

Barik And Another vs State Of U.P. on 9 October, 2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved on : 24.09.2026

Delivered on : 09.10.2026

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CAPITAL CASES No. – 2915 of 2017

Barik and another

..Appellant(s)

Versus

State of U.P.

..Respondent(s)

Counsel for Appellant(s)

:

Archana Tyagi, Dharmendra Pratap Singh, Dileep Kumar, Ishwar Chandra Tyagi, Pankaj Kumar Tyagi, Rajrshi Gupta

Counsel for Respondent(s)

:

Chandra Bhushan Tiwari, G.A., Mayank Yadav, Vivek Kumar Singh

Court No. – 42

HON'BLE ATUL SREEDHARAN, J.

HON'BLE ACHAL SACHDEV, J.

Per : Achal Sachdev, J.

Death Reference No. 09/2017 with Criminal Appeal (DB) No. 2915 of 2017 Heard Sri Saghir Ahmad, learned Senior Advocate, assisted by Sri Ishwar Chandra Tyagi, learned counsel for the appellants, Sri Anurag Pathak, learned Senior Advocate, assisted by Sri Chandra Bhushan Tiwari, learned counsel for the informant and Ms. Divya Ojha, learned A.G.A.-I for the State both in the Criminal Appeal and the Reference.

A. The reference and the appeal

1. The learned Sessions Judge, Muzaffarnagar, has made this reference under [Section 366](#) of the Cr.P.C. for confirmation of the death sentence passed on (1) Barik, son of Abul Hasan, and (2) Shahbad, son of Mohd. Barik. The sentence was passed by judgment and order dated 23.05.2017 in Sessions Trial No. 302 of 2012 (State of U.P. v. Barik and another), arising out of Case Crime No. 321 of 2011, P.S.- Chhapar, District- Muzaffarnagar, and in the connected Sessions Trial Nos. 304 of 2012 and 274 of 2013 under [Sections 4/25/27](#) of Arms Act. Barik and Shahbad were convicted under Section 302 read with [Section 34](#) of the I.P.C. and sentenced to death. They were also convicted under Section 307 read with [Section 34](#) of the I.P.C. and sentenced to ten years' rigorous imprisonment each, with a fine of Rs. 10,000/- each and one year's simple imprisonment in default. Under [Section 4/25](#) of the Arms Act, the court sentenced each to one year's rigorous imprisonment.
2. Two other persons named in the F.I.R., Shahnawaz alias Kala and Shahnazar alias Monu, are sons of Barik. The court found them to be juveniles, separated their cases from the rest of the accused, and sent them to the Juvenile Justice Board. They are not before us. This judgment refers to their role in the incident only because it forms part of the prosecution case and the evidence against the appellants. Nothing in this judgment constitutes a finding of their guilt or an expression of opinion on the case against them, which the Juvenile Justice Board will decide on its own record.
3. Barik and Shahbad have filed Criminal Appeal No. 2915 of 2017 against their conviction and sentence. The reference and the appeal arise from the same judgment, and we have heard them together.

4. In a death reference, this Court must examine the whole evidence for itself and reach its own conclusion on guilt and sentence, regardless of the trial courts view ([Jumman v. State of Punjab](#), AIR 1957 SC 469 paras 11 & 12). The appeal against conviction also requires a reassessment of the evidence. We have reviewed the entire record.

B. The prosecution case

5. The informant, Mohammad Aalim, son of Riyasat (PW-1), resident of village- Barla, P.S.- Chhapar, District- Muzaffarnagar submitted a written report (tehrir, Ext.Ka-1) against four persons : Barik, son of Abul Hasan, and his sons Shahbad, Shahnawaz (alias Kala), and Shahnazar (alias Monu), all of village- Barla. According to the report, the informant's land adjoins Barik's. The informant's poplar trees stand on the ridge between the two fields, and Barik sought to cut the ridge and take the trees into his own holding. On the morning of 09.11.2011, Barik and his sons threatened to kill the informant's family if they cut the trees.

6. That evening, at about 5:00 PM, the informant, his father Riyasat (alias Mukhia), his son Munnawar (alias Monu), Fajruddin (son of his wife's brother Kamruddin), and his elder son Azad (alias Raja) were in the field. The four accused arrived with a balkati, a ballam, a bhala and a sword, abused them near the poplar trees, and together attacked them with the intent to kill. Azad was killed on the spot, and his hand was severed. Riyasat was hacked, and his hand was severed. Monu and Fajruddin were injured. The accused chased the informant to his house, but he escaped. The report adds that the injured were taken to hospital, that Riyasat died on the way, that Fajruddin was referred to Meerut because his condition was serious, and that Maqbool Hasan, Shaukeen, Mohammad Tariq and Gullu witnessed the incident.

7. The chik F.I.R. (Ext.Ka-2) was registered in the report under [Sections 302](#) and [307](#) I.P.C., and the time of registration is recorded as 17:30 hours on 09.11.2011. S.S.I. Bharat Lal Shah (PW-8) investigated the case. Inquests were held on the bodies of Azad (Exts.Ka-10 to Ka-15) and Riyasat (Exts.Ka-18 to Ka-22). Blood-stained, plain earth, and footwear were collected from the spot (Ext.Ka-16), and site plans (Exts.Ka-17 and Ka-23) were prepared. The police arrested the four accused on 11.11.2011. Weapons and Barik's clothes are said to have been recovered at their pointing out (recovery memos Ext.Ka-6 and Ka-7), and the site plan of the place of recovery is (Ext.Ka-28). On the recovery of the farsa at Barik's pointing out, a case under the [Arms Act](#) was registered as Case Crime No. 322 of 2011 (chik F.I.R. Ext.Ka-31; GD entry Ext.Ka-32). The prosecution filed a charge sheet under [Sections 302](#) and [307](#) I.P.C. (Ext.Ka-27). S.I. Rajpal (PW-9) filed charge sheets under [Section 4/25/27](#) of the Arms Act against Barik (Ext.Ka-29) and Shahbad (Ext.Ka-30).

8. The Chief Judicial Magistrate, Muzaffarnagar, committed the murder case to the Court of Sessions, which received it on 03.04.2012. The court found Shahnawaz and Shahnazar to be juveniles and separated their cases, so the trial proceeded against Barik and Shahbad alone. The Chief Judicial Magistrate took cognisance of the [Arms Act](#) charge sheets against Barik and Shahbad on 21.12.2011. Being connected with Case Crime No. 321 of 2011, these cases were committed by order dated 03.04.2012 and registered as Sessions Trial Nos. 304 of 2012 and 274 of 2013. All three trials were heard together. The court took down the evidence. The court recorded evidence in Sessions Trial No. 302 of 2012 and decided all three by a single judgment dated 23.05.2017.

9. On 03.05.2012, charges under Sections 302 and 307 read with [Section 34](#) I.P.C. were framed against both accused, and a charge under [Section 4/25/27](#) of the Arms Act was framed against Barik. [The Arms Act](#) charge against Shahbad was framed on 27.02.2013. Both denied the charges.

10. The prosecution examined nine witnesses : PW-1 Mohammad Aalim (informant); PW-2 Fajruddin and PW-3 Munnawar alias Monu (injured witnesses); PW-4 Constable Chhote Lal (chik writer); PW-5 Dr. Rajendra Singh (postmortem); PW-6 S.I. Anil Kumar Sagar (arrest and recovery); PW-7 Dr. Yogesh Agarwal (injury reports); PW-8 S.S.I. Bharat Lal Shah (Investigating Officer); and PW-9 S.I. Rajpal. In their statements under [Section 313](#) Cr.P.C., the accused denied the evidence and said they had been falsely implicated. The defence filed a document relating to the treatment of the accused Barik for a heart ailment at the District Hospital, Muzaffarnagar, on 09.11.2011, but examined no witness to prove it.

11. The trial court found the accused guilty. It held that the injured witnesses, PW-2 Fajruddin and PW-3 Munnawar alias Monu, whose injuries showed they were present, had consistently named the accused, and that the informant and the medical evidence of PW-5 Dr. Rajendra Singh and PW-7 Dr. Yogesh Agarwal supported them. It noticed the corrections in the time of the F.I.R. but did not accept the defence argument, reasoning that two persons had died, the investigation was in progress, and such mistakes creep in. It did not consider the interpolations made by the Investigating Officer in the inquest papers. It did not consider the use of a bhala and a ballam. It did not consider the swelling on Azad's head or the lacerated wound on Riyasat's head, nor did it address the difference between the weapons named in the F.I.R. and those described by the injured witnesses in court. It held that the injured witnesses had proved the presence of all the accused, and that even if they were confused about which accused caused which injury or carried which weapon, this did not affect their participation in the crime; with the aid of [Section 34](#) I.P.C., all the accused were held guilty. It relied on the dispute over the poplar trees as motive, on the threat given that morning, and on the recovery of weapons at the accused's pointing out. On sentence, it took into account that this was a planned attack with sharp weapons on unarmed people, in which two were killed, the hands of the deceased were severed by the accused, and two others were seriously injured. It held the case to be one of the rarest of rare and passed the sentences stated above.

Table 1 : Witnesses examined PW Witness Role Comment PW-1 Mohammad Aalim Informant; father of Azad and Monu; son of Riyasat Not relied on as an eyewitness; material omissions and conduct not natural PW-2 Fajruddin Injured; son of the informant's wife's brother Presence proved by injuries; relied on for the main facts; weapon account not accepted PW-3 Munnawar alias Monu Injured; son of the informant Presence proved by injuries; relied on for the main facts; farsa description after recovery not accepted PW-4 Constable Chhote Lal Chik writer Proved Exts. Ka-2 and Ka-3 PW-5 Dr. Rajendra Singh Post-mortem Proved Exts. Ka-4 and Ka-5;

could not link any injury to a particular weapon PW-6 S.I. Anil Kumar Sagar Arrest and recovery Two versions of time and place of arrest; no disclosure memo; recoveries not proved PW-7 Dr. Yogesh Agarwal Injury reports Proved Exts. Ka-8 and Ka-9; injured brought by a villager at 6:30 PM and 6:45 PM PW-8 S.S.I. Bharat Lal Shah Investigating Officer Admitted alterations in inquests and learnt of Riyasat's death only at about 7:30 PM PW-9 S.I. Rajpal Ambedkar Investigated Arms Act cases, Case Crime Nos. 322 and 323 of 2011 Proved Exts. Ka-28 to Ka-32 Table 2 : Documentary and material exhibits Exhibit Document Proved by Comment Ka-1 Written report (tehrir) PW-1 Written by Kamruddin (not examined); mentions events that happened after the time shown Ka-2 Chik FIR, Case Crime No. 321/2011 PW-4 Shown at 17:30 hours; held to be ante-timed Ka-3 GD entry of registration PW-4 Departure and return entries of 09.11.2011 not proved Ka-4 Postmortem report of Azad PW-5 Homicidal death by sharp-weapon injuries Ka-5 Postmortem report of Riyasat PW-5 Homicidal death by sharp-weapon injuries Ka-6 Recovery memo: Barik's clothes PW-6 No public witness, no time; not relied on Ka-7 Recovery memo: weapons PW-6 No disclosure statement, no public witness; not relied on Ka-8 Injury report of Fajruddin PW-7 Photocopy; examined at 6:30 PM; referred to Meerut Ka-9 Injury report of Monu PW-7 Photocopy; time 7:45 PM overwritten as 6:45 PM Ka-10 to Ka-15 Inquest papers of Azad PW-8 F.I.R. time altered 17:00 to 17:30; place of body altered; overwriting in Ka-13 Ka-16 Memo of blood, earth and footwear PW-8 No public witness Ka-17 Site plan (Investigating Officer's observation) PW-8 Body (point A) and blood points 1-5 in Barik's field Ka-18 to Ka-22 Inquest papers of Riyasat PW-8 F.I.R. time altered; death information at 17:00; inquest 19:00-20:00; Form 13 (Ka-22) receipt at 17:00; not signed by S.I. Devendra Singh Ka-23 Site plan (informant's pointing out) PW-8 Disputed trees on ridge; deceased and injured in Barik's field Ka-24 Memo: Fajruddin's clothes PW-8 Does not show from whom received Ka-25 Memo: Monu's clothes PW-8 Not signed by Monu; witnesses' parentage added later Ka-27 Charge sheet, [Sections 302/307](#) I.P.C.

PW-8 Ka-28 Site plan of place of recovery PW-9 Recoveries not proved Ka-29, Ka-30 Arms Act charge sheets (Barik, Shahbad) PW-9 Arms Act charge not proved Ka-31, Ka-32 Chik F.I.R. and GD entry, [Arms Act](#) case PW-9 Registered on the recoveries Ka-33 Forensic report: clothes and footwear

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Not put to accused under [Section 313](#) Cr.P.C.

Ka-34, Ka-35 Forensic reports: farsa, ballam

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Not put to accused under [Section 313](#) Cr.P.C.

Mat. Ex. 1 Farsa (said to be recovered at Barik's pointing out) PW-6, PW-8 Recovery not proved Mat. Ex. 3 Ballam (said to be recovered at Shahbad's pointing out) PW-6, PW-8 Recovery not proved; knife not produced Mat. Ex. 2, 4 Clothes in which the farsa and ballam were sealed PW-8 No accused's signature on the sealed packets Defence Document of Barik's heart treatment, 09.11.2011 Not proved No witness examined Table 3 : Injury reports (PW-7) Injured Time of examination Injuries Comment Fajruddin (PW-2) 6:30 PM, 09.11.2011 (1) Incised wound 15 x 9 cm, muscle deep, right side of neck, 10 cm below right ear. (2) Incised wound 5 x 1 cm, bone deep, right side of head, 8 cm above right eyebrow. Condition serious; unconscious; referred to Meerut.

Proves presence and supports Section 307. One head wound, not three or four as described.

Munnawar alias Monu (PW-3) 6:45 PM, 09.11.2011 (overwritten from 7:45 PM) (1) Incised wound 4 x 2.5 cm, muscle deep, left side of face, 3 cm in front of ear. (2) Incised wound 2 x 0.2 cm, muscle deep, back of right shoulder. Simple; unconscious.

Cheek wound matches the blow aimed at his neck. Shoulder wound slight for a heavy weapon.

Table 4 : Post-mortem reports (PW-5) Deceased Ante-mortem injuries Cause and time Comment Azad alias Raja (Ex. Ka-4) (1) Traumatic swelling 5 cm x 3 cm, left side of head, 11 cm above & backward to left ear. (2) Incised wound 4 cm x 2 cm x chest-cavity deep on right side front of chest, 4 cm from rt. nipple at 4 o'clock position; 4th and 5th ribs fractured; right lung suppressed. (3) Incised wound 3 cm x 1 cm x bone deep on left forearm, 15 cm below left elbow. (4) Amputated wound from wrist joint 5 cm x 5 cm x bone deep. Amputated part (hand) present separately with body. (5) Incised wound 1.5 cm x 1 cm, muscle deep, right thigh 11 cm above from rt. knee joint, back and lateral part. (6) Incised wound 5 cm x 2.5 cm x bone deep on lateral & back of right knee joint.

Shock and haemorrhage; about half a day before postmortem Homicidal death by sharp weapons. One blunt head injury not explained by the witnesses. Inquest records left hand cut off at the wrist; postmortem records only the amputation.

Riyasat alias Mukhia (Ext.Ka-5) (1) Lacerated wound 4 cm x 0.5 cm, bone deep on head, right ear and back rt. side. (2) Incised wound 3 cm x 1.5 cm x bone deep, right collar bone. (3) Incised wound 6 x 2.5 cm x abdominal-cavity deep in epigastric region at 12 o'clock position, 11 cm above umbilicus. (4) Incised wound 7 cm x 6.5 cm x bone deep on right wrist joint bone cut & attached with skin flap. (5) Incised wound 10 cm x 2 cm x bone deep lateral part of left arm just above left elbow joint. (6) Incised wound size 10 cm x 3 cm x bone deep on lateral and back of left forearm just below left elbow joint. (7) Incised wound size 7 cm x 5 cm x bone deep on back of left forearm just above left wrist joint. (8) Amputated wound 8 cm x 5 cm x bone deep on hand & hand part with fingers present separately with body. (9) Incised wound 11 cm x 5 cm x bone deep on front of right thigh just above right knee joint. (10) Incised wound 3 cm x 1 cm x bone deep just below left knee joint back side.

Shock and haemorrhage; postmortem at 4:35 AM on 10.11.2011; about half a day before Homicidal death by sharp weapons; many deep wounds on the limbs. One blunt head injury not explained by the witnesses. Inquest records right hand and fingers cut off at the wrist; postmortem records only the amputation.

C. Submissions

12. Learned counsel for the appellants argued that the appellants have been falsely implicated due to a land dispute with the family of the deceased, Riyasat. Barik's father had sold land to Samar Jahan, the informant's wife, and to Smt. Misara, wife of Barik's brother, Abdul Wahab, and a civil suit regarding this sale was pending.

13. Learned counsel further argued that, on his own evidence, the informant was not an eyewitness; that no independent witness was examined, despite the informant having named such witnesses in the report; and that the court did not ask questions to the accused regarding the forensic reports under [Section 313](#) of the Cr.P.C.

14. Learned counsel also argued that the contradictions in the evidence of the witnesses of fact, brought out by the Investigating Officer, make the place of occurrence doubtful, and that the witnesses differ about the weapons the accused carried. The prosecution has not explained the contusion on Azad's head or the lacerated wound on Riyasat's head, which could only have been caused by a hard, blunt object. This, it was said, makes the injured witnesses' evidence doubtful.

15. Lastly, learned counsel argued that the F.I.R. was ante-dated and written after consultation, because the informant was not present at the scene. There is unexplained overwriting and interpolation regarding the time of the offence and the sending of the bodies for postmortem, which the Investigating Officer admitted during cross-examination.

16. Learned A.G.A. for the State replied that the evidence of the injured witnesses fully proves the accused's involvement in the crime, regardless of the value of the informant's evidence. The site plan proves that the incident occurred as alleged, with two persons killed and two injured. Any discrepancies in the injured witnesses' evidence relate to side issues; on the main facts, their evidence stands and is supported by the medical evidence.

D. Points for determination

17. On the rival submissions, the following points arise for determination :

- (i) Whether the F.I.R. was lodged at the time shown and, if not, what effect this has on the prosecution case ?
- (ii) Whether the overwriting and interpolations in the inquest reports affect the evidence of the injured witnesses ?
- (iii) Whether the informant PW-1 can be relied upon as an eyewitness ?
- (iv) Whether the motive and the morning threat are proved and, if not, whether that is fatal to the prosecution ?
- (v) What is the effect of the non-examination of the eyewitnesses named in the F.I.R. ?
- (vi) Whether the evidence of the injured witnesses PW-2 and PW-3 is reliable, and whether the discrepancies in it go to the root of the case ?
- (vii) Whether the place of occurrence is proved ?
- (viii) Whether the medical evidence is consistent with the account of the injured witnesses ?
- (ix) Whether the recoveries and the forensic reports are proved and can be used against the appellants ?
- (x) Whether the participation of each appellant and their common intention are proved, and whether the offences under Sections 302 and 307 read with [Section 34](#) I.P.C. and [Section 4/25](#) of the Arms Act are made out ?
- (xi) Whether the sentence of death should be confirmed and, if not, what sentence is appropriate ?

E. The evidence

(i) The F.I.R.

18. The F.I.R. shows registration at 17:30 hours on a report said to have been given at about 5:30 PM, for an incident at about 5:00 PM. Yet the report already says that Riyasat died on the way to the hospital and that Fajruddin was referred to Meerut. PW-7 Dr. Yogesh Agarwal examined Fajruddin at about 6:30 PM and referred him after that. PW-8 S.S.I. Bharat Lal Shah admitted that the police learnt of Riyasat's death through P.S.- Kotwali only at about 7:30 PM. He also said the informant arrived at 5:30 PM and that writing the chik and the GD entry took about half an hour. In both inquests, the Investigating Officer who prepared the inquest report recorded the time of the F.I.R. as 17:00 and changed it to 17:30, without explanation. As the trial court recorded while PW-8 was being examined, the first four lines of Riyasat's inquest are in a different handwriting. The same inquest records that it began at 19:00 hours and ended at 20:00 hours, although PW-8 said he learnt of the death only at about 7:30 PM and reached the postmortem house at Rampur Tiraha at about 10:00 PM. Form 13 attached to it (Ext.Ka-22) records receipt of the sealed body at the police headquarters at 17:00 hours, and is signed by the Reserve Inspector on 10.11.2011. The time does not match the rest of the prosecution case, and the Investigating Officer has not explained it. Kamruddin, who wrote the report, was not examined, and the prosecution did not prove the Investigating Officer's departure and return GD entries from the police station on 09.11.2011.

19. On this evidence, we are unable to accept that the F.I.R. was recorded at 17:30 hours. The report speaks of the referral of Fajruddin, which took place after he was examined at about 6:30 PM; the Investigating Officer's own account puts registration no earlier than about 6:00 PM; and the Chik F.I.R. shows that the time of the F.I.R. was altered by an interested person in the same way in both inquests. At the least, the F.I.R. came into existence later than the time shown, and after the informant had learnt of events at the hospital ([Meharaj Singh v. State of U.P.](#), (1994) 5 SCC 188). The trial court put the corrections down to mistakes made while two deaths

were being investigated. We cannot accept that. These are not stray slips. The trial court also did not address the interpolations in the inquest papers. A prompt F.I.R. matters because it records the first version before there is time to consult and add to it. Where the time of lodging the F.I.R. is contested, the court must examine the rest of the evidence more carefully. But an ante-timed F.I.R. does not by itself lead to acquittal if the eyewitness evidence is otherwise reliable. The F.I.R. is not substantive evidence. Its defects discredit the informant and whatever rests on the F.I.R. alone. They do not by themselves falsify the evidence of witnesses who had no part in writing it.

(ii) The inquest reports

20. The defence relied on the overwriting and interpolations in the inquest reports. An inquest under [Section 174](#) Cr.P.C. is held only to find the apparent cause of death. It is not substantive evidence and cannot be used to contradict eyewitnesses who did not make it ([Radha Mohan Singh v. State of U.P.](#), (2006) 2 SCC 450). PW-2 and PW-3 were unconscious in hospital when the inquests were held, and no entry in them comes from either of them. We have already taken the changed F.I.R. timings into account in holding that the F.I.R. was ante-timed. The inquest officer made the change in the place where Azad's body lay, and the corrected entry matches the site plan and the injured witnesses. These defects reflect on the F.I.R. and on how the Investigating Officer handled the investigation. They call for closer scrutiny of the prosecution evidence, but they do not weaken the injured witnesses' evidence. The inquests in fact support them on the deaths, the apparent cause, and the nature of the injuries.

(iii) The informant, PW-1

21. We cannot rely on PW-1 Mohammad Aalim as an eyewitness. He says he was threatened with death that morning, yet he told no one and, within hours, took his elderly father, two sons and a guest, unarmed, to the disputed ridge. When attacked, he ran, spoke to no one, did not go to the police outpost 100 metres from his house, and could not say how any victim was struck. When he went back to the spot, he stayed for only five to seven minutes. He did not go with the injured, never saw his father's body, and never asked about the cut-off hands. His account of his movements that evening (police station, then hospital) does not match PW-8's (at the spot, then with Azad's body). PW-8 has also proved that his police statement did not mention who carried which weapon, the collecting of leaves, his return to the spot, or how the injured were taken away. These omissions amount to contradictions. What is true in his account cannot be separated from what he has added.

(iv) Motive and the morning threat

22. Only PW-1 speaks of a morning threat. The injured witnesses, who are said to have been present, do not mention it, and PW-3 Munnawar alias Monu says the accused had never threatened him or come to their house. PW-1 admitted there was no earlier quarrel over the ridge or the trees, and PW-8 found no cut tree. The motive is not proved. That is not fatal where there is reliable direct evidence. Both injured witnesses say the accused came abusing them over the poplar trees before the attack, and the trees stand on the ridge next to the place of the attack (Ext.Ka-23). Barik's pending civil suit against the sale deed in favour of PW-1's wife shows ill-will between the families. Such ill-will can cut both ways, so we have examined the injured witnesses' evidence carefully; but it is not, by itself, a reason to reject it.

(v) The eyewitnesses named in the F.I.R.

23. The F.I.R. names Maqbool Hasan, Shaukeen, Mohammad Tariq and Gullu as eyewitnesses; the last two are the informant's brothers. PW-8 recorded statements of three of them, but none was examined at trial. PW-1 himself placed Maqbool at his own gate, Shaukeen in the village, and Tariq as coming to his house later. PW-2 and PW-3 say clearly that no one else was there. So the claim of independent eyewitnesses is false, on the prosecution's own evidence. The prosecution did not have to examine people who were not present, but listing them in the report reflects on how the F.I.R. was prepared. On the other hand, the injured witnesses did not repeat this claim, which shows their account is their own. Irshad son of Noor Hasan, who brought both injured witnesses to hospital, and Tahir, who telephoned the news of Riyasat's death, were also not examined. Their evidence would have shown when and how the injured were taken from the spot, and would have tested the informant's account and the time of the F.I.R. Their non-examination is a lapse, and it adds to our doubts about PW-1 and the F.I.R. It does not affect the injured witnesses, who were unconscious when they were taken away and whose presence is proved by PW-7's record. The prosecution is not bound to examine every witness, and an adverse inference arises only where the evidence actually led is not sufficient ([Takhaji Hiraji v. Thakore Kubersing Chamansing](#), (2001) 6 SCC 145).

(vi) The injured witnesses, PW-2 and PW-3

24. PW-7 found incised wounds on both injured witnesses : Fajruddin had a 15 cm x 9 cm wound on the right side of the neck and a bone-deep wound on the head, and Monu had wounds on the left cheek and the back of the right shoulder. A villager brought both to hospital by about 6:40 PM on 09.11.2011, and both were unconscious. Their presence at the scene is therefore certain. The evidence of an injured witness carries a built-in assurance that he was there and is not to be rejected without strong reasons ([Abdul Sayeed v. State of M.P.](#), (2010) 10 SCC 259), and their being relatives of the deceased is no ground to reject it. On the main facts, the two witnesses agree. According to both, at about 5:00 PM the appellants Barik and Shahbad, fellow villagers well known to them, came there armed with sharp weapons, along with Shahnawaz and Shahnazar, abused them over the poplar trees, and attacked them together. The victims ran north across the ridge and were caught in Barik's field, where Azad was killed and his hand severed off, Riyasat was hacked and his hand severed, and both witnesses were injured and fell unconscious. The four names have remained the same in every version, including the F.I.R. Though we have held the F.I.R. to be ante-timed, it existed before the recoveries of 11.11.2011, so the naming of the accused does not depend on the recoveries.

The defence argued that, since the F.I.R. was prepared after deliberation and contains overwriting and interpolation, the naming of the assailants by the injured witnesses may also be the product of that deliberation.

We have considered this with care.

The injured witnesses are close relatives of the informant; their statements were recorded after the registration of the F.I.R., and the evidence of related witnesses from a family on bad terms with the accused must be examined closely. Four circumstances indicate that their account is their own.

First, both the injured witnesses were unconscious and under treatment when the report was written, and could have had no part in it.

Second, their account departs from the F.I.R. on the very points where the F.I.R. was embellished : they deny the morning threat and the presence of any outsider, though agreeing with the informant would have helped the prosecution. Witnesses taught a prepared version would not reject its most useful parts.

Third, what they say about the place of the attack is confirmed by what the Investigating Officer himself saw at the spot, and what they say about its time and nature is confirmed by the medical evidence.

Fourth, the differences among them in positions, the order of blows, and the weapons reflect witnesses speaking from their own memory of a sudden attack, not witnesses repeating a settled story. Where the police influenced a statement, as in PW-2's [Section 161](#) Cr.P.C. statement on the weapons, the influence is evident, and PW-2 departed from it in court. The evidence of an injured witness is not to be discarded unless there are strong grounds, such as major contradictions or clear falsity ([Balu Sudam Khalde v. State of Maharashtra](#), AIR 2023 SC 1736).

We find no such grounds that raise a suspicion regarding the appellants' identity.

25. The witnesses differ on which accused carried which weapon, where each victim stood, the order and number of blows. In chief, PW-3 said Shahbad had a balkati; in cross-examination, he said a farsa and described it using the nuts and bolts of the farsa later recovered. PW-2's police statement, proved through PW-8, gives Barik a farsa, Shahbad a ballam, Shahnazar a daon, and Shahnawaz a knife, which differs from his evidence in court and closely matches the recoveries. There is also some exaggeration, such as 'countless' blows and every accused striking Riyasat's head, which the medical evidence does not support. Minor discrepancies in details do not destroy credibility ([Bharwada Bhoginbhai Hirjibhai v. State of Gujarat](#), (1983) 3 SCC 217), and a witness who is wrong on one point is not, for that reason, to be disbelieved on all; the Court must separate what is true from what is not. The discrepancies here are on side issues, which is to be expected from witnesses who were themselves attacked by four armed men without warning and lost consciousness. Any sign of later influence is limited to their description of the weapons. On the main facts (the time, the place, the identity of the appellants as two of the attackers, the joint armed attack, and its result), both witnesses are consistent and supported by independent evidence. We accept their evidence on these facts, but do not accept their attribution of particular weapons and blows to particular accused. What the witnesses say about Shahnawaz and Shahnazar is part of their account of the occurrence and cannot be left out; whether it proves the guilt of those two is for the Juvenile Justice Board.

(vii) The place of occurrence

26. In the site plan Ext.Ka-17, prepared by PW-8 from what he himself saw, the place where Azad's body lay (point A) and the five places from which the Investigating Officer collected blood, blood-stained earth and footwear are all within Barik's field. In Ext.Ka-23, prepared at the informant's pointing out, the disputed poplar trees are marked X on the ridge, and the deceased and the injured are shown within Barik's field, but he found no evidence or crime artefacts in the informant's field. This supports the injured witnesses, who say the victims ran north across the ridge and were attacked a few steps inside Barik's field. They ran north because the Barla-Baseda road lies beyond Barik's field. This contradicts PW-1, who said the victims did not reach Barik's field. The change in Azad's inquest from 'Riyasat's field' to 'Barik's field' aligns it with the physical evidence; it concerns how the inquest was written, not where the body lay. Entries in the site plans recording what witnesses told the Investigating Officer fall under [Section 162](#) Cr.P.C. Nothing at the spot supports the account that the victims were collecting leaves. Nothing suggests that the complainant side started the fight either, as no accused was injured in the incident, and no plea of private defence was raised by the accused. The injured witnesses' description has proved the place of occurrence to the satisfaction of the court.

(viii) The medical evidence

27. PW-5 found six ante-mortem injuries on Azad, including an incised wound on the right side of the chest that cut the 4th and 5th ribs and tore the right lung, and left hand severed at the wrist. He found ten ante-mortem injuries on the body of Riyasat, including a deep abdominal wound, deep incised wounds on both forearms and knees, and an amputation involving the fingers and right wrist joint. Both died of shock and bleeding, about half a day before the postmortem, which in Riyasat's case was held at 4:35 AM on 10.11.2011. The medical evidence confirms that both were killed as a result of several sharp-weapon injuries at about the time alleged. It does not support some details given by the witnesses. Each deceased has one blunt injury to the head that the witnesses do not explain. Such an injury can be caused by a heavy weapon such as a farsa or balkati striking with its flat side or back, or by a fall while running but none of the injured witnesses have testified to such a fact and these injuries could have been caused as a result of physical assault or a fall. One blunt injury among many sharp-weapon injuries does not displace the account of the injured witnesses. The trial court did not deal with these injuries at all. Fajruddin has one head wound, not three or four. Apart from Azad's chest wound, there are no stab wounds of the kind a bhala or ballam would cause, a point the trial court did not consider. The doctor could not link any injury to any particular weapon. These differences concern which weapon was used by whom, which we have not accepted. They do not affect the occurrence

itself. The inquest reports record that Azad's left hand had been cut off at the wrist, and that Riyasat's right hand and fingers had been cut off at the wrist, and they show the severed parts. The inquest on Azad agrees with the injured witnesses, who say his left hand was cut off. The postmortem reports, however, only record the amputation injuries; they do not record that the severed hands were received or examined, and no postmortem report of the severed hands has been proved. Nor does the record show who picked up Riyasat's hand from the spot, when Riyasat himself was taken to hospital alive, and how it came to be with his body at Rampur Tiraha. This is another gap in the investigation. It does not affect the finding that the hands of both deceased were cut off in the attack, which the postmortem reports prove.

(ix) The recoveries and the forensic reports

28. It is manifest that no disclosure statement of any accused has been proved on record. PW-6, Anil Kumar Sagar, categorically stated that he did not record any statement of the accused and that the Station Officer prepared such statements at the police station. PW-8, the Investigating Officer, did not depose to the actual words used by any accused. In the absence of a proved disclosure statement, the foundation for recovery under [Section 27](#) of the Evidence Act collapses. The trial courts reliance on such statements is misplaced, as they are barred by [Section 162](#) of the Cr.P.C. and [Section 25](#) of the Evidence Act, as clarified in [Subramanya v. State of Karnataka](#), (2023) 11 SCC 255.

Further, PW-6 gave contradictory version of the time and place of arrest and, in cross-examination, admitted that the police party was at Barla from morning till 8:20 PM. The prosecution withheld departure GD entry No. 28 and the corresponding arrival entry. Under [Section 114\(g\)](#) of the Evidence Act, an adverse presumption arises that the entries, if produced, would not have supported the prosecution.

29. The recovery itself is fraught with infirmities. The Police recovered four weapons allegedly used in the commission of the offence pursuant to a disclosure statement by the accused. The Police allegedly recovered them from a single shelf in a family house that was merely latched, with no independent public witness from the vicinity and no explanation for their absence. The recovery memos make no mention of time. The knife allegedly recovered was not produced in court. The articles were dispatched for forensic examination only after 17 days, breaking the chain of custody and making tampering plausible.

30. In light of these cumulative deficiencies absence of admissible disclosure, contradictions in the arrest, withholding of GD entries, lack of independent witnesses, defective recovery memos, non-production of the weapon, and unexplained forensic delay the Court finds that the recovery of weapons pursuant to the alleged disclosure statement is not proved. The prosecution has failed to establish this circumstance beyond reasonable doubt, and the recoveries cannot be treated as incriminating material against the accused.

31. The forensic reports on the clothes and footwear (Ext.Ka-33), the farsa (Ext.Ka-34) and the ballam (Ext.Ka-35) were not put to the accused under [Section 313](#) of the Cr.P.C. The report dated 10.06.2013 on the weapons, which record that the blood stains had disintegrated, were not tendered. A circumstance not put to the accused cannot normally be used against him ([Sharad Birdhichand Sarda v. State of Maharashtra](#), (1984) 4 SCC 116). This Court could cure the omission, but there is no need, as we do not rely on the recoveries or the forensic reports at all.

(x) The part played by each appellant, and common intention

32. Where several members of one family are accused of a group attack against a background of ill-will, caution requires that each accused's part be proved by the consistent evidence of at least two reliable witnesses ([Masalti v. State of U.P.](#), AIR 1965 SC 202). We have therefore considered each appellant separately.

Both injured witnesses name Barik as one of the attackers and give him a sword-like weapon. PW-3 says Barik struck at his neck, and the blow landed on his cheek, and PW-7 found an incised wound on his left cheek. PW-3 also says Barik struck Azad on the chest, and PW-5 found a penetrating incised wound on Azad's chest. PW-2 says he was struck on the shoulder with the sword, and PW-7 found a deep incised wound on the right side of his neck. The evidence of Barik's role is proved by the consistent testimony of both injured witnesses and is supported by the medical evidence.

Both injured witnesses name Shahbad as one of the attackers, and neither has at any stage left him out. He is also named in the F.I.R., which was written before any recovery. The witnesses differ about his weapon : PW-2 and PW-3 in chief say it was a balkati; PW-3 in cross-examination says a farsa; and PW-2's police statement says a ballam. But both attribute to him the blows on Fajruddin's head: PW-2 says he was struck on the head with the balkati he attributes to Shahbad, and PW-3 says Shahbad struck Fajruddin on the head. PW-7 found a bone-deep incised wound on Fajruddin's head. Where several armed men attack together, a witness's uncertainty about which weapon one of them held does not make that person's presence or participation doubtful, when both witnesses consistently name him as taking part and describe what he did. [Section 34](#) requires, besides a common intention, participation in the criminal act. Shahbad's participation, armed and striking Fajruddin, is proved. The variations noted above mostly concern the weapons and roles of the two juveniles, who are not before us.

33. The defence suggested to PW-1 that Barik was ill with chest pain on 09.11.2011 and was treated in hospital that day, and filed a document relating to his treatment at the District Hospital, Muzaffarnagar, on that date. The accused did not examine any witness to prove the document, and it does not show that Barik was elsewhere at about 5:00 PM, when the attack took place. The accused who raises a plea of being elsewhere must prove it, and an unproved document cannot do so. It does not displace the consistent evidence of the injured witnesses that Barik was present and took part in the attack.

34. The appellants were charged under [Section 34](#) I.P.C. and were required to meet the case of joint liability. [Section 34](#) applies where several persons commit a criminal act in furtherance of a common intention. It does not require that everyone who shared that intention be tried with the accused. That the other participants named by the witnesses were juveniles and are being tried separately does not prevent us from considering the occurrence as a whole, including the part the witnesses attribute to them, in deciding whether the appellants acted in furtherance of a common intention ([Mohan Singh v. State of Punjab](#), AIR 1963 SC 174). Our finding, however, is confined to the appellants. In any case, the two appellants were tried together, and a common intention between them is enough. They came together, each armed, attacked together, chased the fleeing victims and inflicted the injuries described. This shows a common intention to kill. Once that is proved, it does not matter which of them caused which injury. As for the injured, the intention to kill is judged from the weapons, the part of the body aimed at and the manner of attack, not only from the injury actually caused. Fajruddin received a deep incised wound on the neck and a bone-deep wound on the head. Monu was struck on the face and shoulder by blows aimed at his neck. The offence under Section 307 read with [Section 34](#) I.P.C. is proved. The charge under [Section 4/25](#) of the Arms Act is not proved. The recoveries are not proved, and there is no proof of the size of the articles or of any notification making them 'arms'. The conviction and sentence under [Section 4/25](#) of the Arms Act cannot stand.

(xi) Effect of the faulty investigation

35. The investigation in this case was flawed. The F.I.R. was ante-time, the Investigating Officer altered the inquest papers without explanation, and the prosecution did not examine Sub-Inspector Devendra Singh, who prepared the inquest on the direction of PW-8; the recoveries were not proved. The police account of the arrest and the Investigating Officer's movements does not hold together. A defective investigation, however, does not by itself entitle the accused to acquittal; if the eyewitnesses' evidence is otherwise reliable, the Court must act on it, since the accused cannot benefit from the police's lapses ([C. Muniappan v. State of T.N.](#), (2010) 9 SCC 567). Such defects require the evidence to be examined with greater care, and the Court to ask whether the eyewitness account stands independently of what the police have done. It does here. The presence of PW-2 and PW-3 is proved by their injuries, recorded by PW-7 at about 6:40 PM on the day of the occurrence, when they were brought to hospital by a villager and before the police had any part in the matter. Their account of the place of occurrence is supported by the Investigating Officer's own observation of the body and the blood at the spot, and the postmortem reports independently confirm the manner and time of the deaths. The injured witnesses did not adopt the embellishments found in the F.I.R. Where police influence appears in the description of the weapons, we have not relied on it. The defects in the investigation therefore take away the evidence that depends on the police. Still, they do not affect the evidence of the injured witnesses, which we have found reliable.

F. Conclusion on guilt

36. The F.I.R. was ante-time, the informant is unreliable, and the investigation was faulty. Even so, the evidence of the injured witnesses PW-2 and PW-3, supported by the site plan and recovery of artefacts of crime from the place of occurrence and by the medical evidence as to the nature and time of the injuries, proves beyond reasonable doubt that the appellants Barik and Shahbad, in furtherance of their common intention and together with others, murdered Azad alias Raja and Riyasat alias Mukhia and attempted to murder Fajruddin and Munnawar alias Monu. Their conviction under Sections 302 and 307 read with [Section 34](#) I.P.C. is upheld. The conviction under [Section 4/25](#) Arms Act, in light of the discussion hereinabove, is not sustainable.

G. Sentence

37. The offence is serious. Two people, one of them a young student, were killed, and two others, one a boy of about fifteen or sixteen, were injured, in an attack with sharp weapons on unarmed people who were fleeing. The hands of both the deceased were cut off by the accused. The question is whether this is one of the rarest of rare cases, in which the option of life imprisonment is unquestionably foreclosed ([Bachan Singh v. State of Punjab](#), (1980) 2 SCC 684; [Machhi Singh v. State of Punjab](#), (1983) 3 SCC 470). The sentence must suit the individual offender, taking into account the chance of reform, based on material about each accused ([Manoj v. State of M.P.](#), (2023) 2 SCC 353).

38. In our view, the following reasons rule out the death sentence :

(i) The incident arose from a dispute between two neighbouring families over boundary trees and land. There was also a civil suit pending before the Civil Court for cancellation of a sale deed executed by the father of the appellant Barik in favour of Samar Jahan, the wife of the informant, and the wife of Barik's elder brother. The families were thus already at odds over land. The prosecution alleged a planned attack, preceded by a threat to kill that morning and driven by Barik's wish to take over the ridge and the trees. Neither is proved. The morning threat rests on the informant alone, whom we have not believed; the injured witnesses do not speak of it; and the informant admitted that there had been no earlier quarrel over the ridge or the trees. That the attackers came armed shows that they were ready for violence, but it does not show a calculated plan made in advance to kill. On the evidence, the attack was the violent outcome of a quarrel over land between neighbours, not a killing for gain, a killing of a helpless person for its own sake, or a crime directed at society at large. Such a crime, however grave, does not ordinarily fall within the category of the rarest of rare.

(ii) The appellants are convicted under [Section 34](#) I.P.C. The evidence does not show which attacker inflicted the fatal injuries or cut off the hands. It would not be safe to impose the death penalty based on joint liability alone.

(iii) The F.I.R. was ante-dated, and the investigation was flawed. These defects do not justify rejecting the injured witnesses, but they leave residual doubt, which is itself a mitigating factor ([Ashok Debbarma v. State of Tripura](#), (2014) 4 SCC 747).

(iv) Nothing on record indicates that the appellants cannot be reformed or pose a continuing danger to society. The prosecution has not alleged any criminal record against either of them, and no bad conduct has been reported. They have been in custody since 2011.

39. The trial court did not call for any report on mitigating circumstances, such as the accused's antecedents, social background, mental health or conduct in jail. Nor were the accused informed that they could place such material before the Court. The hearing on sentence under [Section 235\(2\)](#) of the Cr.P.C. must be a real hearing, not a formality, in which the accused has a fair opportunity to show what bears on sentence. A death sentence cannot be passed without assessing, on the material, the offender's circumstances and whether he can be reformed ([Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra](#), (2009) 6 SCC 498). The Supreme Court has since explained this requirement further in [Manoj](#) (supra). Here, the death sentence was passed without considering any mitigating circumstances, and it cannot stand for that reason alone.

40. Such a defect would usually require the matter to be sent back, or this Court to call for the reports itself. That is unnecessary here, because, for the reasons given above, this is not a case in which life imprisonment is ruled out. The death sentence cannot be confirmed.

H. Order

41. Capital Sentence Reference No. 9 of 2017 is answered in the negative. The death sentence passed on Barik and Shahbad is not confirmed.

42. Criminal Appeal No. 2915 of 2017 is partly allowed as follows:

(1) The conviction of Barik and Shahbad under Section 302 read with [Section 34](#) of the I.P.C. is upheld. Their death sentence is commuted to life imprisonment. The trial court's fine and the sentence in default remain unchanged.

(2) Their conviction under Section 307 read with [Section 34](#) I.P.C. is upheld. The sentence of ten years' rigorous imprisonment each, with a fine of Rs. 10,000/- each and one year's further imprisonment in default, is maintained.

(3) Their conviction and sentence under [Section 4/25](#) of the Arms Act are set aside, and they are acquitted of that charge.

(4) All sentences shall run concurrently. The period already served shall be set off under [Section 428](#) of the Cr.P.C.

(5) Under [Section 357\(3\)](#) of the Cr.P.C., the appellants shall also pay, in equal shares, compensation of Rs.1,00,000/- (Rupees one lakh) to the next of kin of each deceased, namely Azad alias Raja and Riyasat alias Mukhia, and Rs.50,000/- (Rupees fifty thousand) to each injured person, namely Fajruddin and Munnawar alias Monu, within six months. If not paid, the amount shall be recovered as a fine. The District Legal Services Authority, Muzaffarnagar, shall also consider compensation for the victims under [Section 357-A](#) of the Cr.P.C.

43. The appellants are in custody and shall serve the modified sentence. A copy of this judgment shall be sent at once to the trial court, with the lower court record, for compliance, and to the Superintendent of the jail concerned.

44. Before parting with the case, we must record our concern at the manner in which the official records in this case were prepared. The inquest reports, the F.I.R., the general diary and the recovery memos are the foundation of a criminal trial. The Court relies on them to know when information reached the police, what the police saw and what they did. In this case of two murders, those records were not kept honestly, and the Court had to look past them to the injured witnesses and the medical evidence to find the truth.

45. The record shows the following :

(i) In both inquest reports, the time of the F.I.R. was first written as 17:00 hours and later altered to 17:30 hours, without any initials or explanation. The first four lines of Riyasat's inquest are in a different hand.

(ii) Riyasat's inquest records that information of his death was received at 17:00 hours, when, on the prosecution's own case, the attack was still going on and Riyasat was alive.

(iii) The same inquest records that it was held from 19:00 to 20:00 hours, whereas the Investigating Officer (PW-8) stated that he learnt of the death only at about 7:30 PM and reached the postmortem house at Rampur Tiraha at about 10:00 PM. The officer, S.I. Devendra Singh, who is said to have prepared it, has not signed it.

(iv) Form 13 attached to that inquest (Ext.Ka-22) records receipt of the sealed body at the police headquarters at 17:00 hours, over the signature of the Reserve Inspector dated 10.11.2011. No explanation has been given.

(v) In Azad's inquest, the place where the body lay was first written as 'Riyasat's field' and later changed to 'Barik's field', without attestation.

(vi) The recoveries of weapons were shown without any disclosure statement, without any public witness, and without recording the time. The departure and arrival entries in the general diary were not produced. The two police witnesses gave different accounts of the time and place of arrest and of whether the accused signed the sealed packets.

(vii) The statement of the injured Fajruddin under [Section 161](#) Cr.P.C., recorded on 24.11.2011, attributes to each accused exactly the weapon later shown as recovered from him, which Fajruddin denied saying.

(viii) The memo of seizure of Monu's clothes (Ext.Ka-25) is not signed by him, does not name the witnesses before whom the clothes were taken, and the parentage of the witnesses was added later.

46. These are not clerical slips. Taken together, they show that entries in official records were made or altered after the event to fit the prosecution case and in the alternative, to cast aspersions on it. Such conduct harms both sides. It exposes the accused to the risk of conviction on false records, and it puts at risk the conviction of the guilty, which is what the victims' families are entitled to expect. Our observations are made on the record of this case. The officers concerned have not been heard by us, and nothing we say is a final finding against any of them.

47. We, therefore, direct as follows :

- (1) A copy of this judgment shall be sent to the Director General of Police, Uttar Pradesh, and to the Senior Superintendent of Police, Muzaffarnagar.
- (2) The Director General of Police shall cause an inquiry to be held by an officer not below the rank of Superintendent of Police, who is not posted in District- Muzaffarnagar, into the conduct of the Investigating Officer, S.S.I. Bharat Lal Shah, S.I. Devendra Singh, S.I. Anil Kumar Sagar, and any other police officer responsible for preparing or altering the records [referred to above](#).
- (3) The inquiry officer shall examine the original case diary, general diary, inquest papers, recovery memos and malkhana register, and shall give each officer concerned an opportunity to be heard.
- (4) If the inquiry finds misconduct, strict action shall be taken against the officers responsible, including departmental proceedings and, where an offence is disclosed, criminal proceedings, in accordance with law.
- (5) A report of the inquiry and of the action taken shall be placed before the Registrar General of this Court within three months from the date of receipt of a copy of this judgment.
- (6) The Director General of Police shall also consider issuing instructions to all districts to ensure that the time of receipt of information, the time of registration of the F.I.R. and the time of the inquest are recorded correctly and contemporaneously, and that any correction in such records is well explained.

(Achal Sachdev,J.) (Atul Sreedharan,J.) October 9, 2026 KS