



2026:DHC:2374-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Reserved on: 17<sup>th</sup> February, 2026.***

***Date of Decision: 23<sup>rd</sup> March, 2026.***

***Uploaded on: 23<sup>rd</sup> March, 2026.***

+ **CRL.A. 797/2025 & CRL.M.(BAIL) 1228/2025**

VIRENDER ALIAS BABLU .....Appellant

Through: Mr. Himanshu Anand Gupta, Ms. Mansi Yadav, Mr. Shekhar Anand Gupta, Mr. Sidharth Barua, Mr. Mike Desai, Ms. Navneet Kaur and Ms. Shivani Rampal, Advs.

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with Ms. Divya Yadav & Mr. Lalit Luthra, Advs.

+ **CRL.A. 983/2025 & CRL.M.(BAIL) 1514/2025**

VIKAS @ TINKU .....Appellant

Through: Mr. Dhruva Bhagat, Adv.

versus

STATE (NCT OF DELHI) ....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with Ms. Divya Yadav & Mr. Lalit Luthra, Advs.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUSTICE MADHU JAIN**

**JUDGMENT**

**MADHU JAIN, J.**

**BACKGROUND:**

1. The present appeals have been filed under Section 415 (2) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter*, 'BNS') assailing the impugned judgment of conviction and order on sentence



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dated 10<sup>th</sup> March, 2025 and 27<sup>th</sup> March 2025 respectively passed by the court of Ld. ASJ-05 North-West District, Rohini Court, Delhi whereby the Appellants have been convicted in *Sessions Case No. 56/2017* arising out of *FIR No. 732/2016* registered at P.S. Begumpur, Delhi under Sections 302/34 of the Indian Penal Code, 1860 (*hereinafter 'IPC'*) and wherein Appellant - Virender@Bablu has also been convicted under Sections 25/27 of the Arms Act, 1959.

2. By the impugned judgment of conviction and order on sentence, the Appellants have been sentenced to undergo imprisonment for life for the commission of offence punishable under Section 302 of the IPC along with a fine of Rs. 1,00,000/-. In default of payment of the said fine, they have been sentenced to undergo simple imprisonment for a period of 6 months. Further, Appellant Virender @ Bablu has been sentenced to undergo Imprisonment for a period of 3 years with fine of Rs. 5,000/-, for commission of offence under Sections 25/27 of the Arms Act, 1959. In default of the payment of fine, the concerned Appellant will have to undergo simple imprisonment for a period of 1 month.

3. It is pertinent to mention here that this is the second round of appeals being filed by the Appellants. *Vide* judgment dated 26<sup>th</sup> March, 2024, both the Appellants were convicted for the offence under Section 302 IPC and accused Virender @ Bablu was additionally convicted for the offence under Sections 25/27 Arms Act, 1959. Thereafter, vide order dated 6<sup>th</sup> December, 2024, the Ld. Division Bench of this court in *CRLA.792/2024* and in *CRLA.913/2024*, set aside the said judgment of conviction and order on Sentence dated 26<sup>th</sup> March, 2024 and 30<sup>th</sup> May, 2024 respectively, and remanded the matter back to the Id. Trial



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court for fresh arguments and pronouncement of judgment. The relevant portion of the order in **CRL.A.792/2024** and **CRL.A.913/2024** dated 6<sup>th</sup> December, 2024 is extracted below:

*“8. In the considered opinion of this Court, the impugned judgment of the Trial Court is sketchy to say the least as there is no discussion in respect of the evidence or the basis of the conclusions that the Trial Court has arrived at in the said judgment. In a case involving a serious offence such as an offence under Section 302 IPC, the ld. Trial Court is expected to analyse and appreciate the evidence which has been led and draw its conclusions only on the basis of the same. The said reasoning being completely absent in the impugned judgment, the same cannot be sustained. In these circumstances, therefore, this Court is of the opinion that the matter deserves to be remanded for re-hearing of the final arguments and pronouncement of judgment afresh on the existing evidence and documents on record.*

*9. According to the respective nominal rolls on record, the Appellant in CRL. A. 792/2024 i.e., Vikas@Tinku has already undergone a period of approximately 3 years 7 months and the Appellant in CRL.A. 913/2024 i.e., Virender@Bablu has undergone approximately 5 years 10 months. Accordingly, the Appellants are directed to be released on bail till the pronouncement of final judgment by the ld. Trial Court, upon them furnishing a personal bond of Rs. 20,000/- each with one surety of like amount, to the satisfaction of the ld. Trial Court/Link Court, further subject to following conditions:*

*i. The Appellants shall not leave India without prior permission of the ld. Trial Court.*

*ii. The Appellants shall intimate the ld. Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential*



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*address.*

*iii. The Appellants shall appear before the ld. Trial Court as and when the matter is taken up for hearing.*

*iv. The Appellants are directed to give their mobile numbers to the Investigating Officer and keep it operational at all times. v. The Appellants shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.*

*10. The impugned judgment of conviction and order of sentence dated 26th March, 2024 and 30th May, 2024, respectively, are set aside. The matter is remanded back to the ld. Trial Court and the same shall be listed on 9th January, 2025. The ld. Trial Court shall hear the arguments afresh and pronounce judgment within a period of 2 months from the said date.”*

4. The impugned judgement has now been passed on 10<sup>th</sup> March 2025, which is under challenge in this appeal.

**BRIEF FACTS:**

5. The present case arises out of the incident dated 22<sup>nd</sup> September 2016 when around 8:34 PM, PS Begumpur received information from Brahm Shakti Hospital regarding one Vinay Singh having been admitted with a gunshot injury who was declared brought dead. The said information was recorded vide DD No.42A, pursuant to which the police machinery was set into motion.

6. Upon reaching the hospital, the IO (PW26 / Retd. Ins. Ramesh Singh) collected the MLC bearing No. 1268/16(Ex. Pw-1/1) of the deceased and thereafter proceeded to the place of occurrence near Maxfort School, Sector-23, Rohini. At the spot, one motorcycle bearing registration No. HR-12X-



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7510 was found lying with blood stains. The crime team inspected the scene and collected exhibits including blood-stained earth samples. Consequently, **FIR No. 732/2016** was registered at PS Begumpur for the offence punishable under Section 302 IPC.

7. On 23rd September 2016, the postmortem examination of the deceased was conducted, wherein two firearm wounds (one entry and one exit) were noted on the temporal region of the head, with blackening and tattooing, indicative of close-range firing. The cause of death was opined as cranio-cerebral damage resulting from ante-mortem firearm injury sufficient to cause death in the ordinary course of nature.

8. On 29<sup>th</sup> September 2016, as per the testimony of PW-14 HC Yashpal, at about 06:00 p.m., he along with SI Surender and IO (PW26) reached Sector-24, Rohini in search of the culprits, where the IO (PW26) requested 4–5 public persons to join the proceedings, however, they refused and left. Thereafter, a raiding party was constituted. The concerned raiding party, at about 6:45 pm, apprehended 2 boys coming from the side of the Rithala road after they were pointed out by the secret informer. Upon interrogation, their names were revealed as Vikas @ Tinku and Virender @ Bablu. Both the Appellants were formally arrested vide arrest memo dated 29<sup>th</sup> September 2016, and their personal search was conducted. Their disclosure statements were recorded as Ex.PW14/5 and Ex.PW14/6.

9. Pursuant to the above disclosure statements, Appellant Virender is stated to have led the police party to the Service Road, Sector-25, Rohini, near electric pillars No. 561-52/23, and got recovered one country-made pistol (*desi katta*), wrapped in green colour cloth, from underneath the bushes. The



prosecution examined PW-19 to prove the recovery of the said *katta*. The said weapon was seized after sealing, and was handed to SI Surinder (PW-20).

10. After completion of the investigation, charge-sheet was filed before the concerned court and cognizance of the offences was taken.

11. Upon compliance with the provisions of Section 207 Cr.P.C., the case was committed to the Court of Sessions for trial in accordance with law.

12. *Vide* order dated 18th March 2017, charges were framed against both the Appellants for offences punishable under Sections 302/34 IPC, and additionally against accused Virender under Sections 25/27 of the Arms Act, 1959 to which they pleaded not guilty and claimed trial.

13. The prosecution has examined as many as twenty-six (26) witnesses in order to prove the charge against the accused/Appellants. While believing the testimonies of these witnesses, the Id. Trial Court has discussed them as under:

*“5. (i) PW-1 Dr. Afroz is the person who examined the dead body of the deceased namely Vinay Singh vide MLC No. 1268 (Ex.PW 1/1).*

*(ii) PW-2 Sh. Baljeet Singh is the uncle of deceased Vinay. It was deposed similarly by both of them that they have identified the dead body of deceased. It was also deposed by Sh. Baljeet Singh (PW-2) and Sh. Wazir Singh (PW-9) that then statements were recorded (Ex.PW2/1 and Ex.PW9/ respectively). It was also inter-alia deposed by Sh. Wazir Singh (PW-9) that his son Vinay used to lend money against interest and that around July 2016. Vinay had told him that he had lent Rs.2.5 lakhs to one Virender Verma @ Bablu. who resided in Sector-25. Rohini on 12.02.2016 in connection with marriage of his sister. That the money was paid in presence of father of Virender and an affidavit and a blank*



*signed cheque was given to him. It was further deposed by him that about 4-5 days prior to the incident, his son Vinay had told him that he had demanded back his money from Birender. who refused to make the payment and had threatened to shoot him.*

*(iii). PW-3 ASI Karambir Singh is the photographer, who had taken photographs at the spot (Ex.PW3/l to 14).*

*(iv). PW-4 SI Akashdeep is the official, who was posted with Crime Team and on receipt of information, he inspected the spot and got it photographed and recorded his observations in the Scene of Crime report.*

*(v). PW-5 Sh. Krishan Kumar Batra deposed that he was a property dealer by profession and that deceased Vinay was known to him and used to visit his office and Vinay used to lend money against interest.*

*It was further deposed that on 22.09.2016 at about 07.00 PM while Vinay was sitting in park in front of his office, one of his relatives came there and Vinay left with him.*

*(vi). PW-6 HC Parvinder is the D.O, who registered the F.I.R of the present case (Ex.PW6/l) on receipt of rukka, vide endorsement (EX.PW6/2). The witness had brought the DD Register w.r.t. DD No.42/A dt. 22.09.2016 (Ex.PW6/4).*

*(vii). PW-7 HC Dilip Kumar is the official, who, on receipt of copies of F.I.R from D.O, delivered the same at the residence of Ld. MM, Joint C.P. and D.C.P.*

*(vii) HC Dilip Kumar (PW-7) is the official, who, on receipt of copies of F.I.R from D.O, delivered the same at the residence of Ld. MM, Joint C.P. and D.C.P.*

*(viii). PW-8 ASI Prem Pal is the official, who was on patrolling duty in Sector-23, Rohini. It was*



*deposed by him that near divider of Max Fort School near crossing of Sector-23 & Sector-24, Rohini, he saw a black coloured Pulsar M/C NO.HR12X-7510 lying parked; a large crowd was found present there; blood was on the motorcycle; the injured was also lying (here; S.I Surender reached there, who took injured to the hospital by leaving him at the spot.*

*It was further deposed that after S.I Surender returned back to the spot and sent him to P.S with Rukka at around 10.30 p.m. and that after registration of F.I.R, he returned back to the spot with rukka.*

*(x). PW-10 HC Charan Singh is the official, who, on receipt of information from Brahm Shakti Hospital, went there along with S.I Surender. It was deposed that on reaching the hospital, it transpired that injured Vinay was brought dead and that M.L.C was collected and that no eye witness met them in the hospital. It was further deposed that after leaving him in the hospital, I.O went to the spot and that he got preserved the dead body in S.G.M Mortuary, that Post Mortem was got conducted on 23.09.2016; dead body was handed over to legal heirs and then returned back to the P.S. It was further deposed that some pullandas received in the hospital were handed over to him by the I.O in the hospital and he had brought the same to P.S.*

*(xi). PW-11 HC Narender is the official, who, had taken one viscera box bearing seal of hospital alongwith a sample seal and two plastic boxes duly sealed with seal of RS from malkhana FSL, Rohini vide RC no.218/21/16 & 219/21/16 and that after depositing the said articles in FSL, he brought back the receipt and deposited same in malkhana.*

*(xii). PW-12 Sh. Rajan Walia deposed that on 22.09.2016, he was bringing his father home on motorcycle and that on the way, he saw a large*



*crowd having collected at Sector-23. Rohini near Max Fort School. That when he went there and saw Vinay @ Doctor lying therein injured condition; there was bleeding and that he alongwith some other persons helped to put Vinay in a Champion vehicle which had been got stopped on road; the vehicle driver took him to hospital; too had gone to Brahm Shakti Hospital and was declared dead in the hospital.*

*(xiii). PW-13 Insp. Manohar Lai deposed that on 24.11.2016, while being posted as Draftsman (N-W), he had gone to P.S Begumpur, where he met Insp. Ramesh Singh and that thereafter, they went to the spot near Max fort School, Sec-23, Rohini; he inspected the spot at instance of the I.O and PW Satish Kumar and prepared his rough notes and that subsequently, he prepared scaled site plan in his office on 25.11.2016 (EX.PW13/1).*

*(xiv). PW-14 HC Yashpal deposed that on 29.09.2016, he had joined investigation alongwith S.I Surinder and the I.O; at about 06.00 p.m., they reached Sector-24, Rohini in official vehicle in search of culprits of the case; a secret informer met I.O and informed that Virender @ Bablu, who was wanted in the present case would be coming at Deep Vihar for taking money from someone alongwith his accomplice Tinku; that Insp. Ramesh requested 4-5 passersby to join the proceedings, but they all refused and went away; that thereafter, a raiding party alongwith the informer reached center of road near I.C.I.C.I. Bank between Deep Vihar and Sector-24, Rohini, they parked their vehicle on the service road and that they took positions behind trees near the spot; that at about 06.45 p.m., two boys were seen coming from the side of Rithala road; they were pointed out by the informer and the raiding party apprehended both the said boys, whose name were revealed as Vikas @ Tinku and*



*Virender @ Bablu and both of them were arrested after interrogation vide arrest memos (EX.PW14/1 & EX.PW14/2); that their personal search was conducted vide memos (Ex.PW14/3 & Ex.PW14/4); that the disclosure statements were recorded as Ex.PW14/5 & Ex.PW14/6; that in accordance with disclosure statement, accused Virender took them to Service Road, Sector-25, Rohini, to a pair of electric pillars No.561-52/23 and from under the bushes, he got recovered a desi katta wrapped in a green colour; that the same was opened and found containing an empty cartridge; the sketch of katta (Ex.PW14/7) and cartridge was prepared and the same was sealed in a transparent plastic dabba and was seized vide memo (Ex,PW14/8); that the seal after use was handed over to S.I Surender; that in accordance with disclosure statement, accused Vikas took them to his house in Village Rithala. from where he got recovered a Passion Pro motorcycle; that the motorcycle was seized vide memo (Ex.PW14/9).*

*(xv). PW-15 HC Rajender is the MHC (M), who has deposed that on 29.11.2016, H.C Shamsher deposited 9 live cartridges vide RC no.237/21; on 30.11.2016, the said cartridges were sent through Ct. Narender to FSL Rohini vide RC no.4/21; Ct. Narender deposited back the receipt with him and that nobody had tampered with the cartridges as long as same remained in his custody.*

*(xvi). PW-16 Ct. Ran Singh is the official, who has deposited the 7 sealed exhibits with seal of RS and two with seal of SGMH Mortuary from MHC (M) to FSL Rohini; he took the same vide RC no.220/21 and after depositing the same in FSL, he deposited back the receipt with MHC (M) and that the same was not tampered with so long as the same remained in his custody.*

*(xvii). PW-17 Sh. Jeetu is the registered owner of*



*motorcycle bearing registration no. DL-11SG-8846. It was deposed by him that the I.O had seized the said motorcycle, which was taken by him on superdari vide supardarginama (Ex.PW17/A) and that the copy of RC was EX.PW17/B.*

*(xviii). PW-18 Sh. Satish Kumar is the relative of the deceased and also the eyewitness in the present case. It was inter-alia deposed by him that at about 10/12 minutes later, when they reached near Maxfort School, Sector-23, Rohini, Vinay Singh was about 15/20 mts ahead of him on his motorcycle; in the meantime, one motorcycle make Passion Pro of Black colour crossed him from his back in a fast speed on which two boys aged about 20/25 years were riding towards Vinay Singh side; the registration number on the plate of the said motorcycle was not visible as the tape was affixed to hide the same; the said motorcyclist took their motorcycle parallel to the motorcycle of Vinay Singh and the pillion rider of the said motorcycle fired on the head of Vinay Singh; as a result of that, the motorcycle of Vinay struck with the divider and Vinay fell down towards the right side of the divider; the said motorcyclist made U turn and started running on their motorcycle towards Sector-24 Rohini side; that he wanted to apprehend them, so he followed them on his motorcycle upto some distance but he could not chase them, so he came back to the spot. During his examination-in-chief, this witness correctly identified both the accused persons by pointing out that accused Virender @ Bablu was the pillion rider and caused gunshot injury to Vinay Singh and that accused Vikas @ Tinku was riding the motorcycle at the time of incident.*

*It was also deposed by him that he made effort to stop the vehicle and in the meantime, one of the known of the Vinay came there, who has identified*



*Vinay and with the help of that person, he took Vinay to Braham Shakti Hospital.*

*(xix). PW-19 Sh. Khushi Ram is the recovery witness, who has inter-alia deposed that on 29.09.2016, he had gone to Sector-25, Rohini, on his motorcycle and when reached near CNG Pump Sec-25, Rohini and saw some police officials with a person, whose name was revealed as Virender @ Babloo, who is resident of Sec-25, Pocket-1, Rohini, Delhi; the said accused led them to some distance ahead of CNG Pump towards the bushes by the side of pair of electricity pole; accused took out one green colored cloth bag from the bushes and handed over the same to the police; police opened the bag and it was found containing one desi katta; police checked the katta and it was found containing one empty cartridge (khali khol); Police prepared the sketch of desi katta and fired cartridge; I.O kept the katta and sealed the same and that the I.O recorded his statement.*

*(xx) PW-20 SI Surender is the official, who alongwith Ct. Charan Singh reached at Brahm Shakti Hospital, Budh Vihar, Phase 1, Delhi, where Sh. Vinay Singh was brought dead. He is also the witness to several memos i.e. seizure memo (Ex.PW18/A to Ex.PW18/E, EX.PW20/B, EX.PW20/D, Ex.PW14/9), Sketch of katta and cartridge (Ex.PW14/7), pointing out -cum- seizure memo (Ex.PW14/D), pointing out memos (Ex.PW20/E & Ex.PW20/F), personal search memos (Ex.PW14/1 to Ex.PW14/4), Disclosure statement of accused persons (Ex.PW14/5 & Ex.PW14/6), photographs (Ex.PW20/P) EX.PW20/P4),*

*(xxi) PW- 21 Dr. Adesh Kumar is the official from FSL, Rohini, who has deposed that on 30.11.2016, one sealed wooden box with the seal of SGMH Mortuary Mangol Puri, Delhi-83, was received in*



*his office and same was marked to him for chemical examination. That on examination, he prepared his report (Ex.PW21/A).*

*(xxii) PW- 22 Dr. Anurag Thapar is the doctor, who has conducted the postmortem of the body of deceased Vinay. It was deposed by him that the body of deceased was duly identified by Wazir (Father) and Baljit (uncle) and that the post-mortem report was Ex.PW22/A. That in his opinion, the cause of death was cranio cerebral damage as a result of fire arm injury, which was ante-mortem in nature.*

*(xxiii) PW-23 Sh. Saurabh Pathak is the witness from Biology, FSL, Rohini, who has deposed that on 30.11.2016, 09 sealed parcels were received, which were assigned to him for biological and serological examination. That the parcel no.1 to 7 were sealed with the seal of RS and the parcel no.8 & 9 were sealed with the seal of SGMH Mortuary Mangol Puri Delhi-83. It was also deposed by him that after opening, parcel no.1 & 3 were found containing road material, parcel no.2, 4 to 8 were having blood stained gauze cloth piece and parcel no.9 was found containing Ex.PW9a, 9b, 9c and 9d.*

*It was also deposed by him that during biological examination, blood was detected on Ex.1 to 9d and that the Exhibits were sealed with the seal of SP FSL Delhi and that thereafter, he prepared Report (EX.PW23/A) and the forwarding letter (EX.PW23/B).*

*(xxiv) PW-24 Sh. Jagminder Singh is the owner/supardar of motorcycle No.HR12X-7510, who has deposed that on 22.09.2016, the said motorcycle was with his nephew namely Vinay. This witness identified the photographs of the motorcycle (Ex.PW20/P1, EX.PW20/P2, EX.PW24/P1 and Ex.PW24/P2).*

*(xxv) PW-25 Sh. Puneet Puri is the witness from FSL. who has deposed that on 30.11.2016, the*



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*sealed parcels were received in FSL through Ct. Narender and same were marked to him for examination; the seals on the parcels were intact. The witness correctly identified the exhibits as Ex.P1 and Ex.PW25/P1.*

*(xxvi) PW-26 Retd. Insp. Ramesh Singh is the I.O of the case, who has deposed that on 22.09.2016 and at about 08.34 P.M., Dr. Afroj from Braham Shakti hospital telephonically informed about the admission of injured Vinay Singh vide MLC No.1268/16 by Rajan, who was declared brought dead; who received gun shot injury; he alongwith SI Surender Kumar reached the place, where HC Prem Pal met them; one motorcycle no. HR12X-7510 was found parked near Maxfort School and the blood was also found there; no witness was found at the .spot; SI Surender prepared the rukka and got the case registered; the case was assigned to him; he got the spot inspected through mobile crime team by taking photographs; eye-witness reached at the spot; he lifted blood on gauze etc; he recorded the statement of witnesses u/s 161 Cr.PC; seized the motorcycle; got conducted the post-mortem over the body of the deceased; prepared the site plan and several seizure memos besides pointing out memo. It was also deposed by him that accused Virender refused join the TIP proceedings (Ex.PW26/J) and that the TIP proceedings of accused Vikas @ Tinku was Ex.PW26/M.*

14. In the statements of the Appellants under Section 313 Cr.P.C recorded on 15<sup>th</sup> May, 2023, the Appellants denied the entire prosecution case and claimed false implication. They asserted that no offence was committed by them and that they had been roped in on fabricated allegations. The Appellants further contended that the alleged threats attributed to Appellant- Virender were an afterthought, as no complaint had ever been lodged by PW-9 Wazir



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Singh in that regard. In support of their defence, they examined DW-1 Ram Bahadur and DW-2 Tarun Verma. The defence evidence closed on 23<sup>rd</sup> November, 2023.

15. The Id. Trial Court vide the impugned judgment dated 10<sup>th</sup> March, 2025 convicted the Appellants. The relevant paragraph is re-produced hereinbelow:

*“CONCLUSION*

*29. In view of the foregoing discussion and on the basis of evidence proved on record, the prosecution has proved the charge u/s 302/34 against both the accused beyond reasonable doubts. I hold the accused Virender @ Bablu and Vikash @ Tinku guilty and accordingly convict them u/s 302 IPC. The accused Virender @ Bablu is convicted also for the offence u/s. 25/27 Arms Act. Therefore, this court is of the opinion that the prosecution has not been able to prove the offence punishable U/s 201/34 IPC against the accused persons.”*

16. As can be seen from above, the Ld. Trial Court held the Appellants guilty for offences under Sections 302/34 IPC and additionally convicted the Accused/Appellant Virender @Bablu for offences under Sections 25/27 of Arms Act, 1959. In terms of the impugned order on sentence dated 27<sup>th</sup> March, 2025, the Appellants were directed to undergo as stated in the paragraph re-produced hereinbelow:

*“8. After considering all the relevant facts and circumstances, I am of the view that the present case does not qualify the test of rarest of the rare case in which the death sentence can be imposed. Both the convicts are accordingly sentenced u/s 302 IPC for imprisonment for life and a fine of Rs. 1 lac each. In default of payment of fine, the convicts shall*



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*undergo a further simple imprisonment for a term of 6 months. The convict Virender @ Bablu is also sentenced u/s.25/27 Arms Act for imprisonment for 3 years and a fine of Rs. 5000/-. In default of payment of fine, he shall undergo a further simple imprisonment for a term of 1 month. All the sentences of imprisonment to run concurrently. Benefit of section 428 Cr.PC be given to the convicts as per law. Sentenced accordingly.*

*Accordingly, the convict Virender@ Bablu is sentenced as under: -*

<i>Sr. No.</i>	<i>Offence</i>	<i>Substantive Sentence</i>	<i>Fine</i>	<i>Sentence in default of payment of fine</i>
<i>1.</i>	<i>Section 302/34 IPC</i>	<i>Life imprisonment (RI)</i>	<i>Rs.1,00,000/-</i>	<i>Six months (SI)</i>
<i>2.</i>	<i>Section 25/27 Arms Act</i>	<i>Imprisonment for 3 years</i>	<i>Rs. 5000/-</i>	<i>One month (SI)</i>

*Convict Vikar (Vikas) @Tinku is sentenced as under:-*

<i>Sr. No.</i>	<i>Offence</i>	<i>Substantive Sentence</i>	<i>Fine</i>	<i>Sentence in default of payment of fine</i>
<i>1.</i>	<i>Section 302/34 IPC</i>	<i>Life imprisonment (RI)</i>	<i>Rs.1,00,000/-</i>	<i>Six months (SI)</i>

*All the sentences of imprisonment to run concurrently. Benefit of Section 428*



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*Cr.P.C. be given to the convicts as per law.*

17. The *CRL.A. 797/2025* and the *CRL.A. 983/2025* were admitted in this Court vide order dated 30<sup>th</sup> May, 2025 and 16<sup>th</sup> July, 2025 respectively.

**SUBMISSIONS MADE ON BEHALF OF THE APPELLANTS:**

18. On behalf of the Appellants, an attempt has been made to show that there are inconsistencies in the statements of PW-12 and PW-18, who were, in effect, the only witnesses present at the scene (PW-18 being the only eyewitness to the incident). Firstly, it is submitted that PW-12 does not confirm the presence of PW-18 either at the crime scene or at the hospital. He also does not confirm that the deceased had sustained a gunshot injury. The Appellants were arrested on 29<sup>th</sup> September, 2016 on the basis of certain purported secret information, which is recorded.

19. He further submits that a perusal of the statement of PW-18 would show that even he does not state that he knew the names of the persons who were riding the motorcycle, which he described as a black coloured 'Passion Pro' motorcycle. It is further submitted that, on the basis of the site plan, the recovery of the bullet is also suspicious, as it is unclear how a bullet without blood traces could have been recovered from such a large road where vehicular movement is substantial.

20. Finally, a dispute is raised with respect to how the Appellants were recognized or identified as the accused in the case, inasmuch as the defence led the evidence of DW-1 and DW-2, who placed on record photocopies of two newspapers published on 29<sup>th</sup> September, 2016, wherein it was reported that two young boys had been arrested by the Delhi Police from Faizabad. The distance between Faizabad and Delhi being about 500 to 600 kms, leads to a



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suspicion that the arrest in fact took place in Faizabad. The witnesses were not questioned on the authenticity of the newspapers, rather, it was merely put to them that the news had been planted on behalf of the defence.

21. On behalf of the Appellant - Vikas@Tinku, Mr. Bhagat has argued that his client had no motive or past dispute with the deceased. He was only 21 years of age at the time of the incident. No CDR was produced to confirm the location of the two Appellants near Maxfort School, Rohini, or to show any conversation between them. In the absence of any independent evidence, the Appellant - Vikas has been convicted solely on the basis of the testimony of PW-18. In fact, PW-12 does not even confirm the presence of PW-18 in the hospital, and in the MLC, the person accompanying the deceased is shown to be PW-12 and not PW-18, who claims to be a close relative. Ld. Counsel has emphasized that PW-5 stated that both the deceased and the relative-PW-18 left on the same bike bearing the same registration number. However, PW-18 stated that he was riding a separate bike from the deceased.

22. It is therefore submitted that this goes to the root of the matter, in view of the fact that PW-18 and the deceased were riding on the same bike, then the entire testimony of PW-18 would prove to be untrue. It is further highlighted that PW-12 also stated that he did not see anyone else related to the deceased who was known to him, except the deceased. The said testimony shows that the facts stated by PW-12 and PW-18 do not match with each other. There is a clear contradiction which creates doubt as to whether PW-18 was even present at the site when the incident took place and his entire testimony is false and fabricated.

23. It is further submitted on behalf of the Appellants that the testimony of PW-19 would show that on the day when the arrest and recovery were made,



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only one person, namely Virender @ Bablu, was arrested, and Appellant - Vikas was not arrested on that date. There is no independent evidence showing the arrest of Appellant-Vikas. Further, the manner in which the gun was allegedly recovered from the bushes would also suggest that the same was planted.

24. Further, it is submitted by the learned counsel on behalf of the appellants that the manner in which PW-18 identified the accused in Rohini Court appears to be doubtful, suggesting that the alleged identification is a concocted and made-up story.

**SUBMISSIONS MADE ON BEHALF OF THE RESPONDENTS:**

25. On behalf of the State, Mr. Bahri, Id. APP submits that there are four main disputes raised by the Appellants. The same are:

- I. Regarding the articles in the newspaper.
- II. Regarding the identity of the Appellants.
- III. Regarding the lack of common intention.
- IV. The Reliability of PW-19.

26. On the first issue, insofar as the newspaper is concerned, the submission of Mr. Bahri, Id. APP is that the original newspapers have not been produced. Secondly, since the newspaper is only secondary evidence, no complaint, no image, and no document relating to the Delhi Police arresting the Appellants from Faizabad has been produced.

27. It is contended by the Id. APP that the entire newspaper story is false and fabricated. Reliance is placed upon the decision in *Lakshminath Shetty and Another vs. State of Tamil Nadu, 1988 (3) ACC 319*, to argue that such newspapers constitute hearsay evidence and cannot form the basis of either conviction or acquittal. It is further submitted that the father of the deceased, Sh. Wazir Singh, who deposed as PW-9, clearly stated in his statement under



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Section 161 Cr.P.C. that he suspected Appellant-Virender due to a money dispute with his son.

28. It is also submitted that the blank cancelled cheque allegedly given in connection with the transaction was within the knowledge of his father and has been produced in evidence. It is further argued that the TIP was refused by both the Appellants as per Ex. PW26/I and Ex. PW26/J, and therefore, an adverse inference ought to be drawn. The truthfulness of PW-18 is also sought to be supported by the fact that he did not name the Appellants in his statement, but only stated that he could recognize them, which shows that he had no intention to falsely implicate the Appellants.

29. Mr. Bahri placed reliance on *Shahaja v. State of Maharashtra, (2023) 12 SCC 558*, submitting that while appreciating the testimony of a witness, the Court must examine whether the evidence, when read as a whole, carries a ring of truth. In this regard, reliance was placed upon the principles governing the appreciation of ocular evidence. Further reliance was also placed on *Baban Shankar Daphal v. State of Maharashtra, 2025 SCC OnLine SC 137*, and *Nirmal Singh v. State of Bihar, (2005) 9 SCC 725*, which discuss the settled principles relating to the appreciation of ocular evidence.

30. Mr. Bahri, ld. APP also submits that the gunshot injury has been proved through the FSL. The fact that the deceased died due to a gunshot from the recovered weapon is not in dispute in terms of the FSL report. PW-25, who is the Assistant Director (Ballistics), had clearly established that the characteristics of the striations present on the evidence bullet and on the test-fired bullets were found to be identical. Thus, the weapon used for the shooting has been confirmed. The same was recovered at the instance of the



accused from the bushes, which was also proved in the presence of PW-19, an independent witness. Under these circumstances, it is his submission that small inconsistencies may be present, but the same deserve to be ignored.

**ANALYSIS AND FINDINGS:**

31. The Court has considered the matter.

32. Upon perusal of the post-mortem report, it is evident that there was a firearm entry wound and a firearm exit wound and the cause of death as categorically mentioned in the post mortem report is cranio cerebral damage.

The relevant portion of the post-mortem report is reproduced hereinbelow:

***“EXTERNAL EXAMINATION (Injuries etc.):***

1. *Firearm entry wound, 0.7 x 0.7 cm, over left temporal region, situated 168 cm above the heel and 5 cm lateral to the outer angle of left eye with blackening & tattooing in the 15 cm of surrounding area seen. Singeing of surrounding scalp hair present. Abrasion collar and grease collar present.*
2. *Firearm exit wound, 0.7 x 0.6 cm over right temporal region, 168 cm above the heel and 8 cm lateral to the outer angle of the right eye.  
On exploration, projectile passed through underlying skin, s/c tissues, muscles, fracturing left temporal bone lacerating the left temporal lobes and then right temporal lobe, fracturing right temporal bone. Massive blood extravasation seen along the injury track.*
3. *Laceration, 6 x 3 cm x bone deep, present on the outer aspect of right knee with overlying abrasion, reddish, measuring 10 x 5.5 cm.*
4. *Abraded contusion, reddish, 5.3 cm x 1.5 cm, present on the front of left leg in its middle 1/3rd.*
5. *Abraded contusion, reddish, 2 x 1 cm, present on the front of left leg in its lower 1/3rd.*
6. *Abraded contusion, reddish, 1 x 1 cm, present on the*



- outer aspect of right elbow.*
7. *Laceration, 3.5 cm x 0.5 cm x muscle deep, present on the medial malleolus of the right ankle.*
- OPINION: Cause of Death is cranio cerebral damage as a result of firearm injury, antemortem in nature. However, blood and viscera have been preserved to rule out intoxication.”**

33. Upon perusal of the impugned judgment, it is manifested that the Id. Trial Court has placed substantial reliance upon the testimony of PW-18 for recording conviction. The relevant extract of the impugned judgment reads as under:

*“The identity of the accused persons have been sufficiently established through PW-18. It is proved that accused Vikas @ Tinku was driving the motorcycle and accused Virender @ Bablu was pillion rider, when accused Virender @ Bablu fired gun shot injury on the head of victim and caused his death. From the facts and circumstances, it is proved on record, it can be gathered that both the accused were having common intention to kill Vinay Singh”.*

34. However, this Court is unable to concur with the aforesaid findings. A careful and independent scrutiny of the testimony of PW-18 reveals material inconsistencies, improbabilities and conduct contrary to normal human behaviour, giving rise to doubts regarding the presence of PW-18 during the incident, thereby rendering his version unsafe to be made the sole foundation of conviction. The relevant portion showing inconsistency are produced is hereinbelow:

<i>Witness</i>	<i>Statement in Examination in Chief</i>	<i>Statement in Cross-Examination</i>
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<p>PW-18 Satish Kumar</p>	<p>....In the year 2016, I was doing the business of finance at B-340, near Mother Dairy, Shahbad Dairy, Delhi. <u>The daughter of my real uncle (chacha) got married with Vinay Singh S/o Sh. Wajir Singh R/o Flat no. 109, Pocket 12, Sector 21, Rohini, Delhi about one year back from the day of incident. I used to meet Vinay Singh after his marriage at his house as well as at his office situated at Sector 25, Rohini in the name of White House.</u></p> <p>xxx</p> <p>In the evening of 22.09.2016, I had gone from my office of Shahbad Dairy to the office of Vinay at Sector 25, Rohini. I parked my bike outside his office and met with Vinay Singh. After sometime thereafter, Vinay Singh asked me to go with him to his home and then we both left the office of Vinay Singh at about 7 pm. Vinay was on his own motorcycle whereas I was following him on my motorcycle.</p> <p>xxx</p> <p><u>At about 10/12 minutes later, when we reached near Maxfort School, Sector 23, Rohini at that time Vinay Singh was about 15/20 mts ahead of me on his motorcycle. In the meantime, one motorcycle make Passion Pro of Black color crossed me from my back in a fast speed on which two boys aged about 20/25 years were riding towards Vinay Singh side. The registration number</u></p>	<p>...It is correct that I used to do the job of finance with cash only without using any cheque or other instrument in this regard. It is correct that I do not file income tax return. <u>I was dealing the business of finance from my office which was situated at 340-B, Near Mother Dairy, Shahbad Dairy, Delhi. I used to run alone my finance business in Delhi. I do not remember the mobile number which I was carrying on that day. Nowadays, I am using mobile number 8168-3</u></p> <p>xxx</p> <p>I was not having said mobile number with me on the day of incident. It is wrong to suggest that I was using the same mobile number at the time of incident also.</p> <p>xxx</p> <p><u>At the time of incident, I was not carrying any mobile phone with me. It is wrong to suggest that on 22.09.2016, I was keeping with me my personal mobile phone in working condition.</u></p> <p>xxx</p> <p><u>The visibility with sunlight was very low, but the street light was there near the spot</u></p>
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on the plate of the said motorcycle was not visible as the tape was affixed to hide the same. The said motorcyclist took their motorcycle parallel to the motorcycle of Vinay Singh and the pillion rider of the said motorcycle fired on the head of Vinay Singh. As a result of that, the motorcycle of Vinay struck with the divider and Vinay fell down towards the right side of the divider. The said motorcyclist made U turn and started running on their motorcycle towards sector 24 Rohini side.

xxx

I wanted to apprehend them, so I followed them on my motorcycle upto some distance but I could not chase them, so I came back to the spot.

xxx

At the spot, I made efforts to stop the vehicles who were passing from the said spot at that time, but after seeing the condition of Vinay Singh nobody agreed to accompany us to the hospital in their vehicle. In the meantime, one known of Vinay came there who also identified Vinay as his known one. With his help I had taken Vinay Singh to Brahma Shakti Hospital in a Green color Champion Vehicle. Doctors of the hospital examined Vinay Singh and declared him dead.

xxx

The known of Vinay Singh remained in the hospital and I left the hospital for going to my cousin sister's house

and things were visible. Only few persons were passing by. I do not know whether any other person had seen the said incident at that time or not.

xxx

Friend of Vinay Singh get admitted him in the hospital. It is wrong to suggest that I never went to Brahm Shakti Hospital with injured Vinay Singh. I cannot tell the name of the Doctor who attended Vinay Singh in the hospital. I had stated residential address of Vinay Singh to the Doctor. Brahm Shakti Hospital is situated at Pooth.

xxx

We reached hospital in 5-10 minutes after putting the injured in vehicle. Incident took place at about 7.15 pm. We reached hospital around 7.35 to 7.45 pm. On our way to hospital traffic was normal.

It is wrong to suggest that I did not accompany the injured to the hospital. I remained in the hospital for about half an hour and once doctor declared the deceased as dead, I left for my sister's house to tell her about the incident. No policeman had reached at the hospital till



	<p><u>to inform her regarding the incident. After hearing the said shocking information, my sister became very nervous and shocked, so I had to remain with her to make her understand. The father of Vinay Singh went to the hospital. Other relatives and family members started coming to my cousin sister's house at that time.</u></p> <p>xxx</p> <p>After about 2/2:30 hours, I recalled that the motorcycle of Vinay Singh is still lying at the spot so I went to the spot again. Some police officials were found present at the said spot and were making enquiry from the persons present there.</p> <p>xxx</p> <p><u>On 30.09.2016, I had come to Rohini Court for some personal work I saw IO of this case while getting from the staircase alongwith both the accused persons and 2-3 police officials. I identified them as the same persons who came at the spot on a motorcycle and the pillion rider gave gun shot injury to Vinay Singh at the time of incident. On asking their names revealed to be Vikas @ Tinku and Virender @ Bablu. I identified Vikas @ Tinku as motorcycle rider and Virender @ Bablu as pillion rider and who fired upon Vinay Singh. IO recorded my statement...</u></p>	<p><u>the time I remained in the hospital. My statement was not recorded by the police in the hospital.</u></p>
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35. PW-18 has admitted that he is related to the deceased, stating that he is



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the cousin of the deceased's wife. Though the testimony of a related witness cannot be discarded only on that ground, it must be examined with caution. In the present case, several aspects of PW-18 conduct and statement raise serious doubts. PW-18 stated that after the incident, he tried to stop passing vehicles but no one agreed to help. He then stated in his cross-examination on 8<sup>th</sup> March, 2019 that '*one known person of Vinay*' i.e (PW-12) came to the spot, and with his help, he took the injured to Brahm Shakti Hospital in a champion vehicle. He further deposed in examination in chief that after Vinay/deceased was declared dead, that '*known person*' remained in the hospital and he himself left to inform his cousin sister. This conduct appears unnatural as it is not easy to believe that a close relative, who claims to have witnessed the shooting, would leave the hospital after the deceased was declared dead and entrust the body to a person who is only described as '*one known of Vinay*'. Ordinarily, a relative would stay at the hospital until close family members arrive or police formalities are completed. Furthermore, PW-18's statement that he did not remember the mobile number of the phone he was carrying at that time and a further claim that he was not carrying any mobile phone on the day of the incident does not inspire court's confidence and seems like a made-up story. In fact, it appears to the Court that the mobile phone of PW -18 would have been clear evidence to prove his location. Further, as per PW – 18, immediately upon witnessing the shooting, instead of attending to the victim, he claims to have followed the shooters for some distance. PW-18 says in his examination in chief as under:

***“I wanted to apprehend them, so I followed them on my motorcycle upto some distance but I could not chase them, so I came back to the spot.”***



36. In the meantime, PW – 12 had reached the spot and had taken the victim to the hospital. In fact, PW-12 had not seen PW-18 at all either at the spot or at the hospital.

37. PW-18 has further deposed that on 30<sup>th</sup> September, 2016, when he had come to Rohini Court for some personal work, he allegedly saw the IO of the present case coming down the staircase along with both the accused persons and 2–3 police officials. This version of a chance meeting in the Court premises appears highly doubtful. The identification of the accused in police custody, without any prior Test Identification Parade (*hereinafter 'TIP'*), and that too allegedly by coincidence in the court complex, casts serious doubt on the credibility of this part of the prosecution case. The explanation offered by PW-18 appears to be an afterthought and does not inspire confidence.

38. It is necessary at this juncture to examine the statement of PW-12. It emerges that he was admittedly a friend of the deceased. He has deposed that on the relevant date and time, while returning after closing his father's shop, he noticed a crowd gathered near Maxfort School, Sector-23, Rohini, and found the deceased Vinay lying in an injured condition. The relevant portion of the said statement is quoted hereinbelow:

<i>Witness</i>	<i>Statement in Examination in Chief</i>	<i>Statement in Cross-Examination</i>
<i>PW-12 Rajan Walia</i>	<i>...I am doing private job in Libaspur. On 22.9.17 at about 7.00–7.30 PM I was bringing my father home from his shop in Pooth Kalan. <b><u>On way I saw a large crowd having collected at Sector-23, Rohini near</u></b></i>	<i>...As I do not now remember I cannot say if the other person who had accompanied me to hospital was named Satish. <b><u>I have no knowledge about particulars of its driver.</u></b> Only one motorcycle was seen by me at the spot. It is correct that the injured was unconscious.</i>



<p><u>Maxfort School. When I went there I saw Vinay @ Doctor lying there in injured condition. He was bleeding. I alongwith some other persons helped to put Vinay in a Champion vehicle which had been got stopped on road. The vehicle driver took him to hospital. I too had gone to Brahm Shakti Hospital. He was declared dead in the hospital. I then went to leave my father at home and then went to PS Begumpur as I was directed by police to reach there. Police had interrogated me. I do not know anything else. I have nothing more to say.</u></p>	<p>Motorcycle of Vinay was lying near him. Vinay was bleeding from his head. His motorcycle was of black colour. <u>I knew Vinay being my friend. It is incorrect to suggest that after stopping at the spot I had gone to leave my father at home or that thereafter I had remained at home. There was only one gate of the hospital and I entered through it. It is correct that except for Vinay I did not know anyone else from the crowd which had collected there. The Champion vehicle had been got stopped by the crowd. It was not there when I firstly reached the spot. It is correct that my statement was recorded by police in the PS. I had initially remained at the spot for about 10 minutes and it took me around 15-20 minutes in reaching the hospital. I cannot say who had got Vinay admitted in the hospital. Doctors had not made any inquiry from me. It is incorrect to suggest that my statement had not been recorded by police on 22.09.16 or that I had been subsequently called to the PS and my statement was recorded.</u> It is incorrect to suggest that I came to know about his death after I had returned back home. <u>Infact I came to know about his death in the hospital itself.</u></p>
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39. From a perusal of the testimony of PW-12, it is evident that he was a friend of the deceased and had reached the spot shortly after the incident. He



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has categorically stated that he remained at the spot for about 10 minutes and thereafter accompanied the injured to Brahm Shakti Hospital in a Champion vehicle, reaching there within approximately 15–20 minutes. PW – 12 does not confirm the presence of PW -18 but only states ‘some other persons’. He further deposed that he remained in the hospital for about 15–20 minutes until the deceased was declared dead. What assumes significance is that PW-12, at no point in his examination-in-chief or cross-examination, makes any specific reference to PW-18: Satish Kumar, who claims to be a close relative of the deceased and an eye-witness to the occurrence. Even when specifically confronted by the Id. APP, PW-12 stated that he could not say whether the other person who accompanied him to the hospital was named Satish.

40. If the version of PW-18 is to be accepted, he was not only present at the spot at the time of incident but was also instrumental in taking the deceased to the hospital, he remained present during treatment, furnished the residential address of the deceased to the doctor, and stayed there for a considerable duration. In ordinary course of human conduct, a close relative of an injured person, particularly in a case of gunshot injury resulting in death, would exhibit anxiety, urgency, and emotional involvement sufficient to make his identity and relationship apparent to those present. However, the testimony of PW-12 does not reflect any such circumstance as PW-12 has categorically stated that except for the deceased, he did not know anyone from the crowd. He has further stated that he cannot say who had got the deceased admitted in the hospital and that the doctors did not make any inquiry from him. If PW-18 was actually present there and had indeed taken charge of the situation in the manner asserted by him, it is difficult to comprehend how PW-12, who remained both at the spot and in the hospital for nearly half an hour



in total, remained unaware of PW-18's identity or of his relationship with the deceased.

41. The absence of any interaction, acknowledgment, or even an incidental reference to PW-18 by PW-12 renders the prosecution version on this aspect unnatural with normal human probabilities. The natural and expected conduct of a close relative in such circumstances would ordinarily manifest in a manner perceivable to others present. The absence of such indication assumes relevance while appreciating the credibility and presence of PW-18 at the material time.

42. PW-1: Dr. Afroz, who was on duty when the deceased was brought to the hospital, also disposed that PW-12: Rajan Walia had brought the dead body. Relevant portion of the said statement is extracted hereinbelow:

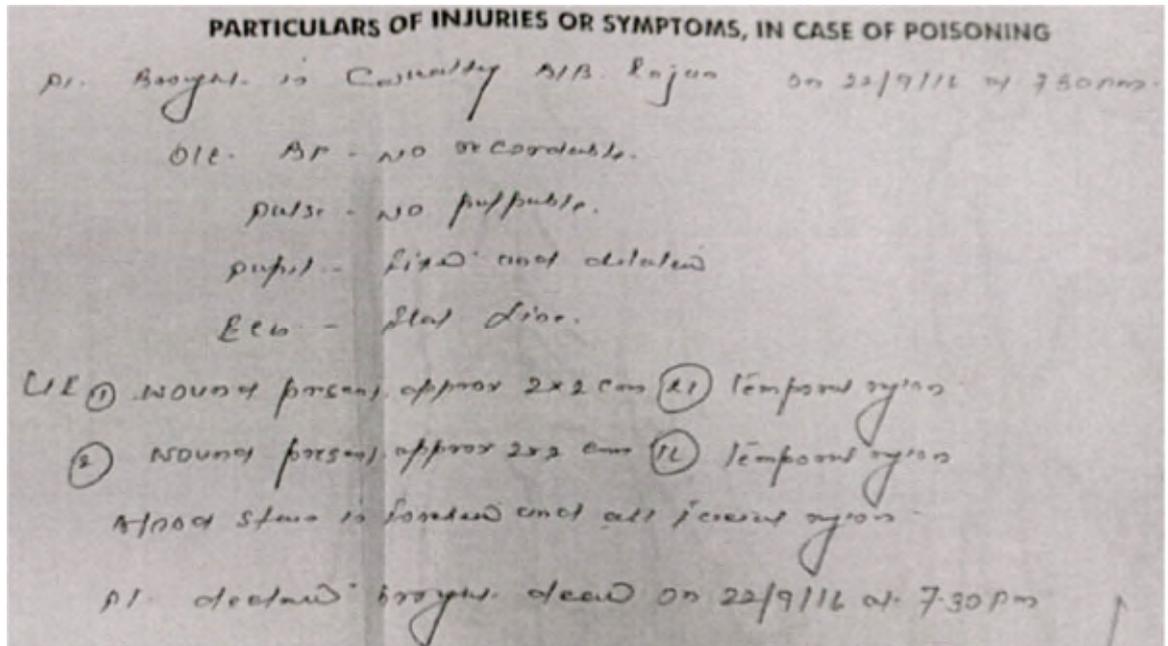
*“I was present on duty in the hospital when the patient was brought there. It is correct that no police official was accompanying the body when it was brought to the hospital. I cannot say whether or not any gun powder marking was present on the dead body when I examined it. It is incorrect to suggest that I cannot say so as in fact no gun powder was visible on the body.*

***It may be possible that the injuries mentioned in the MLC, found on the dead body, had been caused by way of fall on a pointed object. The patient was already dead when brought to the hospital. It is correct that Rajan, who had brought the body to the hospital, had never informed me about any gun shot injury having been suffered by the patient. There was no active bleeding from wounds of the body when I examined it.”***

43. Furthermore, the MLC also records that the deceased was brought to



the hospital by PW-12 Rajan which corroborates the statement of Dr. Afroz, PW-1 regarding the presence of PW-12 in the hospital. The relevant portion is reproduced hereinbelow:



44. Moreover, the incident is alleged to have taken place at 8:34 P.M. during the night, as stated in the Rukka. Whether the place was sufficiently illuminated has not been proved beyond reasonable doubt by the prosecution. PW-18 has stated that his motorcycle was at a distance of about 15–20 mts behind the motorcycle of the deceased when two persons on another motorcycle as per him, “crossed me from my back” and then reached near the motorcycle of the deceased. According to him, the pillion rider fired at the deceased at point-blank range, and both assailants immediately fled from the spot after taking a U-turn. The entire occurrence, as per PW-18’s own version, would have taken about 1-2 minutes.

45. In such circumstances, it is difficult to accept that within such a short span of time, during night-time, PW-18 was in a position to clearly observe



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and recognize both assailants, particularly when they overtook him from behind and thereafter quickly escaped. PW-18 has further admitted that tape was affixed on the number plate and therefore, the registration number was not visible. The defence submission that the motorcycle allegedly bore the word 'RAJPUT' inscribed in bold letters, which none of the witnesses have stated to have noticed, assumes relevance and cannot be lightly brushed aside.

46. The prosecution has also relied upon the alleged recovery of *desi* katta pursuant to disclosure statement but no fingerprint examination was conducted on the weapon. The absence of such scientific corroboration renders the alleged recovery doubtful and weakens the prosecution case. If the said pistol had in fact been used in the incident, it would ordinarily have fingerprints.

47. More importantly, it is clarified that the alleged recovery of the pistol cannot be accepted, not merely on account of the absence of fingerprint examination, but also because the testimony of the recovery witness itself does not inspire confidence as the presence of recovery witness, PW-19: Khushi Ram at the spot appears suspicious. He claims to be engaged in the business of property dealing, where the presence of a mobile phone is essential; yet he stated that he was not carrying any mobile phone. He further deposed that he did not know which property he had gone to see, who had asked him to see the property, and that he was not carrying any mobile phone with a camera. He was not even aware of the model of the mobile phone he was using at that time. He also stated that he could not recollect whether any police official made any recording at the spot. Additionally, he admitted that he was not wearing a helmet and was travelling through the service lane to avoid the police officials. Despite attempting to avoid the police, he



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voluntarily stopped to see what the police officials were doing. These circumstances cast doubt on the naturalness of his presence at the alleged place of recovery. Moreover, the considerable distance between the place of the incident and the place of recovery cannot be ignored. Viewed cumulatively, these circumstances give rise to serious suspicion in the mind of this Court that the alleged pistol may have been planted. The relevant portion of his testimony has been produced hereinbelow:

<i>Witness</i>	<i>Statement in Cross Examination</i>
<i>PW-19 Khushi Ram</i>	<p><i>.....I had gone to Sector 25 to see a property at around 9 PM. I left my house at 8 PM. The description of the property is not known to me. I do not even know the number or ownership of the property. I do not even know who had asked me to see the property. I remained at the property for 4–5 minutes and found it to be locked. I even enquired from the labourers in the adjoining house, but they did not tell me anything about the property.</i></p> <p style="text-align: center;"><i>xxx</i></p> <p><i>It is correct that the police vehicles were quite visible from a distance as the blue and red lights of the police were on. I myself stopped after seeing the police officials. No one except the police officials was present. There were 3–4 police persons present. One police official was having three stars on his uniform. As I am a common man, I am afraid of police officials. I was not afraid of the police officials on that day as I had not committed any offence. I remained at the spot for around half an hour. Thereafter, I never met the police officials again for the present case....</i></p> <p><i>My statement was recorded on the spot. I was present at the spot, but I do not know which police official recorded my statement. My signatures were obtained on two papers. Only one person was there who seemed to be apprehended by the police officials. <b><u>I was not carrying any mobile phone having a camera. I was not even aware which model of mobile phone I was having at that time. I cannot recollect whether any police official made any recording at the spot. I was not wearing a helmet and was</u></b></i></p>



**going through the service lane in order to avoid the police officials. Despite not wearing a helmet, I myself stopped to see what the police officials were doing. I was never a witness in any case previously.**

*I am afraid of police officials. I was not afraid of the police officials on that day as I had not committed any offence. I remained at the spot for around half an hour. Thereafter, I never met the police officials again for the present case.*

*My statement was recorded on the spot. I was present at the spot, but I do not know which police official recorded my statement. My signatures were obtained on two papers. Only one person was there who seemed to be apprehended by the police officials. **I was not carrying any mobile phone having a camera. I was not even aware which model of mobile phone I was having at that time. I cannot recollect whether any police official made any recording at the spot. I was not wearing a helmet and was going through the service lane in order to avoid the police officials. Despite not wearing a helmet, I myself stopped to see what the police officials were doing. I was never a witness in any case previously....***

48. Furthermore, PW-9, the father of the deceased, stated that the Appellant- Virender @Bablu had borrowed money from the deceased and, upon being asked to return the money, the Appellant Virender allegedly threatened to shoot him. It appears doubtful that PW-9, being himself a police officer, did not lodge any complaint regarding such a serious threat. The absence of any contemporaneous complaint or report significantly weakens the credibility of the alleged threat and renders the prosecution version weak in relation to motive.

49. Moreover, previous enmity by itself cannot be the sole basis for presuming motive; some cogent and reliable material must be placed on record by the prosecution to establish the existence of such motive. Further, this Court



finds that there is no clear, cogent, or convincing evidence on record to establish any motive on the part of Appellant - Vikas @ Tinku to commit the alleged offence against the deceased. The prosecution has failed to bring on record any prior enmity, dispute, or circumstance which could reasonably suggest why Appellant-Vikas @ Tinku would participate in the commission of such a serious crime.

50. The Apex Court in *Prahlad v. State of M.P.*, (2024) 14 SCC 203 reiterated the well-settled principle that previous enmity is a double-edged sword. While it may furnish a motive for the commission of an offence, it can equally form the basis for false implication. The relevant portion is extracted hereinbelow:

**“42. It is also equally well settled that previous enmity is a double-edged sword. Though, it can provide a motive for the crime, it can also be a ground for false implication. Reliance in this respect, could be made on the judgment of this Court in Ramashish Rai v. Jagdish Singh [Ramashish Rai v. Jagdish Singh, (2005) 10 SCC 498 : 2005 SCC (Cri) 1611] , wherein this Court has observed thus: (SCC p. 501, para 7)**

**“7. ... By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence.”**

51. The Supreme Court in *Nimai Ghosh v. State of Bihar*, 2025 SCC *OnLine* SC 2337, reiterated that while the testimony of a solitary eyewitness can form the basis of conviction, such testimony must withstand strict scrutiny, particularly where the conduct of the witness appears unnatural or



inconsistent with ordinary human behaviour. The relevant portion extracted hereinbelow:

*“11. In Gopal Singh v. State of Madhya Pradesh<sup>2</sup>, a case relating to double murder, this Court allowed the appeal against the conviction recorded by the High Court, which had set aside the judgment of acquittal passed by the Trial Court for offences under Section 302/34 IPC. The testimony of the alleged eyewitness, Feran Singh (PW-5), was disbelieved. The Court observed as under:—*

**“25. We also find that the High Court has accepted the statement of Feran Singh, PW 5 as the eyewitness of the incident ignoring the fact that his behaviour was unnatural as he claimed to have rushed to the village but had still not conveyed the information about the incident to his parents and others present there and had chosen to disappear for a couple of hours on the specious and unacceptable plea that he feared for his own safety.”**

**In the said case, this Court held that the conduct of the eyewitness was unnatural. Though he claimed to have rushed to the village after the incident, he did not convey any information to the villagers, his parents, or other persons present there. Instead, he disappeared for a couple of hours on the pretext of fear and self-preservation, which rendered his testimony doubtful.”**

52. In *Narendrasinh Keshubhai Zala v. State of Gujarat*, (2023) 18 SCC 783. The Apex Court reiterated in cases resting on the testimony of a sole eyewitness, such witness must be wholly reliable and trustworthy. The relevant portion extracted hereinbelow:



**“8. It is a settled principle of law that doubt cannot replace proof. Suspicion, howsoever great it may be, is no substitute of proof in criminal jurisprudence (Jagga Singh v. State of Punjab [Jagga Singh v. State of Punjab, 1994 Supp (3) SCC 463 : 1994 SCC (Cri) 1798] ). Only such evidence is admissible and acceptable as is permissible in accordance with law. In the case of a sole eyewitness, the witness has to be reliable, trustworthy, his testimony worthy of credence and the case proven beyond reasonable doubt. Unnatural conduct and unexplained circumstances can be a ground for disbelieving the witness.**

9. This Court in *Anil Phukan v. State of Assam* [*Anil Phukan v. State of Assam*, (1993) 3 SCC 282 : 1993 SCC (Cri) 810] has held that : (SCC p. 285, para 3)

**“3. ... So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect.”**

The same principle has been enunciated in : *Amar Singh v. State (NCT of Delhi)* [*Amar Singh v. State (NCT of Delhi)*, (2020) 19 SCC 165 : (2021) 3 SCC (Cri) 784] .

12. Police interrogated PW 3 at different places and recorded his statement on the 14th of January at around 4.30 p.m. at the Police Headquarters.



**Cross-examination part of his testimony reveals this witness to have repeatedly improvised his initial statement, disclosed to the police. Illustratively he had not informed the police of having disclosed the incident to the sister of the deceased. He had also not disclosed to the police that there was exchange of words between Ram and Narendra (appellant herein) in relation to some money owed by the deceased to the accused. This may not have any effect on the veracity of his statement. But what makes his testimony shaky and the witness unbelievable is his admission of the Police Headquarters being in close proximity to the place of occurrence of the incident and despite knowing that police is always posted at the gate he did not approach the police. The explanation furnished is only that he was “much scared”, which prudently is not acceptable, given that he was a close friend of the deceased.”**

53. In the considered opinion of this Court, the conduct attributed to PW-18 raises serious doubts regarding the reliability of his testimony. PW-18 claims to be engaged in business; however, he stated that he was not carrying a mobile phone at the relevant time. Further, despite claiming to have witnessed the incident, he allegedly left the deceased, who was his relative, in the care of a person described only as “a known person of Vinay,” without informing the police or making use of the hospital telephone. He also stated that he left the hospital soon after the deceased was declared dead and proceeded to his sister’s house, where he remained for nearly two hours. Such conduct appears inconsistent with the natural conduct expected of a close relative who had allegedly witnessed a fatal shooting. Additionally, the absence of any reference to PW-18 either in the MLC or in the testimony of PW-12 assumes significance and creates a serious dent in the prosecution



case.

54. The issue of visibility at the spot also assumes importance. As per the testimony of PW-18, he was riding his motorcycle at a distance of about 15–20 metres behind the deceased when the incident occurred. Considering that the occurrence took place during evening hours and that PW-18 himself was riding a moving motorcycle, the possibility of clearly observing and accurately identifying the assailants becomes doubtful. His subsequent claim that he identified the accused persons by chance upon seeing them in Rohini Court, in the absence of a prior Test Identification Parade, does not inspire confidence. These circumstances cumulatively give rise to serious and reasonable doubt regarding the presence of PW-18 at the scene of the incident, thereby rendering the prosecution version unsafe to rely upon.

55. The judgments relied upon by the Id. APP namely, *Shahaja* (supra), *Baban Shankar Daphal* (supra) and *Nirmal Singh* (supra), do not assist the prosecution, as the testimony of PW-18 is fraught with irregularities and highly improbable conduct, thereby creating sufficient doubt in the mind of the Court.

### **CONCLUSION**

56. In view of the foregoing discussion, this Court finds that the prosecution case rests primarily on the testimony of PW-18, whose version is inconsistent and unreliable. His testimony does not inspire confidence and cannot be made the sole basis of conviction.

57. The prosecution has thus failed to prove the charges against the Appellants beyond reasonable doubt.

58. Accordingly, the impugned judgment of conviction and order on sentence are set aside. The Appellants are acquitted of all charges and shall



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be released forthwith, if not required in any other case.

59. The bail bonds and surety bonds furnished by the Appellants shall stand discharged. Pending applications, if any, also stand disposed of.

60. Copy of this order be sent to the Jail Superintendent, for information and compliance.

**MADHU JAIN  
JUDGE**

**PRATHIBA M. SINGH  
JUDGE**

**MARCH 23, 2026/RM/ys**