



2026:AHC-LKO:23961-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 2528 of 2008

Tarsem Singh Appellant(s)

Versus

State of U.P. Respondents(s)

Counsel for Petitioners(s) : Arun Kumar Shukla, Anuradha Singh, Farhat Jamal Siddiqui, Furkan, Jaleel Ahmad, Jayant Singh Tomar, Manju Gupta, Rishad Murtaza, Smt. Arpita Srivastava
Counsel for Respondent(s) : Govt. Advocate

AFR

Court No. – 10

Reserved on: 08.01.2026

Delivered on: 07.04.2026

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

(Per Zafeer Ahmad, J.)

1. Heard, Sri Rishad Murtaza and Ms. Farhat Jamal Siddiqui assisted by Ms. Aishwarya Misra, for the appellant and Sri Arunendra, learned AGA for the State and perused the record.

2. The aforesaid criminal appeal arises out of order and judgment dated 05.09.2008 passed by Special/ Additional Sessions Judge, Lakhimpur Kheri, in Sessions Trial No. 419 of 1999 (*State v. Gurdeep Kaur (deceased) and another*) arising out of case crime no. 57 of 1999, wherein the applicant has been convicted and sentenced to undergo life imprisonment u/s 302 of Indian Penal Code (in short IPC) along with a fine of Rs. 20,000/- and in default of payment of fine further one year additional simple imprisonment; and rigorous imprisonment of two year u/s 404 IPC along with fine Rs. 2000/- and in default of payment of fine further two months additional simple imprisonment. It has further been provided that both the sentences shall run concurrently.

Prosecution Story in Nutshell:

3. The prosecution case, in brief, is that the complainant Gurdeep Kaur lodged a written report stating therein that in the intervening night of 18/19.05.1999 at about 12:00 in midnight, she was present in her house situated at village Phulwaria, Police Station Palia, Kheri. It was further stated that at the relevant time, she was lying in the western room on the second floor along with her children; her mother-in-law; Naseeb Kaur, and her elder, Sukhvinder Kaur, were lying in the middle room, while her husband; Balvinder Singh, and his friend; Sobran Singh Kalsi, were lying in the eastern room. It was further stated that seven to eight miscreants came to the second floor of the house during the night. The miscreants got the middle

room opened by her mother-in-law and thereafter entered the room of her husband as well. As soon as they entered, they killed her husband and his companion, as well as her mother-in-law and her elder, by firing bullets and by using sharp-edged weapons. It was further stated that the miscreants looted jewellery and cash kept in the room of her mother-in-law and thereafter started moving downstairs and at that time, the complainant also fired from her licensed gun. Upon hearing the noise, Darshan Singh, Jaswant Singh from the neighbourhood, her servant Ram Seva, and several other persons arrived at the spot and, in the light of electricity and torch, saw and recognised the miscreants. The miscreants were chased, but they managed to escape. It was further stated that all the miscreants were armed with country made pistols and other weapons and that they could be identified along with the looted jewellery if produced. It was also stated that all four dead bodies were lying inside the house. On these allegations, the complainant requested that a report be lodged and appropriate legal action be taken.

4. On the basis of the said written report, on 19.05.1999 at around 1:30 AM a check FIR was registered under Section 396 IPC in police station Palia, as case crime no. 57 of 99 and GD entry no. 2 was made at the same time. The investigation of the case was handed over to SHO Suresh Tripathi. Furthermore, during the investigation the names of Gurdeep Kaur and Tarsem Singh came into the light

and it was found that they have committed murder of Balwinder Singh, Sukhvinder Kaur, Sarwan Singh Kalsi, and Naseeb Kaur.

5. During investigation on the basis of the informant, the investigating officer and other police personnel arrested Tarsem Singh on 24.05.1999 from his house in village Pulwariya at around 2:00 PM. This was witnessed by Balwinder Singh, Balkaran Singh, Darshan Singh, and Pardeshi. Thereafter, his interrogation revealed that he had been in an illicit relationship with Gurdeep Kaur for a long time, and this became known to Balvinder Singh and his family members. Due to this Balvinder Singh had planned to kill them (i.e. Gurdeep Kaur and Tarsem Singh), which was overheard by Gurdeep and she told the same to Tarsem on 18.05.1999 in the afternoon. Thereafter, on the same day at around 11:00 PM he reached Balvinder's house, where Gurdeep handed him licensed gun of Balvinder and cartridges, thereafter, both of them with the use of the gun and knife murdered all the four people and took away a pair of earring, gold bangles, gold ring and a bracelet of Nasib Kaur, which was kept in Nasib Kaur's room. Furthermore, the said gun and knife was kept by Gurdeep
6. Furthermore, during the course of investigation on 24.05.1999, when the accused Tarsem Singh was taken to the place of occurrence, Gurdeep Kaur was found present there. During interrogation, she accepted that she was having an illicit relationship with Tarsem Singh and also confessed her involvement

in the crime. In her confession, she stated that Tarsem Singh first opened fire upon Balvinder Singh @ Kaku, and thereafter shot his friend Sarwan Kumar Kalsi. She further confessed that she herself stabbed Naseeb Kaur and Sukhvinder Kaur.

7. It was further stated by her that she handed over the gun and knife used in the commission of the offence and admitted that she had used the same to cause injuries to all the deceased persons. She also confessed that, in order to evade liability, she had lodged a false FIR alleging the incident to be one of dacoity.
8. The said knife and gun were taken into police custody and the recovery memo was prepared in respect thereof (Ext. Ka-1), along with the site map of the place from where the recovery was made (Ext. Ka-19). Furthermore, the recovered goods, gun and cartridges were sent to the Forensic Science Laboratory, Lucknow, and the examination report was obtained from the Laboratory (Ext. Ka-41)
9. Thereafter, upon completion of investigation and finding sufficient evidence, a charge sheet was submitted in the Court against the accused Gurdeep Kaur and Tarsem Singh under Sections 302, 404, 411, and 117 IPC (Ext. Ka-20).
10. On 04.12.1999, charges under Section 302 read with Section 34 IPC were framed against accused Gurdeep Kaur and Tarsem Singh. In addition thereto, a charge under Section 177 IPC was framed against accused Gurdeep Kaur, and a charge under Section 404 IPC

was framed against accused Tarsem Singh. Both the accused persons denied the charges and claimed trial.

11. After framing of the charges, accused Gurdeep Kaur died, and consequently, the proceedings against her stood abated in terms of the order passed by the concerned Court dated 06.12.2001.

12. To prove its case, the prosecution examined ten witnesses, namely: PW-1: Darshan Singh, PW-2 Mashwant Singh, PW-3: Balwant Singh, PW-4: Gurvinder Singh, PW-5: Jagjeet Singh, PW-6: Dr. R V Singh, PW-7: S.I. Surendra Tripathi, and CW-1: SI Rajendra Prasad Nishad.

13. The list of the exhibits in this case is as follows:

Exhibit No.	Item / Description
Ext. Ka-1	Recovery memo of licensed single-barrel gun and <i>badi chhuri</i> (knife) recovered at the instance of Gurdeep Kaur
Ext. Ka-2	Recovery memo of ornaments allegedly belonging to deceased Naseeb Kaur (gold earrings, bangles, ring, watch etc.) recovered from the accused
Ext. Ka-3	Inquest report of deceased Balvinder Singh
Ext. Ka-4	Inquest report of deceased Sukhvinder Kaur
Ext. Ka-5	Inquest report of deceased Sarwan Singh Kalsi
Ext. Ka-6	Inquest report of deceased Naseeb Kaur
Ext. Ka-7	Recovery memo of blood-stained country-made pistol (<i>tamancha</i>)
Ext. Ka-8	Recovery memo of cash seized during

	investigation
Ext. Ka-9	Recovery memo of four empty cartridges (12 bore)
Ext. Ka-10	Recovery memo of blood-stained soil and plain soil from the place of occurrence
Ext. Ka-11	Post-mortem report of deceased Sarwan Singh Kalsi
Ext. Ka-12	Post-mortem report of deceased Naseeb Kaur
Ext. Ka-13	Post-mortem report of deceased Sukhvinder Kaur
Ext. Ka-14	Post-mortem report of deceased Balvinder Singh
Ext. Ka-15	Check FIR
Ext. Ka-16	General Diary (GD) entry relating to registration of FIR
Ext. Ka-17	Site plan of the place of occurrence
Ext. Ka-19	Site map of the place from where gun and knife were allegedly recovered
Ext. Ka-20	Charge-sheet submitted against the accused
Ext. Ka-21 to 24	Police Form No. 13 relating to dispatch of dead bodies for post-mortem
Ext. Ka-25 to 28	Sketches of dead bodies
Ext. Ka-29 to 32	Sample of the seals used to seal the dead bodies
Ext. Ka-33 to 36	Letters to R.I.
Ext. Ka-37 to 40	Letters to C.M.O

Ext. Ka-41	Forensic Examination report of the recovered single barrel gun and four cartridges
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14. Furthermore, the list of the material exhibits in this case are as follows:

<u>Exhibit No.</u>	<u>Item/Description</u>
Material Exhibit-1	Two Gold Earrings
Material Exhibit -2	A broken red bangle
Material Exhibit -3	Two steel bracelets
Material Exhibit -4	One rusted bracelet
Material Exhibit -5	One white HMT ladies watch with chain
Material Exhibit-6	Blood-stained Cloth
Material Exhibit-7	A large knife (<i>badi chhuri</i>)

15. On perusal of the order sheet of the Ld. Trial Court it transpires that appellant in his statements u/s 313 CrPC dated 03.07.2003 expressed his desire to produce defence evidence and thereafter date was fixed on 08.07.2003, but on 08.07.2003 adjournment was sought by Tarseem Singh and the case was adjourned and next date was fixed on 23.07.2003, but again on that date adjournment was sought which was allowed on the condition of last opportunity and the case was listed on 28.07.2003. On 28.07.2003 again adjournment was sought but the same was rejected and the case was listed for argument, that is why appellant has not produced any oral or documentary evidence in his defence. In his statement under

Section 313 CrPC, the appellant denied having committed the crime. Thus, the appellant pleaded innocence.

16. Upon a comprehensive appraisal of the oral and documentary evidence on record, the learned Trial Court convicted the appellant to undergo rigorous life imprisonment u/s 302 IPC along with a fine of Rs. 20,000/- and in default of payment of fine further one year additional simple imprisonment; and rigorous imprisonment of two year u/s 404 IPC along with fine of Rs. 2000/- and in default of payment of fine further two months additional simple imprisonment. It has further been provided that both the sentences shall run concurrently.

Submissions made by learned counsel for the accused-appellant:-

17. Learned counsel for the appellant assailed the impugned judgment contending that the prosecution has failed to establish its case beyond reasonable doubt and that the conviction is unsustainable in law. It is submitted that the case rests primarily on the testimony of child witnesses (PW-4 and PW-5), which is unreliable, being susceptible to tutoring and suffering from material inconsistencies, particularly with regard to sequence of events and number of gunshots. It is further contended that their conduct in not disclosing the incident immediately creates serious doubt about their presence. Learned counsel also pointed out that key witnesses, namely PW-1 and PW-3, have turned hostile, thereby weakening the prosecution case. It is argued that there are material inconsistencies between

ocular and medical evidence, and submit that such inconsistencies render the prosecution version doubtful. It is further submitted that the recovery of alleged weapon and articles is doubtful, inasmuch as the recovered articles were not properly identified and the recovery proceedings are not free from suspicion. It has also been contended that the learned Trial Court acted grossly in illegal manner so far as it is related to the recording of the statements under Section 313 Cr.P.C. It is also contended that the prosecution has failed to establish any clear motive. It is lastly argued that the accused has been falsely implicated due to village factionalism and that the trial court has failed to properly appreciate the evidence, thus the appellant is entitled to benefit of doubt.

Submissions made by learned A.G.A :-

18. Per contra, learned A.G.A. appearing for the State opposed the submissions advanced on behalf of the accused-appellant and supported the impugned judgment and order passed by the Trial Court. It was submitted that the prosecution has proved its case beyond reasonable doubt through cogent and reliable evidence and that the testimonies of PW-4 and PW-5, though related witnesses, are natural witnesses, whose presence at the place of occurrence is fully established. Learned A.G.A. further contended that mere hostility of certain witnesses does not demolish the prosecution case, when the core version stands duly proved. It was also urged that the medical and documentary evidence corroborates the ocular

account and the recovery effected at the instance of the accused lends further assurance to the prosecution story. Accordingly, learned A.G.A. submitted that no illegality, perversity or infirmity exists in the findings recorded by the Trial Court and the appeal is liable to be dismissed.

Oral Testimonies:

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

1. **PW-1 Darshan Singh** deposed that about three years prior to his deposition, Balvinder Singh, Nasib Kaur, Sukhvinder Kaur and a guest from Punjab were murdered during the night, and that he came to know about the incident in the morning. He denied having witnessed the occurrence and further stated that no recovery was made from accused Tarsem Singh in his presence. He admitted his signatures on certain documents prepared by the Investigating Officer but deposed that their contents were not read over to him. The witness was declared hostile.
2. **During cross-examination**, he denied having given any statement under Section 161 Cr.P.C. and disowned the same. He further deposed that the accused was not present at the time when his signatures were obtained on Ext. Ka-5 and Ka-6. He also deposed that he later went to the house of the accused, found

him sleeping, woke him up, and thereafter the accused came out and informed the police.

3. **PW-2 Mashwant Singh**, s/o Harnam Singh, deposed that on 19.05.1999 inspector prepared the *panchayatnama* of the dead bodies of Balvindra Singh, Sukhvendra Kaur, Sarwan Singh and Naseeb Kaur (Ext. Ka-3 to Ext. Ka-6 respectively).
4. No cross-examination of PW-2 was conducted.
5. **PW-3 Balwant Singh** deposed that he did not clearly recollect whether the Investigating Officer had taken into possession any blood-stained soil, cartridges or empty shells from the house of Balvinder Singh in his presence. He admitted his signatures on certain documents (paper no. K-6/1 to K-6/4), but stated that their contents were not read over to him and he was unaware of what was written therein. He gave a similar response with respect to other documents (Ext. Ka-7 to Ka-10). The witness was declared hostile.
6. **During cross-examination**, he denied having given any statement under Section 161 Cr.P.C. and expressed ignorance as to how such a statement came to be recorded. He further denied the suggestion that he was deposing falsely in collusion with the accused.
7. **PW-4 Gurvinder Singh**, son of deceased Balvinder Singh, was examined before the Trial Court. On the date of his deposition,

the witness was of 15 years of age. The Trial Court, before recording his testimony, conducted a preliminary inquiry to assess his competence to depose. Upon being asked where he was present, the witness replied that he was in Court. Upon being asked about the duty of the Court, he replied that the function of the Court is to punish the culprit/accused (“*Mulljiman ko saja dena*”). Upon such interaction, the Trial Court formed the opinion that although the witness was of tender age, he possessed sufficient understanding and intelligence to comprehend the nature of questions put to him and to give rational answers. Accordingly, the Court proceeded to record his testimony.

8. **During Examination-in-Chief**, he deposed that he knew the accused, Tarsem Singh, who was a resident of his village Phulvariya. He further deposed that Gurdeep Kaur was his biological mother and that she died after the incident. He further deposed that he was the eldest among three brothers and one sister. He further deposed that his father, deceased Balvinder Singh, had earlier married Sukhavinder Kaur, whom he referred to as his *Badi Maa*. He further deposed that Sukhavinder Kaur had one daughter who was married prior to the incident. He further deposed that the accused Tarsem Singh had been visiting their house, ever since he became old enough to understand things. He further deposed that his grandmother disliked such

visits and had instructed his father as well as his biological mother not to allow Tarsem Singh to visit the house. He further deposed that Tarsem Singh used to visit the house even in the absence of his father. He further deposed that the deceased Sarwan Singh Kalsi, who was a friend of his father, was a resident of Punjab and had come to stay at their house about three to four days prior to the date of the incident. He further deposed that their house was a double-storied structure. He further deposed that on the upper floor there were three rooms—one on the eastern side, one on the western side and one in the middle. He further deposed that he used to address his father as “*Kaku*”. He further deposed that the incident occurred in the intervening night of 18/19.05.1999. He further deposed that on that night, his father and Sarwan Singh Kalsi were sleeping in the eastern room on the upper floor. He further deposed that in the middle room, he and his younger brother, Jagjit Singh, were sleeping on one cot, while on the adjacent cot his grandmother Nasib Kaur and his Badi Maa Sukhavinder Kaur were sleeping. He further deposed that his biological mother Gurdeep Kaur, along with her two younger children, was sleeping in the western room. He further deposed that a tube light was on in the middle room as Nasib Kaur had a habit of sleeping with the light on. He further deposed that at about 12:00 midnight, he and his brother woke up after hearing the sound of two gunshots fired from the

eastern room. He further deposed that thereafter he saw Tarsem Singh and Gurdeep Kaur entering in their room from the eastern side, there being a door between the two rooms. He further deposed that Tarsem Singh was carrying a single-barrel gun (*ek naali bandook*) and Gurdeep Kaur was carrying a big knife (*badi chhuri*). He further deposed that Gurdeep Kaur was wearing only drawers (कच्छा) and vest (बनियान) while her face was covered with a red scarf. He further deposed that as soon as she entered the room, she stabbed Nasib Kaur on her body and face. He further deposed that at the same time Tarsem Singh fired upon Sukhavinder Kaur. He further deposed that his grandmother and his *Badi Maa* died as a result of the injuries sustained. He further deposed that thereafter his biological mother, Gurdeep Kaur, threatened him and his brother not to disclose anything to anyone, failing which Tarsem Singh would kill them. He further deposed that due to this threat he was frightened. He further deposed that after the incident, Tarsem Singh and Gurdeep Kaur left the house. He further deposed that he, thereafter, went to the eastern room and saw his father and Sarwan Singh Kalsi lying dead. He further deposed that he remained silent out of fear and that after about eight days, when the police arrested Tarsem Singh and Gurdeep Kaur, his fear subsided. He further deposed that only thereafter he disclosed the entire incident to the Investigating Officer.

9. **During cross-examination**, he deposed that his mother belonged to Punjab. However, he was not aware of the exact village or city from where she hailed. He further deposed that his *badi maa* was a resident of Sampurna Nagar and was first married to his father. He further deposed that she had one daughter, who was married in Khairtiha. He further deposed that her brother-in-law was a resident of Khairtiha and used to visit their house. He further deposed that he, along with his younger brother, used to visit Khairtiha and stay there for one to two days. He further deposed that the information regarding the murder of his *badi maa* and father reached Khairtiha in the morning and by that time the dead bodies had already been sealed. He further deposed that Tarsem Singh was not present when the dead bodies were being sealed. He further deposed that he was not capable of stating as to whose body was sealed first or last and that no paperwork was done in his presence. He further deposed that no blood sample was collected by the Inspector in his presence and that the Inspector did not question any witness in his presence. He further deposed that the Inspector did not call him to the police station even after eight to ten days of the incident and did not ask him anything about the occurrence, nor did he himself narrate anything to the Inspector. He further deposed that whatever was written by the Inspector was done on his own volition. He further deposed that

the testimony given by him was not tutored and that he was not deposing for the first time. He further deposed that he studies at Palia School and that his younger brother, Jagjit, also studies in the same school. He further deposed that at the time of the incident the school was closed due to summer vacation. He further deposed that he was not well-versed in Hindi. He further deposed that he and his brother were sleeping in the same room in which his *badi maa* and grandmother were sleeping. He further deposed that his grandmother's name was Naseeb Kaur and she was killed while she was sleeping and no gunshot was fired at her. He further deposed that he heard three gunshots during the incident, out of which one was fired in his room and the second shot was heard from the eastern room. He further deposed that after the attackers fled, he and his brother came out of the room and at that time no one from the neighbourhood had arrived. He further deposed that he woke up Seva Ram (servant), who was sleeping downstairs. He further deposed that thereafter Seva Ram went to call the neighbours and then Darshan Singh, Balwant Singh and others came, but Tarsem Singh was not present at that time. He further deposed that when the police arrived, Gurdeep Kaur was present in the house and that there was no other person present except the two offenders. He further deposed that when he went to wake his grandmother Naseeb Kaur, she was already dead. He further deposed that he neither

cried nor hugged any of the dead bodies. He further deposed that he and his brother left the house during the night and returned only after the police arrived. He further deposed that he did not inform any officer that his mother and Tarsem Singh were the murderers of his father, his *badi maa* and his grandmother. He further deposed that the offenders neither assaulted them nor fired upon them. He further deposed that it would be wrong to say that he and his brother, Jagjit Singh (PW-5), were not present at the time of the incident or that they reached the place after information was sent to Khairtiha. He further deposed that the dead bodies were lying with their heads towards the west and legs towards the east. He further deposed that the bodies were taken down from the cots and kept in the courtyard of the terrace in his presence. He further deposed that when the police arrived, all four bodies were kept in the courtyard in front of the eastern room. He further deposed that at about 4:00 P.M. the bodies were taken to the mortuary, but neither he nor his brother accompanied the bodies and he was unaware as to whether any family member accompanied them. He further deposed that the bodies were later brought back, after which he and his brother participated in the last rites. He further deposed that the offenders looted jewellery, cash and other valuable articles and scattered the contents of the storage boxes. He further deposed that he went to his father's room after he was already dead and

clarified that his father's room was situated on the eastern side where he was sleeping. He further deposed that the main door of his room faced north, whereas his father's room was situated towards the south. He further deposed that he witnessed the occurrence from a place between the wall and the door of his father's room, though he did not inform the police about this fact. He further deposed that the offenders were carrying only a *chhuri* (knife) and a gun and further clarified that none of the offenders carried any other knife. He further deposed that his mother covered her hair with a dupatta and not her face. He further deposed that it would be incorrect to state that he had given a false statement or that he had been tutored regarding his deposition. He further deposed that he had no knowledge as to whether any private counsel had been engaged or whether his mother had been murdered.

10. **PW-5 Jagjit Singh**, son of deceased Balvinder Singh, was examined before the Trial Court. On the date of his deposition, the witness was 12 years of age. The Trial Court, before recording his testimony, conducted a preliminary inquiry to assess his competence to depose. Upon being questioned, the witness stated that he was studying in Class VII at Edmonton Public School, an English medium institution. When asked about the purpose of his presence in Court, he stated that he had come to give evidence and that the function of the Court is to

punish the culprit/accused (“*Mulzim ko saza dena*”). On the basis of these responses, the Trial Court recorded a finding that although the witness was of tender age, he possessed sufficient understanding of the nature of questions and was competent to depose.

11. **In his examination-in-chief**, he deposed that he knew the appellant Tarsem Singh, who was a resident of his village Phulvariya. He further deposed that Gurdeep Kaur was his biological mother, Sukhavinder Kaur, the first wife of Balvinder Singh, was his “*Badi Maa*”, and that Sarvan Singh Kalsi was his father’s friend who had come from Punjab approximately five days prior to the date of the incident. He further deposed that Tarsem Singh used to frequently visit their house, both in the presence and absence of his father Balvinder Singh. He further deposed that his grandmother, Nasib Kaur, did not approve of these visits and had told his father not to allow Tarsem Singh to come to the house. He further deposed that the incident occurred on the night of 18.05.1999. He further deposed that on the same night, he was sleeping in the room situated on the upper floor along with his brother PW-4 Gurvinder Singh, his grandmother Nasib Kaur, and his “*Badi Maa*” Sukhavinder Kaur. He further deposed that his father Balvinder Singh and guest Sarvan Singh were sleeping in the eastern room, whereas his mother Gurdeep Kaur and his two younger siblings were sleeping in the western

room. He further deposed that at around 12:00–1:00 a.m., he heard the sound of two gunshots emanating from his father's room. He further deposed that upon hearing the gunshots, he and his brother PW-4 woke up. They then saw Tarsem Singh and Gurdeep Kaur enter their room, where the tube light was on. He further deposed that Tarsem Singh was armed with a single-barrel gun, while Gurdeep Kaur was carrying a large knife (*badi chhuri*). He further stated that Gurdeep Kaur attacked his grandmother Nasib Kaur with the *chhuri*, and that Tarsem Singh fired at Sukhavinder Kaur, as a result of which both women succumbed to their injuries. He further deposed that his mother Gurdeep Kaur threatened both him and his brother that if they disclosed anything to the police, Tarsem Singh would kill them. He further deposed that thereafter Tarsem Singh left the house, but Gurdeep Kaur remained inside. He further deposed that on the next morning, he saw his father Balvinder Singh and Sarvan Singh lying dead in their room. He further deposed that he did not inform the police immediately due to fear, but disclosed the entire incident to the Investigating Officer after the arrest of Tarsem Singh, when his fear had subsided.

12. **During cross-examination**, he deposed that in all three gunshots were fired during the incident. He had awakened on hearing the first shot and thereafter heard two more shots. While verifying his statements, he further deposed that he had not

informed the police that his mother had fired any shot, and that if any such statement was recorded under his name, he was unaware of the reason for the same. He further deposed that he informed the investigating officer that his mother threatened them (P.W. 4 & P.W. 5) saying that Tarsem would kill all three of them (including the mother) if they disclosed the truth, however, he did not know in what manner exactly did the investigating officer recorded this statement. He denied that his mother had stated that he would get into trouble if he told anyone about the incident. He further deposed that by the time the police arrived, he was no longer afraid and had informed them about the scene of the crime. He further deposed that Sukhavinder Kaur was lying on a cot and had been shot from close range from the western side; however, he corrected himself and clarified that the cot was placed in an East–West direction and not North–South as earlier stated. He further deposed that nothing was looted from the house—neither money nor jewellery—and that the alleged offenders had not scattered any household articles. He further deposed that neither he nor his brother, P.W.-4 Gurvinder Singh, left the cot until the offenders had departed, and thereafter both of them went to wake up the servant, Sewa Ram, but did not disclose to him the identity of the offenders. He also admitted that he did not inform the servant about the murder of his father, mother, and grandmother. He further

deposed that he did not inform anyone about the incident until the date of his testimony, except the police. He further denied the suggestion that he had not witnessed the incident or that he was not present at the time of occurrence. He further deposed that the offenders did not assault him and that he had no knowledge as to whether there were bloodstains on his clothes. He further deposed that he did not touch the dead bodies in his arms or cry over them, and that he was unaware as to whether the dead bodies were wrapped in cloth and sealed. He further deposed that when the police arrived in the morning, the dead bodies were lying on the cots in the rooms; however, the police did not complete any inquest proceedings regarding the bodies in his presence and subsequently took them away. He also stated that his brother did not accompany the police. He further deposed that at the time of the incident, his sister was two to three years younger than him.

13. **PW-6 Dr. R.V. Singh**, Senior Medical Officer, District Hospital, Kheri, conducted the post-mortem examinations of all four deceased persons on 19.05.1999 at different intervals of time and proved the reports (Ext. Ka-11 to Ka-14). He deposed that all the deceased had died approximately one day prior and that rigor mortis and post-mortem staining were present on the bodies.

- On the body of deceased Sarwan Singh Kalsi, he found one firearm injury on the right side of the face causing extensive fractures of skull bones, with recovery of pellets and wadding material, along with as many as twelve incised wounds on different parts of the body including forehead, shoulder, arms, chest, forearm, hand, thigh and back, indicating repeated assault by a sharp-edged weapon and use of firearm.
- On the body of deceased Naseeb Kaur, he found multiple grievous incised and stab wounds, including four deep incised wounds on the head and face causing extensive fracture of skull bones, along with several stab wounds on chest, forearms, back and other parts of the body, totaling about fifteen injuries, all indicative of a brutal assault by a sharp-edged weapon.
- On the body of deceased Sukhvinder Kaur, he found a firearm injury of entry on the upper part of the face extending to the temporal region, with blackening and tattooing around the wound, and recovery of twenty-eight metallic pellets and wadding material from the cranial cavity, clearly indicating close-range firing.
- On the body of deceased Balvinder Singh, he found a firearm injury on the chin causing extensive cranial damage along with a penetrating stab wound on the

abdomen, resulting in injury to internal organs and accumulation of blood in the abdominal cavity.

He opined that the firearm injuries were caused by a gun and the remaining injuries were caused by a sharp-edged weapon such as a knife (*chhuri*), and that all the deceased died due to shock and haemorrhage as a result of the ante-mortem injuries.

14. **During cross-examination**, he deposed that injuries no. 1, 2, 3, and 4 on the body of deceased Naseeb Kaur could have likely been caused by some heavy sharp weapon like a pickaxe (*ghadashi*) or a billhook (*banka*).

15. **PW-7 Surendra Tripathi**, the Investigating Officer, deposed that on 19.05.1999 at about 1:30 A.M., complainant Gurdeep Kaur lodged a written report at Police Station Paliya, on the basis of which check FIR was prepared, which he proved as Ext. Ka-15, along with the corresponding General Diary entry, proved as Ext. Ka-16. He further proved that the inquest reports (*panchayatnama*) of the deceased persons, prepared by S.I. K.N. Singh, are Ext. Ka-3 to Ka-6. He further deposed that during investigation, blood-stained and plain soil were collected, which he proved as Ext. Ka-10, and empty cartridges recovered from the place of occurrence were proved as Ext. Ka-9. He further proved the site plan of the place of occurrence prepared by him as Ext. Ka-17. He further deposed that on 24.05.1999, accused Tarsem Singh was arrested and, on the basis of his disclosure

statement, articles belonging to deceased Naseeb Kaur, namely gold earrings, bangles, a ring and a watch, were recovered, which he proved as Ext. Ka-2. He further deposed that on the same day, accused Gurdeep Kaur was arrested and at her instance a licensed single-barrel gun and a knife (*badi chhuri*) were recovered, which he proved as Ext. Ka-1. He further proved that after completion of investigation, charge-sheet was submitted, which he proved as Ext. Ka-20.

16. **During cross-examination**, he admitted that four empty cartridges were recovered from the place of occurrence, two from the upper room and two from the ground floor, and that the recovered firearm was the licensed gun of deceased Balvinder Singh. He further deposed that the recovered articles were not formally identified but were recognized by a neighbour. He denied the suggestion that the accused had been falsely implicated or that the recovery was fabricated.

17. **CW-1 Rajendra Prasad Nishad**, Sub-Inspector, Police Station Kheri, deposed that in compliance of the order dated 27.08.2003 passed by the Fast Track Court-IV against absconding accused Tarsem Singh, he executed the attachment proceedings on 04.09.2003 at the residence of the accused. He proved that the movable property of the accused was taken into police custody and attachment was carried out in the presence of witnesses. He further proved that the attached articles were handed over to

Mangal Singh of village Ranjanganj Majra Lughouri under proper documentation and in presence of witnesses. He further deposed that the seizure memo was prepared on the spot, which was read over and explained to the witnesses and was duly signed by them. He also stated that the accused Tarsem Singh was absconding and his whereabouts were not known.

Court Analysis:

Credibility of Child Witnesses and Evidentiary Value of Their

Testimony:

19. The conviction in the present case primarily rests upon the ocular version of PW-4 Gurvinder Singh and PW-5 Jagjit Singh, both of whom are stated to be eye-witnesses of the occurrence. A careful reading of their depositions reveals that they have furnished a vivid and graphic account of the incident, narrating the sequence of events with minute and specific details, including the manner in which the accused approached the spot, the role attributed to each accused, the nature of weapons carried, and the manner in which the assault was carried out.

20. The learned counsel for the appellant vehemently argued is that the conviction rests primarily on the testimonies of PW-4 and PW-5, who are minor children of the deceased, and therefore their evidence ought to be discarded being interested and susceptible to tutoring. This Court is unable to accept the said contention of the learned counsel for the following reasons:

- a. Firstly, the competency of a witness is governed by Section 118 of the Indian Evidence Act, 1872, which lays down that every person is competent to testify unless the Court considers that due to tender age or other reasons such person is unable to understand the questions or give rational answers. Section 118 of Evidence Act, reads as under:

“Section 118. Who may testify.—*All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.”*

The law relating to appreciation of evidence of child witnesses is well settled. It is not the rule of criminal jurisprudence that the testimony of a child witness is inherently unreliable or liable to be discarded merely because of age. However, as a matter of judicial prudence, such evidence requires closer scrutiny, as a child witness is always susceptible to tutoring and impressionable influence.

- i. The Supreme Court, in ***State of M.P. v. Ramesh***, (2011) 4 SCC 786, has reiterated that an inference as to whether a child has been tutored can be drawn from the deposition itself. The Court observed that:

“14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with

greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.”

- ii. Similarly, in ***Pramila v. State of U.P., (2021) 12 SCC 550***, it has been held that even the sole testimony of a child witness can form the basis of conviction, provided the Court is satisfied that the possibility of tutoring is ruled out. The Supreme Court emphasized in paragraph 5 of the case as under:

“5. ...where a child witness is to be considered, and more so when he is the sole witness, a heightened level of scrutiny is called for... The Court has, therefore, to satisfy itself that all possibilities of tutoring or otherwise are ruled out and what was deposed was nothing but the truth.”

- iii. Moreover, learned counsel for the appellant placed reliance upon ***Ashok v. State of Uttar Pradesh, (2025) 2 SCC 381***, wherein the Supreme Court held that conviction could not be sustained when the sole child witness's testimony lacked sterling quality due to inconsistencies and delay, and that such evidence was unsafe to rely upon without corroboration, particularly when it amounted only to a weak circumstance insufficient to establish guilt beyond reasonable doubt. Learned counsel also relied upon ***Pradeep v. State of Haryana, (2023) 19 SCC 221***, wherein the Supreme

Court recognized that the testimony of a child witness is admissible and may form the sole basis of conviction if the Court is satisfied about the competence, truthfulness, and reliability of the witness; however, the Court simultaneously cautioned that a child witness of tender age is easily susceptible to tutoring and therefore such evidence must be subjected to careful judicial scrutiny, and that corroboration, though not a rule of law, remains a rule of prudence.

- iv. Applying the aforesaid principles to the facts of the present case, this Court finds that the testimonies of PW-4 Gurvinder Singh and PW-5 Jagjit Singh stand on a firm footing. Both the witnesses were examined by the Trial Court after due satisfaction regarding their competency, and nothing has been brought on record to show that they were incapable of understanding the questions or giving rational answers.
- b. Secondly, from a careful reading of their depositions, it is evident that both witnesses have given a natural, consistent and vivid account of the occurrence. They have categorically deposed that during the night of the incident, they were present inside the house when the accused-appellant Tarsem Singh along with co-accused Gurdeep Kaur entered the

premises. They have specifically stated that the accused was armed with a firearm and a knife, and thereafter committed assault upon the deceased persons. The description given by the witnesses regarding the manner of entry, the weapons carried, and the sequence of assault clearly reflects that they had actually witnessed the occurrence.

- i. It is also noteworthy that both the witnesses have stated that they were threatened by the accused not to disclose the incident. They have further explained that due to fear and trauma, they did not immediately narrate the entire incident. This explanation assumes significance. The witnesses were minor children who had just witnessed the brutal murder of their family members, including their father. In such circumstances, their silence or delayed disclosure cannot be termed unnatural; rather, it is a natural human reaction.
- ii. The learned counsel for the appellant has laid much emphasis on alleged inconsistencies in their statements, such as the clothes Gurdeep Kaur was wearing at the time of the incident, inability of the child witnesses to answer whose body was sealed first, as to whether Gurdeep Kaur left the house after the occurrence or not, etc. However, upon careful scrutiny,

it emerges that these discrepancies are minor in nature and relate to peripheral details. The core of their testimony, namely the presence of the accused, the manner of assault, and the weapons used, remains consistent and unshaken. It is well settled that minor inconsistencies are bound to occur, particularly in the testimony of child witnesses, and such discrepancies often lend credibility rather than detract from it.

c. Thirdly, the argument of tutoring, as advanced by learned counsel for the appellant, also does not hold ground. There is nothing in the cross-examination of these witnesses to suggest that they were tutored or that their statements were the result of external influence. Their deposition appears spontaneous and bears intrinsic truth. The details narrated by them are such that they could not have been fabricated without actual knowledge of the incident.

i. Moreover, the Trial Court has rightly observed that a child would not ordinarily falsely implicate his own mother in a serious offence such as murder, knowing fully well that such implication may lead to her punishment. This observation carries considerable weight. In the present case, the child witnesses have not only implicated the accused-appellant but have also deposed against their own mother, Gurdeep Kaur.

Such conduct rules out any possibility of false implication and lends strong assurance to the truthfulness of their testimony.

- d. Fourthly, it is also significant to note that both child witnesses, PW-4 and PW-5, did not sustain any injury during the occurrence, despite being present in the very same room where their grandmother Naseeb Kaur and Badi Maa Sukhvinder Kaur were brutally assaulted and killed. This circumstance, rather than creating any doubt, in fact lends further assurance to the prosecution case. The consistent version of both witnesses is that the accused, after committing the assault, threatened them with dire consequences if they disclosed the incident. In such a situation, it is wholly natural that the assailants would spare the children in order to avoid raising immediate alarm and to facilitate their escape. The absence of injuries on the child witnesses, therefore, is not unnatural but is in consonance with the prosecution version and the conduct attributed to the accused. It further supports the presence of the witnesses at the spot and the truthfulness of their testimony.
- e. Lastly, it is also well settled that the testimony of a related witness cannot be discarded merely on the ground of relationship. On the contrary, such witnesses are often the most natural witnesses. In the present case, PW-4 and PW-5

being inmates of the house are the most natural witnesses to the occurrence and there is no reason to disbelieve them.

Effect of General Diary Entry vis-à-vis Testimony of PW-1:

21. From a perusal of the General Diary (GD) entry (Ext. Ka-16), which had been proved by PW-7, it emerges that PW-1 had accompanied co-accused Gurdeep Kaur to the police station during the night for the purpose of lodging the FIR. However, in his deposition before the Trial Court, PW-1 has stated that he came to know about the incident only in the morning and has not supported the prosecution case, thereby turning hostile.

22. This material inconsistency between the contemporaneous police record and the oral testimony of PW-1 cannot be lightly ignored. The presence of PW-1 at the police station at the time of lodging of the FIR clearly indicates that he had knowledge of the incident at the earliest point of time. His subsequent attempt to feign ignorance and disassociate himself from the prosecution case during trial demonstrates that he has not come forward with the true version of facts.

23. The conduct of PW-1 in resiling from his earlier position and withholding material facts strongly suggests that he has been won over by the accused party. It is a common phenomenon in criminal trials, particularly in cases involving serious offences, that witnesses succumb to pressure, inducement or influence and turn hostile in order to shield the accused.

24. It is well settled that the testimony of a hostile witness is not to be discarded in toto, and the Court can rely upon such part of the testimony which finds corroboration from other evidence on record. In the present case, the hostile stance of PW-1 does not demolish the prosecution case; rather, it necessitates a cautious appreciation of his evidence in the light of other reliable material available on record.
25. On the contrary, the inconsistency in the testimony of PW-1, when read with the GD entry, strengthens the prosecution case inasmuch as it reflects an attempt on his part to suppress the truth. The fact that he had accompanied the informant at the earliest stage but later denied knowledge of the occurrence clearly indicates that his testimony before the Court is not trustworthy.
26. It is also pertinent to note that the prosecution case does not hinge solely upon the testimony of PW-1. The same is supported by cogent and reliable evidence of other witnesses, including the eyewitnesses, medical evidence, recovery and forensic report. Therefore, even if PW-1 has turned hostile, the same does not create any dent in the prosecution case.
27. In view of the above, this Court is of the considered opinion that the conduct of PW-1 in giving a false and inconsistent statement before the Court, contrary to the contemporaneous GD entry, does not weaken the prosecution case. Rather, it indicates that the

witness has attempted to shield the accused, and his testimony, to that extent, deserves to be discarded.

Recovery of Weapon, Forensic Evidence and Conduct of the Accused-

Appellant:

28. This Court now proceeds to examine the evidentiary value of recovery effected at the instance of the accused persons, the accompanying forensic analysis, and the conduct of the accused-appellant. It is well settled that though recovery under Section 27 of the Indian Evidence Act is not substantive evidence of guilt, it constitutes a highly relevant incriminating circumstance, particularly when it is discovered pursuant to the disclosure statement of the accused and is supported by other evidence on record.

29. In the present case, the Investigating Officer has categorically deposed that on 24.05.1999, he arrested accused Tarsem Singh and, on the basis of his disclosure statement, recovered articles belonging to deceased Naseeb Kaur, namely gold earrings, bangles, a ring and a watch (Ext. Ka-2). He has further deposed that on the same day he arrested co-accused Gurdeep Kaur, who pointed out and led to the recovery of a licensed single-barrel gun and a large knife (*badi chhuri*) (Ext. Ka-1). The said recoveries, having been effected pursuant to disclosure statements, clearly attract the provisions of Section 27 of the Evidence Act and are admissible to

the extent they relate to discovery of facts within the special knowledge of the accused.

30. The legal position with respect to such recoveries is well crystallized that the discovery of a fact in consequence of information received from an accused affords a guarantee of truth to that limited extent, as the information leading to discovery is presumed to be within the exclusive knowledge of the accused. In the present case, the recovery of personal belongings of the deceased as well as the weapon of assault at the instance of the accused persons constitutes a strong incriminating circumstance, particularly when there is no plausible explanation offered by the accused as to how he came to have knowledge of the same.

31. The argument of the appellant that independent witnesses have not supported the recovery is of no avail. It is a settled principle that the testimony of the Investigating Officer cannot be discarded merely on the ground that independent witnesses have turned hostile, if the official witness is otherwise found to be reliable and trustworthy. There is no rule of law that recovery must fail in the absence of independent corroboration, especially when the recovery is otherwise duly proved and stands corroborated by surrounding circumstances.

32. The contention regarding non-production of certain recovered articles or alleged lapses in handling of material exhibits also does not go to the root of the prosecution case, as it is well settled that

defective or negligent investigation cannot be a ground for acquittal, unless such lapses create a serious dent in the prosecution case. In the present case, the factum of recovery and the use of weapon are otherwise established through ocular testimony, medical evidence and forensic report, therefore, such lapses do not materially affect the substratum of the case.

33. The forensic analysis report (Ext. Ka-41) indicates that the 12 bore S.B.B.L. gun bearing No. 1262 was subjected to examination along with four cartridges marked as E.C.-1 to E.C.-4. The report records the presence of lead and nitrite residues in the barrel of the said firearm, thereby clearly indicating that the weapon had been used. The ballistic expert has further opined that cartridges marked as E.C.-2 and E.C.-4 were fired from the said firearm, as they bore characteristics similar to the test cartridges (T.C.-1 and T.C.-2) discharged from the weapon. Though it has been observed that cartridges E.C.-1 and E.C.-3 could not be conclusively compared due to absence of sufficient individual characteristic marks, such inability does not dilute the evidentiary value of the report to the extent it positively establishes firing from the said weapon.

34. The learned counsel for the accused-appellant sought to raise a doubt by contending that as per the prosecution version, co-accused Gurdeep Kaur had fired only a single shot in retaliation from the licensed gun when the assailants were leaving the house, whereas the forensic report indicates that more than one cartridge was fired

from the said firearm. This Court finds that the said contention, weakens the appellant's case because:

1. The written report states that after the assailants entered the house, committed the murders of four persons and were retreating from the ground floor, Gurdeep Kaur fired one shot from the licensed gun in retaliation. However, the investigation led to recovery of four empty cartridges from the scene of occurrence, out of which at least two cartridges have been conclusively matched with the licensed S.B.B.L. gun. This factual position assumes significance.
2. If the version of the defence is to be accepted that the said licensed gun was used only once for the purpose of retaliation, then, in the ordinary course, only one cartridge would have been found to be fired from that weapon. However, the forensic report clearly establishes that more than one cartridge was discharged from the said firearm. This circumstance indicates that the said gun was not used merely for a solitary act of defence but was in fact used more than once during the occurrence.
3. Furthermore, the evidence on record shows that three deceased persons had sustained firearm injuries. In such a situation, the recovery of multiple cartridges and the scientific matching of more than one cartridge with the

licensed gun provides a strong and cogent indication that the said firearm formed part of the weapons used in the commission of the offence. The version that the firearm was used only for a single retaliatory shot thus stands rendered improbable in light of the scientific evidence.

35. It is also important to note that the inability of the ballistic expert to conclusively match cartridges E.C.-1 and E.C.-3 does not create any dent in the prosecution case. It is well settled that forensic evidence is corroborative in nature, and even partial matching is sufficient to lend assurance to the prosecution version. The absence of identifiable marks on certain cartridges is a known limitation in ballistic science and cannot be treated as a circumstance adverse to the prosecution.

36. The trial court has, therefore, rightly appreciated this aspect and has correctly observed that even if one proceeds on the assumption that a single shot was fired in retaliation, such fact would be of no consequence in the backdrop of a coordinated and brutal assault by multiple assailants. A solitary shot fired by one person would not have been sufficient to repel the attack. On the contrary, the forensic evidence demonstrates that the firearm was used in a manner consistent with the prosecution case.

37. Furthermore, the learned counsel for the accused-appellant argued that the Investigating Officer failed to segregate cartridges recovered from different places and prepared a single recovery

memo also does not go to the root of the matter. Such lapse, at best, reflects lack of meticulousness in investigation. However, the core fact remains that empty cartridges were recovered from the scene, which corroborates the ocular version, medical evidence and the forensic report regarding use of firearm. It is trite that procedural lapses in investigation cannot outweigh substantive evidence establishing the occurrence.

38. The conduct of the accused-appellant is another relevant circumstance under Section 8 of the Evidence Act. From the evidence on record, it is apparent that the accused has failed to furnish any plausible explanation regarding the incriminating circumstances appearing against him in his statement under Section 313 Cr.P.C.. It is well settled that while the burden of proof primarily lies on the prosecution, when facts are especially within the knowledge of the accused, the failure to offer any explanation assumes significance under Section 106 of the Evidence Act and it is well settled that conduct often speaks louder than words, and the behaviour of the accused, when read in conjunction with other evidence, provides an additional link in the chain of circumstances.

39. In the present case, the recovery of incriminating articles at the instance of the accused, the corroborative forensic evidence indicating use of firearm, and the unexplained conduct of the accused collectively form a coherent and reliable set of

circumstances. These circumstances are not to be viewed in isolation but in conjunction with the ocular testimony (especially of PW-4 and PW-5) and medical evidence, which together establish the prosecution case to the hilt.

40. Accordingly, this Court finds that the recovery of weapon and articles, the forensic evidence relating to firearm and cartridges, and the conduct of the accused-appellant constitute strong corroborative circumstances. The alleged discrepancies pointed out by the learned counsel for the appellant are minor, do not go to the root of the matter, and are insufficient to create any reasonable doubt in the prosecution case.

Ocular Evidence Corroborated by Medical Evidence:

41. It is a well-settled principle of criminal jurisprudence that where the ocular testimony of witnesses is found to be credible and trustworthy, the same is to be given primacy, and the medical evidence acts as a corroborative piece. In the present case, the ocular version furnished by PW-4 and PW-5 finds complete and consistent support from the medical evidence on record.

42. It is crystal clear that upon careful appreciation of the testimonies of PW-4 and PW-5, both eye-witnesses have consistently deposed in their examination-in-chief that they had seen the accused-appellant present inside their house at an odd hour, where his presence was wholly unnatural and unexplained. Once such a circumstance stands established, the burden shifts upon the accused

to offer a plausible explanation. However, in the present case, the accused has failed to furnish any explanation in his statement under Section 313 Cr.P.C., nor has he led any evidence in defence to rebut the said incriminating circumstance. This failure on the part of the accused constitutes an additional link pointing towards his guilt.

43. Learned counsel for the appellant has placed reliance on *Zainul v. State of Bihar, 2025 INSC 1192*, wherein the Hon'ble Supreme Court reiterated that where medical evidence renders the ocular account improbable or inconsistent on material particulars, the Court must exercise greater caution in placing reliance upon such testimony. There is no dispute with regard to the said legal proposition.

44. Both PW-4 Gurvinder Singh and PW-5 Jagjit Singh have categorically deposed that the accused-appellant Tarsem Singh was armed with a firearm, while co-accused Gurdeep Kaur was carrying a sharp-edged weapon (*badi chhuri*), and that both of them inflicted fatal injuries upon the deceased persons in a sequential manner inside the house.

45. The post-mortem reports of all four deceased persons, as proved by PW-6 Dr. R.V. Singh, clearly establish that the injuries sustained were a combination of firearm wounds and incised/stab wounds caused by a sharp-edged weapon. For instance, deceased Balvinder Singh and Sukhvinder Kaur sustained firearm injuries, while

multiple incised and stab wounds were found on the bodies of Naseeb Kaur and Sarwan Singh Kalsi.

46. The nature, location and multiplicity of injuries, including firearm entry wounds with blackening and tattooing, presence of pellets and wadding pieces, as well as deep incised and stab wounds, fully correspond with the manner of assault as narrated by the eyewitnesses. The medical opinion that such injuries could be caused by a firearm and a sharp-edged weapon like a knife (*badi chhuri*) lends complete assurance to the ocular account.

47. There is no inconsistency between the ocular and medical evidence which may discredit the prosecution case. On the contrary, both are in complete harmony. It is well settled that unless medical evidence completely rules out the possibility of the occurrence as narrated by eyewitnesses, the ocular testimony cannot be discarded. In the present case, the medical evidence not only supports but reinforces the prosecution version.

48. Thus, the ocular testimony of PW-4 and PW-5 stands duly corroborated by the medical evidence, thereby strengthening the case of prosecution and lending credibility to the prosecution case.

Alleged Vague and Omnibus Questioning under Section 313 Cr.P.C.

49. Learned counsel for the appellant has contended that the statement of the accused recorded under Section 313 Cr.P.C. suffers from serious infirmity inasmuch as the incriminating circumstances were not put to the accused in a proper and specific manner, and that the

questioning was vague and omnibus in nature, thereby causing prejudice to the appellant.

50. Before advertng to the said contention, it would be apposite to briefly notice the scope and object of Section 313 Cr.P.C. The provision casts a mandatory duty upon the Court to put to the accused all incriminating circumstances appearing against him in the prosecution evidence so as to afford him an opportunity to explain the same. The object of such examination is not merely procedural but substantive, as it enables the accused to offer his explanation and serves as an important safeguard against miscarriage of justice.

51. In the present case, learned counsel for the appellant has drawn attention to Question No. 11 put to the accused, which reads as under:

" प्रश्न नं० 11:- आपने गवाहान पी०डब्लू० 1 दर्शन सिंह, पी०डब्लू० 2 बसंत सिंह पी०डब्लू० 03 बलवन्त सिंह पी०डब्लू० 04 गुरुविन्दर सिंह, पी०डब्लू० 05 जगजीत सिंह पी०डब्लू०, 06 डा० आर० बी० सिंह, पी०डब्लू० 7 सुरेन्द्र त्रिपाठी प्रभारी निरीक्षक के बयान को सुना। इस विषय में आपको क्या कहना है ?

उत्तर:- पुलिस के असर से झूठी गवाही देते हैं। "

52. It is contended that the aforesaid question is omnibus in nature and does not specifically put individual incriminating circumstances to the accused. This Court, however, finds that the said submission does not merit acceptance.

53. A perusal of the statement under Section 313 Cr.P.C. indicates that prior to the aforesaid question, specific questions had already been put to the accused covering all material and incriminating

circumstances, including his presence at the place of occurrence, recovery of weapon and articles, and the evidence of prosecution witnesses. Thus, even if Question No. 11 appears to be general in nature, the same is merely cumulative and does not constitute the sole basis of examination.s

54.It is well settled that mere irregularity or defect in framing of questions under Section 313 Cr.P.C. would not vitiate the trial unless it is shown that prejudice has been caused to the accused. In the present case, no such prejudice is demonstrated. On the contrary, the accused was fully aware of the case against him and had adequate opportunity to explain the incriminating material.

55.Furthermore, the appellant, despite being afforded opportunity, did not choose to lead any defence evidence, as is evident from the order-sheet of the Trial Court. His response under Section 313 Cr.P.C. is a bald denial without any plausible explanation. Thus, even assuming that one of the questions was broadly framed, the same has not resulted in any failure of justice.

56.Thus, this Court is of the considered view that no prejudice has been caused to the appellant on account of the alleged defect in questioning under Section 313 Cr.P.C., and the same does not vitiate the trial. The contention raised by the learned counsel for the appellant is accordingly rejected.

Conclusion:

57. In view of the foregoing discussion, this Court is of the considered opinion that the testimony of PW-4 and PW-5, who are natural child witnesses of the occurrence, has been found to be cogent, credible and trustworthy. Their presence at the place of occurrence is natural and their version stands fully corroborated by the medical evidence as well as the forensic report. The nature of injuries, the weapons used, and the manner of assault, as deposed by them, find complete support from the post-mortem reports. The recovery of incriminating articles and weapon at the instance of the accused, coupled with the forensic evidence establishing the use of firearm, lends further assurance to the prosecution case. The conduct of the accused, his failure to furnish any plausible explanation under Section 313 Cr.P.C., and the inconsistency in the testimony of PW-1, read with the General Diary entry, further strengthen the prosecution version. The alleged discrepancies and contradictions pointed out by the learned counsel for the appellant are minor in nature and do not go to the root of the prosecution case. It is well settled that minor inconsistencies are bound to occur in truthful testimonies and cannot be a ground to discard otherwise reliable evidence. Thus, on an overall appreciation of the ocular evidence, medical evidence and forensic analysis on record, it stands established that PW-4 and PW-5, who are the eye witness of the incident, are credible and reliable and their testimonies inspire

confidence. The evidence consistently points towards the guilt of the accused-appellant, leaving no reasonable ground for a conclusion consistent with his innocence.

58. Accordingly, the criminal appeal is **dismissed**. The impugned judgment and order dated 05.09.2008 passed by the learned Special/Additional Sessions Judge, Lakhimpur Kheri in Sessions Trial No. 419 of 1999 are hereby **affirmed**.

59. The appellant, Tarsem Singh, is in jail and shall continue to serve out the remaining part of his sentence in accordance with law.

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

61. Let a certified copy of this judgment along with the lower court record be transmitted to the court concerned forthwith, and in any case within a period of one week, for compliance.

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

April 7, 2026
Kanhaiya