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2026:AHC:130205-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1048 of 1989

Balistor

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	P.b. Umrao (a.c.), Pratap Bhan Umrao
Counsel for Respondent(s)	:	A.G.A., Zafar Abbas

Along with :

1. **Criminal Appeal No. 1377 of 1989 :**
   Mahesh and another
   Versus
   State of U.P.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

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

1. Both these Criminal Appeals bearing Nos. 1048 of 1989 (Balistor Vs. State of U.P.) and 1377 of 1989 (Mahesh and another Vs. State of U.P.) have been filed by accused-appellants, Balistor, Mahesh and Naresh, respectively, against the judgment and order of conviction dated 02.05.1989 passed by learned Vth Additional District and Sessions Judge, Moradabad in Session Trial

No. 67 of 1988 (State Vs. Mahesh and others) arising out of Case Crime No. 287 of 1987, under Sections 302, 324/34 and 201 IPC, Police Station Kundarki, District Moradabad.

2. From the written report, Exhibit Ka-1, prosecution story in nutshell is that informant, Rohtash Singh @ Chhotey (PW-1), has filed this written report at police station Kundarki, District Moradabad against Mahesh, Naresh @ Chhotey, Virpal and Balistor stating therein that "Ramayana was being recited in the temple of our village, where lanterns were illuminated. I along with my brother Ram Kunwar and father Ramphal Singh and other people of the village were present there. At around 09:45 P.M., after reciting Ramayana, I along with my brother Ram Kunwar and father were going home. My brother was ahead of us and my father and I were behind. As soon as my brother reached near the outer wall of Khairati's house, Mahesh, Naresh @ Chhotey, Virpal and Balistor from our village were already standing there. Mahesh, Virpal and Naresh had guns and Ballistor had a country-made pistol. They surrounded my brother. On seeing this, my father and I made a noise and on listening the noise, Prem Pal, Khandey Singh and Kishan Pal Singh came at the spot. Mahesh, Virpal, Naresh @ Chhotey fired the gun upon my brother Ram Kunwar before us, whereupon he fell down sustaining injury. Balistor threatened us with a country-made pistol and told the others to make the dead body disappear. Due to fear, we were unable to take any action. All four persons fled from the spot, carrying away the dead body while firing in the air. In the said firing, Km. Veerum, daughter of Jaswant, who was also coming from the Ramayana, sustained pellets injury. My father, other witnesses and I saw the whole incident in the light of the torch. Mahesh had already registered a case against my brother Ram Kunwar in respect of eloping his sister Suman, in

which he was on bail. Due to this enmity, all the four accused committed murder of my brother and carried away his dead body."

3. After submission of written report, Exhibit Ka-1, by informant Rohtash Singh @ Chhotey (PW-1) at Police Station Kundarki, District Moradabad, an F.I.R., Exhibit Ka-4, was registered on 28.09.1987 by Head Constable Rajendra Singh (PW-5) at Case Crime No. 287 of 1987, under Sections 302/201 IPC against the accused-appellants Mahesh, Naresh @ Chhotey, Virpal and Balistor.

4. Station House Officer/Investigating Officer, Chandra Bhan Shukla (PW-8) has started investigation of this case. He visited the place of occurrence, took the torch from the witnesses into custody, and subsequently returned it to them with instructions to produce it whenever required. He also prepared Exhibit Ka-2 of taking over into possession and handing over the torch to the witnesses. The Investigating Officer also taken simple soil and bloodstained soil from the place of occurrence on 28.09.1987 before the prosecution witnesses and prepared a *fard* as Exhibit Ka-6. On 28.09.1987, the Investigating Officer, Chandra Bhan Shukla (PW-8), also collected plain soil and bloodstained soil from the millet crop field of Sumeri, son of Jeevan, located at the southern-western corner, and prepared a recovery memo, marked as Exhibit Ka-7. On 28.09.1987, the Investigating Officer had also taken into possession one piece of plastic shoe of brown colour of deceased Ram Kunwar, on which two leather *tiklis* (buttons) are attached, which was recovered from the southern-western corner of the millet crop field of Sumeri, son of Jeevan, and prepared a recovery memo as Exhibit Ka-7/A. The Investigating Officer, Chandra Bhan Shukla (PW-8), recovered the dead body of the deceased Ram Kunwar without head on 04.10.1987 from the

sugar-cane field of Nazruddin, resident of Majholi, which was identified by witnesses as dead body of Ram Kunwar, son of Ramphal Singh. The Investigating Officer prepared a *fard* identification of dead body of the deceased as Exhibit Ka-3. On 04.10.1987 itself, the Investigating Officer, Chandra Bhan Shukla (PW-8), had also recovered from the right leg of the deceased Ram Kunwar one piece of plastic shoes of brown colour, on which Sansar was written. Number of the shoes is seven. In this shoes, three leather *tiklis* (buttons) are attached. The shoe is old used. The same was taken into possession. From the dead body of the deceased, one piece of white cotton waist-cloth which was bloodstained and one piece of *shun* rope which was tied on the waist of the dead body was recovered and taken into possession and *fard* recovery of the above articles was prepared before the witnesses of the *fard* by the the Investigating Officer as Exhibit Ka-11.

5. The Investigating Officer, Chandra Bhan Shukla (PW-8), inspected the place of occurrence, recorded the statement of the informant and other witnesses and inquired from the villagers, prepared the site plan as Exhibit Ka-8. The Investigating Officer also prepared site plan from the place where plastic shoe of the deceased was recovered from the field of Sumeri as Exhibit Ka-9. The Investigating Officer also inspected the place from where dead body of the deceased was found and prepared site plan of that place as Exhibit Ka-10. The Investigating Officer also tried to arrest accused-appellants but he was unsuccessful because they surrendered before the Court of Chief Judicial Magistrate on 08.10.1987. The Investigating Officer took the two accused-appellants on remand and interrogated them, during which they stated that they could lead to the recovery of the head of the deceased. The Investigating Officer accompanied the accused-

appellants to the place where they claimed the head of the deceased could be recovered. However, the head of the deceased, Ram Kunwar, could not be recovered from the place shown by the accused-appellants. Thereafter, completing and preparing all the formalities of the investigation and preparing other police papers, such as, *panchayatnama*, etc., the Investigating Officer sent the dead body of the deceased, Ram Kunwar, for conducting post mortem examination. Thereafter, after completing all the formalities of the investigation, recording the statements of the witnesses, the Investigating Officer filed charge-sheet under Sections 302/201/307 and 120B IPC against the accused-appellants in the court of Magistrate concerned. According to the post mortem report of the deceased Ram Kunwar, Exhibit Ka-19, following ante mortem injuries were found on the dead body of the deceased :

> *"1. Gunshot wound of entry in an area of 3 cm x 2 cm cavity deep sterni on the wound inverted. Sterni whole of the skin colour has changed to black blueish. Nothing can be said regarding charring and blackening of the skin on the wound. The colour has changed on the wound of putrefaction. The wound is over the left side of front of chest 6 cm below the left clavicle.*
>
> *2. Gunshot wound of entry in an area of 1.5 cm x 1.5 cm x cavity deep on the left side of chest 6 cm below. The injury no. 1 with skin round the wound with inverted margins. Nothing can be said regarding blackening and charring of the wound because of putrefaction changes leading to black coloured of skin.*
>
> *3. Gunshot wound of entry 7 cm x 3 cm on the right side chest 8 cm below the axilla. The margins of the wound is inverted and cavity deep. No opinion can be given regarding blackening and charring of the wound skin.*

4. Gunshot wound of exit of 8.5 cm x 6.5 cm on the right side back of chest in the middle with everted margins of the wound. No opinion can be given regarding charring and blackening of the wound.

5. Neck and face absent from the body just above the 4th cervical vertebra with cut margin wound which has separated the neck from the body round the whole neck circumference (30 cm x 8 cm).

6. Whole of the toes of the left leg (all five) absent from the leg appear to be eaten by the insects and wild animals.

7. Left hand below the left elbow found burned has appearing charred.

8. Whole of the organ inside the chest cavity are eaten away by the wild animals."

6. Injured Km. Veerum was also examined by Dr. S.N. Verma on 28.09.1987 and following injury was found on her body :

"Gunshot wound on left hand palm Ant. 4 fingers. Index, middle, IIIrd and little fingers. Ant. Multiple injury."

7. Since the case was exclusively triable by the Court of Session, hence learned concerned Magistrate committed the case to the Court of Session for trial.

8. Learned Trial Court framed charges against the accused-appellants Mahesh, Naresh and Virpal on 15.03.1988 under Sections 302, 201 and 324 IPC. Learned Trial Court also framed charges against the accused-appellant Balistor on 15.03.1988 under Section 302/34, 201 and 324/34 IPC. The accused-appellants denied the charges levelled against them and claimed trial.

9. In support of its case, prosecution adduced informant Rohtash Singh @ Chhotey (PW-1), Khandey Singh (PW-2), Prem

Pal (PW-3), Sansar Singh (PW-4), Rajendra Singh (PW-5), Anwar (PW-6), Ashfaq (PW-7) and Chandra Bhan Shukla (PW-8). Apart from the ocular evidence, prosecution also relied on documentary evidence, such as, from Exhibit Ka-1 to Ka-22.

10. Prosecution witnesses were examined before the trial Court and their statements were recorded. After recording the prosecution evidence, Trial Court examined the accused-appellants under Section 313 Cr.P.C. The accused-appellants in their examination under Section 313 Cr.P.C. have denied from the questions put before them. They expressed ignorance about the questions that were read before them. They have also stated that they were unaware of the questions put up to them. In addition to the above, accused-appellant, Mahesh, has stated that due to enmity, witnesses have given evidence against him. He also stated that he had no enmity with Ram Kunwar but had enmity with Vinod. Accused-appellant, Virpal, had also stated that due to enmity, witnesses have given evidence against him and due to enmity, case was filed against him. The accused-appellants, Naresh and Balistor, have stated that due to enmity, case was registered against them and due to enmity, witnesses had given evidence against them. In this way, all accused-appellants have expressed ignorance about the questions and facts which were put up to them under Section 313 Cr.P.C. in their statements.

11. The accused-appellants have examined Onkar Gupta, Head Copyist as DW-1 in their defence.

12. Learned Trial Court after recording the evidence of the prosecution and defence and after hearing the arguments of both sides, delivered judgment and order dated 02.05.1989 against the accused-appellants. Learned Trial Court held the accused-appellants, Mahesh, Naresh and Virpal, guilty under Section 302 IPC and accused-appellant, Balistor, under Section 302/34 IPC

and sentenced them for life imprisonment with a fine of Rs. 2000/- each. In default of payment of the fine, they all were directed to undergo rigorous imprisonment for one year. The accused-appellants were also held guilty under Section 201 IPC and sentenced them for two years' rigorous imprisonment. The accused-appellants were also held guilty under Section 324/34 IPC and they were also sentenced to undergo rigorous imprisonment for one year.

13. Aggrieved by the judgment and order dated 02.05.1989 of the learned Trial Court, the accused-appellants have preferred these criminal appeals before this Court.

14. We have heard the arguments of learned Counsel for the appellants and learned A.G.A. for the respondent/State. We have gone through all oral and documentary evidences and also perused the impugned judgment and order of conviction and sentence dated 02.05.1989 passed by learned Trial Court.

15. Learned Counsel appearing for the accused-appellants submitted that incident occurred on 27.09.1987 at 09:45 P.M. and the F.I.R. was lodged on 28.09.1987 at 02:00 A.M. after a delay of about four hours. From the place of occurrence, Village Basera, distance of police station was only six kms., however, the informant lodged the written report after deliberation and with due afterthought, falsely implicating all the accused-appellants in the present case. It is also submitted that the accused-appellants had no enmity with the deceased, Ram Kunwar. All the prosecution's eyewitnesses are family members of the deceased, Ram Kunwar, making them related witnesses. The other prosecution witnesses, Anwar (PW-6) and Ashfaq (PW-7), are helpers of the prosecution in supporting its case. They have falsely given evidence against the accused-appellants under pressure of the prosecution. It is also submitted on behalf of the

accused-appellants that there are major and material contradictions in the evidence of the eye-witnesses of the prosecution, which shake the veracity of the prosecution story. However, learned Trial Court has not considered and kept in mind these major and material contradictions in giving the finding and reasoning against the accused-appellants. There was no motive on the part of the accused-appellants to commit the murder of the deceased, Ram Kunwar, but they have been falsely implicated in this case due to enmity. Learned Trial Court has not considered this major aspect in delivering the judgment and order of conviction and sentence against the accused-appellants. The finding and reasoning of the learned Trial Court are based on surmises and conjectures and not supported by any reliable evidence and are against the settled principle of law. By the above arguments, learned Counsel for the accused-appellants have submitted that the accused-appellants are innocent but the learned Trial Court wrongly appreciating the evidence has convicted them in the alleged commission of the crime. In this way, it is submitted that the judgment and order dated 02.05.1989 passed by the learned Trial Court is liable to be set aside. Hence, criminal appeals filed by the accused-appellants are liable to be allowed.

16. Per contra, learned A.G.A. for the State submitted that there is no delay in lodging the written report and registration of the F.I.R. against the accused-appellants. The eye-witnesses of the prosecution have seen the commission of the crime by the accused persons with their own eyes in the light of petromax lamps and by their torches. All the accused-appellants have been named in the written report, Exhibit Ka-1. After commission of the alleged crime, all accused had absconded from their home. The Investigating Officer tried to arrest them but he was unsuccessful

in doing so. Ultimately, the accused-appellants surrendered before the Court of Chief Judicial Magistrate. The informant and other prosecution witnesses of the facts have seen occurrence of the incident with their own eyes. All the eye-witnesses of the prosecution have fully supported the prosecution story by their reliable and credible evidence in the Court. Learned Trial Court found ocular and documentary evidence of the prosecution as reliable and trustworthy and held the accused-appellants guilty for the commission of the crime. Learned Trial Court has appreciated the evidence in proper and judicious perspective and rightly convicted the accused-appellants. There is no perversity and illegality in the finding and reasoning given by the learned Trial Court. Hence, criminal appeal filed by the accused-appellants are devoid of merits and are liable to be dismissed.

17. In the light of the rival submissions advanced by learned Counsel for the parties, we have perused the written report. From a perusal of the written report, Exhibit Ka-1, it is revealed that all accused-appellants have been named specifically with their role played by them and also the murder weapon, which they have held in their hands. According to the written report, the incident had occurred in the night of 27.09.1987 at 09:45 P.M. Informant Rohtash Singh @ Chhotey (PW-1) has lodged written report at the concerned police station and on the basis of the written report, Exhibit Ka-1, F.I.R., Exhibit Ka-4, was registered on 28.09.1987 at 02:00 A.M. in the night itself. The distance between the place of incident and the police station Kundarki is six kms. When we see the horrifying and cruel manner in which accused-appellants had committed the alleged crime in the night in the light of petromax lamps and torches, we find that there is no delay or connection in lodging the written report by informant Rohtash Singh @ Chhotey (PW-1). We also find that there is no

afterthought in lodging the written report, Exhibit Ka-1. In view of the above fact and situation, it is clear that there is no delay in lodging the written report and registering the F.I.R. at the concerned police station against the accused-appellants, hence we find no force in the arguments of learned Counsel for the parties on this point.

18. We have gone through the evidence of informant Rohtash @ Chhotey (PW-1), who is real brother of deceased Ram Kunwar, and found that he is an eye-witness of the incident and he stated the same things in his evidence as was stated by him in his written report, Exhibit Ka-1. In his examination-in-chief, this witness has stated that "it was 09:45 P.M. at night. The deceased after listening Akhand Ramayan Path in the temple was going to home. I, along with my father Ramphal Singh, were also going with him. The deceased was my real brother. The deceased was 3-4 steps ahead. When we reached near southern wall of Khairati's house, then there accused Mahesh, Naresh @ Chhote, Virpal and Balistor met us. Virpal is uncle of Mahesh and Naresh; and Naresh is cousin of Mahesh. Mahesh, Naresh and Virpal had guns and Balistor had country-made pistol. They surrounded my brother Ram Kunwar. I, my father and my brother Ram Kunwar made a hue and cry. Prem Pal Singh, Khandey Singh and Kishan Pal Singh came. I and other witnesses had torch. My father was also carrying a torch, and all the torches were lit, providing sufficient light. Mahesh, Naresh and Virpal had collectively fired upon Ram Kunwar. Due to which, he sustained injury and died there. Balistor holding country-made pistol in his hand continuously intimidating us. Again Balistor said that make the dead body disappear. After this, accused fired in the air and dragged the dead body of my brother and carried away. By the fire in the air, Km. Veerum, daughter of Jaswant Singh, had also

received pellets injury. We all saw the whole incident in the light of torch. I had carried my torch today which I had at the time of incident.

19. About motive of the incident, informant Rohtash Singh @ Chhotey has stated in his examination-in-chief that "accused Mahesh before 2-2½ years of this incident had registered a case against my brother in respect of eloping his sister Suman with my brother. It was enmity of accused with my brother. All the four accused are present in Court. My brother was wearing a light checked shirt with red lines, a white waist-cloth (tahmad), underwear with green lining, and plastic shoes without laces. The dead body of my brother was found after six days in the sugar-cane field of Nazruddin in the jungle of Majholi. The head of the dead body was severed. We identified from clothes, shoes and by his body that this dead body is of my brother."

20. In his cross-examination by defence, informant Rohtash Singh @ Chhotey (PW-1) has stated that "name of father of accused Mahesh is Rajpal. I do not know whether Rajpal had lodged a case against Vinod in respect of Suman for the case under Section 498 IPC on 30.11.1986 or not. Mahesh had lodged a report against four persons in respect of eloping his sister. This report was written against the deceased Ram Kunwar, Rashid, Santosh and Vinod. Except Ram Kunwar, rest three persons are alive."

21. In the same way, eye-witnesses Khandey Singh (PW-2) has also stated in his evidence that it was 09:45 P.M. at night. I was at temple. In our village, Akhand Ramayan Path was being recited. I heard a noise near the temple coming from the southern wall of Khairati's house. On hearing it, Kishan Pal, Prem Pal Singh and other villagers ran towards that. Km. Veerum, daughter of Jaswant Singh, too ran towards that. This witness has

also stated in his evidence that all the prosecution witnesses had torches and all of them were lit. This witness further stated that "I saw, in the light of my torch and the torches of others, that the accused Mahesh, Naresh, Virpal, and Balistor were surrounding Ram Kunwar. Mahesh, Naresh and Virpal had guns and Balistor had country-made pistol. Three persons, holding guns, fired at Ram Kunwar together. He fell down there and died. Balistor with country-made pistol was threatening us there. Balistor said that make the dead body disappear and they dragged the dead body in western direction. Before this, they had fired in the air. Due to which, Km. Veerum sustained injuries. The accused persons are of my village. I know them before."

22. In cross-examination, Khandey Singh stated that "I secured bail for Ram Kunwar in case of Section 366/376 IPC. His father Ramphal had called me for his bail. Name of my father is Man Singh and my grandfather name is Niranjan Singh. Niranjan Singh had two sons, Pan Singh and Buddhi Singh. Ramphal is son of Buddhi Singh and Ram Kunwar is son of Ramphal. At the time of incident, I was attending the Ramayan Path. I arrived at the spot, upon hearing Ram Kunwar's commotion, before any firing occurred. In Ramayan program, three gas petromax lamps were lit."

23. Prem Pal is PW-3 but he has not supported the prosecution case and he was declared hostile on the request of the prosecution. However, from the perusal of the evidence of this witness, this fact is revealed and established that on the day of incident, there was reciting of Akhand Ramayan at the temple. This witness was also present there; he had also heard noise from the southern wall of Khairati's house. On hearing it, this witness along with other witnesses including Km. Veerum, daughter of Jaswant, came to the spot. There were people standing there.

From the statement of this witness, happening of the incident and fact of reciting of Akhand Ramayan at the temple and coming of the noise of hue and cry are proved and testified.

24. Prosecution produced Anwar as PW-6. He has also supported the prosecution story. This witness has stated in his evidence the same statement as were stated by the informant Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2). He is a witness of recovery of plain soil and bloodstained soil, Exhibits Ka-6 and Ka-7. The fact with regard to aforesaid recovery has been proved by this witness in his cross-examination. He has also stated that "I had not told to Rohtash that I had also seen dragging of the dead body because Rohtash was himself present there and he had saw me. First of all, I had told these things to daroga that I had seen the accused dragging and carrying away the dead body. Balistor was walking 1-2 steps behind them. Balistor had fired 3-4 shots in the air when they were carrying away the dead body. Thus, from the evidence of Anwar (PW-6), prosecution story has also found support and corroboration. The role of accused-appellants have also been stated by this witness. In the same way as was stated by the informant Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2). Thus, we find the evidence of this witness as relevant and trustworthy in respect of the prosecution story.

25. Prosecution produced Ashfaq as PW-7. From the perusal of the evidence of this witness, it appears that he had stated and verified the fact that the accused-appellants, Virpal, Mahesh, and Naresh, were carrying away the dead body of the deceased, Ram Kunwar, while Balistor was 2–3 steps behind them, firing shots into the air. All of them were going towards west. During the course of cross-examination by the defence, this witness had also stated that "I had not told to Rohtash that I had also seen

dragging and carrying away the dead body of the deceased because Rohtash was also present there. First of all, I had told about this to *daroga*. I had stated that all four accused were holding and dragging the dead body while carrying it away. From the perusal of the evidence of this witness Ashfaq (PW-7), we find that prosecution story has also found support from the statement of this witness as given by him in the Court.

26. Thus, from the perusal and discussions of the evidence of the informant, Rohtash Singh @ Chhotey (PW-1), and Khandey Singh (PW-2), we find that these witnesses are although related to the deceased, Ram Kunwar, but they are eye-witnesses of the occurrence, who have seen the happening of the whole occurrence with their own eyes.

27. From the perusal of the written report, Exhibit Ka-1, we find that informant, Rohtash Singh @ Chhotey (PW-1) himself scribed the written report, Exhibit Ka-1, in which he described the incident, naming all the accused and specifying the roles played by each, in very simple and natural words. There is no embellishment, exaggeration, concoction in the written report, Exhibit Ka-1. Apart from this, although informant Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2), who is related with his brother Ram Kunwar, have also stated and narrated the happening of the incident and roles played by each of the accused in very simple and natural language without any exaggeration, embellishment and concoction. At the time of happening of the incident, it was 09:45 P.M. and deceased with his brother informant Rohtash Singh and father Ramphal were returning from listening the reciting of Akhand Ramayan at the temple, in the way, accused-appellants appeared near the outer southern wall of Khairati's house and surrounded the deceased, Ram Kunwar. Accused-appellants Mahesh, Naresh and Virpal had

guns in their hands and accused Balistor had country-made pistol in his hand. The accused-appellants, Mahesh, Naresh and Virpal together fired shot from their guns at deceased Ram Kunwar, who died at the spot and accused Balistor holding country-made pistol in his hand was threatening to the people so that no person could come forward and save the life of deceased, Ram Kunwar. After committing the murder of the deceased, Ram Kunwar, the accused-appellants were not satisfied with their criminal act; they also dragged his dead body by tightening a *shun* rope around his waist and carried it away. In the jungle of Majholi, they severed the head of the deceased from his body and thrown the same away at a place from where despite pointing out of the accused-appellants, Investigating Officer could not recover the head of the dead body of the deceased, Ram Kunwar. However, except head, dead body of the deceased was recovered on 04.10.1987 from the sugar-cane field of Nazruddin, resident of Majholi. The dead body of the deceased was identified by informant Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2) as dead body of Ram Kunwar from the clothes, shoes and from other articles. The commission of the crime and carrying away the dead body of the deceased, Ram Kunwar, by dragging and severing the head from rest of his body shows that the accused-appellants have committed the crime with full preparation and with intention to kill him in a very horrifying, cruel and brutal manner.

28. Although the informant Rohtash Singh @ Chhotey (PW-1) is real brother of the deceased, Ram Kunwar, and Khandey Singh (PW-2) is family member of the deceased and they are the eye-witnesses of the incident, who have seen the whole occurrence with their own eyes, thus, testimony of the above eye-witnesses is fully credible that inspire full confidence. We find that evidence of Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2)

are wholly reliable. There is no major and material contradictions by which evidence of these witnesses could be rejected and doubted. Prosecution witnesses Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2) supported and corroborated the evidence of the Anwar (PW-6) and Ashfaq (PW-7). Likewise, Anwar (PW-6) and Ashfaq (PW-7) also corroborated the evidence of prosecution witnesses Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2).

29. No person or family member of the victim could falsely implicate an innocent individual in a crime as serious as murder while excluding the real culprit who committed the offence. In other words, family members of the victim always desire that name of the real culprit must be written in the F.I.R. and real culprit must be punished according to provisions of the law. In this case, there is no ground or circumstance of this nature by which this fact could be revealed that prosecution and eye-witnesses of the case have falsely implicated the accused-appellants for commission of the crime.

30. It is a settled principle of law that the evidence of a related witness cannot be rejected or doubted merely on the ground of their relationship.

31. The Supreme Court in ***State of Rajasthan v. Smt. Kalki And Another;*** **(1981) 2 SCC 752**, has held in paragraph no.7 that:

> *"7. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an*

'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents."

32. The Supreme Court in ***G. Laxmanna And Others v. State of Andhra Pradesh;*** **(2002) 8 SCC 333**, has held in paragraph no.10 on the point of related witness that:

"10. The mere fact that the prosecution witnesses are related to each other does not impress us, having regard to their natural presence and the consistency in their evidence. After all the deceased were also related to the witnesses as they belonged to the same family."

33. Although at the time of the incident, the informant, Rohtash Singh @ Chhotey, brother of the deceased Ram Kunwar, his father Ramphal, and several other people, including other prosecution witnesses, were present, the accused-appellants were armed with deadly weapons, like guns and country-made pistols, and their conduct was extremely horrifying and cruel. For this reason, no person, including Rohtash Singh @ Chhotey (PW-1) and the other prosecution witnesses, dared to intervene or save the life of the deceased, Ram Kunwar, from the brutal acts of the accused. On this ground only, it could not be said that informant Rohtash Singh @ Chhotey (PW-1), Khandey Singh (PW-2), Anwar (PW-6) and Ashfaq (PW-7) are not the eye-witnesses of the incident.

34. The Supreme Court in ***Sucha Singh And Another v. State of Punjab;*** **(2003) 7 SCC 643**, has held in paragraph no. 23 on the point of related witness that:

> *"23. So far as inaction of PWs 9 and 10 in not coming to rescue of deceased is concerned, it has been noted by the trial Court and the High Court that both of them were unarmed and bare handed and the accused persons were armed with deadly weapons. How a person would react in a situation like this cannot be encompassed by any rigid formula. It would depend on many factors, like in the present case where witnesses are unarmed, but the assailants are armed with deadly weapons. In a given case instinct of self-preservation can be the dominant instinct. That being the position, their inaction in not coming to rescue of the deceased cannot be a ground for discarding their evidence."*

35. Motive assigned for the commission of the crime by the prosecution is that the deceased Ram Kunwar, participated in eloping of Suman, sister of the accused Mahesh. For this incident, a report was lodged against the deceased, Ram Kunwar, Rashid, Santosh and Vinod. Khandey Singh (PW-2) has also accepted in his cross-examination that "I had taken bail as a surety of Ram Kunwar in the case under Section 366/376 IPC."

36. The Investigating Officer, Chandra Bhan Shukla (PW-8), has stated in his cross-examination that "I had not collected any evidence in respect of motive, however, I had seen that a case was registered against the deceased under Sections 366/376 IPC and he was on bail. I had not read over the F.I.R. registered under Sections 366/376 IPC but that case was registered at register no. 4 in which in the column of the accused, name of the deceased Ram Kunwar was written."

37. Thus, from the above facts, circumstances, and evidence discussed in this respect, it is revealed that the accused-appellants had a strong motive for the commission of the offence. Since the deceased, Ram Kunwar, was allegedly involved in the

elopement of Suman, sister of the accused Mahesh, with another person, it is amply established that the accused-appellants harboured a strong motive against the deceased, Ram Kunwar, which impelled them to commit the crime. Due to this motive, the accused-appellants with full preparation and intention had committed the crime in a brutal, horrifying and in a very cruel manner and tried to disappear the dead body of the deceased with intention to screen the evidence. Thus, the prosecution story is further corroborated by the established motive of the accused-appellants for the commission of the offence.

38. From the perusal of the post mortem report, Exhibit Ka-19, it appears that genuineness of the post mortem report has been admitted by the defence on 05.12.1988. After admitting the genuineness of the post mortem report of the deceased, Ram Kunwar, it was exhibited as Exhibit Ka-19. Although in the trial Court, the doctor, who conducted the post mortem examination of the deceased, Ram Kunwar, has not been examined by the trial Court since defence has admitted the genuineness of the post mortem report, Exhibit Ka-19. Due to this reason, post mortem report, Exhibit Ka-19, shall be legally read as evidence. From the perusal of the post mortem report of the deceased, Ram Kunwar, we find that the deceased, Ram Kunwar, has sustained as many as eight injuries. Injury nos. 1, 2, 3, 4 are the gunshot injuries, which are located on his vital part of the body and injury nos. 5, 6, 7 and 8 are also on the vital part of his body. The injuries which are eight in numbers of the dead body of the deceased corroborate the evidence of the eye-witness of the prosecution, informant Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2). The written report, Exhibit Ka-1, and evidence of informant Rohtash Singh @ Chhotey (PW-1) and Khandey Singh (PW-2) find support and corroboration from the injuries as found

in the post mortem report of the deceased, Ram Kunwar, Exhibit Ka-19. In other words, evidence of the informant Rohtash Singh @ Chhote and Khandey Singh (PW-2) found corroboration from the medical evidence as written in post mortem report, Exhibit Ka-19, of the deceased, Ram Kunwar. Thus injuries as found according to the post mortem report, Exhibit Ka-19, on the dead body of the deceased, Ram Kunwar, found full support from the ocular evidence of the prosecution witnesses. In this way, the ocular evidence of the prosecution witnesses and the post-mortem report, Exhibit Ka-19, of the deceased, Ram Kunwar, corroborate and support each other, thereby proving and establishing the prosecution case beyond reasonable doubt. Although injured Km. Veerum, daughter of Jaswant, who has also sustained gunshot injury and according to her injury report, Exhibit Ka-22, it appears that due to fear of the accused-appellants, she avoided to appear in the Court as a witness to give her evidence but the gunshot injuries which were found on her body also corroborate and support the prosecution story and horrifying criminal act of the accused-appellants.

39. From perusal of the judgment and order of the learned trial Court dated 02.05.1989, we find that trial Court has well discussed the prosecution evidence including the oral and documentary and based its finding and reasoning on cogent and reliable evidence. The finding and reasoning as recorded by the learned trial Court is based on cogent and reliable evidence. The finding and reasoning of the learned trial Court is based on settled principle of law of evidence. The finding and reasoning of the trial Court are fully supported by the settled principles of law in this respect. The trial Court minutely perused and discussed all the relevant evidence, appreciated it in the right and proper perspective, and based its finding on cogent and reliable

evidence. Thus, we find that there is no perversity or illegality in the finding and reasoning as recorded in the judgment and order of learned Trial Court. Thus, from the above discussions, we find no force in the arguments advanced by learned Counsel for the accused-appellants in this respect.

40. In the light of above discussions, we find no merit in the criminal appeals filed by the accused-appellants. Hence, we find criminal appeals filed by the accused-appellants devoid of merits and are liable to be dismissed.

41. In the result, the criminal appeals are **dismissed**. The impugned judgment passed by the learned Vth Additional District and Sessions Judge, Moradabad is affirmed. The appellants, Balistor, Mahesh and Naresh are on bail. Their personal bonds stand cancelled and their sureties are discharged. They are directed to surrender before the learned Chief Judicial Magistrate, Moradabad within a period of fifteen days. In the event of default, the Chief Judicial Magistrate, Moradabad shall issue a non-bailable warrant to secure their arrest to undergo the sentence.

42. The Chief Judicial Magistrate, Moradabad is directed to intimate this Court regarding compliance of this order.

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

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

July 01, 2026
SHUBHAM

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