

Allahabad High Court

Chauthi Yadav And Others vs State on 11 September, 2025

Author: Rajiv Gupta

Bench: Rajiv Gupta

HIGH COURT OF JUDICATURE AT ALLAHABAD Judgment
Reserved On:05.08.2025 Judgment Delivered
On:11.09.2025 HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 2142 of 1985 Chauthi Yadav And
Others ..Appellant (s) Versus State ..Respondents(s)
Counsel for Appellant(s) : G.P.Dixit, Janardan Yadav
Counsel for Respondent(s) : A.N. Mulla, A.G.A. Court
No. - 46 Hon'ble Rajiv Gupta,J.

Hon'ble Harvir Singh,J.

(Delivered by Hon'ble Rajiv Gupta, J.)

1. Heard Shri Kamal Krishna, learned Senior Advocate assisted by Shri Janardan Yadav, learned counsel for the appellants, Shri A.N. Mulla, learned AGA for the State and perused the record.
2. At the very outset, learned AGA has pointed out that in the instant case appellant no.3/Brijlal Yadava has already passed

away about 8-9 years back and as such, his appeal has already been dismissed as abated vide order dated 17.07.2018. Now the appeal survives only for appellant no.1/Chauthi Yadava and appellant no.2/Sri Ram Yadava, both sons of Ram Deo.

3. The instant criminal appeal has been filed against the judgment and order dated 16.08.1985 passed by Sessions Judge, Deoria in Sessions Trial No.180 of 1983, arising out of Case Crime No.39 of 1983, under Sections 147/ 148/ 149/ 307/ 302/ 201 IPC and Section 5 of Explosive Act, P.S. Gauri Bazar, District Deoria by which the appellants have been convicted for the offence under Section 148 IPC and awarded the sentence of two years rigorous imprisonment, under Section 302 IPC read with Section 149 IPC and awarded the sentence of life imprisonment and under Section 307 IPC read with Section 149 IPC and awarded the sentence of seven years rigorous imprisonment with default stipulations. All the sentences have been directed to run concurrently.

4. Brief facts of the case are that the first informant Kishora Devi wife of the deceased had given an oral information at police station Gauri Bazar, District Deoria on 06.03.1983 at 13:30 hours, on the basis of which, an FIR was registered at Police Station

Gauri Bazar, District Deoria, marked as Ext. Ka-1, which reads as under:

जुबानी वादिनी हमार नाम किशोरा देवी हमरे पति के नाम राम चन्दर यादव हवे। हम धमउर गाँव के रहे वाला हई जवन पडरी गाँव के टोला हवे। जवन एही थाना में पड़ेला। हमन से अउर चौथी के परिवार से बहुत दिन से दुश्मनी चलि आवत बा। एही से अजु सवेर करीब 11 वजे दिन में हमरे गाँव के चौथी यादव वाप के नाम रामदेव श्री वाप के नाम रामदेव यादव वृजलाल वाप के नाम वभूति यादव अउर उन लोगन के साथ में 3 आदमी रहलन है। जेकर चेहरा देखवी नाम पता न जानत हई। झोला में बम ले ले रहल व हमरे पति के उपर वम चलवलन लोग ओकर से चोट ला गल कि एतने में हमार पति गाँव के पूरव भगलन कि हम शोर कइली तब तक हमरे गाँव के दीना वाप के नाम मगरू यादव हवे पीछा कइलन कि उनके उपर भी वम चलवलन लोग वम के चोट उनहू के लग गइल। हमार पति के हमरे गांव के पूरव तरफ घुरहू के उस के खेत में जात-जात पकड़ि लिहल लोग अउर वम से जान से मारि दिहल लोग ओकरा वाद उनके उठाके पता नही कहाँ लेगइल लोग। हमार मर गइल वाइन। सूचना देवे थाना पर आइल वानी। जवन लिखवनी लिख गइल। पढ़वा के सुनली त ठीक वा। आपन निशानी अगुठा वनावत वानी।

5. The said FIR was registered by Head Constable Ramvir Singh (P.W.8) and its corresponding G.D. entry was also prepared vide G.D. Report No. 17 at 13:30 hours, carbon copy whereof has been proved and marked as Ext. Ka-2. The said FIR was registered in the presence of S.H.O. Shiv Shankar Ram (P.W.9) and the investigation of the said case was entrusted to him.

6. After registration of the FIR, the Investigating Officer recorded the statement of the first informant Kishora Devi at the police station itself and proceeded to the place of incident and

prepared the site plan, which has been proved and marked as Ext. Ka-10. The Investigating Officer upon reaching the place of incident collected the blood stained earth and plain earth, kept it in a container and prepared its fard recovery memo, which has been proved and marked as Ext.Ka-11 and thereafter, he was informed that the dead body of the deceased was lying in Wahad Mauja Madhiya Khurd, falling in the jurisdiction of Police Station Chauri Chaura, Gorakhpur, consequent to which, he reached there, where he found S.O. Chauri Chaura along with other staff present there. Thereafter, an inquest was conducted on the person of the deceased by S.O. Vijay Raj Azad, who after preparing the relevant documents being photo-nash, challan-nash, letter to R.I., letter to C.M.O. etc, sealed the dead body and handed over the same to the constable for taking it to the mortuary for post-mortem. The said documents have been proved and marked as Exts. Ka-2, Ka-3, Ka-6 and Ka-7, whereas the inquest report has been proved as Ext. Ka-5.

7. The Investigating Officer thereafter prepared the site plan, from where the dead body was recovered, which has been proved and marked as Ext.Ka-12. Thereafter on 07.03.1983, the Investigating Officer recorded the statement of the witnesses Chandrabali and Guljari and that of Parmanand and Ramesh on

08.03.1983. The Investigating Officer, thereafter visited Sadar Hospital, Deoria on 10.03.1983 and recorded the statement of injured Dina Nath, who made available his injury report dated 06.03.1983 at 04:15 p.m. As per his injury report, he sustained a blast injury 8 cm x 4 cm x muscle deep right thigh, upper outer part 24.0 cm above the right knee joint. Blackening and blast powder seen around the wound and burn skin hair around the wound. Bleed on touch. As per the opinion of the doctor, the said injury was a blast injury, which was kept under observation and x-ray of right thigh was advised. The said injury report has been proved as Ext.Ka-14.

8. An autopsy was conducted on the person of the deceased Ramchandra on 07.03.1983 and as per the post-mortem report, the deceased suffered the following injuries:

1. Incised wound, 8 x 3 x vertebral deep on the front of neck, middle part, all the structures above vertebrae (muscle, trachea, oesophagus and great vessels) cut through & through.

2. Contusion with blackening 1 x 1/2 on the left arm, middle part, lateral aspect.

3. Contusion with blackening 2 x 1 on the right thigh, middle and inner part.

4. Contusion with blackening right leg anterior and upper part in area of 2 x 1/2.

5. Lacerated wound 1/2 x 1/4 on the right thigh lower and outer part.

6. Two incised wounds 1 apart on the right leg, out part, lower one 1 x 1/4 x muscle deep and upper one and upper one 1/2 x 1/4 x muscle deep.

7. Incised wound 1 x 1/2 x muscle deep on left ankle mid-part.

8. Incised wound 1/2 x 1/4 x muscle deep on right ankle, out part.

9. Multiple abrasions in area of 12 x 8 on the middle part back.

This post-mortem report shows that the main injury was No.1 which was responsible for the death of the deceased.

9. The said post-mortem report has been proved and marked as Ext. Ka-8. As per the post-mortem report, the cause of death has been shown to be shock and hemorrhage, as a result of ante-mortem injuries. After collecting the cogent and reliable material during the course of investigation, the Investigating Officer concluded the investigation and submitted the charge-sheet against all the accused persons on 20.04.1983, under Sections 147, 148, 149, 307, 302 and 201 IPC and Section 5 of

the Explosive Act, which has been proved and marked as Ext. Ka-13.

10. After submission of the charge-sheet, learned Magistrate had taken cognizance of the case, however, since the case was exclusively triable by the court of Sessions, as such, committed it to the court of Sessions for trial, which was numbered as Sessions Trial No. 180 of 1983 (State Vs. Chauthi Yadava and 2 others). The trial court thereafter framed the charges against the accused-appellants under Sections 148, 302 IPC read with Section 149 and also under Section 307 IPC read with Section 149 IPC vide order dated 28.01.1984. The accused-appellants abjured the said charges, did not plead guilty and claimed to be tried.

11. The prosecution in order to bring home the guilt of the accused-appellants produced as many as six witnesses of fact and four formal witnesses. The appellants in their defence produced Rajendra Sahi as a defence witness. The statement of the witnesses so deposed is enumerated hereunder.

12. P.W.1 Chandrabali is an eye-witness of the incident. He, in his examination-in-chief, has stated that about one year back at about 11:00 a.m., he had gone for a hair cut in the backyard of

Dwarika, where he found Ramchandra and Dina getting a hair cut. While getting the hair cut, the two accused persons namely Chauthi and Brijlal, armed with spear, and another accused Sri holding a bag having bomb therein reached there along with three unknown persons armed with spear. As soon as Ramchandra saw them, he tried to escape, however, Sri hurled a bomb, which hit Ramchandra and Dina. Dina thereafter fell down, however, Ramchandra continued to run away being chased by the assailants. He, however, entered the sugarcane field owned by Ghurhu. The assailants then assaulted him with a spear and caused his death. He further stated that the mother of Ramchandra and his wife and he himself were following the assailants and the deceased and had seen them killing the deceased. The assailants thereafter picked up his dead body and proceeded towards the western side of the village to an unknown place.

13. During cross-examination, P.W.1 stated that the victim Ramchandra and injured Dina are his real nephew. He further denied the suggestion that Ramchandra was ever confined in jail in any dacoity case. He further stated that the house of barber is situated just after two houses and the house of Dwarika is situated at 20 paces from his house and the canal is

situated 25-30 bigha from his house, where Ramchandra was done to death. He further stated that he had heard that the dead body of Ramchandra was recovered from Majhna Nala (gutter), which is at a distance of 50 bigha from his village and less than a mile from canal.

14. P.W.1 further denied the suggestion that, on the day of incident, he was sick and was sleeping at his house and when he reached the place of incident, the incident occurred. While he was getting his beard shaved, then assailants reached there and bombs were hurled, consequent to which, Ramchandra and Dina received injuries and Dina fell down then and there, however, Ramchandra escaped. Hearing the noise of bombs being hurled, mother and wife of Ramchandra emerged and followed Ramchandra. He further stated that the assailants caught hold of Ramchandra in the sugarcane field and dragged him out and thereafter assaulted him with ballam. He at the relevant time, when assailants assaulted Ramchandra, was standing at a distance of 5 bigha and wife of the deceased was also present there along with his mother. He had seen the appellants assaulting the deceased and thereafter taking him away. The villagers reached thereafter and the dead body was taken away.

15. P.W.1 further denied the suggestion that, he had not seen the bomb blast and had only heard noise of the bomb blast. He further denied the statement recorded by the Investigating officer under Section 161 Cr.P.C. and stated that he cannot explain as to how the Investigating Officer has recorded such statement. He further candidly stated that the incident was witnessed by him and two others being the mother and wife of the deceased and blood had fallen behind the house of Dwarika, where Dina had fallen down after receiving injuries on his thighs by a bomb blast, however, injuries of Ramchandra could not be noted, as he was in a running state. When the assailants took away the dead body, he did not follow them, as he did not dare to follow them, as the assailants were armed with bombs and spears and no other person followed them. In the evening, it was disclosed that the dead body of Ramchandra was recovered from Majhna Nala. He further denied the suggestion that Ramchandra was a dacoit, though he was a man of strong built. P.W.1 further denied the suggestion that Ramchandra was done to death by his enemies besides Majhna Nala and his dead body was thrown from where it was recovered. He further denied to have falsely deposed in the instant case.

16. P.W.2 Guljari is another eye-witness and mother of the deceased. She, in her testimony, has stated that at about 11:00 a.m. at the relevant date and time, she was present at the doorstep of her house and his son Ramchandra had gone to get a hair cut at the door step of Dwarika, where the barber had reached and was giving a hair cut. She further stated that, while she was standing at her doorstep, she saw Sri carrying a bag and Brijlal and Chauthi holding spear in their hands and three other unknown persons armed with spears. Upon seeing them, she suspected that they are proceeding to kill her son, as such, she also proceeded towards them. While his son Ramchandra was getting a hair cut, the assailants reached there and hurled bombs, consequent to which, Dina and Ramchandra made their escape good. Dina fell down on the way, however, his son ran swiftly towards east followed by the six assailants and reached in the fields of Ghurhu. Behind her, wife of Ramchandra and Chandrabali also followed. Ramchandra fell down in the field of Ghurhu and the assailants dragged him out and thereafter assaulted him with spears. The assailants thereafter picked up his body, however, she suddenly fell down.

17. During cross-examination, P.W.2 candidly stated that she has a normal eye-sight. She witnessed the said incident from a

distance of 5-7 paces, where Chandrabali along with her daughter-in-law had also reached. Her daughter-in-law pleaded the assailants not to assault the deceased, but they did not listen. Her daughter-in-law had brought her to her house in an unconscious state and after she regained consciousness, her daughter-in-law had left for police station. Her brother Buddhu had also reached the police station on being informed. She had first reached the place, where bombs were hurled at her son, which hit him and Dina, causing injuries and Ramchandra started bleeding whereas Dina fell down as he could not run away, who was taken away by his father.

18. P.W.2 further denied the statement shown to be recorded by the Investigating Officer. She further denied that she had not given any such statement that the assailants took away the dead body towards Majhna Nala. She further candidly stated that after the incident of murder, his daughter-in-law had gone to her parents place and candidly stated that at the time of incident, she was present at the house and further denied the contrary suggestions. She further denied the suggestion that she had not seen the incident of killing of his son rather candidly stated that, it is true that in her presence, her son was done to death. She further denied to be falsely deposing in the said case.

She had seen the assailants picking up the dead body of her son, consequent to which, she became unconscious.

19. P.W.3 Mangru is the another eye-witness and father of the injured Dina. He, in his statement, has stated that on the relevant date and time at about 11:00 a.m., he was present at his doorstep and his son was getting a hair cut at the doorstep of Dwarika. He further stated that, he had seen Chauthi and Brijlal holding a spear and Sri holding a bag, in which, bombs were kept. There were three other persons accompanying them, who were also carrying spears. The assailants were being followed by wife of Ramchandra and his mother, when they reached near the doorstep of Dwarika. Sri hurled two bombs, one hit Dina and other hit Ramchandra, then they stood up and tried to escape, however, Dina after covering some distance fell down, though Ram chander made his escape good towards east and went into the sugarcane field of Ghurhu. He also followed them. The assailants caught hold of Ramchandra and killed him and thereafter took away his dead body towards west. Thereafter, he returned back and took his son to the hospital for medical treatment.

20. During cross-examination, he candidly stated that when the bombs were hurled, he was passing through a way and was near the house of Rupai and mother of Ramchandra and his wife were ahead of him. He saw two bombs being hurled, one at his son and other on Ramchandra. He further stated that, he cannot explain as to why the factum of two bombs being hurled was not noted by the Investigating Officer. He further candidly stated that Ramchandra was followed by his mother, wife and Chandrabali, however, he after picking up his son had taken him to Deoria. He did not made any attempt to challenge the assailants, as they were armed. He further stated that within half an hour, Ramchandra was killed and his dead body was taken away. Because of fear, no other persons caught the assailants though they raised alarm.

21. P.W.3 further denied the suggestion that any case of dacoity was registered against Ramchandra and he had stood surety for him. He further denied the suggestion that there was any dacoity in the house of Ramakant, in which, Ramchandra was arrested. He further candidly stated that Chandvali, wife and mother of Ramchandra did not return back with him and thereafter, he took away his son in a cot to Bakhra and thereafter taken him to Deoria for treatment.

22. He further candidly stated that, the victim was assaulted with spears and no other article was used to assault him and two persons were assaulting him with spears. The place where Dina and Ramchandra were assaulted, blood had fallen. He further denied the suggestion that Ramchandra was not hit by a bomb. He further denied that, he was not present at the time of incident and the deceased Ramchandra and his son Dina were assaulted somewhere else.

23. P.W.4 Smt. Kishora is the wife of the deceased Ramchandra. She, in her examination-in-chief, has categorically stated that, about one year back at about 11:00 A.M. in the morning, her husband was done to death and at the relevant time, she was sitting at her doorstep. Her husband, at the relevant time, had gone to a barber to get a shave and while he was getting a shave, the assailants reached there. Sri was having a bag, while others were having ballam, along with these persons, there were three unknown persons also, however, they were unarmed. She further stated that she followed the assailants when the bombs were hurled and she saw her husband running towards the east, whereas Dina was lying below in an injured condition.

24. P.W. 4 further stated that the three assailants, present in court, were following her husband, who were accompanied by three other unknown persons. She immediately followed her husband, since his life was in danger. Her husband entered in the sugarcane field of Ghurhu, however, the assailants dragged him out and assaulted him with spears. Chauthi and Brijlal assaulted him with Ballam causing his death. Thereafter, the assailants took away his dead body with the help of lathi, however, she did not dare to follow them. On the FIR being read out to her, she categorically stated that, it is the same report which she had dictated to the constable and it was read out to her by the constable and after being scribed, she put her thumb impression on that, which has been proved as Ext. Ka-1. The dead body of her husband was found near the Majhna Nala, his neck was pierced and he had suffered a bomb injury on his back. Injuries were seen on his neck and back.

25. During cross-examination, she stated that prior to this incident, no quarrel had taken place between the assailants and her husband. There was some trivial dispute over fields, but she cannot state its number as she is illiterate and there was no litigation in respect of it. The assailants wanted to plough the entire field, half of which was theirs which, in fact, resulted in

the present incident. She further denied the suggestion that her husband was ever arrested by the police. She further showed her ignorance that her husband was ever involved in any case registered under Section 307 IPC lodged by Jang Bahadur. She further denied the suggestion of any incident of dacoity at the house of Birbal, in which, her husband Ramchandra was an accused. She further stated that her husband had lodged a criminal case against the present accused-assailants, however, they were acquitted prior to this case. She further candidly stated that at the time of incident, she was present at her in-laws place. She further candidly stated that the field where the incident took place both wheat and sugarcane had been sown.

26. P.W. 4 further candidly stated that, when she went to lodge the report, she was not aware as to where the dead body was thrown. At about 03:00 p.m., it was revealed, that the dead body was lying in Majhna Nala. After lodging the report, the Investigating Officer reached her village and she went at Majhna Nala with him. Dina did not meet her at her house, as he had gone to Deoria for treatment. Mangru and Chandrabali did not accompany her to the police station and she went alone and informed the constable about the incident, who scribed her FIR. She further denied the suggestion that on the date of incident

of murder, she was not present in the village, but was at her parents place.

27. P.W.4 further denied the suggestion that after getting the news about the murder of her husband, she reached Majhna Nala along with his brother. She further stated that Dina after receiving injuries fell at the doorstep of Dwarika. Sri hurled bombs at her husband and Dina being injured by the hurling of bombs causing bleeding injuries. At the relevant time her husband was being followed by the assailants and she was behind them. Her mother-in-law was also there along with an old person. She further denied to have given any statement to the police and candidly denied the assertion recorded by the Investigating Officer. She further denied the suggestion that the assailants were not accompanied by three other persons, who were empty handed. She further denied the suggestion that her husband was a big dacoit and number of dacoity cases were registered against him. She further denied that her husband died in the incident of dacoity during night hours and subsequently, when she got the knowledge of the said incident, then false report was prepared and lodged. She further denied that Dina had also gone to commit dacoity, where he got injured on account of hurling of bombs. Dina's physical condition was

very serious, as such, he did not visit the police station. She further denied the suggestion that on the relevant date and time, she was not present at her house, but had gone to her parents place.

28. P.W.5 is Permanand. He, in his examination-in-chief, has categorically stated that on 06.03.1983, he along with his brother Ramesh had reached Dhammaur, Police Station Gauri Bazar at about 10-11 a.m. He after shaving the beard of Ramchandra was sitting idle. Ramesh was shaving the beard of Dina. In the meanwhile 5-6 persons arrived. Ramchandra was then sitting there, who tried to escape. Amongst the assailants, one started hurling bombs causing injuries to Dina. He himself saw Dina being injured. He, however, could not identify the said 5-6 persons and ran away out of fear.

29. During cross-examination, he further candidly stated that at the relevant time, he along with Ramesh was giving a haircut and was shaving. Chauthi, Sri and Brijlal, present in court, were pattidars, however, he did not saw them and had made their escape good. He could not see, as to who was holding the bombs, however, as soon as Ramchandra saw the said persons, he ran away and the assailants chased him and hurled bombs.

Dina was hit by the bomb, however, he made his escape good. He further stated that, while he was shaving the beard of Dina, bombs were hurled and Dina got injured. He was interrogated by the police.

30. P.W.6 Dina is the injured witness, who suffered the bomb injuries in the incident in question. He, in his testimony, has stated that the deceased Ramchandra was his cousin and on the relevant date and time, he and his cousin were getting their beard shaved, however, Sri, Chauthi and Brijlal along with three unknown persons reached there. Ramchandra was sitting at a distance of 5-6 arms. Sri was having a bag in one hand and was holding the bomb in the other. Chauthi and Brijlal were armed with Ballam, however, the unknown persons were unarmed. Seeing them, Ramchandra tried to escape. He also ran to escape, when two bombs were hurled. The first bomb hit Ramchandra and the other one hit him. He received injuries and fell down, however, his brother ran away. These persons chased Ramchandra. When he fell down, his uncle, his father, Ramchandras mother and wife also reached there. He somehow hid himself in the house of Ganesh.

31. During cross-examination, he stated that he is not an accused in any case till date. He is also not aware of any report being lodged by Jang Bahadur against Ramchandra and no litigation ever pursued between him and accused-assailants, nor there was any dispute regarding fields and he had no quarrel with the assailants prior to this incident. He further candidly stated that on the date of incident, the assailants had not reached there to kill him, but Ramchandra, however, accidentally, he got injured. All the six assailants reached there together, when Ramchandra tried to escape. Bombs were hurled, however, he could not see, where the bombs hit him. The first bomb hit Ramchandra and consequently hit him. The assailants hurled bombs from 3-4 steps, behind Ramchandra. Ramchandra was running towards north when bombs were hurled, however, he could not see where the bombs hit him or where he received injuries. Ramchandra was followed by him and he was followed by the assailants. He ran 6-7 paces and then fell down after receiving injuries on the right side of his thighs, however, after receiving injuries, he hid himself in the house of Ganesh. There was enough bleeding but, whether it fell is not known to him. He was taken to Deoria for treatment.

32. P.W.6 further candidly stated that he had not seen Ramchandra being killed and since he was injured as such, could not lodge the report. After 4-5 days, he was interrogated by the police. He did not inform the police that his brother Ramchandra was killed in the filed of Ghurhu by Ballam and knives. He also did not state that after his brothers murder, his dead body was taken towards Majhna Nala and if any such statement has been recorded by the police, it is all false and denied by him. The bombs hit him from behind. Since he had seen Sri holding a bag in one hand and holding bomb in the other, as such, he was certain that bomb was thrown by him, which he had witnessed.

33. P.W.6 further denied the suggestion that, he was not present at the relevant time and received injuries. He further candidly denied the suggestion that he was injured with Ramchandra at some other place and the assailants could not be identified. He further denied the suggestion that, he is falsely implicating the assailants. He further denied the suggestion that Ramchandra is a big dacoit and he used to accompany him and in an incident of dacoity, he along with Ramchandra got injured.

34. P.W.7 Dr.S.C. Tripathi is the Medical Officer, who had conducted an autopsy on the person of the deceased and has noted the injuries on his person, which has already been discussed in the earlier part of the judgment. He, in his cross-examination, has candidly stated that:

बल्लम अगर नार्मली यूज की जाय, यानी भौकी जाय, तब उसमें पंचर्ड वुंड आयेगा। अगर उसको मारते समय वह स्लिप कर जाय, या पिटने वाला भाग रहा हो और भौकने का मौका न लगे तब उस सूरत में इन्साइज्ड वुंड आयेगा।

चोट नं० 1 किसी तेज धारदार हथियार से आई होगी चक्कू या गंडासा से आ सकती है। बल्लम के 1 बार से यह चोट नहीं आ सकता। *One blow of ballam can't cause this injury no. 1 while Farsa, Choppers or heavy knife could have caused it. This injury no. 1 itself was quite sufficient to cause death in the normal course. Injuries 2 to 9 were not sufficient individually to cause death in the normal cause. In case of profuse bleeding, death could have occurred.*

For injuries no. 6, 7, & 8 there must have been three blows. They were not possible by a single blow.

बाम्ब ब्लास्ट होने पर कन्टयूजन भी आ सकता है, लेसीरेटेड वुंड भी आ सकता है। यह इस पर निर्भर करता है कि कितने फोर्स से बाम्ब का क्या मटीरियल टकराया। ब्लैकनिंग के आधार पर मैंने इंजरीज 2, 3 व 4 को ब्लैक इंजरी कहा है। मैं बैलिस्टिक एक्सपर्ट नहीं हूँ। मैं नहीं कह सकता कि कितनी दूरी से ये चोटे ब्लास्ट में आईं।

चोट नं० 6, 7 व 8 चाकू की भी हो सकती है।

चोट नं० 1 से 9 में पंचर्ड या स्टैब वुंड नहीं है। इसलिये मैं *authoritatively* नहीं कह सकता कि इनमें से कोई बल्लम से आई।

35. P.W.8 Ramvir Singh is the Head Moharrir, who, on the oral dictation of P.W.3, first informant, had registered the FIR and prepared its corresponding G.D. Entry No.17 at 13:30 hours. He has not been cross-examined by any of the accused persons.

36. P.W.9 is the Investigating Officer of the present case. He has testified that on 06.03.1983, he was S.H.O. at Police Station Gauri Bazar and the case was registered in his presence and its investigation was entrusted to him. During the course of investigation, he had collected the blood stained earth and plain earth from the place of incident and kept it in a container, which has been proved by him as Material Exts. 1 and 2. He further stated that he, after interrogating the necessary witnesses and collecting the cogent evidence and material had submitted the charge-sheet against the accused-assailants. He further stated that the deceased Ramchandra was a known dacoit and was involved in number of dacoity cases, however, no cogent or corroborating material has been produced by him in this regard.

37. P.W.9 further, in his cross-examination, has stated that near the house of Dwarika, he had seen some blood and bloody foot-marks, however, did not find any remnants of bomb. He further stated that the place, where Ramchandra and Dina were getting

a hair cut, he did not find any blood but had found blood soaked footprints there and the said footprints continued for about two furlongs. He further stated that the distance between the house of Dwarika and field of Ghurhu is about one and a half furlong and at the place of incident, wheat crop had been trampled, which shows that some scuffle had taken place there, however, there was no blood and in close proximity of wheat field, crop of sugarcane was also raised. Outside the sugarcane field, he had found blood spilled there and had collected blood stained earth from there, however, the blood stained footprints were not collected by him.

38. P.W.9 further stated categorically stated that it is wrong to state that no blood stained footprints were found near the house of Dwarika. The wife of the deceased accompanied him to the place of incident. The inquest report was prepared by the police of Police Station Chauri Chaura as the place where the dead body was found fell within their jurisdiction. He had interrogated the injured Dina at the hospital. He further reiterate that:

गवाह चन्द्रवली ने यह बयान दिया था कि उस समय मैं चादर ओढ़ कर बुखार में अपने दरवाजे पर बैठा था। और मैंने मुलजिमान को घटना स्थल की तरफ जाते देखा और तब मैं अपने घर से उठ कर उनके पीछे पीछे गया। उसने यह भी बयान दिया था कि " मेरी तबियत

खराब पहुँच गया "। उसने यह भी बयान दिया था कि हम लोग भी पीछे-2 धुरहू के गन्ने के खेत में पहुँच गये । उसने यह भी बयान दिया था कि घटना को पूरे गाँव ने देखा था "। गवाह गुलजारी ने मुझे यह बयान दिया था कि " राम चन्द्र की औरत तथा मैं भी धीरे धीरे उधर ही बढ़े कि थोड़ी देर में बम फूटने की आवाज बहुत जोर की हुई कि किशोरा ने शोर किया तो मैं समझ गई कि मेरे लड़के को ही लोग मार रहे हैं ।"मंगरू गवाह ने मुझे बयान दिया था कि " द्वारिका के घर के पीछे जाते जाते बम मारे वहीं पर मेरा लड़का दीना भी मौजूद था उसको भी बम की चोट लगी "। उसने यह भी बयान दिया था कि " राम चन्द्र चिल्लाते हुये भागे रामचन्द्र की औरत उसकी माँ पीछे-2 गये । श्रीमती किशोरा देवी का बयान मैंने रिपोर्ट वाले दिन ही लिया था। यह कहना गलत है कि मैंने उसका कोई बयान नहीं लिया और उसका सारा बयान अपने मन से लिख लिया हो।

39. P.W.10 Dr. N.K. Jaiswal is the Medical Officer, who had examined and noted the injuries on the person of injured Dina Nath, which has been discussed in the earlier part of the judgment. He, in his cross-examination, has categorically stated that:

Burnt explosion में शरीर और भागों पर भी blast Injury हो सकती थीं, पर इस Case में नहीं है। जरूरी नहीं है कि blast Injury के केस में शरीर के और भागों पर भी छोटें हों। यह Private Case आया था। मैंने पुलिस को इत्तिला नहीं दी कि इस तरह से burnt Blast का Case आया है।"

40. After recording the aforesaid testimonies, the statement of accused-persons, under Section 313 Cr.P.C. has been recorded by putting all the incriminating circumstance to them. The appellants denied all the incriminating circumstances and claimed that they had been falsely implicated. Appellant No.1 Chauthi in his statement has further stated that the dead body

of the deceased was lying at Majhna Nala and then he came to know about it. The deceased was his relative and he had not killed him. Appellant No.2 Sri Ram has stated that due to family enmity, he has been falsely implicated. The appellants, in order to establish their defence, got examined one Rajendra Sahi as D.W.1.

41. The said D.W.1 stated that, in fact, Ramchandra was a known dacoit and a miscreant. About two years back, he came to know about the finding of a dead body at Majhna Nala, however, neither he nor the other villagers were aware of the fact, as to who killed him. He further stated that on the day and time of incident, no untoward incident occurred causing injuries to Ramchandra and Dina by bombs or the appellants participated in it. On the day of incident, deceased Ramchandras mother was only present, however, his wife was not there and had gone to her parents place and on getting the news about the death of her husband Chandrabali had gone to her village to bring her back.

42. During cross-examination, D.W.1 has stated that Ramchandra was not killed in the field of Ghurhu and he is not aware as to who had killed him and when. In the morning, when

he came to know about the finding of dead body of Ramchandra near Majhna Nala, then he went there and found his dead body and informed the police, however, no written report was registered at his information.

43. The trial court upon appreciating the entire evidence has held that the prosecution has successfully established the case against the appellants by relying upon the testimony of P.W.5 and P.W.6, who are the natural and injured witnesses and said to have witnessed the incident. The trial court held the three eye-witnesses saw Ramchandra fleeing away followed by six persons including appellants chasing him, which undoubtedly has been held to be worth credence being based on circumstantial evidence having no missing link therein to be truthful witnesses and by placing implicit reliance upon their testimony has recorded the finding of conviction against the appellants and the explanation tendered by the appellants has been held to be false and inadequate by the trial court, on the basis of which, the appellants have been convicted by the impugned judgment and order against which the instant appeal has been preferred.

44. Learned counsel for the appellants has submitted that the trial court has not appreciated the evidence on record in right

perspective and has illegally recorded the finding of conviction and sentence against the appellants, which is based on surmises and conjectures and as such, the judgment of conviction is liable to be set aside.

45. Learned counsel for the appellants has next submitted that the incident has not taken place in the manner as alleged by the prosecution, however subsequently, by cooking up and concocting a false story, the appellants have been falsely implicated because of enmity. He has further submitted that in the FIR, there is not a whisper that the deceased was assaulted by a spear and done to death and as such, the prosecution story becomes highly doubtful and the witnesses are not at all reliable.

46. Learned counsel for the appellants has next submitted that there are material contradictions in the statement of the witnesses, which goes to the root of the case, however, the trial Court by placing implicit reliance upon their testimonies and by holding them to be truthful witnesses has illegally recorded the finding of conviction and sentence against the appellants, which is bad in law and is liable to be set aside.

47. Learned counsel for the appellants has next submitted that no remnants of blood by bomb was found at the first place of incident nor any blood was found there as such, the place of incident in the instant case is highly doubtful, however, the trial court brushed aside the said relevant facts and illegally recorded the finding of conviction and sentence against the appellants, which is bad in law.

48. Learned counsel for the appellants has next submitted that the medical report does not corroborate the prosecution story and the injury on the neck of the deceased has been caused by some heavy weapon and not by a spear, as alleged by the prosecution, however, the trial court completely ignored this relevant aspect of the matter and illegally recorded the finding of conviction and sentence against the appellants.

49. Learned counsel for the appellants has next submitted that, in fact, the inmates of the victim had reached subsequently to the place of incident and therefore, are not the eye-witnesses and on the basis of imagination have narrated the prosecution story, which do not inspire confidence, however, the trial court by placing implicit reliance upon their testimony has held them

to be truthful witnesses and illegally recorded the finding of conviction and sentence against the appellants.

50. Learned counsel for the appellants has further submitted that false witnesses in the instant case have been introduced and by relying upon their testimony, the conviction has been recorded against the appellants without any cogent evidence and material and as such, the impugned judgment and order, convicting the appellant, is bad in law and liable to be set aside.

51. Learned counsel for the appellants has next submitted that, in fact, Ramchandra was a hardened criminal involved in number of dacoity cases and has been killed by some unknown persons, however subsequently, on recovery of his dead body from near the Majhna Nala, a false case has been cooked up and concocted by the inmates of the house, implicating the appellants and the trial court completely overlooked this aspect of the matter and illegally recorded the finding of conviction and sentence against the appellants, which is bad in law and liable to be set aside.

52. Per contra, learned AGA has vehemently opposed the contentions raised by learned counsel for the appellants and has submitted that the witnesses are the most natural

witnesses, whose presence at the time of incident has been clearly established. The date, time and manner in which the incident has taken place, has been cogently and firmly established by their testimony and they have narrated the incident in a most natural manner and the defence has not been able to elicit any material contradiction and inconsistencies in their submissions except minor contradictions here and there, which in the background of the fact that the witnesses are rustic witnesses and such minor contradictions are quite natural on such flimsy grounds. The entire prosecution story cannot be thrown overboard, which otherwise inspires confidence.

53. Learned AGA has further submitted that the medical report completely corroborates the prosecution story and there are no material contradictions, so as to disbelieve the prosecution story and the witnesses. He has further submitted that the doctor, who conducted the post-mortem, nowhere ruled out that the injury sustained by injured Dina and deceased Ramchandra could not be caused in the manner as alleged.

54. Learned AGA has further submitted that the prosecution has proved its case beyond all reasonable doubt and the trial court after making critical analysis of the entire evidence and material

on record has rightly convicted the appellants and sentenced them, which order does not suffer from any illegality and there is no real reason to reverse the finding of conviction recorded by the trial court and the impugned judgment and order is liable to be affirmed.

55. Having considered the rival submissions made by the parties and making a critical analysis of the evidence adduced during the course of trial and the sequence of events as narrated by the prosecution, we find that, as per the prosecution story, the deceased Ramchandra along with injured Dina on the relevant date and time were getting a hair cut, behind the house of Dwarika and in the meantime, the three appellants namely Chauthi Yadava, Sri Yadava and Brijlal armed with bombs and spears reached there along with three unknown persons and Sri Yadava hurled bombs. The deceased Ramchandra and Dina in order to rescue themselves tried to escape, however, both of them suffered blast injuries and Dina after running a few paces fell down in an injured condition, however, Ramchandra, in order to save his life made his escape good.

56. Thereafter, Ramchandra was followed by the appellants, who chased to kill him. Hearing the noise of bombs being hurled, the

witnesses being mother and wife of the deceased and one Chandrabali, who were present at their doorstep, saw the victim Ramchandra running away in order to rescue himself followed by the appellants, who reached the field of Ghurhu, where the appellants with common object of killing the deceased Ramchandra dragged him out of the field and thereafter assaulted him with spears causing his death and thereafter lifted his dead body and took away to an unknown place, however subsequently, his dead body was recovered lying near Majhna Nala.

57. The FIR in the instant case was lodged by P.W.3 Smt. Kishora, who alleges to have witnessed the entire incident of assault and had also seen the assailants killing her husband by spears, however, dare not to chase them, as they were armed with spears and bombs. The FIR had been lodged at Police Station Gauri Bazar by Smt. Kishora wife of deceased Ramchandra by giving the requisite details, on the basis of which, the investigation was made and after collecting the cogent and reliable materials, the appellants were charge-sheeted and put to trial.

58. During the course of trial, the prosecution has produced five prosecution witnesses, however, out of the said witnesses, the testimony of P.W.5, Parmanand, who is the barber and at the relevant time was shaving the beard of Ramchandra and Dina and had witnessed the incident and appears to be a natural witness, who has corroborated the prosecution story regarding hurling of bombs and Dina being hit and Ramchandra fleeing away, however, not naming the assailants. The narration by P.W.5 Parmanand to this effect finds corroboration from the prosecution story.

59. However, sofaras P.W.6 Dina is concerned, he is an injured witness and has fully corroborated the first part of the incident i.e. of arrival of three appellants Chauthi, Brijlal armed with spears and Sri having bombs in a bag held by him, while the deceased Ramchandra and he was getting their beard shaved and when he along with Ramchandra tried to escape, the bombs were hurled by Sri, which hit him as well as the deceased Ramchandra, he suffered injuries on his thigh and fell down after covering a few paces, however, Ramchandra even after being hit by the bombs tried to make his escape good to save his life, however, he was chased by the assailants. He, in his testimony, has candidly reiterated the fact that at the time of

said incident his uncle Chandrabali and his father Mangru (P.W.2) along with Ramchandras mother and his wife followed the assailants and reached there and witnessed the incident.

60. Thus, we find that the first part of the prosecution story has been fully corroborated by the injured witness Dina Nath, who is an injured witness and there is no reason to doubt the credibility of the said injured witness, which has also been relied upon by the trial court, while recording the finding of conviction and there is no reason to reverse the said view taken by the trial court.

61. The said witnesses have been cross-examined at great length and we find that though there are certain minor contradictions here and there, but that does not otherwise affect the credibility and truthfulness of the said witness. Moreover, it is germane to point out here that the witnesses in the instant case are rustic witnesses and some minor contradictions in their testimony may occur, however, on the said grounds, the otherwise reliable testimonies of the witnesses cannot be thrown overboard.

62. Before analyzing the credibility of the other ocular witnesses, we may note that the Hon'ble Apex Court in a recent case

reported in 2022 Live Law (SC) 596, Shahaja @ Shahajan Ismail Mohd. Shaikh Vs. State of Maharashtra, has held that:

27. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a

short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

63. Now, in the light of the aforesaid settled principle of law, if we analyze the testimony of other prosecution witness, particularly P.W.1 Chandrabali, we find that he too, for the purpose of getting a shave and haircut, had reached the backyard of Dwarika, where P.W.5 Parmanand and his brother Ramesh were giving a haircut to Ramchandra and Dina and in the meanwhile, appellants Chauthi and Brijlal armed with spears and Sri holding a bag in his hand, having bombs, along with three other unknown persons reached there. As soon as

assailants arrived there, Ramchandra tried to make his escape good, however, Sri started hurling bombs, consequent to which, Ramchandra and Dina suffered injuries. As per his testimony, after hurling bombs, the assailants chased Ramchandra, who tried to make his escape good and reached in the field Ghurhu, where the assailants dragged him out and killed him by assaulting with spears.

64. P.W.1, in his testimony, has categorically pointed out the presence of Ramchandras wife and his mother Guljari at the place of the incident, when victim was assaulted by the assailants. The said witness has been subjected to lengthy cross-examination, however, except minor contradictions here and there, which are bound to occur in the background of the present case, the defence has not been able to shake the credibility of the said witness and he, in a most natural manner, has described the incident and therefore, there is no reason to doubt the credibility of the said witness.

65. The trial court only on the basis of certain minor contradiction has held that the said witness P.W.-1 is not a reliable witness and his presence at the time of the incident is doubtful, however, if we carefully go through his testimony, we

find that his presence at the time of the incident of hurling of bombs and thereafter following the assailants and witnessing the incident of killing the deceased Ramchandra, appears to be quite natural and therefore, the contrary view taken by the trial court that he is not a reliable witness, is not based on any cogent reason and is liable to be rejected.

66. Thus, we are of the opinion that the testimony of P.W.1 cannot be thrown overboard, as it not only describes the manner of incident in a most natural manner but his testimony finds corroboration even from the medical evidence. Thus, we are of the opinion that the testimony of the said witness cannot be discarded outrightly as he has corroborated the prosecution story in all relevant particulars and therefore, he cannot be held to be wholly unreliable witness, as held by the trial court. Even, his testimony finds corroboration from the testimony of P.W.4 Kishora Devi, wife of the deceased.

67. As far as, the testimony of P.W.4 Kishora Devi is concerned, a sketchy attack upon the testimony of P.W.4 has been made by learned counsel for the appellants that she is not a reliable witness at all and had, in fact, reached the place of incident after the incident had already taken place and therefore, she cannot

be said to be an eye-witness of the incident and even trial court has not held her to be reliable witness, however, when we carefully go through the testimony of P.W.4, we find that, though there are certain inconsistencies, discrepancies and infirmities in her testimony, however, while analyzing and appreciating the testimony of the said witness as a whole, we cannot overlook the fact that, in fact, P.W.4 Kishora Devi, wife of Ramchandra, is a rustic witness and merely on the ground of certain inconsistencies, discrepancies and infirmities in her testimony, her entire testimony cannot be thrown overboard.

68. The Hon'ble Apex Court in the case of State of U.P. Vs. Krishna Master (2010) Vol. 12 SCC 324 has clearly held that:

24. The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relative(s). Therefore, the court must keep in mind all these relevant factors while appreciating evidence of a rustic witness.

69. Further, it is well settled principle that, if the evidence adduced by the witness has a ring of truth, the discrepancies, inconsistencies and infirmities cannot be a ground for rejecting their evidence. Applying the aforesaid principles laid down by the Hon'ble Apex Court, we find that the testimony of P.W.4 cannot be thrown overboard and she being a rustic women has been subjected to lengthy cross-examination, however, has supported the prosecution story in material particulars. The manner in which she has given the details of the prosecution story clearly shows that she was the eye-witness of the incident and had seen her husband running away after being hit by bombs followed by the assailants, who chased him away with a clear intention to kill. To this extent, the defence has not been able to shake the credibility of the said witnesses. The contrary submission made by learned counsel for the appellants has, therefore, no force and is liable to be rejected.

70. Thus, we find that testimony of P.W.4 also corroborates the prosecution story on material particulars, which also finds corroboration from the testimony of P.W.1, who clearly states about the presence of the said witness at the time of the incident and therefore, even the said witness also cannot be held to be wholly unreliable witness and part of her testimony

also lends credence to the prosecution story and even her testimony having a ring of truth cannot be completely brushed aside as held by the trial court, particularly in view of principle of law laid down by the Honble Apex Court in appreciating the evidence of a rustic witness. In the aforesaid context, we may refer to a decision of the Hon'ble Apex Court in the case of State of U.P. v. Anil Singh, AIR 1988 SC 1998, wherein in para 15, it is observed thus :

15. It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.

71. Now coming to the finding recorded by the trial court regarding veracity of the statement of P.W.2 Guljari, mother of the deceased, that may not be accepted in the peculiar facts and circumstances of the case that, she being an old lady, aged

about 72 years may not have been able to reach the place of incident, when his son Ramchandra was killed and we may say that her testimony may not inspire confidence in the backdrop of the circumstances that she was an old lady and may be held difficult for her to reach the place of incident of actual assault and witnessing the incident, however, we are of the opinion that the testimony of P.W.1 Chandrabali, whose presence at the time of incident appears to be quite natural and who has also given vivid description of the incident, lends credence to the prosecution story and his testimony cannot be thrown overboard as held by the trial court.

72. Even, the testimony of P.W.4 Kishora, who, admittedly, to some extent, is a shaky witness and her testimony suffers from certain inconsistencies, discrepancies and infirmities, yet keeping in mind the factum that she is a rustic witness and there being a ring of truth in her testimony, as such, her entire testimony cannot be easily brushed aside and the view taken by the trial court in this respect, based on the principle of law laid by the Honble Apex Court in appreciating the evidence of a rustic witness does not appears to be correct and she can be held to be a partly reliable witness corroborating the incident on material particulars.

73. Thus, we find that from their testimonies, the date, place and manner of the incident have been cogently and firmly established by the prosecution.

74. The first part of the story has been corroborated not only by the eye-witnesses but even by the injured witness Dina Nath, who also suffered bomb injuries in the said incident and has candidly stated that while he along with Ramchandra were having a haircut behind the house of Dwarika, appellants Sri, Chauthi and Brijlal along with three other unknown persons reached there and Sri Yadava, who was holding a bag in one of his hand, while bombs in the other, started hurling bombs while Chauthi and Brijlal were armed with ballam. On account of bombs being hurled by him, Ramchandra and Dina received injuries while they tried to escape. It is further stated that after running for few paces, Dina fell down in an injured condition, however, Ramchandra was followed by the assailants and at the relevant time P.W.1 Chandrabali, his mother P.W.3 Smt. Guljari and wife had also reached there and followed the assailants.

75. Thus, the presence of the witnesses has been cogently and firmly established by the testimony of the witnesses as also by the injured witness, whose presence at the time of incident

cannot be held to be doubtful. The other witnesses, who followed the deceased Ramchandra, while he was being chased by the assailants have also been vividly recalled by all the witnesses, which further corroborates the prosecution story. Thus, by no stretch of imagination, the testimony of the said witnesses cannot be said to be cooked up and concocted, who have given the vivid details of the prosecution case. Thus, from their testimonies, the date, place and manner of incident have been cogently and firmly established by the prosecution.

76. It is further germane to point out here that the injury report of Dina Nath Yadava as well as the post-mortem report of the deceased Ramchandra clearly establishes the fact that they were assaulted by hurling bombs, consequent to which, they received injuries. The said factum has also been corroborated by the eye-witnesses and therefore, there cannot be any doubt about the prosecution story that the assailants first hurled bombs upon the two victims and therefore, chased Ramchandra and killed him by spears after dragging him from the field of Ghurhu and the role of the appellants in causing the death of Ramchandra stands fully established.

77. The contrary submission made by learned counsel for the appellant in this respect is without any substance and is liable to be discarded.

78. It is further germane to point out here that if we analyze the entire testimony of the witnesses and the manner of incident, we find that the first incident of hurling of bombs by the assailants upon the victim Dina and Ramchandra is clearly established, due to which, they suffered bomb injuries and thereafter as per the prosecution story, the assailants chased the victim Ramchandra to the field of Ghurhu, where after dragging him out, they assaulted him with spear and killed him and took away his body, which subsequently has been found lying near the Majhna Nala, which fact has been clearly established by the prosecution story.

79. As per the prosecution case, even from the circumstantial evidence, it is clearly established that after hurling of bombs upon the victim Ramchandra, he was chased by the assailants, following him armed with spear, with an intention to kill him. The said incident of hurling of bombs had occurred at about 11:00 a.m. and after the incident of chasing the victim by the assailants, the dead body of the deceased has been recovered at

03:00 p.m., just within four hours of the incident and the assailants have been seen following the victim after hurling of bombs with an intention to kill him and soon thereafter, his dead body was recovered within a very short span of four hours. This particular circumstance also clinchingly establishes the prosecution story that the victim Ramchandra was done to death by the said assailants.

80. Thus, from the aforesaid circumstances, the defence contention that Ramchandra had been done to death some time in the night by some unknown person and his dead body was lying near Majhna Nala, does not inspire confidence at all and makes the testimony of D.W.1 Rajendra Sahi to be unbelievable.

81. Thus, from the evidence adduced during the course of trial, it is cogently and firmly established that Ramchandra was alive during the first phase of the incident, when bombs were hurled upon him and Dina, and further corroborated by the medical evidence, that he was alive while Ramchandra reached at the field of Ghurhu, where he is said to have been done to death. The contrary evidence led by D.W.1 Rajendra Sahi that Ramchandra was murdered in the night itself by some unknown persons at some unknown place, is not worth credence at all

and therefore, the testimony of D.W.1 Rajendra Sahi, does not inspire confidence at all and is liable to be discarded, as rightly held by the trial court, which finding is also reiterated by us.

82. Now coming to the submissions of learned counsel for the appellants that the medical report does not corroborate the prosecution story, we may say that it is trite that the medical opinion need not be treated as the last word on the subject. The eye witness account cannot be discarded by according undue privacy to the hypothetical answers of the medical witnesses. If the Court finds that the oral evidence is credible and trustworthy, a medical opinion pointing to other possibility can not be accepted as conclusive, unless the oral evidence is totally inconsistent with the medical evidence or the ballistic expert and the prosecution has failed to explain those inconsistencies. In that event the medical opinion makes a serious dent in prosecution's case but the fact remains that the ocular evidence has a primacy over the medical evidence.

83. Reference may be made to the judgment of Supreme Court in the case of Bhagirath vs. State of Haryana (1995) AIR 5 ACC 96:

"it has to be noted that it would be erroneous to accord undue privacy to the hypothetical answers of medical witnesses to exclude the eye witnesses account, which has to be tested independently and not treated as 'variable' keeping in view the medical evidence as constant."

84. In *Solanki Chimanbhai Ukabhai vs. State of Gujarat* (1983) 2 SCC 174, the Supreme Court noted as follow:

"Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye-witnessess, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence."

85. The above principle of law has been consistently followed by the Supreme Court in a large number of cases. In *Abdul Sayeed vs. State of M.P.* (2010) 10 SCC 259, the Court has referred to *Maniram vs. State of U.P* (1994) SCC (Cri) 1242 : *State of U.P. vs. Dinesh* (2009) 11 SCC 566: *State of U.P. vs. Hari Chand* (2009) 13 SCC 542 and culled out the following principle :-

"39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

86. Applying the aforesaid principles to the facts of the present case, we find that there is no contradiction between medical evidence and the oral evidence in the instant case.

87. The medical evidence also lends credence to the prosecution case against the appellants. The post-mortem report also points out conclusively to the culpability of appellants for the commission of the offence.

88. Now coming to the submission of learned counsel for the appellant that P.W.1 and P.W.4 are relatives and interested witnesses being brother and wife hence, their statement could not be relied upon.

89. The above noted submission was considered by Supreme Court elaborately way back in Dalip Singh v. State of Punjab 7 AIR (1953) SC 364. The Court observed that ordinarily a close

relative would not spare the real culprit, who has caused the death and implicate an innocent person. His/her evidence can only be discarded when it is established that the witness has a cause, due to enmity to implicate him falsely. In Dalip Singh (supra) case also the testimonies of two women witnesses were impeached on the ground that they were close relatives of the deceased. Following principles were enunciated in Dalip Singh (supra):-

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

90. In Piara Singh Vs. State of Punjab, (1977) 4 SCC 452, same principles were reiterated:-

"4. The central evidence against the appellant consisted of the three eye-witnesses, namely, P.W. 3 Harbhajan Singh, P.W. 5 Chanan Kaur and P. W. 6 Kesar Kaur. It is true that the three witnesses were relations of the deceased and bore animus against the accused but

as the occurrence had taken place near the door of the house of the deceased these persons were the natural witnesses and were in fact sitting in the court-yard when the occurrence took place. It may be difficult to get witnesses from the village when an assault of the type suddenly takes place in the house of the deceased. It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence. The High Court was fully alive to these principles and has in fact found that the evidence of these three witnesses has a ring of truth. After having perused the evidence ourselves also we fully agree with the view taken by the High Court. In fact, the learned Sessions Judge has not made any attempt to dwell into the intrinsic merits of the evidence of these witnesses but has rejected them mainly on general grounds most of which are either unsupportable in law or based on speculation. The evidence of the eye-witnesses is sought to be corroborated by the evidence of P. W. 7 Kundan Singh to whom the whole occurrence was narrated immediately after the accused left the house. There is also the evidence of Balbir Singh, P. W. 17, who is a Sarpanch of the village and an independent witness and who proves that the appellant Piara Singh had made an extra judicial confession before him in which he admitted to have committed the murder of the deceased Surjit Singh along with his companions Kashmir Singh, Gian Singh and Joginder Singh. This witness also proves that Kashmir Singh on being narrated by the details made a disclosure which resulted in the recovery of the Kirpan from the sugar- cane field of Meja Singh for which a search list was prepared and the Kirpan was also found stained with human blood. According to the Investigating Officer an empty cartridge was also found at the spot and he sent the same to the Ballistic Expert along with the rifle recovered from Piara Singh who

was a constable in the Border Security Force and the Ballistic-Expert found that the empty could have been shot from the rifle in question. These circumstances fully corroborate the evidence of the eye-witnesses. Finally, there is the medical evidence of Dr. Jatinder Singh who performed the postmortem examination on the deceased and he found as many as 7 incised wounds on the various parts of the body of the deceased and 7 incised punctured wounds on some vital parts of the body. Apart from these injuries the deceased had also sustained a gun shot injury with a wound of entry and exit on the left buttock, which according to Dr. Jatinder Singh could be; caused by a fire- arm including a rifle. The Doctor further deposed that the contusions and abrasions were caused by a blunt weapon and the other incised wounds were caused by a sharp cutting instrument like the Gandasa. Another Doctor was examined by the Sessions Judge as Court Witness No. 1 who on seeing the post-mortem report of Dr. Jatinder Singh was of the view that Injury No. 11 could not have been caused by a rifle and much capital was made by the accused but of the evidence given by Dr. Paramjit Singh."

91. A three Judge Bench in Hari Obula Reddy Vs. State of A.P., (1981) 3 SCC 675 observed as under:-

"13. ...it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it 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."

92. Again in *S. Sudershan Reddy and others Vs. State of A.P.*, (2006) 10 SCC 163, the Supreme Court has held as under:-

"12. We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

*15. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dilip Singh* case in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses."*

93. In this context the reference may be made to the judgement of Supreme Court in the case of *Kamta Yadav vs. State of Bihar* (2016) 16 SCC 164: *Nand Kumar vs. State of Chhatisgarh* (2015) 1 SCC 776.

94. Thus, we find that there are unbroken line of authorities to the fact that evidence of eye-witness, if found forceful, cannot be discarded simply because the witness was a relative of the deceased. The only caveat is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution.

95. Applying the aforesaid principles of law, we find that the testimony of P.W.1 and P.W.4 inspires confidence and as such, cannot be thrown overboard. Close scrutiny of their testimony clearly shows that they had witnessed the incident in question and have narrated the prosecution story and they cannot be said to be interested witnesses as argued by learned counsel for the appellants.

96. Now coming to the submissions of learned counsel for the appellants that the victim deceased Ramchandra was a hardened criminal and a dacoit and, in all probability, he has been done to death at some other place, while committing dacoity and on account of animosity, the appellants have been falsely implicated, however, when we go through the testimony of the witnesses, we find that there is nothing on record to accept the submission made by learned counsel for the

appellants that the deceased Ramchandra was killed while committing dacoity.

97. From the submissions of the eye-witnesses particularly P.W.1, P.W.4, P.W.5 and P.W.6- Dina, who is an injured witness and the overwhelming circumstantial evidence corroborated by the evidence of P.W.9 Shiv Shanker Ram, who has collected material evidence supporting the prosecution story, we are satisfied about the commission of the offence by the appellants and thus, we are of the opinion that the trial court has appreciated the evidence in proper perspective and the learned counsel for the appellants could not point any perversity in the finding of conviction and sentence recorded by the trial court awarded to the appellants.

98. There being no illegality, infirmity or perversity in the recorded conviction and sentence of the appellants, we affirm the impugned judgment and order dated 16.08.1985 passed by the Sessions Judge Deoria in Sessions Trial No. 180 of 1983, under Section 302 IPC read with Section 149 IPC, under Section 148 IPC and Section 307 IPC read with Section 149 IPC.

99. The present appeal lacks merit and is, accordingly, dismissed. Appellant No.1 and 2 are on bail. Their bail bonds are

cancelled and sureties are discharged. They are directed to surrender before the trial court within two weeks to undergo the remaining part of their sentence, failing which, the trial court is directed to adopt coercive measures for securing their presence.

100. Let a copy of this order be forwarded to the trial court concerned along with the lower court record for information and necessary compliance.

(Harvir Singh,J.) (Rajiv Gupta,J.) September 11, 2025 Subham

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