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2026:AHC-LKO:45990-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

AFR
Reserved on: 06.04.2026
Delivered on: 08.07.2026

CRIMINAL APPEAL No. - 795 of 1989

Ram Lal and 3 others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Nagendra Mohan, Aishwarya Pratap Singh, Mohd. Azam, Sunil Kumar Singh, Vivek Kumar Divedi
Counsel for Respondent(s)	: G.a, Girish Kumar Kannoja, Vinay Kumar Singh, Yogeshwar Sharan Srivastava

HON'BLE RAJNISH KUMAR, J.
HON'BLE MRS. BABITA RANI, J.

(Per: Mrs. Babita Rani,J)

1. Heard Sri Nagendra Mohan, learned counsel for the appellants, Sri Vinay Kumar Singh, learned counsel for the complainant and Sri Pawan Kumar Mishra, learned A.G.A. for the State.

2. The present appeal has been filed against the judgment and order dated 08.11.1989 passed by Additional Sessions Judge, Hardoi in Sessions Trial No. 467 of 1988 in re: State vs. Ram Lal and others convicting the appellants no. 1 to 3 under Sections 302/149, 324/149 and 148 of the Indian Penal Code (hereinafter referred to as 'IPC') and appellant no. 4 under Sections 302/149, 323 and 147 of IPC. All the 4 appellants (hereinafter referred to as 'accused') were sentenced to

his conviction under Sections 323 and 147 of IPC. All the sentences were directed to run concurrently.

3. During the pendency of this appeal, the accused Ram Lal and Phulla, passed away and thus, the instant appeal was abated on their behalf by this Court vide order dated 16.03.2021. Thus, the instant appeal survives only for accused Bateshwar and Ram Naresh.

Factual Matrix of the Case

4. The case as set up by the prosecution is that on 07.04.1987, at around 6:30 PM, the accused came to the house of the complainant wherein accused Ram Lal, Bateshwar and Ram Naresh were carrying pistol and guns and accused Phulla was carrying *lathi*. The accused started firing at the complainant and his family members and accused Phulla attacked Murli with the *lathi*. When the complainant and his family members raised hue and cry, the neighboring villagers including Ismeer, Islaam, Prahlad and others came to the spot and thereafter, the accused fled the scene of occurrence. The complainant PW-1, Motilal, Subedar and Murli sustained injuries in the incident.

5. Thereafter, the complainant (PW-1) submitted the tehrir in the police station concerned on the basis of which, the First Information Report (Ex Ka-11) was lodged against all the four accused on 07.04.1987 under Sections 307/323 of IPC at Police Station Harpalpur, District Hardoi. The dying declaration of injured Subedar was recorded and in addition to the accused named in the FIR, he

6. The investigation of the case was taken over and conducted by Sub Inspector Ravi Raj Dixit (PW-9) who went to the place of occurrence and prepared the site plan (Ex Ka17) and also collected the blood stained and simple earth from the place of occurrence. Thereafter, on 10.04.1989, accused Ram Lal, Bateshwar and Phulla were arrested from the Kakra village. Thereafter, on 13.04.1987, the investigation was taken over by PW-7, V.P. Srivas and on the same day accused Ram Naresh was arrested. On 21.04.1987, accused Ram Ratan was arrested.

7. After recording the statement of witnesses and completing the other formalities, charge-sheet (Ex Ka-20) was filed against Ram Lal, Bateshwar, Ram Naresh, Ram Ratan and Phulla under the above-mentioned offenses.

8. On finding a *prima facie* case, the case was committed for trial to the court of Sessions and learned Sessions Judge framed charges under Sections 148, 323/149, 307/149 and 302/149 of IPC against accused Ram Lal, Bateshwar and Ram Naresh whereas under Sections 147, 323, 307/149 and 302/149 were framed against accused Phulla and Ram Ratan, to which they pleaded not guilty and claimed trial.

9. Thereafter, the prosecution opened its case and examined as many as 12 witnesses in its support. In order to properly appreciate the evidence and the circumstances which were arrayed against the accused, it may be apposite to have a brief resume of the evidence

while accused Ram Lal was his uncle. PW1 further stated that on the day of the incident, at around 6:15 to 6:30 O'clock in the evening, the accused, armed with guns and lathis, came to the residence of the complainant PW-1 where his father Murli, Subedar and Motilal were also present. Accused shot at deceased Subedar, Motilal and the complainant (PW-1) and assaulted Murli with lathis. The complainant took all the injured to the place of Chandrapal on a bullock cart. Said Chandrapal wrote the complaint and complainant (PW-1) put his signature on it after same was read out to him. Thereafter, all the injured were taken to the police station on a jeep and on the basis of the tehrir Ex Ka-1, the FIR was registered. The police took PW-1 to the scene of occurrence and after the formalities, took him to the hospital where he found other injured. Thereafter, all injured were taken to Hardoi hospital where they got treatment.

11. PW-2 Islam is the neighbor of the complainant and an independent eye-witness to the incident, who corroborated the testimony of PW1 and stated that he knew the accused as well as the victims as they all belonged to his village. He stated that he had reached the place of occurrence upon hearing the hue and cry and witnessed that all the accused with their respective lathi and firearms were abusing. Accused Bateshwar armed with gun, Ramlal with Katta, Ram Naresh with gun and Ram Ratan and Phulla were armed with lathi. He further corroborated that accused Bateshwar fired at Subedar, who fell down near the door of Har Dayal. Accused Ram

12. PW-3 Dr. S. Thiryani was posted in the District Hospital, Hardoi on 08.04.1987 at 12:30 AM, deposed that he examined and prepared the injury report (Ex Ka-2) of the deceased Subedar when he was brought to the District Hospital, Hardoi by the police authorities. The injury report had disclosed the following injuries on the person of Subedar:

- a. Firearm wound 2 cm x 2 cm x cavity abdominal deep over Umblicus. Some abdominal content coming out from the wound. Margins are lacerated and inverted. Blackening and scorching absent but tatooing present on right side of abdomen. Low bleeding present. Direction not clear. Injured kept U.O. and advised X-ray.

He further stated that he prepared the injury report of Murli (Ex Ka3) on 08.04.1987 at about 1:00 AM and found the following injuries on his person:

- a) Lacerated wound 3 cm x $\frac{3}{4}$ cm x muscle deep on the left side skull 7 cm above eye-brow. Low bleeding present, injury kept under observation. Advised X-ray.
- b) Lacerated wound 5 $\frac{1}{2}$ cm x 1 cm x scalp deep on the right side skull and 8 $\frac{1}{2}$ cm above eye brow, low bleeding present, injury kept under observation. Advised X-ray
- c) Lacerated wound with abrasion 6 cm x 1 $\frac{1}{2}$ cm on the right side skull 3 cm above injury no. 2. Swelling around present, advised X-ray. Low bleeding present.

At around 1:20 AM on the night of 08.04.1987, PW-3 deposed to had

blackening, tatooing & scorching. Direction backwards to forward. Low bleeding present. Kept under observation and advised X-Ray

b) Fire arm wound of exit 1 cm x 3/4 cm connected with the wound of entry, on the front and outer side of the right leg 19 (nineteen) cm above ankle joint. Margins lacerated and inverted. Low bleeding present. Kept under observation and advised X-Ray

At around 1:40 AM on the night of 08.04.1987, PW-3 prepared the injury report (Ex Ka5) of complainant PW1 Om Prakash and found the following injuries on his person:

a. Two Firearm wounds each 1 cm x 3/4 cm, muscle deep at dorsum of the left hand at root of the ring finger, second on outer and dorsal side of the little finger of the left hand middle. Margins lacerated and inverted. No blackening, tatooing and scorching seen. Low bleeding present. Direction not clear. Kept under observation and advised X-Ray

b. Firearm wound 4 cm x 1/2 cm skin deep on the front of left thigh, 19 cm above knee joint. Margins lacerated and echymosed. No blackening, tatooing and scorching seen. Direction not clear.

13. PW-4 Dr M.L. Tandon prepared the post-mortem report Ex Ka8 of the deceased Subedar and stated that Subedar had died on 08.04.1987 at around 10:45 P.M with following antimortem injuries:-

scorching. Direction of wound was front to back to left side and down wards.

2. Stitched incised wound (on removing the stitches) 2 cm x 1 cm x abdomen cavity deep. Each iliac fossa with hospital dressing rubber drain with equiplast dressing.

During the internal examination, the left iliac bone was found fractured. Further the elongated foreign body shadow in the left lower abdominal region along with fracture of upper part of left hip bone was seen in the X-ray prepared by Dr. N.A. Khan. PW-4 found the cause of death of deceased Subedar due to the shock and hemorrhage as a result of anti-mortem injuries.

14. PW-5 Sri R.K. Lal Chaudhari was the SDM who had recorded the dying declaration of the deceased Subedar. He stated that the dying declaration of the deceased was recorded by him in District Hospital, Hardoi in the morning of 08.04.1987 after ensuring that patient was fit in making statement and he had prepared two carbon copies of the dying declaration.

15. Injured Soobedar died in the hospital on 08.04.1987 and the information about his death was registered in the GD (Ex Ka-28) by S.O. Kotwali. Sub Inspector U.B. Singh reached the mortuary to conduct the inquest proceedings and prepared the inquest report Ex Ka-22.

16. PW-6 Head Constable Ranjeet Singh had registered the FIR on the basis of the written complaint Exhibit Ka-1 filed by the complainant PW-1 and proved FIR and G.D. entries Exhibit Ka-11

complaint submitted by PW-1. The investigation of the case was assigned to Sub Inspector, Ravi Raj Dixit (PW-9) who went to the place of occurrence with the complainant and prepared the site plan (Ex.Ka.17). He lifted the blood stained and simple earth from place of occurrence vide recovery memo Ex.Ka-18.

17. PW-7 took over the investigation on 13.04.1987 and recorded the statement of witnesses. He arrested accused Ram Ratan on 21.04.1987 and sent him in custody. After completion of entire investigation, he prepared the chargesheet Ex.Ka-20 and submitted before the court.

18. PW-8, constable Shiv Shankar Yadav had taken the body of deceased Subedar for post-mortem on 09.04.1987. PW-10 Head Constable Vishram Lal and PW-11 Constable Gokran Singh had sent the clothe of the victims for forensic examination. PW-12 Shripal Trivedi is the X-Ray Technician at District Hospital Hardoi, who had prepared the X-Ray reports of PW-1 Om Prakash and deceased Subedar.

19. The statements of accused were recorded under Section 313 of Code of Criminal Procedure, 1973 (**CrPC**). They pleaded false implication and claimed themselves to be innocent. Despite being provided opportunity of leading evidence, the accused chose not to furnish any evidence in their defence and support of innocence and accordingly their opportunity of leading evidence was closed.

20. After considering the contentions raised by both the sides and

21. Feeling dissatisfied from the order and judgement of conviction, the accused, Ram Lal, Bateshwar, Ram Naresh and Phulla preferred the instant appeal.

Contentions of the Parties

22. Raising challenge to the impugned order and judgment passed therein, learned counsel for accused vehemently argued that learned trial court had ignored that there were several material lacunas in the case of prosecution, which had rendered the prosecution story highly improbable and doubtful. The learned counsel vehemently submitted that some unknown persons had robbed the complainant and other injured on the fateful day, however due to prior enmity, the accused have been falsely implicated. The incident took place in the dark, when the victims could not have identified the unknown robbers. The FIR is alleged to be ante timed as none of the injured witnesses were examined at the time of the lodging of the report. The appellants have also challenged the dying declaration on the ground that it contained several material facts such as names and details of the weapons of the accused and such details were unnatural to have come from a person so severely injured as Subedar. It has been further alleged that the description of the weapons and name of accused as given in the dying declaration does not match with the testimony of the prosecution witnesses.

23. Concluding the arguments, the learned counsel for the accused submitted that no independent witness has been produced by the

24. Per contra, learned Additional Government Advocate for the state submitted that the learned trial Court has passed a speaking and well-reasoned judgment based on proper appreciation of evidence available on record. The testimony of PW1 and PW2 remain unblemished and unchallenged, and thus, the judgment of the learned trial Court convicting the accused warrants no interference.

Points for Determination

25. Upon perusal of the contentions advanced by both the parties, the testimony of the witnesses, the impugned judgment and other evidence available on record, the following issues emerge for consideration:-

- A. Whether in the given facts and circumstances, the dying declaration can be said to be tutored and unnatural?*
- B. Whether the trial court has committed any error relying upon the eye account of witnesses?*
- C. Whether the impugned order and judgment of the learned Trial court suffers from any perversity?*

26. The date, time and place of the incident has not been disputed by the appellants. They have also not disputed the nature of injuries sustained by the victims and the nature of the weapons allegedly used by the assailants. The only defense of accused was that the victims were attacked by some strangers, who robbed them on 07.04.1987 and since the incident took place in the dark, the victims were unable to identify the assailants. Due to prior enmity, the complainant found it fit to name the accused and thus, the accused have been falsely

27. The FIR was initially lodged under Sections 307/323 of IPC and after the death of Subedar, Section 302 of IPC was added on 10.04.1987. Subedar was admitted to the hospital in the night of the incident itself, i.e., on 07.04.1987. Subedar was first taken to the Harpalpur hospital and thereafter, he was shifted to the District Hospital, Hardoi on the same night. He was medico legally examined by PW-3 and injury report Ex Ka-2 was prepared at about 12:30 AM (00:30 hours) on 08.04.1987, wherein a single fire arm injury was found on his person. At about 8:30 AM on 08.07.1987, the dying declaration of Subedar was recorded by PW-5 SDM Sri R.K. Lal Chaudhari. During treatment, Subedar succumbed to the injuries at 10:40 PM on 08.07.1987 and the post-mortem report Ex Ka8 found the cause of death to be shock and hemorrhage due to fire arm injury.

28. The learned Trial Court relied upon the dying declaration in convicting the appellants and this finding has been challenged on the ground that several material facts have been incorporated in the dying declaration, which are unnatural to state for an injured person and thus, this is contended to have rendered the dying declaration unreliable.

29. Dying declaration is admissible under Section 32(1) of the Indian Evidence Act, 1872 (now Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023). Section 32(1) of the Evidence Act states that statements, written or verbal, or relevant facts, made by a person, who is dead, are relevant when the statement is made by a

legal maxim *nemo moriturus praesumitur mentirii* which means that a man will not meet his maker with a lie in his mouth.

30. At this juncture, it would be apposite to refer to certain judicial precedents establishing the principles pertaining to the admissibility and reliability of the dying declaration. Material on record to implicate the accused persons with the offence of murder is statement of deceased Ex.Ka-6,, 7 & 10, which was being treated as dying declaration. The prosecution heavily has banked upon the statement of deceased Ex.Ka-6, 7 & 10, which was being treated as dying declaration to implicate the accused persons with the offence of murder. Before appraisal of facts under challenge, let the judicial pronouncements and propositions of law with this regard be discussed. The judiciary evolved rule of caution, for acceptance of dying declaration as laid down by Hon'ble Supreme Court in ***Paniben Vs. State of Gujarat 1992 (2), SCC 474***. The same rules were reiterated by Hon'ble Supreme Court in the ***Shakuntala Vs. State of Harayana (2007) 10 SCC 168, Jaishree Anant Khandekar Vs. State of Maharashtra, (2009) 11 SCC 647 and Sukanti Moharana Vs. State of Orissa, (2009) 9 SCC 163***. The said principles are statutory and cardinal in nature and same are reproduced as under:-

(i) *There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.*

(ii) *If the court is satisfied that dying declaration is voluntary, it can pose conviction on it, without corroboration.*

iv) Where dying declaration is suspicious, it should not be acted upon without corroborating evidence.

v) Where the deceased was unconscious and could not make any dying declaration, the evidence with it is to be rejected.

vi) A dying declaration which suffers from infirmity cannot form the base of conviction.

vii) Merely because a dying declaration does not contain the details as to occurrence, it is not to be rejected.

viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, shortness of statement itself guarantees the truth.

ix) Normally, the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration looking up to the medical opinion, but where the eye-witness said that the deceased was in a fit and conscious state to make dying declaration, the medical opinion cannot prevail.

x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

31. In ***Paramjit Singh and others Vs. State of Punjab and others AIR 1997 Supreme Court 1614***, it was held by Hon'ble Supreme Court that if all the details are given in dying declaration, the same must not inspire confidence of court in as much as a neatly structured dying declaration may bring an adverse effect in the mind of court.

32. In ***Laxman v. State of Maharashtra***, reported in (2002) 6 SCC 710, the Hon'ble Supreme Court made the following observations:

“3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the

with. Since the accused has no power of cross- examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is

33. In ***Munnawar & Ors. Vs. State of U.P.***, reported in (2010) 5 SCC 451, the Hon'ble Supreme Court observed that:

"13. In Balak Ram case [(1975) 3 SCC 219] this Court dealt with two dying declarations, one recorded by the investigating officer in the case diary which was held to be unreliable and the other by the Executive Magistrate which was held to be reliable notwithstanding the fact that the injured, when taken to the hospital, was in a very critical condition. This Court observed that though there may be some suspicion with regard to the statement recorded by the Police Officer, the same could not be said of the second dying declaration.

14. It was observed thus: (Balak Ram case, SCC p. 235, para 54)

"54. The circumstances surrounding the dying declaration, though uninspiring, are not strong enough to justify the view that officers as high in the hierarchy as the Sub-Divisional Magistrate, the Civil Surgeon and the District Magistrate hatched a conspiracy to bring a false document into existence. The Civil Services have no platform to controvert allegations, howsoever grave and unfounded. It is, therefore, necessary that charges calculated to impair their career and character ought not to be accepted except on the clearest proof. We are not prepared to hold that the dying declaration is a fabrication."

The aforequoted paragraph fully supports the view that (save for very good reasons) a dying declaration recorded by a Magistrate duly endorsed by a Doctor should not be discarded.

15. In K. Ramachandra Reddy case [(1976) 3 SCC 618], this Court again, on an appreciation of the circumstances leading to the recording of the dying declaration, held that it could not be relied upon. It is, therefore, obvious that the fact as to whether a dying declaration is reliable or not would depend upon the facts of the case and the evidence produced by the prosecution and no hard and fast rule by way of precedent can ever be adopted.

16. As already observed by us, there are no suspicious circumstances whatsoever with regard to the dying declaration recorded by Rajdev Singh and endorsed by Dr. Trivedi and no substantial reason has been spelt out by Mr. Sushil Kumar as to

not overly critical or precarious when the dying declaration had been recorded."

34. The facts of present case are to be analyzed keeping in view the aforesaid principles of law laid down by Hon'ble Supreme Court, as caution for acceptance of dying declaration. Before we advert to the actual admissibility of dying declaration and credibility of witnesses to dying declaration, it will be useful at this juncture to reproduce, herein below the dying declaration Ex.Ka.10,

प्रमाणित किया जाता है कि सूबेदार पुत्र लज्जू निवासी महसुलापुर थाना हरपालपुर हरदोई पूर्ण रूप से होशो हवास में हैं तथा अपना Dying Declaration record कराने को सक्षम हैं।

8/4/87
Dr. S. Thiryani

8.4.1987 at 8:30 A.M.

मृत्यु पूर्व बयान श्री सूबेदार पुत्र लज्जू उम्र 43 साल निवासी ग्राम महसुलापुर थाना हरपालपुर जिला हरदोई ने बयान किया कि

1-प्रश्न- आप अस्पताल हरदोई मे क्यों हैं।

उत्तर- मैं इलाज कराने आया हूँ क्योंकि मुझे गोली लगी है

2- प्रश्न- गोली कब लगी ?

उत्तर - कल 6 बजे शाम को लगी है।

3- प्रश्न- गोली किसकी है

उत्तर- 315 बोर के कट्टा से लगी हे वैसे बन्दूक भी चली थी

4- प्रश्न- क्या 315 बोर का कट्टा व बन्दूक लाइसेन्सी है।

उत्तर- दोनो बिना लाइसेन्सी है

5- प्रश्न- गोली किसने मारी है।

उत्तर- गोली बटेश्वर पुत्र निरंजन ने मारी है।

6-प्रश्न- वटेश्वर के साथ और कौन कौन था ?

उत्तर- वटेश्वर के साथ फुल्ला पुत्र निरंजन व रामलाल पुत्र हीरालाल, नरेश पुत्र छुट्टा, रामरतन पुत्र बालक राम थे। बालकराम के लड़के रामरतन पर लाठी थी वटेश्वर पर 315 बोर का कट्टा था। फुल्ला पर 12 बोर का कट्टा व रामनरेश पर 12 बोर की बन्दूक व रामलाल पर 12 बोर का कट्टा था।

7- प्रश्न- किसी से रंजिश है।

उत्तर- किसी और से रंजिश नहीं है इन्ही से पारवारिक झगड़ा है।

8- प्रश्न- आपको किस किस ने मारा है।

उत्तर- उपरोक्त चार आदमियों ने मारा है और वटेश्वर की सबने मदद की है।

9. और कुछ कहना है।

उत्तर- कुछ और नहीं कहना है।"

(आर.के लाल चौधरी)
डिप्टी कलेक्टर/कार्यकारी
मजिस्ट्रेट हरदोई

35. The statement made herein above starts from the version of victim and below the statement there is thumb impression of victim/deceased. PW3 Dr. S Thiryani endorsed on the top corner of the statement that “**patient** is fully conscious and fit to make the statement. **Dated 08.04.1987 at 8:30 A.M. with the signature of doctor,**” while in the bottom it has been noted that Subedar was in complete senses during recording of his statement. The both fitness certificate were given by PW 3 under his handwriting and signature. Under the certificate of fitness, the thumb impression of left hand of deceased Subedar has been affixed, while towards the right side PW-5 has put his signature with the time 8:45 AM. The statement of injured has been recorded by PW5 in his own handwriting and has been said to be recorded after getting satisfied and obtaining fitness certificate of victim/deceased from Dr. S. Thiryani PW3. PW5 has submitted further that the statement was read over and after concluding the statement at 8:45 AM, the signature of maker was obtained in the bottom of statement. As per PW-5, the injured made his statement voluntarily and in a fit state of mind.

36. At this juncture, while appraising the dying declaration, it will not be out of record to mention the injuries found on the body of the maker of statement immediately before the recording of statement so that the fact of fitness of the injured at the relevant time can be addressed properly. In this regard, statement of PW3 Dr. S. Thiryani, treating doctor, is of great value, who found a fire arm wound of 2x2 cm, abdominal cavity deep over the umbilicus and some abdominal

certificate in his signature and hand writing. As per PW-3, no first aid was given to the injured until his admission in this hospital and his medico-legal examination. His general condition was very low. In answer to the question put to the witness, he unequivocally stated that no sleeping pills was given to the injured during his treatment and only a pain killer injection namely *Analgin* was administered to him. From the bare perusal of evidence made by this witness, it is clear that the Subedar was in his full senses while making the statement. Nothing was placed on record that the maker of the statement was under the impression of sedative or any type of internal or outer impression. PW-3 being neutral and natural witness is supposed to give the evidence free from any kind of doubt or interest, therefore, there is no reason to disbelieve his deposition regarding medical ability of the injured. PW5, who is scribe of dying declaration has also corroborated the fact that PW3 gave fitness certificate in his presence. He further stated that before the commencement of the dying declaration, he himself had ensured that the statement should be free from tutoring and any external pressure and for that purpose, he asked the treating doctor to restraint entry of everyone and recorded the statement only after being assured that injured was ready to make the statement voluntarily and free from tutoring. According to him, even no patient was around the maker of the statement. Although, PW5 admitted during his cross examination that he did not detail the above fact in the dying declaration, yet there is no reason to discard his statement merely on the basis of this

37. Now, we have to determine that whether the dying declaration is reliable, credible and admissible against the accused? In this context, if we examine the dying declaration itself, it becomes clearly evident that the document is intact in itself and there is no room of doubt in the statement made by the maker. The dying declaration has been recorded by PW-5 in question and answer format, so that the maker could be enable to understand the question and then to answer the same. While recording statement, Subedar was asked several questions such as why he was in the hospital and when he had been attacked before he was asked to name the accused. Subedar had stated that he was in the hospital for treatment and the incident took place at 6:00 PM which is consistent with the testimonies of the other witnesses. It is true that the description of weapons as given in the dying declaration was not exactly accurate to the description given in the testimonies of the prosecution witnesses and the first information report, however, it has been categorically stated that he was fired and sustained injuries in the incident itself. Although, in his statement, Subedar also named Ram Ratan having firearm along with other four accused named in the FIR, who has been acquitted, yet there is no reason to cast doubt on entire dying declaration merely on this score. Reason is not for to seek. Subedar is said to have been the first one to be shot by the accused and thus he may have had the least opportunity to witness which weapon was carried by which accused. All the accused are said to have been armed with guns and lathis and this has been consistent with the FIR, the

8:30 A.M. and he died at about 10:45 P.M., and therefore, it cannot be said that he was so feeble and lacking mental health so as to not understand the question and reply. All the answers given by the maker in dying declaration though subtle but sufficient to reach on the conclusion that accused left no stone unturned to commit his murder. The dying declaration cannot be doubted merely because of such minor discrepancies particularly in view of the fact that he was badly injured by firearm wound at the time of recording of the dying declaration. Therefore, in the given facts and circumstances, the credibility of dying declaration and observation made by learned trial court, warrants no interference.

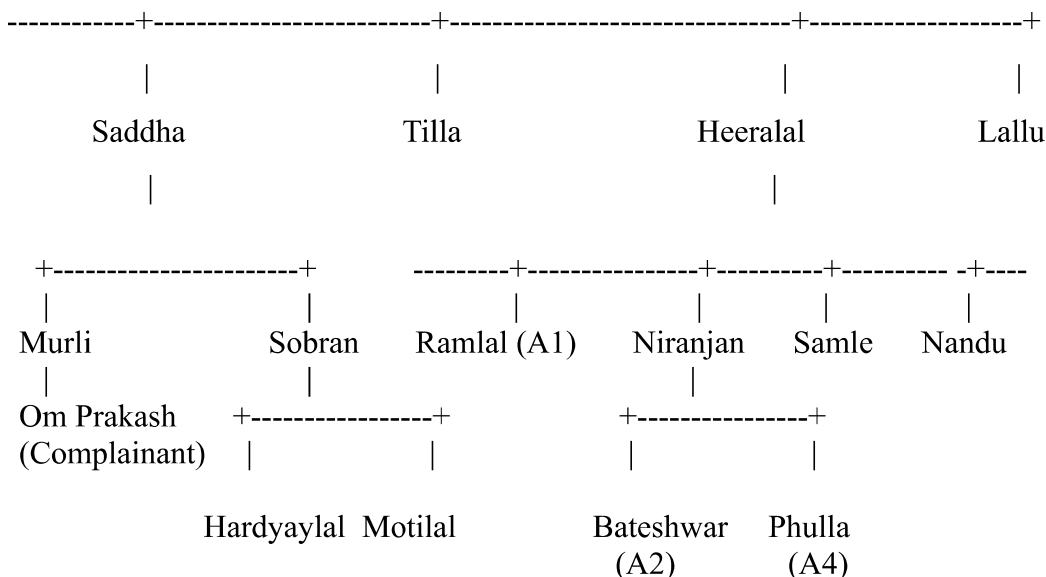
Issue No. 2- Whether the trial court has committed any error relying upon the eye account of witnesses?

38. Another issue raised by the learned counsel for the appellants is that the prosecution has examined only two eye-witnesses, PW1 complainant and PW2. Both of them have been alleged to be interested witnesses and it has been submitted that even though several witnesses were named in the FIR, none of them were produced by the prosecution as witnesses.

39. PW-9 Sub Inspector R. R. Dixit, who was the first investigating officer, stated that though the witnesses were named in the complaint, they could not be examined on the day of the incident itself because no witnesses were available on the said day. It is only on 15.04.1987, when PW-7 is said to have recorded the statement of

Information Report. The appellants have contended that the non-examination of these independent witnesses who were named in the complaint renders the prosecution version highly doubtful and unreliable. PW1 is the complainant himself and is thus alleged to be an interested witness. PW2 is said to have contested the panchayat elections against accused Ram Lal and thus, he is alleged to have deposed against the accused out of his own personal interests.

41. PW-1 had stated that the appellants were his own cousin brothers and uncle. For the sake of convenience, the relations of the appellants with the complainant is depicted through the following chart:



42. It is thus apparent that the accused and the complainant belonged to the same family. The families of the complainant/injured and accused had several prior ongoing disputes. The complaint Ex Ka1

369, wherein the Hon'ble Supreme Court made the following observations:

“13. Another circumstance which appears to have weighed heavily with the Additional Sessions Judge was that no independent witness of Salabatpura had been examined by the prosecution to prove the prosecution case of assault on the deceased, although the evidence shows that there were some persons living in that locality like the ‘pakodewalla’, hotelwalla, shopkeeper and some of the passengers who had alighted at Salabatpura with the deceased. The Additional Sessions Judge has drawn an adverse inference against the prosecution for its failure to examine any of those witnesses. Mr Hardy has adopted this argument. In our opinion the comments of the Additional Sessions Judge are based on serious misconception of the correct legal position. The onus of proving the prosecution case rests entirely on the prosecution and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At the most, if a material witness is withheld, the court may draw an adverse inference against the prosecution. But it is not the law that the omission to examine any and every witness even on minor points would undoubtedly lead to rejection of the prosecution case or drawing of an adverse inference against the prosecution. The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters. In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit. Secondly, there is

dilatory procedure of our courts, the harassment to which they are subjected by the police and the searching cross-examination which they have to face before the courts. Therefore nobody wants to be a witness in a murder or in any serious offence if he can avoid it. Although the evidence does show that four or five persons had alighted from the bus at the time when the deceased and his companions got down from the bus, yet there is no suggestion that any of those persons stayed on to witness the occurrence. They may have proceeded to their village home. So far as Pakodewalla and Hotelwalla etc. are concerned there is positive evidence to show that they were interrogated by the police but they expressed ignorance about the occurrence. In this connection the evidence of P.W. 5 Harnek Singh clearly shows that the Investigating Officer interrogated the Hotelwalla and the Pakodewalla but they stated before him that they had not witnessed the occurrence. In these circumstances, therefore, there was no obligation on the prosecution to examine such witnesses who were not at all material. It is not a case where some persons were cited as eye-witnesses by the prosecution on material points and were deliberately withheld from the Court. For these reasons, therefore, the learned Additional Sessions Judge was not at all justified in raising an adverse inference against the prosecution case from this fact and the High Court was right in rejecting this part of the reasoning adopted by the learned Additional Sessions Judge.”

(Emphasis added by court)

44. It is true that the complaint Ex Ka1 as well as the testimony of eye-witnesses disclose that several neighbors had come to the spot on hearing the hue and cry and PW-2 also reached on the spot and witnessed the entire scene happened there. However, the other named witnesses in the FIR have not been examined. This fact remained unchallenged that prior to the incident, a litigation dispute pertaining to some agricultural land had been initiated between

some dispute because Hardyaylal's utensils had allegedly been stolen by the son of accused Ram Lal. PW1 stated that a separate property suit was ongoing between accused Ram Lal and Hardyaylal.

45. The families of the complainant and the accused seem to have been engaged in a complex web of disputes, which involved several members of the families. It is not unusual for independent witnesses to deter from taking sides and appearing as a witness from either side in such cases. The witnesses were not willing to give their statements to the police even on the day of the incident. Such hesitation stems from concerns regarding safety and the general tendency to avoid getting involved in legal affairs. Thus, we do not find any adverse impact on prosecution story for non-examination of named eye witnesses.

46. Testimony of PW-1 and PW-2 has been challenged on the ground that they made material improvements. The original complaint had not mentioned anything about accused Ram Ratan but at the time of their testimony, PW1 & PW-2 alleged that Ram Ratan was also one of the accused, who had attacked him and the other injured. Specific role was attributed to Ram Ratan and PW-1 stated that Ram Ratan was carrying a lathi through which he had assaulted Murli. PW1 stated that he had specifically taken Ram Ratan's name while narrating the incident to the scribe Chandrapal but somehow Chandrapal omitted Ram Ratan's name. PW1 further stated that he had also taken Ram Ratan's name while giving his statement to the

PW-2 deposed that accused Ram Lal had country made pistol and Basteshwar was having gun, while Ram Ratan and Phulla had lathi with him, which is in the contradiction of weapons alleged in first information report, whereby accused Bateshwar was alleged to had country made pistol. The testimony of both witnesses had been challenged on the ground of them being interested witnesses.

47. In cross-examination PW-2 stated that when he reached to the spot, Bateshwar made fire first and further fire were made by Ram Lal and Ram Naresh.
48. On being asked, answered that he did not ran to escape rather remained standing there. He replied that neither he saw nor searched any pellet or tikli on the space of occurrence as he had no concern.
49. He remained on place of occurrence for about 10 minutes and left the place only after the leaving of injured for police station on bullock cart . Further stated that he did not accompany with them to hospital or police station.
50. Argument is that PW-2 is not reliable and trust worthy witness being inimical to accused persons and delayed recording of his statement by Investigating Officer. Further raised challenge on the ground that he gave contradictory statement to PW-1 and FIR with regard to weapons. The weapons with the accused, disclosed in FIR and evidence of PW-1 and PW-2 are as under:-

FIR	PW-2	PW-1
राम लाल लसुंजा	कहा	कहा

51. Before advertng to appraisal of contention raised by learned counsel for accused, it will be beneficial to refer to the judgment of the Hon'ble Supreme Court in ***Thoti Manohar v. State of Andhra Pradesh***, reported in (2012) 7 SCC 723, wherein the Hon'ble Supreme Court made the following observations:-

“34. In Hari Obula Reddi and others v. The State of Andhra Pradesh AIR 1981 SC 82, a three-Judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It cannot be laid down.

“as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.”

35. In Kartik Malhar v. State of Bihar (1996) 1 SCC 614, it has been opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term ‘interested’ postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

36. In Pulicherla Nagaraju alias Nagaraja Reddy v. State of Andhra Pradesh AIR 2006 SC 3010, while dealing with the liability of interested witnesses who are relatives, a two-Judge Bench observed that

“16.... it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to the

“16.....If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted.”

38. The learned counsel for the appellant has endeavoured hard to highlight certain discrepancies pertaining to time, situation of the land, number of persons, etc., but in our considered opinion, they are absolutely minor in nature. The minor discrepancies on trivial matters not touching the core of the matter cannot bring discredit to the story of the prosecution. Giving undue importance to them would amount to adopting a hyper-technical approach. The Court, while appreciating the evidence, should not attach much significance to minor discrepancies, for the discrepancies which do not shake the basic version of the prosecution case are to be ignored.....”

52. In ***Vadivelu Thevar v. State of Madras***, reported in (1957) 1 SCC 700, the Hon’ble Supreme Court held that witnesses can broadly be classified into three categories which are:

“18. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable

In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in

and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.”

53. In ***Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127***, wherein the Hon’ble Supreme Court made the following observations:

*“20. The Court can separate the truth from the false statements in the witnesses’ testimony. In *Leela Ram v. State of Haryana, (1999) 9 SCC 525*, this Court held as follows:*

“12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the

1973 SC 2407] and Lehna v. State of Haryana [(2002) 3 SCC 76 : 2002 SCC (Cri) 526]. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of “falsus in uno, falsus in omnibus” (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim “falsus in uno, falsus in omnibus” has no application in India and the witnesses cannot be branded as liars. The maxim “falsus in uno, falsus in omnibus” has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded.”

54. In the backdrop of the case, there is no dispute that Ram Ratan was not named in FIR, nor any incriminatory role in commission of offence was assigned, and first time his name emerged during the dying declaration of deceased Subedar. Learned trial court taking view that neither he was named in the FIR, nor in the statement of PW-1 made to Investigating Officer, acquitted him giving benefit of doubt. The question now is whether a false statement of witnesses made regarding a particular person, can render the entire story of prosecution, as unreliable? Answer is no. Law is settled that part of

55. So far as, argument of interested witness is concerned, PW-1 gave a description of all the ongoing property and other disputes within the two sides and stated that the appellants had attacked them due to those ongoing property disputes and enmity. As per the testimony of PW1, accused Phulla and Ram Ratan were carrying lathis, accused Ram Naresh and Bateshwar were carrying big guns and accused Ram Lal was also carrying a gun. The first one to fire a shot was Bateshwar, who shot deceased Subedar. Thereafter, Ram Lal and Ram Naresh shot PW1 complainant and Motilal. Phulla and Ram Ratan are said to have attacked PW1's father Murli with lathis and when PW1 raised hue and cry, then neighbors Islaam, Ismeer, Prahlad and Khushiram came to the spot and accused fled from the scene of occurrence.

56. PW-2 had also corroborated the version of PW1 and had stated that he reached the scene of occurrence upon hearing the hue and cry and identified the accused. He supported the testimony of PW1 by naming all the accused.

57. PW-1 has been corroborated by PW-2, who specifically denied any prior enmity with the accused due to which he may falsely implicate them. Except suggestion, no evidence of previous litigation with PW-2 as alleged, has been filed. Therefor, argument of PW-2 being interested witness, does not hold water, hence rightly rejected by learned trial court. PW-1 is an injured eye-witness whose presence at the scene of occurrence is not in doubt. The witnesses have been corroborated by the injury reports Ex. Ka 2-5, which found firearm

prosecution witnesses. PW4, further testified that the death of Subedar was caused due to a single firearm wound. Murli is said to have sustained such wounds which could have been caused by a lathi. All the 4 accused appellants have been consistently named in the complaint, FIR, dying declaration and in the witness testimonies. In view of the corroborated evidence, we find no reason to doubt the testimonies of the prosecution witnesses, particularly PW1 and 2, in so far as the role of the accused appellants are concerned.

58. The last contention raised by the appellants is that the incident took place in the dark and some unknown robbers had attacked the victims and they falsely implicated the accused appellants.

59. PW-1 in his cross-examination had categorically denied this version of the appellants. PW1 had stated that the incident occurred at around 6-6:30 in the evening, when there was sufficient sun light. He further stated that the accused were residents of his village and thus, he was familiar with their faces. Some of the accused were also the family members of the complainant and the injured and thus, it cannot be doubted that the victims would not have had any difficulty in recognizing the faces of the accused. PW2 has also stated that the incident occurred in the evening, when there was sufficient light.

60. PW-3 found the injuries of all the victims to be around ¼ day old and all the injured were kept under observation. Firearm wounds were found on the person of the complainant PW1, deceased Subedar, and Motilal, while three lacerated wounds were found on

have been caused at around 6-6:30 PM on 07.04.1987 and the injuries of Murli were said to have been caused by lathis. In his cross-examination, PW3 had denied any possibility of the injuries of Murli and Om Prakash being self-inflicted or superficial.

61. In view of the aforementioned circumstances, it is clear that the incident occurred in the evening, when there was sufficient light for the victims to have identified the accused, particularly in view of the fact that the accused lived in the same village and were family members of the victims. All the 4 accused appellants were named in the first information report itself, which was promptly lodged just a few hours after the incident. They also find a mention in the dying declaration of deceased Subedar. There is nothing on record to support the story as pleaded by the defence of some unknown robbers attacking PW1 and other injured victims. Thus, we find no strength in this argument. Therefore, this point of determination favours the prosecution and goes against accused.

Issue No.3-Whether the impugned order and judgment of the learned Trial court suffers from any perversity?

62. As discussed above, it has been established on record beyond doubt that accused sharing the common intention, not only committed murder of Subedar but also committed offence of attempt to murder by causing life threatening and simple injuries to the injured Murli, Motilal and Om Prakash by using firearms and lathi. As a matter of fact, trial was initiated against five persons and

not been challenged by the State or complainant. Section 147 IPC deals with rioting while Section 148 deals with rioting with deadly weapons. In both the sections, formation of unlawful assembly is mandatory ingredient, as defined under Section 141 IPC. However, acquittal of one person namely Ram Ratan out of five accused negate the formation of unlawful assembly, therefore, despite of non-existence of necessary ingredient of unlawful assembly, conviction of accused under Sections 147 and 148 IPC is patent illegal and perverse and is liable to be interfered with and accused deserves to be acquitted of charges of Sections 147 and 148 IPC. Even otherwise conviction could not have been made in both sections simultaneously.

63. However, the position, which emerges is that the evidence which has been produced by prosecution is that the evidence which has been produced by prosecution on the record is sufficient, cogent, convincing and reliable to prove that the accused and none else has committed the offence of attempt to murder, simple injuries to injured and murder of deceased Subedar in furtherance of common intention, therefore, accused Beteshwar and Ram Naresh are held guilty of offences under Sections 323/34, 307/34, 302/34 of IPC. Accordingly the order and judgment passed by learned trial court deserves to be partly allowed and modified accordingly.

64. Accordingly, the appeal is **partly allowed**. Conviction and sentence under Sections 147 and 148 of IPC is set aside and accused Beteshwar and Ram Naresh are acquitted of offences mentioned

66. Accused/appellants are on bail. Their bail bonds and surety bonds are hereby cancelled and sureties are forfeited. Sureties are discharged from their obligations. Non-bailable warrants of accused Bateshwar and Ram Naresh be issued and they are directed to surrender before learned Chief Judicial Magistrate within 15 days from today, who will send them to the jail to serve the remaining sentence, failing which learned Chief Judicial Magistrate will execute the non-bailable warrants issued against them by this court. Learned chief judicial magistrate concerned will ensure strict compliance of the order passed by this court.

67. Original record be transmitted after due compliance to the concerned court forthwith and in any case within a week from today.

68. All pending applications also stand **disposed of**.

(Mrs. Babita Rani,J.) (Rajnish Kumar,J.)

July 08, 2026/ Reena/-