported the rival candidate and in the election, the informant lost. Therefore, he harboured animosity against the appellants, leading to their false implication in this case. We do not find any force in this submission as well. The appellants have not clarified, who was the rival candidate, whom they were supporting and the election to the office of the Gram Pradhan was held about a year ante-dating the occurrence. There was no reason for the informant to falsely rope in the appellants after the lapse of a year from the electoral event. In view of the above discussion, we hold that the testimony of PW-1 and PW-2 is consistent, reliable and trustworthy.

39. So far as the medico-legal evidence is concerned, it is submitted on behalf of the appellants that the ocular evidence is not corroborated by the medico-legal evidence, rendering the prosecution case highly doubtful. In this regard, we have examined the testimony of PW-1, Ujagar Singh, PW-2, Jivaram and PW-6, Dr. A.K. Srivastava, who conducted the autopsy. According to the *post-mortem* report, Ex. Ka-13, there were two gun shot wounds, one of entry and exit, 19cm x 17cm x brain deep, extending from root of nose to just above occipital protuberance, and the other, was of an entry, 23cm x 6cm on inner aspect of right arm extending from just above medial condyle of elbow joint to right axilla pit, the entry extending into right chest cavity. On internal examination, all the bones of skull were found fractured, brain lacerated and in pieces with blood present there. Four pellets were found in brain matter, the right axilla and ribs over the right side fractured, the right lung shredded into pieces and 14 small pellets and one wad was found in it. The cause of death was opined to be shock and hemorrhage, as a result of ante-mortem injuries. According to PW-1 and PW-2, Shyama Devi was sitting near the hearth and making *chapati*, when she was shot by the appellants. She was in the sitting

position with both her arms between her legs. PW-6, Dr. A.K. Srivastava, has opined that injury Nos.1 and 2 could be caused while the deceased was in sitting position. Both the witnesses of fact have said that the deceased was shot by the appellants and the doctor has found that the deceased died due to gun shot injury. Therefore, there are no material contradictions in the ocular and medico-legal evidence, which substantiates the prosecution case.

40. According to the prosecution, the appellants had motive to commit the murder of the deceased because after the death of the deceased's husband Dayaram, Shyama Devi inherited his property, but the appellants, who are *Devar* and *Jeth*, managed to get her name mutated out of the revenue records. In this regard, Shyama Devi had instituted a case in the Tehsildar's Court. The prosecution have produced copies of the application and the order of the Tehsildar's Court, which corroborates their version. The appellants too have admitted that Shyama Devi had instituted a case against them in the Tehsildar's Court. Therefore, there was motive for the appellants to commit the evil deed in order to grab Shyama Devi's property. Besides this, this is a case of direct evidence and in case of direct evidence, it is settled law that motive is not very material and has no significance. In view of the above, the prosecution have proved motive for the appellants to commit this crime. The direct evidence corroborated with the medico-legal evidence, support the prosecution case as well.

41. It is in the last submitted on behalf of the appellants that the informant, Ujagar Singh, had an illicit relationship with Shyama Devi. The informant was keeping her in his house, which was a cause of annoyance to his family members and it was the informant's family members, who did Shyama Devi to death. The informant has falsely roped in the appellants in this case to save his family members from the penalties of the law. The defence

have not produced an iota of evidence in support of this contention of theirs. PW-1, Ujagar Singh, has disclosed his age as 60 years whereas according to the autopsy report, Shyama Devi was aged about 35 years. There was an age difference of 25 years between Shyama Devi and the informant. PW-1 has said on oath that he regarded Shyama Devi as one of his daughters and has denied that he had any illicit relationship with her. It has come in evidence that at the time of the incident, the women of the house were present and the informant had a daughter-in-law too. It is highly improbable that women from the informant's family and other family members of his would murder Shyama Devi because of annoyance with the informant for sheltering Shyama Devi in his house. If according to the appellants, it were the family members of the informant, who committed the crime, they (the appellants) could have moved an application or stated this fact to the police or other authorities, who would have investigated the case from this angle as well. There is nothing on record to show that the appellants did so during the entire course of investigation and the trial. Therefore, this submission on behalf of the appellants has no force.

42. In view of what we have said above, we hold that the prosecution have proved their case beyond reasonable doubt. The Trial Court has appreciated the evidence on record correctly and reached the conclusion about guilt of the appellants for sound reasons. The appellants have been rightly convicted and sentenced for the said crime.

43. Therefore, this appeal has no force. The appeal fails and is **dismissed**. The conviction and sentence of the appellants by the Trial Court is hereby **affirmed**.

44. The appellants are on bail. Their bail bonds and personal bonds are cancelled and sureties discharged. They are directed to surrender before the Trial Court within two weeks from today to

undergo the remaining part of their sentence, failing which, the Trial Court is directed to adopt coercive measures for securing their presence.

45. Let a copy of this order be forwarded to the Trial Court concerned along with the lower court record for information and necessary compliance.

(Sanjiv Kumar,J.) (J.J. Munir,J.)

February 05, 2026

Anoop