



2026:AHC-LKO:38744-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

Criminal Appeal No. - 1981 of 2003

Khushi Ram

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s) : Khaleeq Ahmad Khan, M.K. Shukla, Rajesh
Kumar Dwivedi (Ac)
Counsel for Respondent(s) : Govt. Advocate

Court No. – 10

AFR
Reserved on: 24.03.2026
Delivered on: 27.05.2026

**HON'BLE RAJNISH KUMAR, J.
HON'BLE ZAFEER AHMAD, J.**

(Per: Zafeer Ahmad, J.)

1. Heard Sri Rajesh Kumar Dwivedi, learned Amicus Curiae for the appellant and Sri Pawan Kumar Mishra, learned A.G.A for the State and perused the records.
2. The aforesaid criminal appeal arises out of judgment and order dated 30.10.2003 passed by learned Additional Sessions Judge/Fast Track Court No. 3, Sitapur in Session Trial No. 745 of 2002 (*State v. Khushi Ram*), arising out of Case Crime No. 215 of 2002, Police Station Manpur, District Sitapur, whereby the appellant has been convicted under Section 302 of Indian Penal Code, 1860 (in short IPC) and sentenced to imprisonment for life along with a fine of Rs. 5,000/- and in default of payment of fine, to undergo an additional one year of simple imprisonment.

3. Before advertng to the merits of the case, it may be noted that this Court has been apprised, while dictating the present judgment, that the accused–appellant has already been released on remission on 26.01.2019. However, since the present appeal arises out of the judgment and order of conviction passed by the learned Trial Court, this Court proceeds to adjudicate upon the legality and correctness of the impugned judgment on merits.

Prosecution Story in Nutshell:

4. The prosecution story, in brief, is that Mohd. Sher Khan, lodged a written report on 28.02.2002 stating therein that his brother Mohd. Umar @ Munna, s/o Ismail Khan, after watering the paddy field, had gone to rest in the mango orchard of Ramprasad Badhai , situated towards the north of the village, where he fell asleep. At around 12:30 P.M., the accused Khusiram, s/o Manohar, who was working as a labourer in the field of Shaami, allegedly reached the said orchard and, without any enmity, assaulted the deceased while he was sleeping and slit his throat with a spade (*kudal*), causing his death on the spot. It was further stated that the informant Mohd. Sher Khan, along with his brother Mohammad Saeed and other villagers, namely Ibrahim and Babu, who were present nearby, rushed to the place of occurrence and saw the accused fleeing from the spot carrying a blood-stained spade. They chased the accused, but he threw the weapon near the southern boundary of the field of Chandrabhal, situated to the north of the orchard, and escaped towards the northern side.
5. On the basis of the written report, an FIR was registered under Section 302 IPC against the accused, Khushiram. The investigation of the case was entrusted to

S.O. Shashikant Yadav, who proceeded to the place of occurrence on the same day and conducted the inquest proceedings.

6. Upon completion of investigation, charge-sheet was submitted against the accused-appellant under Section 302 IPC. Thereafter, the case was committed to the Court of Session, where charge under Section 302 IPC was framed against the accused. The accused denied the charge, pleaded not guilty, and claimed trial.
7. In order to prove its case, the prosecution examined Mohd. Sher Khan (PW-1), Ibrahim (PW-2), Zabbar Ahmad Khan (PW-3), S.O. Shashikant Yadav (PW-4), Khaleel Khan (PW-5), and Dr. Arvid Kumar Shakya (PW-6).
8. The defence, however, did not adduce any oral or documentary evidence in support of its case.
9. The following exhibits were produced and proved before the Trial Court:

Exhibit No.	Particulars/Item
Ext. Ka -1	Written Report
Ext. Ka -2	Recovery Memo of spade (<i>kudal</i>)
Ext. Ka -3	Recovery Memo of bloodstained and plain earth
Ext. Ka-4	<i>Panchayatnama</i>
Ext. Ka-5	Letter to RI
Ext. Ka-6	Letter to CMO
Ext. Ka-7	Sketch of the dead body
Ext. Ka-8	Police Form no. 13
Ext. Ka-9	Sample Seal
Ext. Ka-10	Site Plan
Ext. Ka-11	Charge Sheet
Ext. Ka-12	Docket for sending the items collected to Forensic Laboratory
Ext. Ka-13	FIR
Ext. Ka-14	Copy of GD entry
Ext. Ka-15	Post Mortem report

10. The following material exhibits were produced and proved before the Trial Court:

Material Exhibit Number	Particulars/Item
Material Exhibit-1	Spade (<i>Kudal</i>)
Material Exhibit-2	Bloodstained Earth
Material Exhibit-3	Plain Earth

11. The statement of the accused-appellant was recorded under Section 313 Cr.P.C., wherein he denied the prosecution case in toto and stated that the FIR is false and fabricated. He further stated that the investigation has not been conducted properly and the charge-sheet has been prepared falsely.

12. He further stated that the complainant has given false evidence and that the written report was prepared in collusion with the police and the scribe due to election rivalry. He further stated that the witnesses have deposed against him due to enmity and *party-bandi*, and that PW-3 has also deposed under the influence of the complainant. He further stated that the recovery of the spade (*kudal*) has been falsely shown and it does not belong to him. He also stated that PW-5 is a relative of the complainant's family and is an interested witness. He further stated that all the witnesses belong to the same community and have falsely implicated him due to enmity. He further stated that the deceased and his family had enmity with several persons in the village and that no one had actually seen the incident. He further stated that upon discovery of the dead body, a false case has been foisted against him and the deceased was in fact killed by some unknown person. He lastly stated that Kunwar Bahadur Singh has falsely implicated him due to election enmity, that he has not committed the said offence, and he is innocent.

Submissions made by learned *Amicus Curiae* for the accused-appellant:-

13. Learned Amicus Curiae for the accused–appellant submitted that the prosecution case is wholly doubtful and unreliable. He further submitted that the F.I.R. is ante-timed and was not forwarded to the Magistrate forthwith, thereby casting serious doubt on its genuineness. He further submitted that the medical evidence does not support the ocular version and there exist material contradictions in the testimonies of PW-1, PW-2, PW-4 and PW-6. He further submitted that PW-2 is not a true eyewitness and that PW-1 and PW-2 are wholly unreliable witnesses. He further submitted that the alleged weapon of offence was not produced before the post-mortem doctor and, therefore, no medical corroboration is available; moreover, as per the post-mortem doctor, the injuries could have been caused by different weapons, suggesting involvement of more than one assailant. He further submitted that there is no credible eyewitness account and the real assailant remains unidentified, and that the accused has been falsely implicated due to prior enmity. He further submitted that the blood found on material numbered (in FSL report) 1, 2 and 4 was disintegrated and its origin could not be determined, while the blood on material number 3 was insufficient for serological examination. He further submitted that the deceased had enmity with several persons and the nature of injuries, including the severance of vital structures, has not been satisfactorily explained by the prosecution. He further submitted that the written report was scribed at the instance of the scribe, who himself had enmity with the accused, and in view of these infirmities, the prosecution has failed to prove its case beyond reasonable doubt and the accused has been falsely implicated.

Submissions made by learned A.G.A :-

14. Per contra, learned A.G.A. has opposed the submissions advanced on behalf of the accused–appellant and contended that the prosecution has successfully established the guilt of the accused beyond reasonable doubt. He further submitted that the FIR was promptly lodged and minor discrepancies, if any, with regard to its timing or dispatch do not affect the core of the prosecution case. He further submitted that the testimony of the prosecution witnesses, particularly PW-1, is natural and reliable and cannot be discarded merely on account of minor contradictions. He further submitted that the medical evidence substantially corroborates the ocular version and clearly establishes that the death was homicidal in nature caused by sharp-edged weapon. He further submitted that the recovery of the weapon of offence, though assailed, stands proved and the same lends support to the prosecution case. He further submitted that mere non-production of the weapon before the post-mortem doctor or minor lapses in investigation are not sufficient to discard an otherwise reliable prosecution case. He further submitted that the trial court has rightly appreciated the evidence on record and recorded a finding of conviction, which does not call for interference by this Court.

Oral Testimonies:

In order to appreciate the issues arising in the present appeal, it is appropriate to examine, in brief, the oral evidence adduced by the prosecution.

15. **PW-1 Mohd. Sher Khan**, deposed that the deceased Mohammad Umar @ Munna was his younger brother. He further deposed that on the date of the incident, his brother had gone to water the paddy field and thereafter went towards the mango orchard of Ramprasad Badhai situated to the north of the

village for rest, where he (deceased) fell asleep. He further deposed that at about 12:30 P.M., the accused Khusiram, who was working nearby in the field, came and assaulted his brother with a spade (*kudal*) and slit his throat, causing his death on spot. He further deposed that he himself was present nearby and on witnessing the occurrence, he raised alarm. He further deposed that upon his alarm, Ibrahim, Babu and several villagers who were working in nearby fields came to the spot and they saw the accused fleeing from the place of occurrence carrying the blood-stained spade (*kudal*). He further deposed that they chased the accused, who ran towards the northern side and after going some distance threw the *kudal* near the boundary (मेड़) of the field of Chandrabhal and escaped. He further deposed that due to the incident, an atmosphere of fear and terror was created in the village and the villagers stopped their agricultural work. He further deposed that thereafter Kunwar Bahadur Singh came to the spot and on his (witness) instructions, written report was scribed by him (Kunwar Bahadur). He further deposed that the same was read over to him and it is proved as Ext. Ka-1. He further deposed that he took the written report to the police station and got the case registered. He further deposed that thereafter he returned to the place of occurrence along with the police personnel. He further deposed that the inquest proceedings were conducted and the dead body of the deceased was sealed and sent for post-mortem examination.

16. **During cross-examination**, he deposed that the mango orchard of Ramprasad Badhai is situated at some distance from the village and described the location of surrounding fields, boundaries and pathways. He further deposed that the place where the deceased was lying was about 10 paces inside from the eastern

boundary of the orchard. He further deposed that he reached the place of occurrence after hearing the alarm and at that time the accused was running away at a distance of about 20–25 steps. He further deposed that when the accused ran towards the field of Chandrabhal, they chased him for some distance but thereafter returned to the place of the incident. He further deposed that several villagers had gathered at the place of occurrence within a short time and he remained at the spot for about 10 minutes, thereafter proceeded to the police station. He further deposed that Kunwar Bahadur Singh, who was the *Pradhan* of the village, had arrived at the spot and got the report written. He further deposed that he went to the police station on a bicycle and handed over the report to the concerned officer. He further deposed that he reached the police station at about 1:00 P.M. and remained there for about half an hour. He further deposed that thereafter he returned to the village along with the police in a jeep. He further deposed that he had seen the accused inflicting the blow upon the deceased from a close distance. He further deposed that the blow was inflicted on the neck of the deceased and that the accused was at a distance of about two hands while assaulting. He further deposed that the deceased had gone to the field in the morning and that he did not know as to how long the deceased had been sleeping at the place of occurrence. He further deposed that if the deceased had not been sleeping, the accused would not have been able to assault him in such a manner. He further deposed that the *kudal* used in the offence had a handle of about two and a half hands in length and the blade was about eight fingers wide. He further deposed that two blows were inflicted by the accused. He further deposed that there was no enmity between the accused and the deceased to his knowledge. He

further deposed that he could not assign any reason as to why the accused committed the murder of his brother. He further denied the suggestion that the deceased was killed by some unknown person or that the accused has been falsely implicated due to enmity or party faction. He further denied the suggestion that the report was lodged after deliberation or that it was prepared in collusion with the police.

17. **PW-2 Ibrahim**, deposed that about one year prior to his deposition, at around 11–12 noon, the incident took place. He further deposed that on the day of the incident he and one named Babu were sitting on the southern boundary (मेड़) of the orchard of Ramprasad, while the deceased Munna was lying asleep in the same orchard. He further deposed that accused Khushiram was also resting in the same orchard, along with his *kudal*. He further deposed that the Khusiram was working nearby in the field and was carrying a *kudal*. He further deposed that upon hearing the sound of assault, he saw that Khusiram struck Munna with the *kudal* and thereafter ran towards the northern side. He further deposed that the accused threw the *kudal* in the field of Lala of Chandpur and fled away. He further deposed that upon alarm, several villagers including Sher Khan, Shaid Khan and others reached the place of occurrence and chased the accused, however, he managed to escape.

18. **During cross-examination**, he deposed that he has been hard of hearing for the last 2–4 years and hears loudly, though he can see clearly. He further deposed that the deceased Munna was lying at a distance of about 10–15 steps from him towards the north direction. He further deposed that he had not talked with the deceased on that day and was not aware as to when he came to the orchard. He

further deposed that upon hearing the sound, he raised alarm and within 2–3 minutes villagers gathered at the spot. He further deposed that when the accused was running away, people chased him but could not apprehend him. He further deposed that the police arrived after about half an hour of the incident. He further deposed that he did not see the accused working in the field of one named Sami. He further deposed that he did not see the deceased coming to the orchard or sitting there and had only seen him lying asleep. He further deposed that Sher Khan and Shahid Khan came from the southern side of the village. He further deposed that when villagers arrived, about 10–20 persons gathered and chased the accused. He further deposed that he did not chase the accused, as he was not well, and could not tell that upto where accused was chased. He further deposed that he did not see the accused throwing the *kudal* and where the same was thrown. He further deposed that there were previous incidents of murder in the village, in which the family of the accused was either charged or were witness for the case and there existed factionalism. He further deposed that he did not know whether there was any enmity between the accused and the deceased. He further deposed that at the time of the assault, head of the deceased was towards south and his feet were towards north. He further deposed that he did not see the spade belonging to deceased and the spade (*kudal*) found was that of accused, he became aware of this fact as everyone was saying the same. He further deposed that he had informed the inspector that Khushiram (accused) has murdered Munna but has not told the reason/ motive behind such act. He further deposed that he has not told inspector that there existed any enmity between the accused and deceased and that accused was having a doubt that deceased was having an illicit relation with

wife of accused. He further deposed that it is incorrect to say that he had not seen the incident or that he is giving false evidence due to enmity or village faction.

19. **PW-3 Zabbar Ahmad Khan**, deposed that he knew the deceased Munna, who had died about one year prior to his deposition. He further deposed that he had heard that the deceased was murdered near the orchard of Ramprasad Badhai by cutting his throat with a *kudal*. He further deposed that he had not seen the incident of assault. He further deposed that when the Investigating Officer came, he was called to the spot, where *kudal* was found. He further deposed that recovery memo of *kudal* was prepared and his signature was obtained on the same. He identified his signature on the said paper, which was marked as Exhibit Ka-2. Further when *kudal* was taken out from a sealed bundle before the Trial Court, he identified it to be the same which was sealed in his presence, which was marked as Material Exhibit-1. He further deposed that the Investigating Officer had also collected samples of blood-stained and plain earth from the place of the occurrence, the recovery memo of the same was identified by him, which was marked as Exhibit Ka-3. Further, he identified the same, when these sealed containers were opened before the Trial Court, the sample of blood-stained earth was marked as Material Ext.-2 and that of plain earth was marked as Material Ext.-3.

20. **During cross-examination**, he deposed that he had not seen anyone assaulting the deceased. He further deposed that when he was called by the Investigating Officer, he went to orchard where the Investigating Officer was sitting on a cot and the *kudal* was lying below. He further deposed that *kudal* was not brought from the field in his presence and he could not see as to from where it had come.

He further deposed that he did not know whether the *kudal* belonged to the accused or whether the accused used it for agricultural purposes.

21. He further deposed that the dead body of the deceased was lying on the place of the incident, when he reached there, and the neck of the deceased was cut. He further deposed that when his signatures were obtained, the dead body was lying in the same condition and had not been sealed. He further deposed that he had signed the papers at around 2:00 P.M. and was not able to recall so as to who made other signatures on the said papers, apart from his own. He further deposed that he had not stated before the Investigating Officer that on 28.07.2002 the accused Khusiram had murdered the deceased by cutting his throat with *kudal*, and if such statement is recorded, he could not assign any reason for the same. He further deposed that he did not know from where *kudal* was brought and who had brought it near the place of occurrence.

22. **PW-4 Shashikant Yadav**, SO, Police Station Machhrehata, District Sitapur, deposed that on 28.07.2002 he was posted as SHO of Police Station Manpur, District Sitapur and on the same day, while he was present at the police station, a written report was received at around 13:30 hours regarding the murder of Mohammad Umar alias Munna by the accused Khusiram by cutting his throat with a *kudal*. He further deposed that on the basis of the said report, a case crime number 215/2002 under Section 302 IPC was registered and he took up the investigation. He further deposed that he immediately proceeded to the place of occurrence along with police force and reached the spot. He further deposed that he found the dead body of the deceased lying in the orchard of Ramprasad Badhai and prepared the inquest report and other relevant papers. He further deposed that

he inspected the dead body and noticed that the neck of the deceased was cut. He further deposed that he sealed the dead body and sent it for post-mortem examination through constables. He further deposed that he recorded the statements of witnesses including Sher Khan and others at the spot. He further deposed that he prepared the site plan of the place of occurrence on the pointing out of the informant. He further deposed that he collected blood-stained earth and plain earth from the place of occurrence and sealed them in separate container. He further deposed that during the course of investigation, a *kudal* alleged to have been used in the commission of the offence was recovered, from Chandrabhal's field. He further deposed that recovery memo of the said *kudal* was prepared in the presence of witnesses. He further deposed that on various dates and occasions, efforts were made to apprehend the accused, Khusiram; however, he could be arrested only on 02.08.2002. He further deposed that all the recovered materials were sent to the Forensic Science Laboratory, Lucknow, on 09.09.2002. He further deposed that, on the basis of sufficient evidence collected during the course of investigation, the accused, Khusiram, was sent for trial in Case Crime No. 89 of 2002 under Section 302 IPC.

23. **During cross-examination**, he deposed that the length and width of the blade of the alleged weapon of offence were not recorded in the recovery memo, nor was the time of recovery mentioned therein. He further deposed that no corresponding entry in respect of the same was made in the General Diary. He further deposed that the recovery was effected first and thereafter the recovery memo was prepared. He also deposed that the recovery memo of the *kudal* was prepared at the place from where it was recovered, and not at the place where the dead body

was lying. He further deposed that the recovery memo of the *kudal* was prepared while he was sitting on a cot placed near the place of recovery. He further deposed that at the time of recovery, the *kudal* was bloodstained; however, due to strong sunlight, the blood had dried up. He further deposed that he has not shown any house or habitation in the site plan, though the village Kahmara was situated at some distance. He further deposed that he has shown the route by which the informant reached up to point "C" through the fields of Chandrabhal, but he has not shown the complete route from the village to the place of occurrence. He further deposed that he has not shown in the site plan the exact position of the witnesses at the time of occurrence nor the place from where they allegedly witnessed the incident. He further deposed that the presence of a towel (*gamcha*), found near the dead body at the place of occurrence, was noted in the *panchayatnama*, and the same was sealed and sent along with the dead body for post-mortem examination. He further deposed that he could not assign any reason as to why the post-mortem doctor did not record the presence of the said towel in the post-mortem report. He further deposed that as per Ext. Ka-8 the distance between the place of occurrence and the police station has been shown as 7 kilometers and in the check FIR, the distance is mentioned as 8 kilometers. He further deposed that the variation in distance is due to non-mentioning of exact particulars and admitted that the time of occurrence is not mentioned. He further denied the suggestion that the FIR was not in existence at the time of preparation of *panchayatnama* and that the FIR was not lodged till that time. He further deposed that he proceeded to the spot at about 1:30 PM and returned on the next day at about 8:50 AM. He further deposed that he did not take the statement of the

wife of the accused but he did ask her about the accused, however he had not recorded her statement. He further deposed that he did not find any clothes of the accused stained with blood at the time of arrest. He further deposed that the witness Ibrahim had stated before him that he was sitting near the orchard, however he (witness) had not mentioned in case diary that Ibrahim had actually seen the incident or that Ibrahim had chased the accused. He further deposed that Ibrahim had not told that the accused had any suspicion regarding his wife. He further deposed that he had not recorded in the case diary the exact position of witnesses. He further deposed that he had not mentioned in the site plan the position of witnesses. He further deposed that he had not mentioned in the case diary the route taken by the accused while fleeing. He further deposed that the deceased had enmity with several persons but he did not investigate that aspect. He further deposed that it is incorrect to say that he has falsely implicated the accused or that he conducted a biased investigation. He further deposed that it is incorrect to say that the accused did not commit the offence.

24. **PW-5 Khaleel Khan**, deposed that Munna, of his village, was murdered in Ramprasad's orchard, located on the north side of the village. He further deposed that on the day of incident, he was lying under neem tree at his house and was sleeping. He further deposed that after being informed through the boys of his family and villagers, he went to the orchard. He further verified and proved Ext. Ka-2 and Ext. Ka-3. He further verified the kudal, used in assault.

25. **During cross-examination**, he deposed that inspector had arrived before him and made signature before the inspector, at the place where *kudal* was recovered. He further denied the suggestion that his signature was taken on a blank paper.

26. **PW-6 Dr. Arvid Kumar Shakya**, CHC Hargaon, District Sitapur, deposed that on 29.07.2002 he was working on the said post and on the same day Constable Rambriksh of police station Manpur handed over sealed dead body and nine related documents to him and identified the body. He further deposed that he prepared the post-mortem report at around 3:00 PM and on external examination he found that the deceased was of normal height and build. He further deposed that rigor mortis had disappeared from both arms and legs and post-mortem staining was present on the back. He further deposed that following injuries were found on the body of the deceased.

- **Injury No. 1:** Incised wound measuring 12 cm X 2.5 cm X vertebra deep on left side of the neck at level 4 of cervical vertebra.
- **Injury No. 2:** Incised wound measuring 11 cm X 2.5 cm X vertebra deep on right side of the neck at level 3-4 of cervical vertebra, 7 cm below right ear.
- **Injury No. 3:** Incised wound measuring 2 cm X 0.5 cm X bone deep on left side of neck, 8 cm below the left ear.
- **Injury No. 4:** Incised wound measuring 2.5 cm X 0.5 cm X muscle deep on the front of left shoulder joint.
- **Injury No. 5:** Abraded contusion measuring 2.5 cm X 1.5 cm on the front of the right shoulder joint.

On internal examination **carotid** vessels on both sides of neck were found to be severed, both lungs were pale, heart was empty, esophagus from cervical vertebra were to be cut, small intestine was filled in places, large intestine was filled in the upper part, four ounces of brown liquid was found in the stomach and rectum was found to be empty. In opinion of the doctor death was due to shock and hemorrhage as a result of ante-mortem injuries. He further verified and proved the post-mortem report as Ext. Ka-15. He further deposed that injury no. 1 to 4 could have been caused by *kudal* (spade) and the same was sufficient to cause death. He further deposed that injury no. 5 could have been caused due to fall and the all the above stated injuries might have been caused on 28.07.2002 at around 12:30 PM.

27. **During cross-examination**, he deposed that injury no. 5 was not caused by sharp edged weapon and this injury could have also been caused by a blunt side of the knife or fall. He further deposed that injury no. 4 could have been caused by knife only if the same was not stabbed but the sharp side was used. He further deposed that this injury is generally not possible with a sickle, but it is possible that if a portion of the sickle falls on the body of the deceased with a less force. The margins of the injury no. 3 were not noted and he deposed that in cut wounds margins are usually regular. He further deposed that this injury could have been caused by sickle. He further deposed that injury no. 1 and 3 are unlikely to have been caused by a single blow, but if deceased defended himself, a second injury could have been caused. He further deposed that injury no. 1 is approximately five times the length and width of injury no. 3. He further deposed that it is possible that injury no. 1 was caused by different weapon and injury no. 3 by another weapon. He further deposed that these injuries could have been caused by different weapons. He further deposed that no undigested or digested food was found in the stomach of the deceased. He further deposed that a *dhoti* and undergarment were present on the body of deceased. He further deposed that no towel was found with the sealed body of deceased. He further deposed that the time of death as estimated by him could vary by 6 to 8 hours. He further deposed that it is possible that deceased died at around 7:00 PM on 28.07.2002. He further deposed that injury no. 3 and 4 could have been caused by a spade (*kudal*) only if it was struck with little force. He further deposed that injury no. 1 to 4 are likely to have occurred, while the deceased was standing or sitting.

Court Analysis:

FIR is Ante-timed and omission in Inquest Report:

28. Learned counsel for the accused–appellant has submitted that the First Information Report is ante-timed and was not forwarded to the Magistrate forthwith as contemplated under Section 157 Cr.P.C., and therefore the entire prosecution case stands vitiated.
29. The law relating to the evidentiary value of the First Information Report is well settled, that prompt lodging of the F.I.R. lends assurance to the prosecution case, however delay or irregularity in its lodging is not by itself fatal, unless it gives rise to a reasonable inference of fabrication or embellishment. The object of insisting upon promptness is to exclude the possibility of concoction; however, the Court must examine whether the delay stands satisfactorily explained.
30. In the present case, the prosecution has established that the occurrence took place at about 12:30 P.M. and the F.I.R. came to be registered at about 13:30 hours. The Trial Court has rightly taken into consideration the surrounding circumstances, namely that the informant was not well-versed with the exact reckoning of time, had to travel to the police station by bicycle, and that approximately 10–15 minutes were consumed in getting the written report scribed. The time taken in reaching the police station would necessarily depend upon the speed of the bicycle and other attending circumstances. Thus, the time gap between the occurrence and the lodging of the F.I.R. stands reasonably explained and cannot be said to be unnatural or suggestive of ante-timing.
31. Furthermore, no material has been brought on record to show that the police personnel had any prior enmity with the accused so as to fabricate a case in advance and prepare the F.I.R. beforehand. In absence of any such motive or

circumstance, the allegation that the F.I.R. was ante-timed remains a mere bald assertion without evidentiary support. Minor variations regarding the distance of the police station, shown as 7 km in one document and 8 km in another, or absence of exact time of occurrence in certain papers are inconsequential discrepancies which do not go to the root of the matter.

32. As regards the requirement under Section 157 Cr.P.C., it is well settled that delay in forwarding the F.I.R. to the Magistrate would be of consequence only where it is shown that such delay has been utilized for introducing improvements or embellishments. No such prejudice has been demonstrated in the present case.

33. Further, learned counsel for the accused-appellant has drawn the attention of this Court to certain omissions in the inquest report (Ext. Ka-4) and submitted that the same create serious doubt regarding the prosecution version. He submitted that the inquest report does not contain the names of alleged eyewitnesses, does not record the presence of particular witnesses at the spot, nor does it contain any reference to the accused having been seen fleeing from the place of occurrence. According to the defence, these omissions assume significance as the inquest report was prepared at the earliest point of time and, therefore, ought to have reflected the true state of affairs.

34. On the other hand, learned A.G.A. has placed reliance upon ***Brahm Swaroop v. State of U.P., (2011) 6 SCC 288***, and contended that the omissions pointed out in the inquest report are wholly inconsequential and do not in any manner affect the substratum of the prosecution case. It is submitted the inquest report is not a substantive piece of evidence and cannot be treated as an exhaustive account of the prosecution case. He has further submitted that non-mentioning of the names

of eyewitnesses, or the detailed manner of assault in the inquest report does not render the ocular testimony unreliable, and such omissions cannot be made a ground to discard otherwise credible evidence. It is, therefore, urged that the defence has placed undue emphasis on minor omissions which, in law, do not have any bearing on the prosecution case.

35. Having considered the rival submissions, this Court finds no substance in the contention raised on behalf of the accused–appellant. The scope of an inquest is limited and is aimed to ascertain the apparent cause of death, it is not a substantive piece of evidence and cannot be treated as a comprehensive document narrating the prosecution case. The reliance placed by learned A.G.A on *Brahm Swaroop (supra)* is apposite in this aspect.

36. In the present case, the inquest report was prepared promptly. The omissions pointed out by the defence, namely non-mentioning of the names of witnesses, absence of details regarding the manner of assault or non-mentioning of the alleged presence of witnesses at the spot, do not affect the core of the prosecution case, particularly when there is otherwise cogent and reliable ocular evidence available on record.

37. In view of the aforesaid discussion, this Court is of the considered opinion that neither the plea of ante-timing of the FIR nor the alleged omissions in the inquest report create any dent in the prosecution case.

Medical, Forensic and Ocular Evidence:

38. The next contention of counsel for the accused–appellant is that the medical and forensic evidence do not support the ocular testimony and, therefore, the prosecution has failed to establish its case beyond reasonable doubt. It has been

contended that the alleged weapon of offence was not shown to the autopsy surgeon; that as per the doctor, the injuries could have been caused by different weapons; that the blood found on certain material exhibits had disintegrated and its origin could not be determined; and therefore the prosecution story becomes doubtful.

39. He has placed reliance upon *Ishwar Singh v. State of U.P.*, (1976) 4 SCC 355 and *Mani Ram v. State of U.P.*, 1994 Supp (2) SCC 289 to contend that where ocular testimony is inconsistent with medical evidence, it would not be safe to sustain conviction. It has further been argued that since the alleged weapon was not shown to the doctor, the prosecution has failed to establish nexus between the injuries and the weapon allegedly used in the offence.

40. On the other hand, learned A.G.A. has placed reliance upon *Sudha Renukaiah v. State of A.P.*, (2017) 13 SCC 81; *Punjab Singh v. State of Haryana*, 1984 Supp SCC 233; *Laxminath v. State of Chhattisgarh*, (2019) 8 SCC 685; and *State of Rajasthan v. Teja Ram*, (1999) 3 SCC 507, and submitted that mere non-showing of the weapon to the doctor is inconsequential where the medical evidence broadly supports the ocular version. It is further submitted that where medical evidence indicates two possible views, the same cannot be treated as a contradiction so as to discard otherwise reliable eyewitness testimony. He has further contended that failure of the serologist to determine the origin of blood due to disintegration does not demolish the prosecution case.

41. The law on the interplay between ocular and medical evidence is no longer *res integra*. It is well settled that where direct evidence of eyewitnesses is cogent, credible and trustworthy, minor inconsistencies with medical evidence do not

override the prosecution case. Medical evidence is essentially corroborative in nature and assumes primacy only where it completely rules out the possibility of the occurrence as deposed by eyewitnesses.

42. In *Punjab Singh (supra)*, the Hon'ble Supreme Court has held that where direct evidence is satisfactory and reliable, the same cannot be rejected on hypothetical medical evidence and where medical evidence discloses two possible views, the same does not amount to inconsistency. Similarly, in *Sudha Renukaiah (supra)*, it has been held that mere non-showing of weapons to the doctor at the time of deposition is inconsequential where the injuries found by the doctor could have been caused by the weapons alleged by the prosecution.

43. In the present case, P.W.-5, the autopsy surgeon, has categorically deposed that injury nos. 1 to 4 could have been caused by a *kudal* (spade), which is the alleged weapon of offence. Though the doctor has also opined that such injuries could be caused by a sharp-edged weapon, the same merely indicates an alternative, not a conclusive one, medical possibility and not a contradiction to the prosecution case. The medical evidence nowhere rules out the possibility of injuries having been caused by the alleged weapon.

44. The reliance placed by learned counsel for the accused–appellant upon *Ishwar Singh (supra)* and *Mani Ram (supra)* is misplaced. In those cases, the medical evidence completely contradicted the ocular version and created irreconcilable inconsistencies affecting the core prosecution case. In the present matter, however, the medical evidence substantially supports the prosecution story and no such irreconcilable inconsistency is made out.

45. So far as the forensic evidence is concerned, it has come on record that blood found on material numbered 1, 2 and 4 (sample of blood-stained and plain earth, *kudal* and undergarment) had disintegrated and therefore its origin could not be ascertained, while blood found on another exhibit was insufficient for serological examination. However, in *Teja Ram (supra)*, the Hon'ble Supreme Court has categorically held that failure of the serologist to detect the origin of blood due to disintegration does not necessarily mean that the blood was not human blood, and such deficiency by itself cannot be treated as fatal to the prosecution case.
46. It is a matter of common forensic experience that due to lapse of time, climatic conditions, coagulation and disintegration, serological examination may not always yield definite results. Such deficiency in forensic analysis cannot eclipse otherwise reliable ocular and medical evidence. Criminal courts are required to assess evidence on the touchstone of reasonable probabilities and not on fanciful or imaginative doubts.
47. Furthermore, in *Laxminath (supra)*, the Hon'ble Supreme Court has held that mere lapse on the part of the investigating agency in not properly sending the weapon for forensic examination would not by itself demolish the prosecution case where the ocular testimony remains trustworthy and the medical evidence supports the prosecution version.
48. Furthermore, the Trial Court has also rightly observed that the exact nature and dimension of injuries would depend upon several attending circumstances, namely the manner in which the assault was made, the relative position of the assailant and the victim at the time of occurrence, the attempt, if any, made by the deceased to save himself, and the manner in which the occurrence was witnessed

by the eyewitnesses. It has correctly been noticed that during the course of assault, it is quite possible that the deceased may have moved her body or attempted to defend himself, due to which variation in the nature or placement of injuries may occur.

49. Further, the Trial Court has further rightly appreciated that injury nos. 1 to 4 were found by the doctor to be capable of being caused by a *kudal* (spade), whereas injury no. 5 could have been caused by abrasion or fall. It has also rightly been observed that while using a *kudal*, injury may not necessarily be caused only by its sharp edge and even the reverse side or blunt portion of the weapon may result in abrasion or blunt-force injury depending upon the manner of assault and resistance offered by the victim.

50. Thus, merely because one of the injuries could have been caused by abrasion or fall, it cannot be inferred that the ocular version stands contradicted. The medical evidence, read as a whole, substantially corroborates the prosecution case and does not create any irreconcilable inconsistency with the ocular testimony.

51. In the present case, the ocular evidence, medical evidence and surrounding circumstances form a coherent chain pointing towards the guilt of the accused. The alleged discrepancies pointed out by the defence neither demolish the prosecution case nor create such inconsistency which may render the prosecution story inherently improbable.

52. Accordingly, this Court is of the considered opinion that the alleged inconsistencies in medical and forensic evidence are not material in nature and do not affect the substratum of the prosecution case.

Alleged Contradictions in testimonies of the witnesses:

53. The learned counsel for the accused–appellant has vehemently contended that there exist material contradictions in the testimonies of PW-1, PW-2, PW-4 and PW-5 regarding the place where the *kudal* (spade) was allegedly thrown by the accused, the manner of its recovery and the exact spot from where the same was recovered, and therefore the recovery itself becomes doubtful.
54. Elaborating the submission, it has been argued that in the written report it has been stated that the accused fled away after throwing the bloodstained *kudal* near the ditch (मेड़), whereas in the recovery memo and site plan different locations have been indicated. It has further been pointed out that PW-1 deposed that the accused had thrown the *kudal* near the ditch situated between the fields of Chandrabhal, while PW-2 in one part of deposition stated that the accused had thrown the *kudal* in the field of Chandrabhal, and in another part stated that he had not actually seen the accused throwing the *kudal*. It has also been pointed out that PW-4 stated that the *kudal* was lying where it had been thrown, whereas the Investigating Officer indicated the place of recovery in the site plan differently. On the bases of these discrepancies, it has been argued that the recovery is fabricated and the prosecution story becomes doubtful.
55. The issue which, therefore, arises for consideration is whether the aforesaid discrepancies are material contradictions going to the root of the prosecution case or are merely normal variations which naturally occur in truthful testimony.
56. It is a settled principle of criminal jurisprudence that while appreciating oral evidence, the Court is required to distinguish between “*material contradictions*” affecting the core of the prosecution case and “*minor discrepancies*” arising out of

normal errors of observation, lapse of memory, difference in perception or passage of time. Every discrepancy is not fatal to the prosecution. Unless the contradiction is of such magnitude that it completely demolishes the substratum of the prosecution case or renders the witness wholly unreliable, the same cannot be made a ground to reject otherwise cogent evidence.

57. The doctrine that minor inconsistencies lend assurance to the truthfulness of witnesses is now deeply embedded in Indian criminal jurisprudence. Human faculties of observation, retention and narration differ from person to person. Witnesses observing a sudden and gruesome incident from different positions and under psychological stress cannot be expected to depose with photographic precision regarding every minute detail, particularly with respect to exact distances, topographical positions and sequence of movements.

58. The Court must also bear in mind that evidence is not to be appreciated in a hyper-technical manner. Criminal courts are concerned with the substance of the prosecution case and not with trivial variations which do not affect the core issue. If the broad prosecution story remains intact and inspires confidence, peripheral inconsistencies are liable to be ignored.

59. In the present case, the consistent prosecution version emerging from the evidence of the witnesses is that the accused assaulted the deceased with a *kudal* and thereafter the said weapon was found lying near the place of occurrence and was subsequently recovered by the police. The discrepancies pointed out by the defence relate only to the precise location where the *kudal* was thrown or lying, namely whether it was near the ditch, near the field boundary or inside the adjoining field.

60. Such discrepancies, in the considered opinion of this Court, are natural and inconsequential. The incident occurred suddenly and the witnesses were deposing after lapse of considerable time. Rustic villagers witnessing a violent incident cannot be expected to describe the exact geographical location of the weapon with mathematical accuracy. Slight variation regarding whether the weapon was lying near the ditch, field boundary or adjoining field does not alter the substance of the prosecution case. On the aspect of appreciation of testimony of rustic and related witnesses, learned A.G.A. has placed reliance upon ***Jugendra Singh v. State of U.P., (2012) 6 SCC 297***, wherein the Hon'ble Supreme Court has observed that rustic and uneducated villagers cannot be expected to be precise with regard to the concept of time and, therefore, minor discrepancies regarding timing cannot be given undue importance.

61. Learned A.G.A. has further placed reliance upon ***Jaisy @ Jayaseelan v. State, (2012) 1 SCC 529***, wherein the Hon'ble Supreme Court reiterated the settled principle that the testimony of an interested witness cannot be discarded merely on the ground of relationship. It has been held that evidence of a related witness does not suffer from any inherent infirmity and what is required is cautious scrutiny as a matter of prudence and not as a rule of law. Once the Court finds that such testimony has a ring of truth and inspires confidence, conviction can safely be based thereupon even without independent corroboration.

62. The aforesaid principles squarely apply to the facts of the present case. The prosecution witnesses are rustic villagers and minor discrepancies regarding timing, exact distances and precise location of the weapon are natural and inconsequential. Similarly, merely because the witnesses are related to the

deceased, their testimony cannot be discarded when the same otherwise appears cogent, natural and trustworthy.

63. The testimony of PW-2 that he had not actually seen the accused throwing the *kudal* also does not create any fatal inconsistency. The witness merely stated that he had not seen the precise act of throwing the weapon, but the overall prosecution version regarding the accused being armed with the *kudal* and the weapon being found near the place of occurrence remains consistent throughout the prosecution evidence.
64. The law is equally settled that recovery under Section 27 of the Indian Evidence Act, 1872 is merely a corroborative circumstance and not substantive evidence by itself. Even assuming that certain discrepancies exist regarding the exact place of recovery, the same would not by itself demolish the prosecution case where the ocular testimony regarding the assault is otherwise reliable and supported by medical evidence.
65. In the present matter, the recovery memo (Ext. Ka-2) and site plan (Ext. Ka-10) substantially support the prosecution case regarding recovery of the weapon from the vicinity of the place of occurrence. The defence has not been able to establish any circumstance showing that the weapon was planted or fabricated by the Investigating Officer.
66. It is also pertinent to note that criminal courts are required to adopt a common prudence while appreciating evidence. Trivial discrepancies arising out of normal human conduct cannot be elevated to the status of material contradictions so as to reject the entire prosecution case. To do so would amount to appreciating evidence in a wholly unrealistic and hyper-technical manner.

67. Moreover, in this regard the Trial Court has also rightly observed that different witnesses witnessing a sudden occurrence from different positions cannot be expected to describe the exact topographical location with mathematical precision. The broad prosecution version that the accused assaulted the deceased with the *kudal* and thereafter fled after throwing the same near the place of occurrence remains consistent throughout.

68. This Court, therefore, finds that the alleged contradictions highlighted by the defence are merely peripheral variations which neither affect the core prosecution case nor render the recovery doubtful. The broad prosecution story regarding the use and recovery of the *kudal* remains intact and trustworthy.

69. Accordingly, the submissions advanced on behalf of the accused–appellant on this issue are liable to be rejected.

Non-Examination of Scribe of Written Report

70. Learned counsel for the accused–appellant has contended that the written report (Ext. Ka-1) was not scribed by the informant himself but by one Kunwar Bahadur Singh, who has not been examined before the Trial Court, and therefore the prosecution story becomes doubtful. It has further been argued that since the written report was allegedly drafted by the scribe according to his own understanding and language, possibility of false implication cannot be ruled out.

71. On the other hand, learned A.G.A. has placed reliance upon ***Hukam Singh v. State of Rajasthan, (2000) 7 SCC 490***; ***State of U.P. v. Anil Singh, 1988 Supp SCC 686***; and ***Himanshu Mohan Rai v. State of U.P., (2017) 4 SCC 161***, and submitted that non-examination of the scribe of the written report is not fatal to

the prosecution case when the FIR has otherwise been duly proved by the informant and the concerned police officials.

72. The contention advanced on behalf of the accused–appellant cannot be accepted.

There is no requirement in law that the First Information Report must necessarily be written in the handwriting of the informant himself or that the scribe thereof must invariably be examined as a prosecution witness. In rural settings, it is a matter of common experience that written reports are often drafted by persons acquainted with writing work at the instance and dictation of the informant.

73. In the present case, the written report has been duly proved by PW-1, who clearly identified the same and supported the prosecution version contained therein.

Merely because the report was written in the language or style of the scribe does not lead to an inference that the prosecution story was fabricated or concocted.

74. The Hon'ble Supreme Court in ***Himanshu Mohan Rai (supra)*** has specifically held that there is no requirement that the FIR must be in the handwriting of the informant and mere non-examination of the scribe is not sufficient to doubt the prosecution case where the FIR otherwise stands duly proved. Similarly, in ***Hukam Singh (supra)***, it has been held that the prosecution is not bound to examine each and every witness cited during investigation and the Public Prosecutor has the discretion to examine only such witnesses as are necessary for unfolding the prosecution case.

75. Furthermore, the defence has failed to establish any circumstance or provide any evidence indicating that the scribe had any animosity against the accused so as to falsely implicate him, except a bald allegation that the accused has enmity with

scribe . The written report was lodged promptly and substantially corroborates the ocular version adduced before the Trial Court.

76. In view of the aforesaid discussion, this Court finds that non-examination of the scribe of the written report does not create any dent in the prosecution case and the submissions advanced on behalf of the accused–appellant on this issue are liable to be rejected.

Role of Motive in a Case Based on Direct Evidence:

77. Learned counsel for the accused–appellant has further submitted that the prosecution has failed to establish any convincing motive for the commission of the alleged offence and, therefore, the entire prosecution story becomes doubtful.

78. The aforesaid submission does not impress this Court. It is a settled principle of criminal jurisprudence that in a case resting upon direct ocular evidence, motive loses much of its significance. Motive assumes greater importance in cases based purely on circumstantial evidence, where the chain of circumstances is required to be completed by proving the reason which impelled the accused to commit the offence. However, where trustworthy eyewitness account is available and inspires confidence of the Court, absence or insufficiency of motive is not fatal to the prosecution case.

79. In the present case, the prosecution has produced ocular testimony of PW-1 and PW-2 regarding the manner of occurrence. Their presence at or near the place of occurrence stands established and their testimonies substantially corroborate the prosecution version. Merely because the prosecution could not establish a strong motive with mathematical precision, the same would not demolish the otherwise reliable direct evidence available on record.

80. Thus, in a case based on direct evidence, motive recedes into the background and assumes only secondary importance. Once the ocular testimony is found trustworthy and corroborated by medical and surrounding circumstances, failure to prove motive cannot be made a ground to discard the prosecution case.

Alleged Enmity and Plea of False Implication

81. Learned counsel for the accused–appellant has further submitted that the accused has been falsely implicated in the present case on account of previous enmity, election rivalry and village factionalism (party-bandi). It has also been argued that the deceased and his family had enmity with several persons in the village and therefore possibility of the actual assailants being someone else cannot be ruled out.

82. The law on the point is well settled that enmity is a double-edged weapon. While previous enmity may furnish a motive for false implication, at the same time it may equally provide a motive for commission of the offence. Therefore, mere existence of enmity by itself is not sufficient to discard the prosecution case unless the defence is able to establish circumstances showing that innocent persons were falsely implicated while the real culprits were deliberately shielded.

83. In the present case, except making bald allegations regarding village factionalism and election rivalry, the defence has not been able to place any cogent material on record to probabalize the plea of false implication. No circumstance has been shown as to why the prosecution witnesses would spare the real assailant and falsely implicate the accused in a serious offence of this nature.

84. Furthermore, the prosecution witnesses are natural witnesses whose presence at or near the place of occurrence stands established from the evidence on record. Their

testimonies have remained substantially consistent on the material particulars of the occurrence. Mere existence of prior enmity cannot be a ground to discard otherwise reliable ocular testimony.

85. It is also pertinent to note that false implication in a case involving brutal murder is not to be readily inferred merely on the basis of alleged village enmity, particularly when the prosecution evidence inspires confidence and finds corroboration from medical and surrounding circumstances.

86. This Court is, therefore, of the considered opinion that the plea of false implication raised by the accused–appellant is devoid of substance and does not create any reasonable doubt in the prosecution case.

Conclusion:

87. In the present case, the prosecution has successfully established the homicidal death of the deceased. The ocular testimony of the prosecution witnesses is cogent, reliable and substantially corroborated by the medical evidence on record.

88. The discrepancies pointed out by the defence are minor in nature and relate only to peripheral aspects of the prosecution case. The same do not affect the core prosecution story. The pleas relating to ante-timed FIR, false implication, doubtful recovery, non-examination of the scribe and inconsistencies in medical and forensic evidence have already been dealt with and rejected hereinabove.

89. Upon cumulative appreciation of the entire evidence on record, this Court finds that the prosecution has successfully proved the guilt of the accused–appellant beyond reasonable doubt. The learned Trial Court has rightly appreciated the evidence and no illegality or perversity is found in the impugned judgment.

90. Accordingly, the present appeal is hereby **dismissed**. The judgment and order of conviction and sentence passed by the learned Trial Court are hereby **affirmed**.

91. Since the accused-appellant, Khushi Ram, has already been released on remission on 26.01.2019, he is not required to surrender, unless wanted in any other case.

92. Pending applications, if any, shall stand disposed of.

93. Let a copy of this judgment along with the trial court record be transmitted forthwith to the court concerned for information and necessary compliance.

94. Sri Rajesh Kumar Dwivedi, learned Amicus Curiae was appointed to represent the appellant-accused. We put on record the words of appreciation for able assistance rendered by him, therefore, we quantify the remuneration of Rs. 25,000/- for him. Let the same be paid by the concerned expeditiously.

(Zafeer Ahmad, J.) (Rajnish Kumar, J.)

May 27, 2026
kanhaiya