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2026:AHC:97646-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2034 of 1984

Ranvir Singh and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Rahul Misra, Samar Singh, Sunil Vashisth
Counsel for Respondent(s)	: D.g.a.

Court No. - 44

**HON'BLE SIDDHARTH, J.
HON'BLE VINAI KUMAR DWIVEDI, J.**

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Mr. Rahul Misra, learned counsel for the surviving appellant, Omkar; Mr. G.N. Kanaujiya, learned A.G.A.-I for the State/opposite party and perused the record.
2. This criminal appeal has been filed by accused-appellants, Ranvir Singh, Omkar, Mangey Ram and Hem Raj Singh against the judgment and order dated 26.07.1984 of learned Trial Court passed in Sessions Trial No. 163 of 1979 (State v. Ranvir Singh and others) arising out of Case Crime No. 4 of 1979, under Section 302/34 IPC, Police Station Muradnagar, District Ghaziabad.

3. Brief facts of the case are that informant Gajraj Singh (PW-7) got scribed the written report, Exhibit Ka-10, by Bhanwar Singh and lodged an F.I.R., Exhibit Ka-2, on 05.01.1979 at 07:00 A.M. against Ranvir Singh, Omkar Singh, Mangey Ram and Hem Raj Singh alleging inter alia that "litigation is going on between us and our uncle Ranvir and grandfather Chunni, who have been living for some time in village Pathauli, and they have executed an agreement of the land in favour of Mangey Ram and Hem Raj of our village, and now both the parties have joined together. My father, who was pursuing the land case, while he was alive, these people had no hope of winning the case. Therefore, they were planning to kill my father (Shyam Singh). Today on 05.01.1979 at about 6:30 A.M., my father and my maternal uncle (Segram) were coming from the jungle when they reached near Mahavir's chak and the fields of Brahmopal Singh, then from the sugar-cane field of Mahavir Singh, Ranvir Singh s/o Chunni, Omkar Singh s/o Ranvir Singh, Mangey Ram and Hem Raj s/o Chhajju Singh came out and all four surrounded my father. Ranvir Singh and Hem Raj had knives in their hands. Mangey Ram and Omkar Singh had country-made pistols. These persons said that today we will give you taste of litigation. All of them suddenly attacked upon him with country-made pistols and knives and caused injuries to him. After receiving injuries, he fell down and succumbed to death. This incident was witnessed by Segram s/o Dharm Singh, resident of village Saidpur, Balkishan s/o Harpal Singh, Veersen s/o Aman Singh, Jhabbar Singh s/o Itwara, resident of village Abupur. My father's dead body is lying at the spot. Please get my report lodged and appropriate action be taken."

4. After lodging the written report, Exhibit Ka-10, an F.I.R. was registered against the accused-appellants at Case Crime No. 4 of 1979, under Section 302 IPC by Constable 498 Satyapal Singh

(PW-2) on 05.01.1979 at 07:00 AM. On receiving information about the incident, Ram Charan Lal Sharma (PW-11) reached at the spot with police team including S.I. Ramraj and S.I. P.D. Sharma. On the direction of Ram Charan Lal Sharma (PW-11), S.I. P.D. Sharma conducted *panchayatnama* of the dead body of deceased, Shyam Singh, and prepared the same, Exhibit Ka-5. S.I. P.D. Sharma also prepared *challan nash*, Exhibit Ka-6, letter to C.M.O., Exhibit Ka-7, photo *nash*, Exhibit Ka-8, letter to R.I., Exhibit Ka-9. S.I. P.D. Sharma also took sample of bloodstained soil and plain soil and prepared fard memo as Exhibit Ka-20 and Ka-21. He also collected four live cartridges, two empty cartridges, one plastic *tikli* (button), five *chindi*, one striped waist-cloth (*tahmad dharidar*), one muffler and one cap (*topa*) from the place of occurrence and prepared recovery memo, Exhibit Ka-13. From the place of occurrence, S.I. P.D. Sharma collected burnt clothes, hair and two teeth stuck with muscle of deceased, Shyam Singh. He also collected *kheru* of white colour bloodstained on which mark of cut and burn was present and prepared fard, Exhibit Ka-14, and burn clothes, Exhibit Ka-22. Investigating Officer Ram Charan Lal Sharma (PW-11) prepared site plan of the place of occurrence as Exhibit Ka-11. The dead body of the deceased, Shyam Singh, was sent for conducting post mortem examination. The Investigating Officer recorded the statement of the witnesses under Section 161 Cr.P.C. He also sent all articles and objects collected from the place of occurrence for chemical examination to Forensic Science Laboratory. After completing all formalities of the investigation, Investigating Officer Ram Charan Lal Sharma (PW-11) submitted charge-sheet, Exhibit Ka-15, against the accused-appellants.

5. Dr. S.C. Goyal (PW-1) conducted autopsy of the dead body of the deceased, Shyam Singh, and prepared the post mortem

report, Exhibit Ka-1. He found following ante mortem injuries on the dead body of the deceased, Shyam Singh :

1. *Incised wound 1 cm × ½ cm × bone deep on the middle part of the forehead, 2 cm from the root of the nose; margins clearly placed.*
2. *Lacerated wound 2 cm × ½ cm × bone deep on the right side head 8 cm above.*
3. *Lacerated wound 3 cm × ¼ cm × bone deep on right side head, 10 cm above the right ear.*
4. *Lacerated wound 2 cm × 1 cm × scalp deep on left side head 8 cm above left ear.*
5. *Lacerated wound 2½ cm × 1½ cm × bone deep on the left side head, 10 cm above the left ear.*
6. *Lacerated wound 1 cm × 1 cm × bone deep on left side head, 9 cm above from the left ear; margins irregular.*
7. *Incised wound 2 cm × ½ cm × muscle deep on the left mastoid region, 3 cm behind the left ear; margins clearly cut.*
8. *Incised wound 1 cm × ½ cm × muscle deep on the left angle of mouth.*
9. *Gunshot wound of entry 3 cm × 2½ cm × bone deep on right side of face middle of the lower mandible blackening and scorching present around the injury in an area of 8 cm × 6 cm six big pellets recovered from the wound.*
10. *Blackening and scorching present on right upper arm (upper third), extending up to injury no. 9.*
11. *Blackening and scorching present in an area of 12 cm × 8 cm on the back of the right forearm.*
12. *Gunshot wound of entry 2 cm × 2 cm × chest cavity deep on left side front of chest, 5 cm above the nipple at 1 o'clock.*

13. Incised wound 2 cm × 1 cm × chest cavity deep left side back of chest, 9 cm below the lower border of scapula."

6. In internal examination, left side of ribs nos. 2 and 3 of the left side of the chest was found broken. Right side of lower jaw was also found broken. During the post mortem examination, six bigger size of pellets were removed from the right side of the face. One large round pellet and pieces of wadding were removed from the right chest cavity that were handed over to the constable, who brought the dead body of the deceased to the post mortem house. According to the opinion of Dr. S.C. Goyal (PW-1), cause of death of the deceased was haemorrhage and shock due to ante mortem injuries. According to Dr. S.C. Goyal (PW-1), these injuries were sufficient to cause death to the deceased.

7. Charge-sheet was filed by the Investigating Officer in the concerned Magistrate Court. Since the case was exclusively triable by the Court of Session, learned Magistrate committed the case to the Court of Session.

8. Charges were framed against the accused-appellants on 19.07.1982 under Section 302 read with Section 34 IPC by the Trial Court. The accused-appellants denied from the charges framed against them and claimed trial.

9. To substantiate the charges against the accused-appellants, prosecution adduced Dr. S.C. Goyal (PW-1), Satyapal Singh (PW-2), Shyam Sundar Dubey (PW-3), Madan Pal (PW-4), Sanjay Gupta (PW-5), Tikam Singh (PW-6), Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9), Sewag Ram (PW-10) and Ramcharan Lal Sharma (PW-11). Apart from the above ocular evidence, prosecution also relied on documentary evidence from Exhibits Ka-1 to Ka-16.

10. Trial Court recorded evidence of the prosecution witnesses. Thereafter, accused-appellants were examined under Section 313 Cr.P.C. In their statements under Section 313 Cr.P.C., accused-appellants denied from all allegations levelled by the prosecution against them. They have also stated that they have falsely been implicated in this case due to village rivalry and enmity between them. The surviving accused-appellant, Omkar, has stated that he lived in village Pathauli. A case relating to attempt to murder him was instituted against Mangey and Gajraj, in which they were convicted. From that time, I left the village. Due to this enmity, I had been falsely implicated in this case.

11. After hearing the arguments of the prosecution and defence and perusing the evidence, learned Trial Court found the accused-appellants guilty under Section 302 read with Section 34 IPC and convicted them for life imprisonment.

12. Aggrieved by the judgment and order of conviction and sentence dated 26.07.1984, accused-appellants preferred this criminal appeal before this Court.

13. During pendency of this criminal appeal, appellant nos. 1, 3 and 4, Ranvir Singh, Mangey Ram and Hem Raj Singh have died. Therefore, the criminal appeal against appellant nos. 1, 3 and 4 stands dismissed as abated. Now, the criminal appeal is being adjudicated only in respect of appellant no. 2, Omkar.

14. Learned counsel for surviving accused-appellant, Omkar, has submitted that the date and time of the incident is 05.01.1979 at 06:30 A.M. However, informant Gajraj Singh (PW-7) lodged a written report, Exhibit Ka-10, naming all accused-appellants, with surprising promptness within half an hour at 07:00 A.M. at Police Station Muradnagar, District Ghaziabad. The distance of police station from the place of occurrence is about two miles. It is also submitted that it is surprising that only within

half an hour, informant so quickly and rapidly got scribed a written report from his brother, Bhanwar Singh, and reached the police station Muradnagar and lodged written report, Exhibit Ka-10. This fact made the prosecution story doubtful. Apart from this, the date '05.01.1979' falls in the winter season. In the first week of January, at 06:30 A.M., the sun generally does not rise. In the month of January, even during the first week, there is usually heavy fog in the atmosphere. Learned counsel for surviving accused-appellant, Omkar, has also submitted that although prosecution produced informant Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10) as eye-witnesses of the incident, however, from the perusal of their evidence, it is clear that they have not seen the occurrence with their own eyes. Evidence of these prosecution witnesses speaks these facts loudly itself. Prosecution projected these prosecution witnesses, Gajraj (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10) as projected witnesses with due consideration, deliberation and afterthoughts. From the place of occurrence and the material articles recovered therefrom, it appears that the deceased, Shyam Singh, was killed at night by some unknown persons. When dead body of the deceased, Shyam Singh, was found lying at the place of occurrence and this news reached his house, then due to previous enmity because a large number of litigation including civil and criminal nature was pending between the deceased, Shyam Singh, and prosecution witnesses on one side and accused-appellants on other, prosecution, on the ground of suspicion, has falsely implicated the accused-appellants in the alleged crime after deliberation and afterthought, with a view to take revenge. The testimonies of the prosecution witnesses are not trustworthy and reliable. By their evidence itself, it is clear that so called eye-witnesses of prosecution have not witnessed the happening of the occurrence

with their own eyes. It is also submitted that prosecution was unable to prove that so called muffler, cap (*topa*) and waist-cloth (*tahmad*), which were recovered from the place of occurrence, were surely of the appellant. The prosecution was unable to produce any witness, who could prove and testify by their evidence that he has seen Omkar wearing the above muffler, cap (*topa*) and waist-cloth (*tahmad*) regularly. However, without considering and discussing these material facts in its judgment and order, learned Trial Court only on the ground of evidence of so-called eye-witnesses of prosecution, held the surviving accused-appellant, Omkar, and the deceased appellants guilty for commission of the crime. There is no reasonable discussion regarding the culpability and liability of the appellant that inspires confidence in the mind of the learned Trial Court, on the basis of which the Trial Court was convinced that the surviving accused-appellant, along with the other deceased appellants, had committed the alleged crime. Learned Trial Court has not appreciated the evidence in proper perspective and in legal manner and delivered a wrong judgment and order against surviving accused-appellant, Omkar, wholly against the settled principles of law. Therefore, in view of the above facts and circumstances, surviving accused-appellant, Omkar, is liable to be acquitted and judgment and order of conviction and sentence passed by learned Trial Court is liable to be set aside.

15. Per contra, learned A.G.A. for the respondent-State has vehemently opposed the arguments of learned counsel for the accused-appellant and submitted that this is a case of direct evidence. Prosecution witness Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10) were present at the place of occurrence at the time when incident happened. Surviving accused-appellant, Omkar, with other dead appellants

have brutally committed murder of the deceased, Shyam Singh, by assaulting with knife and by firing upon him with country-made pistol in front of the prosecution witnesses. There are no major or material contradictions in the evidence of the prosecution witnesses by reason of which the prosecution evidence could be doubted. Learned Trial Court has appreciated the evidence in proper prospective and delivered a reasonable judgment and order, which is based on cogent evidence and according to the settled principles of law in this respect. There is no force in this criminal appeal of the accused-appellant, Omkar. The appeal is devoid of merits, hence is liable to be rejected.

16. In the light of the above arguments of learned counsel for the surviving appellant, Omkar, and the learned A.G.A. for the State, it is appropriate and judicious to peruse and analyse the prosecution evidence to determine whether the prosecution has been able to prove its case beyond reasonable doubt.

17. From the perusal of the evidence of informant Gajraj Singh (PW-7), who is son of deceased Shyam Singh, it is revealed that this witness is not an eye-witness of the incident. At the time of the incident, this witness was not present at the place of occurrence but he was at his home. This fact was itself admitted by this witness in his evidence that "at the time of incident, I was at my home and Jhabbar has come home and informed me that accused-appellants, Mangey, Hem Raj, Ranvir and Omkar, have killed your father Shyam Singh and he also told that Ranvir and Hem Raj had knife in their hand and rest of the accused had country-made pistols in their hand." According to this witness as told by Jhabbar, he went to the spot. Thus, from the evidence of this witness, it is established that informant Gajraj Singh (PW-7) is not an eye-witness of the incident because at the time of happening of the incident, he was not present at the spot.

Written report, Exhibit Ka-10, has been got scribed by this witness by his brother, Bhanwar Singh. All the facts written by writer Bhanwar Singh on the dictation of Gajraj Singh (PW-7), were stated by Jhabbar and other prosecution witnesses. In other words, Jhabbar and other prosecution witnesses have narrated the happening of the incident to informant Gajraj Singh (PW-7) and he in the same way has narrated the prosecution story in the written report, Exhibit Ka-10.

18. From the evidence of the informant, Gajraj Singh (PW-7), it appears that, according to this witness, a civil litigation was pending and continuing between the prosecution side on one hand and the accused-appellants on the other. From the evidence of this witness, it emerges that not only civil litigation was pending between the prosecution and defence sides, but several criminal cases were also pending between them. In some cases, the prosecution witnesses supported the prosecution story, while in other cases, the accused-appellants also appeared as witnesses in support of their prosecution version. It also revealed that there was bitter enmity between both sides due to civil and criminal litigations between them. Gajraj Singh (PW-7) stated that "before three days of the incident, accused-appellants have threatened his father, Shyam Singh, to kill him and they have also threatened that we will teach you about the litigation." From the evidence of this witness as submitted by him in the Court, it emerged that "at the time of the incident, maternal uncle of this witness, Sewag Ram, Bir Sen and Balkishan, were present at the place of occurrence when accused-appellants have committed the crime." Thus, from the evidence of this witness, it is revealed that this witness is not an eye-witness of the incident. There was bitter enmity between both sides since civil and criminal litigation were pending between them. Apart from the above facts, in his cross-

examination, this witness has stated that "I had told the Investigating Officer that the accused had told my father that they would give him the taste of litigation. If the Investigating Officer had not written this fact in my statement under Section 161 Cr.P.C., I cannot tell reason for this. I had stated in *tehriri* report that Jhabbar had come to my home and told about the incident and I told these things to the Investigating Officer. If the Investigating Officer had not written in my statement and Bhanwar Singh had not written these things in the *tehriri* report, then I cannot tell reason for this." In this way, we find that this witness has made major improvement in his evidence against the statement given to the Investigating Officer under Section 161 Cr.P.C. Meaning thereby, this witness with a view to give force to the prosecution story stated those facts and things in the Court which were not stated by this witness to the Investigating Officer under Section 161 Cr.P.C. Thus, from the perusal of the whole evidence of informant Gajraj Singh (PW-7), we find that this witness only after happening of the incident and receiving information about the incident has lodged the written report at the police station naming accused-appellants as accused for the commission of the crime. Apart from this, we find no other relevancy in the evidence of this witness.

19. Bir Sen (PW-8) is also said to be the eye-witness of the incident. This witness has stated that "at the place of occurrence on 05.01.1979 at 06:30 A.M., this witness was going to water his field from the tube-well. Then he heard the noise in the sugarcane field of Brahmapal. Jhabbar was also present with him. According to him, when he reached near the field of Brahmapal then he had seen that Hem Raj and Ranvir Singh were assaulting Shyam Singh with knives. Shyam Singh was retreating in order to defend himself. Mangey fired a shot from a country-made pistol

at Shyam Singh, but the shot missed. Thereafter, Mangey struck Shyam Singh on the head with the butt of the country-made pistol. By the assault of the accused, Shyam Singh fell down. Omkar fired a shot from the country-made pistol at Shyam Singh, which hit in his chest. Mangey wanted to shoot from the country-made pistol but the cartridge fell down. Then Mangey loaded second cartridge and fired shot near the right ear of Shyam Singh, which hit him." This witness also stated that "along with him, Singh Ram, Jhabbar Singh and Balkishan had also seen this incident at the place of occurrence." According to this witness, "at the time of committing of the offence, cap (*topa*), muffler and waist-cloth (*tahmad*) of Omkar had fell down on the spot. From the evidence of this witness, it is emerged that Chunni, father of the deceased Shyam Singh and accused Ranvir, had left the village Abupur before this incident and went to village Pathauli. From this fact, it is clear that at the time of the incident, surviving accused-appellant, Omkar, and his father deceased-appellant, Ranvir, was not living in the same village where incident happened. In other words, surviving accused-appellant, Omkar, and his father, Ranvir, and his grandfather, Chunni, were living in other village Pathauli at the time of the incident. From the evidence of this witness, it is revealed that the incident happened for about 3-4 minutes. From the perusal of the cross-examination of this witness, it is revealed that he has stated that "the Investigating Officer had taken my statement. I had told him that Jhabbar also went on tube-well with me. I could not tell any reason that why the Investigating Officer has not written this thing in my statement." This witness has also stated that "I had told the Investigating Officer that the noise was coming from the field of Brahmapal. If the Investigating Officer had not written this thing, I cannot tell any reason for this."

20. Thus, from the perusal of the evidence of Bir Sen (PW-8), this fact is revealed that according to this witness, four accused-appellants including surviving accused-appellant, Omkar, were attacking Shyam Singh by knife and country-made pistol. However, the statement of Bir Sen (PW-8) appears to be doubtful because if four accused persons simultaneously attacked the deceased Shyam Singh with knives and country-made pistols, there is a possibility that some pellets from the firearms could also have hit the accused persons, since according to this witness, all the accused persons were assaulting. All the accused surrounded the deceased Shyam Singh and were assaulting from very close range. However, there is no evidence of this kind in the record that some injuries were also caused on the body of the accused persons. From the evidence of this witness, it is also revealed that this witness has also improved his statement in the Court against the statement which was given by him to the Investigating Officer under Section 161 Cr.P.C. Evidence of this witness appears to be concocted and afterthought. From the perusal and appreciation of the whole evidence, it is apparent that the prosecution tried to project this witness as an eye-witness of the incident. However, from the perusal of the evidence of this witness, it is clear that this witness has not seen the happening of the incident with his own eyes. Although this witness has stated that incident happened for 3-4 minutes but this witness has not made any attempt by calling people of the nearby area to save life of the deceased, Shyam Singh, from assailants. Despite the fact that incident happened for 3-4 minutes but this witness has not made any attempt to save the deceased Shyam Singh. This witness has also not made any noise and hue and cry so that people of the nearby houses could come at the place of the occurrence to save the life of the deceased, Shyam Singh. In this way, conduct of this witness Bir Sen (PW-8)

does not inspire confidence. This witness has stated the happening of the incident in the way which appears to be concocted and artificial and creates reasonable doubt about his presence at the place of occurrence. Due to this reason, we find that testimony of this witness is suspicious and unworthy of credit. Hence, we would not rely on the evidence of this witness in support of the prosecution story.

21. Balkishan (PW-9) has also stated the happening of the incident in the same way in which Bir Sen (PW-8) has stated the prosecution story. The only difference is that according to this witness on the day of the incident on 05.01.1979 at 06:30 A.M., he was returning on his cart (*buggi*) from Modi Nagar Sugar Mill after delivering his sugar-cane at the mill. When this witness reached his village near the field of Brahmapal, he heard Bir Sen, Jhabbar, and Segram shouting to run towards Shyam Singh and save him. However, if we believe the statement of Balkishan (PW-9) that Bir Sen, Segram, and Jhabbar made a noise and called upon people to reach the place of occurrence to save the life of Shyam Singh, it is surprising that despite the noise made by these three persons, none of the neighbours or persons from nearby houses heard the noise or came to the place of occurrence to save Shyam Singh. Only this witness Balkishan (PW-9) has heard the noise of Bir Sen, Segram and Jhabbar. It is also surprising that other prosecution witness Jhabbar was not produced by the prosecution in the Court. Jhabbar ran towards the house of Shyam Singh and informed Gajraj Singh (PW-7) about the incident, but none of the prosecution eye-witnesses called for any help from the neighbours or persons residing nearby. This witness has also stated that during the incident, cap (*topa*), muffler and waist-cloth (*tahmad*) of Omkar have fell down on the spot. From the evidence of this witness, it is also revealed that this witness

was also accused in other cases and appellants were prosecution witnesses in that cases. According to this witness, the sun had not risen at the time of the incident, but it was daylight and the sun was about to rise. It was a winter day, and there was moonlight at the time of the incident. This witness has also stated during cross-examination that "I had not told to the Investigating Officer that cap (*topa*), muffler and waist-cloth (*tahmad*) of Omkar had fell down on the spot because he has not questioned me."

22. Thus, from the perusal of the evidence of Balkishan (PW-9), it appears that this witness has also stated in the same way, style and manner as was stated by Bir Sen (PW-8) in the Court. From this fact, it is revealed that prosecution witness Balkishan (PW-9) was also not present at the place of occurrence when incident happened. The prosecution also projected Balkishan (PW-9) to support its case. Due to this reason, Balkishan (PW-9) has stated the happening of the incident in the same way and manner as was stated by Bir Sen (PW-8). From the evidence of this witness, it is also revealed that the sun had not risen at the time of the incident but was about to rise. It is also surprising fact that none of the people from the nearby area or neighbours, who were residing in houses near or at some distance from the place of occurrence, heard the noise of Bir Sen, Segrām, and Jhabbar, whereas only this witness, Balkishan (PW-9), has heard them shouting to run towards the spot and save Shyam Singh. From the perusal of the evidence of Balkishan (PW-9), it appears that this witness is also a projected witness by the prosecution to support its case. However, from the evidence of this witness, we find that statement of this witness also does not inspire confidence. In this way, we find that presence of this witness

Balkishan (PW-9) is also doubtful at the place of occurrence when the incident happened.

23. Prosecution witness Sewag Ram (PW-10) is brother-in-law of the deceased, Shyam Singh. In other words, he is real brother of wife of the deceased, Shyam Singh. From perusal of the evidence of this witness, it is revealed that this witness has stated that "he had come to the house of Shyam Singh two days prior to the incident upon hearing that a quarrel was going on between Shyam Singh and his brother over agricultural land." According to this witness, he along with deceased, Shyam Singh, had gone to ease themselves towards jungle. As per the statement of this witness, when he and Shyam Singh after easing themselves were returning towards village and reached at the field of Brahmopal then from the sugar-cane field of Mahabir, Ranvir and Hem Raj with knives and Mangey and Omkar with country-made pistols came out. Hem Raj and Ranvir assaulted with knives on Shyam Singh. According to this witness, when he made a noise then Omkar and Mangey have said that go away otherwise we will shoot you." Thereafter, in his evidence, nearly in the same way, this witness has also stated the prosecution story as was stated by other prosecution witness, Bir Sen (PW-8) and Balkishan (PW-9). From the evidence of this witness, this fact again emerged and corroborated that deceased-appellant, Ranvir, with his father Chunni and children were living in village Pathauli. Thus, from the above statement of this witness, this fact emerged that the deceased-appellant, Ranvir, and surviving accused-appellant, Omkar, were not living in the same village where incident happened but they were living in village Pathauli, away from village Abupur. This witness has accepted in his cross-examination that village of this witness is eight *kosh* away from the place of occurrence. This witness has also stated in his cross-

examination that "he has not stayed at the place of occurrence. From there, he went to the house of Shyam Singh and from there he went to his village." According to this witness, after one month, Investigating Officer called him at the police station and recorded his statement. From the perusal of the whole evidence of Sewag Ram (PW-10), it is also apparent that this witness is also not an eye-witness of the incident. This witness has not seen the incident with his own eyes. The prosecution with consideration and afterthought projected this witness to be present at the home of Shyam Singh prior to two days of the incident. Prosecution tried unsuccessfully to project this witness with this story that he went to ease himself with the deceased Shyam Singh and when he along with deceased, Shyam Singh, were returning from jungle to their home, then incident happened. In this way, prosecution although tried to project this witness as an eye-witness of the incident, however, he has himself stated that he has not stayed at the place of occurrence and had went to the home of Shyam Singh and from there, he went to his village. This witness is a real brother-in-law of the deceased, Shyam Singh, and maternal uncle of the informant Gajraj Singh (PW-7) and Bhanwar Singh. In spite of this fact and his close relationship with the deceased Shyam Singh and his family, being the real brother of the deceased's wife, this witness did not consider it proper to stay at the place of occurrence, accompany the dead body to the post-mortem house, or participate in the cremation proceedings of the deceased Shyam Singh. The above conduct of this witness clearly indicates that he was later, upon consideration and afterthought, projected by the prosecution as an eye-witness to support and strengthen the prosecution story and to falsely implicate the surviving accused-appellant, Omkar, along with the other deceased-appellants. From the conduct and behaviour of this witness, it is also explicitly clear

that he was not present with the deceased, Shyam Singh, at the time of the incident." Thus, from the overall perusal and analysis of the statement of Sewagram (PW-10), we find that evidence and statement of this witness creates a doubt and suspicion about the facts as stated by this witness in the Court in the support of the prosecution story. Due to this reason, we are unable to believe the testimony of this witness as reliable and trustworthy.

24. From the perusal of the whole evidence of the prosecution witness as available on record and as stated by the informant Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewagram (PW-10), it is clear that many civil and criminal cases were pending between the prosecution and defence sides. The litigation was both civil and criminal in nature. Cases under Section 307 IPC were pending against the prosecution side, in which prosecution witnesses were arrayed as accused persons. There were also criminal cases in which one side was the prosecution and the other side was arrayed as the accused. There was civil litigation pending between them relating to agricultural land of Chunni Lal, father of deceased, Shyam Singh, and deceased-appellant, Ranvir Singh. Cases were also pending in Revenue Court. It is also revealed that there was bitter enmity between the prosecution sides and accused-appellants. From the perusal of the entire prosecution evidence, it is apparent that due to bitter enmity and suspicion between the prosecution side and the defence side, the surviving accused-appellant, Omkar, along with the other deceased appellants, has been falsely implicated in the present case for the commission of the alleged crime.

25. However, only on the ground of suspicion and doubt without cogent and reliable evidence which must be beyond reasonable doubt, no accused persons could be held guilty for commission of the crime.

26. The Supreme Court in ***Sujit Biswas v. State of Assam;*** (2013) 12 SCC 406 has held in para-13 as under:

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

27. The Supreme Court recently in ***State of Odisha v. Banabihari Mohapatra And Another;*** (2021) 15 SCC 268 has held:

"It is well settled by a plethora of judicial pronouncement of this Court that suspicion, however strong cannot take

place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt."

28. It is also a settled principle of law that mere enmity, in the absence of cogent, reliable, and foolproof evidence, is not sufficient to hold a person guilty of a heinous crime such as murder.

29. Hon'ble Supreme Court in the case of **Sushil And Others v. State of U.P.**; 1995 SSC (Cri.) 388 and in the case of **State of Punjab v. Sucha Singh**; (2003) 3 SCC 153, has held that:

"Enmity is a double edged weapon which cut both ways. It may constitute motive for the commission of the crime and at the same time it may also provide a motive for false implication."

30. From the written report, Exhibit Ka-10, and from the evidence of Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10), it is clear that date and time of the incident is 05.01.1979 at 06:30 am. The month of January is a very cold season. Generally, in the first week of January, heavy fog is present in the atmosphere. Due to the dense fog during this period, visibility of nearby places is reduced to a few feet. In other words, due to heavy fog in the atmosphere covering the ground also, visibility in all directions, i.e., front, back, and other sides, is extremely poor. However, in spite of the happening of the incident on 05.01.1979 at 06:30 am, eye-witnesses of the prosecution are stating in the Court that they had seen the happening of the incident with their own eyes. These statements of the prosecution witnesses appear to be doubtful and suspicious due to the heavy fog present in the month of January. Hence, due to the above reason, testimonies of the above witnesses do not inspire confidence, as such, we do not rely on them.

31. In the evidence of Bir Sen (PW-8) and Balkishan (PW-9), it has been stated that during the course of the incident, cap (topa), muffler, and waist-cloth (tahmad) of the accused-appellant, Omkar, fell on the ground at the place of occurrence, which has been mentioned in the recovery memo (Exhibit Ka-13). Cap (topa) is exhibited as material Exhibit-17, muffler is exhibited as material Exhibit-18 and waist-cloth (*tahmad*) is exhibited as material Exhibit-19.

32. Investigating Officer, Ramcharan Lal Sharma (PW-11) has stated in his evidence that on his direction, S.I. P.D. Sharma took into custody from the place of occurrence, one striped waist-cloth (tahmad dharidar), one muffler and one cap (topa) However, prosecution witnesses Bir Sen (PW-8) and Balkishan (PW-9) have stated in their evidence that these cap (*topa*), muffler and waist-cloth (*tahmad*) are of accused-appellant, Omkar. It is an admitted fact by the prosecution witnesses that at the time of the incident, surviving accused-appellant, Omkar, and deceased-appellant, Ranvir, were not living in village Abupur where incident happened but they were living in village Pathauli, situated in district Meerut. In the above condition, how these facts could be regarded conclusively to be proved that above cap (*topa*), muffler and waist-cloth (*tahmad*) were of accused-appellant, Omkar. This fact can be proved only by a person who had seen the accused-appellant, Omkar, usually wearing the aforesaid cap (topa), muffler, and waist-cloth (tahmad), and who may be his neighbour. Since cap (topa), muffler and waist-cloth (tahmad) are commonly worn in every house during the winter season, only a person residing in village Pathauli who regularly meets the accused-appellant, Omkar, could verify that the recovered cap (topa), muffler, and waist-cloth (tahmad) were used and worn by the accused-appellant, Omkar. Thus, in view of the above facts, it

could not be conclusively presumed that recovered cap (topa), muffler, and waist-cloth (tahmad) from the place of occurrence surely are of the accused-appellant, Omkar. These facts also create a doubt about veracity of the prosecution story.

33. Prosecution witness Balkishan (PW-9) has stated in his cross-examination that "I had not told the Investigating Officer that on the spot, cap (topa), muffler, and waist-cloth (tahmad) of Omkar, had been left on the ground because he had not asked from me". From the above statement of prosecution witness Balkishan (PW-9), suspicion about the recovery of so-called cap (topa), muffler, and waist-cloth (tahmad) of accused-appellant, Omkar, also become doubtful.

34. It is also a clear fact that the Investigating Officer could not recover any weapon of assault like fire-arm or knife from the possession or on the pointing out of the surviving accused-appellant, Omkar.

35. It is also a noteworthy fact that prosecution has not adduced and examined Jhabbar, who has informed about the incident to the informant Gajraj Singh (PW-7) and is also an eye-witness of the incident. The prosecution withheld this very material witness by not producing and examining in the Court since Jhabbar whose name as a prosecution witness has been mentioned in the charge-sheet at Sl. No. 5. Non-production by the prosecution and examination of this witness Jhabbar in the Court is a very material fact which raise a serious doubt about the veracity and truthfulness of the prosecution story.

36. Thus, from the above discussions and analysis of the prosecution evidence, it is clear that evidence of prosecution witness Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10) does not inspire confidence. The presence of above these prosecution witnesses at the place of

occurrence is very doubtful. From the perusal of the evidence of the above witnesses, it is clear that there are major and material contradictions in the evidence of the above witnesses. Apart from the above, conduct of the witnesses is also highly doubtful and unnatural.

37. In view of the above discussions, we find that learned Trial Court has not appreciated the evidence of the prosecution in right prospective and without observing major and material contradictions only relying on the evidence of the prosecution witnesses Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10) held the surviving accused-appellant, Omkar, with other deceased-appellants guilty. The finding and reasoning of the learned Trial Court are not supported by cogent and reasonable finding in this regard.

38. In view of the above facts, judgment and order of the learned Trial Court dated 26.07.1984 is not sustainable in the eyes of law. Hence, we find that judgment and order of learned Trial Court dated 26.07.1984 is liable to be set aside and the appeal of the surviving appellant, Omkar, is liable to be allowed.

39. The criminal appeal is **allowed**. Accordingly, we set aside the impugned judgment and order dated 26.07.1984 of conviction and sentence passed against the accused-appellant, Omkar, by learned Trial Court in Sessions Trial No. 163 of 1979 (State v. Ranvir Singh and others) arising out of Case Crime No. 4 of 1979, under Section 302/34 IPC, Police Station Muradnagar, District Ghaziabad. The appellant is acquitted of the charge under Sections 302/34 IPC. The appellant, Omkar, is on bail. He need not surrender. His bail bonds are cancelled and sureties stand discharged. However, he shall comply with the provisions of Section 437-A Cr.P.C.

40. Let a copy of this judgment be sent to the learned Trial Court forthwith along with the Trial Court record for compliance.

(Vinai Kumar Dwivedi,J.) (Siddharth,J.)

30th April, 2026
SHUBHAM