2025:AHC:216540-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL U/S 413 BNSS No. - 560 of 2025

Mewati Devi

.....Appellant(s)

Versus

State Of U.P. And 8 Others

.....Respondent(s)

Counsel for Appellant(s) : Kiran Yadav, Sanjay Kumar Yadav
Counsel for Respondent(s) : G.A.

RESERVED ON 14.10.2025
DELIVERED ON 03.12.2025

Court No. - 47 **AFR**

HON'BLE RAJEEV MISRA, J.
HON'BLE DR. AJAY KUMAR-II, J.

(DELIVERED BY HON'BLE DR. AJAY KUMAR-II, J.)

1. Heard Mr. Sanjay Kumar Yadav, the learned counsel for appellant and the learned A.G.A. for State-opposite party-1.

2. Challenge in this Criminal Appeal is to the judgment dated 30.08.2025 passed by Sessions Judge, Azamgarh, in Sessions Trial No. 28 of 2012 (State vs. Ram Karan Yadav and others), Sessions Trial No. 491 of 2014 (State vs. Jai Prakash @ Prakash Yadav and others) arising out of Case Crime No. 376 of 2011, under Sections 302/149, 147 IPC, Police Station Raunapar, District Azamgarh and Session Trial No. 29 of 2012 (State vs. Vijai Yadav), arising out of Case Crime No. 515 of 2011, under Section 3/25 Arms Act, Police Station- Raunapar, District Azamgarh, whereby the accused opposite parties 2 to 9 have been acquitted by Court below of the charges framed against them.

3. Brief facts of the case are that the first informant-appellant moved a Written Report dated 02.08.2011 by stating that her husband had gone to Chandpatti to sell milk in the morning. On 02.08.2011, at around 12:00 noon, Subhash, Ramkaran, Rambadan and Heera were sitting in ambush 1 km west from Vishen Ka Pura Chowk with a four wheeler and one motor cycle. There was a land dispute with Subhash. They had also threatened her husband. Her husband's vehicle was pushed and he was made to fall. He got up and ran away. By then, aforesaid persons chased and caught her husband

and broke his legs and hands by running the car over him, due to which, he died on the spot. She was taken by her son Jaikesh on a bicycle and after getting medicines when they reached the spot, they identified all the aforesaid persons. Meanwhile, one Niranjan Yadav also came on the spot. All the three persons have seen the incident.

4. On the aforementioned Written Report (Tehrir) of appellant, FIR against the named accused persons as Case Crime No. 376 of 2011, under section 302/34 IPC at 4:00 pm on 02.08.2011 at Police Station Raunapar, District Azamgarh was registered.

5. After completion of investigation, charge-sheet was submitted against opposite parties 2 to 9 under Sections 302/34, 147 IPC. Another charge-sheet was also submitted against opposite party 5 Vijai Yadav, under Section 3/25 Arms Act. Thereafter cognizance was taken upon same and the cases were committed to the Court of Sessions. After hearing both the parties, the charges were framed against opposite parties 2 to 9, under Sections 302/149, 147 IPC and charge under Section 3/25 Arms Act was also separately framed against opposite party 5 Vijai Yadav.

6. In order to prove it's case, prosecution adduced eight prosecution witnesses, namely, P.W.-1 Smt. Mewati Yadav (the informant/wife of deceased), P.W.-2 Jaikesh (son of the deceased), P.W.-3 Dr. Santosh Kumar (Autopsy Surgeon), P.W.-4 Parmarath Yadav (witness of panchnama), P.W.-5 Ramkrishna Dwivedi (Ist Investigating Officer), P.W.-6 Rampreet Yadav (witness of prosecution sanction), P.W.-7 Harigovind Singh (Scribe of FIR) and P.W.-8 Tejbahadur Singh (the then In-charge Inspector and 2nd Investigating Officer). The witnesses adduced by the prosecution have given their respective oral evidence and also proved 27 prosecution papers, namely, Written Report (Tehrir) as Ex. Ka-1, Post Mortem Report as Ex. Ka-2, Inquest Report (Panchayatnama) as Ex. Ka-3, Police Form-13 as Ex. Ka-4, Letter to C.M.O. as Ex. Ka-5, Photonash as Ex. Ka-6, letter to Inspector as Ex. Ka-7, Site Plan as Ex. Ka-8, Recovery memo of blood stained earth and plain earth as Ex. Ka-9, Recovery memo of blood stained grass as Ex. Ka-10, Recovery memo of spectacles of the deceased as Ex. Ka-11, Recovery memo of one pair slippers of deceased as Ex. Ka-12, Recovery memo of motorcycle as Ex. Ka-13, Copy of Report No.9 regarding arrest of accused Rambadan Yadav as Ex. Ka-14, Copy of Report No.14 regarding arrest of accused Heera Yadav as Ex. Ka-15,

Recovery memo of motorcycle and country made pistol on the spot as Ex. Ka-16, Site Plan of recovery memo of motorcycle on the pointing out of accused Vijai Yadav as Ex. Ka-17, Recovery memo of Bolero Car as Ex. Ka-18, Charge-sheet against accused Ramkaran Yadav, Rambadan Yadav, Vijai Yadav, Lal Bahadur Yadav and Heera Yadav as Ex. Ka-19, Sanction for prosecution as Ex. Ka-20, Check FIR (Case Crime No. 515/2011) as Ex. Ka-21, G.D. as Ex. Ka-22, Charge-sheet against accused Vijai Yadav as Ex. Ka-23, Charge-sheet against accused Jai Prakash @ Prakash Yadav, Hariprakash Yadav, Ramesh Yadav and Subhash Yadav as Ex. Ka-24, Check FIR (Case Crime No. 376/2011) as Ex. Ka-25, G.D. Entry as Ex. Ka-26 and report of FSL (Forensic Science Laboratory) as Ex. Ka-27.

7. In statement recorded under section 313 Cr.P.C., the accused-opposite parties 2 to 9 denied the prosecution version and the commission of alleged incident. They stated that P.W.-1 and P.W.2 have given false evidence against them. It has also been stated that they are innocent and have been falsely implicated due to enmity.

8. The defence got examined Sant Ram Yadav as D.W.-1, Lekhpal Jagarnath Singh as D.W.-2 and Dr. Sanket as D.W.-3 to prove the innocence of the accused. The defence has proved documents, namely, papers regarding Farmer Accidental Insurance Scheme as Ex. Kha-1, Report of Lekhpal regarding benefit of Insurance Scheme as Ex. Kha-2, Information letter regarding The Oriental Insurance Company Limited as Ex. Kha-3, Registration Form of Farmer Accidental Insurance Scheme as Ex. Kha-4, Death Certificate of the Insured person issued by the Lekhpal as Ex. Kha-5, Witness Certificate as Ex. Kha-6, Death Certificate as Ex. Kha-7, Report of Sub Divisional Magistrate dated 16.08.2011 as Ex. Kha-8, Medical Form of Subhash Yadav as Ex. Kha-9, Paper Nos. 191 Kha/1 and 191 Kha/3 as Ex. Kha-10 and Paper Nos. 192 Kha/2 and 192 Kha/4 as Ex. Kha-11.

9. By the impugned judgment dated 30.08.2025, Court below has acquitted the accused of the charges under Sections 302/149, 147 IPC and opposite party 5 Vijai Yadav, under Section 3/25 Arms Act.

10. Thus, feeling aggrieved by the impugned judgment passed by Court below, the present appeal has been preferred by the informant-appellant.

11. Learned counsel for appellant submits that the accused

committed murder of appellant's husband at 12:00 noon on 02.08.2011 in her presence. The incident was seen not only by the appellant but by her son Jaikesh and one Niranjan Yadav also. Informant and her son Jaikesh are the eye witnesses of aforesaid murder, but, Court below has wrongly disbelieved their trustworthy testimonies and has thereby committed gross illegality. The eye-witness account as stated by informant and her son Jaikesh is fully supported by medical evidence and enmity due to land dispute between the parties was the motive behind this murder. Court below has erred law in acquitting the accused persons. The impugned judgment of acquittal is against the weight of the evidence on record and therefore, same is liable to be set-aside by this Court.

12. Learned A.G.A. for State-opposite party-1 has however vehemently opposed the present appeal. According to the learned A.G.A., Court below has correctly appreciated the testimonies of the eye witnesses and therefore, rightly come to the conclusion that P.W.-1 and P.W.-2 are not the eye witnesses of the alleged incident. Court below has also rightly found that the injuries found on the body of the deceased are not such injuries, which could have been caused on account of a four wheeler running over the body of deceased several times. As both P.W.-1 and P.W.2 have not been found to be eye witnesses of the incident, therefore, Court below has rightly acquitted the accused. Lastly, it has been argued that no ground to interfere in the impugned judgment and order is made out, therefore, learned A.G.A. urged for the dismissal of present appeal.

13. We have heard the learned counsel for appellant as well as the learned A.G.A. for State-opposite party-1 and perused the record.

14. The trial Court while acquitting the accused, has recorded the following findings:

> **1. Registration of the First Information Report at the concerned regarding Police Station on the alleged date and time, was found to be suspicious raising doubts regarding credibility of the prosecution case.**
>
> **2. P.W.-1 Mewati Devi and P.W.-2 Jaikesh were found to be chance witnesses.**
>
> **3. The presence of P.W.-1 and P.W.2 on the spot at the time of incident, was found to be doubtful.**
>
> **4. P.W.-1 and P.W.-2 have made highly contradictory statements in their evidence regarding several material details of incident.**

> **5. The evidence of P.W.-1 and P.W.-2 does not in any way corroborate the ante mortem injuries found on the body of the deceased and their evidence in this regard, is completely contradictory to the medical evidence available on record. In short, the medical evidence does not corroborate the ocular version of the occurrence.**
>
> **6. As per evidence of P.W.-1 and P.W.-2, total nine persons were seated in a four wheeler and the deceased was driven on and off by the offending vehicle 3-4 times with intention to kill but not a single crush injury was found on the body of deceased.**
>
> **7. After appreciating the evidence of P.W.-1 and P.W.-2, they were found not to be present on the spot at the time of incident and therefore, both of them did not see the incident happening. The evidence of P.W.-1 and P.W.-2 was thus found to be not trustworthy.**

15. After recording the above findings, Court below concluded that since prosecution has failed to prove the charges against the accused persons beyond reasonable doubt by means of the impugned judgment, acquitted the accused of the charges framed against them.

16. While considering the scope of interference in an appeal against acquittal, it has been held by the Supreme Court that if two views are possible, one supporting acquittal and other indicating conviction, the High Court should not, in such a situation, reverse the order of acquittal recorded by Court below.

17. Reference in this regard be made to the judgment of Supreme Court **in Bharwad Jakshibhai Nagjibahi and others vs. State of Gujarat, (1995) 5 SCC 602**, which is most appropriately applicable to the facts of the present case. Paragraph-9 of the report is relevant for the controversy in hand and is accordingly, reproduced herein-below:-

> **" *Law is now well settled that though the Cr.P.C. does not make any distinction between the powers of the Appellate Court while dealing with an order of conviction or of acquittal, normally the Appellate Court does not disturb an order of acquittal in a case where two views of the evidence are reasonably possible. But the above principle is not applicable where the approach of the trial Judge in dealing with evidence is manifestly erroneous and the conclusions drawn are wholly unreasonably and perverse. In the instant case, we find that the High Court was fully conscious and did not transgress the bounds, of its appellate powers while dealing and reversing the order of acquittal."***

18. While dealing with an appeal against acquittal the Apex Court in **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC OnLine SC 561,** has observed as under:

> ***"39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-***
>
> ***(a) That the judgment of acquittal suffers from patent perversity;***
>
> ***(b) That the same is based on a misreading/omission to consider material evidence on record;***
>
> ***(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.***
>
> ***40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."***

19. It has also been observed in above-mentioned judgment that an A ppellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent C ourt of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by Court below. It has further been observed that the A ppellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion, which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

20. The Supreme Court in **Gamini Bala Koteshwara Rao vs. State of Andra Pradesh, (2009) 10 SCC 636**, has observed that interference in an appeal against acquittal should be rare and in exceptional circumstance. It was further held that it is open to the High Court to reappraise the evidence and conclusion arrived at by Court below. However, it is limited to those cases where the judgment of Court below was perverse. This Court went to declare that the word "perverse", as understood in law, has been understood to mean, "against the weight of evidence". If there are two views and Court below has taken one of the views merely because another view in plausible, the Appellant Court will not be justified in interfering with the verdict of acquittal.

21. Having heard the learned counsel for appellant, the learned A.G.A. for State-opposite party-1 upon evaluation of the impugned judgment including the reasons recorded therein, in the light of deposition of the injured witness i.e. appellant and keeping in mind the limitation with a Court of appeal dealing with a judgment of acquittal, this Court finds that following four questions arise for consideration in present appeal:-

i. Whether the inference drawn by Court below that registration of FIR on the alleged date and time is suspicious, which raises doubt on credibility of the prosecution case, is legally sustainable.

ii. Whether P.W.1 Mewati Devi and P.W.2 Jaikesh are chance witnesses.

iii. Whether the presence of P.W.1 Mewati Devi and P.W.-2 Jaikesh on the spot at the time of the incident is doubtful and their testimonies are not trustworthy.

iv. Whether reasons recorded by Court below in support of it's conclusion that prosecution has failed to establish the guilt of accused beyond reasonable doubt, are cogent and valid reasons or illusionary and against the weight of evidence on record, therefore, illegal and perverse.

Question No. i. Whether the inference drawn by Court below that registration of FIR on the alleged date and time is suspicious, which raises doubt on credibility of the prosecution case, is legally sustainable?.

22. As per prosecution version, the alleged incident took place on 02.08.2011 at around 12:00 noon, the FIR of which was registered at 4:00 p.m. on the same day at Police Station Raunapar, District Azamgarh, on a Written Report (Tehrir) moved by Mewati Devi, the widow of deceased. The factum of the registration of the FIR was also mentioned in G.D. No. 29, time 16:00 hours on 02.08.2011. As per persecution version, the informant-appellant Mewati Devi and Jaikesh are the eye witnesses of the alleged incident. The informant-appellant Mewati Devi in her deposition as P.W.-1 has stated that she got scribed the Written Report (Tehrir) (Ex. Ka-1) out side the concerned police station from some person. In her cross-examination, she stated that said Written Report (Tehrir) was written on the spot where her husband died. She further stated that while writing the Written Report (Tehrir), Police Official from the Police Station Raunapar also came on the spot including S.H.O. (Bade Daroga) and some Constables and her application was taken by S.H.O. concerned on the spot. Aforementioned disclosure in her cross-examination reveals that she had not gone to the police station

for registration of the FIR, someone on the spot wrote down the Written Report (Tehrir) upon her dictation and same was delivered to the Police Official present on the spot.

23. As per the testimony of P.W.-5 Investigating Officer, Ramkrishna Dwivedi, the said FIR was registered in his absence and he got the copy of the Check FIR, etc. on the spot. Whereas the informant-appellant herself is stating that she handed over her written application to S.H.O. concerned on the spot. There is, thus material contradiction regarding timing of registration of the FIR in evidence of P.W.-1 informant-appellant and P.W.-5 Investigating Officer.

24. The factum of registration of the FIR was also mentioned in G.D. No. 29, time 16:00 hours dated 02.08.2011 (Ex. Ka-26) wherein, it has been mentioned that Mewati Devi came with one Niranjan Yadav to the Police Station and gave written application, whereas the informant-appellant in her cross-examination has stated that the said application was handed over to the concerned S.H.O. on the spot.

25. The said Check FIR was received in the Court of concerned Chief Judicial Magistrate on 06.08.2011 and surprisingly, the said Check FIR was also seen by the concerned Circle Officer only on 04.08.2011, which is evident from the cross-examination of the P.W.-5, Investigating Officer as is mentioned at page-36 of the impugned judgment. This also shows that said Check FIR was not only seen/forwarded by the concerned Circle Officer with the delay of two days, but same has been sent to the concerned C.J.M. with delay of four days. Resultantly, the time and date on which the said FIR is stated to be registered, becomes highly suspicious.

26. After carefully considering aforesaid aspects of present case as recorded by Court below in para-32 of impugned judgment, we are of the considered opinion that the finding recorded by Court below with regard to registration of the FIR at the concerned police station at the alleged time and date, being suspicious raises doubt on the credibility of prosecution case, is legally sustainable. Therefore, question no.i is answered in the affirmative.

Question No. ii. Whether P.W.1 Mewati Devi and P.W.2 Jaikesh are the chance witnesses?.

27. As per narration in the FIR, the alleged incident was seen by the wife Mewati Devi and son Jaikesh of the deceased, when they were returning back after getting medicines for Mewati Devi. Therefore,

both of them are stated to be eye witnesses of the alleged incident. However, in the Written Report (Tehrir) (Ex. Ka-1) only four persons, namely, Subhash, Ramkaran, Rambadan and Heera were named by P.W.-1 Mewati Devi and names of other accused were disclosed during the course of investigation.

28. P.W.-1 Mewati Devi in her examination-in-chief, has stated that she and her son Jaikesh went to the Doctor for taking medicines. Her son Jaikesh took her on bicycle for getting medicines. When they were returning at around 12:00 noon on 02.08.2011 accused Subhash Yadav, Ramkaran Yadav, Rambadan Yadav, Vijai Yadav, Heera Yadav, Hari Prakash, Jai Prakash, Ramesh Lal Bahadur and three unknown persons who had covered their faces with clothes, were riding on a four wheeler whereas accused Vijai Yadav was driving a motor-cycle. Her husband's vehicle was pushed and t hereafter, he got up and ran away. By then, aforesaid accused chased and caught her husband. They thereafter got him back to the spot and thereafter, a four wheeler was run over her husband 3-4 times and murdered her husband on the spot.

29. P.W.-2 Jaikesh (son of the deceased) also deposed on similar lines as his mother Mewati Devi. However, this witness Jaikesh has stated that accused Subhash Yadav, Ramkaran Yadav, Rambadan Yadav, Heera, Vijai, Jai Prakash, Hari Prakash, Ramesh and Lal Bahadur were on the four wheeler. This witness has also stated that when his father was being mercilessly beaten by the accused persons, he and her mother shouted, whereupon accused Vijai Yadav placed country made pistol on the head of his mother because of which, they stopped shouting. In the meanwhile, Hari Prakash, Jai Prakash, Lal Bahadur, Ramesh, Heera, Ramkaran, Rambadan, who had caught hold of his father asked Subhash to drive the Bolero v ehicle over and above his father.

30. The incident took place 1 km west from Vishen Ka Puura Chowk on a road. Smt. Mewati Devi P.W.-1, (wife of the deceased) and Jaikesh P.W.-2 (son of the deceased) are chance witnesses interested in conviction of accused because of their inimical dispositions towards appellant. Let us examine their evidence with caution and close scrutiny in order to ascertain whether their presence on the spot is properly explained and whether they fall under the category of wholly reliable witnesses in order to base conviction of accused on their testimonies. At the same time it will

have to be kept in mind that merely because the eye witnesses are the family members of the deceased, their evidence cannot per se be discarded. Relationship is not a factor to affect credibility of a witness. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. At the same time it needs to be kept in mind while appreciating evidence of such witness that when feelings run high and there is personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge, along with the guilty. In the case of **Balraje @ Trimbak Vs. State of Maharashtra, reported in (2010) 6 SCC 673**, the Apex Court has held that when the eye witnesses are stated to be interested and inimically deposed against the accused, it would not be proper to conclude that they would shield the real culprit and rope in an innocent person. If after careful analysis and scrutiny of their evidence, the reason given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

31. A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be at the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times. This again is an aspect which is to be looked into in a given case by the court. The evidence of a chance witness therefore, requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded **(vide Shakarlal vs. State of Rajasthan [(2004) 10 SCC 632: 2005 SCC (Cri) 579]).**

32. The evidence of chance witness can be accepted provided statement of such witness adequately explains the presence of such witness and such evidence stands the test of caution and close scrutiny.

33. Admittedly, the place of alleged incident is neither the residence of the deceased nor his work place, rather it is a public road. Admittedly, in the early morning, the deceased left alone for selling milk in Chandpatti. It is the case of the prosecution that P.W.-1 Mewati Devi on the fateful day, at about 10:00 a.m. suddenly, fell ill

and therefore, went to Chandpatti market on a bicycle with her minor son Jaikesh. As per prosecution story, Mewati Devi P.W.-1 became ill only after her husband had left home for selling milk. In this background, Mewati Devi P.W.-1 first visited the Doctor and after getting medicines in due course, started her return journey and during her return journey, she arrived at the spot, where she alongwith her minor son Jaikesh witnessed the incident. In this prosecution story, Mewati Devi P.W.-1 and Jaikesh P.W.-2 both were aware of the fact that the deceased was also there in Chandpatti market for selling milk. Therefore, it is very surprising that instead of contacting deceased, they had visited Doctor at their own and took medicines. It is also an admitted fact that said Chandpatti market is about 5 kms from their home. In this background, it is abundantly clear that both Mewati Devi P.W.-1 and Jaikesh P.W.-2 are chance witnesses, who are alleged to be present on the alleged spot. Therefore, in our opinion, conclusion of Court below regarding these witnesses to be chances witnesses, is a right conclusion. Therefore, question no.ii is answered in the affirmative.

Question No. iii. Whether the presence of P.W.1 Mewati Devi and P.W.-2 Jaikesh on the spot at the time of the incident is doubtful and their testimonies are not trustworthy?.

34. Law regarding appreciation of evidence of chance witnesses is well settled. In the present case, both Mewati Devi P.W.-1 and Jaikesh P.W.-2 are wife and son of the deceased respectively. Therefore, these witnesses are family members of the deceased. In this background, their evidence needs to be carefully analyzed specifically with the objective whether these witnesses were actually present on the date, time and place of the incident. If the answer to this question is in the affirmative, only then it can be evaluated that their evidence is trustworthy or not.

35. Mewati Devi P.W.-1 and Jaikesh P.W.-2 both have stated that they were returning on bicycle after getting medical treatment from Chandpatti market and they had witnessed the incident while returning home from said Chandpatti market. Mewati Devi P.W.-1 in her cross-examination has stated that she left home for Chandpatti market at 10:00 a.m. and met the Doctor at about 11:00 a.m., Doctor took approximately two hours to examine her and thereafter she was administered glucose.

36. Similarly, Jaikesh, P.W.-2 in his cross-examination has stated that

he took her mother for medical treatment at 10:00 a.m. He further stated that the distance from Chandpatti market to his home is about 5 km. He arrived in the Hospital within 40-45 minutes and Doctor examined his mother for about 20-25 minutes.

37. Mewati Devi P.W.-1 has specifically stated that she was administered glucose whereas her son Jaikesh P.W.-2 has stated that Doctor did not administer glucose to her mother and an injection was administered to her. If their statements are presumed to be true then in that eventuality, not less than 40-45 minutes were taken by these witnesses from start of their journey upto their arrival at hospital. Mewati Devi P.W.-1 has stated that Doctor took approximately 2 hours to examine her and his son Jaikesh has stated that Doctor took 20-25 minutes. Therefore, as per statement of P.W.-1, it was already 12:00 noon in hospital, whereas P.W.2 Jaikesh, it was already 11:30 a.m. at the hospital, even if it is presumed that these witnesses started their return journey at 11:30 a.m., in that eventuality too, possibility of presence of both P.W.-1 Mewati Devi and Jaikesh P.W.-2 at spot, (which is approximately 4 km from the hospital) at 12:00 noon becomes completely doubtful.

38. We, are therefore, of the opinion that conclusion drawn by Court below regarding the presence of P.W.-1 and P.W.-2 being doubtful at the time of incident, is a right conclusion drawn from due appreciation of evidence of P.W.-1 and P.W.-2 at page 38, 39 and 40 of the impugned judgment.

39. Mewati Devi P.W.-1 in her evidence has stated that at the time of incident, a four wheeler was being driven by accused Lal Bahadur, whereas her son Jaikesh P.W.-2 has stated that it was Subhash Yadav, who was driving the said four wheeler. Therefore, there is material contradiction in the testimony of P.W.-1 and P.W.-2 regarding the person who was actually driving the said vehicle, which is alleged to have caused the alleged incident. The whole prosecution story is that the deceased was run over 3-4 times by the four wheeler. In this background, it was very important for both of these witnesses to clearly specify who was actually driving the vehicle at the time of incident. The said material contradiction cannot be ignored.

40. P.W.-1 in her deposition has also stated that nine accused were sitting in the Bolero vehicle at the time of incident. However, Jaikesh P.W.-2 has stated in his deposition that Hariprakash, Jaiprakash, Lal

Bahadur, Subhash, Ramesh, Hira, Ramkaran and Rambadan laid the deceased on the road and asked Subhash Yadav to run the vehicle over the deceased and Subhash Yadav drove the vehicle over the deceased 3-4 times moving it back and forth. Thus, there is material contradiction in the evidence of P.W.-1 and P.W.-2 regarding manner in which the said incident had occurred. If both the witnesses were actually present at the spot, certainly then there would not have been such material contradictions in their testimonies regarding the manner in which the incident had occurred and name of accused, who was driving the offending vehicle.

41. P.W.-1 Smt. Mewati Devi and P.W.-2 Jaikesh both have stated that road on which the incident is alleged to have occurred is going from North to South whereas the Investigating Officer, P.W.-5 has stated that road of the incident, goes from East to West. Court below has specifically recorded that in site plan (Exhibit A-8), the road of the incident is shown from the East to West. If these prosecution witnesses were actually present at the spot, they would certainly have known in which direction the road is, on which the incident is alleged to have occurred.

42. As per depositions of P.W.1 and P.W.2, the deceased's body was lying in the middle of road. P.W.1 has not stated that the deceased was lifted by anyone. However, as per the inquest report Exhibit A-3, the deceased's body was found at the location "X" located on the southern side of the road and not in the middle of road which again raises doubts on the presence of these witnesses on the spot, at the time of occurrence.

43. P.W.-2 Jaikesh in his examination-in-chief has stated that accused stuffed his father's mouth with mud and grass and in this background when these two witnesses were present at the spot, then mud and grass must have been present in the deceased's mouth even after his death. However, post mortem report does not mention any grass or mud in the deceased's mouth. The Autopsy Surgeon in his cross-examination has stated that during the course of post mortem no pieces of grass were found in the mouth of deceased.

44. Therefore, the statements of Smt. Mewati Devi, P.W.1 and Jaikesh P.W.2 are highly contradictory and the presence of these witnesses at the time of incident, is also highly doubtful.

45. As per prosecution story, the deceased was run over by Bolero

Vehicle 3-4 times, although there is material contradiction in the deposition of P.W.1 and P.W.2 regarding the manner of incident. However, both these witnesses have consistently, stated that deceased was run over 3-4 times by Bolero Vehicle. As per prosecution story and depositions of P.W.1 and P.W.2 both hands and legs of the deceased were broken. Therefore, it is very important to find out whether there is any crush injury on the body of the deceased or not and whether hands and legs of accused were also broken or not.

46. During the post-mortem examination, P.W.-3 observed the following ante mortem injuries on the body of the deceased Singhasan Yadav:

1. An abrasion measuring 0.5 cm x 0.4 cm on the left side of the face, below the left eye.
2. An abrasion measuring 12 cm x 0.4 cm on the back of the left forearm.
3. Multiple abraded contusions measuring 65 cm x 20 cm on the back of the arm and forearm.
4. Lacerated wound measuring 3 cm x 1 cm x muscle-deep on the front of the right arm.
5. Multiple abraded contusions measuring 72 cm x 32 cm across the abdomen and down the chest.
6. Multiple abraded contusions measuring 50 cm x 20 cm on the right side of the back, from the shoulder down to the gluteal region.
7. Multiple abraded contusions measuring 60 cm x 15 cm down to the waist and left lower limb.
8. An abrasion 0.2 cm x 2 cm on the right knee.

47. On internal examination of the deceased's body, P.W.-3 stated that all the chest bones (ribs), sternum, and coccyx were broken. The right and left lungs were lacerated. There was approximately one litre of blood in the chest cavity. The membrane covering the heart was torn. The heart was empty and weighed 1.50 grams. The stomach membrane was torn. There was approximately one litre of blood in the stomach. The liver was ruptured. The spleen was ruptured.

48. Thus, it is apparently, clear that none of the hands and legs of the deceased were found broken. Moreover, there is not a single crush injury on the body of the deceased. When a Bolero vehicle is run over 3-4 times over a normal human being that too if 8-9 persons are sitting in such Borelo vehicle, then in that eventuality, there ought to

be some crush injury on the body of a normal human being. It is true that all the ribs of the deceased were broken and although lungs were also lacerated, however, only multiple abrated contusions were found over his chest and his back but no crush injury and/or no broken bone of hands and legs of the body of the deceased was also found. Therefore, version of the prosecution, i.e. the deceased was run over by Bolero vehicle several times over his body and the legs and hands were broken, does not find support from his post mortem report. In short the ocular version of the occurrence is not corroborated by the medical evidence on the record. This also raises doubt on the veracity of the version of incident put forward by P.W.1 and P.W.2 again raising serious doubt regarding their presence on the spot at the time of the incident. As a cumulative result of above findings, Court below has rightly come to the conclusion that P.W.-1 and P.W.-2 were not present at the time of incident and their testimonies are not trustworthy. Therefore, question no.iii is answered in the affirmative.

Question No. iv. Whether reasons recorded by Court below in support of it's conclusion that prosecution has failed to establish the guilt of accused beyond reasonable doubt, are cogent and valid reasons or illusionary and against the weight of evidence on record, therefore, illegal and perverse.

49. Court below finally came to the conclusion that P.W.1 and P.W.-2 are not eye witnesses of the incident. They were not present at the scene of incident or at the time of incident. They did not see the incident. Thus, the statements made by P.W.1 and P.W.2 in their respective deposition that on the day of incident, P.W.1 and P.W.2 had gone to Chandpatti market for medical treatment and after getting the medical treatment, when they were returning home, on the way at 12 noon they saw the incident taking place that nine accused persons, sitting in a four wheeler Bolero vehicle, with intention to kill the deceased, laid the deceased on the road and killed him, is not reliable in any way. The evidence of P.W.1 and P.W.2 does not support the prosecution. The prosecution story is not found to be beyond any reasonable doubt by their evidence. Therefore, the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubt.

50. So far as the veracity of above reasons recorded by Court below to conclude that the guilt of accused does not stand established beyond reasonable doubt also cannot be said to be illegal or

perverse. The findings/reasons returned by Court below are based upon due evaluation of allegations made in the complaint in the light of evidence on record. Court below has assigned specific reasons for coming to the conclusion that no offence under any of charging Section is made out against accused. Upon examination by us of the said findings in the light of depositions of the prosecution witnesses as noted in the impugned judgment, we could not come across any such fact on the basis of which, any of the findings qua the charging sections recorded by Court below can be said to be illegal, perverse or erroneous. As such, the conclusion drawn by Court below that no criminality as alleged to have been committed by the accused-opposite parties 2 to 9 is borne out from the record is neither illegal nor perverse. Therefore, question no.iv is answered in the affirmative.

51. In view of the discussion made above, we do not find any perversity in the judgment so as to interfere with the findings returned by Court below. The conclusion drawn by Court below is the outcome of due appreciation of evidence on record. No misreading or omission could be pointed out by the learned counsel for appellant. Being the last Court of fact, we have ourselves evaluated the evidence on record to find out whether there is any perversity in the impugned judgment or Court below has misconstrued any material evidence. However, we could not gather any such fact from the record so as to conclude that the conclusion drawn by Court below is against the weight of evidence on record. It thus, cannot be said that only the view consistent with the guilt of accused is possible as per the evidence on record. We, therefore, do not find any good ground to entertain the present appeal filed under Section 413 BNSS, which consequently fails and is, accordingly **dismissed.**

December 3, 2025
Monika

(Dr. Ajay Kumar-II,J.) (Rajeev Misra,J.)

Digitally signed by :-
MONIKA KESARWANI
High Court of Judicature at Allahabad