2025:AHC:215048-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. -2849 of 1987

AFR

Judgment Reserved on 17.10.2025

Judgment Delivered on 01.12.2025

Virendra .....Appellant(s)

Versus

State of U.P. .....Respondents(s)

Counsel for Appellant(s) : Ajit Kumar, Anand Vikram Singh
Counsel for Respondent(s) : D.G.A.

Court No. 44

HON'BLE J.J. MUNIR, J.
HON'BLE SANJIV KUMAR, J.

(Delivered by: Sanjiv Kumar, J.)

1. This criminal appeal has been preferred by the appellants, namely, Virendra, Onkar and Ajab Singh @ Bali, against the judgment and order dated 02.12.1987 passed by Mr. N.P. Verma, the then learned Special/Additional Sessions Judge, Bulandshahar, in Sessions Trial No.61 of 1986, under Section 302 read with Section 34 of the Indian Penal Code (for short I.P.C.), Police Station Ahmad Garh, District Bulandshahar.

2. By the impugned judgment and order, the appellant Virandra has been convicted and sentenced to undergo imprisonment for life and a fine of Rs.2000/- for the offence punishable under Section 302 I.P.C. In default of payment of fine, he has been ordered to undergo rigorous imprisonment for one year. The other appellants, Onkar and Ajab Singh @ Bali have been convicted and sentenced to undergo imprisonment for

life and a fine of Rs.2000/- each for the offence punishable under Section 302 I.P.C. read with Section 34 I.P.C. In default of payment of fine, they have been directed to undergo rigorous imprisonment for one year each.

3. During the course of the hearing of this criminal appeal, appellants Virendra and Ajab Singh @ Bali have died, and the appeal stands **abated** against them vide order dated 17.07.2018. This appeal has been heard at the instance of the surviving appellant, Onkar Singh, alone.

4. Brief facts of the prosecution case are that the informant, Ram Ji Lal, son of Leeladhar, resident of village Satbara, Police Station Ahmad Garh, District Bulandshahr, filed a written first information (Ex.Ka-1) on 11.02.1985 at 6:30 a.m. at Police Station Ahmad Garh, stating therein that the marriage of Dayawati, daughter of Rajpal and grand daughter of Devi Ram, was to be solemnized on 13.02.1985. On 10.02.1985, Devi Ram (brother of the informant) went to Bulandshahr to purchase articles for the marriage. In the night at about 8:45 p.m., the informant was lying in the *Dewari*, while his nephew Rajendra was lying in a room (*kotha*). In the courtyard, Smt. Shakuntla (wife of Rajendra), Smt. Mehar Shri (wife of Rajpal), Smt. Dayawati (daughter of Rajpal) and some other women of the locality were singing wedding songs. A lantern was lit there, and the main door of the house open. The convits Virendra, Onkar, and Ajab Singh alias Bali entered the informant's house. Virendra Singh caught hold of the informant and asked about the gun belonging to his brother Devi Ram. The informant replied that Devi Ram had taken it along with him to Bulandshahr. Meanwhile, Onkar and Ajab Singh alias Bali caught hold of Rajendra and Ajab Singh alias Bali, attacked him with a *lathi*. The women ran inside the room. The informant, Rajendra and others raised alarm and caught hold of the assailants, but they managed to free themselves and ran outside. In the process, a woolen coat and a woolen sheet from the convicts was snatched. In the pocket of the said coat, a loaded country-made pistol was kept. They bolted the door from inside. Shortly thereafter, all the three accused climbed on

their roof through the adjacent house of one *Tirkhi*. The informant also climbed on the roof. Virendra pulled the dried grass from thatch and set it afire near the staircase. Hearing the commotion, villagers arrived at the spot. Some of them opened fire using their licensed weapons and surrounded the informant's house to approach the miscreants. Ram Avtar Singh, Kunwar Sen, Hari Singh, Kanti Prasad, and others raised alarm. Rajendra fired two shots from the *jangla* (window) and said from within the house that no miscreants were inside, asking them to open the door (from the outside) and save him. In the meantime, Onkar attacked Rajendra with a spear (*bhala*) from the *munder* (roof edge) but it was caught by Rajendra's wife. Thereafter, Virendra fired at Rajendra with his country-made pistol from the roof-top, causing him injuries. He fell down and died on the spot. After murdering Rajendra, the appellants fled towards the south. The informant went to the police station with the snatched woolen coat, woolen sheet, country-made pistol and cartridges which were taken in custody and a memo (Ext.Ka-2) was prepared. Upon the information laid an FIR was registered as Case Crime No.13 of 1985, Section 302 I.P.C and Section 25 Arms Act, at Police Station Ahmad Garh.

5. The investigation was carried out by P.W.4, Kalyan Singh Yadav, Station Officer (S.O.) P.S. Ahmad Garh, who prepared the inquest report of the deceased and sent the body for *post-mortem* examination. The Investigating Officer inspected the place of occurrence and prepared its site-plan (Ext. Ka-10). He also collected plain earth and blood-stained earth from the place of occurrence and prepared its memo (Ext.Ka-11). In addition, he collected dried grass stems and kept them in separate sealed boxes, marked as Exhibits 9, 10, and 11. He further collected ash from the fire at the spot and sealed them in a separate box and prepared its recovery memo (Ext. Ka-12). He also prepared the *supurdagi nama (*Ext. Ka-*13)* for the lantern, which was stated to have been lit in the house at the time of the incident.

6. P.W.3, Dr. D.B. Singh, conducted the *post-mortem* examination on the deceased's cadaver on 12.02.1987 at 3:30 p.m. He found five

ante-mortem injuries on the dead body and opined that the cause of death was shock due to excessive bleeding.

7. After recording the statements of witnesses and collecting other evidence, the Investigating Officer filed a charge-sheet under Section 302 IPC against Virendra, Onkar and Ajab Singh @ Bali before the competent court.

8. The concerned court took cognizance of the offence and summoned the accused. They appeared before the Court and the court furnished them copies of relevant prosecution papers under Section 207 Cr.P.C. and thereafter committed the case to the Court of Sessions on 29.01.1986.

9. The accused persons appeared before the Court of Sessions, where Virendra was charged with the offence punishable under Section 302 of the Indian Penal Code (IPC), and Onkar and Ajab Singh @ Bali were charged with the offence punishable under Section 302 read with Section 34 of the IPC. All the accused persons pleaded not guilty and claimed to be tried.

10. The prosecution examined six witnesses in support of the prosecution case: P.W.1, Ramji Lal (brother of the deceased), P.W.2, Shakuntla (wife of Rajendra), P.W.3, Dr. D. B. Singh (conducted *post-mortem* examination), P.W.4, Kalyan Singh Yadav (Investigating Officer), P.W.5, Constable Daya Chand (scribe of *Chik* F.I.R.) and P.W.6, Constable Bishambar Singh (carried dead body to *post- mortem* house).

11. P.W.1, Ramji Lal, is uncle of the deceased Rajendra and also the first informant in this case. He has said in his testimony that he was present at the time of the incident. It has come in his statement that there was enmity between the accused and the informant with regard to election of the Gram Pradhan. In that election, Aidal, father of accused Virendra, contested and Devi Ram had supported his rival Bahori, who won the election. Therefore, the accused bore grudge against the informant and his family. P.W.1 further deposed that the marriage of Rajpal's daughter was fixed for 13.02.1985. On 10.02.1985, at about 8:45 p.m., Devi Ram had gone to Bulandshahr, and the informant was

lying in his *Dubari*, while the door of the house was open. Rajendra was inside the house in the eastern *Kothri*. In the courtyard, Shakuntla, Mohar Shree and other women of the locality were singing wedding songs and a lantern was lit there. The appellants Virendra, Onkar, and Bali entered their house. Virendra caught hold of the informant and asked for the gun belonging to Devi Ram (his brother). The informant said that Devi Ram had taken the gun along to Bulandshahr. Thereafter, Bali and Onkar went inside the house. Bali was carrying a *lathi*, Onkar had a country-made pistol on him, concealed in his coat and Virendra was also armed with a country-made pistol. Bali struck Rajendra with the *lathi* and dragged him into the courtyard. Thereupon, Rajendra, his wife Shakuntala, and Mohar Shree caught hold of Onkar and Bali. Virendra also ran inside and they caught hold of all three appellants. The appellants tried to run away and in the process, Onkar's coat and Bali's shawl *(chadar)* were snatched. The accused then ran outside the house. The informant bolted the door from inside and climbed onto the roof from the staircase. The appellants also climbed on the roof through the house of Tirkhi. Upon hearing the alarm, the villagers gathered outside the house. Thereafter, all the appellants took some dried grass (*phoos*) and set it on fire on the staircase. Rajendra, from inside the house, told the villagers that there were no miscreants inside and also fired 2-3 rounds from the *jangla* (window). When Rajendra saw fire on the staircase, he shouted for help and came out into the courtyard. Then Onkar attacked him with a *ballam* (spear), which was caught by Rajendra's wife. The informant told Virendra that Virendra Bhai, he is not a miscreant, he is my nephew, Rajendra. Don't shoot him. Even then, Virendra shot him, and thereafter, the appellants fled.

12. P.W.1, Ramji Lal, has also deposed that he identified all the accused in the light of a lantern and the light from the fire. Rajendra died on the spot. At about 4:00 a.m., he got a written report scribed by Ram Avatar and put his thumb impression on it. The witness has proved the written information *(Tahrir)* (Ex. Ka-1) and has stated that he brought the *tehrir*, as well as the snatched coat, the shawl (*chadar*), country-made

pistol, and cartridges to the police station, where the concerned constable took them into his possession and completed the necessary formalities. He also proved the coat and shawl *(chadar)* and said that these belonged to the appellant, Onkar, and the country-made pistol and cartridges were found inside the pocket of his coat.

13. P.W.2, Smt. Shakuntla, wife of Rajendra (deceased), has supported the prosecution case and stated that on the fateful night, at about 8:45 p.m., she, along with her sister-in-law *(Jethani)* Mohar Shree, her niece Dayawati, and other women of the locality were singing wedding songs in the courtyard of her house. A lantern was lit there. Her father-in-law, Ramji Lal, was in the *Debari* and her husband was lying down in the *Kothari*. The appellants, Virendra, Bali, and Onkar came over there. Virendra asked Ramji Lal for Devi Ram's gun, to which he said that Devi Ram had taken it along with him to Bulandshahr. Then Onkar dragged her husband out of the *Kothari*, and accused Bali assaulted her husband with three *lathi* blows on his head. Thereafter, she, her husband, and Ramji Lal caught hold of the appellants. They tried to run away, and in the process, a coat and a shawl (*chadar*) was snatched away from them. The accused ran outside the house, and her father-in-law bolted the door from inside. The women of the locality, who were singing wedding songs ran inside the *kotha.* The appellants climbed onto their roof from Tirkhi's *kothari*. Her father-in-law, Ramji Lal, also climbed onto the roof from the staircase. Her husband fired two round of shots from the *jangla*. The villagers surrounded the house, and someone bolted the door from outside. Thereafter, all the appellants collected some dried grass (*phoos*) and set it a fire on the staircase. The appellant, Onkar assaulted her husband with a spear (*ballam)*, but she caught hold of it, due to which it did not hit him. Then Virendra shot her husband, as a result of which he fell to the ground and died. She identified the appellants by the light of the lantern and the burning fire.

14. P.W.3 Dr. D. B. Singh, has conducted the *post-mortem* examination upon the deceased Rajendra's body on 12.02.1987 at 3:30 p.m., and found the following *ante-mortem* injuries:-

(i) Lacerated wound measuring 1½" × ⅓" × scalp deep on the left side of the head, 4" above the left eyebrow.

(ii) Two abraded contusions, each measuring ¾" × ½", situated ½" apart on the left side front of the head, about ½" above injury no. 1.

(iii) Multiple gunshot wounds of entry present over an area of 11" × 5" towards the right and left sides of the upper front of the chest, extending downwards to the front of the neck and left shoulder. One large wound measuring 2" × 1¼" × chest cavity deep was found near the middle of the left collar bone, surrounded by several small wounds, each about ½" × ¼", skin to muscle deep.

(iv) Abrasion measuring 2½" × 2" on the front lower part of the right knee.

(v) Abrasion measuring 2½" × 2" on the front lower part of the left knee.

During the internal examination, the left collar bone and second rib were found fractured, and both pleura were lacerated. The upper and middle lobes of the right lung were also lacerated.

15. In the opinion of the doctor, the cause of death was shock as a result of excessive bleeding from *ante-mortem* injuries. He recovered eleven pellets from the lungs, which he sealed in an envelope and handed over to the constable. Dr. D. B. Singh proved the *post-mortem* report (Ext. Ka-3) and the clothes of the deceased (Ext. 5, 6, and 7). He opined that injuries No. 1 and 2 could have been caused by a *lathi*, Injury No. 3 was caused by a gunshot, and Injuries No. 4 and 5 were caused by friction.

16. P.W.4, Kalyan Singh, Station Officer, is the Investigating Officer of this case. He has stated that he recorded the statements of the informant and other witnesses. Upon reaching the spot, he found the dead body of the deceased lying in the informant's courtyard. He further said that he recorded the statements of Smt. Shakuntala and Ramji Lal and prepared the inquest report, which he proved as Ext. Ka-5. He also prepared the photo *nash*, *challan nash*, letter to the C.M.O., a letter to the

R.I., and a sample seal, which he proved as Ext. Ka-6 to Ext. Ka-9. He further stated that he inspected the place of occurrence and prepared the site plan, which he proved as Ext. Ka-10. From the place of occurrence, he collected plain earth, blood-stained earth, and dried grass (*phoos*), which were proved as Ext. 9, 10, and 11 respectively. He also collected ashes from the staircase and the roof, which he proved as Ext. 12. The *supurdaginama* of the lantern, recovered from the place of occurrence, was proved as Ext. Ka-13. After completing the investigation, he submitted the charge-sheet against the appellants, which he proved as Ext. Ka-14. He further said that a separate case was registered under Section 25 Arms Act, but as no evidence was found in support, he submitted a final report therein. P.W.4 has also deposed at the trial that on 10.02.1985, at about 10:30 p.m., Aidal Singh, son of Pope Singh, who is the father of the accused Virendra and Jogendra son of Maharaj Singh, arrived at the police station by truck and provided certain information, which was entered in G.D. No. 28 at 10:30 p.m. He has proved a copy of the said G.D. entry as Exhibit Kha-1. On the basis of this information, Sub-Inspector Lal Singh Tomar, Constables Dayanand Tyagi, Tope Singh, and Ramesh Chand were sent to village Satbara by the same truck. When he himself reached the house of the informant, the aforesaid police officials were already present there. He has admitted that in the year 1982, there was *party-bandi* in village Satbara due to the Gram Pradhan election, one party belonged to Bahori Pradhan and the other to Aidal Singh.

17. P.W.5, Constable Dayanand, is a formal witness. He has scribed the *chik* FIR on the basis of the written report (Ext. Ka-1) submitted by the informant and entered its gist in G.D. No. 6 dated 11.02.1985. He has proved the *chik* FIR as Ext. Ka-15 and the copy of the G.D. as Ext. Ka-16.

18. P.W.6, Constable Bishambar Singh, is a formal witness, who has taken the dead body of Rajendra Singh from Satbara to *post-mortem* house, Bulandshahr for autopsy. He reached Bulandshahr in two hours. It

took him some time in police lines. Thereafter, relevant papers were handed over to the doctor, belatedly at 12 noon.

19. The prosecution have produced the following documents during the trial:-

A written report (Exhibit Ka-1), recovery memo regarding the country-made pistol, cartridges, woolen coat, and bed sheet (Exhibit Ka-2), *post-mortem* report (Exhibit Ka-3), chik report (Exhibit Ka-4), inquest report of the deceased (Exhibit Ka-5), photo nash (Exhibit Ka-6), challan nash (Exhibit Ka-7), letter to C.M.O. (Exhibit Ka-8), letter to R.I. (Exhibit Ka-9), site-plan (Exhibit Ka-10), recovery memo regarding plain earth and blood-stained earth (Exhibit Ka-11), recovery memo regarding ash (Exhibit Ka-12), *supurdaginama* regarding the lantern (Exhibit Ka-13), charge-sheet (Exhibit Ka-14), chik FIR (Exhibit Ka-15), G.D. No.6 dated 11.02.1985 at 6:30 a.m. (Exhibit Ka-16), G.D. No.8 dated 11.02.1985 at 7:30 a.m,. (Exhibit Ka-17) and G.D. No.24 dated 11.02.1985 at 19:30 p.m. (Exhibit Ka-18).

20. The statements of the appellants were recorded under Section 313 of the Code of Criminal Procedure (for short ‘the Cr.P.C.’), where they denied the prosecution case. It was admitted that the marriage of Dayawati, daughter of Rajpal, was scheduled for 13.02.1985. They also stated that they had been falsely implicated in this case due to *partybandi* and that the Investigating Officer had wrongly submitted the charge-sheet against them. They also filed written statements, wherein it was stated that the village *Pradhan* and the informant with the help of police, had lodged a false report against them. According to them, the real facts were that some unknown dacoits came to the house of Ramjilal, and due to the alarm raised, the dacoits could not commit any loot. This information was given by Aidal Singh and Jogendra Singh at the police station the same night and the police arrived there at about 11:00-11:30 p.m. in the night. The police inquired about the incident, and the people informed them that it had been committed by unknown dacoits. It was also stated that the FIR was lodged belatedly. The witnesses are inimical to them. Ramji Lal is on good terms with *Pradhan* Bahori and Bahori got

them falsely implicated in this case. The deceased, appellant Bali stated that he had nothing to do with the *chadar* or the gun. He further stated that the unknown dacoits committed *marpeet* (assault) and murder of Rajendra, and upon information furnished by Jogendra and Aidal Singh, the police reached the house of Ramjilal the same night. He was on inimical terms since 1969 with the deceased appellant, Virendra due to a land dispute between him and Chatri Singh @ Chatar Singh, a brother of full blood Virendra's grandfather of accused. Virendra has stated that he never told Devi Ram that he would not allow Devi Ram to keep his gun. Some unknown dacoits entered Devi Ram's house to commit dacoity. Rajendra and others raised alarm. A gun was fired, and the villagers surrounded Devi Ram's house confining the dacoits inside. Aidal Singh and Jogendra Singh informed the police the same night and the police reached the spot at about 11:00–11:30 p.m. In the meantime, the dacoits committed *marpeet* with Rajendra and shot him dead. The deceased appellant Virendra also said that due to *partybandi* and enmity arising out of the election of the village Pradhan, he had been falsely implicated in this case. The defence has produced certain documents in support of this contention.

21. The Court examined C.W.1 constable Ramesh Chandra and C.W.2 I.O. Kalyan Singh Yadav (after recalling him). C.W.1, Ramesh Chand (Constable) deposed that on 10.02.1985, he was posted at Police Station Ahmad Garh. On that date, he himself along with Constables Top Singh, Dayanand Tyagi, Subhash, and Davendra had reached village Satwara at 11-12 night. There, they reached the house of Ramji Lal and found that Rajendra, the nephew of Ramji Lal, was lying dead. People were saying that Virendra, Onkar and Bali had killed him. S.I. Lal Singh stayed there during the night and kept up inquiring about the incident. At 8-9 a.m. the *Kotwal* reached there after that they returned to the police station. The villagers were heard to say that dacoits had come to the house of Ramji Lal and killed Rajendra and the appellants were member of the gang of dacoits.

22. C.W.2 Kalyan Singh Yadav (Investigating Officer), in his re-examination, stated that at 10.30 p.m. on the date of incident, Aidal Singh and Jugendra Singh gave information that Ramji Lal's house has been surrounded and firing is going on. Thereafter S.I. Lal Singh Tomar proceeded to the place of occurrence the same night at 10.30 p.m. vide G.D. No.28 dated 10.2.1985 and returned at 8:00 a.m. on 11.2.1985 recorded in G.D. No. 10. He has proved a copy of the return G.D. as secondary evidence (Ex. C-1). Aidal Singh is the appellant, Virendra's father and Jugendra Singh is the appellant, Onkar's brother.

23. The learned Trial Court, after hearing the arguments of both parties and examining the evidence on record, convicted the appellant, Virendra under Section 302 I.P.C. and appellants, Onkar and Ajab Singh @ Bali under Section 302 read with Section 34 I.P.C. and sentenced each of them to the terms already indicated above.

24. Feeling aggrieved by the impugned judgment and order dated 02.12.1987, this appeal has been filed by all three convicts.

25. During the course of the hearing of this criminal appeal, appellants Virendra and Ajab Singh @ Bali have died, and the appeal was ordered to **abate** at the instance vide order dated 17.07.2018. Therefore, the appeal has been heard at the instance of the surviving appellant, Onkar alone.

26. Heard Mr. Krishna Kant Dubey, learned Counsel for the appellant and Mr. Ghanshyam Kumar, learned A.G.A.-I for the State and perused the record.

27. Learned counsel for the appellant has submitted that learned Trial Court has not properly appreciated the evidence on record, and thus, the impugned conviction and sentence are not sustainable. It is further submitted that the alleged incident occurred in the night of 10.02.1985, and upon receiving information, some police officials arrived at the place of occurrence around 11:00-12:00 the same night. The FIR was lodged the next morning at 6:30 a.m., and there is no explanation for the delay in lodging the FIR. It is next submitted that there was also delay in conducting the *post-mortem* examination of the deceased, which has not

been explained by the prosecution. This raises serious doubt about the prosecution case. It is next contended that some unknown dacoits committed the offence and fled the place of occurrence, and later, the informant, with the help of the village *pradhan* and the police, lodged a false report against the appellants due to *partybandi* and enmity in connection with village *pradhan* election.

28. Learned counsel for the appellant has also submitted that if according to the prosecution, the motive of the appellants was to loot Devi Ram's gun and they were informed that Devi Ram had taken his gun to Bulandshahr, the appellants would have returned without event. Moreover, if they had intention to murder Rajendra, then they would have done so at the very first instance when, according to the prosecution, they entered the informant's house and asked about the gun and beaten Rajendra. Thus, the entire story of the prosecution is doubtful. It is also submitted that according to the prosecution, at the time of the incident some women of the locality were inside the house singing wedding songs. However, none of them had been examined in support of the prosecution case. P.W.1 and P.W.2 are family members of the deceased and, therefore, are highly interested witnesses.

29. It is true for a principle that close family members are not expected to tell falsehood about the complicity of a man in the crime, because they would not wish that the true offender to go unpunished and, therefore, not speak inculpatory about an innocent man falsely. This principle, however, has no application to a case where the evidence shows that nobody saw anything, and against the ones implicated, the family members of the deceased had a grudge or scores to settle. It is in cases, such as these, that a family member of the deceased can verily be called an 'interested witness'.

30. On the other hand, it is submitted on behalf of the State that the prosecution story is proved beyond reasonable doubt. There is no unexplained delay in lodging the F.I.R. The offence was committed in the night and the F.I.R. was lodged the next morning. Due to fear the informant did not go to the police station to lodge the FIR. The place of

occurrence is established. Rajendra was killed. P.W.1 and P.W.2 have witnessed the incident and their testimony is consistent and reliable. Their testimony can not be doubted on the ground that they are relatives of the deceased. There is no reason why the appellants would be falsely implicated in this case. The appellants came at the informant's house to commit murder and their relatives went to the police station in advance to mislead the police by giving it the color of a dacoity by unknown men.

31. Upon a consideration of evidence adduced by both the parties and the rival submissions, let us see whether the prosecution has been able to prove its case beyond reasonable doubt. In a criminal case the burden of proof always lies upon the prosecution. The prosecution case is that appellants/convicts came over to the informant's house and committed *maarpeet*, set the staircase on fire and murdered Rajendra, the informant's nephew, by shooting him dead inside the house. The defence case is that it was some unknown dacoits who came to the informant's house to commit dacoity. They beat up Rajendra and when they failed in their attempt they shot him dead and fled away from the spot. Due to *party bandi* and enmity arising from the village *Pradhan* election, the appellants have been falsely implicated in this case with the aid of incumbent *Pradhan,* acting in connivance with the Police.

32. Thus in the present case murder of the deceased Rajendra in the informant's house on the fateful night is not disputed by the defence. The defence case is that they were not involved in the commission of the offence. The inquest report of the dead body was prepared at the spot, the next day i.e. 11.2.1985 at 12.30 p.m. The *post-mortem* was conducted on 12.2.1985 at 3.30 p.m. Thus there is a delay of more than 24 hours in sending the body for *post-mortem* and this delay is not well explained by the prosecution. According to P.W.3 Dr. D.B. Singh there were 05 *antemortem* injuries on the body of the nature of lacerated wound, abrasions, multiple gunshot wounds of entry over left side of chest and the cause of death was shock and excessive bleeding as a result of *antemortem* injuries. In the opinion of the doctor the death may have

been caused on 10.2.1985 at 8.45 or 9 p.m. and gunshot injury no.3 was sufficient in the ordinary course of nature to cause death. The I.O. has collected plain earth and blood-stained earth from the place of occurrence which corroborates the ocular testimony regarding the place of occurrence. In view of the above, the place of occurrence is established and the fact that the deceased was murdered inside the house by firearm injuries.

33. Let us see whether the appellants/convicts committed the offence as alleged by the prosecution. As per the prosecution the incident took place on 10.02.1985 at about 8:45 p.m. at the house of the informant, Ramji Lal, in village Satbara, Police Station Ahmad Garh, District Bulandshahr. The FIR was lodged the next morning at 6:30 a.m. by the informant. According to the Chik FIR the distance from the place of occurrence to the police station is about 7 kilometers. A perusal of the FIR shows that it does not contain any explanation regarding the delay. The first submission on behalf of the appellants is that there was delay in lodging the FIR and no explanation for the delay has been given which raises serious doubts about the prosecution case and as the assailants were unknown to the informant so he has falsely implicated the appellants due to *partybandi* and enmity arising out of village *Pradhan* elections.

34. P.W.1 the informant Ramji Lal has stated that at about 4 a.m. the *tehrir* was written by Ram Autar at his dictation and on that basis he lodged the FIR. On the other hand the I.O. Kalyan Singh has stated on oath that the father of the accused Virendra, namely Aidal Singh, alongwith one Jogendra, brother of co-accused Onkar, had reached Police Station Ahmad Garh the same night at 10.30 p.m. by truck and informed the police that the house of Ramji Lal is surrounded by miscreants (*badmaash*) and there ongoing assault by gunfire. The said information was duly entered in the General Diary of the police station and Sub-Inspector Lal Singh Tomar, along with three other police officials, proceeded by the same truck to village Satbara. P.W.4, I.O. Kalyana Singh has stated that S.I. Lal Singh Tomar, Head Constable

Dayanand Tyagi, Constable Top Singh, and Constable, Ramesh Chandra were sent from the police station to the said village, Satbara, the same night.

35. The Court has examined C.W.-1, Constable, Ramesh Chandra, who accompanied S.I. Lal Singh Tomar to village Satbara. He has stated that they reached the village at about 11-12 in the night and went to the house of Ramji Lal, where his nephew Rajendra was found lying dead. He further stated that they stayed in the village throughout the night and returned to the police station when the Station Officer (*Daroga*) arrived there at about 8-9 a.m., the next morning.

36. In view of the above evidence, it is clear that after the alleged incident, the police reached the house of the informant at about 11:00 p.m. to 12 midnight the same night, upon information by relatives of the appellants Virendra and Onkar. The police remained present in the village throughout the night and saw the dead man lying in the informant's house. If the assailants were known to the informant and so to the Police, then it is quite unusual that neither the informant lodged any F.I.R. during the night nor the police started investigation into this crime till the next morning. Despite presence of the police in village the entire night, the informant did not go to the police station to lodge the FIR the same night. The presence of police should have removed the fear, if any, the informant had in proceeding to police station to lodge an FIR. It was quite unnatural for him to wait for the night to be over and lodge the FIR the next morning.

37. It is also relevant to note that P.W.1, Ramji Lal and P.W.2, Shakuntala, the wife of the deceased, are the only two public witnesses examined by the prosecution. Both of them are relatives of the deceased. Surprisingly, both of them have denied that the police had reached their house the same night. P.W.1 has stated that the police did not reach the village before the report was lodged. He has denied that the Police came to his house at 11:00 or 11.30 p.m. He has expressed ignorance about the fact that Aidal Singh and Jogendra went to police station and called the Police. P.W.2 has stated that no policeman came to her house at 11-12 in

the night. The Police came the following morning at 8-9 a.m. The above statements of P.W.1 and P.W.2 are contrary to the evidence of Police Officials, who have said that the Police came to village the same night at 11-12. So denial of the Police's presence on the fateful night in the village by P.W.1 and P.W.2 appears unnatural, which goes to show that they are hiding true facts from the Court. Thus, there is unexplained delay in lodging the FIR.

38. The effect of delay in lodging the FIR has been discussed by Supreme Court in various pronouncements. In **Thulia Kali v. State of Tamil Nadu 1972 (3) SCC 393**, it was held by the Supreme Court that delay in lodging the First Information Report often results in embellishment which is a creature of after-thought. On account of delay the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version and an exaggerated account of the correct story as a result of deliberation and consultation. It is also held that in order to avoid all criticisms of the defence, it is therefore essential that the delay in lodging of the First Information Report should be satisfactorily explained.

39. Further, the Supreme Court in **Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188**, has observed in para 12 of the report:

> *" FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory*

explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared u/s 174 Cr. P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR."

40. In view of the legal position that emerges from the above discussion, the FIR lodged belatedly with no explanation for the delay casts a serious doubt over the prosecution case.

41. The Investigating Officer has stated on oath that since 1982, due to the election of the village *Pradhan*, there has been *partybandi* in village Satbara. One faction supports Bahori Pradhan and the other stands by Aidal Singh, the father of the appellant, Virendra Singh. It has come in the statement of P.W.1, Ramji Lal, that he and Devi Ram had supported Bahori *Pradhan*, who won the *Pradhan* election, while the appellant Virendra's father, Aidal Singh, lost the election. Therefore, from the above evidence, it is clear that there is *partybandi* in the village, and due to the election of the *Pradhan*, both parties were not on good terms with each other. Thus there was reason for the informant to falsely implicate the appellants in this case.

42. The prosecution has produced P.W.1, Ramji and P.W.2, Shakuntala as the only witnesses of fact. Out of them, P.W.1 is the informant and uncle of the deceased and P.W.2, Shakuntala is the wife of deceased. Both are related witnesses and hence what are called interested witnesses. Their evidence is to be carefully examined, particularly when there were other women and also some villagers present at the time of incident near the place of occurrence. Surprisingly, the prosecution has not examined any independent witness. Though both the above witnesses have supported the prosecution case and are mostly consistent in their

testimony regarding some facts but the attending circumstances, other evidence contrary to it and concealment of important facts by these witnesses, raises doubt over their testimony. Thus, their testimony is not reliable. P.W.1 has stated that he did not see miscreants assault Rajendra with a *lathi* and he himself was not beaten by them. The I.O. has stated that P.W.2 Shakuntala did not tell him that Virendra caught hold of her husband and asked for the gun. Shakuntala also did not tell him that Onkar dragged her husband into the courtyard and Bali hit Rajendra with a *lathi*. Thus it appears that her statements before the Court on these points are improvements, which create doubt about her testimony.

43. Here, it is also relevant to note that the Investigating Officer has admitted that in Case Diary No.III, he had recorded that there was no evidence against the accused, and they were arrested merely because their names were mentioned in the FIR. He has further stated that different persons were giving different versions regarding the incident. Some were also saying that the accused were not involved in the offence. He has also stated that other women who were singing wedding songs were also interrogated but they were not arrayed as witness because they stated that the incident has occurred but did not name any person while others were saying otherwise. C.W.1 Constable, Ramesh Chandra has also stated that villagers were saying that dacoits ravaged Ramji Lal's house and killed Rajendra and that appellants, Virendra, Bali and Onkar were also among those *dacoits* (bandits). He has also stated that they did not go to the appellants' house to apprehend them. The statement of C.W.1 is contrary to the statement of P.W.1 and P.W.2, who have not stated that some dacoits came and killed Rajendra. Additionally, if the names of the appellants were divulged to the Police the same night, why the Police never went to their house to apprehend them or inquire of them, is not clarified by the prosecution. It creates doubt about the prosecution case and gives weight to the defence that with regard to the incident the names of assailants were not known to anybody.

44. It is relevant to note that the appellants reside in the same village. It is not the case of the prosecution that the accused entered inside the

informant's house with their faces covered with masks. Therefore, according to the prosecution itself, there was no intention on the appellants' part to conceal their identity while committing the alleged offence. According to the prosecution's case, after entering the house, the appellant, Virendra asked the informant Ramji Lal for Devi Ram's gun, saying that they would not allow Devi Ram to keep the gun. P.W.1, Ramji Lal, stated that he informed them that the gun was not with him and had been taken by Devi Ram to Bulandshahr. In this regard, the learned counsel for appellant submits that if the appellants' intention was to take the gun belonging to Devi Ram they would have left after learning that it was not in the house. There was no reason for them to remain in the house, and thereafter, commit the said crime. It is also submitted that if the common intention of the appellants was to kill Rajendra then they could have easily killed him or attempted to kill in the very first instance when they had entered the house, armed with *lathi* and country-made pistols and even caused *lathi* blows to Rajendra.

45. According to the prosecution case, the incident occurred in two parts. In the first part, the accused entered inside the informant's house and demanded the gun, which the informant told them was not there. They then beat up Rajendra with *lathi* and when the inmates of the house tried to capture them, they fled the house. The second part is that after leaving the house, they climbed on the roof of the informant's house from Bahori's adjacent house. The appellant, Onkar attacked Rajendra with a *ballam* (spear) unsuccessfully from the roof, whereas the appellant, Virendra shot Rajendra, also from the roof. According to the statements of P.W.1, Ramji Lal and P.W.2, Shakuntala, the appellants pulled out the dried grass from the thatch and set it on fire on the staircase. The aforesaid version of the prosecution is hard to believe.

46. It has come in evidence that after the first incident, the informant, Ramji Lal, bolted the house from inside, and the villagers surrounded it; some of them also opened fire. Some villagers were also on the roof. According to P.W.1 when the appellants ran outside the house he bolted the door from inside and climbed on his roof and raised alarm. Then

appellants, Virendra, Onkar and Bali also climbed on the roof from the adjacent house of Tirkhi. He has also stated that he remained on the roof till the assailants remained there. Some villagers were also on the roof. Before the appellant, Virendra opened fire, the roof was dug by villagers to rescue the children. Kanti, Kunwar Sain, Hari Singh and Ram Avtar, the villagers were also on his roof. According to P.W.1 when the appellant, Virendra shot Rajendra, he himself was standing close to Virendra and said that he told Virendra that *" वीरेंदर भाई ये बदमाश नहीं है, मेरा भतीजा राजेंद्र है इसको गोली मत मार, मेरे इतना कहने पर भी वीरेंदर ने उसको गोली मार दी."* The above statement of P.W.1 shows that he is concealing material facts. There is no earthly reason why he would say to the appellant Virendra *'ये बदमाश नहीं है'*. It shows that some miscreants (*badmaash*) came there whose presence is deliberately concealed by P.W.1 and P.W.2. P.W.1 has also stated that some villagers were saying that '*बदमाश अंदर है*' and the deceased was saying that 'कोई बदमाश अंदर नहीं है'. He has also said that the appellants were on the roof and Virendra was aiming to shoot Rajendra and he himself was standing close to Virendra. It is surprising that appellant, Virendra did not do any harm to informant though he was standing on the roof near them. In this regard the statement of P.W.2, Shakuntala is material wherein she has stated that when the miscreants were on the roof then her husband, Rajendra was saying that *"मुझे इस बार बचा लो मैंने मुल्जिमान को पहचान लिया है. मैं सवेरे भुगत लूँगा"*. If the appellants were involved in the crime, residing in the same village and not covering their face and had come asking for gun then certainly appellants were known to the deceased prior to the incident. So there was no occasion for him to have asked his wife to save him for once and that he had identified the appellants whom he would take care of in the morning. This creates doubt if the appellants were at all involved in the offence.

47. Further, if the intention of the accused was to commit Ragendra's murder, there was no need for them to set fire to the staircase by drawing dried straw from the thatch. It is also relevant to mention that it has come

in evidence that a hole was found dug in a portion of the roof of the informant's house. It is submitted on behalf of appellants that this hole was made by unknown dacoits to commit dacoity. But according to P.W.1, the hole was made by the villagers to rescue the children trapped inside the house. However, there is no evidence that any child was actually taken out through this hole. There is no evidence regarding how many children were inside the house. P.W.1, further stated that the hole in the roof was made by villagers prior to Virendra shooting the deceased. If the informant and the appellants were on the roof at the same time with some villagers and till then the appellant, Virendra had not opened fire killing the deceased then the digging of a hole on roof by the villagers appears quite unnatural and it would have taken some time also. Whereas it would have been much easier for the villagers to unbolt the door of the house from outside and rescue the inmates. There is also no evidence from the prosecution to show that the fire was near the main door of the house, preventing the inmates from opening it from inside. Therefore, the entire story put forward by the prosecution appears to be highly unnatural whereas the version of defence appears quite probable.

48. It is also relevant to mention that the Police remained in the village during the entire night, but there is no evidence to show that they went to the appellants' house to inquire about the incident or apprehend them. Had it come to the knowledge of the Police the very night that the appellants had committed the offence, the Police would certainly have gone to their house to apprehend them. It is further relevant that the appellants were arrested two days later from their own house in the same village by the Investigating Officer. If the appellants had actually committed the offence, they would have absconded and fled houses rather than stay back to be arrested.

49. It is also pertinent to note that, as per the prosecution, the appellants had entered the informant's house armed with a country-made pistols and a *lathi*. The evidence reveals that during the second incident, when appellants were on the roof, the appellant, Onkar allegedly attacked with a *ballam* (spear). The prosecution have not explained how

and from where the *ballam* came into possession of the appellants, as they were not stated to be armed with such a weapon at the time of entering in the informant's house. It is also relevant to note that P.W.1 and P.W.2 have stated that they did not see the village Pradhan, Bahori, during the night, and it is the case of the appellants that they have been falsely implicated in this case at the instance of Bahori, the village Pradhan. It has come in evidence that during the incident a large number of villagers had surrounded the house of the informant and some of them were also on roof and later the Police also reached there and remained in the village the entire night, inquiring about the incident. But, in view of testimony of P.W.1 and P.W.2, it is surprising and quite unnatural that Bahori, the village *Pradhan* did not reach at the place of occurrence until morning and came there after the Police had left the place. It is not the case of the prosecution that Bahori *pradhan* was not present in the village during the fateful night. It shows that P.W.1 and P.W.2 are hiding the presence of Bahori, the village *pradhan*, before the Court which gives weight to the defence case that in connivance with Bahori *pradhan* the appellants were falsely implicated in this case; and, to hide his active role in lodging the concocted FIR, his presence at the place of occurrence during the night was deliberately suppressed.

50. It is submitted on behalf of the prosecution that in a pre-planned manner the appellants came over to the informant's house to commit murder and their relatives, Aidal Singh and Jogendra went to the police station in advance to mislead the Police by giving it the colour of a dacoity by unknown offenders.

51. This submission is hard to believe. It is very unlikely that under a stratagem two persons would go to the police station in advance to inform the police that a dacoity was being committed and take the Police to the spot with them, while others sharing a common intention would commit murder in the manner stated by the prosecution to give it the colour of a dacoity. It this were the case, the appellants would have concealed their identity and committed murder at the first instance itself, and if their attempt was foiled by the inmates of the house, they would

have run away rather than climb on the roof and attempt again in front of the informant and the villagers who had surrounded the house and some of them, including the informant, were standing on the roof also. If the appellants were not hiding their identity then there was no reason for their relatives to go to the police station in advance and bring the police with them because their intention to give it the colour of a dacoity would not have served the purpose as villagers would have told the Police that it was the appellants who had committed the offence.

52. In the present case, as per the prosecution, during the first part of the incident, a coat belonging to appellant, Onkar and a shawl (*chadar*) belonging to appellant, Ajab Singh @ Bali was snatched from them. The informant produced these articles at the police station at the time of lodging the FIR. It is further the case of the prosecution that a country-made pistol and cartridges were inside the pocket of the said coat belonging to appellant, Onkar. Accordingly, the FIR was also registered under Section 25 of the Arms Act. However, during investigation, the Investigating Officer found no evidence to establish that the country-made pistol and the cartridges belonged to appellant, Onkar and, therefore, he submitted a final report (closure report) in respect of the offence under Section 25 Arms Act. This circumstance also weakens the prosecution case regarding the involvement of the appellants, particularly, the surviving appellant Onkar, in the commission of the offence. The role attributed to appellant, Onkar is only that of assaulting with a *ballam*, which is doubtful as it is not the case of prosecution that he was carrying *ballam* when he entered in the house. How the *ballam* came into his hands is not clarified by the prosecution. During investigation, the Investigating Officer has not found any evidence in this regard and submitted a final report under Section 25 Arms Act.

53. Therefore, from the evidence adduced by parties, it appears that some unknown men may have entered the informant's house to commit dacoity. The attempt to commit dacoity was resisted by the inmates of the house. The villagers also reached there and during the scuffle, Rajendra was beaten and shot dead. As the dacoits were not known to

the informant so in order to take advantage of village rivalry and enmity due to the Gram *Pradhan* election, he falsely implicated the appellants in the present case; an opportunistic implication as it seems.

54. In view of the discussion made above, the involvement of appellant/convict in the offence appears to be highly doubtful. The prosecution has failed to prove its case beyond reasonable doubt, and it has not been established that the appellant, Onkar, along with others, entered into the informant's house and committed the murder of Rajendra. Thus, the learned Trial Court failed to appreciate the evidence in the correct perspective and has illegally convicted and sentenced the appellant, Onkar.

55. The finding of Trial Court with regard to delay in lodging the F.I.R. is not well founded either; it is against the evidence on record. The finding of the Trial Court regarding a pre-planned assault by appellants and an FIR by the relatives of appellants to give it the colour of a dacoity is also unfounded and against the evidence on record. The learned trial court failed to appreciate the evidence in right perspective and the finding of guilt was recorded on conjectures. In view of the above, the impugned judgment and order is liable to be set aside and the sole surviving appellant Onkar deserves to be acquitted of the charge for the offence punishable under Section 302 read with 34 IPC.

56. In view of the above, the instant criminal appeal is, accordingly, **allowed.** We set aside the judgment and order dated 02.12.1987 passed by the Trial Court and acquit the surviving appellant, Onkar, of the charge under Section 302 read with 34 IPC.

57. The appellant, **Onkar** is on bail. His bail bond is cancelled and the sureties discharged. The appellant, Onkar need not surrender.

58. Let a copy of this order be sent to the Trial Court concerned along with the Trial Court record for information and necessary compliance.

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

December 1, 2025
Amit/-

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