2026:AHC:160684-DB

# HIGH COURT OF JUDICATURE AT ALLAHABAD

## CRIMINAL APPEAL No. - 1711 of 1987

**A.F.R.**

Judgment reserved on 21.07.2026

Judgment delivered on 03.08.2026

Hari Ram and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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| Counsel for Appellant(s) | : | Dileep Kumar |
| Counsel for Respondent(s) | : | A.G.A. |

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**Court No. - 42**

**HON'BLE ATUL SREEDHARAN, J.**
**HON'BLE JAI KRISHNA UPADHYAY, J.**

**(Per : Jai Krishna Upadhyay, J.)**

**1.** This criminal appeal has been preferred by accused appellants against the judgment and order dated 29.6.1987 passed by the Special Judge / Additional Sessions Judge, Farrukhabad in Session Trial No. 77 of 1984 (State vs. Hariram and others) convicting and sentencing the appellants for the offences punishable under Section 302 read with Section 34 IPC for life imprisonment and for the offence under Section 307/34 IPC for four years rigorous imprisonment.

**2.** The brief facts of the case, as unfolded by informant Triloki Nath Verma in the First Information Report (in short 'F.I.R.'), are that on 17.5.1983 at around 9.15 a.m. he along with father Basant Lal, brother Raghuvir Prasad, and Badri Prasad left his house situated at Mohalla Nitganja for his goldsmith shop at Seth Gali. When they reached near the house of Ram Kishan Vaidya, in the meantime, his neighbors Hari Ram, Shri Kant, Rama Kant, and Uma Kant came and surrounded them and started hurling abuses. Out of them, Shri Kant and Uma Kant had country-made pistols whereas Rama Kant and Hari Ram had knives. These people said that "you people pretend to be very rich and you spoil whatever deal we make" and saying this Shri Kant and Uma Kant fired from their country-made pistols and Rama Kant and Hari Ram attacked with knives. Father and brother of the informant sustained injuries. When the informant lunged to save his father,

Rama Kant attacked him with a knife with intention to kill. He stepped back to save himself and the knife instead of hitting his body went on tearing his shirt, and this is how he escaped. He also got an injury on his right hand during the scuffle. This incident has also been witnessed by Kanhaiya Lal, Chandra Kishor and Om Prakash, etc., who were present at the spot. Upon all of them screaming, all four assailants accused fled towards their house along with their weapons.

**3.** On the basis of written report, *chik* F.I.R. was lodged on the same day at 9.30 a.m. for the offence under Section 307 IPC and G.D. report was prepared. Investigation in the matter started. The Investigating Officer visited the place of occurrence, prepared site plan, inquest report and other papers. During investigation, injured Basant Lal and Raghuvir Prasad died and offence under Section 302 IPC was added to the matter. After completing necessary formalities, the Investigating Officer submitted charge sheet in the matter.

**4.** Dr. H.P. Srivastava conducted the postmortem of both the deceased on the same date at 4.55 p.m. and 5.40 p.m. respectively. He found two penetrating wounds on the body of the deceased Basant Lal and two stab wounds on the body of deceased Raghuvir Prasad. The cause of the death was shock and hemorrhage as a result of ante mortem injuries.

**5.** The accused appeared and charges under Sections 302/34 IPC and 307/34 IPC were framed against them. They denied the charges, pleading not guilty and claimed their trial.

**6.** Trial proceeded and in order to prove its case on behalf of the prosecution eight witnesses, namely, informant – Triloki Nath (P.W.-1), Chandra Kishore (P.W.-2), Dr. Arjun Kumar (P.W.-3), Ram Avtar Yadav (P.W-4), Dr. H.P. Srivastava (P.W.-5) Amar Singh (P.W.-6), Jagpal Singh Gautam (PW-7) and Shivdas Pandey (P.W.-8) were examined.

**7.** In documentary evidence, documents / papers exhibited as Ext.Ka.-1 to Ext. ka-41 respectively have been proved.

**8. P.W.-1** - Triloki Nath is the son of deceased Basant Lal. He is engaged in the profession of goldsmith. He stated that the accused Shri Kant, Rama Kant, and Uma Kant are real brothers and are the sons of accused Hari Ram. After his and Hari Ram's house, there is a small lane and after that is Ram Kishan Vaidya's shop. His father was also engaged in the same work. Their shops are in Seth Gali, Farrukhabad. He further stated that on 17-5-1983 at around 9.00, 9-1/4 a.m. he alongwith his father Basant Lal, brother Raghuvir Prasad, and Badri Prasad were going towards their goldsmith shop and when

they reached near Ram Kishan Vaidya's shop, Shri Kant, Rama Kant, Uma Kant and Hari Ram came and surrounded them and started hurling abuses and said that they act like very wealthy people and whatever deal they make, they spoil it. The accused Shri Kant and Rama Kant had country-made pistols, Uma Kant and Hari Ram had knives. The accused Shri Kant and Rama Kant fired from the country-made pistols and Hari Ram and Uma Kant attacked his brother Raghuvir Prasad and father Basant Lal with knives, due to which they sustained injuries. No one was injured by the fire of the country-made pistol. When he lunged to save them, Rama Kant attacked him, he stepped back a little and his shirt was torn by the knife and in the scuffle, he sustained an injury above his left eye and on right wrist and hand. He further stated that he dictated the report of the incident to Vijay Kumar, read it, signed it and gave it at the police station and thereafter taking his father and brother in an injured condition, he went to Lijiganj Hospital, where his brother and father were declared to be dead. The medical examination of his injuries was done. He also states that the accused also do the work of a goldsmith. Due to this business, they had enmity with the accused. Besides this, there was no other enmity with the accused. He further states that the incident happened at the distance of 2-4 steps from the intersection on the road. The place where the incident occurred has shops and houses on both sides and a lane goes between them. The place where both the deceased fell i.e. Ram Kishan Vaidya's shop is at 4-6 steps from there. There were people doing their respective work nearby and people walking on the road. None of them asked how the incident happened. When the incident happened, he shouted. He further states that his house is about 40 steps from the scene of crime. The people of the house came 2-4-6 minutes after the incident. He did not carry Basant and Raghuvir home but asked to take them to the hospital and lodge a report. The hospital is about 2 kilometers away from the spot. First, he took a tempo and went to Kotwali, where he reached in 5-7 minutes. There they submitted the report which he had taken written from home. He states that his statement was not recorded at the police station. He further states that on reaching the hospital, the doctor declared them as dead. His statement was recorded at 10.00, 10-1/2 a.m. in the hospital. He did not show his injuries to the doctor.

In his cross-examination, he has stated that four accused had surrounded them and a total of two fires happened from a distance of 4-6-7-8 steps which did not hit anyone. He also states that he got some injuries in the scuffle. The injury on the eyebrow came from the weight of the knife. When the injury came on the eyebrow, the knife was caught from the blade side and a scratch had come on the eye brow. The injury on the hand did not come from the hilt of the knife but from the blade. He also states that it is wrong to say that he was not present at the time of the incident. He further

states that when they were going to the shop, the key was in his father's hand and there was no item of the shop. He did not take the key to the police station. He also stated that gambling used to happen in the lane adjacent to Vaidya ji's shop.

**9. P.W.-2 –** Chandra Kishor claims himself to be an eye witness. He states that he had gone to visit the temple built at the Mahavir Ganj intersection. At 9.00 or 9:15 a.m. heard a noise and saw that Shri Kant and Uma Kant fired with a country made pistol at Basant Lal, Raghuveer Prasad, Triloki Nath, and Badri Prasad but the fires did not hit anyone. Hari Ram and Rama Kant attacked Raghuveer Prasad and Basant Lal with knives, which hit them and when Triloki lunged to save them, Rama Kant attacked him with a knife w hich did not hit him but went on tearing his shirt. He also states that apart from him, Kanhaiya Lal, Om Prakash, etc., arrived at the place of occurrence . He also stated that his real sister is married to the deceased Raghuvir and his house is at the distance of about one mile from the place of incident and there are other temples that fall on the way. Before the noise occurred, he had not seen Basant Lal, Raghuveer, Triloki, Badri Prasad on the road and after the noise he saw these people. He also states that he saw that Shri Kant and Uma Kant simultaneously fired at these people with country-made pistols. He also stated that the knife was wielded two-three times at Triloki Nath. The second knife was wielded at Triloki Nath's hand, which hit his hand causing a scratch. He also stated that he stayed at the incident spot for about 10-15 minutes. After this, taking Raghuvir Prasad and Basant Lal, they went to Kotwali. They took them on a three-wheeler (tempo) and reached Kotwali in **10-5** minutes. He stayed at Kotwali for 2-4 minutes and from there he went to inform the relatives. He and Triloki were together from the incident spot to Kotwali and he left Triloki at Kotwali with Diwan ji and went away. Basant Lal and Raghuvir Prasad were alive till the time of his departure. He also stated that Triloki met him at the hospital at around half-past twelve or one o'clock. After the incident, the accused persons fled towards their house. He did not see any bunch of keys at the incident spot.

**10. P.W. - 3** – Dr. Arjun Kumar stated that on 17-5-1983 he was posted as Medical Superintendent, Civil Hospital Farrukhabad. On that day, injured Raghuvir Prasad and Basant Lal were brought and upon examining them, he found them dead at 9.40 a.m. and 9.45 a.m. respectively. Since both the above-mentioned injured were found dead, their medical examination was not conducted. He also stated that on the same day in the afternoon at 3.15 p.m., he examined the injuries of Triloki Nath Verma and found four injuries upon his body in the form of contusion and linear scratch which were simple in nature.

**11. PW-4** - Ram Autar Yadav is the Head Moharrir of Police Station Kotwali Farrukhabad. He states that on 17.5.1983 at 9.30 a.m. on the basis of the written report which is Exhibit Ka-1 of the complainant Triloki Nath, he had prepared the Chik report as crime number 211/1983, under Section 307 I.P.C. The registration of the case was entered in G.D. No. 18. He also states that after registering the case, he had sent both the injured for medical examination. Constable Arvind Kumar gave information at the police station and submitted the injury letter (Chitthi Majroobi) that Raghuvir Prasad and Basant Lal have died and the crime was converted from Section 307 I.P.C. to Sections 307 and 302 I.P.C. The entry of which is marked in G.D. No. 19.

**12. PW-5** - Dr. H.P. Srivastava has conducted the post-mortem examination of the corpse of the deceased Basant Lal on 17.5.1983 at 5.00 p.m. He stated that at the time of conducting the post-mortem, six to 12 hours had passed since the deceased died. Post-mortem rigidity (rigor mortis) was present all over the body of the deceased. Two Stabbed wounds were found on his body. In the internal examination, both lungs, the heart along with its membranes were cut. The stomach contained about half a pound of pulpy food. The intestines contained some digested food. In his opinion, the death of the deceased was due to shock and hemorrhage for which the mentioned injuries were sufficient in the ordinary course of nature.

On the same day at 5.40 p.m., he conducted the post-mortem examination of the corpse of the deceased Raghuvir Prasad. He stated that at the time of post mortem rigidity was present all over his body. Two ante-mortem injuries in the form of stabbed wound, one on the inner side of the right collarbone going upto the depth of the chest cavity and another below the axilla going upto the depth of the chest cavity were found on the body of the deceased.

In the internal examination, the lung, along with its membranes, and the heart were cut. The stomach contained about ten ounces of pulpy food. The liver was also cut. In my opinion, the death of the deceased was due to hemorrhage and shock, for which the injuries mentioned above were sufficient. He also stated that the injuries of both the deceased could have been caused by a knife.

**13. PW-6** - S.I. Amar Singh, is the second I.O.. He had also investigated the matter. He proved the investigation proceeding and the relevant papers in this regard.

**14. PW-7** - S.I. Jugpal Singh Gautam was posted as S.O. Kotwali Farrukhabad and is the first Investigating Officer of the case. He stated that t he registration of this case happened in his presence and its investigation was entrusted to him. During investigation, he first went to Lijiganj Hospital Farrukhabad where he came to know that the injured of this case, namely, Basant Lal and Raghuvir Prasad, have died. Thereafter, he recorded the

statements of the complainant injured Triloki Nath. After this, he prepared the inquest reports (Panchayatnama) of both the deceased separately and prepared all the documents for the post-mortem. On 18-5-1983, taking the blood-stained pajama of the complainant Triloki Nath into possession, he prepared its memo. He further states that when the complainant Triloki Nath had come to the police station, there were injuries on his body, which is marked in the G.D. He also states that Chitthi Majroobi was also given in relation to the injured complainant Triloki Nath and he was sent for medical examination. Immediately after the case was registered at 9.30 a.m., the injured were sent to the hospital. He states that in Exhibit Ka-20, cutting has been done in the column of the time of recording the report and in the column of giving information. He had written what time earlier in the column of giving information, it is not clearly readable. He had written 9.30 by over-writing the digits. In the column of death, cutting 9.40 he had written it. Similar over-writing has been done in these very two columns of Exhibit Ka-13 as well. He has also stated that when he started writing Exhibit Ka-13 and Ka-20, at that time he knew the time of information and the time of death exactly, but due to crowd and slip of pen, something else was written instead of 30 and 40, which he had corrected by cutting it and signing it at the same time. He had found a bunch of keys during the inspection of the incident spot. He had not sent a report to the chemical examiner for the examination of the blood-stained earth and plain earth. He also stated that when he took the blood-stained earth and plain earth from the incident spot, he had kept them separately in two boxes and sealed them. The complainant Triloki Nath had submitted his shirt which he was wearing at the time of the incident which was duly sealed with all seals. He had not sent the clothes that were recovered from the bodies of the deceased to the Chemical Examiner for examination.

**15. PW-8** - Constable Shivdas Pandey took the corpse to the post-mortem hospital Fatehgarh.

**16.** After closure of prosecution evidence, statement of accused appellants under Section 313 CrPC was recorded in which they denied the prosecution case and stated that they have been falsely implicated due to per-existing enmity. Accused Srikant and Hariram have further stated that the deceased persons were gambling and got into a fight with gamblers and were killed by them.

**17.** The Trial court found that prosecution has fully succeeded in bringing home the charges against the accused appellants beyond reasonable doubt and convicted and sentenced the accused appellants, as mentioned above. Hence this appeal.

**18.** We have heard Shri Dilip Kumar, learned Senior Counsel assisted by

Shri Yogesh Chandra Dubey and Shri Sudhanshu Kumar, learned counsel for appellants and Shri Rishi Chaddha along with Shri A.N. Mulla, learned A.G.A. appearing for the State at length.

**19.** Castigating impugned judgment and order, learned Senior Counsel appearing for the appellants submitted that the appellants are innocent and they have been falsely implicated in this case. He further submits that the FIR is ante-timed. In support of this submission, he has submitted that there is over writing on the time of information at the police station in the first column of both panchayatnamas wherein 9.50 hours was changed as 9.30 hours. He also submits that there is no mention of starting and ending time of inquest in the relevant columns and 12.30 p.m. is mentioned on the last page of panchayatnama below the signature. It is also submitted that the recovery of blood stained 'pajama' seems to be false and concocted and to show blood stains on the clothes of PW-1 (informant) as there was no blood on the shirt. It has also been submitted that PW-1 Triloki Nath – informant / injured witness was not present on the spot at the time of the incident and he is not a reliable witness. Further, PW-2 Chandra Kishor is a chance witness and a close relative (brother-in-law) of deceased Raghuvir and there are material contradictions in his testimony. He was also not present on the spot at the time of the occurrence. There was no motive to commit the crime. It is also submitted that PW-1/injured witness was examined after much delay with no explanation for the same and the injuries allegedly suffered by him are minor in nature. It has also been submitted that the investigation in the matter is perfunctory and was conducted in a malafide manner to implicate the appellants. Findings recorded by the trial court in the impugned judgment and order are not based on correct appreciation of evidence and impugned judgment and order suffers from infirmity and illegality warranting interference by this Court.

**20.** In reply, learned AGA submitted that prosecution was able to prove its case beyond reasonable doubt. Medical evidence fully supports the oral version. F.I.R. is a genuine document. Cutting, overwriting or minor clerical corrections on an inquest report (*panchayatnama*) or FIR do not automatically invalidate the prosecution case or create fatal doubt. PW-1/informant is an injured and his presence at the place of occurrence cannot be doubted. Laches on the part of Investigating Officer are also not fatal to the prosecution case. Findings recorded by the learned trial court in the impugned judgment and order are based on correct appreciation of facts, evidence and law and do not suffer from any infirmity or illegality warranting interference by this Court.

**21.** We have considered rival submissions made by learned counsel for parties and have gone through the entire record carefully.

**22.** At the outset, it may be mentioned here that appellant no. 1 – Hariram, appellant no.2 – Srikant and appellant No.4 – Umakant have died and vide order dated 9.7.2018 appeal against them has been abated and only appellant no.3- **Ramakant** is surviving.

**23.** On a careful scrutiny of the impugned judgment and the depositions of material witnesses and also the submissions made by the learned counsel for the parties, the main points that arise for determination are :

(I) Whether the F.I.R. lodged in the instant case is a genuine document or it is an ante-timed and suspicious ?

(II) Whether PW-1 and PW-2 were present on the scene of crime at the time of the incident ?

(III) Whether death of both the deceased was caused by the surviving appellant – Rama Kant ?

**24.** Now we proceed to determine the first point, as mentioned above i.e. whether the F.I.R. lodged in the case is a genuine document or it is an ante-timed and suspicious.

**25.** An FIR isa written document prepared by the police when they receive the first piece of information about a serious (cognizable) crime. The object of an FIR from the point of view of the informant is to set the criminal justice system into motion and from the point of view of the investigating authorities is to obtain information about the alleged crime. A truthful and genuine FIR provides a strong foundation for the case of the prosecution but when it is proven to be ante-timed or suspicious, the entire foundation of the prosecution's case loses its credibility.

**26.** In the case in hand, the FIR was lodged by the informant / PW-1 Triloki Nath at the concerned police station on 17.5.1983 at 9.30 a.m. for the offence committed at 9.15 a.m. of the said date. The distance between the place of incident and the police station is about ½ kilometer. After the incident, the informant goes to his home, gets a tehrir written from one Vijay Kumar at home, then returns to the place of incident, arranges tempo at the scene and took both the injured in it and takes them to the police station. After the FIR was registered, a G.D. of about 180 words was prepared and thereafter majrubi chitthi was prepared but there was no mentioning of case crime number in the said majrubi chitthi. Further, in the first column of both the panchayatnamas, the time of registration of FIR was first written as 9.50 a.m. and then it was changed / altered to 9.30 a.m. by cutting 50 to 30. Moreover, the time of registration of FIR was written as 9.50 a.m. in blue ink and later it was changed to 9.30 a.m. in black ink. In the same document,

the time of death was first written as 9.55 a.m. and later it was changed to 9.40 a.m. It is also important to mention that no time has been mentioned as to when the panchayatnama was started.

**27.** From the above, the F.I.R. in the present case does not appear to be a genuine document. A close scrutiny of the documentary evidence reveals glaring embellishments. P.W.-7 (S.I. Jugpal Singh Gautam), the first Investigating Officer, categorically admitted during cross-examination that there are explicit over-writings in the inquest reports (Panchayatnamas), specifically in Exhibits Ka-13 and Ka-20. He conceded to altering the digits in the crucial columns pertaining to the time of receiving information and the time of death, overwriting them to reflect "9.30" and "9.40". P.W.-7 attempted to brush off these serious alterations as a consequence of the crowd and slip of pen. Such an explanation is legally untenable and highly unbelievable. The Hon'ble Supreme Court in ***Meharaj Singh (Lalli) v. State of U.P., (1994) 5 SCC 188***, elucidated the significance of the inquest report in determining the authenticity of the F.I.R.:

- *12. 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 eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. 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 under Section 174 CrPC, 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 an embryo state 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. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.*

- *14. It is interesting in this connection also to note that Satkari PW 5*

> *named Resham also as an eyewitness. The High Court rightly held Satkari to be a chance witness also but the prosecution has not explained as to why Resham who was alleged to be an eyewitness has not been examined. According to Balbir PW 2, Jog Raj was also an eyewitness. He too has not been examined. Shiv Charan PW 4, also named Resham and Jog Raj as eyewitnesses. Thus, it appears to us that a concerted effort was made by the prosecution witnesses to introduce Resham and Jog Raj as false eyewitnesses in the case but since they have not been examined, it would be fair to draw a presumption, that they perhaps were not prepared to support the false case. The High Court while setting aside the order of acquittal did not deal with these various infirmities.…."*

**28.** Again in the case of **Mohd. Muslim v. State of U.P., (2023) 7 SCC 350,** the Hon'ble Supreme Court reiterated that FIR in a criminal case and particularly in a murder case is a vital and a valuable piece of evidence especially for the purpose of appreciating the evidence adduced at the trial. It is for this reason that the infirmities, if any, in the FIR casts a doubt on its authenticity. The FIR in such cases may also lose its evidentiary value. Thus, this entitles the accused to be given the benefit of doubt.

**29.** In this scenario, non-mentioning of case crime number in the said majrubi chitthi, the overwriting in the inquest reports, failure to mention as to when the panchayatnama was started etc., strongly corroborates with the submission of the defence that the F.I.R. was drafted after due deliberations and consultations, rendering it ante-timed. In ***Nallabothu Ramulu alias Seetharamaiah and others vs. State of Andhra Pradesh*** with ***Chalmala V eeraiah vs. State of Andhra Pradesh, 2014 Cri. L. J. 2487 (Supreme Court)*** where alongwith other infirmities circumstances regarding the F.I.R. were found suspicious, the Hon'ble Apex Court held that the whole prosecution story was doubtful.

**30.** Furthermore, the perfunctory nature of the investigation is evident from the admission of PW-7 on many points including that the blood-stained earth and the plain earth, despite being collected and sealed, were never sent to the F.S.L. for chemical analysis. Similarly, the clothes recovered from the deceased and the injured / informant were neither subjected to forensic examination nor produced before the Court. Further, as per the provisions of Section 157 CrPC on receiving the information the officer-in-charge of a police station is bound to send forthwith a report of the same to a Magistrate concerned but in the instant case the FIR was lodged on 17.5.1983 whereas the required report was received by the Magistrate concerned on 23.5.1983, which is a lapse on the part of the I.O. Such glaring procedural omissions shake the root of the prosecution's case.

**31.** So far as the laches in investigation are concerned, the Hon'ble Apex Court in ***Kailash Gour and others vs. State of Assam, (2011) 13 Scale 549*** has held that:

> "*.....That an accused is presumed to be innocent till he is proved guilty beyond a reasonable doubt is a principle that cannot be sacrificed on the alter of inefficiency, inadequacy or inept handling of the investigation by the police. The benefit arising from any such faulty investigation ought to go to the accused and not to the prosecution.....*"

**32.** As regards the presence of PW-1 and PW-2 at the place of occurrence is concerned, it is settled and consistently reiterated principle of criminal jurisprudence that before an eyewitness can be safely relied upon by the Court, he must establish beyond reasonable doubt his presence on the spot at the time of the occurrence through some strong and confidence inspiring evidence. Although ocular evidence constitutes direct evidence, its probative value is wholly dependent upon the credibility of the witness, which is inseparably linked with proof of his presence at the scene of occurrence. Where the presence of an eyewitness becomes doubtful, his entire testimony is rendered suspect and unsafe for reliance. The unnatural conduct of the alleged eyewitnesses is yet another strong circumstances which negates their presence at the place of occurrence.

**33.** The prosecution heavily relies on the testimony of P.W.-1 Triloki Nath, who is alleged injured eye-witness of the crime in the present case. He has stated that the incident occurred at around 9:15 a.m., he was also present on the spot and sustained injuries caused by knife. He states in his cross-examination that while hitting him, the accused held the knife from the blade side and hit him with the handle side due to which he received scratches, which appears to be concocted and unbelievable. If the accused persons were in the heat of passion causing various injuries to the injured / deceased by knife, why would they hit PW-1 from blade side of the knife. Further, it seems highly improbable that when the accused persons, who were four in number having country made pistols and knives, caused life threatening injuries to the father and brother of PW-1, spared the informant / PW-1, who was unarmed. It creates a doubt about his presence at the place of occurrence at the time of the incident. He also claims that he accompanied the injured persons at the police station but chitthi majrubi was prepared and was issued only in respect of the injured Basant Lal and Raghuvir and no chitthi majrubi was issued in his respect. Further, in the chitthi majrubi, which is said to have been prepared / issued after the FIR was lodged, it was mentioned that the injured / deceased suffered fire-arm injuries whereas in the post mortem report, no fire-arm injury was found on their body. It is also evident that both the injured were medically examined immediately but medical examination of PW-1 was conducted at 3:15 p.m. This delay in his medical examination is not satisfactorily explained. Furthermore, the conduct of P.W.-1 immediately following the brutal assault on his father and brother is highly

unnatural. Instead of rushing his critically wounded father and brother to the hospital to save their lives, he firstly prepared a tehrir by one scribe then arranges for a tempo, took them in a tempo to the police station and thereafter to the hospital. Moreover, PW-1 is neither the witness of panchayatnama nor the site plan was prepared in his presence or pointing out.

**34.** As regards the presence of PW-2 – Chandra Kishore at the scene of crime is concerned, he states that while he had gone to visit the temple built at the Mahavir Ganj intersection, he heard a noise at 9.00 or 9:15 a.m. and saw that Shri Kant and Uma Kant fired with a country made pistol at Basant Lal, Raghuvir Prasad, Triloki Nath, and Badri Prasad but the fires did not hit anyone. Hari Ram and Rama Kant attacked Raghuvir Prasad and Basant Lal with knives, which hit them and when Triloki lunged to save them, Rama Kant attacked him with a knife which did not hit him but went on tearing his shirt. He claimed to have witnessed the incident merely by chance while returning from a temple. He also stated that his real sister is married to the deceased Raghuvir and his house is at the distance of about one mile from the place of incident and there are other temples that fall on the way. In his cross examination he states that there was no distance between the accused persons and the deceased. He also states that the I.O. took his statement at the hospital whereas the I.O. claims to have taken his statement at the place of occurrence. PW-2 further states that having gone to the police station, he left them and went home. This conduct of PW-2 appears to be improbable and unnatural. His real sister was married to Raghubir, who had sustained serious knife injuries and was struggling between life and death and he (PW-2) went his home leaving him in this condition at the police station. Further, this witness has given minute to minute details of the incident caused by each accused. He is brother-in-law (saala) of the deceased Raghubir. In the ordinary course of human conduct, brother-in-law (saala) witnessing his brother-in-law (bahnoi) being attacked would instinctively attempt to rescue him even at the risk of his own life, rather than act as a passive spectator meticulously observing and memorizing the details of conduct of the assailants. Failure to offer a satisfactory explanation gives rise to presumption that the said witness was not present at the scene.

**35.** As far as the submission regarding relativeness of the witnesses of fact is concerned, the admitted position of law is that testimony of eye-witnesses, which is otherwise convincing and consistent, cannot be discarded simply on the ground that deceased was related to eye-witnesses but the same is subject to scrutiny, and must be corroborated by other evidence to ensure its reliability.

**36.** In the instant case, from a perusal of the record it is evident that PW-2 is the brother-in-law (sala) of deceased Raghuvir and is closely related to him. His house is about one mile away from the place of incident. He claimed to have witnessed the incident merely by chance while returning from a temple. On the one hand he stated that he had not seen any of the accused persons, injured or deceased at the place of incident before the sound of the gunshot but on the other hand he had given minute to minute details of the incident caused by each accused and assigned specific weapons to each of them which, on the basis of close scrutiny, appears to be done on account of relativeneness. His conduct is unnatural and also there are contradictions in his testimony.

**37.** Hence, on close scrutiny of entire evidence, in our view, though deceased were done to death and this fact finds support with the medical evidence but by someone else and not by the surviving accused appellant. F.I.R. is not a genuine document, presence of the witnesses of fact i.e. PW-1 and PW-2 at the place of occurrence at the time of the incident is doubtful, PW-2 has deposed against the accused persons on account of relativeness and the accused appellants have been implicated in this case due to business rivalry. Findings of the trial court regarding guilt of the surviving accused appellant for the offence under Section 302 read with Section 34 IPC and Section 307/34 IPC are not based on correct appreciation of facts, evidence and law. The impugned judgment and order suffers from infirmity, illegality and perversity. Thus, this Court is of the view that the prosecution has not been able to establish the guilt of the surviving accused appellant beyond reasonable doubt. Therefore, the Court is inclined to grant benefit of doubt to the surviving accused appellant on the ground of rule of caution.

**38.** In view of the above discussions, we are of the opinion that the prosecution has failed to establish the guilt of the surviving accused appellant for the offence punishable under Section 302 read with Section 34 IPC and Section 307/34 IPC beyond reasonable doubt and to the satisfaction of the judicial conscience of the Court. So, the impugned judgment and order of conviction and sentence dated 29.6.1987, which has been sought to be assailed, call for and deserves, interference. The criminal appeal is liable to be allowed.

**39.** Accordingly, criminal appeal is **allowed** and the conviction and sentence imposed upon the surviving accused appellant – Rama Kant for the offence punishable under Section 302 read with Section 34 IPC and Section 307/34 IPC is set-aside as the accused appellant found not guilty for the aforesaid offences. He is acquitted of all the charges framed against him. Accused appellant is on bail, he need not surrender. His bail bonds are cancelled and

sureties are discharged.

**40.** Copy of this judgment alongwith trial court record be sent forthwith to the trial court for compliance.

**August 3, 2026**

safi

**(Jai Krishna Upadhyay,J.)  (Atul Sreedharan,J.)**

Digitally signed by :-
MAHBOOB SAFI
High Court of Judicature at Allahabad