2026:AHC:239774-DB

Reserved on : 11.08.2026
Delivered on : 25.11.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
CAPITAL CASES No. - 2 of 2024

Durvesh Kumar

…..Appellant(s)

Versus

State of UP

…..Respondent(s)

Counsel for Appellant(s)	:	Atharva Dixit, Irshad Husain, Pranav Tiwary
Counsel for Respondent(s)	:	G.A., Santosh Kumar Tiwari, Vijai Kumar Tiwari

Court No. - 45

HON'BLE SALIL KUMAR RAI, J.
HON'BLE PADAM NARAIN MISHRA, J.

(Delivered by Hon. Padam Narain Mishra,J.)

1. Heard Shri Manish Tiwary, learned Senior Advocate assisted by Shri Atharva Dixit, Shri Pranav Tiwary and Shri Irshad Hussain, the counsel representing the appellant, Shri Vijai Kumar Tiwari, the counsel for the first informant and Shri Vikas Goswami, the Additional Government Advocate for the State-respondent.

2. The present capital appeal has been preferred by the appellant against the judgment and order dated 30.01.2024 passed by the Additional Sessions Judge, Court No. 14, District- Bareilly in Session Trial No. 116 of 2021, arising out of Case Crime No. 384/2020, whereby the appellant was awarded capital punishment under Section 302 IPC along with fine of Rs. 10,000/-. The appellant has also challenged the conviction in the connected Session Trial No. 117 of 2021, arising out of Case Crime No. 0417 of 2020, under Section 3/25 of Arms Act, Police Station- Meerganj,

District- Bareilly, whereby he has been sentenced to go imprisonment for a period of three years along with fine of Rs. 3,000/-, under the aforesaid Sections of Arms Act.

3. Reference No. 02 of 2024 has been submitted by the trial court along with the trial court records under Section 366 Cr.P.C. for confirmation of the death sentence.

4. The prosecution case, in brief, is that on 13.10.2020, the informant Umesh Kumar (PW-1) lodged a First Information Report alleging that his brother (the present appellant) Durvesh Kumar had shot and killed their father- Lalta Prasad and mother- Mohini Devi at their residence at about 04.00 A.M. The time of occurrence mentioned in the written report as Exihibit-Ka-1 was approximately 04.00 A.M. On above information, after registering the FIR, Investigating Officer started investigation and recorded the statement of witnesses, collected the plain and blood-stained soil, prepared site-plan and other relevant papers and thereafter, submitted charge-sheet against the accused-appellant under Section 302 of IPC and Sections 3/25 of the Arms Act.

5. During course of the trial, the prosecution examined six witnesses. PW1 Umesh Kumar and PW2 Hemlata were examined as alleged eyewitnesses. The prosecution also examined, amongst others, PW-3 Dr. Indaveer Pratap who proved the post mortem report and PW 4 Mahesh Singh who authored the FIR and has also proved the FIR; PW5 Rajendra Kumar, who conducted the inquest proceedings and PW6 Sub-Inspector Vijay Kumar who is the Investigating Officer of this case.

6. The prosecution relied upon the postmortem report, site plan, recovery proceedings and forensic evidence. The trial court, upon appreciation of evidence, convicted the appellant under Section 302 IPC and Section 3/25 of the Arms Act, as aforesaid.

7. The legality and correctness of the conviction and sentence have been challenged in the present capital appeal. Aggrieved by the conviction and sentences, the appellant has preferred the present appeal.

Submission on behalf of the Appellant:-

8. The counsel for the appellant submits that the conviction rests substantially upon the testimony of PW1 and PW2. Their presence at the place of occurrence is itself doubtful. Their depositions contain material contradictions concerning the time of the occurrence, the sequence of the events, the position of the deceased persons and the alleged firing, and the conduct of the witnesses.

9. It is further submitted that the FIR, Exhibit Ka-1, mentions the time of occurrence as 4.00 a.m, whereas PW-1 subsequently stated that the occurrence took place at approximately 6:15 a.m. when he and his wife were carrying tea to his parents. The FIR does not mention that PW1 and his wife- PW2 had witnessed the murders, or they had gone to their parents' house carrying tea. These facts emerged subsequently and, therefore, constitute material improvements. Learned counsel further submits that the testimony of PW6, the investigating officer, materially conflicts with the account given by PW1 regarding the preparation, authorship and date of recording his statement. PW2's statement was recorded on 28.10.2020, approximately 15 days after the incident. The prosecution has not satisfactorily explained the delay or the material difference between the witnesses' account.

10. It is also argued that the prosecution has failed to establish any convincing motive for the appellant to murder his own parents. The alleged property dispute is not supported by reliable evidence, particularly when PW1 admitted that an oral partition had taken place in the year 2010. The alleged recovery of weapon and clothes is also disputed. It is, therefore, submitted that the appellant is entitled to the benefit of doubt.

11. Learned counsel further submits that the Investigating Officer admitted that the police, dog squad and the field unit had arrived at the place of occurrence which indicates that the identity of the assailant was not clearly established at the initial stage of investigation.

12. The counsel for the appellant has placed reliance upon the judgments of the Hon'ble Supreme Court passed in ***Pandurang Chandrakant Mhatre & Ors vs State Of Maharashtra*** (20090 10 SCC 773, ***Krishna Master and Ors. Vs State of Uttar Pradesh*** (2010) 12 SCC 324, ***Mehmood and Ors. vs State of Uttar Pradesh*** (2007) 14 SCC 16, ***Meharaj Singh vs State of Uttar Pradesh*** (1994) 5 SCC 188, ***B.N. John. vs State of Uttar Prades***h (2025) SCC OnLine SC 7, ***Suresh Chandra Tiwari and Ano. vs State of Uttar Pradesh*** (2024) SCC OnLine SC 3531, ***Geejaganda Somaiah vs State of Karnataka*** (2007) 9 SCC 315, ***Ramanand alias Nandlal Bharti vs State of Uttar Pradesh*** (2023) 16 SCC 510, ***Boby vs State of Kerala*** (2023) 15 SCC 760, ***Pulukuri Kotaiyya vs King Emperor*** AIR 1947 PC 67, ***Gorle S. Naidu vs State of Andhra Pradesh*** (2003) 12 SCC 499, ***Santa Singh vs State of Punjab*** (1971) 4 SCC 190 and ***Allauddin Mian and Ors. Sharif Mian and Ano. vs State of Bihar*** (1989) 3 SCC 5."

Submission on behalf of the First Informant and the State :-

13. *Per contra*, learned AGA and the counsel for the first informant jointly submit that the deaths were homicidal and prosecution, in support of its case, produced two eyewitnesses who identified the appellant and their evidence is corroborated by the medical and recovery reports. It is further argued that discrepancies in the testimony of witnesses are minor and natural and that their conviction does not warrant interference. Learned AGA further submitted that if there is direct evidence, motive has no role and in the present case, there are two eyewitnesses of the case who have fully supported the prosecution case.

14. We have considered the rival submissions and perused the material available on record.

15. After considering the rival submissions, the following questions arise for consideration:

(i) whether the testimonies of PW1 and PW2 inspire confidence and establish beyond reasonable doubt that the appellant committed the murders?

(ii) whether the contradictions between the statements of PW1 and PW2 and evidence of PW6 materially affect the prosecution case?

(iii) whether the prosecution has established the alleged motive and recovery circumstances?

(iv) whether the conviction of the accused under Section 302 IPC and Sections 3/25 of Arms Act can be sustainable?

16. The first circumstance requiring consideration is the discrepancy regarding the time of occurrence. The written report, Exhibit Ka-1, mentions the time of occurrence as approximately 04.00 a.m. However, PW1, in his deposition before the trial court, stated that at about 06:15 a.m., he and his wife were carrying tea to his parents, and when they heard gunshots near the temple, they proceeded towards the house. The ground of carrying tea, hearing the gunshots and thereafter, witnessing the alleged assault, forms an important part of prosecution's explanation for the presence of PW1 and PW2 at the place of occurrence. However, these circumstances do not find mention in the FIR. The FIR also does not disclose that the informant and his wife had witnessed the occurrence with their own eyes.

17. It is true that an FIR is not expected to be an encyclopedia of the prosecution case and every omission there cannot be treated as fatal. Nevertheless, the omission of the very circumstances by which the informant later explained his presence as an eyewitness, assumes significance when the subsequent account materially differs from the earlier version.

18. The discrepancy becomes more significant when considered in the light of the medical evidence. As per the medical evidence referred to on record, the probable time of death was around 3.00 to 3:40 a.m. The medical estimate of time of death is not invariably exact and must be evaluated with due regard to the doctor's evidence and surrounding circumstances. However, if the medical evidence, when read as a whole, substantially place the death several hours before the alleged eyewitness account at 6:15 a.m., the discrepancy requires a satisfactory explanation.

19. In the present case, the prosecution has not satisfactorily explained inconsistency regarding the time recorded in the FIR, the time stated by PW1 and the medical report. Considered alongside other infirmities in the ocular account, this discrepancy creates a substantial doubt regarding the manner in which the witnesses claimed to have witnessed the occurrence.

20. Further, there are material improvements in the testimony of PW1. PW1 stated before the trial court that he saw the appellant dragging his father from the doorway into a room and subsequently, shooting his mother as she came out of the latrine. He also described the appellant reloading the firearm, firing several shots and threatening the witnesses before fleeing away. The defence has pointed out that several of these details were not disclosed in the earliest version and were not found in the statement attributed to PW1 under Section 161 CrPC. In particular, the FIR does not state that PW1 had seen the appellant dragging his father and subsequently, firing at his mother.

21. The investigating officer, PW6, stated that the informant had given him a handwritten statement on 13th October 2020 at the police station, which was written by the informant himself and signed in his presence. He further stated that this statement was incorporated into the case diary on the same day. On the other hand, PW1 stated that his statement under Section 161 CrPC had been written by the investigating officer or another person that he had signed it**,** and that the statement was recorded at his residence two or three days after the incident. He also stated that

the investigating officer had questioned him at the police station on the date of occurrence but that his statement was recorded at home subsequently. Thus, the evidence of PW1 and PW6 is materially *at variance* concerning the preparation, authorship and date of recording of the informant's statement.

22. This discrepancy cannot be brushed aside as a minor variation between two statements. The date and manner regarding the informant's statement are relevant to assess the consistency of the prosecution version and the extent to which the later deposition represents a continuation of the earliest account or an expanded version developed during the investigation.

23. PW6 also admitted that there was no separate document in the case diary relating to oral statement of PW1 under Section 161 CrPC. His testimony, therefore, does not establish that every detail subsequently narrated by PW1 was part of a contemporaneous oral statement recorded during investigation.

24. The prosecution was required to establish the circumstances in which the alleged eye-witnesses' account first emerged. The contradiction between PW-1 and PW-6 concerning the preparation and recording of the statement cannot be ignored, particularly when the FIR itself does not disclose the presence of PW-1 and PW-2 as eye-witnesses.

25. It is well settled that a statement recorded under Section 161 CrPC is not a substantive evidence. It may be used only for the limited purpose of contradiction in accordance with Section 162 CrPC, read with Section 145 of the Indian Evidence Act. An omission does not automatically amount to a contradiction, it must be material and of such a nature that it is irreconcilable with the deposition made before the court. The prescribed procedure for confronting the witness and proving the contradiction through the investigating officer, where necessary, must also be followed.

26. In **Tahsildar Singh v. The State of U.P., AIR 1959 SC 1012**, the Supreme Court explained the distinction between an ordinary omission and an omission amounting to a contradiction. The court emphasized that a previous police statement cannot be used as a substantive evidence and that a material omission may be treated as a contradiction only in accordance with the governing legal principles.

27. Similarly, in **V.K. Mishra v. State of Uttarakhand, (2015) 9 SCC 588**, the Supreme Court explained the procedure for proving contradictions between a witness's testimony before the court and the statement recorded by the police. The witness must be confronted with the relevant portion, and where the witness denies having made the previous statement, the contradiction must be duly proved through the investigating officer.

28. Applying the aforesaid principles, the Court is conscious that every omission in a police statement cannot be treated as contradiction. However, the substantial differences concerning the time and circumstances of the witnesses' alleged arrival, the omission to mention the presence of eye-witnesses in the FIR and the conflicting version regarding the recording of PW-1's statement become relevant circumstances while assessing the credibility of the prosecution case.

Contradictions between PW1 and PW2:-

29. The testimony of PW2 also places the occurrence at approximately 6:15 a.m. She stated that she and PW1 were carrying tea to the deceased persons when they heard gunshots. According to her, the appellant dragged Lalta Prasad (deceased father) into a room, covered his body with a cloth and thereafter, shot Mohini Devi (deceased mother), who ran towards the lavatory out of fear. The account given by PW1 differs materially from this version. PW1 stated that when the father was shot, his mother was coming out of the lavatory and that the appellant subsequently shot her as she came out of the lavatory. PW2, on the other hand, stated that she did not see Mohini Devi at the spot when Lalta

Prasad was shot and described the mother as running towards the toilet in fear.

30. The difference is not confined to the precise position of the deceased. It concerns the sequence in which the two victims were attacked and the location of Mohini Devi when the firing allegedly took place. Both the witnesses were allegedly present together and claimed to have witnessed the same occurrence from a short distance. Their account of these central events would ordinarily be expected to be substantially consistent, even though minor variations in perception and recollection may occur.

31. There is also a difference concerning the alleged conduct of the appellant after the attack on Lalta Prasad. PW2 stated that appellant dragged the injured father into the room, covered his body with a cloth and fled away from the spot. Her account concerning the covering of the body and the subsequent attack on Mohini Devi does not clearly correspond with the sequence described by PW2. The evidence does not satisfactorily clarify how these acts occurred in the sequence asserted by the prosecution.

32. PW2 further stated that she had seen the incident from the corner of the street. She was unable to recall several details, including the colour of the appellant's cloths, the precise interval between the firing and the covering of the body, the type of cloth used, whether the shots were fired continuously or intermittently and whether she had seen the firearm being reloaded.

33. It is true that the inability to remember every detail cannot, by itself, render a witness unreliable, however, where the evidence contains material discrepancies about the sequence and location of the principal acts, such uncertainty assumes significance.

34. The witnesses also differ in their description of the circumstances in which they heard the gunshots. PW1 referred to hearing the shots near the temple and proceeding towards the house. PW2 stated that the house

was not visible from the Shiva temple and that she had heard the firing only after proceeding further. This difference, considered in isolation, may not be decisive. Nevertheless, it forms part of the broader uncertainty regarding the arrival of the witnesses and observation of the occurrence.

35. PW1 and PW2 both referred to the presence of persons from the locality. PW1 claimed that local persons had witnessed the incident, while PW2 stated that a crowd gathered after the father had been shot, but could not specify who and how many persons were present. No independent eyewitness from the locality was examined.

36. It is settled that non-examination of an independent witness does not, by itself, warrant rejection of the prosecution case. In **Appabhai & Anr. v. State of Gujarat, 1988 (Supp.) SCC 241,** the Supreme Court occasioned against rejecting otherwise reliable evidence merely because independent persons had not been examined. Nevertheless, in the present case, the absence of independent corroboration assumes relevance only as an additional circumstance when considered with the material discrepancies and the doubts surrounding the presence of the alleged eyewitness.

37. Further, PW2's statement under Section 161 CrPC was recorded on 28th October 2020, approximately 15 days after the occurrence. Delay in recording a witness's statement is not invariably fatal, but it calls for scrutiny where the witness claims to have witnessed a grave occurrence and no satisfactory explanation for the delay emerges from the evidence. The prosecution has not satisfactorily explained the delay in recording the statement of PW2. This circumstance, read with the difference between her account and that of PW1, adds to the uncertainty surrounding the reliability of the alleged eyewitness' version.

38. In **State of Rajasthan v. Smt. Kalki & Anr., 1981 2 SCC 752,** the Supreme Court observed that ordinary discrepancies are natural and

must be distinguished from material discrepancies, which affect the credibility of the witness.

39. We are conscious that witnesses cannot be expected to reproduce an occurrence with photographic precision. The present case, however, does not rest merely on minor variations. The discrepancies relate to the time and circumstances of the alleged occurrence, the position of the deceased persons and the sequence of attack.

40. The testimony of PW6 is material because he investigated the case and recorded the statement of the informant and the alleged eyewitnesses. As already discussed, PW6 confirmed that PW1 had submitted a handwritten statement at the police station on the date of the incident and signed it in his presence. PW1's account regarding the authorship and date of the incident relating to that statement is materially different.

41. PW6 further stated that the informant's wife had been referred to during investigation as Premlata alias Hemlata. He admitted that the statement recorded on 28th October 2020 was entered in the case diary under the name of Premlata and that ‘alias Hemlata’ had not been recorded in the case diary, although he stated that the witness had disclosed both names. The discrepancy in the name by itself would not be sufficient to discard the testimony of PW2. Its relevance is limited to the accuracy of the investigative record and the identification of the person whose statement was recorded. It must be assessed alongside the delayed recording of the statement and the other discrepancies in the oral account.

42. PW6 also stated in his evidence that the appellant had left his ancestral residence before the incident and was residing with his family in a rented house at Teachers Colony, Meerganj, Bareilly, UP. The appellant's residence elsewhere does not establish his innocence, particularly as PW1 and PW2 claimed that he regularly visited the village. Nevertheless, the prosecution was required to establish reliably

that the appellant was present at the place of occurrence at the relevant time.

43. An important circumstance emerging from the prosecution statement is the statement of PW-5 Sub-Inspector Rajendra Kumar who proved the inquest proceedings and the documents prepared in connection with the dead bodies. He also stated that the police, dog squad and field unit had arrived at the place of occurrence in his presence. These facts establish that investigative teams visited the scene of occurrence. The defence submits that the deployment of the dog squad and the field unit lends support to its contention that till that stage, the identity of the perpetrator was not clearly established. This circumstance assumes significance when examined alongside the FIR, Exhibit Ka-1, which does not state that the informant or his wife had witnessed the occurrence and the material improvements made by PW1 and PW2 in their depositions before the trial court. The arrival of the dog squad and the field unit by itself cannot establish that the police were unaware of the identity of the assailant, nor can it independently discredit the prosecution witnesses. Nevertheless, the prosecution has not satisfactorily explained, by reference to the contemporaneous investigation record, what information regarding the identity of the assailant was available when these units were summoned and what findings, if any, emerged from their examination of the scene of crime.

44. The medical evidence establishes that both deceased persons suffered firearm injuries and died homicidal deaths. However, medical evidence regarding the nature of the injuries cannot, by itself, resolve the material inconsistencies in the identification and presence of the alleged eyewitnesses. The prosecution was required to establish beyond reasonable doubt that the appellant was the person who caused those injuries.

45. The post-mortem report indicates that the each deceased sustained three firearm injuries. The prosecution was also required to explain the circumstances concerning the cartridges allegedly recovered from the

place of occurrence. The evidence refers to the recovery of two empty cartridges and one live cartridge from the scene, whereas the alleged firing involved several shots at both the deceased persons. The prosecution evidence does not satisfactorily clarify this aspect.

46. The number of cartridges from a crime scene may not invariably correspond with the total number of shots fired, but in the present case, this circumstance requires proper explanation in the context of the disputed ocular version.

47. PW1 stated that he witnessed the appellant firing at his father, dragging him into a room and subsequently, firing at his mother. He admitted that he did not physically attempt to intervene when his father was allegedly being shot and that he shouted instead. PW-2 stated that neither she nor PW1 attempted to apprehend the appellant, because they were frightened.

48. The witnesses cannot be expected to react in a uniform or predetermined manner during a violent incident. The failure to intervene, therefore, cannot be treated as proof that the witness was not present. The conduct of PW1 and PW2 must be assumed in the light of the circumstances and their explanation of fear. Nevertheless, the claimed presence of these witnesses must be examined in conjunction with their inconsistent accounts of how they arrived at the scene, the absence of any reference to eyewitnesses in the FIR, the discrepancy concerning the time of occurrence and delayed recording of PW2's statement, which taken cumulatively, raise a reasonable doubt about whether the witnesses were present at the scene as alleged by prosecution.

49. The prosecution has also not established a convincing motive for the appellant to murder his parents. The defence suggested that there were strained relations between the appellant and PW1 and that a dispute concerning the ancestral property had arisen in the family.

50. The appellant in his statement under Section 313 CrPC alleged that PW1 and PW2 had falsely implicated him because of their personal and property related interest. The appellant alleged that PW-1 was residing with Hemlata without obtaining divorce from his legally-wedded wife and that the said circumstance had resulted in strained family relations. He further alleged that PW-1 and Hemlata had conspired to implicate him and his family in a false case and had compelled him to vacate the ancestral house approximately 2 to 2 and a half months before the occurrence. He also stated that, on the night of the incident, he was residing with his family in a rented house away from the place of occurrence. The allegations made by the appellant in his statement under Section 313 CrPC are not assertion of the defence version but the court cannot accept the prosecution case concerning the identity of the assailant without examining whether the evidence establishes the charge beyond reasonable doubt.

51. The evidence does not satisfactorily establish that the appellant had compelling reasons to kill his own parents or that a property dispute provided the motive alleged by the prosecution. PW1 admitted that an oral partition had already taken place in the year 2010.

52. Motive may not be an indispensable requirement where trustworthy and reliable direct evidence establishes the guilt of the accused but may assume significance where remaining evidence is weak. In **Nathuni Yadav and others v. State of Bihar, 1998 9 SCC 238**, the Supreme Court explained that the absence of motive does not by itself defeat an otherwise established prosecution case. The significance of motive depends upon the nature and strength of the remaining evidence.

53. In the present case, the absence of motive is not being treated as an independent ground for acquittal. Its relevance arises because the alleged eyewitness' account itself suffers from material discrepancies and the presence of PW1 in PW2 is doubtful. In such circumstances, the absence of a compelling motive to kill one's own parents, offers no added assurance to the prosecution version.

54. The prosecution also relied upon the recovery allegedly made at the instance of the appellant on 09-11-2020. According to PW6, the appellant disclosed that he had concealed the country-made pistol, cartridges and blood-stained clothes in the field of Ramdas, following which, the articles were recovered.

55. A statement made to a police officer is not admissible as a confession merely because it was recorded during investigation. Section 27 of the Indian Evidence Act permits proof only of so much of the information received from an accused in police custody as distinctly relates to the fact thereby discovered. The prosecution must establish the discovery and connection between the information and the articles recovered in accordance with law. The alleged recovery must also be considered in the light of the evidence regarding the place of concealment, the manner in which the articles were recovered, their sealing and identification, and the forensic results, if any, connecting them with the occurrence. The fact that a firearm or clothing is recovered does not automatically establish that it was used in the commission of the crime.

56. In the present case, the recovery evidence, as placed before the court, does not sufficiently remove the doubts arising from the prosecution's account of the occurrence. The recovery cannot independently cure the material infirmities in the identification and presence of the alleged eyewitnesses. The evidentiary value of the alleged disclosure must remain confined to the legally admissible portion and the discovery actually established by the prosecution.

57. The Court is mindful that the prosecution is not required to establish its case with mathematical precision and that minor discrepancies are inevitable in human testimony. However, the criminal standard of proof requires that the evidence, taken as a whole, establish the guilt of the accused beyond reasonable doubt.

58. In the present case, the FIR records the time of occurrence as 04.00 a.m, while the alleged eyewitnesses' account places it approximately at

6:15 a.m. The earliest report does not identify PW1 and PW2 as eyewitnesses or mention the circumstances by which they claimed to have reached the place of occurrence. PW1's account concerning the date, authorship, and manner of recording his statement is materially *at variance* with the testimony of PW6. PW1 and PW2 also differed concerning the position of Mohini Devi at the time of the first attack and the sequence in which the alleged act took place.

59. These discrepancies cannot be viewed in isolation. They must be assessed with the delay in recording of PW2’s statement, the absence of independent eyewitnesses’ testimony despite the assertion that persons from the locality had witnessed the occurrence, the uncertainty concerning the alleged recovery and the failure of the prosecution to establish a convincing motive.

60. We are not saying that every omission in a statement under Section 161 CrPC is a contradiction, nor do we reject the witnesses merely because they are related to the deceased. Our conclusion is drawn on the cumulative effect of the material discrepancies and the resulting doubts about the reliability of the prosecution’s account of the occurrence.

61. The prosecution has undoubtedly established that Lalta Prasad and Mohini Devi suffered homicidal deaths. However, proof of the homicidal deaths and proof of the identity of the perpetrator are distinct matters. The prosecution was also required to establish beyond reasonable doubt that the appellant was responsible for the deaths. The evidence, when assessed as a whole, does not satisfy that standard.

62. In our considered opinion, the learned trial court did not adequately appreciate the cumulative effect of the discrepancies between PW1, PW2 and PW6 and the resulting doubts concerning the core of the prosecution case, and not merely peripheral details. The conviction under Section 302 IPC, therefore, cannot safely be sustained.

63. The conviction under Sections 3/25 of the Arms Act, requires separate consideration. The prosecution must establish the relevant ingredients of the offence, including the appellant's conscious possession of the firearm and the other statutory requirements applicable to the charge. The evidence concerning the alleged recovery must be assessed independently of the conclusion regarding the murders.

64. In the present case, the alleged recovery is relied upon substantially through the testimony of PW6. For the reasons discussed above, the recovery circumstances do not inspire sufficient confidence to establish the appellant's possession of the firearm beyond reasonable doubt. The prosecution case concerning the recovery does not independently provide a sufficiently reliable basis for sustaining the conviction under Section 3/25 of the Arms Act. Accordingly, the conviction under Section 3/25 of the Arms is also liable to be set aside.

65. In view of the foregoing discussions, the present appeal is hereby **allowed**.

66. The judgement and order dated 30.01.2024 passed by the Additional Sessions Judge, Court No. 14, Bareilly in Session Trial No. 116 of 2021, arising out of Case Crime No. 384/2020, under Section 302 IPC, and connected Session Trial No. 117 of 2021, arising out of Case Crime No. 0417 of 2020, under Section 3/25 of Arms Act, Police Station- Meerganj, District- Bareilly are hereby **set aside**.

67. The **death sentence** as awarded by the learned trial court to the present appellant- Durvesh Kumar, is hereby **set aside**. Further, the **conviction** under Section 3/25 of the Arms is also hereby **set aside**. The appellant is acquitted of all the charges levelled against him under Section 302 IPC & under Section 3/25 of Arms Act.

68. Consequently, Reference No. 02 of 2024 made under Section 366 Cr.P.C. for confirmation of the death sentence is also **rejected**.

69. The appellant is in jail and if he is not wanted in any other criminal case, he shall be released forthwith, subject to compliance of Section 437A Cr.P.C (Section 481 of BNSS). His bail bonds and sureties are hereby discharged.

70. Lower Court Record be transmitted back, forthwith.

71. Office is directed to send a copy of this judgment to the authorities concerned for necessary compliance.

(Padam Narain Mishra,J.) (Salil Kumar Rai,J.)

November 25, 2026
Rama Kant

Digitally signed by :-
RAMA KANT
High Court of Judicature at Allahabad