

AFR
Judgment Reserved on
18th May, 2026
Judgment delivered on
30th July, 2026



2026:AHC:157914

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1689 of 2000

Sobaran and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Agnivesh, Imran Mabood Khan, Jadu Nandan Yadav, Radhey Shyam Yadav, Ravindra Singh, Shivam Yadav
Counsel for Respondent(s)	: Ajay Kumar Srivastava, Govt. Advocate, Janardan Yadav

Court No. - 43

HON'BLE SIDDHARTH, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. This **Criminal Appeal No. 1689 of 2000 (Sobaran and Others Vs. State of U.P.)** has been preferred by accused-appellants against the judgment and order of the Trial Court dated 19.07.2000, passed in S.T. No. 138 of 1997, State Vs. Sobaran and Others arising out of Case Crime No. 226 of 1996 under Sections 148, 302 read with Section 149 I.P.C., Police Station Nawabganj, District Farrukhabad.

2. Informant Mohd. Yunus Son of Alisher Khan-(PW-6), resident of Ganipur, Nawabganj, P.S. Nawabganj, Farrukhabad, has filed written report Exhibit Ka-6 at Police Station Nawabganj, District Farrukhabad. In Exhibit Ka-6, informant Mohd. Yunus-PW-6 has stated that I Mohd.

Yunus son of Alisher Khan is a resident of Ganipur, Nawabganj. Today on 12.12.1996, I had gone to Block Compound to inquire about distribution of trees. At that time, it was 01:00 O' clock of the day. I saw that some children of the school and villagers were running fast towards North from Block Compound. I tried to know the problem and after reaching 300 meters away, I saw that dead bodies of two persons were lying in the wheat field of Ram Swaroop Pal son of Jodha Lal Pal resident of Hamirpur Bogar, Police Station Nawabganj, in which one person wore pant, shirt and the other wear Kurta, *Paijama and Sadri*. There were many injuries on their faces due to this it is difficult to identify their faces. I have come to police station to give information about this fact, accordingly. This information dated 12.12.1996 has been lodged by Mohd. Yunus PW-6 at Police Station Nawabganj.

3. On the basis of the information Exhibit Ka-6, an FIR Exhibit Ka-21 was registered at Case Crime No. 226 of 1996 under Section 302 IPC on 12.12.1996 against unknown accused persons by Constable Clerk Krishna Dutt Dixit PW-9. Krishna Dutt Dixit PW-9. After registration of the FIR also entered and prepared G.D. *rapat* No.24 at 03:30 pm as Exhibit Ka-22. After registration of the FIR-Exhibit Ka-21, investigation of the case was taken into his hand by SHO Shivraj Singh PW-8. I.O. Shiv Raj Singh PW-8 has reached with police team including Sub Inspector Rajaram Suman PW-5 and Sub Inspector R.N. Tiwari PW-7 at the place of occurrence. Under direction of I.O. Shivraj Singh PW-8, S.I. Rajaram Suman PW-5 collected sample of plain soil and blood stained soil, near the dead body of the deceased Awadhesh and prepared recovery memo Exhibit Ka-2. From the place of occurrence, he has also taken into possession one bar of bamboo and prepared recovery memo of this as Exhibit Ka-3. He also took simple soil and blood stained soil from near the place of the dead body of the deceased Sobaran and prepared a recovery memo Exhibit Ka-4. Under direction of S.I Shivraj Singh PW-8 and R.N. Tiwari PW-7 prepared *panchayatnama* of deceased Sobaran as Exhibit Ka-7. He also prepared other related police papers of panchayatnama, such as letter to CMO, photolash, challanlash,

report to R.I. as Exhibit Ka-8, Exhibit Ka-9, Exhibit Ka-10 and Exhibit Ka-11, respectively. S.I. R.N. Tiwari, PW-7 on the same date prepared *panchayatnama* of the deceased Awadhesh as Exhibit Ka-12 and other necessary police papers, such as report to CMO, Challannash, Photolash, report to R.I. as Exhibit Ka-13, Exhibit Ka-14, Exhibit Ka-15, respectively. After preparing the *panchayatnama* of the deceased Sobaran and Awadhesh, the dead bodies of the deceased were handed over to Constable Dev Dutt Pandey and Shivraj Singh PW-8 for postmortem examination.

4. After receiving information about the dead bodies of Sobaran and Awadhesh and identification of the above dead bodies, father of the deceased Sobaran, Hariram PW-1 has also got ascribed written report Exhibit Ka-1 from Ram Niwas PW-2 and submitted it at police station Nawabganj, district Farrukhabad. In his written report Exhibit Ka-1, Hariram PW-1 has stated that on 7.10.1996, Satish Chandra, son of Feru Singh of my village was bitten by snake, due to which, he died. Feru Singh had given information at police station about the death of Satish Chandra. The police got postmortem conducted of his body, in which cause of death was found to be snake biting, but Feru Singh had doubted that, Sobaran Singh and Surendra had killed my son. He oftenly discussed this thing in the village and regarded enmity with us. Due to this reason, I and my son went to my relations at Nagla Ajeet P.S. Patiyali, district Etah. From there we also came and go at my village. I had came here from 3-4 days and two months have lapsed by now after the date the incident happened and their doubts would have been disappeared. Yesterday on 11.12.1996, my son Sobaran on his motorcycle with Awadhesh son of Ram Chandra, resident of Village Bhadki Naya Gaon district Etah, had came Nawabganj, to came his home and on the crossroad (*chauraha*) at Nawabganj, Ram Kisun son of Jageshwar Singh and Vedram Singh Son of Himchal Singh of my village and my Samdhi Kaptaan Singh son of Chetram, resident of Nagla Azeet had seen both of them. My *Samdhi* had asked them to go home then they said that you may go we will reach after sometime. At crossroad

(*Chauraha*), these peoples had also seen Feru Singh son of Ram Swaroop, Nar Singh @ Naiya, Dharamveer Son of Feru Singh, Sobaran son of Maiku Lal, Shiv Pal Singh son of Maiku Lal at crossroad. After darkness began, my son Sobaran and Awadhesh son of his Aunt (*Mausi*) both had to proceed on foot towards village. Then these people have also seen coming behind them. Today, in the day on receiving information, that two dead bodies were lying in front of the Block Compound, I have also come with my family members, then I saw that my son Sobaran and his aunt's son Awadhesh both are lying dead in the wheat field. On enquiring about this, Vedram, Ram Niwas and my *Samdhi* had told all things to me. I have full belief that Feru Singh and other above people had killed my son Sobaran and Awadhesh, so kindly take necessary action against them.

5. On 27.12.1996, appellants Feru Singh, Nar Singh, Shiv Raj were arrested by the I.O. with his police team from Manjhana railway station at 02:00 pm in day. Above three appellants have stated in their statements before the I.O., that they could get recovered murder weapon, i.e. *Gadasa* and *Takora*. Upon this information given by the accused persons Feru Singh, Shiv Raj Singh and Nar Singh, they were taken into a jeep with police party and proceeded to village Bogar. On reaching near village Bogar, accused persons Feru Singh, Nar Singh and Shiv Raj Singh get down from the police jeep and on their pointing out from the pool of the patel near the hut of Shiv Raj Singh, has traced a *Takora* which was appearing stained with blood and given to the police. The accused person Nar Singh @ Naiya has also given a blood stained *Garasa* from the pool of the patel near the hut of appellant Shiv Raj Singh. The *Garasa* appears to be blood stained. On the dictation of the I.O. Shivraj Singh PW-8, S.I. Rajaram Suman PW-5 prepared *fard* recovery of the above articles as Exhibit Ka-5.

6. I.O. Shivraj Singh PW-8 prepared site plan Exhibit Ka-7 of the place of occurrence from where dead bodies of the deceased were found. I.O. also prepared site plan of the place from where the murder weapon was recovered as Exhibit Ka-18. He has also recorded the statements of

witnesses including informant Hariram PW-1 and arrested accused persons. After completing all the formalities of the investigation, I.O. Shivraj Singh PW-8 filed a charge-sheet Exhibit Ka-19 against the appellants.

7. The dead bodies of the deceased were carried by Constable Dev Dutt Pandey and Shiv Singh for postmortem. Dr. Arun Prakash Chaturvedi PW-10 has conducted the postmortem on the dead bodies of deceased Awadhesh son of Ram Chandra and prepared postmortem report as Exhibit Ka-29. He also conducted postmortem of the dead body of deceased Sobaran and prepared postmortem report as Exhibit Ka-33. Dr. Arun Prakash Chaturvedi PW-10 found following *ante mortem* injuries on the dead body of the deceased Awadhesh :

- “(1) Incised wound 10cm x 1 cm cranaial cavity deep on left side of head 5 cm above left ear at parietal and occipital region
 - (2) Incised wound 12 cm x 2 cm x cranaial cavity deep 2 cm above injury no.1.
 - (3) Incised wound 7 cm x 1.5 cm x cranaial cavity deep on top of left side head 1.5 cm above injury No.2.
 - (4) Incised wound 10 cm x 3 cm x cranaial cavity deep on left side forehead involving left eye.
 - (5) Incised wound 11.5 cm x 2.5 cm cavity deep obliquely placed on upper part of neck involving right side of chin.
 - (6) Abraded contusion 15 cm x 11 cm over left side of face involving upper part of neck.
 - (7) Incised wound 3 cm x 1 cm x bone deep over right mastoid region.
 - (8) Lacerated wound 4 cm x 1.5 cm x bone deep on right side back of head. Occipital region 3 cm behind injury No.7.
- Note: All Incised wound margins clean and out ragged at places. All skull bones broken and fractured in pieces. Teeth fractured and loose. Brain cut and lacerated with blood clot.”

Dr. Arun Prakash Chaturvedi PW-10 has also found the following *ante mortem* injuries on the dead body of deceased Sobaran :

- (1) Incised wound 12 cm x 1.5 cm x cranaial cavity deep on right side forehead involving right eye and face.
- (2) Incised wound 7 cm x 2 cm x bone deep on right side of forehead clear mid line involving right eye.
- (3) Incised wound 8 cm x 3 cm x bone deep over nose involving middle of forehead.
- (4) Incised wound 10 cm x 3 cm x bone deep front of neck upper part involving chin.

(5) Incised wound 4 in numbers on anterior aspect of right side neck measuring from 6 cm x 1.5 cm to 3 cm x 1 cm to muscle deep.

(6) Incised wound 5 cm x 1 cm x bone deep over right mastoid region. (7) Abraded contusion 10 cm x 6 cm on right side face involving front of right ear.

(8) Abraded contusion five in numbers semi-lunar shape measuring 5 cm x 0.2 cm to 3 cm x 0.5 cm over postero-lateral aspect of right shoulder upper arm.

(9) Abraded contusion 7 cm x 4 cm front on right shoulder.

Note : Incised wound having clear and ragged margins, all facial bones fractured, teeth nose broken. Mandible and maxilla fractured.”

In the opinion of Dr. Arun Prakash Chaturvedi, the cause of death of both deceased was hemorrhage and shock due to ante-mortem injuries.

8. After submission of the charge-sheet by I.O. Shivraj Singh PW-8 in the concerned Magistrate Court having jurisdiction, case was committed to the Court of Session for trial.

9. Charges were framed against accused appellants on 21.04.1999 under Sections 148, 302 read with Section 149 IPC by the Trial Court. The accused have denied from the charge and claimed trial.

10. In support of its case, prosecution adduced Hariram PW-1, Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, and Mohd Yunus PW-6 as witnesses of facts and Raja Ram Suman PW-5, R.N. Tiwari, PW-7, Shivraj Singh PW-8 Krishna Dutt Dixit-PW-9 and Dr. Arun Prakash Chaturvedi PW-10 were adduced as formal witnesses. Apart from the above oral evidence of these witnesses, prosecution also relied on documentary evidence from Exhibit Ka-1 to Exhibit Ka-34.

11. Learned Trial Court has recorded evidence of the prosecution and accused were examined under Section 313 Cr.P.C. In their statement under Section 313 Cr.P.C., accused appellants have denied the allegations levelled against them and they have also expressed ignorance about the questions which were put to them. They have also stated that, they were falsely implicated in this case by Hariram due to enmity and police has also falsely implicated them due to enmity and village rivalry and *partibandi*. They have also stated that, witnesses have given the evidence against them due to enmity. They have adduced Akhilesh as DW-1 in their defence.

12. After hearing the arguments of both the parties, Trial Court has found guilty to accused persons under Section 148, 302 read with Section 149 IPC and for the commission of the crime, each accused appellants were convicted and sentenced under Section 148 IPC for two years rigorous imprisonment and a fine of Rs. 1,000/-, each and on default of payment of fine, each accused appellants were directed to serve six months additional imprisonment. Each accused appellants were also convicted and sentenced under Section 302 read with 149 IPC by life imprisonment and a fine of Rs. 10,000/- each. In case of default of payment of fine, each accused appellant were directed to serve additional one year simple imprisonment. All the sentences of each accused person were directed to run concurrently. Aggrieved by the above impugned judgment and order of the learned Trial Court dated 19.07.2000, appellants have preferred this criminal appeal before this Court.

13. It is noteworthy to mention here that during the pendency of this criminal appeal, appellant Nos. 1 Sobaran son of Maiku Lal; appellant No.2 Shivraj son of Maiku Lal, appellant No.4 Feru Singh have died. Due to death of appellant Nos. 1, 2, and 4, criminal appeal in respect of these above appellants have abated. It is revealed from the office report dated 22.1.2025 that accused-appellant No.5 Nar Singh @ Naiya has been declared juvenile by the Juvenile Justice Board, Etah in Case Crime No. 226 of 1996 under Sections 149, 148, 302 IPC., hence this criminal appeal is being adjudicated only in respect of appellant Nos. 3, 5 and 6 namely Shiv Pal, appellant No.5 Nar Singh @ Naiya and Dharamveer @ Dharampal.

14. Learned counsel for surviving appellants have submitted that due to prior enmity and grudge, Hariram PW-1 has lodged written report/information against accused-appellants only on the ground of doubts. No witness has seen commission of the offence by their own eyes. Place of occurrence where dead bodies were lying of the deceased Sobaran and Awadhesh is an open place in the wheat field, near the Block Compound. If any person would have really seen the commission of the crime/evidence by the appellants then, in this condition, FIR

Exhibit Ka-6 have not been registered as against unknown persons. It is also submitted on behalf of the appellants that no prosecution witnesses have seen the deceased persons going with appellants at Nawabganj. However, later with deliberation and afterthoughts, Hariram PW-1 falsely projected Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, as witnesses of the last seen theory with a view to falsely implicate the appellant in this case. These witnesses were also planted and projected by the prosecution in this case to support the prosecution story. However, from the perusal of the evidence of prosecution witnesses, it is clear that they were not present at Nawabganj on 11.12.1996 and they have also not going behind the deceased persons Sobaran and Awadhesh. It is also submitted that recovery of so-called *Garasa* and *Takora* at the pointing out of the appellants is also doubtful, because in Forensic Science Laboratory Examination report, only blood was found on *Garasa and Takora (Kulhari)*. However, it has not been mentioned in the FSL Report that blood which was found on *Garasa and Takora* was of deceased Sobaran and Awadhesh. Learned counsel for the appellants has also submitted that there is no direct evidence in this case. There is also no circumstantial evidence in this case against the accused appellants. However, learned Trial Court, on the basis of conjectures and surmises without completing every chain of circumstantial evidence, wrongly held guilty to accused appellants for the commission of the crime. The Trial Court has also not appreciated the evidence in proper perspective and in legal manner according to the evidence as available on the records. The finding of the Trial Court is without cogent evidence, which is based on misreading of the prosecution evidence that are against the prosecution itself. The prosecution was wholly unsuccessful to prove its case beyond reasonable doubt. However, the Trial Court only on the ground of enmity and conjecture and surmises, wrongly held guilty and convicted the accused appellants in this case, for the commission of the alleged crime. The finding and reasoning of the Trial Court is perverse and without any evidence and against the law. Hence,

liable to be set aside. Therefore, the appeal of the appellants deserves to be allowed.

15. Against the above submission of learned counsel for the appellants, learned AGA for the State-respondent and learned counsel for the informant/complainant have also opposed the above arguments of the appellants. Learned AGA for the State-respondent and learned counsel for the informant/complainant have submitted that appellants have committed the murder of Sobaran and Awadhesh on 11.12.1996. They have called upon the deceased Sobaran and Awadhesh on the pretext of compromise and taken to field with them and taking opportunity, accused appellants have killed mercilessly and brutally to deceased Sobaran and Awadhesh. Prosecution witnesses Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, have seen accused appellants with deceased Sobaran and Awadhesh on 11.12.1996 at Nawabganj crossroad (*chauraha*) and thereafter they were also seen with accused appellants. Thus, there is ample evidence of last seen together all appellants with deceased persons on the day of incidence before their death. On the instance of the appellant, murder weapon *Takora* and *Garasa* were recovered from near the hut of Shiv Raj Singh, on which human blood was found, which was used by the appellants in the commission of murder of Sobaran and Awadhesh. The Trial Court has rightly appreciated the prosecution evidence as available on the record. The Trial Court has delivered sound and cogent finding, which is based on reliable prosecution evidence and, therefore, the Trial Court found ample evidence against accused appellants, hence accused appellants were convicted and sentenced by the learned Trial Court. There is no perversity and illegality in the judgment and order of the Trial Court dated 19.07.2000. There is no force in criminal appeal as filed by the appellants. Hence, criminal appeal of appellants is devoid of merits and there is no force in the submission advanced by learned counsel for the appellants. Due to this reason, the judgment and order of conviction and sentence dated 19.07.2000 deserves to be affirmed.

16. In the light of the above arguments and counter arguments of the learned counsel for the accused-appellants and learned AGA, learned counsel for the informant, we have perused and gone through the finding and reasoning as recorded by the learned Trial Court in convicting and sentencing the accused-appellants for the alleged crime.

17. First of all, from the perusal of the written report Exhibit Ka-6, it reveals that after this news that dead bodies of two unknown persons were lying in the wheat field of Ram Swaroop Pal son of Jodha Lal Pal, a resident of Hamirpur Bogar P.S. Nawabganj near north side of the block compound. The dead bodies of the two persons were unidentified and no person was there to identify the dead bodies of the two deceased and no person was lodging information about this fact that two unidentified bodies are lying on there. In these circumstances, Mohd. Yunus PW-6, a local resident of Ganipur, Nawabganj has filed written report Exhibit Ka-6, in which he has given the information about lying of two dead bodies of the deceased persons as unidentified in the wheat field of Ram Swaroop Pal at police station Nawabganj. This Exhibit Ka-6 was written by Mohd. Yunus PW-6 on 12.12.1996. On the basis of this Exhibit Ka-6, as filed by Mohd. Yunus PW-6, Chik FIR Exhibit Ka-11 No.139 was registered at Crime No. 326/1996 under Section 302 IPC on 12.12.1996 at 13:30 PM. This fact indicates that till 13:30 PM on 12.12.1996, dead bodies of the two deceased namely Sobaran and Awadhesh were unidentified on the place of occurrence and it is also clear that till 13:30 PM on 12.12.1996, family members or any relative of the deceased persons have not come to the place of occurrence where two dead bodies were lying as unidentified. This fact also clearly established this that family members of the deceased persons have no information about this incident that their sons/brothers/husbands, as the case may be, were murdered near the block compound of Nawabganj and their bodies were lying there as unidentified. Investigation of the case was started on the basis of the written report Exhibit Ka-1, as filed by Mohd. Yunus PW-6.

18. On hearing news and rumors about the two dead bodies of the deceased were lying in the north side of the block compound of Nawabganj, which were unidentified, Hariram PW-1, father of deceased Sobaran with his family members reached at the place of occurrence where dead bodies were lying as unidentified. During the course of cross-examination, Hariram PW-1, has clearly accepted this fact that in village I heard a rumor that two dead bodies of boys are lying in a field in front of block compound, Nawabganj. All the people have started to proceed at the place of occurrence to see this scene. Therefore, I have also gone with family to see the place of occurrence, when I had came at the place of occurrence then, all the police personnel were present on there. Meanwhile, dead bodies of the two deceased persons were identified as Sobaran son of Hariram and Awadhesh son of Ram Chandra. After that Hariram PW-1, father of deceased Sobaran has got ascribed a second written report Exhibit Ka-1 from Ram Niwas PW-2, submitted at Police Station Nawabganj. In these facts and circumstances, it is clearly revealed that after 13:30 PM on 12.12.1996, Hariram PW-1, has filed a written report Exhibit Ka-1 with deliberation and afterthoughts, implicating accused in this case for the commission of the alleged crime. This fact cast against the truthfulness of the prosecution story and by this, prosecution story becomes doubtful from the very beginning, itself.

19. Thus, it is clear that in this case, no eye-witness have seen the commission of the crime by the accused with their own eyes. From the perusal of the finding and reasoning of the judgment and order dated 19.07.2000, as passed by the learned Trial Court, we find that learned Trial Court has relied on the evidence of Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, as witnesses of last seen of the deceased persons with the accused-appellants. In this way, the Trial Court applied last seen together theory in this case and regarded Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, as a witness of last seen, who have seen Sobaran and Awadhesh with accused persons before their death on 11.12.1996 in the market of Nawabganj, wondering

at crossroad together. Relying on the evidence of Hariram PW-1, Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, the Trial Court has regarded their evidence as fully reliable as witnesses of last seen together. From the perusal of the evidence of Ram Niwas PW-2, we find that this witness has stated that this incident has happened on 11.12.1996. On that day, he had gone Nawabganj market when he came at Nawabganj crossroad (*chauraha*) near the market, then he met with Kaptaan Singh, who was *Samdhi* of Hariram. According to this witness, when this witness was returning from crossroad Nawabganj to his home then, there Sobaran and Awadhesh have also met with this witness. According to this witness, when this witness almost in his way of return, proceeded towards bus stop then, accused Sobaran, Shivram, Shiv Pal, Feru Singh, Nar Singh @ Naiya met him. These people were going behind Hariram and Awadhesh. According to this witness, he has seen accused persons were going behind deceased Awadhesh and Sobaran. Thereafter, next day after hearing rumor about the lying of two dead bodies, this witness has also gone alone at the place of occurrence to see the dead bodies. According to this witness, Hariram PW-1 has also met with this witness at the place of occurrence. Hariram PW-1 and his wife have identified their son Sobaran's and dead body of Awadhesh. This witness has also stated that after recovery of the dead bodies, I had told to Hariram PW-1 that accused persons, his son and son of their *Sadu* had met at crossroad. In his cross-examination, this witness has clearly stated that on reaching in village, I had not told this thing to uncle Hariram that I had seen both deceased and accused persons at Nawabganj crossroad. Hariram PW-1 had not meet on the next day. I had not went to the house of Hariram to inquire this fact that Sobaran and Awadhesh (cousin brother) have came to village or not. Therefore, from the perusal of the evidence of Ram Niwas PW-2, it is clear that this witness although has stated that he had seen the deceased persons with accused at crossroad of Nawabganj Bazar on 11.12.1996 and also this fact that accused persons were going behind the deceased persons. Only on the hearing of rumor about lying of two dead bodies at the place of occurrence, this witness

has gone there where Hariram PW-1 has met with this witness with family, then, this witness has told this thing to Hariram PW-1. Thus, the evidence and statement of Ram Niwas PW-2, cast a doubt about truthfulness and credibility, trustworthiness of his evidence itself. If really Ram Niwas PW-2 had seen deceased persons with accused appellants on 11.12.1996 at Nawabganj crossroad Bazar then, this witness could easily told this fact to Hariram PW-1, father of the deceased Sobaran on 11.12.1996. However, only after identification of the dead bodies of two deceased persons Sobaran and Awadhesh, this witness has told the above fact to Hariram PW-1, father of deceased Sobaran at the place of occurrence after 13:30 PM on 12.12.1996. Therefore, in the light of the above discussion, we are of the opinion that this witness is being projected and planted by the prosecution with a view to support the prosecution case. This witness is not a witness of last seen together of deceased Sobaran and Awadhesh before this death with accused.

20. From the perusal of the evidence of Shyam Singh PW-3, we find that this witness has also stated in the same manner and style, as was stated by Ram Niwas PW-2 in his evidence. This witness has also stated that he has gone to Nawabganj Bazar, crossroad on 11.12.1996 and when he was returning to his home, then, he saw in front of the block compound in the evening at about 08:00 PM that accused appellants and deceased Sobaran and Awadhesh were going on the street ahead of him. According to this witness, accused persons were saying that they and deceased were talking themselves that you come today, we will settle the matter. The accused were also saying that if we would went in the village then, different types of talk would be there by sitting there and we can do the compromise. According to this witness, thereafter the accused and deceased had gone in the north direction from the road and this witness has returned to his home. In his cross-examination, this witness has stated that I had not told this thing to Hariram PW-1, because there was a large crowd over there. This witness has stated that he reached at 02:00 PM on the day of occurrence to see the dead bodies. This witness has

also stated that I had not told till today this thing that I had seen the deceased drinking wine near the block compound.

21. Therefore, from the perusal of the evidence of Shyam Singh PW-3, it is amply clear that prosecution has also planted and projected this witness with consideration and afterthoughts to substantiate its case and to ensure conviction of the accused for the commission of the alleged crime. Surprisingly in the same way in which Ram Niwas PW-2, has not told to Hariram PW-1, what he has seen at crossroad of Nawabganj Bazar. In the same way, this witness has also not told to Hariram PW-1, father of the deceased Sobaran that he has seen accused persons and deceased together and talking among themselves about compromise on 11.12.1996. This conduct and manner of Shyam Singh PW-3 is highly suspicious, that creates a reasonable doubt about this fact that in reality he has seen accused and deceased together talking among themselves about compromise. Thus, evidence of Shyam Singh PW-3 is also found unreliable and unworthy of credit. His evidence also does not inspire any confidence.

22. From the perusal of the evidence of Indresh Singh PW-4, we find that Indresh Singh PW-4 son of Ram Chandra is a resident of village Bhadki, P.S. Naya Gaon, District Etah, presently residing at Nagla Gusron, P.S. Mohammadabad, District Farrukhabad. Indresh Singh PW-4 is elder brother of deceased Awadhesh. This witness has stated in his evidence that on the day of occurrence, he was at his home at village Bhadki. Apart from this, this witness, his mother, wife of deceased Awadhesh were also present at home. According to this witness, accused Sobaran, Shivraj and one other person whose name is not known, have came at the home of this witness at Bhadki. According to this witness, accused have said to Awadhesh that, come and assist us in doing compromise. Deceased Sobaran was also present there. According to this witness, accused persons were saying that they will give weightage to your words. Thereafter according to this witness, accused took Sobaran son of Hariram PW-1 and Awadhesh with them. Thereafter on next day, this witness has heard that Sobaran and Awadhesh have died. In his

cross-examination, this witness has said that Sobaran had come at my home a day before incident. This witness has also stated that those accused who had come to take my brother and Sobaran on the date of 11.12.1996 at 09:00 AM. This witness is stating that on 11.12.1996 at 09:00 AM, accused persons have come at the house of this witness and took with them deceased Sobaran and Awadhesh. In his cross-examination, this witness has clearly accepted that he has not told to the I.O. that accused persons have called and taken with them the deceased Sobaran and Awadhesh on the pretext of compromise and killed them. According to this witness, on the next day morning in the cremation ceremony, he had gone at the house of Hariram PW-1, then, this witness has told that about three accused had taken with them deceased Sobaran and Awadhesh on 11.12.1996 on the pretext of compromise.

23. Thus, from the perusal of the evidence of Indresh Singh PW-4, it is also revealed that, prosecution has also planted and projected Indresh Singh PW-4 as a witness of last seen together. However, from the perusal of the whole evidence of this witness, it is clear that in spite of this fact that accused had gone at home at Bhadki of this witness and taken deceased Sobaran son of Hariram PW-1 and Awadhesh with them on the pretext of compromise, even in this situation, when so-called enmity was running between Hariram PW-1 and accused appellant Feru Singh, this witness Indresh Singh PW-4 has not told these things to Hariram PW-1 or other responsible person. Even Indresh Singh PW-4 has not told this thing that has happened on 11.12.1996 at his home at village Bhadki to the I.O. even at the place of occurrence where dead bodies of the deceased Sobaran son of Hariram and Awadhesh son of Ram Chandra were found. From the evidence and statement of this witness itself, it is revealed that this witness is not a witness of last seen together of deceased persons with accused before their death.

24. In the light of the above discussion, we find that although prosecution has projected Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4 as witnesses of last seen, who have seen deceased Sobaran and Awadhesh alive with accused persons before their death.

However, from the above discussion and perusal of the evidence of Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4, it is clear that in reality these witnesses have not seen to the deceased Sobaran and Awadhesh with the accused persons before their death. Prosecution has miserably failed in their attempt to prove its case on the basis of the evidence of Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4 as witnesses of last seen together. However, learned Trial Court wrongly and against the settled principles of law relying on unreliable and doubtful evidence of Ram Niwas PW-2, Shyam Singh PW-3 and Indresh Singh PW-4 has held guilty to accused appellants.

25. The Hon'ble Supreme Court in **Rambraksh @ Jalim vs. State of Chhattisgarh (2016) 12 SCC 251** has observed as follows:

“.....the last seen theory applies only when the time gap between the last seen point and the discovery of the death is so small that no one else could have committed the crime. Even then, this circumstance alone is insufficient and the prosecution must establish a complete chain of circumstances proving the accused's guilt. In the said decision, this Court held as under:

“12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.”

26. In the case of **Krishnan alias Ramasamy vs. State of Tamil Nadu (2014) 12 SCC 279**, while relying its judgment in **Arjun Marik vs. State of Bihar 1994 (2) SCC 372**, the Hon'ble Supreme Court observed as follows :

“21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court held as follows: (SCC p. 385, para 31)

“31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.”

27. Hon’ble Supreme Court in the case of ***Kanhaiya Lal vs. State of Rajasthan (2014) 4 SCC 715*** has held as follows:

“...that evidence on last seen together is a weak evidence and conviction only on the basis of last seen together without there being any other corroborative evidence against the accused will not be sufficient to convict the accused for an offence under Sections 302 and 201 of the IPC.”

28. Thus, from the legal principles as enunciated by Hon’ble Supreme Court in ***Krishnan alias Ramasamy (supra), Arjun Marik (supra) and Kanhaiya Lal (supra)***, it is clear that evidence of last seen together is a weak type of evidence and conviction, only on the basis of last seen together, without there being any other corroborative evidence against accused will not be sufficient to convict the accused for the commission of the alleged crime. From the perusal of the evidence of prosecution witnesses who are projected by the prosecution as witness of last seen, such as Ram Niwas PW-2, Shyam Singh PW-3, Indresh Singh PW-4 by the prosecution it is clear that evidence of the above prosecution witnesses of the so called last seen together, do not inspire any confidence. From the reading and perusal of the evidence of the above witnesses of prosecution, it is clear that for the conviction of the appellants, evidence of these witnesses could not be safely relied for the conviction of the appellants. Since they have not told what they had seen, heard or observed on 11.12.1996 to any person, such as Hariram PW-1, father of the deceased Sobaran or to any other person or to any police official. They have concealed whatever they have seen, heard and observed on 11.12.1996 to themselves. Only after hearing rumor i.e. on 12.12.1996

that dead bodies of two unknown deceased persons were lying near the block compound in the wheat field, the above prosecution witnesses have stated this fact to Hariram PW-1, father of the deceased Sobaran and other persons. The conduct and manner of these above prosecution witnesses creates a reasonable doubt about the veracity and truthfulness of their evidence. Evidence of prosecution witnesses Ram Niwas PW-2, Shyam Singh PW-3, Indresh Singh PW-4 are of a very shaky and suspicious nature. It is settled principles of law that, on the basis of shaky and suspicious nature of evidence of any prosecution witnesses, no accused person could be held guilty and convicted for the commission of the alleged crime.

29. From the perusal of the finding and reasoning of the learned Trial Court, we find that learned Trial Court in convicting appellants for the commission of the alleged crime also relied on the recovery of the alleged murder weapon *Garasa* and *Takora (Kulhari)* on the pointing out of the accused appellant Feru Singh, Nar Singh @ Naika, Shiv Raj from the pool of the patela near the hut of Shiv Raj on 27.12.1996. This recovery memo of alleged murder weapon is Exhibit Ka-5. The Trial Court has also relied on the report of the Forensic Science Laboratory, Mahanagar Lucknow Exhibit Ka-34, in which in result of examination report, it is mentioned that *Garasa*, which is shown at Serial No.21 and *Takora (Kulhari)* which is shown at Serial No. 22 have human blood on them. Thus, according to the FSL report Exhibit Ka-34, on *Garasa and Takora (Kulhari)* human blood has been found. However, in the FSL report, it has not been stated that this human blood belongs to deceased Sobaran son of Hariram and Awadhesh son of Ram Chandra. If prosecution would have been successful in proving this fact that human blood which has been found on *Garasa and Takora (Kulhari)* is of deceased persons Sobaran son of Hariram PW-1 and Awadhesh son of Ram Chandra, then in this condition, a link in the chain of circumstantial evidence could be regarded to be established by the prosecution. However, without ascertaining this fact that this human blood on *Garasa and Takora (Kulhari)* is surely of the deceased persons only on the

ground of human blood as found on *Garasa and Takora (Kulhari)* accused (appellant) could not legally be held guilty for the commission of the alleged crime in this case. However, we find that Trial Court only on this ground that human blood has been found in FSL report on the *Garasa and Takora (Kulhari)* of the murder weapon Exhibit Ka-34, has held guilty to appellants for the commission of the crime. It is very dangerous to hold any person only on the basis of so called recovery of murder weapon on which human bloods were found, that accused person have committed the alleged crime. Apart from the above facts and circumstances, from the perusal of the records of the Trial Court, we find that there is no disclosure statement of the accused persons Feru Singh son of Ram Swaroop, Nar Singh @ Naiya, Dharamveer Son of Feru Singh, Sobaran son of Maiku Lal, Shiv Pal Singh son of Maiku Lal recorded by the Investigating Officer Shiv Raj Singh PW-8 about the hiding of the murder weapon at the alleged place. Since there is no disclosure statement of appellants in the records of the case, therefore, in this circumstance, recovery memo of the alleged weapon of murder *Garasa and Takora (Kulhari)* becomes doubtful and due to this reason, we could not legally rely on the above recovery of alleged weapon of murder as Exhibit Ka-5. The Trial Court wrongly and against the settled principles of law relied on the doubtful recovery of the alleged murder weapon and convicted the accused appellants on the basis of the recovery memo Exhibit Ka-5. Since it could not be ascertained that blood found on the *Garasa and Takora (Kulhari)* was certainly of the deceased persons then, it could not be surely and certainly said that the recovered weapon of murder has been used in the alleged commission of the crime by the appellants. However, the Trial Court has not considered these relevant facts in its finding and reasoning on this point. According to evidence of I.O. all three accused persons simultaneously in one voice have made their disclosure statements and have also stated that they have concealed the the murder weapon near the village.

30. On this point of recovery under Section 27 of the Indian Evidence Act, Hon'ble Supreme Court in the case of *Wadla Bheemaraidu Vs.*

State of Telangana 2024 SCC OnLine SC 3589, has held in paragraphs 26 and 27 as follows:

“26. The law is well settled by a catena of judgments of this Court that the information under Section 27 IEA which leads to discovery of an incriminating material/evidence must be proved by the Investigating Officer as being voluntary and uninfluenced by 27 Exhibit P22-A threat, duress or coercion. The Investigating Officer is also required to prove the contents of the information/confessional memo to the extent they relate to the facts discovered.

27. This Court in the recent judgment of Babu Sahebouda Rudragoudar v. State of Karnataka (2024) 8 SCC 149, while referring to the earlier judgments on this point, examined the aspect regarding the standard of proof of information provided by the accused to the Investigating Officer under Section 27 IEA in the following terms:-

“60. We would now discuss about the requirement under law so as to prove a disclosure statement recorded under Section 27 of the Evidence Act, 1872 (hereinafter being referred to as “the Evidence Act”) and the discoveries made in furtherance thereof.

61. The statement of an accused recorded by a police officer under Section 27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the investigating officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in State of U.P. v. Deoman Upadhyaya, 1960 SCC OnLine SC 8 : AIR 1960 SC 1125].”

31. Thus, in the light of the legal principles as laid down by the Hon’ble Supreme Court in ***Wadla Bheemaraidu (supra)***, we find that I.O. Shivraj Singh PW-8 has not recorded any disclosure statement in any disclosure memo of the appellants Feru Singh son of Ram Swaroop, Nar Singh @ Naiya, Dharamveer Son of Feru Singh, Sobaran son of Maiku Lal, Shiv Pal Singh son of Maiku Lal about the hiding of murder weapon. Thus, the recovery memo Exhibit Ka-5, and the discovery of the alleged murder weapon *Garasa and Takora (Kulhari)* have also become suspicious and against the settled principles of law. The Trial Court without keeping this legal aspect in mind has wrongly relied on recovery memo Exhibit Ka-5 of the alleged weapon of murders and has wrongly held appellants guilty

for the commission of the alleged crime. Therefore, in the light of the legal principles as enunciated by the Hon'ble Supreme Court in ***Wadla Bheemaraidu (supra)***, recovery of the weapon of murder at the pointing out of the appellants also becomes doubtful and unreliable.

32. From the perusal of the finding and reasoning as delivered by the Trial Court in the judgment and order dated 19.07.2000, we find that Trial Court against the settled principles of law, has wrongly observed that prosecution is successful in connecting the chain of circumstantial evidence against the appellants. We find that in the present case at hands, this case is neither a case of direct evidence nor a case of last seen together theory, because there is no witness of prosecution of this nature who could be regarded as a witness of last seen, who have seen lastly the accused persons with the deceased Sobaran and Awadhesh, alive before their death. It is settled principles of law that in case of circumstantial evidence, the prosecution is legally responsible and duty bound to complete every link of the chain of circumstantial evidence from which it could be undoubtedly proved, that in all human probability, the act must have committed by the appellants. Without completing the chain of circumstantial evidence by the prosecution, Trial Court wrongly held guilty to accused appellants for the commission of the alleged crime.

33. Hon'ble Supreme Court in ***Sharad Birdhi Chand Sarda Vs. State of Maharashtra (1984) 4 SCC 116*** laid down five golden rules to be kept in mind while appreciating circumstantial evidence as follows :

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in [Shivaji Sahabrao 2 \(1984\) 4 SCC 116 Bobade v. State of Maharashtra \[\(1973\) 2 SCC 93 : 1973 SCC \(Cri\) 1033 : 1973 CrL LJ 1783\]](#) where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] “Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.” (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

34. Thus, in the light of the law, as laid down by the Hon’ble Supreme Court in ***Sharad Birdhi Chand Sarda (supra)*** it is clear that for the conviction of any accused person on the basis of the circumstantial evidence, every link of the chain of circumstantial evidence must be necessarily complete and unerringly leads towards the accused for the commission of the crime.

35. For the conviction on the basis of the circumstantial evidence, the chain of circumstantial evidence must be completing each link of the circumstantial evidence. In other words, circumstantial evidence must be necessarily, consistently leads towards the culpability of accused.

36. On the basis of shaky, suspicious and doubtful circumstantial evidence, conviction of an accused-appellant could not be recorded.

37. Thus, in the light of the judgment in the case of ***Sharad Birdhi Chand Sarda (supra)*** of Hon’ble Supreme Court, we find that in the present case at hand, there is no either reliable and trustworthy evidence of last seen together of the deceased persons with the appellants before

their death. There is neither any unimpeachable circumstantial evidence of this nature, which could be regarded as circumstantial evidence that could connect every link of the chain of circumstantial evidence against the accused appellants. In the light of the above discussions, we find that there is no circumstantial evidence of this nature, that on the basis of which, accused appellants could be held guilty for the commission of the alleged crime. The finding and reasoning of the learned Trial Court in this regard is without any cogent and reliable evidence and is also against the settled principles of law as enunciated by the Hon'ble Supreme Court in *Krishnan alias Ramasamy (supra)*, *Arjun Marik (supra)*, *Kanhaiya Lal (supra)*, *Wadla Bheemaraidu (supra)*, and *Sharad Birdhi Chand Sarda (supra)*. Due to this reason, we are of the considered view that the judgment and order of the Trial Court dated 19.07.2000, passed in S.T. No. 138 of 1997, State Vs. Sobaran and Others arising out of Case Crime No. 226 of 1996 under Sections 148, 302 read with Section 149 I.P.C., Police Station Nawabganj, District Farrukhabad is perverse and illegal, hence not found sustainable in the eyes of law. Therefore, the judgment and order of conviction and sentence dated 19.07.2000 is liable to be set aside and the appeal deserves to be allowed.

38. We, therefore, set aside the judgment and order dated 19.07.2000 of conviction and sentence in respect of surviving accused appellant No.3 Shiv Pal, appellant No.5 Nar Singh @ Naiya (already declared juvenile) and appellant No.6 Dharamveer @ Dharampal as passed by the Trial Court S.T. No. 138 of 1997, State Vs. Sobaran and Others arising out of Case Crime No. 226 of 1996 under Sections 148, 302 read with Section 149 I.P.C., Police Station Nawabganj, District Farrukhabad.

39. Thus appeal is **allowed**. From the perusal of the records it is revealed that appellant No.3 Shiv Pal, appellant No.5 Nar Singh @ Naiya and appellant No.6 Dharamveer @ Dharampal are on bail hence their personal bonds are cancelled and sureties are discharged from their liabilities.

40. Let this judgment and order be sent with record to the Trial Court for necessary compliance, forthwith.

(Vinai Kumar Dwivedi,J.) (Siddharth,J.)

July 30, 2026
NSC