2026:AHC-LKO:38756-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL APPEAL No. - 924 of 2018

Hareram Chaudhary .....Appellant(s)

Versus

State of U.P. .....Respondent(s)

Counsel for Appellant (s)	:	Dilip Mani, Atul Sharma, Dinesh Kumar, Mohammad Sufiyan, Ram Kumar Srivastava, Sachin Upadhyay, Samar Singh Rawat, Shivendra S. Singh Rathore, Sumit Srivastava, Vivek Shukla (Amicus)
Counsel for Respondent(s)	:	Govt. Advocate, Hemant Kumar Pandey, Sanjay Kumar Dixit, Yogeshwar Sharan Srivastava

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Court No. -10

Reserved on 19.03.2026
Delivered on 27.05.2026

A.F.R.

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

(Per : Rajnish Kumar, J.)

(1) The instant criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as "***Cr.P.C.***") has been filed by the accused/convict/appellant, Hareram Chaudhary, assailing the judgment and order dated 29.03.2018 passed by learned Additional Sessions Judge (Fast Track), Court No.36, Barabanki, in Sessions Trial No. 0000301 of 2015; *State Versus Hareram Chaudhary,* emanating from

Case Crime No. 67 of 2015, under Section 302 of the Indian Penal Code, 1860 (here-in-after referred to as "***I.P.C.***") and Section 3/25 of the Arms Act, Police Station Kothi, District Barabanki, whereby accused/appellant has been convicted and sentenced to undergo under Section 302 I.P.C. to life imprisonment and a fine of Rs.10,000/- and under Section 3/25 of Arms Act to 3 years' R.I. and a fine of Rs.2,000/-. In default of payment of fine to undergo additional six months imprisonment. All the sentences have been directed to run concurrently and the period already undergone by the accused/appellant shall be adjusted in the sentence awarded by trial Court.

(2) The prosecution case, in short, is that complainant, Suryakant Mani, resident of Purshottam Dham Ashram, police station Kothi, district Barabanki had submitted a written report (Ext. Ka.1) at police station Kothi, district Barabanki on 16.05.2015, alleging therein that Thakur Ram Sahai Singh, who was the Head Secretary of the institution Thakur Sadanand Tatvagyan Parishad, was sleeping in the threshing ground (खलियान) in the intervening night of 15/16.05.2015, when at about 02:00 a.m., Hareram Chaudhary son of Damodar Chaudhary shot in his head and Pratap Chandra resident of Raisanda was exhorting from behind and Anand Bhatt resident of Virat Nagar, Nepal, Durgesh Pandey and Premdas resident of Haridwar were saying 'मारो बचने न पाये' (hit, do not escape). He, Arvind Ji, Anil Ji and Bandhu Ji, Ram Niwas Gupta and Vineet Gupta resident of 39/1532A, Shiv Ashram, S.P. Mukherjee Marg and several other ashram residents had also seen them in the light of a generator.

(3) On the basis of the aforesaid written report (Ext. Ka.1), F.I.R., bearing Case Crime No. 67 of 2015, under Section 302 I.P.C., was registered at police station Kothi, district Barabanki on 16.05.2015 at 01:00 p.m. against accused Hareram Chaudhary,

Pratap Chandra, Anand Bhatt, Ram Niwas Gupta, Durgesh Pandey, Prem Das and Vineet.

(4) The investigation of the case was conducted by S.I. Shri Rai Sahab Yadav. He reached the spot, prepared the inquest report of the dead body of the deceased Thakur Ram Sahai Singh, challan lash, photo lash, letter to Reserve Inspector, letter to C.M.O., site plan and also recorded the statement of the complainant under Section 161 Cr.P.C. On 25.05.2015, he arrested the accused Hareram Chaudhary and on his pointing out recovered revolver (तमंचा) and also prepared the site plan of the place from where the revolver was recovered. On 17.05.2015, he received the post-mortem report of the deceased Thakur Ram Sahai Singh.

(5) The post-mortem of the dead body of deceased Thakur Ram Sahai Singh was performed at District Hospital, Barabanki by Dr. Shailendra Kumar Singh on 16.05.2015 at 07:30 P.M. He found the following ante-mortem injuries on the dead body of deceased Thakur Ram Sahai Singh :-

1. Fire arm entry wound size 1 cm x 1 cm with an area of blackening & burning size 3 cm x 2 cm present on head, 11 cm above from right ear.

2. Fire arm exit wound size 2 cm x 2 cm present on the hard palate of oral cavity with laceration of tongue and fracture of premolar & molar of upper & lower jaw of mouth with laceration of gums of adjacent area of Left side.

On Opening :-

- ➔ Ecchymosis present underneath above mentioned Injuries.

- ➔ There is fracture of posterior part of right parital bone, base of skull Lt. side & anteriority. There is laceration of meninges & brain matter with collection of coagulated blood & fluid in cranial cavity & brain matter.

On external examination, Dr. Shailendra Kumar Singh found that post mortem staining was present on his back and

rigor mortis was present on all over body. On internal examination, he found that both lungs, kidneys and spleen were congested; digested food and gases were present in small intestine; faecal matter and gases were present in large intestine; liver was congested.

Dr. Shailendra Kumar Singh had opined date of death of deceased about half to one day and as per his opinion, cause of death was due to coma as a result of ante-mortem firearm injury. Time since death was about half to one day.

(6) During investigation, the Investigating Officer S.I. Rai Sahab Yadav found the involvement of one Pawan Rai alias Pawan Yadav also in the incident, but he absconded, due to which proceedings under Section 82 Cr.P.C. was undertaken. However, the involvement of named accused in the F.I.R., Pratap Chandra, Anand Bhatt, Ram Niwas Gupta, Durgesh Pandey, Premdas and Vineet was not found in the incident, therefore, their names were dropped. On 06.07.2015, the Investigating Officer S.I. Rai Sahab Yadav was transferred.

(7) The further investigation of the case was entrusted to S.I. Shri B.P. Yadav. He, after going through the investigation done by earlier Investigating Officer and after collecting the further incriminating evidence, filed charge-sheet against the accused Hareram Chaudhary under Section 302 I.P.C. and Section 3/25 of the Arms Act on 19.08.2015.

(8) The learned Chief Judicial Magistrate took cognizance on the aforesaid charge-sheet and committed the case to the Court of Sessions on 21.08.2015, where the case was registered as Sessions Trial No. 0000301 of 2015; *State of Vs. Hareram Chaudhary.* The learned trial Court framed charges under Section 302 I.P.C and Section 3/25 of the Arms Act against the

accused Hareram Chaudhary on 21.11.2015. The accused Hareram Chaudhary denied the charges and claimed to be tried.

(9) In order to prove its case, the prosecution examined eight witnesses, who are as under :-

P.W.1-Suryakant Mani	Complainant
P.W.2-Bandhu Ji	Eye witness
P.W.3-Constable Pankaj Kumar Dwivedi	Prepared computerized check F.I.R.
P.W.4-Dr. Shailendra Kumar Singh	Conducted post-mortem of the deceased and prepared the report
P.W.5-S.I. Rai Sahab Yadav	1st Investigating Officer
P.W.6-S.I. B.P. Yadav	2nd Investigating Officer
P.W.7-Constable Dilbahar Yadav	Official witness of arrest of the accused and recovery of weapon of assault
P.W.8-H.C. Rampati Sonkar	Official witness and proved Ext. Ka. 13 and Ext. Ka. 14

(10) Apart from the aforesaid, the prosecution had also produced the documentary evidence and proved it, which are as under :-

Ext. Ka. 1	Written Report
Ext. Ka. 2	Check F.I.R.
Ext. Ka. 3	Post-mortem report
Ext. Ka.4	Site plan of the place of incident
Ext.Ka.5	Site plan of the place of recovery of weapon of assault
Ext.Ka.6	Recovery memo (Torch)
Ext. Ka. 7	Recovery memo (country made pistol)
Ext. Ka. 8	Challan lash
Ext. Ka. 9	Photo lash
Ext. Ka. 10	Letter to R.I.
Ext. Ka. 11	Letter to C.M.O.
Ext. Ka. 12	Charge-sheet
Ext. Ka. 13	G.D. Entry
Ext. Ka. 14	Panchayatnama
Ext. Ka. 15	Forensic Science Laboratory Report

(11) The prosecution had also produced the material exhibits, which are as under :-

Material Ext. 1	Mobile
Material Ext. 2	Mosquito net
Material Ext. 3	Torch
Material Ext. 4	Recovered country made pistol
Material Ext. 5 Material Ext. 6	Two empty cartridges
Material Ext. 7	Empty article
Material Ext. 8 Material Ext. 9	Test Fire Cartridge
Paper Nos. B25/2 to B25/4	The charge-sheet submitted before the Court of the Chief Judicial Magistrate, Motihari includes true copies of documents numbered 43/07
	Orders dated 26.06.2015, 21.08.2015 and 27.11.2017 passed in Case No. 1098/14 by the learned Magistrate
List B-30	N.C.R. No. 158/11 dated 21.10.2011 under Sections 504, 506 I.P.C. and carbon copy of Police Station GD Police Station Kothi, Barabanki from List B-31

(12) After evidence of prosecution, the statement of the accused Hareram Chaudhary was recorded under Section 313 Cr.P.C., in which he stated that the incident is false; the case has falsely been lodged; he did not commit any murder and on that day, he had not gone to the Ashram. He stated that the case has been lodged with delay; FIR has been manipulated; and the post-mortem report has been wrongly prepared on the basis of police papers. No recovery has been made from him. A false recovery memo has been prepared and the charge-sheet has been filed without proper investigation on incorrect facts. He also stated that the place and time of arrest have wrongly been shown; he was arrested from the house of Ram Pravesh in village Paigambarpur, Tola Bihar. He is innocent, on account of which, false evidence has been given against him. The report is

unclear. Due to opposition to illegal activities taking place in the Ashram, he has been falsely implicated. He also stated that several criminal cases were pending against the deceased Dr. Ram Sahai Singh and he was a witness in the murder case of Saint Gyaneshwar Maharaj. Ram Sahai Singh turned hostile in that case. Due to this, the followers of Saint Gyaneshwar Maharaj and related parties bore enmity against the deceased. Many people were hostile towards him and throughout the country, those connected with the Ashram including its servants (*sevadar)* and office bearers, were involved in litigation. All of them have been falsely implicated. He also stated that on the night when the murder took place in the Ashram, no one in the Ashram had any information. The complainant and witness Anil Giri were in Lucknow on the night of the incident. The complainant came to know the next day and after taking legal advice, he lodge a false case. No person from the Ashram witnessed the incident nor gave any testimony.

(13) On behalf of defence, three witnesses had adduced oral evidence, who are as under :-

D.W.1	Ashutosh Kumar Rai
D.W.2	Rampravesh Prasad
D.W.3	Ram Vilas Mahto

(14) In addition to the aforesaid, the defence has also produced documentary evidence, which are as under:-

List B-43/1 Paper No. B-43/2 to Paper No.B-43/3	True copy of F.I.R., bearing Case Crime No. 181 of 2008, under Sections 147, 148, 149, 286, 34 I.P.C. and Section 7 of Criminal Law Amendment Act and Section 3/5 of Explosives Act presented in District Court Sultanpur.
Paper No.B-43/4 to Paper No.B-43/5	True copy of charge-sheet in Case Crime No. 181 of 2008

Paper No. B-43/6 to Paper No.B-43/7	True copy of chik F.I.R., bearing Case Crime No. 2571 of 2006, under Section 307 I.P.C. Section 5 Explosive Act and 7 Criminal law Amendment Act, District Court, Haridwar.
Paper No.B-43/8 to Paper No. B-43/9	True copy of charge-sheet in Case Crime No. 2571 of 2006
Paper No. B-43/10 to Paper No.B-43/11	True copy of the summoning order dated 03.03.2012 passed in Complaint Case no. 882 of 2011, 2155 of 2014; Murari Vs. Ram Sahai, under Section 504, 506 I.P.C., police station Kotwali Haridwar by Civil Judge (Senior Division)-II, Haridwar.
Paper No. B-43/12 to Paper No. B-43/16	True copy of the complaint case No. 882 of 2011, 2155 of 2014.

(15) After hearing the learned Counsel for the parties and considering the evidence and material on record, learned trial Court convicted and sentenced the accused Hareram Chaudhary by means of the impugned judgment and order dated 29.03.2018 in the manner as disclosed in paragraph-1 here-in-above.

(16) Feeling aggrieved, the instant appeal has been filed by the appellant.

Arguments

(17) Heard Shri Vivek Shukla, learned Amicus Curiae for the appellant, Shri Aatreya Tripathi, learned A.G.A. for the State and Shri Yogeshwar Sharan Srivastava, learned counsel for the complainant.

Submission on behalf of the appellant:

(18) Learned *Amicus Curiae* appearing for the appellant submitted that the impugned judgment and order passed by the learned Trial Court is bad in the eyes of law and suffers from manifest illegality and is liable to be set aside. He further submitted that the Trial Court wrongly and illegally discarded the defence version as well as the evidence adduced by the defence and recorded conviction contrary to the evidence available on record. He further submitted that there was an inordinate delay in lodging the FIR, which has not been satisfactorily explained by the prosecution, even then the Trial Court erroneously accepted such explanation because many vehicles and persons were present in the Ashram, even then the deceased was neither taken to hospital nor any information was given at police station. He further submitted that although seven persons including the present appellant were named in the FIR, but the Investigating Officer submitted charge-sheet only against the appellant and exonerated the remaining accused persons on the basis of the same set of statements and material collected during investigation, which itself creates doubt on the prosecution story.

(19) Learned *Amicus Curiae* further submitted that as per prosecution story, the appellant was armed with a firearm and made fire at the deceased by the same and though a weapon was recovered but no ballistic examination report was obtained. He further submitted that the recovery was false and the appellant has been falsely implicated in the same. He further submitted that the golden principle of presumption of innocence of the guilty has not been followed because the impugned judgment shows that learned trial Court had made a view of guilt of the appellant since the beginning and convicted the appellant

without any cogent evidence regarding complicity of the appellant.

(20) Learned *Amicus Curiae* further submitted that learned trial Court failed to consider that there was no motive to commit such heinous offence and the prosecution also miserably failed to prove its case beyond all reasonable doubt against the appellant as required under law. Even then, the Trial Court accepted the prosecution evidence on the presumption of previous bad character of the accused as adduced by the prosecution, whereas there was no material evidence available on record corroborating the same. Thus, submission is that the impugned judgment and order suffers from vice of not only misreading of the evidence and material on record but also non-reading of relevant and necessary evidence, which has all along been available negating the alleged culpability of the appellant. The Trial Court also failed to consider that the prosecution had not examined an important witness, who disclosed that the complainant was at Lucknow at the time of the incident. He also submitted that learned trial Court has also failed to consider the legal position and the relevant laws and passed the impugned judgment and order against the weight of evidence. In any case, the sentence is too severe. Hence, the findings recorded by the Trial Court are grossly perverse.

(21) On the basis of above, learned Amicus Curiae submitted that the impugned judgment and order passed by learned trial Court is not sustainable in the eyes of law and is liable to be set-aside.

Submission on behalf of the State :

(22) Learned A.G.A. vehemently opposed the submissions advanced by learned Amicus Curaie appearing on behalf of the appellant. He submitted that the learned Trial Court rightly and in accordance with law appreciated the evidence on record and passed a well-reasoned and speaking judgment and order

convicting and sentencing the appellant. He submitted that Thakur Ram Sahai Singh was the head of the Institution and all the decisions were being taken by him, therefore, on account of his death, there was a confusion among the other disciples and residents of the Ashram. However, in the morning when all assembled in the Ashram, they were unable to decide amongst themselves as to what course ought to have been adopted in such circumstances. Thereafter, on the advise of the 'panchas', it was resolved that all of them are eye witnesses and an offence has been committed in the Ashram in their presence and failure to report the same itself would be improper, therefore, the F.I.R. should be lodged. Everyone present there agreed that the F.I.R. ought to be lodged and then at about 11:00 AM, they went to have the report registered. Thus, there was no delay in lodging the F.I.R. and the delay, if any, has satisfactorily been explained. He further submitted that motive has been proved by the P.W.1 in cross-examination and no evidence to the contrary was adduced by the defence. The delay in lodging the F.I.R. has also been properly explained as there was confusion among the disciples looking to the death in the Ashram and head of Ashram and the threats extended by the accused persons. He further submitted that P.W.-1 and P.W.-2 are eye-witnesses to the occurrence and their presence at the place of incident could not be doubted. Their testimonies fully corroborates the prosecution case. He also submitted that once the prosecution case stands proved by reliable ocular evidence, motive loses significance. He further submitted that minor discrepancies or inconsistencies in the testimonies of prosecution witnesses are natural on account of lapse of time and perception and observation, which differs person to person, therefore, the Trial Court rightly ignored such contradictions and inconsistencies. He further submitted that the recovery of the firearm was made in accordance with law, pursuant to the disclosure statement made by the appellant, which does not suffer from any

illegality. Thus, submission is that the impugned judgment and order has rightly been passed in accordance with law and there is no illegality or error in it, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds, which lacks merit and liable to be dismissed.

Analysis

(23) We have cogitated on the submissions advanced by learned counsel for the parties and perused the records.

(24) The case of the prosecution is that the occurrence took place in the intervening night of 15/16.05.2015 at about 02:00 AM at Purushottam Dham Ashram under the Police Station Kothi, District Barabanki. Thakur Ram Sahai Singh was the Head Secretary of the Institution Thakur Sadanand Tatvagyan Parishad. He was sleeping on the threshing ground (khaliyan). At about 02:00 A.M., accused/appellant-Hareram Chaudhary fired a shot at his head and Pratap Chandra resident of Raisanda was exhorting from the back and Anand Bhatt, Durgesh Pandey and Prem Chand were also exhorting (मारो बचने न पाये) and we, Arvind Ji, Anil Ji and Bandhu Ji, saw Ram Nivas Gupta and Vineet Gupta, Shiv Ashram fleeing away in the night in the light of generator. Many other residents of Ashram have also seen.

(25) The first information report was lodged on 16.05.2015 at 13:00 hours at Police Station Kothi District Barabanki with the aforesaid allegations, on the basis of a written report submitted by the complainant, Suryakant Mani (P.W.-1) in regard to the incident taken place at 02:00 AM. Learned Amicus Curiae laid much emphasis that there was an inordinate delay in lodging the F.I.R. and there is no plausible explanation for the same and the conduct of the complainant and the residents of the Ashram is also against the natural conduct, which creates doubt on the prosecution case and suggests the possibility of consultation,

deliberation and embellishment, which has vehemently been opposed.

(26) To consider the aforesaid submissions of learned Counsel for the parties, we have examined the evidence adduced before the learned Trial Court. The complainant appeared as P.W.-1. He had got registered the First Information Report on the basis of the written complaint i.e. Ex. Ka-1. The P.W.-1 in regard to the delay in lodging of F.I.R. has deposed that he himself, Bandhu Ji (P.W.-2) and Anil Ji had gone to lodge the F.I.R. He had given the F.I.R. after writing under his hand and, thereafter, the police had come and the inquest of the deceased was conducted before him. In the cross-examination, he stated that upon the sudden and tragic death of Thakur Ram Sahai Singh, the information was spread in the village Risanda and the adjoining area during night but no one came at that time. By the morning people had assembled. During night none of them went to the police station to inform the authorities because the Head of the Institution, who used to take all the decision was murdered and the assailants had also threatened of dire consequences, therefore, they were in shock and fear. In the morning, when all the people gathered in the Ashram, they were still in confusion and did not proceed. However, on the advise of the *panchas,* it was resolved that all of them are eye witnesses and an offence has been committed in the Ashram and failure to report the same, would itself be improper, therefore, the F.I.R. should be lodged. Everyone present there including Bandhu Ji, Anil Ji, Arvind Ji, Ram Dhyan Ji and Anand Ji and several others agreed that the F.I.R. ought to be lodged, whereupon at about 11:00 AM they went to register the report. He denied the suggestion that he was in Lucknow on the date and time of the incident on account of which the first information report was lodged belatedly. P.W.-2 Bandhu Ji deposed in coherence to P.W.-1 and, in his cross-examination, stated that Thakur Ram Sahai Ji, the deceased was the Head of the Ashram. There were several kind of vehicles in

the Ashram but Thakur Ram Sahai Singh Ji had died on the spot after being shot, therefore, he was not taken anywhere. On the question as to why the information to the police was not given promptly, P.W.-2 deposed that when the head of the family had been killed and threats had been extended that if anyone came out, he too would be killed, nobody could venture out in such a situation. He further deposed that at that time no one could understand as to what ought to be done. When all the people gathered together in the morning after prayer, it was only then it could be decided that the report of the offence be lodged and, accordingly, he alongwith P.W.-1 went the police station and the F.I.R. was lodged by P.W.-1.

(27) A cumulative reading of the evidence of P.W.-1 and P.W.-2 indicates that on account of the sudden occurrence, in which the head of the institution was killed, there was an atmosphere of fear, panic and confusion in the ashram. The threats of dire consequences, if anybody comes out, was also extended. In such a situation nobody rushed to the police station for lodging the F.I.R. However in the morning, when all assembled, then on the advise of the '*panchas*', the decision could be taken to lodge the F.I.R. as the heinous crime was committed before the eyes of the inmates of the ashram and, accordingly, the first information report was lodged. There is nothing unnatural in it. The learned Trial Court, after considering the evidence and material on record, has recorded a finding that it is proved from the evidence of P.W.-1 and P.W.-2 that the deceased Ram Sahai Singh had died and after his death nobody was capable of taking decision, therefore, on the advise of the *panchas* the decision was taken to lodge the F.I.R. Accordingly, the complainant proceeded to the police station at 11:00 AM and filed a written report, on the basis of which, the F.I.R. was lodged at 01:00 P.M. Thus, the delay has sufficiently been explained.

(28) The delay in lodging the F.I.R. cannot be a sole ground to discard the prosecution case outrightly because the F.I.R. is lodged only to set the criminal prosecution in motion. Though it is not disputed that delay in lodging the F.I.R creates a doubt about the consultation, concoction and embellishment in the prosecution version, therefore, the same is liable to be explained. In case the delay in lodging the F.I.R. is explained sufficiently and evidence on record is not much against the version of F.I.R., the prosecution case cannot be thrown out on this ground alone.

(29) The Hon'ble Supreme Court, in the case of **Tara Singh and Others Vs. State of Punjab;** *AIR 1991 SC 63*, held that the delay in giving the F.I.R. by itself cannot be a ground to doubt and reject the prosecution case outrightly. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report and after all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. The relevant portion of paragraph 4 is extracted below:-

> *"**4**. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later*

substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case....."

(30) The Hon'ble Supreme Court, in the case of **State of Himachal Pradesh Vs. Gian Chand;** *(2001) SCC(CRI) 980*, has held that delay in lodging the F.I.R. cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report, whereas the delay has the effect of putting the Court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not and if the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay can not by itself be a ground for disbelieving and discarding the entire prosecution case. A cool thought may precede lodging of the F.I.R.

(31) The Hon'ble Supreme Court, in the case of **Baldev Singh Vs. State of Punjab;** *(2014) 12 SCC 473*, held that there cannot be any doubt that delay in lodging of the F.I.R. often results in embellishment as well as the introduction of a distorted version of what may have actually happened, but the facts of each case have to be examined to find out whether the delay in lodging the F.I.R. is fatal for the prosecution case.

(32) The Hon'ble Supreme Court, in the case of **Palani v. State of Tamil Nadu;** *(2020) 16 SCC 401*, held that delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused and in such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of F.I.R. The relevant portion of paragraph 19 is extracted herein below:-

> *"**19**. Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of FIR. But there may be cases where the delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the witness has no motive for falsely implicating the accused....."*

(33) Adverting to the facts of the present case, we are of the view that delay in lodging F.I.R. has satisfactorily been explained and the learned Trial Court has also rejected the contention in this regard. Thus, the contention of learned Amicus Curiae in this regard is liable to be repelled only and repelled accordingly.

(34) The motive plays an important role in committing the crime. However, motive looses its significance in the case of ocular evidence. Learned Amicus Curiae for the appellant submitted that there was no motive to commit such heinous crime and the prosecution has also miserably failed to prove the motive but the learned Trial Court has failed to consider it. The contention has been opposed by the other side. The motive remains locked in the mind of an accused, therefore, it is very difficult in each and every case to prove it by any cogent evidence. It can be deduced by the evidence, material on record and the conduct of the parties. Before commenting on the facts of the present case, it would be apt to discuss the law on the point.

(35) The Hon'ble Supreme Court, in the case of **Subhash Aggarwal Vs. The State of NCT of Delhi;** *(2025) 8 SCC 440*, has held that motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. It has also been held that a strong motive does not by itself result in a conviction and the absence of motive on that sole ground cannot result in an acquittal, when the eyewitnesses are convincing. The relevant paragraphs 28, 29 and 33 are extracted herein below:-

> *"**28**. However, it was also noticed in Kishanpal [State of U.P. v. Kishanpal, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] that even if there may be a very strong motive for the accused to commit a particular crime, it does not lead to a conviction by itself, if the eyewitnesses are not convincing or the chain of circumstances is not complete.*
>
> ***29**. The declaration in the cited decisions and the decisions relied on therein, is to the effect that if the case is built solely upon circumstantial evidence, absence of motive will be a factor that weighs in favour of the accused. Just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. When the eyewitnesses are not convincing, a strong motive cannot by itself result in conviction, likewise when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence.*
>
> ***33.** Motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted.*

(36) Adverting to the facts of the case, when we examined the records, we found that P.W.-1 has deposed that the appellant Hareram Chaudhary came in the Ashram in the year 2006 and after marrying his wife in the year 2008, when he came with his wife, he stayed in the Ashram for two years but he was not living there according to the conduct/rules of the Ashram. In the year 2010, Hareram Chaudhary started living outside the Ashram after constructing a hut. P.W.-2 Bandhu Ji, has also deposed that the deceased Ram Sahai Singh was the Head Secretary of the Institution. The accused wanted that if Secretary would be removed from the way, he could take possession of the Ashram and its property and commercialize it and for this reason, Ram Sahai Ji was murdered.

(37) In view of above, it appears that due to Hareram Chaudhary, having married and living in the Ashram with his wife, he was

not considered in conformity with the discipline of the Ashram, therefore, he started residing outside the Ashram in a hut. Thus, it can be inferred that on account of conflict in this regard with the Head of Institution, he would have to live outside Ashram. Evidence of P.W.-2 also shows that the appellant was ambitious to possess the management of Ashram.

(38) The dispute or conflict with the Head of Institution and the appellant lends support by his statement under Section 313 Cr.P.C., in which he has stated that the case has been lodged on account of enmity as he was opposing the illegal activities going on in the Ashram. However, he has not disclosed as to what kind of illegal activities were going on in the Ashram. He has further stated in response to question No.12 that the deceased was a witness in the case of murder of the Sant Gyaneshwar, who established the Ashram, but he had not given the evidence, therefore, many disciple of Sant Gyaneshwar were angry with him and the complainant had also enmity with the deceased. It has also been stated that the deceased had enmity with many persons as he was the office bearer of all the Ashram in the country and many persons were falsely named in the cases, which were going on against him. It has further been alleged that neither anybody has seen the incident nor anybody came to know about the death of the deceased in the night of his murder in the Ashram. The complainant and the witness Anil Giri were in Lucknow in the night of incident and on the next day, on being informed, came and lodged a false case in consultation with embellishment.

(39) In view of above, upon considering the evidence of P.W.-1 and P.W.-2 and statement of the appellant/accused under Section 313 Cr.P.C., it is apparent that the appellant had remained attached with the Purushottam Dham Ashram. However, on account of his conduct against the principles of the Ashram, he had to leave the Ashram and was residing out of the Ashram in

a hut. He has also admitted the enmity on account of wrong activities in the Ashram. However, he fails to disclose any such activity. It is also apparent on record that a case under Section 396 I.P.C. was pending against the appellant in the Court at Motihari, Bihar, in which the charge sheet was filed and the appellant was absconding. By means of the order dated 26.06.2015 passed in the said case, it has been reported to the Court that the appellant is lodged in the Barabanki Prison. The prosecution has thus proved that the appellant had suspicion that the deceased Ram Sahai Singh had got executed the warrant against him from the Court at Bihar. The enmity has been admitted by the appellant/accused in his statement. Thus, the motive to commit the crime cannot be disputed. The learned Trial Court, considering the aforesaid evidence and the law on the point, had recorded a finding that there is sufficient evidence on record to prove the motive and there is no reason to disbelieve the same. Even otherwise, even if the motive is not proved or there is any doubt about the motive and the occurrence is proved by ocular evidence, the prosecution case cannot be thrown out on this ground. The contention in this regard of learned counsel for the appellant is not tenable and is hereby rejected.

(40) The next argument advanced by learned counsel for the appellant was that seven persons were named in the F.I.R. but, except the appellant, names of all the persons have been dropped during investigation, therefore, the prosecution story itself is doubtful. The contention of learned counsel for the appellant is misplaced and not tenable for the reason that if no prima facie evidence was found against him and the Investigating Agency has dropped his name, it can not be said that the charge sheet was wrongly and illegally been filed against the appellant only. The dropping of the names of the other persons has not been challenged and if it would have been

challenged, it could have been examined in the appropriate proceedings. However, it cannot give any benefit to the appellant as his case was to be considered on the basis of the evidence and material on record and if the prosecution is able to prove the charge against the appellant beyond reasonable doubt, there was no question of acquittal on this ground. Thus, the contention in this regard is not tenable.

(41) Now we proceed to consider the next argument and the issue as to whether there are material contradictions in the evidence of prosecution witnesses, which may have any effect on prosecution case.

(42) We have carefully examined the testimonies of P.W.-1 and P.W.-2. In the F.I.R., they were mentioned as eye-witnesses of the incident and had seen alongwith others, the accused/appellant firing on the deceased in the light of generator and identified them. There is no dispute regarding source of light as 3 - 4 bulbs were alight by the generator. The complainant, Suryakant Mani, (P.W.-1), in examination-in-chief, while reiterating the recitals contained in the written report, stated that the incident took place in the intervening night of 15/16th May, 2015 at about 02:00 AM. At that time, he was present in the threshing ground (khalihan) of the Ashram and was engaged in the cleaning work of the Ashram. Thakur Ram Sahai Singh, the Head Secretary of the Ashram, was sleeping in the threshing ground at a distance of about 5–6 steps from him. Arvind Ji, Bandhu Ji, Anil Ji and several other devotees were also present there. At about 2:00 in the night, accused persons, Hareram Chaudhary, Pratap Ji, Durgesh Pandey, Premdas, Anand Bhatt (of Nepal), Vinay Gupta alias Vineet Gupta and Ram Niwas Gupta came from the southern side. As soon as they arrived, Hareram Chaudhary fired a shot at the head of Thakur Ram Sahai Singh. All of them were exhorting and shouting 'मारो बचने न पाये' (hit, may not be spared). A generator was running there

for service work and in its light, he identified all these persons. Two days later of the incident, a programme of Bhagwat Avataran Mahotsav was scheduled, for which they were making preparation. He did not give any information anywhere. In the morning, he along with Bandhu Ji and Anil Ji went to the police station, where he scribed and submitted the application after affixing his signature thereon. He proved the written report (Ext. Ka.-1). Thereafter, the police came at the place of occurrence and saw the dead body. The inquest proceedings were conducted in his presence. He made his signature on the inquest report. He also proved his signature on the inquest report. He also deposed that his statement was recorded.

(43) P.W.-1 was extensively cross-examined by the defence regarding incident, place of incident, reason for presence there, source of light, conduct of accused/appellant, manner of assault and the distance from where he had seen the incident and also suggested that he was not present in the Ashram at the time of the incident, but was at Param Tatva Dham Ashram, Sarvodaya Nagar, Lucknow, and had come in the morning after receiving information of the occurrence. However, his testimony is consistent with the examination-in-chief and nothing could be extracted, which may create any doubt about his testimony including presence etc. Thus, what emerges from the evidence of P.W.-1 is that though he was a person associated with the Ashram and was also connected with the Ashram situated at Sarvodaya Nagar Lucknow, he was present at Lucknow at the time of incident. It emerges from the evidence of P.W.-1 that the incident occurred in the intervening night of 15/16 May, 2015 at about 02:00 AM in the threshing ground (khalihan) of the Ashram, where the complainant and several other persons were present and engaged in routine cleaning and preparatory work on account of preparation of Bhagwat Avataran Mahotsav after two days. The deceased, who was the Head Secretary of the

Ashram, was sleeping at a short distance of about 5–6 steps from the complainant (P.W.-1) and other persons, namely Bandhu Ji, Arvind Ji, Anil Ji and several devotees were also present at the spot at that time. It further emerges that the accused persons, namely Hareram Chaudhary, Pratap Ji, Durgesh Pandey, Premdas, Anand Bhatt (of Nepal), Vinay Gupta alias Vineet Gupta, and Ram Niwas Gupta, suddenly arrived from the southern side, crossed a drain, and immediately began exhorting to kill the deceased and not to spare him, upon which, the appellant, Hareram Chaudhary fired a shot at the head of Thakur Ram Sahai Singh, resulting in his instantaneous death on the spot. It also emerges that a generator was running at the place of occurrence, providing sufficient light, in which the witness clearly identified the accused. The witnesses remained at the spot in a state of fear and confusion owing to the sudden killing and the threats extended by the accused persons. In the morning, after deliberation among the persons present, including the complainant (P.W.-1) and other witnesses, a collective decision was taken to report the matter to the police and thereafter, P.W.-1 went to the police station along with others at 11:00 AM, prepared the written report and got the F.I.R. registered. P.W.-1 has also explained the surrounding circumstances of the Ashram, its layout, the presence of various structures, lighting arrangements, and the ongoing preparations, to support his presence and identification of the accused persons at the time of occurrence and nothing could be extracted in this regard, which may create any doubt about it.

(44) However, in the site plan (Ext. Ka.-4) prepared by the Investigating Officer, the place of presence of the witnesses and their distance from the deceased has not been specifically shown. On this count alone, the testimony of P.W.-1 cannot be brushed aside because lapses or omissions on the part of the

Investigating Officer cannot, by themselves, demolish the prosecution case and should not be taken in favour of the accused. Our this view is fortified by the decision of Hon'ble Supreme Court, in the case of **Jai Prakash Versus State of Uttar Pradesh and others**; (2020) 17 SCC 632, wherein it has been held that any omission on the part of the investigating officer cannot go against the prosecution case. If the investigating officer has deliberately omitted to do what he ought to have done in the interest of justice, it means that such acts or omissions of investigating officer should not be taken in favour of the accused.

(45) The testimony of P.W.-1 is corroborated by the testimony of P.W.-2, who was also examined by the prosecution and named in the First Information Report as an eyewitness. From the statement of P.W.-2, it is evident that this witness along with P.W.-1 and other persons was filling husk in the threshing ground, where the deceased Ram Sahai Singh was sleeping. A generator was running at the place of occurrence for cleaning work and for providing light. This witness has also deposed regarding the presence of P.W.-1 and other witnesses at the spot. In the light of the generator, this witness saw accused Hareram Chaudhary firing at Ram Sahai Singh. The gunshot injury was caused on the head of the deceased and he died at the spot itself. The defence extensively cross-examined P.W.-2 and attempted to show that P.W.-1 was not present at the place at the time of the incident and that the statement of P.W.-2 was contradictory to that of P.W.-1. However, nothing could be extracted, which may create any doubt about his testimony and presence on spot at the time of incident. Thus, his testimony clearly not only proves the presence of P.W.-1 on the spot at the time of occurrence but also affirms the presence of the others as well. The description of the place of occurrence given by P.W.-1, on the basis whereof the Investigating Officer prepared the site

plan (Ext. Ka.-4), also finds corroboration from the statement of P.W.-2.

(46) P.W.-2 also deposed that in the Ashram, the morning aarti takes place between 6:00 AM and 7:00 AM. When the aarti had concluded, all the persons in the Ashram came to know about the death of Ram Sahai Singh and then, all the persons of Ashram went to the place of occurrence. The learned Trial Court has appreciated this evidence of P.W.-2 and recorded finding that from this statement of P.W.-2, it does not emerge that P.W.-2 came to know of the incident only between 6:00 AM and 7:00 AM, rather this statement of P.W.-2 merely indicates that after the aarti, all the persons residing in the Ashram became aware of the incident. The expression "all persons" clearly refers to those other persons in the Ashram apart from the eyewitnesses to the occurrence. P.W.-2 had already stated that at the time of the incident, about 60 to 100 persons had come to the Ashram in connection with the festival programme. Thus, there is no contradiction between the testimony of P.W.-1 and P.W.-2 and contradiction, if any, is natural, which proves that there is no concoction and embellishment in his testimony.

(47) In view of the foregoing discussion, we are in full agreement with the findings recorded by the learned Trial Court that P.W.-1 and P.W.-2 were natural witnesses, whose presence at the place of occurrence stands fully established from the evidence on record. Their testimonies are consistent, cogent, and mutually corroborative on all material particulars, including the time and place of occurrence, the manner of assault, the source of light at the spot, and the identity of the accused. Nothing substantial has been brought out in their cross-examination, so as to render their presence doubtful or to discredit their otherwise trustworthy version. The post-mortem report and the injuries in particular are also in corroboration to the prosecution case and witnesses, which shows the entry wound of fire arm

on head 11 cm above right ear and exit wound on left side of mouth. We, therefore, find no reason to differ from the well-considered conclusion arrived at by the learned Trial Court in placing reliance upon their evidence.

(48) The Hon'ble Supreme Court, in the case of B**aban Shankar Daphal and Others Vs. The State of Maharashtra;** *2025 SCC Online 137*, has held that minor contradictions or inconsistencies in testimony do not necessarily render it unreliable, as long as the core facts remain intact. The Court has to discern truth by considering evidence in it's totality and not by isolating individual inconsistencies to discredit entire evidence. The relevant paragraphs 35 and 36 are extracted herein below:-

> *"**35**. The Trial Court gave undue weight to minor discrepancies in the eyewitness accounts, such as variations in their descriptions of the sequence of events or the exact number of blows inflicted. It is a well-established principle of law that minor contradictions or inconsistencies in testimony do not necessarily render it unreliable, as long as the core facts remain intact. The role of the court is to discern the truth by considering the evidence in its totality and not by isolating individual inconsistencies to discredit an entire narrative. The Trial Court erred by focusing excessively on trivial discrepancies, thereby losing sight of the broader picture and the compelling evidence against the accused.*
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> ***36**. The High Court appropriately invoked the principle that when direct evidence, such as eyewitness testimony, is credible and reliable, it must be given due weight unless there are compelling reasons to disbelieve it. In this case, the eyewitnesses were independent and had no motive to falsely implicate the accused. Their testimony was consistent with the overall circumstances of the case and was corroborated by the medical evidence.*

(49) The Hon'ble Supreme Court, in the case of **Birbal Nath Vs. State of Rajasthan and Others;** *(2024) 15 SCC 190,* has held that lengthy cross-examination of a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness. Similar view was in R**ammi Vs. State of M.P.;** *(1999) 8 SCC 649.*

(50) Learned Amicus Curiae for the appellant has also challenged the arrest of the accused/appellant and the recovery of cartridges as well as the recovery of country made pistol, which has been shown on his pointing out on the ground that the appellant has been shown to have been arrested from near the Ashram and the recovery has been made thereafter but in fact he was apprehended from Bihar while he was attending a ceremony and, thereafter, a false recovery of cartridge and country made pistol has been shown. The case of the prosecution is that the accused/appellant married in 2008 and started living in the Ashram alongwith his wife but in 2010, he left the Ashram and started living outside the Ashram in a hut. After the incident, he fled away to Bihar and returned to take away his wife and children when on information from reliable source, he was arrested in the night of 25.05.2015 and on the basis of his disclosure statement and pointing out, a country made pistol of .315 bore allegedly used in the crime was recovered. He was arrested by the Investigating Officer, Rai Sahab Yadav (P.W.-5), who has proved the same and the recovery memo (Ex. Ka-7) of weapon on his pointing from a distance of about 500 meters from the Ashram. The recovery memo reveals that on the said date, Investigating Officer SI Rai Sahab Yadav (P.W.5) along with SI Brijesh Singh, Constables Hira Singh Yadav, Baijnath Yadav, Anjani Tiwari, Dilbahar Yadav and driver Constable Mohd. Maqsood Ahmad departed from the police station on 24.05.2015 at about 11:00 PM through Government Jeep bearing registration No. UP41G-0139 and were present at Kaserganj crossing, where informer came and informed that the accused would come through Raisanda Ashram on the Amserua –Tikriya road to take away his wife and children. In pursuance thereof, the police team arrested the accused/appellant on the Tikriya–Amserua road and from his possession, a sum of Rs. 1,210/- was recovered. Thereafter, on the pointing out of the accused, a country-made

pistol concealed beneath dry grass and leaves under the pipe of a culvert situated near Sati Baba turn, in the field of Pipermint of Pyare Lal, was recovered. The pistol was already wrapped in a piece of cloth. A recovery memo was prepared accordingly. The arrest of the appellant and recovery of Rs.1,210/- from him and country made pistol in pursuance of disclosure statement by appellant of committing crime from same has been proved by P.W.-7; Constable Dil Bahar Yadav also, who was with Investigating Officer. A lengthy cross-examination was made from him on this issue but nothing could be extracted, which may create even a doubt on his testimony. The defence has nowhere even attempted to suggest that the wife and family of accused Hareram Chaudhary was not residing outside the Raisanda Ashram. In such circumstances, the prosecution version that the accused, after the incident, had come there on 25.05.2015 to take away his family and was arrested and aforesaid recoveries were made cannot be said to be improbable.

(51) The confession in police custody can not be proved under Section 26 of the Indian Evidence Act, 1872, but when any recovery is made in furtherance of a disclosure statement made by accused, it becomes the relevant fact and upon proved before Court of law, it can not be discarded. The Hon'ble Supreme Court, in the case of **Anter Singh Vs. State of Rajasthan;** *(2004) 10 SCC 657,* has dealt with the various requirements of Section 27 of The Indian Evidence Act, 1872 and placing reliance on the extra judicial confession. The relevant paragraphs 14 to 16 are extracted hereinbelow:-

> *"**14**.The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Section 25 and 26. It is not necessary in this case to consider if this Section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this Section into operation is the discovery of a fact, albeit a relevant*

fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly" relates "to the fact thereby discovered" and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. (See Mohammed Inayuttillah v. The State of Maharashtra (AIR 1976 SC 483).

***15**. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Palukuri Kotayya's case (supra) and in Udai Bhan v. State of Uttar Pradesh (AIR 1962 SC 1116).*

***16**.The various requirements of the Section can be summed up as follows:*

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.

(4) The persons giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible"

(52) One of the arguments of learned Amicus Curiae for the appellant was that an important witness, who had disclosed in his statement under Section 161 Cr.P.C. that the complainant was at Lucknow at the time and date of the incident and not in the Ashram has not been produced and only interested witnesses have been produced. Considering this argument learned Trial Court has recorded that the statements of prosecution witnesses were recorded on different dates by the Investigating Officer. The statement of the complainant; Suryakant Mani, who appeared as P.W.-1, was recorded on 16.05.2015 and statement of the second eye witness Bandhu Ji, who appeared as P.W.-2, was recorded on 18.05.2015. Thereafter on different dates the statements of the witnesses were recorded and the last statement was recorded on 03.06.2015, which was of Bankey Lal. Since the statement of other witnesses were recorded after a long gap of the date of incident, therefore, the possibility of their being win over cannot be denied, particularly when the prosecution witnesses, P.W.-1 and P.W.-2 have deposed in their evidence before the Court that at the time of incident everybody was shocked and under fear, therefore, they could not go to the police station in the night. The prosecution had contended that no witness was ready to give the evidence against the accused in the Court, therefore, they were got discharged. The learned Trial Court, on the basis of an order dated 09.01.2017 passed in the case by the learned Trial Court, has recorded a finding that on the application of the prosecution, the said witnesses were discharged. It has also been recorded that on the said application, no objection was made by the defence. It has also been recorded that the defence has not moved any application to produce any of the said witnesses. The statements under Section 161 Cr.P.C. of the P.W.-1 and P.W.-2 were recorded

immediately after the incident and their statements are in support of the first information report and the facts and circumstances of the incident and their evidence before Court is also consistent with the same, therefore, there is no plausible and valid reason to discard their evidence.

(53) The learned Trial Court also on the basis of the material placed on record by the defence has recorded that many cases of criminal nature were pending against the deceased Ram Sahai Singh, out of which, two were of murder. Thereafter, learned Trial Court, after considering the cases pending against the appellant in different Courts, recorded that on account of the criminal history of the appellant and he was also absconding in a case under Section 396 I.P.C., the witnesses whose statement were recorded under Section 161 Cr.P.C. were trying to save themselves from giving evidence on account of which they have not been examined by the prosecution. Thus, the statements under Section 161 Cr.P.C of the said witnesses looses their efficacy. This Court is in agreement with the aforesaid findings recorded by the learned Trial Court.

(54) The defence examined three witnesses to show that the accused was arrested from Bihar and false arrest and recovery have been shown. D.W.-1, Ashutosh Kumar Rai, deposed that he works in the shop of Pratibha Marble and Granite situated at Lucknow and for the last 10–12 years, he has been visiting Raisanda Ashram in connection with religious preaching, where he became acquainted with the accused. According to him, on 21.05.2015, the police of Police Station Kothi, Rai Sahab Yadav, brought him to Police Station Kothi and thereafter took him to Bihar by jeep, where, in village Paigampur, on 22.05.2015, they arrested Hareram Chaudhary from a function and brought him back to Police Station Kothi in the evening, after which he was released. In cross-examination, he stated that when the police had taken out him from the shop, neither

the owner of the shop informed the local police nor informed his family members. He stated that he had no knowledge, as to whether there was any ceremony relating to the death anniversary (tehravi) at the house of Ram Pravesh Prasad or not. He further stated in cross-examination that the accused was not arrested on his pointing out, rather the police personnel had reached Baba Hareram (accused/appellant) through mobile and laptop.

(55) D.W.-2 Ram Pravesh Prasad stated that accused Hareram Chaudhary had come to his village for religious preaching and had come on 22.05.2015 to attend the death anniversary ceremony of his father, for which he had invited him. At about 11:00–12:00 noon, a white vehicle arrived, in which one person was in police uniform while the others were in plain clothes. They took away Hareram Baba, who was sitting on a cot at his door. In cross-examination, he stated that he has not brought death certificate of his father. He admitted that he had neither informed any local police officer that Hareram Chaudhary had been arrested from his door nor did he ask those persons as to where they were taking the accused.

(56) D.W.-3 Ram Vilas Mahato stated that he knew the accused as a religious preacher. On 22.05.2015, he had gone to attend the death anniversary ceremony of the father of Ram Pravesh Prasad, where Hareram Chaudhary had also come. At about 11:00–12:00 noon, 5–6 persons came in a white vehicle and took Hareram away without informing anyone. In cross-examination, he stated that he did not know how Ram Pravesh had invited Hareram Chaudhary. He further stated that on 22.05.2015, a religious recital (Bhagwat) was being held at the house of Baniya during the daytime, in which he had gone. He was present in the said programme from day to night and also eat there.

(57) The aforesaid evidence of D.W.-1, D.W.-2 and D.W.-3 shows that there are material contradictions and inconsistencies in their evidence, therefore, it is not safe to rely on them, where there is consistent evidence of Investigating Officer and P.W.-7, coupled with recovery, which stands proved. Learned Trial Court, considering the evidence of D.W.-1, D.W.-2 and D.W.-3, has recorded a finding that on perusal of their statement, it emerges that they have given different and inconsistent statements. There is no documentary proof on record to show that the accused was a religious preacher. P.W.-2 Bandhu Ji stated that Hareram Chaudhary used to live outside the Ashram in ordinary attire. After the occurrence, when he was sent to jail, he started living in the dress of a saint. It has also come on record that a charge-sheet under Section 396 of the Indian Penal Code is pending against accused Hareram Chaudhary in a Court in the State of Bihar, in which he has been shown absconding. No rebuttal of this evidence has been made by the defence. Thus, learned trial Court came to conclusion that there is no reason to disbelieve the prosecution witnesses regarding the fact that after the occurrence, the accused had gone to Bihar and on 25.05.2015, he came towards the Ashram situated at Raisanda to meet his family members, where he was arrested and a firearm was recovered from his possession. In regard to the plea taken by the defence that the accused was a religious preacher, learned trial Court, on appreciating the evidence on record, recorded the finding that no question was put by the defence to any prosecution witness, rather, from the statements of the witnesses it only appears that the accused had earlier lived in the Raisanda Ashram, but later on, due to his conduct contrary to discipline, he had to leave the Ashram premises, therefore, the evidence adduced by the defence to show that the arrest and recovery of the accused were falsely shown, is not trustworthy and the same does not discredit the prosecution evidence relating to the arrest and recovery of the accused. This Court is

in agreement with the findings recorded by learned trial Court in regard to arrest of accused and recovery of weapon of assault. Even otherwise, even if the recovery fails and prosecution proves it's case beyond reasonable doubt, it can not be a ground of acquittal.

(58) Coming back to the facts of the present case, it is clearly established that deceased Thakur Ram Sahai Singh, who was the Head Secretary of the Ashram and of all Ashram connected therewith across the country, was murdered in the intervening night of 15/16 May, 2015 while he was sleeping in the open threshing-ground area within the Ashram premises. At the time of the incident, P.W.-1 and P.W.-2 were present at the spot and were engaged in the work of the Ashram. Cleaning work and storing of husk were being carried out by them, because two days later a birth anniversary programme was to be held in the Ashram and therefore, work in the Ashram was continuing even during the night. Arrangements for lighting had been made through a portable generator, where labourers were working. At that time, deceased Thakur Ram Sahai Singh was lying down and accused Hareram Chaudhary fired at the head of the deceased with a firearm, due to which he died on the spot. The accused was seen by P.W.-1 and P.W.-2.

(59) The statement of P.W.-1 and P.W.-2 has also been supported by the medical evidence. P.W.-4 Dr. Shailendra Singh, who conducted the post-mortem of the dead body of the deceased, stated that a shot was fired from behind at the head of the deceased, which broke his jaw and exited outward. The post-mortem report (Ext. Ka.3) also mentions same two injuries, which have been supported by P.W.4. The other details of the incident as narrated by P.W.1 and P.W.2 does not contain any contradiction. Other official witnesses have proved lodging of F.I.R., inquest, post-mortem, investigation etc. and nothing could be extracted to doubt their testimony. Thus, on an overall

analysis of evidence and material on record, this Court is of the view that the prosecution has proved it's case beyond all reasonable doubt and the learned Trial Court has passed the impugned judgment and order after considering all the evidence and material on record and dealing with all aspects minutely, therefore, it does not suffer any error, illegality or perversity.

(60) In view of above, we are in full agreement with the reasoning assigned by the Trial Court. Thus, it does not call for any interference by this Court. The appeal has been filed on baseless and misconceived grounds, which is liable to be dismissed and is, accordingly, **dismissed**.

(61) Consequently, the impugned judgment and order passed by the learned trial Court is hereby confirmed and the sentence is affirmed. The appellant is in jail. He shall serve out the sentence awarded by the trial Court by means of impugned judgment and order.

(62) Let the Trial Court’s Record along with a copy of this order be transmitted to the trial Court concerned forthwith or in any case within two weeks from today.

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

Order Date : 27.05.2026
Saurabh/-

Digitally signed by :-
SAURABH VERMA
High Court of Judicature at Allahabad,
Lucknow Bench