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2026:AHC:165371-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1911 of 1984

Ram Autar Singh and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Indra Kumar Chaturvedi(senior Adv.), Kameshwar Singh, Ram Raksha Tiwari, Shri Chandra, V.b. Singh, V.s. Singh
Counsel for Respondent(s)	: A.G.A., Dga, J.s. Sengar

Court No. - 44

HON'BLE SIDDHARTHA VARMA, J.
HON'BLE ACHAL SACHDEV, J.

Per : Achal Sachdev, J.

CRIMINAL APPEAL

(under Section 374(2) Cr.P.C.)

Arising out of the judgment and order dated 11.07.1984 passed by
the Special Judge (DAA), Banda, in Sessions Trial No. 170 of 1982

1. Heard Sri Rakesh Kumar Singh (Dadda), Sri Kameshwar Singh, learned counsel for the appellants and Sri Muni Raj Mehrotra, learned A.G.A. for the State.

2. The instant appeal has been preferred by the appellants under Section 374(2) of the Cr.P.C. being aggrieved by the judgment and order

and sentenced to undergo two years' rigorous imprisonment under Section 404 I.P.C. The sentences were directed to run concurrently.

3. During the pendency of the appeal, appellant nos. 1, 3 and 4, namely, Ram Autar Singh, son of Shiv Gopal Singh; Randhir Singh, son of Ram Singh; and Drigpal Singh, son of Ram Singh, respectively, had died, and the appeal on their behalf stood abated vide order dated 10.07.2026. The present criminal appeal survives in respect of appellant, Balram Singh. The appellant, Balram Singh, along with the rest of the appellants was directed to be released on bail vide order dated 18.07.1984.

4. The facts of the case for the purpose of disposal of appeal are that there was a long-standing enmity between the families of informant Arimardan Singh and Ram Singh, and the first information report was lodged at Police Station- Kotwali, District- Banda, wherein the informant had stated that in the year 1961, there had been a case of rioting between Drigpal Singh and the villagers, in which Bulua Noniya had been killed and Ram Singh had been falsely implicated by Arimardan Singh, the informant, his brother Binda Singh, Nirbhai Singh, and Narendra Singh, which resulted in acquittal of Ram Singh and his brothers. Since then, the enmity between the two factions had become bitter and each of them were in search of an opportunity to implicate each one of them either way, and the accused persons wanted to take forcible possession of some land belonging to Raju, son of Ram Lal Bharbhujia. Narendra Singh, deceased in the case, is the son of Arimardan Singh and had been a Lekhpal at the time of incident, and had taken the side of Raju in the matter. About two days prior to the incident, i.e. on 25.09.1981, Randhir Singh, Drigpal Singh, Ram Autar Singh and Balram Singh had been in a dispute with the villagers.

Singh, the deceased. Since then, the enmity had become extreme and the accused were in search of a proper opportunity to murder Narendra Singh and they had also told so in the village. On 26.09.1981, Narendra Singh had come to Banda city and on 27.09.1981, in the evening, he had gone by bus in the return journey, along with Chhuttan, son of Gayadeen, the other deceased. It was raining and to protect themselves from the rain, they had gone to take shelter in the society house near the village, and at about 5.30 p.m., Arimardan Singh, his brother Chandrapal Singh, his nephew Man Singh, and Raju son of Ram Lal, Chunni Lal, son of Sukhdaiya, all had gone to the society sugar shop to purchase sugar. At that very time, i.e., on 27.09.1981, all of a sudden, Ram Autar, Balram Singh, Randhir Singh, and Drigpal Singh, the accused persons, came there armed with firearms. Ram Autar was armed with a greener, Balram Singh had a rifle, Randhir Singh also had a rifle and Drigpal Singh was armed with a DBBL gun, and all the four accused pointed their weapon at Narendra Singh and on exhortation extended by Ram Autar, they all fired their weapons upon Narendra Singh, who fell down dead. There was chaos and commotion there, and in firing, some other persons have also been injured. Chhuttan tried to run away in a bid to save himself, but the four accused chased him down and shot him dead. Randhir Singh, the accused, took it and removed a gun from the deceased Narendra Singh and the belt containing the cartridges, and his brother has received gunshot injuries on his jaw, left side of the chest, and right forearm and left thumb. And as it was raining heavily, Arimardan Singh could not proceed immediately to lodge a report at the police station.

5. Written information regarding the aforesaid incident was given on 28.09.1981, in the form of paper Ext.Ka-1, at Police Station- Kotwali.

6. The Investigating Officer proceeded to the scene of the crime and conducted the inquest. The inquest of the deceased, Narendra Singh Lekhpal, was conducted on 28.09.1981 between 11.00 a.m. and 12.30 p.m., and the inquest of Chhuttan was conducted on 29.09.1981 between 1400 and 1530 hours. The Investigating Officer, after conducting the inquest examinations, dispatched the bodies for postmortem examination and prepared the recovery memo of a bus ticket and two rupees note recovered from the pocket of Chhuttan, and, after concluding the inquest, filed charge-sheet against the accused Ram Autar Singh, Randhir Singh and Drigpal Singh, and filed charge-sheet against Balram as an absconding accused. Later on, Balram also surrendered before the court. The charges were framed against the accused by the then IIIrd Additional Sessions Judge, Banda, on 10.11.1982 under Sections 302 read with 34 I.P.C. and 201 I.P.C. against all the appellants, and under Section 404 I.P.C. against accused Randhir Singh. The accused denied the charges framed against them and claimed to be tried.

7. In support of the prosecution case, the prosecution has examined 10 witnesses, namely, PW-1 Arimardan Singh, the informant of the case; PW-2 Nand Kishore; PW-3 Raju, son of Ram Lal; PW-4 Kishori Lal; PW-5 Bihari Lal; PW-6 Dr. A.K. Agarwal, who conducted the postmortem examination of the deceased Narendra Singh; PW-7 Dr. Ravi Mathur, who conducted the postmortem examination of Chhuttan Dubey, son of Gayadeen; PW-8 Head Constable Subba Singh, who was the constable clerk at Police Station- Kotwali, Banda on 28.09.1981 and has proved the G.D. No.13 dated 28.09.1981 at 09:05 a.m. as Ext.Ka-10 and the special report as Exts.Ka-11 and 12; PW-9, the Investigating Officer, S.I. Milan Ram, who has proved the panchayatnama of the deceased Narendra Singh as paper Ext.Ka-4, the challan nash and photo

Autar Singh, Randhir Singh, Drigpal Singh, and absconding accused Balram Singh, proved the same as Ext.Ka-24.

8. After conclusion of the evidence of the prosecution, the statements of the accused were recorded under Section 313 Cr.P.C., wherein they denied the evidence against them and pleaded false implication in the case. Despite an opportunity for producing evidence being given to the accused, no evidence, whether oral or documentary, was produced by them.

9. After hearing the arguments of the prosecution and the accused, the trial court convicted the accused under Sections 302, 201 and 404 I.P.C. Hence, this appeal.

10. The prosecution has examined five witnesses as witnesses of fact. PW-4 Kishori Lal, on the date of incident, was a sales person/accountant at the cooperative society chauraha and has stated that he is not an eyewitness and has denied that the incident took place in front of him; the Investigating Officer recorded his statement. He has thereby not supported the prosecution case.

11. PW-5 Bihari Lal is a witness of the inquest of the deceased Narendra Singh and is not an eyewitness to the case; he had reached the place of incident at 6 p.m. on the date of incident.

12. Similarly, PW-2 Nand Kishore is not an eyewitness of the case. He was employed as an *ahalmad* at the SDM office, Banda, on the date of incident, and he was required to bring certain documents before the court.

13. PW-6 Dr. A.K. Agarwal conducted the postmortem examination of the dead body of Narendra Singh on 29.09.1981 at 12 a.m. in the District

(2) gun shot wound of exit, 6 cm x 5 cm x bone deep, right medial underlying bone fractured, margins inverted;

(3) gun shot wounds of exit (6 in number) on the left side of the chest above the nipple, in an area of 7 cm x 7 cm, each varying from 1.5 cm x 1.5 cm to 1 cm x 1 cm deep, margins inverted;

(4) abrasions in an area of 5 cm x 3 cm on the chest;

(5) gun shot wound of entry, 5 cm x 3 cm, through and through on the palm of the left hand between the level of the little and ring fingers at the metacarpal-phalangeal joints, margins inverted, directed upwards, backwards and outwards; and

(6) gun shot wound of exit, margins inverted, 8 cm x 6 cm, corresponding to injury no. 5, on the back of the left hand at the base of the first and second metacarpals.

On internal examination, the stomach was found perforated below the seat of injury no. 3 in an area of 1 cm x 1 cm; the third and fourth ribs on the left side of the chest were broken; the lungs were ruptured, and 2½ pounds of blood were found inside the chest; the right lung was torn and projected outside; the membranes of the heart were damaged and torn; semi-digested food of about 4 ounces was present in the stomach, and faecal matter was present in the large intestine. According to the doctor, the death was caused by shock and haemorrhage as a result of the antemortem injuries. Two wad pieces and six pellets were recovered from the right side of the chest.

14. PW-7 Dr. Ravi Mathur conducted the postmortem examination of the dead body of Chhuttan on 30.09.1981 at 12 p.m. in the District Mortuary, Banda. He found the following antemortem injuries on the body of the deceased :

(2) gunshot wound of entry, 2 cm x 2 cm x chest cavity deep, margins inverted, abraded collar, no tattooing, no blackening, no scorching, 2½ cm above the lower border of the right scapula, directed upwards, outwards and downwards left;

(3) gunshot wound of exit, 1¼ cm x 1¼ cm x chest cavity content deep, on the left front of the chest, 4 cm left of the nipple sternum, 12 cm above the left nipple;

(4) gunshot wound of exit, 1¼ cm x 1¼ cm x chest cavity content deep, on the left side front of chest wall, 12 cm above the left nipple at the outer border of the left axilla, two metallic pellets recovered from the chest wall;

(5) gunshot wound of entry, 1 cm x 1 cm x chest cavity deep, on the left side front of the chest, 8 cm above the left nipple at the 2 o'clock position, margins inverted, collar abraded, no tattooing, blackening, scorching present, direction downward, leftward and upwards;

(6) gunshot wound of exit, 1¼ cm x 1¼ cm x chest cavity content deep, on the postero-lateral border of the left chest wall, one metallic pellet found in the chest wall 11 cm above the left chest;

(7) abrasion with contusion, 18 cm x 12 cm, on the front of the left hand; and

(8) contusion 11 cm x 9 cm, on the back of the right side of the chest wall, 11 cm below the top of the right shoulder.

On internal examination, 150 g of semi-digested food was found in the large intestine, and semi-digested food was present in the small intestine; the penis and scrotum were swollen; the membranes of the brain were congested and the brain was soft and pulpy; the eighth rib on the left side of the chest was broken, and the windpipe was damaged; both lungs were damaged, and one litre of blood was found inside the chest. According to the doctor, the deceased had died about three days earlier, on account of shock and haemorrhage resulting from the antemortem injuries.

15. The prosecution case hinges on the testimony of two witnesses,

date on which his testimony was recorded before the court. He was, at that time, present in the society house along with his younger brother Chandrapal Singh, his nephew Man Singh, Raju Bharbhujia, Chunni Lal, and other villagers from the village, who had come there to pick up sugar. On that day, the date was fixed for distribution of sugar to the people of Mahokhar village but the informant and others had missed their turn on 23.09.1981, and they had come to collect it. His younger brother Chandrapal Singh, a teacher at Banda Bajrang Vidyalaya, was also sitting with them at the society house, waiting for a bus to Banda. Meanwhile, the bus for Banda-Baberu stopped near the society house, and it was raining heavily. Narendra Singh Lekhpal and Chhuttan Dubey, who had also come off the bus to protect themselves from the rain, went inside the society house and stood on the verandah. At that very time, from the eastern direction, Ram Autar Singh, armed with a (Greener) gun; Balram Singh, armed with a rifle; Drigpal Singh, armed with a double-barrel gun; and Randhir Singh, also carrying a rifle, came towards the verandah from the front. On exhortation by Ram Autar to kill him and not let him go, all four fired upon Narendra Singh with the weapons in their hands, and he fell down and died on the spot. There was chaos and commotion, and Chhuttan Dubey ran towards the chauraha; all four followed him and fired at him. While leaving the place, Randhir Singh took the gun and the *patta* off the neck of the deceased Narendra Singh. While they were following Chhuttan, they heard the sound of a gunshot being fired and did not see Chhuttan return that day. Since it was raining heavily and out of fear of the accused, they did not go to the police station to lodge the report and went to Banda the next day, accompanied by Chandrapal Singh and a chowkidar; the report was written by Chandrapal Singh at his dictation, which he signed after

pucca building housing an office where, among other things, sugar distribution takes place. He explained the reason for not proceeding to Banda that night as being that buses were infrequent at the time, since a bus driver had been murdered some time earlier. He further stated that there were seven to eight tractors in his village, that his brother Narendra Singh also had a tractor, but that there was no driver available to operate it at that time.

17. PW-1 Arimardan Singh has also stated, in his examination-in-chief and cross-examination, that the accused and the family members of Ram Singh were inimical towards him, and that Drigpal Singh, an accused in the case, had been involved in a criminal case with the villagers in 1961 arising out of the murder of Bulua Nonia; Ram Singh had falsely nominated the informant's brother, Binda Singh, Nirbhai Singh, and Narendra Singh, along with other villagers, and the accused were acquitted by the court of Sessions. He has further stated that about 3-4 years prior to the incident, there was a fight amongst two groups in which gunshots were fired, and two First Information Reports were lodged — on one side the informant, Narendra Singh (the deceased) and his family members were involved, and the other side, Vidya Dhar, Jagdish, Shiv Ganesh, Ram Manohar and others, were convicted while the informant's side was acquitted. He has denied that a case involving firing from a gun was lodged about 10-12 years prior to the incident, but has admitted that about 8-9 years prior to the incident, a case under Section 307 I.P.C. was lodged against him and his son Narendra Singh, which ended in a compromise; that about 15 years earlier, on the application of Chunvadiya Ahir, a case was lodged against him and his son, which also ended in a compromise; and that a case under the Goondas Act was lodged against the deceased Narendra Singh, in which

18. The present appeal has been preferred by the appellants, who are aggrieved by the judgment and order of the trial court convicting them of the murders of the deceased Narendra Singh and the deceased Chhuttan Dubey. Deceased Narendra Singh was murdered by the appellants on 27.09.1981 at about 5.30 p.m., when he, along with the deceased Chhuttan, had returned from Banda by bus and, it being rainy, had taken shelter inside the society house near the village of Jaurahi. The informant Arimardan Singh, his brother Chandrapal Singh, and Raju, son of Ram Lal Bharbhujia, were at the place of occurrence at the time. Soon after Narendra Singh was shot and slain by the accused Randhir Singh, Drigpal Singh, Ram Autar Singh, and Balram Singh, the deceased Chhuttan, out of fear, ran out of the society house; he was pursued by the accused-appellants, killed, and his body was recovered the next day from a pit near the place of occurrence. The prosecution has examined two witnesses, PW-1 Arimardan Singh and PW-3 Raju, who have supported the prosecution case, whereas the other two witnesses of fact, PW-4 Kishori Lal has turned hostile, and PW-5 Bihari Lal is a witness of the panchayatnama only and did not witness the incident.

19. Learned counsel for the appellants has vehemently submitted that the accused have been falsely implicated in the case due to prior enmity arising from murder cases in which the informant and his family had been implicated by the deceased's side and were subsequently acquitted. It has further been submitted that the informant has many criminal cases registered against him, and his testimony, in light of the prior enmity, should not have been believed without independent corroboration. It has also been submitted that the other eyewitness, PW-3 Raju, son of Ram Lal Bharbhujia, was under an obligation to the informant, who had allegedly protected his land from illegal occupation by the accused

incident. Moreover, the first information report has been ante-timed and lodged after prior consultation and discussion, as is apparent from the fact that Chandrapal was at the place of incident at the time of occurrence, but the informant himself has testified that the report was scribed by Chandrapal on his dictation at Chandrapal's house in Banda, where they had gone the next morning, and the report was not lodged on the same day, though a bus service existed between village Jaurahi and Banda, the village being situated on the road connecting Banda to Baberu, and the deceased himself had disembarked near the village from the bus returning from Banda. It has also been submitted that Chandrapal was waiting for a bus to Banda, from which it can reasonably be said that the report was prepared after due discussion, and, since the accused had prior enmity with the informant, their names were falsely roped in. The other deceased, Chhuttan, was killed at some other place, as is proved by the fact that his body was recovered from a pit at some distance from the place of occurrence the next day. It has further been submitted that the Investigating Officer prepared a recovery memo of 116 pellets from the place of occurrence along with empty cartridges, but there were no pellet marks on the wall in the background of the verandah where the assault is alleged to have been committed by the use of firearms. Except PW-3 Raju, no other witness has been examined to corroborate the prosecution case, and the appeal is liable to be allowed. It has also been submitted that the recovery memo of a bus ticket and a two-rupee note, prepared by the Investigating Officer to show that the deceased had returned from Banda by bus, is of no evidentiary value since the bus ticket was never produced or proved before the court, which casts doubt on whether they had actually returned from Banda in the absence of any independent witness. It has further been argued that

the victims, and it cannot be conclusively determined whether the injuries were caused by the rifle attributed to one accused or the firearm carried by another. This omission, it is submitted, creates a serious lacuna in the prosecution case, particularly where the nature of the injuries does not itself disclose the type of weapon used, and the resulting doubt must operate in favour of the accused.

20. Learned A.G.A. for the State has vehemently refuted the arguments put forward by learned counsel for the appellants and has submitted that the prosecution case is supported by the eyewitness account and the recovery of pellets from the spot of occurrence, and that no reason was available to the informant for falsely implicating the accused persons after a period of 22 years, when they had been involved by the accused in a criminal case.

21. A first information report was registered at Police Station Kotwali, District Banda, on 28.09.1981 at 09:05 a.m., based on a written report lodged by the informant, Arimardan Singh. The first F.I.R. is Ext.Ka-9, and the endorsement of the same was made in G.D. No. 13 on 28.09.1981 at 09:05 a.m., proved as Ext.Ka-10. The inquest of the deceased Narendra Singh was conducted by PW-9 S.I. Milan Ram, Investigating Officer, on 28.09.1981, commencing at 11 a.m. and concluding at 12.30 p.m., which was proved as Ext.Ka-4. The inquest of the deceased Chhuttan was conducted on 29.09.1981, commencing at 1400 hours and concluding at 1530 hours on the same day. A bus ticket and a Rs.2/- note were recovered from the clothes of the deceased Chhuttan, and a recovery memo of the same was prepared which was proved as Ext.Ka-22.

22. The prosecution's case is that the incident was witnessed by PW-1,

Autar Singh carried a greener gun, Balram Singh and Randhir Singh carried rifles, and Drigpal Singh carried a double-barrel gun at the time of the incident. The postmortem of Narendra Singh's body, conducted by PW-6 Dr. A.K. Agarwal on 29.09.1981, found six injuries, with six pellets and two wad pieces recovered from the body, the dimensions of which showed that they had been caused by a wide bore weapon.

23. PW-1 Arimardan Singh and PW-3 Raju have deposed in a manner broadly consistent with the case set out in the first information report, and their account of the manner of assault finds some measure of support in the medical evidence — the six ante-mortem injuries found on the body of Narendra Singh by PW-6 Dr. A.K. Agarwal, and the eight injuries found on the body of Chhuttan by PW-7 Dr. Ravi Mathur, are broadly consistent with the use of multiple firearms of the kind described in the first information report and in the ocular account. However, corroboration that an offence was committed by firearms is not the same as corroboration of the identity of the four persons alleged to have wielded them, which is the more difficult question in a case resting substantially on the word of two witnesses, both of whom stand in a proximate relationship to the deceased and to the surviving side of a long-standing factional rivalry. Moreover, in the absence of any forensic or ballistic report establishing the nature of the injuries and the specific type of weapon used — beyond the fact that a firearm was involved — doubt persists as to which weapon caused the fatal wound. Although appellant Balram Singh is alleged to have carried a rifle, neither the rifle nor any spent cartridge attributable to it was ever recovered or subjected to forensic examination.

24. It is well settled that a witness's evidence cannot be discarded

solely on that ground, since a mechanical rejection of such evidence would, in cases of factional violence where independent witnesses are seldom available, invariably lead to a failure of justice.

25. At the same time, in **State of Rajasthan v. Kalki, (1981) 2 SCC 752**, the Supreme Court drew a distinction between a witness who is merely “related” to the deceased and one who is “interested” in the sense of having a motive to falsely implicate the accused; a witness is not “interested” unless it is shown that he has some animus or other reason to fasten guilt on an innocent person. That distinction cuts both ways on the facts of the present case. PW-1 is not merely the father of one of the deceased; he is a party to a decades-old, documented, and mutually acrimonious history of criminal litigation with the family of the accused, going back to 1961, and, as admitted, involving cross-cases, a Goondas Act proceeding, and an alleged attempt, only two days prior to the incident, to forcibly dispossess a third party whom the deceased Narendra Singh had supported in his capacity as Lekhpal. PW-3 Raju is, on the defence case, that very third party said to be beholden to the informant's side. The relationship of both principal witnesses to the case is accordingly closer to “interest” than to mere “relation”, which heightens rather than diminishes the need for independent corroboration of the identity of the assailants, consistent with the approach in **Kalki (supra)** and the caution counselled in **Dalip Singh v. State of Punjab, AIR 1953 SC 364**.

26. The Supreme Court in **Thulia Kali v. State of Tamil Nadu, (1972) 3 SCC 393**, explained that a first information report is a valuable piece of evidence precisely because it fixes, at the earliest point in time, the names of the culprits and the eyewitnesses before there has been an

27. PW-1 Arimardan Singh, in his examination-in-chief, has stated that since it was raining heavily and out of fear of the accused, they did not go to lodge the report at the police station on the day of the incident and went to Banda the next day, accompanied by Chandrapal Singh and a chowkidar, and that Chandrapal Singh wrote the report at his house in Banda. The reason given for not taking a bus to Banda that night was that buses were infrequent at the time, a bus driver having been murdered some time earlier. He has further stated that there were seven to eight tractors in the village, that his brother Narendra Singh also had a tractor, but that no driver was available at the time to operate it. The prosecution has failed to assign any cogent reason as to why the informant, along with Chandrapal, did not proceed to Banda — a distance of about 11 kilometres to the east, as per the chik information report — to lodge a report regarding the murder of his son immediately after the incident, notwithstanding the admitted availability of a tractor in the family and of firearms in the household.

28. Applying the principle in **Thulia Kali (supra)**, the delay of over fifteen hours between the incident at about 5.30 p.m. on 27.09.1981 and the lodging of the report at 9.05 a.m. on 28.09.1981 has not been satisfactorily explained on the record. The explanation of heavy rain and fear of the accused does not account for the availability, on the informant's own admission, of a tractor in the family and of firearms in the household, nor for the fact that Chandrapal Singh — who, on the prosecution's own case, was present at the spot at the material time — was, that same evening or the following morning, in a position to travel to Banda, where he resides, and there reduce the report to writing at his own house before it was carried to the police station, some distance further still. The sequence suggests an opportunity for deliberation of the

29. The scribe of the *tehrir*, Chandrapal Singh, occupies a singular position in the record: he is described by the informant as the manager of the very society house where the alleged occurrence took place; he is stated to have been present there at the material time; he is the scribe of the first information report; and, unlike PW-1 Arimardan Singh and PW-3 Raju, he is once removed from the more immediate stakes of the land dispute. He was, on the prosecution's own showing, the one witness reasonably capable of independently confirming both the genesis of the occurrence and the circumstances in which the report was prepared at his house in Banda rather than at the spot or at the nearest police station. He has not been examined.

30. The Supreme Court in **Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145**, held that while the prosecution is not obliged to multiply witnesses on the same point, the withholding of a witness who alone could explain the genesis of the incident, or fill a gap or infirmity in the prosecution case not otherwise convincingly established, entitles the court to draw an adverse inference that the witness, if examined, would not have supported the prosecution version. Chandrapal's evidence went precisely to two of the weakest points in the prosecution case — the circumstances of the delay and the presence of an independent witness at the spot — and his non-examination, unexplained on the record, falls squarely within the principle in **Takhaji Hiraji (supra)** and must be read against the prosecution.

31. The Investigating Officer recovered 116 pellets and empty cartridges from the scene of the incident, proved the recovery memo as Ext.Ka-5. However, as pointed out on behalf of the appellants, no pellet marks were found on the wall forming the background of the verandah,

case requires — that ticket was never produced or proved before the trial court.

32. Takhaji Hiraji (supra) also guides the approach where the ocular account and the surrounding physical or documentary evidence do not sit easily together: minor variance is ordinarily to be resolved in favour of the ocular account, and the medical or physical evidence is not an invariable yardstick by which the eyewitness account must be tested; it is only where the two are so fundamentally inconsistent as to be irreconcilable that the physical evidence displaces the oral testimony. Neither the absence of pellet marks nor the non-production of the bus ticket, taken in isolation, would ordinarily be sufficient to discredit the ocular account. Taken together with the unexplained delay and the non-examination of Chandrapal, however, they contribute to a cumulative pattern of gaps that the prosecution has left unfilled.

33. The cause of death of both deceased, and the fact that they met a homicidal end by firearm injuries at or near the society house at Jaurahi on the evening of 27.09.1981, stands established and is not seriously in dispute. What is in doubt, on a cumulative appraisal of :

(i) the closely interested character of the two principal witnesses in the context of a long and bitter factional history,

(ii) the unexplained delay of over fifteen hours in lodging the first information report despite the means to report promptly,

(iii) the non-examination of Chandrapal, the one witness capable of independently supporting both the genesis of the occurrence and the circumstances of the report's preparation, and

(iv) the absence of corroborative physical evidence at two material

where the prosecution has left available and material avenues of corroboration unexplored without explanation.

34. For the reasons recorded above, we are of the view that the prosecution has not been able to bring home the identity of the assailants vis-à-vis appellant no. 2, Balram Singh, with the certainty required in law, and he is entitled to the benefit of doubt.

35. The appeal is accordingly allowed qua appellant no. 2, Balram Singh. The judgment and order dated 11.07.1984 passed by the court of Special Judge (DAA), Banda, in Sessions Trial No. 170 of 1982, is set aside insofar as it concerns him, and he is acquitted of the charges under Sections 302/34 and 201 I.P.C. The appellant no. 2 is already on bail and he need not surrender. His bail/personal bonds, if any, stand discharged.

36. Insofar as appellants nos. 1, 3 and 4 — Ram Autar Singh, Randhir Singh and Drigpal Singh — are concerned, their appeals have already been abated by the order dated 10.07.2026 on account of their deaths during the pendency of the appeal, and no further order on the merits is called for in their cases.

37. Let a copy of this judgment be certified to the court concerned for compliance, along with the trial court record, within the period prescribed.

(Achal Sachdev,J.) (Siddhartha Varma,J.)

August 7, 2026
KS