

Natthu And Another vs State on 30 May, 2025

Author: Vivek Kumar Birla

Bench: Vivek Kumar Birla

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:92986-DB

Reserved on 11.04.2025

Delivered on 30.05.2025

In Chamber

Case :- CRIMINAL APPEAL No. - 1832 of 1984

Appellant :- Natthu And Another

Respondent :- State

Counsel for Appellant :- Shrey Singh

Counsel for Respondent :- A.G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Praveen Kumar Giri,J.

(Per Praveen Kumar Giri, J.)

1. Heard Shri Shrey Singh, learned Amicus Curiae as well as Shri O.P. Dwivedi, learned A.G.A.-I for the State-respondent and perused the record.

2. We proceed to hear the appeal on behalf of the surviving appellant No.2- Hukum Singh s/o Natthu, as the appeal has already abated in respect of appellant No.1- Natthu (deceased).

3. The present appeal has been filed against the judgment and order dated 04.06.1984 passed by Shri R.N. Agarwal, Sessions Judge, Farrukhabad in Sessions Trial No. 282 of 1983 convicting and sentencing the appellant under Section 302/34 IPC to imprisonment for life and under Section 307/34 to five years rigorous imprisonment and fine of Rs. 200/-, in default of payments of the fine further 6 months' rigorous imprisonment.

4. The prosecution's case is that about three years ago, litigation in respect of agricultural land had taken place between the deceased Khushi Ram and the accused Natthu. In that litigation, a compromise was reached but the accused continued to hold a grudge against Khushi Ram (deceased). On 21.11.1982, at about 5:00 P.M., an altercation started between Khushi Ram and the accused Natthu regarding the flow of water from Natthu's drainage. Upon hearing the altercation, villagers Naresh, Daya Ram, Ram Prakash and several women and children arrived at the place of incident. Thereafter, both accused went inside their sitting room and went up to the roof of their house. Natthu was armed with a gun and his son Hukum Singh, was armed with a pistol. From the roof, both accused challenged Khushi Ram stating that he would not be alive today. Having said this, both accused fired their respective firearms towards Khushi Ram. Khushi Ram, Meera and several people who had gathered there got injured in firing. The accused also threw bricks upon them. Upon hearing the noise, Srikrishna, Ganga Singh, Jog Singh and several other villagers arrived at the spot and when they challenged the accused, Natthu and Hukum Singh stopped firing and came down from the roof and issuing death threats to them fled away. Khushi Ram succumbed to his firearm injuries in the hospital on the next day. Daya Ram, Naresh, Ram Prakash, Arjun, Suraj Mukhi, Batasho, Shakuntla, Sadhna and Smt. Jamuna (wife of Khushi Ram) also sustained injuries from firearms and bricks thrown by the accused. A girl named Meera, who was in Suraj Mukhi's lap, also received firearm injuries and later succumbed to her injuries at the Primary Health Centre in Kaimganj.

5. The incident took place on 21.11.1982 at 5.00 PM and on the same date, at 07:30 P.M., on the basis of written report (Ex.Ka-1) submitted by Informant- Jawahar Lal (P.W.-1 son of deceased Khushi Ram), the first information report was registered as Case Crime No. 183 of 1982 under Sections 307 IPC at Police Station- Kampil, Sub District- Kaimganj District- Farrukhabad, against accused-appellants namely, Natthu and Hukum Singh.

6. The distance of police station from the place of incident is about 2 miles and the F.I.R. was registered promptly on the same date at 07:30 P.M. On the basis of written F.I.R., a check report was prepared at the police station and all the injured were sent to Primary Health Centre, Kaimganj.

7. PW-5 Dr. H.P. Srivastava was posted as Medical Officer at District Hospital, Fatehgarh on 23.11.82. Khushi Ram (deceased) was admitted to the hospital in a critical state, hence, his injury report couldn't be prepared at that time and later he passed away during treatment. Thus, his injuries are described in his postmortem report. On 22.11.82, in the night, he examined the injuries of Arjun Singh at 1:45 P.M., Shakuntala Devi at 2:00 P.M., Vedram at 2:30 P.M., Suraj Mukhi at 2:35 P.M., Sadhna at 2:45 P.M., Jamuna at 2:50 P.M., Dayaram at 2:55 P.M., Bataso at 3:10 P.M. and Naresh at 3:20 P.M. The injury reports of all the injured are exhibited from Ex.Ka-8 to Ex.Ka-17. All these injured were brought by constable Vishram Singh and were referred by Dr. A.P.

Dubey, PHC Medical Officer.

8. (P.W.-5) Dr. H.P. Srivastava has prepared the injury report of (P.W.-2) Arjun Singh in which he has mentioned gun shot wounds of 1/8 inch diameter. The relevant portion of the injury report is being quoted below:

"GSW 1/8" diameter each, two on left upper eyelid 1 and 1/2" apart 4 on left side chest front, one on right side chest, 1 on left side abdomen below coastal margin one on right iliac fossa, one left iliac fossa depth not probed, one above left eye brow skin deep, one on left lower lip muscle deep. Advised X Ray of the respective parts. All injuries in 24" x 9"

Cause: All are 6-8 hrs. old caused by firearm Nature u/o patient hospitalized."

9. (P.W.-5) Dr. H.P. Srivastava has also prepared the injury report of (P.W.-3) Naresh in which he has mentioned multiple gun shot wounds. The relevant portion of the injury report is being quoted below:

"i) GSW one on left side head 3" behind left eyebrow, one below left angle of mouth, one lower lip central part, one on left side chest 4" below left nipple (pellet palpable), one 2" proximal to left wrist left forearm back chest depth of chest wound not measured rest skin deep Advised X-Ray All 8-10 hrs. old All simple All caused by firearm Referred SOPD for needful"

10. (P.W.-5) Dr. H.P. Srivastava has also prepared the injury report of Shakuntala Devi in which he has mentioned the gun shot wound each of 1/8 inch diameter. The relevant portion of the injury report is being quoted below:

"GSW each 1/8" in diameter, one on central forehead x skin deep, one 3" behind right eyebrow right side head skin deep, one chin skin deep, one left chick skin deep, 2 left palm 3" apart skin deep, one inner side left index finger, one on ulnar surface left hand, one left forearm radial side 2" distal to elbow, one 3" proximal to left elbow all skin to muscle deep, one right wrist dorsum, one right hand ulnar side dorsum, skin to muscle deep, 3 on right side thigh & one on left side thigh front in upper 1/3 area all skin to muscle deep, one right side abdomen front, 2 right side chest & 2 left side chest depth not probed All caused by firearm. All in 29" x 18" area All 6-8 hrs. old All u/o Advised X Ray"

11. In the injury report of Ram Prakash, (P.W.-5) Dr. H.P. Srivastava has mentioned one gun shot wound of 1/8 inch in diameter. The relevant portion of the injury report is being quoted below:

"GSW 1/8" in diameter right cheek skin deep Advised X Ray 8 hours old Caused by firearm.

Simple in nature.

Advised to attend SOPD coming morning"

12. (P.W.-5) Dr. H.P. Srivastava has also prepared the injury report of Suraj Mukhi in which he has mentioned gun shot wounds of 1/8 inch in diameter. The relevant portion of the injury report is being quoted below:

"GSW each 1/8" in diameter, one on mons pubis, one on left arm middle front, 2 left side chest front middle 3" apart, one left side abdomen lower outer part, 2 on left lumbar region. Depth of abdomino-thoracic wound not measured, Rest skin to muscle deep.

All caused by firearm, All 8 hrs. old (appx.), All kept under observation.

Advised X Ray, Referred to SOPD coming morning for needful"

13. In the injury report of Sadhana, (P.W.-5) Dr. H.P. Srivastava has mentioned the gun shot wound of abrasion 1/8 inch in diameter. The relevant portion of the injury report is being quoted below:

"GSW of abrasion 1/8" in diameter, right shoulder front 8-10 hrs. old Caused by firearm Simple"

14. (P.W.-5) Dr. H.P. Srivastava has also prepared the injury report of Jamuna. The relevant portion of the injury report is being quoted below:

"Lacerated wound 3" above right ankle front of right leg 1 and 1/2" x 1/4" x 1/4" right leg front Simple Caused by blunt object 8-10 hrs. old."

15. In the injury report of Daya Ram, (P.W.-5) Dr. H.P. Srivastava has mentioned the gun shot wound. The relevant portion of the injury report is being quoted below:

"One gun shot wound of 2 and 3/4" above right ankle medial malleolus 1/8" in diameter skin deep simple 8-10 hrs. old caused by firearm"

16. In the injury report of Batasho, (P.W.-5) Dr. H.P. Srivastava has also mentioned the gun shot wound. The relevant portion of the injury report is being quoted below:

"Two firearm GS, abrasion 1/8" in diameter, 1 and 1/2" apart below right breast caused by firearm, simple 8-10 hrs. old"

17. The investigation was moved into motion by Shri Ram Manohar Singh, S.O. Kampil (PW-4). After dispatching the injured to Primary Health Centre, Kaimganj, he reached at the place of occurrence and recorded the statement of the Jawahar Lal (P.W.-1), Duryodhan Singh and others on

the same date i.e. 21.11.1982. On the following date i.e. 22.11.1982, at the pointing of Jawahar Lal, he prepared the site plan/Topography Report (Ex.Ka-2).

18. On 22.11.1982, Investigating Officer took the blood stained and simple earth from the spot and kept them in separate sealed containers after preparing recovery memo (Ex.Ka-3).

19. On 21.11.1982, Meera succumbed to his injuries in P.H.C. Kaimganj. On receiving information, S.I. Rajesh Kumar Tiwari, Police Station, Kaimganj reached the hospital, appointed the Panchas and prepared the Panchayatnama/Inquest Report of dead body of Meera (Ex.Ka-21) in presence of Vedram, Lalu and others. He then sealed the dead body and sent the dead body through constable Satish Chandra and Constable Dwarka Prasad for postmortem.

20. On 22.11.1982, Khushi Ram succumbed to his injuries in Fatehgarh Hospital. S.I. Munnalal Upadhyay appointed the Panchas and prepared the Panchayatnama/Inquest report of dead body of Khushi Ram (Ex.Ka-27) in presence of Shri Krishna, Ganga Singh and others. He then sent the dead through constable Mahendra Pal Singh and Brij Bihari for postmortem.

21. On 22.11.1982, Investigating Officer arrested accused Nathu near Shamshabad Railway Station and recorded his statement.

22. PW-5 Dr. H.P. Srivastava was the Medical officer on 23.11.1982 in the District Hospital Fatehgarh and he conducted the postmortem on the dead body of deceased Meera and Khushi Ram. The dead body of Meera was brought to him in sealed cover by Constables Satish Chandra and Constable Dwarka Prasad and the dead body of Khushi Ram was brought to him in sealed cover by constable Mahendra Pal Singh and Brij Bihari. The dead bodies were accompanied with necessary papers, samples and seals.

23. P.W.-5 Dr. H.P. Srivastava while conducting the postmortem of Meera (deceased) on 23.11.1982 at 04:00 P.M. observed that Meera had been dead for about two days. The structure of the body was normal and the rigor mortis after death had gone. Following ante-mortem injuries were found on the body of Meera:

i) There were two wounds of 1/8 inch diameter of firearm on the right leg.

ii) Two firearm wounds on the right buttock.

iii) Three firearm wounds on the left side of the back.

iv) Six firearm wounds on the right side of the back of chest, deep from the skin to the chest cavity. All the wounds were in an area of 8 inch x 8 inch.

Nine pellets were recovered from the body of deceased. In the opinion of the doctor, the deceased died due to shock and haemorrhage as a result of the ante-mortem injuries described above, which were sufficient to cause death. He further opined that deceased died on 21.11.82 between 8:00 to

8:30 P.M.

24. On the same day i.e. 23.11.1982 at 4:40 p.m. He conducted the postmortem of the dead body of deceased Khushi Ram, who was identified by Constable Mahender Pal Singh and Constable Brij Bihari Police Station- Fatehgarh. The deceased died in the District Hospital on 22.11.82 at 5:30 P.M. The deceased had a normal build and rigor mortis was noted in the lower body but had begun to subside in the upper body. Following ante-mortem injuries were found on the dead body of Khushi Ram:

- i). Lacerated wound of 1 inch x 1/4 inch x 1/4 inch on the left temple.
- ii) Lacerated wound of 1 inch x 3/4 inch x 1/4 inch deep to the flesh of the head above the eye.
- iii) Lacerated wound of 1 inch x 1/4 inch x 1/8 inch deep to the flesh of the head, located 4.5 inch above the left ear.
- iv) Seven firearm wounds on the forehead and one on the right cheek, each 1/8 inch in diameter, deep inside the head.

In the opinion of the doctor, the deceased died of coma as a result of the ante-mortem injuries described above, which were sufficient to cause death.

25. After completing the investigation, Investigating Officer submitted the charge-sheet on 28.12.1982 under Sections 302, 304 and 324 of IPC against the accused-appellants.

26. Learned Judicial Magistrate took cognizance on the charge-sheet and thereafter committed the case to the Court of learned Sessions Judge after compliance of Section 207 Cr.P.C.

27. The case was registered as S.T. No. 282 of 1983 (State vs. Natthu and another). Learned Sessions Judge framed charges against the accused-appellants under Section 302/34 IPC for causing the death of Khushi Ram as well as Meera and under Section 307/34 IPC for causing injury to Naresh, Daya Ram, Ram Prakash, Suraj Mukhi, Batasho, Shakuntala, Jamna, Arjun and Sadhna.

28. The accused-appellants had not pleaded guilty and sought trial, therefore, the prosecution was permitted to produce its witnesses.

29. The prosecution, in order to prove its case, has produced many documentary evidence, namely, F.I.R., Written Report (Ex.Ka-1), Recovery Memo of blood stained and plain earth (Ex.Ka-3), Injury Reports (Ex.Ka-8 to 17), Postmortem Report of deceased Meera (Ex. Ka-4), Postmortem Report of deceased Khushi Ram (Ex. Ka-5), Panchayatnama of deceased Meera (Ex. Ka-21), Panchayatnama of deceased Khushi Ram (Ex. Ka-27), & Site Plan with Index (Ex.Ka.2).

30. (P.W.-1) Jawahar Lal, first informant of the case has proved the version of the first information report. Recovery memo of blood stained and plain earth as well as site plan have been proved by (P.W.-4) S.I. Ram Manohar Singh. (P.W.-5) Dr. H.P. Srivastava has proved the postmortem report of the deceased Khushi Ram and Meera as well as injury reports of Arjun Singh, Shakuntala Devi, Vedram, Suraj Mukhi, Sadhna, Jamuna, Dayaram, Bataso, and Naresh.

31. To prove its case, the prosecution has examined 5 prosecution witnesses, namely, PW-1 Jawahar Lal (informant) son of the deceased Khushi Ram; PW-2 Arjun Singh, injured villager and eye-witness of the incident; PW-3 Naresh, injured villager and eye-witness of the incident; PW-4 S.O. Ram Manohar Singh, Investigating Officer and PW-5 Dr. H.P. Srivastava, who has done the postmortem of the dead bodies and examined the injured persons.

32. Jawahar Lal (P.W.-1), the informant as well as eye-witness of the case in hand, deposed that Khushi Ram (deceased) was his father who was shot by the accused Natthu and Hukum Singh. He further deposed that the incident occurred on 21.11.1982, around 5:00 PM, during a fight about water drainage. Both the accused fired upon Khushi Ram and several witnesses, resulting in Khushi Ram's death on the following day in the hospital and death of a child named Meera while rushing to the hospital for her treatment. He further deposed that the accused-appellants had also thrown bricks and stones at them. The relevant extract of his deposition is as under:

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This witness has supported his deposition during cross-examination and deposed about the previous litigation between his father and the accused. He also deposed that it is wrong to say that he was giving a false statement due to enmity and that the injured were his relatives.

33. Arjun Singh (P.W.-2), who was also an eyewitness to the incident, has deposed on the line of P.W.-1. He deposed that Natthu, Hukum Singh and Khushi Ram were having an argument about the water drainage. Besides Khushi Ram, his son Jawahar Lal and his mother Jamuna were also there. Khushi Ram, his wife and son were in front of Ram Charan's house. Hukum Singh and Natthu were in front of their house. Nathu and Hukum Singh entered their house and climbed the roof. Nathu had a gun in his hand and Hukum Singh had a pistol in his hand. Standing on the roof, Hukum Singh and Nathu said that "Khushi Ram, you will not be saved today". Both of them fired at Khushi Ram. The pellet hit him, Sadhana, Bataso, Ramprakash and the people who were standing with him and also hit Khushi Ram and his wife. Everyone was injured by the pellets. He further deposed that apart from him, Jog Singh, Srikrishna and Ganga Singh were also present at the spot at the time of the incident. They also witnessed the incident. He further deposed that he was injured in the incident and his eyes were damaged.

This witness has also supported his deposition during cross-examination. He deposed that it is wrong to say that Jawahar Singh and accused Hukum Singh were not present at the spot.

34. Naresh (P.W.-3), has also deposed on the line of P.W.-1 and P.W.-2 and has also supported his deposition during cross-examination. He has deposed that he saw the accused Natthu and Hukum Singh firing upon Khushi Ram and the crowd. In his deposition, he affirmed the presence of Jawahar Lal (P.W.-1) at the time of the incident. The relevant extract of his deposition is as under:

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35. The statements of all the three eye-witnesses P.W. Nos. 1, 2 and 3 were consistent. A very detailed cross-examination has been done but nothing contrary has been brought out to throw any doubt on the statements of the eye-witnesses.

36. S.O. Ram Manohar Singh (P.W.-4), Investigating Officer of the case deposed that from 21.11.1982 to 28.12.1982, he was posted as S.O. Police Station- Kampil. On 21.11.1982, he received the case report at the police station. He recorded the statement of H.M. Shiv Naresh Upadhyay and referred injured for medical treatment. Subsequently, he visited village Jogpur, recorded statements from Jawahar Lal and Daryodhan Singh and searched for the accused. On 22.11.1982, he inspected the incident scene with Jawahar Lal, prepared site plan and collected blood-stained and plain earth samples, which were separately packed and documented. He further deposed that he arrested Nathu near Shamshabad Railway Station and recorded his statement. On 06.12.1982, he recorded statements from Arjun Singh, Naresh and other witnesses. After completion of the investigation, he submitted the charge-sheet against the accused on 28.12.1982. The relevant extract of his deposition is as under:

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In the cross-examination, this witness has supported the examination-in-chief rather than declaring himself hostile and his deposition remains intact.

37. Dr. H.P. Srivastava (P.W.-5), deposed that he was working as a Medical Officer in District Hospital, Fatehgarh on 23.11.1982 and that day he has conducted the postmortem of the body of Meera and Khushi Ram. He further deposed that on 23.11.1982, at 3:00 PM, he received the body of 1.5 year old Meera, daughter of Prakash, and conducted the postmortem at 4:00 PM. Constables Satish Chandra and Dwarka Prasad from Police Station- Kaimganj identified the sealed body. Meera had been died for about two days. On the same day, at 4:40 PM, he performed the postmortem on the body of Khushi Ram, identified by Constables Mahender Pal Singh and Brij Bihari. Khushi Ram died at the District Hospital on 22.11.1982, at 5:30 PM. Khushi Ram was admitted to the hospital on 22.11.1982, at 1:30 AM, referred by Dr. A.P. Dubey, Medical Officer of PHC Kaimganj (Ex. 7). He further deposed that later that night, starting at 1:45 A.M. (night), he examined the injuries of several injured of the incident; Arjun Singh, Shakuntala Devi, Vedram, Suraj Mukhi, Sadhna, Jamuna, Dayaram, Bataso, and Naresh. All were brought to the hospital by Constable Vishram Singh. The relevant extract of his examination-in-chief is as under:

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38. Thereafter, the statements of the accused-appellants under Section 313 Cr.P.C. were recorded, in which all the incriminating evidence was put to them. They denied all the allegations and stated that they were falsely implicated in the present case.

39. Accused Natthu, in his statement under Section 313 Cr.P.C. has admitted that he had a dispute with Khushi Ram over a drain, as Khushi Ram and his family attempted to block his water flow. When he opposed, they attacked him with bricks and sticks. He defended himself by throwing bricks and firing a shot. He further stated that both parties went to the police station but his report wasn't registered and he wasn't medically examined despite having injuries. The inspector spoke only with Khushi Ram's son. He also stated that his son, Hukam Singh, was not present at the time of the incident as he had gone to his sister's house.

40. Accused Hukum Singh, in his statement under Section 313 Cr.P.C. has stated that he was not present during the alleged incident as he was at his sister's house. He further stated that he was falsely implicated in the case to prevent him from defending his father during trial.

41. Thereafter, the Trial Court vide impugned judgement convicted and sentenced the appellants under Section 302/34 IPC to imprisonment for life and under Section 307/34 to five years rigorous imprisonment and fine of Rs. 200/-, in default of payments of fine, further 6 months rigorous imprisonment and directed that all the sentences of each accused would run concurrently.

42. Learned Amicus Curiae for the surviving-appellant, Hukum Singh, submits that the presence of the surviving accused is doubtful on the crime scene because of which the ingredients of offence under Section 302 read with 34 IPC are not satisfied. It is also submitted that the prosecution has motive to implicate the accused because of previous rivalry and litigation and the witness, Jawahar Lal (PW-1), admitted this rivalry between his father and Natthu Singh in his deposition.

43. Learned Amicus Curiae further submits that the prosecution's case relies on the injuries of ten witnesses, yet only three eyewitnesses were produced. It is stated that the deposition of PW-1 Jawahar Lal is liable to be discarded because he is an interested witness with a clear motive to implicate the accused due to the existing rivalry between their families.

44. Learned Amicus Curiae argues that the presence of Jawahar Lal (P.W.-1) is doubtful because the two independent eyewitnesses, PW-2 and PW-3, did not mention his presence in their cross-examination. This absence is further supported by the fact that PW-1 did not sustain any injury during the incident, whereas every other witnesses claimed to have sustained injuries. He further submits that only PW-1, in his examination-in-chief and cross-examination, implicated the surviving accused Hukum Singh.

45. It is also urged that the co-accused Natthu in his deposition made an admission that the accused Hukum Singh was not present at the spot on the date of occurrence. It is further submitted that even if it is hypothetically assumed that the surviving accused-appellant was present at the spot, the ingredients of Section 300 IPC are not made out, because the surviving accused-appellant had no intention of causing death to the deceased, the prosecution's case falls under Exception 4 of Section

300 IPC. It is also submitted that the ingredients of Section 34 IPC are not made out because common intention cannot be proved by the prosecution and there was no recovery of the pistol or gun that could establish beyond reasonable doubt that the accused had fired the gunshot that resulted in death of Meera and Khushi Ram and injuries of other witnesses.

46. Learned AGA for the State vehemently opposed the arguments advanced by the learned Amicus Curiae and submits that the arguments lack merit and are not supported by the corroborating evidence on record. Regarding the submission that the presence of the surviving accused-appellant is doubtful on the crime scene and the ingredients of Section 302 read with 34 IPC are not satisfied, it is contended that this argument misrepresents the eyewitness accounts of Arjun Singh (P.W.-2) and Naresh (P.W.-3), who clearly deposed in their deposition about the presence of Jawahar Lal (P.W.-1) and accused Hukum Singh at the time of the incident. The consistent deposition of eyewitnesses, including PW-1, PW-2, and PW-3, places both accused, Natthu and Hukum Singh, at the place of incident, firing from the rooftop with their weapons. The specific act of challenging the deceased and firing upon the crowd causing the death of two persons and injuring 10 other witnesses, clearly demonstrates their presence and active involvement. He further submits that existence of a prior rivalry is, however, admitted by PW-1 but this fact provides a strong motive for the accused's action. The law is well-settled that the deposition of an interested witness cannot be discarded merely on the ground of interest but must be scrutinized with care. In this case, PW-1's deposition is not isolated; it is corroborated by the depositions of other injured eyewitnesses, PW-2 Arjun and PW-3 Naresh.

47. Learned AGA further submits that co-accused Natthu's deposition cannot be relied upon to prove the alibi of another co-accused (Hukum Singh). Such a statement must be corroborated by the independent and reliable evidence, which is entirely absent in the present case.

48. It is further submitted that argument regarding lack of intention for Section 300 IPC is unsustainable. When accused arm themselves with a gun and a pistol, ascended to rooftop, challenge a victim and then fire upon a gathering crowd, the intention to cause death or such bodily injury as is likely to cause death is clearly apparent. The nature of the weapons used and the target demonstrate a clear knowledge that such actions would likely result in death. Learned Amicus Curie's attempt to bring this under Exception 4 to Section 300 IPC is illogical; there was no sudden fight in the heat of passion without premeditation as the previous enmity between the parties cannot be ruled out. This was a deliberate act of firing with deadly weapons. The common intention under Section 34 IPC is also established because both the accused armed themselves, ascended the roof together, challenged the deceased and then simultaneously fired their respective weapons.

49. Lastly, it is submitted that the non-recovery of the specific weapons (pistol and gun) does not, in itself, demolish the prosecution's case. The testimony of eyewitnesses regarding the use of firearms, coupled with the nature of the injuries (firearm wounds), firmly establishes the use of such weapons. The prosecution is not bound to produce every piece of material evidence, especially when direct evidence proves the facts.

50. We have carefully perused the record and judgment of the trial court and have heard Shri Shrey Singh, learned Amicus Curiae as well as Shri O.P. Dwivedi, learned A.G.A.-I in support of the prosecution case.

51. We find that the prosecution's case is based upon the consistent and cogent testimonies of the three eye-witnesses: PW-1 Jawahar Lal, PW-2 Arjun Singh, and PW-3 Naresh. All three have given a similar account of the incident. Eyewitness testimony, when found to be truthful, consistent and reliable, forms the strongest base of the prosecution's case. As the Supreme Court observed in Pruthviraj Jayantibhai Vanol vs. Dinesh Dayabhai Vala & Others; AIR ONLINE 2021 SC 382, that 'Ocular evidence is the best evidence unless there are reasons to doubt it.'

52. We find that the distance of police station from the place of incident is about 2 miles and the F.I.R. of the present case was registered promptly on the same date at 07:30 P.M.

53. In respect of promptly lodged F.I.R., the hon'ble Supreme Court in Jai Prakash Singh v. State Of Bihar And Another , (2012) 4 SCC 379, has observed as under:

"12. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question. (Vide: Thulia Kali v. The State of Tamil Nadu, AIR 1973 SC 501; State of Punjab v. Surja Ram, AIR 1995 SC 2413; Girish Yadav & Ors. v. State of M.P., (1996) 8 SCC 186; and Takdir Samsuddin Sheikh v. State of Gujarat & Anr., AIR 2012 SC 37)"

(Emphasis Supplied)

54. The argument by the learned Amicus Curiae that PW-1 Jawahar Lal is an interested witness due to previous rivalry and being the son of the deceased and thus his testimony should be discarded, is not sustainable in law. It is a well-established principle that the testimony of an interested witness cannot be discarded merely on the ground of interest. What is required is that their evidence should be scrutinized with care and caution. If, on such scrutiny, the evidence is found to be reliable and corroborated by other independent evidence, it can certainly form the basis of a conviction.

55. In the case of Jayabalan v. U.T. of Pondicherry; (2010) 1 SCC 199, hon'ble Supreme Court has observed that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a

person closely related to the victim. The hon'ble Apex Court held as under:

" 23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

(emphasis supplied)

56. The present case is not solely based upon the deposition of (P.W.-1) Jawahar Lal rather the same is corroborated by the depositions of (PW-2) Arjun Singh and (PW-3) Naresh both of whom are injured eye-witnesses and independent villagers. Their deposition perfectly align with that of PW-1.

57. Hon'ble Supreme Court in Lakshman Singh vs. State of Bihar (now Jharkhand); (2021) 9 SCC 191, held as under:

"9. In State of M.P. vs. Mansingh, (2003) 10 SCC 414, it is observed and held by this Court that "the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly". It is further observed in the said decision that "minor discrepancies do not corrode the credibility of an otherwise acceptable evidence". It is further observed that "mere non-mention of the name of an eyewitness does not render the prosecution version fragile".

9.1 A similar view has been expressed by this Court in the subsequent decision in the case of Abdul Sayeed (supra). It was the case of identification by witnesses in a crowd of assailants. It is held that "in cases where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him". It is further observed that "when incident stood concluded within few minutes, it is natural that exact version of incident revealing every minute detail, i.e., meticulous exactitude of individual acts, cannot be given by eyewitnesses". It is further observed that "where witness to occurrence was himself injured in the incident, testimony of such witness is generally considered to be very reliable, as he is a witness that comes with an inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone". It is further observed that "thus, deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on basis of major contradictions and discrepancies therein".

9.2 The aforesaid principle of law has been reiterated again by this Court in the case of Ramvilas (supra) and it is held that "evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard their evidence". It is further observed that "being

injured witnesses, their presence at the time and place of occurrence cannot be doubted."

(emphasis supplied)

58. The fact that (PW-2) Arjun Singh and (PW-3) Naresh did not mention (PW-1) Jawahar Lal's presence in their cross-examination or that PW-1 did not sustain any injury, in our view does not render PW-1's presence doubtful or his testimony unreliable, especially when P.W.-2 and PW-3 specifically affirmed PW-1's presence in their deposition. The absence of injury to a witness does not deny his presence or ability to witness an event. Even after the detailed cross-examination of these witnesses, nothing contradictory was found to cast doubt upon their deposition.

59. As far as submission of absence of accused Hukum Singh at the place of incident is concerned, the consistent testimonies of PW-1, PW-2, and PW-3 clearly places Hukum Singh at the place of incident, armed with pistol, challenging Khushi Ram and firing alongside Natthu. The specific acts of challenging the deceased and firing upon Khushi Ram as well as crowd clearly demonstrate his involvement in the incident. The statement recorded under Section 313 Cr.P.C. of co-accused Natthu, denying Hukum Singh's presence, is an admission by the co-accused and cannot be used as substantive evidence to prove the alibi of another co-accused. Such a statement, if it were to be considered, would require independent and reliable corroboration which is entirely missing in the present case. On the contrary, the direct and consistent evidence of multiple eye-witnesses, including injured, contradicts the alibi of the co-accused. Although we find that it is uncertain whether the injuries sustained by the victims resulted from shots fired by Hukum Singh or by Natthu, the very fact that accused Hukum Singh fired the shot with his pistol and was present on the spot is sufficient to make him guilty under Section 34 IPC.

60. The argument that the ingredients of Section 34 IPC are not made out, is also unsustainable. Section 34 IPC provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. In the present case, the actions of accused Natthu and Hukum Singh clearly establish their common intention. They both went inside, armed themselves with weapon (gun and pistol), ascended the roof together and opened fire upon Khushi Ram and crowd, causing multiple injuries to the nine injured persons and death of Khushi Ram and Meera. This collusive action leaves no doubt that they shared a common intention to cause death or grievous injuries.

61. The nature of the weapons used (gun and pistol), the act of firing from roof and the multiple firearm injuries sustained by the injured persons and death of Khushi Ram and Meera clearly demonstrate an intention to cause death or at least such bodily injury as the accused knew to be likely to cause death. The argument to bring the case under Exception 4 to Section 300 IPC (sudden fight in the heat of passion without premeditation) is once again, unsustainable. The previous enmity between the parties and accused threatening Khushi Ram that he would not be saved today while firing upon him also indicate premeditation and a deliberate act, not a sudden fight in the heat of passion.

62. As far as submission of non-recovery of weapons (pistol and gun) used in the crime is adverse to the prosecution's case is concerned, this argument is also unreasonable. While the recovery of weapons is a piece of corroborative evidence, its absence does not cause harm to the prosecution's case, especially when there is strong, consistent, and reliable direct evidence.

63. The Supreme Court in State through the Inspector of Police vs. Laly @ Manikandan; 2022 SCC OnLine SC 1424, held that:

"Similarly, assuming that the recovery of the weapon used is not established or proved also cannot be a ground to acquit the accused when there is a direct evidence of the eye witness. Recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. If there is a direct evidence in the form of eye witness, even in the absence of recovery of weapon, the accused can be convicted. Similarly, even in the case of some contradictions with respect to timing of lodging the FIR/complaint cannot be a ground to acquit the accused when the prosecution case is based upon the deposition of eye witness."

(emphasis supplied)

64. In the present case, the direct evidence of eye-witnesses regarding the use of firearms coupled with the medical evidence (postmortem reports detailing firearm injuries and pellet recovery and injury reports of multiple victims with firearm injuries), clearly establishes that firearms were used. The prosecution is not bound to produce every piece of material evidence, particularly when the facts are proved by credible direct evidence.

65. We have carefully examined the arguments advanced by the learned Amicus Curiae in the light of the evidence on record. We find no material to suggest that the findings recorded by the Trial Court are perverse or based on misinterpretation of facts. We do not find any error or illegality in the appreciation of the evidence by the Trial Court that would warrant our interference.

66. In view of the aforesaid observations and the fact that the appeal against accused Natthu has already abated due to his death during the pendency of this appeal, we are of the considered opinion that the prosecution has successfully proved its case against the surviving-appellant Hukum Singh beyond reasonable doubt.

67. We, therefore, are of the opinion that the present appeal lacks merit and is, accordingly, dismissed. The conviction of surviving appellant- Hukum Singh is confirmed.

68. Learned Chief Judicial Magistrate, Farrukhabad is directed to take further necessary action to execute this order/judgment.

69. Lower court record along with a copy of this judgment be sent to the concerned Court forthwith.

70. Learned Amicus Curiae shall be entitled to receive his legal fee by the High Court Legal Services Committee as per Rules.

Order Date :- 30.05.2025 K.Tiwari