2025:AHC:198069-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 853 of 1983

AFR

Kali Shanker and others

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Abhinav Dwivedi, Akhilesh Chandra Shukla, Arjun Singh Yadav, Jyoti Verma, K.d.tiwari, Mayank Bhushan Nath Tripathi, Ram Chandra Singh, Ravi Sahu, Shailendra Kumar Awasthi, Sheel Kumar Ojha, Shyam Singh, Sunil Vashisth, Vijay Prakash Pandey
Counsel for Respondent(s)	:	A.G.A.

Reserved on 20.05.2025
Pronounced on 10.11.2025

Court No. - 42

HON'BLE SIDDHARTHA VARMA, J.
HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

(Per: Ram Manohar Narayan Mishra,J)

1. Heard Sri Akhilesh Chandra Shukla, learned counsel for appellant no.4 (Rajendra), appellant no.5 (Bimal Kumar), appellant no.7 (Surya Kumar), appellant no.8 (Ashok Kumar), appellant no.9 (Bhaiyalal), appellant no.10 (Anant Ram) and Sri Abhinav Dwivedi, learned counsel for appellant no.11 (Pratap Narain) and Sri Amit Sinha, learned A.G.A. for the State.

2. The instant criminal appeal has been preferred against the judgment and order dated 31.03.1983, passed by the VIIIth Additional

District & Sessions Judge, Kanpur, in Sessions Trial No. 53 of 1980 and Sessions Trial No. 480 of 1980, whereby the accused-appellants were convicted under Sections 147, and 302/149 of the Indian Penal Code. The accused, Shiv Kumar, Rajendra Prasad, Kali Shanker, Bimal Kumar, Deo Narain, Pratap Narain, Ashok Kumar, Bhaiyalal @ Raja, Anant Ram, Shiv Narain and Surya Kumar were convicted under Sections 302/149 IPC and sentenced to undergo life imprisonment. They were also convicted under Section 147 IPC and sentenced to one year rigorous imprisonment. Both the sentences are directed to run concurrently. Out of 11 convicted person, appellants, Kali Shankar, Shiv kumar Shukla, Dev Narayan and Shiv Narain died during pendency of present appeal and appeal was dismissed as abated qua these appellants. Six accused/appellants Anant Ram, Bimal Kumar, Rajendra Prasad, Pratap Narain, Surya Kumar, Ashok Kumar and Bhaiyalal are stated to be surviving.

3. In above stated consolidated sessions trials, as many as twenty accused were tried by the learned trial Court, out of whom eleven accused persons were convicted and sentenced and nine accused persons, namely, Ram Kumar, Surendra Kumar, Pramod Kumar, Bhoop Narain, Raj Narain, Thakur Prasad, Jagdish, Gajendra and Virendra Kumar were acquitted of all charges on being given the benefit of doubt. One named accused Umakant was deceased in cross FIR.

4. These sessions trials have arisen out of Case Crime No.321-A of 1979, under Sections 147, 148, 149, 307 and 302 I.P.C., Police Station Sheoli, District Kanpur.

5. Factual matrix of the case, in brief, is that the informant, Shiv Kumar Tiwari s/o Shyam Sundra Tiwari r/o Village Mavaiya, District Kanpur Dehat lodged an FIR on the basis of written report at Police Station Sheoli, District Kanpur Dehat on 09.12.1979 at 7:30 p.m. with averments that his co-villagers, namely, Shiv Narayan Shukla, Shiv Kumar, Kali Shanker etc. had previously been convicted for the offence under Section 307 I.P.C. for assaulting him, his father, his brother and

Kripa Shanker (Gram Pradhan). These persons had pricked up a quarrel with him and his family members by making aggression at his house situated at Mohalla Raipurwa, District Kanpur City, in which, informant's side had defended themselves. A litigation was also ongoing amongst these persons and the informant with regard to land dispute. He resides in his house at Mavaiyya, which was also vacated from illegal possession of Shiv Kumar s/o Matru. Shiv Kumar and others were bent upon eliminating his family due to this enmity. On 09.12.1979, at around 4:00 p.m., his brother, Kripa Shanker had called Mahavir Shukla through his son, Vasudev to get the bail of one Jai Narayan. His brother was standing at the Chabutra of Devi Ji in the village and Mahabir also followed Vasudev when they reached near the Chabutra of Devi Ji in the village, suddenly, Kali Shanker, Uma Kant @ Chhunna, Deo Narayan, Shiv Kumar and others, who were twenty one in number, emerged armed with lathi, Ballam, Kanta, knife, bankaand countrymade pistol and surrounded his brother, Kripa Shanker. They started abusing and beating him. Vasudev also came there and he told them not to assault his father and thereafter, he rushed to his house and brought his gun in order to defend his father, but Surya Kumar and Shiv Narain caught hold of Vasudev and tried to snatch the gun and in the process of snatching of gun, which was loaded, fire broke out. Kali Shanker snatched the gun from Vasudev and all accused persons attacked Vasudev and Kripa Shanker with intention to kill them, lifted them and brought them inside the house of Shiv Kumar Shukla, where they assaulted. The noise was emanating from the house of Shiv Kumar that kill them, it is quite possible that both the injured, namely Vasudev and Kripa Shanker would have been killed by accused persons. This incident was witnesses by Beni Prasad, Pooran, Daya Ram, Ram Sawaroop, Kishan Prasad and others. The aforesaid accused persons assaulted his brother and nephew in a planned manner by gathering their relatives from city and villages. They attacked them by lathi, Ballam, Kanta, knife and banka. This incident has created a state of terror in the village. Girdhar, has any how, fled away from the spot and narrated the incident to him and information

is being filed on the basis of his utterances. As many as 21 accused persons were named in the FIR.

6. The written report in connection with Crime No.321A of 1979 was lodged by P.W.-4 (Shiv Kumar Tiwari) by written report Ex.Ka-2 authored by him on the basis of eyewitness account of the incident received from P.W.-4 Awadhesh @ Girdhar (P.W.2). Another FIR, which appears to be a cross version was lodged at the instance of accused, Shiv Kumar Shukla on same day at 7:00 p.m. prior to lodging of present FIR against Vasudev (deceased), Kripa Shanker (deceased), Girdhar, Mahavir Shukla and Venkatesh Narain, vide Case Crime No.321 of 1979, under Sections 147, 148, 149 and 302 I.P.C. In his written report, the informant, Shiv Kumar Shukla stated that on 05.12.1979, an altercation took place regarding the taking of water from his field. During this incident, the accused assaulted his son and wife. The informant received this information in Kanpur through his nephew, Pramod Kumar. Consequently, he returned to his village, Mavaiyya, on 08.12.1979 along with his younger brother, Ram Kumar. Upon arriving in the village, he came to know that Mahavir Shukla and Vasudev Tiwari had assaulted his wife and son, as well as abused and threatened them. On 09.12.1979, while he was explaining an earlier incident to his sons along with his brother, Ram Kumar, at around 4:00 p.m., Uma Kant Shukla came to his house along with Surya Kumar Tripathi, Ashok Kumar Tripathi, Vimal Kumar Shukla, and Annat Ram Shukla to ask him about travelling to Kanpur. Shortly thereafter, Mahadev Tiwari @ Daroga, his younger brother, Girdhar, his father Kripa Shanker, Mahavir Shukla, and Venkatesh Narayan Mishra @ Munnu arrived at his house armed with weapons. Vasudev was carrying licensed gun of his father, Kripa Shanker. Girdhar and Mahavir Shukla were carrying country-made pistols and Venkatesh Narayan Mishra and Kripa Shanker were armed with lathi. They barged into his house, abusing him, and opened fire. The shot fired from the gun of Vasudev hit Umakant Shukla. Mahavir also fired shot, which hit Surya Kumar. Girdhar also opened fire, but his shot missed. Kripa Shanker and Venkatesh Narayan exhorted the co-accused

that nobody should be spared. The informant and others present there raised an alarm, whereupon Mahavir, Girdhar, and Venkatesh Narayan started fleeing from the spot. During the course of fleeing, the country-made pistol of Mahavir came into his hand, and these three persons succeeded in making their escape. On hearing the noise of firing and commotion, about 100 people assembled at the place. A large number of people assembled on seeing the dead body of Umakant got infuriatede and caught hold of Kripa Shanker and Vasudev and started beating them. The members of public apprehended them during the course of the incident and locked them in his house. He went to the police station and lodged the FIR, leaving them at the place of the incident. The escape of the accused persons was witnessed by Nanha Kachi, Thakur Prasad, Deo Narayan, and other co-villagers. A case was registered at police station vide GD entry No.29 time 19:00 hours on 09.12.1979 (Ext. Ka-11).

7. Both the FIRs were investigated by the police. The FIR lodged at the instance of Shiv Kumar Tiwari was registered as Case Crime No. 321-A of 1979, in which the police submitted a charge-sheet against all 21 named accused persons for committing the murder of Vasudev Narayan and Kripa Shanker Tiwari in connection with Case Crime No. 321A of 1979, and a final report was submitted in favour of accused with regard to Case Crime No. 321 of 1979 lodged at the instance of Shiv Kumar Shukla, an accused in persent case.

8. After conclusion of the investigation, the learned Chief Judicial Magistrate committed the case to the Court of Sessions for trial on 06.02.1980. The learned VIIIth Additional Sessions Judge, Kanpur, framed charges as follows:

(i) Under Section 147 I.P.C. against Ram Kumar, Anant Ram, Jagdish, Virendra Kumar, Bhoop Narain and Pratap Narain.

(ii) Under Section 148 I.P.C. against Kali Shanker, Deo Narain, Sheo Kumar, Rajendra, Gajendra, Chhunni @ Surendra, Pramod, Bimal Kumar, Thakur Prasad, Sheo Narain, Surya Kumar, Ashok Kumar, Raj Narain and Bhaiyya Din.

(iii) Under Section 302 read with Section 149 I.P.C. against all twenty charge-sheeted accused persons.

9. The prosecution examined P.W.1, Dr. A.N. Singh, who conducted the post-mortem examination of Kripa Shankar (deceased), P.W.2, Awadhesh Kumar @ Girdhar, P.W.3, Dr. C.T. Meerpuri, who conducted the post-mortem examination of Vasudev (deceased), P.W.4. Shiv Kumar Tiwari, the informant of Case Crime No. 321A of 1979, P.W.5, Pooran, P.W.6, Dharmeshwar Singh, Head Moharrir, who authored the chik FIR of Case Crime No. 321 of 1979, P.W.7, Rajju Prasad, who carried the injured Vasudev in serious condition to the hospital from the place of incident and P.W.8, Salik Ram, who carried the deceased Kripa Shankar and Vasudev from the police station to the post-mortem house.

10. C.W.1, Ram Shanker Mishra (Investigating Officer), submitted the charge-sheet in the present case and the final report in Case Crime No. 321 of 1979. He had also conducted the inquest of the dead body of Uma Kant (deceased in a cross case), C.W.2, Nandjeet Singh, who conducted the inquest on the dead bodies of Kripa Shanker and Vasudev and C.W.3, Radehy Shyam (Constable), produced the exhibits at the FSL, Agra, for chemical examination.

11. After conclusion of prosecution evidence, the statement of accused persons were recorded under Section 313 Cr.P.C., wherein the circumstances appearing against them in prosecution evidence were explained. The accused persons claimed in their statement under Section 313 Cr.P.C. that prosecution version in the present case is concocted and false and that the actual incident is as mentioned in the FIR lodged at the instance of accused, Shiv Kumar Shukla, in the cross case. They also stated that the witnesses had deposed falsely against them due to prior enmity. The accused, Surya Kumar stated that Girdhar, from the informant’s side of this case, had fired a shot at him, which got missed and Mahavir hit Surya Kumar in his right hand fire shot by Uma Kant, who was present, died on the spot. Surya Kumar was also named in the report filed by Shiv Kumar Shukla.

12. The accused persons examined D.W.1, Dr. S.C. Prasad, Radiologist, who proved the X-ray report of the accused, Surya Kumar Tripathi, D.W.2, Dr. R.P. Gupta, who proved the injury report of Surya Kumar, D.W.3, Dr. D.K. Mathur, who conducted post-mortem examination of Uma Kant (deceased) in cross FIR and D.W.4, Nanha, a witness of fact.

13. After the conclusion of the recording of evidence, the learned trial court heard the arguments of both sides and passed the impugned judgment and order, whereby out of the twenty accused persons, who were charge-sheeted (one named accused, Uma Kant, having died on the spot), eleven accused persons are appellants before this Court, and the trial court acquitted nine accused persons, as stated above.

14. Rama Shanker Mishra (Sub-Inspector) started investigation. He went on the spot. He took into possession blood stained earth from house of Shiv Kumar Shukla where Kripa Shanker and Vasudev were found injured. He prepared a Fard, which was signed by the witnesses in whose presence, it was prepared, recorded the statements of the witnesses, arrested some of the accused and prepared site-plan. He sent the blood stained earth to the Chemical examiner on 12.01.1980.

15. The Panchayatnama of the dead-body of Kripa Shanker and Vasudev was prepared by Nandiji Singh-S.I. The dead bodies were sent for post mortem examination through constable and the post mortem of the dead-body of Kripa Shanker was conducted by Dr. A.N. Singh on 10.12.1979 at 3.30 P.M. He found the following ante mortem injuries on a person of Kripa Shanker:-

> **Injury No.1**-Incised wound 3 cm x 1/4 cm x muscle deep on the forehead above the right eye brow.
>
> **Injury No.2**-Lacerated wound 1/2 cm x 1/4 cm x skin deep on the right upper eyelid.
>
> **Injury No.3-**Incised wound 3½ cm x 1/2 cm x fire cut right ear.

Injury No.4-Incised wound 2 cm x 1 cm x bone deep below right ear with lacerature under the temporal muscle.

Injury No.5- Incised wound 1 cm x 1/4 cm x muscle deep below chin.

Injury No.6-Incised wound 2½ cm x 1 cm lower of the palm of the left hand i.e. index finger metacarpal bone cut.

Injury No.7-Abrasion 1 cm x 1/2 cm on the back of right elbow.

Injury No.8-Abraded contusion 13 cm x 8 cm on the right shoulder top and back with fracture of neck of right scapula.

Injury No.9-Contusion 12 cm x 16 cm on the right side of lower chest.

Injury No.10- Incised wound $1^{1/2}$ x 1/2 cm x bone deep on the middle of front of right leg.

Injury No.11-Incised wound $2^{1/2}$ cm x 1 cm x bone deep below injury No.10.

Injury No.12- Abraded contusion 9 cm x 1 cm on the outer of the right thigh encircling it.

Injury No.13-Abrasion $1^{1\backslash 2}$ cm x 1/2 cm on below right petala.

Injury No.14-Abrasion 1 cm x 1 cm below left knee.

16. The cause of death was according to him due to shock and haemorrhage as a result of ante mortem injuries.

17. The post mortem of the dead-body of Vasudev was conducted by Dr. C.T. Meerapuri on 11.12.1979 at 11:30 a.m. and he found the following ante mortem injuries on his person.

Injury No-1 Incised wound $2^{1/2}$ cm x 1 cm x scalp deep on right side forehead, 3 cm above the outer part of right eyebrow.

Injury No-2 Incised wound 3½ x $1^{1/2}$ cm x cavity legs deep over the back of right ear.

Injury No-3 Abraded contusion 3 cm x $1^{1/2}$ cm over right extend ear on front side.

Injury No-4 Lacerated wound $1^{1/2}$ cm x 1/2 cm x scalp deep over right parietal or temporal region temporal region 3 cm below right ear surrounded by contused swelling $3^{1/2}$ cm x 3 cm.

Injury No-5 Incised wound $1^{1/2}$ cm x 1/2 cm x scalp deep or the occipital region of head right side near mid-line.

Injury No-6 Lacerated wound $1^{1/2}$cm x 1/2 cm x scalp deep on left side forehead upper part 4 cm above eyebrow.

Injury No-7 Stiched wound $1^{1/2}$ cm x 3/4 cm x cavity deep over inner part of left eye, margins of sound cut and underlying eye ball also punctured.

Injury No-8 Incised wound 2 cm x 1 cm x muscle deep over outer side left eyebrow margins cut.

Injury No-9 Incised wound 3 cm x 1/2 cm x scalp deep or left pavetel and temporal region of head 5 cm below left ear, directed down and out, wound oblique,

Injury No-10 Lacerated wound 2 cm x 1 cm scalp deep behind injury No.7.

Injury No-11 Lacerated wound 3 cm x 3/4 cm x bone deep over pavetal region on the left side of mid -line.

Injury No-12 Abrasion $2^{1/2}$ cm x 1 cm on right check.

Injury No-13 Incised wound 4 cm x $2^{1/2}$ cm x bone deep over chin both left on right side, under lying joint bone partially cut.

Injury No-14 Contused swelling in an area of 17 cm x 8 cm over right side chest below nipple 5 cm in front and auxiliary part with form abrasions of 1 cm x 1/2 cm.

Injury No-15 Contusion 8 cm x 2 cm over abdomen both the sides above umblicus.

Injury No-16 Contused swelling 6 cm x 3 cm on back and outer side of right forearm upper part with two abrasions $1^{1/2}$ cm x 1 cm and 2 cm x1 cm.

Injury No-17 Stiched wound 1 cm x 1/2 cm x 2 cm over inner side of left elbow.

Injury No-18 Punctured wound 3/4 cm x 1/2 cm x 2 cm over back of left hand near the root of little finger.

Injury No-19 Contused swelling with multiple abrasion over the back of left hand in an area of 7 cm x 6 cm.

Injury No-20 Lacerated wound 2 cm x 1/2 cm x skin deep with abrasion in front of left leg.

Injury No-21 Abrasion 2 1/2 cm x 1 cm over front of lower pert of left knee.

Injury No-22 Contusion 4 cm x 2 cm over front of chest middle lower part.

Injury No-23 Four abrasions with contusion 6 cm x 2 cm over right side wrist.

Injury No-24 Abraded contusion 2 cm x 1 cm on left side wrist.

Injury No-25 Brused swelling of 10 cm x 6m on left side beck middle part.

18. The cause of death was due to shock and haemorrhage as a result of the ante mortem injuries.

19. The sub-Inspector, who investigated the case, after investigation submitted the Charge-sheet against the accused, Kali Shanker and 14 other accused. A separate charge-sheet was submitted against the accused Gajendra, Anant Ram, Virendra Kumar, Shiv Narain and Surya Kumar. Both the cases emerging from charge-sheets were consolidated and Sessions Trial No.53/1980 was made the leading case.

20. The accused pleaded not guilty tot he charge. The defence version is that on 09.12.1979, while Shiv Kumar Shukla was persuading his

children not to indulge in petty quarrel and thereafter at about 4:00 P.M., Surya Kumar, Ashok Kumar and others came to his father to enquire about their departure to Kanpur. Vasudev Tewari alias Daroga, Girdhar, Kripa Shanker, Mahavir and Venketesh Narain came there. Vasudev alias Daroga was armed with licensed gun of his father and Girdhar was armed with pistol and rest had lathies. Vasudev fired the gun, which hit Uma Kant and he died on the spot. Mahavir also fired a shot by his Pistol at Shiv Narain. Girdhar also fired, but it got missed. Kripa Shanker and Venketesh Narain instigated each other to kill them. The complainant and the others grappled them to avoid further harm to their persons. Hearing hue and cry, a large number of villagers came there and they were enraged seeing the dead-body of Uma Kant. They assaulted Kripa Shanker and Vasudev. Mahavir, Girdhar and Venketesh Narain ran away but the Pistol of Mahavir was Snatched, the villagers took the injured Kripa Shanker and Vasudev into the house of Shiv-Kumar, who had proceeded to the Police Station and lodged a report. A case was registered vide Case Crime No.321 of 1979 at 7:00 p.m. on 09.12.1979 and Sub-Inspector left the Police-Station at 7.30 P.M. immediately. He prepared Panchayatnama of the dead-body of Uma Kant alias Chhunna, Chalan Nash and Photo Nash and sent the deadbody for postmortem through two constables. He collected sample of blood stained and simple earth from near the dead body of Uma kant. The defence case is that the accused had been falsely implicated due to this report lodged at the instance of accused side.

21. It is admitted that the two persons on behalf of the informant's side Kripa Shanker and Vasudev were killed and one Uma Kant from the accused side was killed. It is also admitted that the occurrence had taken place on 09.12.1979 at about 4:00 P.M. According to the prosecution, the accused having armed with lathi, Kanta, Banka, Ballam, Knives and pistol surrounded Kripa Shanker (Pradhan) and murdered him and they also murdered Vasudev, whose gun was being snatched by the accused and it fired and hit Uma Kant accidentally, whereas according to the defence, Surya Kumar, Ashok Kumar had come to the house of Shiv

Kumar Shukla and Vasudev Tewari, Girdhar Kripa Shanker, Mahavir, Venketesh came there and they beat Uma Kant and Murdered him. After having caused the death of Uma Kant, a large number of persons came and they assaulted Kripa Shanker and Vasudev, and so, it is admitted that Marpeet had taken place on the day of occurrence. The important point for determination in this case is as to which party was aggressor and what was the immediate cause of the trouble leading to unfortunate death of three persons. It appears that the relations between the deceased Kripa Shanker, Vasudev and the accused were inimical. The litigations were going on since 1949 and both the parties were at daggers drawn. It was contended on behalf of the accused that there was a compromise in 1977 in a case lodged at the instance of deceased Vasudev @ Daroga under Section 147/323/325 IPC against Kali Shanker and four others in the year 1977 but the cross version of the defence and the suggestions made in the cross-examination of witnesses of fact clearly show that it is admitted that the relations between the deceased and the accused were strained one. According to the prosecution, 7 or 8 days before this occurrence.

22. D.W.1, Dr. H.C. Prasad (Radiologist), has proved the X-ray plate and X-ray report of the right forearm and elbow of the injured, Surya Kumar Tripathi. He stated that on 09.12.1979, he was posted at U.H.M. Hospital, Kanpur, as Radiologist. He conducted the X-ray examination of the right forearm and elbow of Surya Kumar Tripathi. The X-ray plate and report were prepared under his supervision. The X-ray plate has been marked as Exhibit Kha-7, and the X-ray report has been marked as Exhibit Kha-11. According to the X-ray report, multiple radio-opaque shadows of different sizes, having metallic density, were seen in parts of the right forearm and right elbow. These metallic shadows might have been caused by pellets scattered by a firearm shot.

23. D.W.2, Dr. P.P. Gupta, proved the injury report of Surya Kumar Tripathi in the cross-case lodged at the instance of Shiv Kumar Shukla in Case Crime No. 321-A of 1979. He deposed in his evidence that he had conducted the medico-legal examination of Surya Kumar Tripathi

(accused) at 6:55 p.m., and at the time of examination, the following injuries were found on his person: -

(i) Lacerated gunshot wound size 35 cm × 10 cm × bone deep on the right forearm, with blackening, tattooing, and charring present. X-ray was advised.

(ii) Lacerated wound size 5 cm × 2 cm × bone deep on the right forearm, 1 cm above the wrist (gunshot wound), with blackening, tattooing, and charring present. He also deposed that the injured was admitted to the hospital and kept under observation. An X-ray of the right forearm, both AP and lateral X-ray was advised. The injury was caused by a gunshot and, at the time of examination, it was fresh. The injury report was produced before him, which was prepared in his handwriting and signed by him. It also bears the thumb impression of the injured. He proved the injury report by producing the accidental injury register from the hospital, wherein the injuries were noted. Exhibit Kha-12 was marked on the said injury report of injured, Surya Kumar Tripathi. In the opinion of the doctor, these injuries might have been caused on 09.12.1979 at around 4:00 p.m. These injuries could have been caused by a country-made pistol or gunshot. He was unable to give any opinion regarding the distance from which the shots were fired. The injuries were not on a vital part, but they could not have been self-inflicted because its magnitude was large. There is no record that the matter was referred to the police.

24. D.W.3, Dr. K.N. Mathur, who conducted the post-mortem of the deceased, Uma Kant, in Case Crime No. 321 of 1979, also proved the post-mortem report of the deceased, Uma Kant, by his evidence as Exhibit Kha-13. He deposed that he conducted the post-mortem examination of Uma Kant on 10.12.1979. The approximate time of death was about one day prior to the examination. Rigor mortis was present in both the lower and upper limbs. Twelve firearm injuries were found on the person of the deceased, as described in the post-mortem report. The cause of death was shock and haemorrhage as a result of ante-mortem injuries Nos.1 and 6. The injuries were caused by firearm. These injuries were found in an area 10 cm × 12 cm and were inflicted from a distance

of 6 to 10 feet. The probable time of injuries was between 4:00 p.m. and 5:00 p.m. on 09.12.1979.

25. D.W.3, Dr. K.N. Mathur, in his cross-examination, deposed that he was not a ballistic expert and, therefore, could not state with certainty the distance from which the shots were fired.

26. D.W.1, D.W.2, and D.W.3, who are medical experts, were produced on behalf of the defence to support its version and to prove the post-mortem examination report of Uma Kant (accused in the present case) and deceased in the cross-case, as well as the injury and X-ray report of the injured, Surya Kumar Tripathi, who is an accused in the present case. The post-mortem report of Uma Kant and the X-ray report of Surya Kumar Tripathi reveal that Uma Kant died at the time of the incident due to firearm injuries, while Surya Kumar Tripathi sustained firearm injuries on non-vital parts of body.

27. P.W.1, Dr. N. Singh, is the author of the post-mortem examination report of Kripa Shanker, which is marked as Ext. Ka-1, as described above.

28. P.W.2, Awadhesh Kumar @ Girdhar, who is the brother of Vasudev and son of Kripa Shanker and examined as an eyewitness, stated that in the incident, his father, Kripa Shanker, and elder brother, Vasudev, were killed. The incident occurred one year and nine months prior to his examination before the court. He is acquainted with the accused persons and also knew Dhuna @ Uma Kant, who has since died. The accused, Jagdish, Shiv Narayan, and Kali Shanker, belong to the same family. Surya Kumar and Ashok Kumar are nephews of Shiv Narayan. Dev Narayan, Pratap Narayan, Bhoop Narayan, and Raj Narayan belong to the same family. Rajendra Prasad, Jitendra Prasad, Surendra @ Dhooni, and Virendra Kumar are sons of Shiv Kumar. Shiv Kumar is relative of Raj Narayan, and Raj Narayan is the real brother of Shiv Kumar. Ram Kumar is the real brother of Shiv Kumar Shukla, while Pramod Kumar is the nephew of Shiv Kumar. Dhuna @ Uma Kant belongs to the family of Shiv Narayan. Except for Thakur Prasad and

Annat Ram, all the accused persons are relatives. The incident occurred on 09.12.1978 at 4:30 hours. Kripa Shanker and the informant were present at his house at that time. His father was Gram Pradhan. The witness and the deceased were residing in the same house. Kripa Shanker had asked Vasudev to bring Mahavir Shukla. He had called his son, Vasudev, to bring Mahavir Shukla in connection with the bail of one Jai Narayan. Kripa Shanker also followed Vasudev as he reached near the Chabutra of Devi Ji, which is about 50-60 paces north of his house. The deceased, Uma Kant, and other accused persons reached there, armed with *lathi, balam, kanta, knife* and other weapons. The accused surrounded Kripa Shanker and started beating him. Kripa Shanker tried to escape towards the west, but the accused accosted and caught him after 20-25 paces. Vasudev came out and tried to save his father. At that time, Uma Kant, Suraya Kumar, and Shiv Narayan caught Vasudev and tried to snatch his gun, which had been brought from the house to protect his father. In the struggle, the gun accidentally discharged, hitting Uma Kant. Kali Charan snatched the gun and fled. Afterwards, Dev Narayan, Anant Ram, Shiv Narayan, and Rajendra Prasad lifted Vasudev, while Ashok Kumar, Vimal Kumar, Pratap Narayan, and Bhaiya Lal lifted Kripa Shanker and took them inside the house of Shiv Kumar Shukla. Beni Prasad, Pooran, Daya Ram, Ram Swaroop, Kishan Prasad, and others reached the spot. None of them could enter the house of Shiv Kumar. The voices of Vasudev and Kripa Shanker were heard from inside who were shouting that they were being killed and that there was no one to save them. When the accused persons took his brother inside the house, he rushed towards the house and then went to the Shivali Police Station. The informant, Shiv Kumar Tiwari, who is the elder brother of his father met him at the bus stop at Shivali. He narrated the incident to Shiv Kumar, who wrote the report at the bus stop. The witness also signed the report, which is marked as Ex.Ka-2. Thereafter, they went to the police station with the written report and handed it over to the Sub-Inspector. Shiv Kumar Tiwari sent him to Kanpur to bring back Gopal Tiwari, who is the brother of Shiv Kumar Tiwari. He reached

the village at about 1:00 A.M., where he came to know that both his brother and father had died. There was litigation regarding land between his father and the accused persons. A suit for vacation of a house had also been instituted by his father against Shiv Narayan and others. Shiv Kumar, Shiv Narayan, and others had assaulted his father, for which a case under Section 302 I.P.C. was registered, and some persons were convicted. Shiv Kumar Tiwari possessed a house at Naya Purwa, Kanpur. He had filed a suit against Shiv Kumar, son of Matru, for vacating the house situated at Mavaiya. Shiv Kumar, son of Matru, is his real brother-in-law. Prior to this incident, Shiv Kumar, son of Matru, had lodged a case under Section 435 I.P.C. against his brother Vasudev, in which Vasudev was acquitted. The accused persons were bearing enmity against the witness side.

29. In his cross-examination, P.W.2, Awadhesh Kumar @ Girdhar, stated that Lalta, who is the brother of Ram Gopal, is a witness in a case. His uncle, Shiv Kumar, has been working as a *munshi* (clerk) in the Kanpur District Court for the last 25-30 years. The witness further stated that Lalta is also the brother of Kripa Shanker by relation. They met the Sub-Inspector at the police station, but he did not interrogate them. No one from the village accompanied them to the police station. He had told the villagers that Shiv Kumar (P.W.4) met him in Shivali. Shiv Kumar was in the village on that day because it was Sunday. He left the village at 3:00 p.m. and went to Kanpur. Shivali is about four kilometers away from the village, and this distance can be covered either on foot or by bicycle. His uncle, Shiv Kumar, does not have a house in Shivali. He could not find any vehicle and therefore met him at the bus stop. When he reached the police station, Shiv Kumar Shukla was not there. He did not know on that day that Shiv Kumar had lodged a report against him and others. He reached Shivali at 9 P.M. and visited the police station. The dead bodies of his father and brother were lying there. He stayed at the police station till morning and thereafter returned to the village. He was not arrested at the police station. He could not say whether the police were present in the village in the morning or not, as he had not

seen them. The Sub-Inspector recorded his statement after 8-10 days. The Chabutra of Devi Ji is situated at the house of Ram Sanehi Nai. The house of Ram Sanehi Nai faces east towards the north. About 7-8 days prior to this incident, the wife and brother of Shiv Kumar Shukla had a fight (marpeet) with Mahavir. The enmity between the parties was old, as there was no recent dispute. This altercation took place on account of the arrest of Jail Narayan and the initiation of his bail proceedings. The accused persons attacked his father with a kanta, banka, lathi, balam, and knife after surrounding him near the Chabutra of Devi Ji.

30. P.W.3, Dr. C.T. Meerpuri, who is the author of the post-mortem examination report of Vasudev, stated that Injury Nos. 1, 2, 5, 8, 9, and 13 of the deceased were caused by sharp-edged weapons such as Kanta, Banka, knife, etc. Injury Nos. 7, 17, and 18 were caused by some pointed cutting weapons like spear and knife. The remaining injuries were caused by some blunt objects such as *lathi* and sticks, or due to fracture against a rough surface. In the internal examination, clotted blood was found in the skull and scalp. Brain membranes were lacerated, and clotted blood was present on the left side of the upper frontal region. The base of the skull was fractured. Clotted blood was also present in the chest. The 4th and 5th ribs on the left side were fractured. The stomach was full of semi-digested food, and the small and large intestines were filled with gases. In his opinion, apart from bone, injury No.13 did not cut any bone inside the wound.

31. P.W.4, Shiv Kumar Tiwari, who is first informant has supported the FIR version lodged at his instance and proved the written report Ext.Ka-2, which bears his signature as well as signature of P.W.2 as the scribe got the written report prepared at Shivali bus stop at around 4:00 P.M. and produced the same at police station. His brother, Kripa Shanker and nephew Vasudev died due to injuries inflicted by accused persons in the incident. Another report with regard to present incident was lodged at the instance of accused side in which final report was filed. The police station is one of long away from bus stop where he was sitting. He could not know that on the report of accused, Shiv Kumar Shukla, the police

has moved to his village of investigation. This is wrong to say that he came to know about the incident in Kanpur whatever Girdhar told him about the incident, he transcribed in written report. It is wrong to say that he got a report prepared after looking into the report lodged at the instance of accused side.

32. P.W.5, Pooran, who identified the accused persons in the Court, stated that the accused are residents of the village Mavaiya. Most of them work in Kanpur, while others work in the village. On the date of the incident, at around 4:00 P.M., he was returning from the Jangal and reached near the gate of Ajjiulla. The house of Ram Sanhi is situated near the house of Ajjiulla, and Chabutra of Devi Ji is situated near the house of Ram Sanhi. When he reached there, he saw Kripa Shanker standing on the way near the Chabutra of Devi Ji. Around 20-21 persons were seen approaching from the side of Shiv Narayan's house. These persons were the accused in the case, who were present in the Court, along with Uma Kant (deceased). They were armed with lathi, banka, balam, kanta, knife, and a country-made pistol. Thereafter, they began abusing Kripa Shanker and attacked him. After receiving some blows, Kripa Shanker escaped and reached near the well of Murali. Meanwhile, Vasudev (daroga) arrived there, and upon seeing his father being assaulted, he ran toward his house and brought a gun. The accused persons started beating Kripa Shanker. Shiv Narayan, Dhunwa, Shurtu tried to snatched the gun of Vasudev and in the process of snatching the gun, a fire got opened and same hit Uma Kant. Thereafter, he fell down on being hit by firearm shot 2-4 pace away from the door of Shiv Kumar. Kali Charan snatched the gun of Vasudev. The accused persons assaulted and dragged Kripa Shanker and Vasudev and took them inside the house of Shiv Kumar and closed the door. No one stood outside the door. Apart from the witnesses, Daya Ram, Beni Prasad, Krishna Prasad, and Ram Swaroop were also present at the spot. From inside, the voices of Kripa Shankar and Vasudev could be heard shouting, "we are being killed, save us" There were also voices saying, "Kill them and gouge out their eyes." After the incident, the police arrived in the village at about 8:00 p.m. I

also reached the spot and saw Kripa Shankar and Vasudev whining. The police again visited the spot the next day at around 2:00-2:30 p.m. and collected blood-stained earth from the site where Kripa Shankar and Vasudev were killed.

33. P.W.5, in his cross examination, stated that he did not belong to the party of Kripa Shanker (deceased). The accused persons assaulted Kripa Shanker by slapping him at the *Chabutra* of Devi Ji and not by using weapons. When Vasudev reached, the accused persons had already surrounded Kripa Shanker near the well of Murrali. Vasudev then ran to his house to bring a gun, and he returned within half a minute with the gun. By that time, the accused persons were still assaulting and abusing Kripa Shanker with their hands. He also deposed that three of the accused persons grabbed the barrel of the gun, which was pointed towards Uma Kant. Dhanu, Sartu, and Daroga tried to snatch the gun towards themselves, and in the meantime, it accidentally fired. Only one shot was fired, which hit Uma Kant, causing him to fall down 2-4 steps behind. The accused persons brought Kripa Shanker and Vasudev towards the house while beating them with l*athi* and sticks. There was a crowd, and they dragged them by holding their feet and also lifted them. He could not state who was carrying the *banka*. About 2-4 persons were holding lathi, 1-2 persons were carrying *banka*, 1-2 persons had knives, 2-3 persons had *kantas*, one person had a *balam*, and Rajendra was possessing a country-made pistol.

34. P.W.6, Rajesh Singh, who was posted as Head Moharrir at Police Station Shivali on 09.12.1979, deposed that on that day he prepared the chik FIR in this case on the basis of a written report (Ext: Ka-2) brought by Shiv Kumar Tiwari at the police station. The case was lodged at 7:30 P.M. and entered in (G.D.) Entry No.31 at 19:30 hours on the same day. He also made G.D. Entry No.34 at 21:20 hours regarding Case No.321A/ 79, on the basis of information received from Constables, Prem Chand and Raju Prasad, who had brought the dead bodies of Kripa Shanker and Vasudev to the police station. He proved this subsequent G.D. entry as Ext: Ka-7 by comparing the same with the original G.D. in his

handwriting and signature. The case was initially registered vide Report No.29 under Sections 147, 148, 307, and 149 IPC, and after receiving information regarding the death, it was converted to Section 302 IPC. This subsequent G.D. entry was also made by him in his handwriting and signature, which is marked as Ext: Ka-8. He further stated that the special report of this case was sent through Constable Ram Kumar on the same day at 22:00 hours, which was entered vide G.D. Entry No.37 by him. He also stated that on the same day at 7:30 A.M., Shiv Kumar Shukla had given a written report (Ext: Ka-1) at the police station, and on that basis, he had prepared another chik FIR in his handwriting and signature, which is marked as Ext: Ka-10. The written report of the accused Shiv Kumar Shukla was filed at the police station at 7:00 P.M., which is marked as Ext: Ka-1, and the G.D. entry of this report was made vide Report No.29 at 19:00 hours. After registration of Case Crime No.321 of 1979 at the report of Shiv Kumar Shukla, Station Officer R.S. Mishra took up investigation of the case and moved to the spot at 7:15 P.M. The G.D. entry in this regard was made vide Report No.30. Since the Station Officer was not present at the time of registration of the case on the written report of Shiv Kumar Tiwari, he sent the papers of registration of the case through Constables Salik Ram and Daya Ram Yadav, and the G.D. entry in this regard was made vide Report No.31.

35. P.W.-7, Rajju Prasad, stated in his evidence that on 09.12.1979, he was posted as a constable at Police Station Shivali. He accompanied Station Officer Rama Shankar to the place of incident. When they visited village Mavaiya on that day, they found Kripa Shankar and Vasudev in seriously injured condition. They were placed in a bullock cart along with Constable Prem Chand and taken towards the hospital at Shivali. However, on the way, near Haldia Nala, both the injured persons died. Their dead bodies were brought to the police station at 21:20 hours.

36. P.W.-8, Salik Ram (Constable), stated in his evidence that the dead bodies of Kripa Shanker and Vasudev were handed over to him and his colleague, Constable Rajesh Kumar, for transportation to the post-mortem house in Kanpur. They kept the dead bodies properly sealed and

intact, and no tampering in any manner was done. He identified the dead bodies at the time of the post-mortem.

37. C.W.1 Rama Shanker Mishra (Inspector) stated in his evidence that this case was registered in his absence, as he had gone to the place of the incident to investigate the cross-case. He received the *chik* FIR at about 8:00-8:30 P.M. and then he started the investigation of the present case also. Prior to receiving the papers of the present case, he had sent the injured persons, Kripa Shanker and Vasudev, who were accused in the cross-FIR, for medical treatment to the hospital. These injured persons were found inside the house of Shiv Kumar Shukla (informant in the cross-case). While being taken to the hospital, the injured Kripa Shanker and Vasudev died on the way near Haldia Nala. Their dead bodies were brought to the police station, and the case was then converted into under Section 302 I.P.C. He collected plain and blood-stained earth from the place of occurrence on 10.12.1979 and prepared the recovery memo. He took into possession the licensed gun of the deceased Kripa Shanker and prepared a recovery memo, which was marked as Exhibit Ka-15. He also seized a 12-bore country-made pistol from Shiv Kumar, who is an accused in the present case and the informant in the cross-case. On 17.12.1979, he prepared the recovery memo of blood-stained *dhoti* (marked as Exhibit Ka-6). On the same day, he deposited the *dhoti* in a sealed cover at the police station, which was entered in the G.D. at Entry No. 19, at 12:10 hours. A true carbon copy of this entry has been placed on record as Exhibit Ka-18. On 22.12.1979, he recorded the statements of witnesses, namely Girdhar @ Audesh Kumar and others. He prepared and submitted the charge-sheet in the present case, on 31.12.1979 which is written and signed by him, which is marked as Exhibit Ka-19. He also stated that he sent the material exhibits of the present case for chemical and ballistic examination to the Forensic Science Laboratory, Lucknow. The inquests of the dead bodies of Kripa Shanker and Vasudev were conducted by S.I. Nand Ji Singh. The documents related to the inquest of Kripa Shanker were marked as Inquest report (Exhibit Ka-21), *Challan nash* (Exhibit

Ka-22), *Diagram lash* (Exhibit Ka-23), Letter to C.M.O. for post-mortem (Exhibit Ka-24), Letter to C.M.O. regarding clothes (Exhibit Ka-25), Letter to R.I. (Exhibit Ka-16). Similarly, documents related to the inquest of Vasudev were marked as Exhibit Ka-27 to Exhibit Ka-32.

38. C.W.1 Rama Shanker Mishra (Inspector), in his cross-examination, stated that the *chik FIR*, Ext. Ka-10 of Case Crime No. 321 of 1979, was drawn in his presence and bears his signature. He conducted the investigation and reached the spot on 09.12.1979 at 19:15 hours. Thereafter, the witness Girdhar met him on 22.12.1979, and he recorded his statement. When he reached the spot, he found the dead body of Uma Kant lying in front of the house of Shiv Kumar. He conducted the inquest on the dead body of Uma Kant on 10.12.1979 and prepared the inquest report in his own handwriting and signature, which has been marked as Ext. Kha-1. He also collected blood-stained and plain earth from the site of the dead body of Uma Kant, which were kept in ten boxes and sealed it and prepared the corresponding memo marked as Ext. Kha-7. He further stated that he collected six empty cartridges, two live cartridges, and pellets from the place of occurrence and from the door of the accused Shiv Kumar. He clarified in cross-examination that he did not find any blood, pellets, tikli or cartridges between the Chabutra of Devi Ji and the well of Murli. He also stated that P.W.4, Shiv Kumar Tiwari, had not told him that he was waiting at the bus stop at Shivali when Girdhar met him. He further stated that he was not aware whether the empty cartridges recovered from the spot were sent for ballistic examination or not. He deposed that Kripa Shanker and Vasudev were taken into custody from the spot and sent for medical treatment. Shiv Kumar had also reached the spot, and his statement was recorded. He prepared the site plan on the pointing out of the informant Shiv Kumar Tiwari in Case Crime No. 321A of 1979.

39. C.W.2 Nandjeet Singh, in his evidence, stated that he conducted the inquest of the dead bodies of Kripa Shanker and Vasudev, and also prepared the inquest reports and other police papers for the post-mortem

examination of the dead bodies, which are Ext: Ka-21 to Ka-32. These papers are in his handwriting and bear his signatures.

40. C.W.3, Radhey Shyam (Constable), in his evidence, stated that on 26.04.1980, he received three bundles of exhibits related to Case Crime No. 321 of 1979 and a gun from the Malkhana of the Police Station. He took them to the Court of the C.J.M., Kanpur, and got a letter prepared. Thereafter, he visited the C.M.O., Kanpur, but due to the absence of the clerk, the seal could not be affixed. Then, he brought back the material exhibits and filed them at the Police Station. On 12.05.1980, he again received all the material exhibits from the Malkhana of Police Station, Shivali, and after obtaining letters from the C.J.M., Kanpur, and the C.M.O., Kanpur, he deposited them at the F.S.L., Agra, for chemical examination in sealed condition.

41. Learned counsel for the appellants has filed written submissions and also advanced oral arguments in support of the defence case, submitting that in the FIR of Case Crime No. 321 of 1979, lodged at the instance of Shiv Kumar Shukla, the place of the incident was shown as the house of the informant, which has also been corroborated by the site plan in Case Crime No. 321 of 1979. The FIR in the present case was lodged at 7:30 P.M., also at the instance of the informant, Shiv Kumar Shukla, who is not an eyewitness. The place of the incident began at Devi Ji Ka Chabutra, where all the accused in Case Crime No. 321A of 1979 allegedly surrounded the deceased, Kripa Shanker, and started abusing and assaulting him. The incident allegedly ended at the house of Shiv Kumar Shukla (informant) in Case Crime No. 321 of 1979. From a perusal of the statements of witnesses in the present case, the place of the incident is not clearly established. P.W.2 failed to prove the place of the incident. The distance between Devi Ji Ka Chabutra, the well, and the house of Shiv Kumar, the statement of P.W.2, who claims to be an eyewitness, is neither correct nor credible. The informant of Case Crime No. 321A of 1979 deliberately did not disclose the death of Uma Kant and injury of the accused Surya Kumar, who sustained injuries from a gun fired by Vasudev, which amounts to concealment of material facts.

In his statement recorded under Section 161 Cr.P.C., he also failed to explain the firearm injuries sustained by Surya Kumar and Uma Kant. The circumstances and the site plan prepared by the Investigating Officer have not supported the version of the FIR and the prosecution case in Case Crime No. 321A of 1979. As per the FIR of Case Crime No. 321A/ 1979 and the statements of P.W.2 and P.W.3, the incident started at Deviji Ka Chabutara, where Vasudev (deceased in this case) brought his father's gun. During the process of snatching the gun, Umakant and Surya Kumar sustained injuries at Devi Ji Ka Chabutara, whereas the body of Umakant was found in the veranda of Shiv Kumar Shukla (informant of Case Crime No. 321/1979). Looking to the fact that the body of Umakant was found in front of the house of Shiv Kumar Shukla on a chabutara and Kripa Shanker and his son Vasudev were found injured inside the house of Shiv Kumar Shukla with multiple incised wounds, lacerated wounds, and contusions, it supports the version given in FIR No. 321/79. From the perusal of the contents of FIR No. 321A/79 and the statements of P.W.2 and P.W.4, it is evident that Vasudev, one of the deceased in Case Crime No. 321A of 1979, possessed a gun and fired at Umakant and Mahabir fired at Surya Kumar, who is injured in Case Crime No. 321/79. This shows that P.W.2, along with his father and brother, had the intention to kill the accused side. The site plan further indicates that all these persons went to the house of Shiv Kumar Shukla with the intention to kill him and his family, during which Umakant and Surya Kumar sustained gunshot injuries. According to the site plan, Deviji Ka Chabutara does not come on the way to the house of P.W.-2. It is situated much south form the *rasta* of P.W. 2 and no reason has been assigned by P.W.-2 as to how Kripa Shanker reached Deviji Ka Chabutara, or how all the accused in Case Crime No. 321A of 1979 came to know that Kripa Shanker was standing at Deviji Ka Chabutara. P.W.-2 and P.W.-4 have also not disclosed the reason, why the accused persons of Case Crime No. 321A of 1979 brought Kripa Shanker from Deviji Ka Chabutara to the well and then to the house of Shiv Kumar (informant of Case Crime No. 321 of 1979). If their intention was to take

Kripa Shanker and Vasudev to the house of Shiv Kumar, they could have taken them there directly instead of going north of the *rasta* and then bringing them back to the house. No evidence was adduced by the prosecution to show that the accused persons of this case had gathered near Deviji Ka Chabutara. Therefore, Sections 147, 148, and 149 IPC are not attracted. The prosecution was required to prove the overt act of all members of the alleged unlawful assembly, but it failed to establish any unlawful assembly either at Devi ji Ka Chabutara or at the well. The investigation was not proper, and no fair investigation was conducted by the police. It was the duty of the Investigating Officer to investigate the matter fairly, but he submitted the final report in Case Crime No. 321/79, whereas the circumstances clearly prove that one person had died and one was injured at the house of the informant of Case Crime No. 321/79. The investigation appears to have been conducted under the pressure of P.W. 4, Shiv Kumar Tiwari, who was then Munshi of well-known lawyer from Kanpur. The prosecution case is also doubtful because P.W. 1 stated that he went to the Shivali bus stop, where he met his uncle (P.W. 4), who wrote the *Tehrir*. Thereafter, they went to the police station to lodge the FIR, which was registered at 7:30 PM, and they also met the Daroga there. However, by that time (7:30 PM), FIR No. 321 of 1979 had already been lodged, and the S.H.O. had gone with the informant of that case. It was also stated that P.W. 2 was sent to Kanpur by P.W. 4, which is against the natural conduct of a person whose father and brother were fatally injured. No explanation regarding the injuries and death on the accused side also proves that the suppression of the injuries of the accused party amounts to suppression of the genesis of the incident and makes the prosecution case unreliable. In the present case, the prosecution has suppressed the injury of Surya Kumar and the death of Umakant Shukla in the FIR, whereas these persons were examined by D.W.2 and D.W.3. D.W.2 Dr. P.P. Gupta examined the injured Surya Kumar at 6:55 PM on 09.12.1979 and proved his report, confirming that it was a gunshot injury. D.W.3 Dr. K.N. Mathur, who was posted as Medical Officer In-charge at the PHC, Kanpur, proved the postmortem

report of Umakant, which was conducted on 10.12.1979. Therefore, both doctors have proved the postmortem and injury reports related to Case Crime No. 321/1979. The contents of FIR No. 321/79 show that Kripa Shanker, Vasudev, and other accused in Crime Case No. 321 of 1979 went to the house of Shiv Kumar Shukla armed with weapons. They killed Umakant, injured Surya Kumar, and fired at others. The villagers caused multiple injuries to them to prevent further casualties. As a result, Kripa Shanker and Vasudev were caught and confined inside the house, while the other accused escaped. This account is further corroborated by the site plan and the statement of C.W. 1, who stated that the body of the deceased, Umakant, was found at the gate of Shiv Kumar's house. He also mentioned that six cartridges were found in the house, of which two were live. This fact establishes that Kripa Shanker and Vasudev went armed to kill the Shiv Kumar's family and fired six rounds, but were intercepted and beaten by the public. None of the deceased, i.e., Kripa Shanker and Vasudev, sustained gunshot injuries. This indicates that P.W. 2, along with his father and brother, attacked Shiv Kumar's family, resulting in the death of Umakant and injury to Surya Kumar, while the public acted to protect the family. Such actions may amount to the exercise of the right of private defense under Section 100 of the IPC. This fact is also supported by the statement of the injured, Surya Kumar, recorded under Section 313 of the CrPC.

42. In the entire investigation and prosecution evidence, no motive or immediate cause has been shown for the gathering of all 21 accused persons at Devi Ji ka Chabutara. In contrast, the version in FIR No. 321 shows that Kripa Shanker, Vasudev, Girdhar (P.W. 2), and two others went to the house of Shiv Kumar Shukla and assaulted the accused side, resulting in the death of Umakant and injuries to Surya Kumar. When the villagers heard the firing and shouting, they gathered, caught Kripa Shanker and Vasudev, sustained injuries from the villagers, and were confined in the house. This version is further supported by P.W. 2, who stated that his father and brother were caught and confined in Shiv Kumar's house. All these circumstances show that the story in FIR No.

321 of 1979 is correct, whereas Case Crime No. 321A of 1979 is false. Hence, all the accused persons are liable to be acquitted.

43. It is admitted that two persons namely Kripa Shanker and Vasudev got killed in the same incident which took place on 09.12.1979 at around 04:00 pm. Onwards. It is also admitted that the occurrence had taken place on 09.12.1979 at about 04:00 p.m. According to the prosecution, the accused-appellants being armed with *lathi, kanta, banka, ballam, knives and pistols* surrounded Gram Pradhan Kripa Shanker, at Devi Ka Chabutara, abused him and assaulted him, his son. Vasudev while seeing his father being assaulted, brought his father's gun to save his father and at that time Girdhar also reached there. Umakant @ Chunna, Surya Kumar and Shiv Narain to snatch gun of Vasudev from his hand and in the process it got fired and hit Umakant, whereas according to Defence Shurya Kumar, Ashok Kumar had come to the house of Shiv Kumar Shukla, Vimal Kumar Shukla, Giridhar, Kripa Shanker, Mahadev, Venkatesh Narain came there and beat Umakant and killed him and Vasudev killed him by making a shot at him after killing of Umakant a large of persons came and assaulted Kripa Shanker and Vasudev and so, it is admitted that *marpit* had taken place on the day of occurrence. The main point for determination in this case as to which party was aggressor and what was immediate cause of provoke. It is admitted that relations between the deceased Kripa Shanker and Vasudev and accused side were inimical. It is admitted that the litigations were going on since 1949 and both the parties were at dragger's drawn. It is suggested on behalf of the accused that there was a compromise in 1957, but the cross version of the defence and the suggestion made in the cross examination clearly show that the relations between the deceased and the accused were inimical. According to prosecution, seven days before this occurrence, wife of Ashok Kumar and his son had quarrelled with Mahabir who lodged a report and Jai Narain got arrested at the instance of Shiv Kumar Shukla and others, a day before occurrence. Kripa Shankar sent Vasudev to call Mahavir for the bail of Jai Narain, the accused surrounded Kripa Shankar and

Vasudev and killed them. It is admitted by the accused that Jay Narain was arrested in connection with quarrel which had taken place seven days before the occurrence but their defence is that due to arrest of Jay Narain, Shiv Kumar and his companion were angered with the accused and due to this enmity, they beat the accused and when they were snatching the gun of Vasudev, it killed Umakant which he brought from inside his house and the shot also hit accused Surya Kumar Tripathi, who got injured. The villagers came there and getting enraged on seeing the body of Umakant, they killed Kripa Shankar and Vasudev in the house of the accused Shiv Kumar Shukla. It is also admitted fact that both the deceased Kripa Shankar and his son Vasudev were killed inside the house of the accused Shiv Kumar Shukla. According to the prosecution the accused persons had brutally killed both the deceased by lathi and sharp edged weapons whereas according to the defence these people were lynched by villagers being enraged by killing of Umakant and causing serious injuries to Surya Kumar by deceased Vasudev and Mahavir.

44. The trial court has observed in the impugned judgement that in the present trial, the prosecution examined PW 2 and PW 5, who are two witnesses of locality to prove its case, namely PW2- Girdhar and PW5- Puran as eye witnesses. It cannot be said that no independent witnesses have been examined by the prosecution to prove its case. Puran had no enmity with the accused or any relation with the deceased. He belongs to the locality where the occurrence is alleged to have taken place. It is true that the investigating officer has written in his statement under Section 161 CrPC that he was an accused along with Pradhan under Section 107 Cr.P.C. in a case, but that fact has been denied by this witness. No document has been filed by the accused to show that Puran was actually an accused in that case. It is generally seen that villagers are usually reluctant to come forward to give evidence in a murder case, and for this reason, the Supreme Court held in **State of Uttar Pradesh Vs. Lalla Singh and Others, MANU/SC/0154/1977** that it is common ground that villagers show reluctance to get themselves involved in an occurrence,

especially where the accused are desperado. It has also been held that the evidence of father of the deceased has the same evidentiary value as that of an independent witness, and his evidence cannot be rejected solely on the ground that he is related to the deceased, though it does require scrutiny. Puran was confronted with the statement under Section 161 CrPC, but he denied the allegation, and the defence failed to file certified copy. So, the allegation that Puran is an interested witness is not correct. The Supreme Court has held in **Chuhar Singh Vs. State of Harayana, MANU/SC/0102/1975** by a three-judge bench that the fact that the prosecution has been able to examine one witness of the occurrence cannot be detracted from the strength of its case. What is important is the nature and quality of the witness, not the number of witnesses examined. The evidence of a single witness may suffice to record a sentence of death, whereas a lot of witnesses may not be sufficient to support a simple charge of hurt. In this case, the evidence of PW2- Girdhar and PW5- Puran, who are eye witnesses, fully proves that the murder was committed in a very brutal way. The fact that PW 2 is the son of the deceased is not a ground for discarding his evidence, nor does it warrant a search for independent corroboration of his statement. A minor contradiction was pointed out in the statement of PW5 from that recorded under Section 161 CrPC during investigation. Puran stated before the investigating officer that the accused were armed with guns, but he has denied this statement and stated that he had told the investigating officer that only accused had slapped Kripa Shanker Chabutra. He had told the investigating officer that Kripa Shankar ran from Devi Ka Chabutra towards the well, and he cannot say why this fact has not been recorded by the investigating officer. The trial court has observed that the investigating officer had a soft corner for the accused, so the Investigating Officer is also responsible for wrongly recording the statement of the witnesses. The court did not find any contradiction in the statement of PW5 recorded under Section 161 CrPC and that given by him before the Court during trial. He clearly stated that he had gone to look after the field and not for any specific work and when he was

returning from field he saw such occurrence. He had told the Investigating Officer this fact and he cannot say why it was not written. It is admitted that PW 5 belongs to the same village and his house is in that locality, it cannot be said that he is a chance witness and his statement can not be relied upon. The defence has argued that the villagers, upon hearing the gun fire, reached the spot and assaulted the deceased, using various weapons like chailla, Kripan, Lathi and Hasia which is supported by the evidence and the statement of doctor who has stated that these injuries were caused by khurpa but the doctor has clearly stated that these injuries may be caused by Kanta, Chakoo and Ballan. So argument of learned defence counsel that the injuries of Kripa Shanker could be caused by Khurpa and Chaila only has no force. The evidence of doctor clearly shows that the injuries of Kripa Shankar may be caused by Kanta, Ballam and Lathi. The Doctor Mirpur has stated that the injuries no. 1, 2, 5, 8, 9 and 13 of Kripa Shanker could not have been caused by Kanta, Chakko or Banka. It is true that the doctor has stated that he does not know the size of construction of Kanta or Banka. The defence version that mob has murdered the deceased Kripa Shanker and Vasudev is not at all convincing and appealing to common sense. It does not stand to reason that the mob of the village which had no concern with the accused or the deceased would be so furious to see the dead body of Umakant that it would murder Kripa Shanker and Vasudev. It does not stand to reason that the informant would not mention their name in the report and falsely implicate the accused. The enmity between the parties is admitted and the mere fact that there was compromise in one or two cases, did not at all, mean that the whole enmity had ended and friendship developed. The immediate motive is mentioned in the FIR. It is also mentioned in the FIR lodged by Shiv Kumar Shukla that wife of Nanhi and son of Shiv Kumar were beaten by Vasudev upon which Shiv Kumar Shukla was informed by one Pramod Kumar and on this allegation, Shiv Kumar Shukla along with other accused person had come to the village on 08.12.1979. They had a grouse to wreck vengeance against Vasudev and Kripashanker and they

were enraged when they found that Vasudev and Kripa Shankere were arranging for the bail of Jai Narain and killed them. The report lodged by Shiv Kumar Shukla which was also investigated and that version was found to be incorrect and a final report was submitted. Both the prosecution witnesses has given cogent and natural statement and minor discrepancies in their statements are not very material in this case. From the evidence adduced during trial it is absolutely clear that Shiv Shankar Shukla, Rajendra Prasad, Bimal Kumar, Deo Narain, Pratap Narain, Ashok Kumar, Bhaiya Lal alias Raja, Ananat Ram, Shiv Narayan and Kali Shanker were present on the spot and they are responsible for the murder of Kripa Shankar and Vasudev in a very brutal way. No specific role has been assigned to these accused persons by the witnesses and seeing the nature and number of injuries and the facts and circumstances of the case I am of the opinion that these accused Ram Kumar, Surendra Kumar, Pramod Kumar, Bhoop Narayan, Raj Narain, Thakur Prasad, Jagdish, Gajendra, Virendra Kumar are entitled to get benefit of doubt. It is a case of defence that Vasudev fired a shot which hit Umakant who cried and felt on ground near Chabutra of Shiv Kumar. Mahabir fired towards Shiv Kumar which hit Surya Kumar, Girdhar also tried to fire but it misses. Shiv Kumar, Ashok Kumar, Ram Kumar and Vimal Kumar ran towards Kripa Shankar and Mahavir and snatched the gun of Mahavir and Vasudev and after that 100-125 person came from the village. Seeing the dead body of Umakant, they became furious and they snatched Kripa Shanker and Vasudev and started beating them and they put Vasudev and Kripa Shanker in the house of Shiv Kumar Shukla. Umakant died on the spot. Ashok Kumar, Ram Kumar, Shiv Kumar, Surya Kumar, Vimal Kumar had nothing in their hand. No incident had taken place near Devi Ji ka Chabutra or well of Murli. These facts are said to be proved by defence by statement of DW4-Nanha. According to the trial Judge, this witness is highly doubtful one, he admitted that he had litigation with Parsoo and Ganga Ram in the Court of CJM under Section 323/324 IPC. He denied the suggestion that FIR of the case was lodged with the help of Anant Kumar and the doctor has falsely

manipulated the injuries. He has admitted that the parivi in that case was done by Sardar Vakeel. He is a liar when he has stated that he cannot say his name was Jaimal Singh or not. He has admitted that Shiv Kumar Tiwari was a *mohrir* and he used to see him with Sardar Vakeel in that case. He had denied that he had enmity with Shiv Kumar Tiwariwho did pairvi against him. But his statement that Shiv Kumar Tiwari is mohrir of that Sardar Vakeel who was doing the case against him clearly shows that he had the reason to give false evidence. He had also admitted that Shiv Kumar Shukla accused is the pradhan of the village and he is up-pradhan. This also shows that he is under inlfuence of Pradhan who is an accused in the case. He had admitted that Vasudev and Kripa Shanker had also died in this case. He had admitted that Shiv Kumar Shukla had also lodged a report in the police station for which the police has subittted a final report. He is a liar when he has stated that he cannot tell the name of 100-125 person of the village who had murdered Kripa Shanker and Vasudev. He had admitted that he had not told this fact to anyonce except Investigating Officer. Thus, he appears to be reck liar and he is interest witness and no reliance can be placed on his testimony.

45. Learned trial Court concluded that Shiv Kumar Shukla stated that he had lodged the report at the police station and he has been falsely implicated due to enmity. Rajendra had admitted his relationship with Shiv Kumar Shukla. He is son of Shiv Kumar Shukla. He has stated that he has been falsely implicated due to enmity and the witnesses were given the evidence because they cultivate the land of complainant which is not the case of defence. No evidence has been given that Puran cultivates the land of the complainant. Accused-Kali Shankar had also admitted his relations with Shiv Kumar Shukla, he had also admitted he belongs to family of Shiv Narain. He had stated that his son Vimal Kumar is the witness in the report of Shiv Kumar, so he has been falsely implicated. Vimal Kumar had also admitted his relations with Shiv Kumar Shukla and stated that he is the witness in the report lodged by Shiv Kumar, therefore, his presence on the spot is also proved by his statement. Deo Narain had stated that Puran and Nanha had a quarrel and

he had taken bail of brother of Nanha so he has been falsely implicated. But this contention has not been substantiated by any evidence and appears to be absurd. Pratap Narain had stated that Nanha, Kacchi and Puran had a quarrel in which his brother had taken the bail of the brother of Nanha and so Puran was given evidence against him. This is also not substantiated by any evidence. Thus, defence contention that they have been falsely implicated due to enmity is proved to be false and incorrect. Facts and circumstances of the case fully prove that due to long standing enmtiy the accused Shiv Kumar Shukla, Rajendra, Kali Shanker, Vimal Kumar, Deo Narain, Pratap Narain, Ashok Kumar, Bhaiya Lal alias Raja, Anant Ram, Shiv Narain and Surya Kumar had formed an unlawful assembly with the common object of murder of Kripa Shanker and Vasudev and other accused persons, who faced trial together with these accused person were give benefit of doubt and are acquitted.

46. With these observations and findings, learned trial Court convicted the said accused persons for charge under Section 302/149 IPC and Section 147 IPC and sentenced to life imprisonment and one year imprisonment, respectively.

47. Accused persons were enlarged on bail by this Court on 07.04.1983 on admission of appeal.

48. Per contra, learned AGA submitted that the prosecution has successfully proved the case against the appellants beyond reasonable doubt by the evidence adduced by the eyewitness account of P.W.-2 (Awadhesh Kumar @ Girdhar), nephew of the informant and independent witness P.W.-5 (Pooran) and P.W.-4, Shiv Kumar Tiwari (the informant) is not an eyewitness and he has stated in a bona fide manner that he was informed of the incident by his nephew, Awadhesh Kumar @ Girdhar, at Shivali Bus Stop, where he got the written report, Ex.Ka-12, written by Awadhesh Kumar @ Girdhar (P.W.-2) and produced the same at police station vis-à-vis the present FIR was lodged at 7:30 p.m. on the date of the incident. Although in the FIR, it has not been stated that Umakant from the accused side died on the spot. But

eyewitness P.W.-2, who is son of the deceased, Kripa Shankar and the brother of deceased Vasudev, has given a graphic account of the incident. He stated that the deceased Umakant and other accused persons reached at the place where his father was standing near the chabutara of Deviji. The accused persons were armed with lathi, Ballam, kanta, knife and other weapons. They surrounded Kripa Shankar and started beating him. Kripa Shankar tried to escape towards the West, but the accused accosted and caught him after 20-25 kadam. Vasudev came out and tried to save his father, but when he could not release his father from the clutches of the accused persons, he ran towards his house and brought the gun. The witness also ran behind them and reached near the well. In the meanwhile, Umakant, Surya Kumar, Shiv Narain caught hold of Vasudev from behind and started snatching his gun. In the process of snatching the gun, it got fired and hit Umakant. Accused Dev Narain, Ananta Ram, Shiv Narain and Rajendra Prasad lifted Vasudev; and Ashok Kumar, Bimal Kumar, Pratap Narain, Bhaiya Lal and Shiv Kumar lifted his father and took them inside their house. None could enter the house of Shiv Kumar Shukla. Vasudev and Kripa Shankar were crying from the inside of the house of Shiv Kumar that they were being killed, save them. Thereupon, he went back to his house and moved to Police Station Shivali. Shiv kumar Tiwari, elder brother of his father. The written report was scribed by Shiv Kumar in his presence, on which he has also affixed his signature on which Ex.Ka-2 was marked.

49. His uncle, Shiv kumar, was present in the village on the date of occurrence, but he left for Kanpur at around 3:00 p.m. prior to the incident. His uncle met him at bus stop as he had no any means of public transport. Shiv Kumar prepared written report, and he went with him to the police station to lodge an FIR. He went back to Shivali from Police Station at 9:00 p.m. When he went back to Police Station Shivali, the dead body of his father and brother were lying there. He went back to police station in the morning and he was not arrested at the police station. His father was empty-handed, and his brother was also empty-

handed when he tried to save his father firstly and subsequently, he brought the gun to save his father.

50. Regarding the injuries of Surya Kumar, the witness stated only one fire was shot on the spot. Surya Kumar also suffered injuries apart from Umakant. The other eyewitness, Pooran, also testified that the accused persons assaulted Kripa Shankar at Devi ka chabutara as well as at the well, lying near the house of Murli. Umakant received firearm injuries due to an accidental fire which broke out during snatching of gun from Vasudev. The accused accosted Kripa Shankar when he ran from Devi ka chabutara to save himself. They slapped him at Devi ka chabutara and only one shot was fired on the spot. No cross-examination was made from P.W.-5 regarding injuries of Surya Kumar. In the facts and circumstances of the case, it indicates that Surya Kumar received injuries on non-vital parts due to deflation of pellets occurred when the gun wielded by deceased Vasudev got fired accidentally.

51. He next submitted that learned Trial Court has addressed each and every arguments taken from the side of defense and after proper appreciation of evidence, recorded conviction of 11 accused persons and acquitted 9 accused persons who were not assigned any role in the offense and reached the place where deceased Vasudev and Kripa Shankar were killed later on. The impugned judgement is well reasoned and in consonance of the evidence on record. The appeal deserves to be dismissed.

52. The defense examined D.W.-4, Nanha, as an eyewitness, who supported the FIR version lodged at the instance of accused Shiv Kumar Shukla vide Case Crime No. 321/1979 regarding the incident, in rebuttal of eyewitness account produced by the prosecution in the present case. D.W.-4 has stated in his evidence dated 10/3/1983, that the incident occurred 3¼ years ago. He was returning from Post Office at around 4:00 p.m. which was situated in the house Arun Kumar, when he reached near the house of Raghunandan and Venkatesh, he saw Vasudev (deceased), Kripa Shankar (deceased), Mahavir, Girdhar, Venkatesh

Narain, and Shiv Kumar (Tiwari). In the sahan of accused, Vasudev was armed with a gun and Mahavir and Girdhar were armed with a country-made pistol, and others were armed with lathi. Accused Thakur Prasad and Dev Narain also reached there on hearing abuses, accused Gaya Prasad and Putai also reached there. Vasudev opened fire just after reaching there, which hit Umakant, who was standing near Shiv Kumar. Umakant cried and fell down. Mahavir opened fire at Shiv Kumar which hit Surya Kumar. Girdhar also opened fire, but it got missed. Surya Jumar ran towards his house after receiving firearm injury. Accused Shiv Kumar, Ashok Kumar, Ram Kumar and Vibhav Kumar moved towards Mahavir, Kripa Shankar, and Vasudev and snatched the gun of Vasudev and a country-made pistol from Mahavir. These persons fled away from the spot. In the meanwhile, 100 to 105 people assembled there, out of whom some have taken sickles, khurpa, lathi etc. The crowd had snatched Kripa Shankar and Vasudev from the clutches of the accused persons and started beating them, due to which they received injuries. No occurrence took place on Deviji Ka chabutara or well of Murli. In cross-examination, the witness stated that Darogaji visited the spot at around 9:10 PM on the day of the incident. He indicated the places where Vasudev and Kripa Shankar were lying on injured state, but they died on the same day. Darogaji sent the injured Vasudev and Kripa Shankar at police station, but they were dead on the way at the Government Hospital at Shivali. He had not seen Shiv Kumar Tiwari and Pooran at the spot when snatching of gun took place, but prior to that, Vasudev had fired the shot. It is wrong to say that in the process of snatching the gun, Umakant received firearm injury.

53. We have perused the evidence adduced by the parties in the light of arguments advanced by learned counsel for the parties, and while doing so, we found many dents in the prosecution's case.

54. Admittedly, prior to lodging of FIR at the instance of P.W.-4 Shiv Kumar Tiwari against 21 assailants in the present case vide Case Crime No.321A of 1979 in connection with brutal assault on Vasudev and his brother, Kripa Shankar, under sections 147, 148, 149 and 307 IPC at

19:30 hours on the date of occurrence dated 05/12/1979. The FIR was already lodged at the instance of accused Shiv Kumar Shukla (since deceased) vide Case Crime No. 321/1979 at Police Station Shivali, District Kanpur regarding the killing of Umakant of his side, and firearm injuries sustained in the incident by accused Surya Kumar at 17:00 hours, under Sections 147, 148, 149, 307 and 302 IPC (Ex.Ka 10). On the basis of the written report, Ex. Material Ka-12. On account of the death of Vasudev and Kripa Shankar on the way to the police station from the place of the incident, Section 302 IPC was added in present vide G.D. Entry No. 34, dated 09/12/1979 whereas cross-case lodged at the instance of Shiv Kumar Shukla at police station vide G.D. Entry No. 29, Time 19.00 hours dated 09/12/1979. The present case was registered just after that at Police station vide G.D. Entry No.31, Time 19:30 hours, dated 09/12/1979.

55. This fact has emerged in the prosecution evidence that at the time of the incident, the accused persons initially assaulted the deceased Kripa Shankar, who was then Gram Pradhan of the village at Deviji ka chabutra in the village by slapping Kripa Shankar. He ran from that place to save himself, but he was accosted by the accused persons, and they surrounded him near the well in front of the house of Murli, where his son Vasudev reached and tried to save him from the clutches of the accused persons, but when he could not do so, he ran towards his house and then, a few minutes later, came back having armed with the gun his father, his brother, Girdhar @ Awadhesh (P.W.-2), also followed him. Three accused persons, namely, Shiv Naraian, Umakant @ Dhunuva (deceased), and Surya Kumar were trying to snatch the gun which was loaded. The gun fired accidentally in the process of snatching, which hit Umakant, and he fell down. This incident occurred 50 to 20 paces away from Deviji ka chabutra. P.W.-2 Awadhesh Kumar @ Girdhar stated in cross-examination that only one fire broke out from the gun of Vasudev, which hit Umakant and Surya Kumar. Surya kumar also received injuries. The gun got fired at one time. Deviji ka chabutra is situated near the house of Ram Sanehi and the well is situated at the house of Azi

Zulla. Well belongs to Murli. P.W.-2 has stated that he had not seen Girdhar at the time of the incident. This witness is the son of the deceased Kripa Shankar and brother of Vasudev.

56. The second eye witness Pooran, who was examined as P.W.-5, has also given an eye-witness account of the incident, but there are variations in evidence of both the witnesses on some vital points. P.W.-2 Pooran has stated that he was coming from Har (forest) at around 4:00 p.m., when he reached near the door of Azi Zulla, he saw Kripa Shankar, Gram Pradhan, standing on the chabutra (platform) of Deviji, 20-21 people were seen coming from the side of the house of Shiv Naraian, which included the accused persons present in the court and Umakant (Dhunuva), they were armed with lathi, ballam, kanta, banka, Chaku (knife) and tamanch (counterymade pistol). They abused and assaulted Kripa Shankar by slapping then he ran towards the well of Murli. In the meanwhile Darogaji @ Vasudev reached and saw his father is being beaten. He went back to the house and brought a gun. His brother, Girdhar also followed him. Seeing this, accused persons started beating Kripa Shankar badly. Shiv Narain, Umakant (Dhunuva) and Surya Kumar tried to snatch the gun from Vasudev, and in the process of snatching the gun, the trigger of gun got pressed, and a fire occurred which hit Umakant @ Dhunuva. He fell down 2-4 kadam near the door of Shiv Kumar (Shukla) at the distance of 2-4 kadam. Kali Charan snatched and took away the gun of Vasudev. Thereafter, accused persons dragged and lifted Kripa Shankar and Vasudev and brought them inside the house of Shiv Kumar and bolted the door. And for that reason, nobody could enter in the house to save them. Mahavir was also from the side of Kripa Shankar. The police visited the place of incident at around 8:00 PM. He was present at that time and saw Kripa Shankar crying in the courtyard and Vasudev at barauth of the hosue of Shive Kumar. Accused persons dragged to some distance. The deceased Kripa Shankar and Vasudev lifted them also from the well to the house of Shiv Kumar. Umakant @ Dhunuva also reached in the process to the sahan of Shiv Kumar, where he fell down on being hit by gun fire. The

barrel of gun was towards Dhunuva (Umakant), three persons, from the accused side, were snatching the gun from which fired and hit Dhunuva.

57. If we look into the siteplan prepared by the Investigating Officer, in light of the evidence of witnesses and investigating officer, we find that there was a distance of 51 kadam between Deviji ka chabutara to well of Murli. According to the prosecution version, the deceased Kripa Shankar was assaulted at Deviji ka chabutqara as well as at well of Murli which lies at some distance place, and near the well of Murli the gun brought by Vasudev got fired, which accidentally hit Umakant, who in turned died on the spot. But, the dead body of Umakant was not found near the well but in the sahan of the house of Shiv Kumar Shukla, an accused in the present case and informant in cross case. In the evidence of witnesses, nowhere staetd that after receiving the gun short injuries, Umakant ran from the place and fell down in the sahan of Shiv Kumar, which is 36 kadam away of the well, where this incident of firing occurred. The Investigating Officer has also stated in his evidence that body of Umakant was lying by the side of chabutara in front of the house of Shiv Kumar and Vasudev and Kripa Shankar were found in injured condition inside the house of Shiv Kumar from where they were sent to police station by bullcart under protection of two police constables.

58. Although in cross examination which was lodged anticident at point of time to the present case at the instance of Shiv Kumar Shukla. It is stated that the deceased Vasudev, Kripa Shankar, Mahavir, VenkateshIn case, the steps are not taken, the present petition shall automatically be dismissed without any further reference to the Bench of this Court under Chapter XII Rule 4 of the High Court Rules and the same shall not be listed before this Court.

driving by an altercation took place one day ago between the family members of both side armed with licensee gun, countrymade pistol and lathi came to the house of Shiv Kumar Shukla and abused him and entered the house. Vasudev was armed with licensed gun of his father Kripa Shankar. He opened fire at Umakant, and Mahavir fired a shot at Surya Kumar . Girdhar also fired a shot which got missed. Kripa Shankar and Venkatesh were armed with lathi. They were exhorting the other three accused. He stated that the informant and others held

Vasudev closely to restrain him so that he could not reload the gun, then they raised alarm. They raised alarm to which Mahavir, Girdhar and Venkatesh started escaping and in the process countarymade pistol of Mahavir came into the hand of informant and witnesses.

59. This fact also emerged in evidence that on lodging of FIR in cross vide Case Crime No.321 of 1979 in which police submitted final report in favour of the deceased and witnesses of present case. The police moved to the place of occurrence and when the present FIR was lodged after half an hour at instance of accused side, the Station House Officer was not present. The copy of the FIR was sent to him at place of incident where he was present in connection with investigation of Case Crime No.321 of 1979. Ex.ka-16 is copy of GD, dated 8 11 1979, report No.15 Time 18:10 hours, Police station Shivali, District Kanpur Dehat, reveals that informant of Case Crime No.321 of 1979, Shiv Kumar handed over the S.B.B.L. gun snatched from Shiv Kumar, Vasudev and a country with pistol 12 bore to Mahavir on the date and time of the incident. An empty cartridge was struck in the country-made pistol. The Investigating Officer collected an empty cartridge and two live cartridges from the place of occurrence, which he got sealed.

60. A bare perusal of the prosecution evidence, it is obvious that Umakant died on the spot, being hit by fire opened from the gun of Vasudev and the FIR was already lodged by Shiv Kumar Shukla regarding the murder of Umakant by Vasudev and others, which was just after the incident at 7:00 P.M. But in the FIR lodged at the instance of Shiv Kumar Tiwari, which is based on information furnished by eye witness Girdhar (P.W.-2), who is his nephew. The fact of the instant death of Umakant has been concealed and it is only stated that in the process of snatching of gun from Vasudev, it got fired. Whereupon Kali Shanker snatched the gun from Vasudev and all the accused persons started assaulting Vasudev and Kripa Sankar and later they dragged and lifted them, and brought to the house of Shiv Kumar Shukla and took them inside the house, where they were brutally assaulted.

61. It is difficult to believe that snatching of gun took place near the well of Murli and it continued upto the house of Shiv Kumar, where the gun got fired accidentally and hit Umakant. Thus, the defense version is that Vasudev and others from the prosecution side had appeared at the door of Shiv Kumar Shukla, where an altercation took place and Vasudev fired a shot at Umakant, which hit him fately and he died on the spot in front of the house of Shiv Kumar.

62. The prosecution has delibrately concealed the factum of the death of Umakant on the spot in the FIR, and even during the prosecution evidence, the firearm injury received by Surya Kumar are not explained. In the x-ray examination also, radio-opaque body of metelic density was found under the wounds of Surya Kumar, which corroborates that he received firearm injuries in the incident. Therefore, the prosecution version in this regard is that he received firearm injuries, which are false and manufactured, cannot be subscribed. Inasmuch as, the injuries of accused Surya Kumar are proved by the evidence of Dr. D.P. Gupta, D.W.-2, who stated that he conducted the medico-legal examination of injuries of Surya kumar Tripathi on 09/12/1979, at 6:55 P.M. A lacerated gunshot wound, 35 cm x 10 cm x bone deep on the right forearm, with blackening, tattooing and charring were persent. X-ray was advised. The injured was admitted to the hospital and kept under observation. A lacerated wound size 5cm x 2cm x bone deep on the right forearm, 1cm above the writ (gunshot wound), with blackening, tattooing and charring were also present. Thus, the non-explanation of firearm injuries of accused Surya Kumar indicates that the prosecution has concealed the genesis of the incident, and this laguna on the part of the prosecution is fatal to prosecution case. According to the prosecution case, Umakant and two others were holding the gune wielded by Vasudev at the time of the incident, and in the process of snatching of gun, a fire broke out, which hit Umakant, and he died on the spot. However, D.W.-3, Dr. K.N. Mathur, who conducted post-mortem of the deceased Umakant, has stated that 12 firearm injuries were found on the person of the deceased. These injuries were found in an area 10 cm x 12 cm and were inflicted

from a distance of 6 to 10 feet. No blackening or charring was found around the fiream injuries of Umakant. This reveals that he received the firearm shot from a distance of around 6 feet. The doctor has also gaven such an opinion. This makes the defense version probable, that Vasudev intentionally open fired at Umakant, which hit him, and he died on the spot. Umakant received firearm injuries accidentally while snatching the gun from Vasudev. His injuries must have had blackening, charring and tattooing.

63. According to the prosecution, when Vasudev fired a shot at Umakant, and Mahavir fired a shot at Surya Kumar by his country-made pistol, resulting in the death of Umakant and receiving of firearm injuries by Surya Kumar. The public which assembled on the spot, got enraged and dragged Vasudev and Umakant inside the house of Shiv Kumar and assaulted him by lathi, danda, khurpa, etc., which resulted in their death. Although this version does not sound natural but involvement of some members of the public were non- accused, cannot be ruled out as no person had come forward from either side to depose that what occurred inside the house of Shiv Kumar, where Vasudev and Kripa Shankar were found in a badly injured condition, and subsequently died on the way while being carried to the police station in protection two police constables, namely, Rajju Prasad and Premchand. According to Investigating Officer, Rama Shankar Misra (C.W.-1), the injured Kripa Shankar and Vasudev died; near Hardeyanala on way to police station, and subsequently, the dead bodies were entered in the police station and thereafter, the case was converted into Section 302 IPC. Investigating Officer, Rama Shankar Misra (C.W.-1) has admitted in cross-examination that in between Deviji ka Chabutara to the well of Murli, he had not found any bloodstain, pellets, tikli, empty cartridges. On the other hand, he found six empty cartridges, two live cartridges and pellets at the door of Shiv Kumar and took these things in his possession, and he has prepared an inventory, which is Ex.Kha-8. He also collected bloodstain and plainerth found near the dead body of Umakant and prepared its inventory, on which Ex.Kha-7 was marked. The FIR in Case

Crime No.321 of 1979 regarding the murder of Umakant was lodged in his presence and on 09-12-1979 at 19.00 hours, on which Ex.ka-10 is marked. It bears a signature. He stated in cross-examination that witness Pooran (P.W.-5) has not stated to him that Vasudev came near the well, having a gun in his hand, and Vasudev and Kripa Shankar were dragged to the sahan of Shiv Kumar, which got fired in the Sahan of Shiv Kumar.

64. In view of the above contradictions' statements of eye witnesses as well as improvements made by them during the trial from their earlier statements recorded by the Investigating Officer. It is difficult to believe the prosecution version that Umakant received gunshot injuries near the well of Murli, and there is ample force in the defense version that he received firearm injuries from the gun taken by Vasudev in the sahan of accused Shiv Kumar Shukla, due to which he died on the spot, and it was the death of Umakant in the incident and injuries to Surya Kumar, which invoked outrage amongst people assembled there, which ultimately culminated into deadly assault given to Vasudev and Kripa Shankar inside the house of Shiv Kumar Shukla. The recovery of empty cartridges, tikli etc. at the sahan of Shiv Kumar Shukla fortifies this contention put forth by the defense. P.W.-2 (Awadesh Kumar), who is the son of the deceased Kripa Shankar, has clearly stated in his sworn statement before the court that the accused were armed with lathi, ballam, kanta, knives, and countrymade pistol. There was a long-drawn litigation between accused Shiv Narain and others and his father regarding land dispute, and the vacation of house. Shiv Kumar, Shiv Narain and others had assaulted his father, for which a case under Section 307 IPC was instituted, in which some persons were punished. Shiv Kumar works as a clerk in Kanpur court for 25-30 years. He had not thought of saving his father and brother. The witness has not stated that the accused, Dev Narain, was armed with a gun and he opened fire in the air during the incident. None of the deceased, Kripa Shankar and Vasudev, in present case have receied firearm injuries. Thus, six empty cartridges and tiklis etc. have been found in front of the house of Shiv Kumar Shukla, in which the deceased were fatally assaulted, indicates

that more than one fire was caused by the prosecution side in the present case. This is consistent defense version that Vasudev fired shots from SBBL gun of his father at Umakant and Mahavir fired a shot at the accused Surya Kumar, due to which he suffered firearm injuries on his person. Thus, the prosecution version is that the alleged firearm injuries of Surya Kumar are concocted and false, cannot be countenanced. The concealment of the death of Umakant in the FIR and firearm injuries of Surya Kumar received in the same incident, in which two persons from the prosecution side and one person from the defense side died, is fatal to the prosecution case on facts and circumstances of the case. The injuries of Surya Kumar are not of such a nature that same could be overlooked by the prosecution witnesses, or it could be self-made, or the injury report was falsely prepared. Even in the X-ray report, the injury of Surya Kumar appears to be caused by some firearm Kripa Shankar.

65. This is also noticeable that the firearm injury of deceased Umakant were surrounded by blackening, tattooing and charring are not surrounded, whereas the firearm injuries of accused Surya Kumar consisted of blackening, charring and tattooing. Therefore, the statement of P.W.-2 that Surya Kumar also received injuries, but only one fire was shot from the gun of Vasudev, does not inspire confidence. Their injuries reveal that these were caused by different shots and firearms. P.W.-5 Pooran also stated that only one shot was fired near the well. This witness has also admitted that there is long and multiple enmity between the informant and the accused, but has given no explanation regarding the injury of the accused Surya Kumar in his evidence. His statement is that the accused Rajendra was having a country-made pistol and Dev Narain was having a gun does not find support from the statements of P.W.-2, who is an eyewitness as well as the son of the deceased.

66. In recent three judgement of Hon’ble Supreme Court in **Nandalal Versus State of Chhattisgarh,** reported in **2023 SCCOnline SC 362**, given on 14/03/2023. Hon’ble Supreme Court while placing reliance on ***Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394*** and **Ramesh Baburao Devaskar vs State of Maharashtra,** reported in

(2004) 13 SCC 501, held that non-explanation of injuries sustained by the accused is fatal to the prosecution, where injuries cannot be considered to be minor or superficial. The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested, for inimical witnesses, or wehre the defense gives a version which competes in probability to that the prosecution. There may be cases where non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial, or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

67. In another recent judgment, **Parasuram versus State of MP.** Criminal Appeal No.524 of 2021, the Supreme Court held that non-explanation of the injuries on the person of the accused would create a doubt, as to, whether, the prosecution has brought on record the real genesis of the incident or not.

68. In above cases also, like the present one, a cross-case was also registered against the complainant party for the injuries sustained by the accused persons.

69. In the light of forgoing discussion and reasons stated above, we are of the considered opinion that the prosecution has failed to prove the guilt of the surviing accused appellants beyond reasonable doubts. There are material omissions in prosecution case, which do not find a convincing logical reply. The prosecution has also failed to explain the injuries, the mode and the manner of receiving of fatal injuries by Umakant by defence side and firearm injuries received by accused Surya Kumar. It appears that it is quite obvious that the prosecution has concealed the genesis of the incident, which resulted in unfortunate death of three persons. The prosecution has deliberately concealed some material facts during the investigation, as well as during trial. Therefore,

the conviction and sentence awarded to the surviving appellants cannot be sustained. Learned trial court has erred in applying the fact while recording conviction of the appellants while giving a verdict of acquittal to nine named accused persons, despite the fact that there was almost similar evidence against all the 21 named accused persons. Consequently, the judgment and order passed by leraned trial court dated 31.03.1983, whereby the surviving appellants are convicted and sentenced in above manner for charges under Sections 302, 149, 302/149 IPC is **set aside**. The case is based on direct evidence of eyewitnesses but their evidence regarding complicity of the appellants and mode and manner of the commission of the offense does not inspire requisite confidence.

70. Consequently, the appellants, namely, Rajendra Prasad, Bimal Kumar, Surya Kumar, Ashok Kumar, Bhaiyalal, Anant Ram and Pratap Narain, are acquitted of charge under Sections 147 and 302/149 I.P.C. They have been enlarged on bail by order of this Court on admission of present appeal long ago. They need not surrender. Their bail bonds are cancelled and sureties discharged.

71. The appeal is **allowed**.

72. The aforementioned appellants are directed to appear before the trial court and file the requisite bail bonds, within two weeks in compliance of Section 437 of Cr.P.C. upto satisfaction with an undertaking to appear before the appellate Court as and when an appeal is filed against this judgment and order.

73. Let a certified / authenticated copy of this judgment be sent to the court concerned for necessary compliance alongwith the trial court record.

(Ram Manohar Narayan Mishra,J.) (Siddhartha Varma,J.)

November 10, 2025
KR/Amit/Mohit

Digitally signed by :-
RABINDRA KUMAR
High Court of Judicature at Allahabad