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CNR No-UPKJ010037752018

**In The Court of Sessions Judge, Kannauj**

Presiding Officer- Shri Chandroday Kumar (HJS)-UP06553  
Session Trial Number 220 of 2018

State of Uttar Pradesh

... Prosecution

Versus

1- Vinay alias Pitari, son of Ishwari

2- Manoj, son of Darshan Lal,

Both residents of village Kushalpur Kairda police station Vishungarh, District  
Kannauj

... Accused

Crime Number- 58 of 2018

Under Sections 147, 148, 302/34 and 201/34 IPC

Police Station- Vishungarh, Distt. Kannauj.

Prosecution Counsel: Shri Tarun Chandra, ADGC (Criminal),

Defence Counsels: Shri Anurag Awasthi & Shri Ramkripal Singh, Advocates.

**JUDGMENT**

The accused, Vinay alias Pitari and Manoj, have been charged with and tried for offences punishable under sections 147, 148, 302, and 201, read with section 34 of the Indian Penal Code (IPC).

2. According to the prosecution story, the epitomised facts related to the case are as follows: On date May 19, 2018, a Tahrir (application) Exhibit Ka-1 was presented by the complainant and brother of the deceased, PW1, Aman Singh, before Police Station Vishungarh, District Kannauj to the effect that on May 18, 2018 at around 09.00 pm Vinay alias Pitari called his brother Sonu. Sonu told the complainant that Vinay had called him and he needed to talk about something; let us both go to his house. He, along with his brother, went to Vinay's house in Kushalpur Kairda on a motorcycle, where Vinay alias Pitari, Monoj, Rahul, Manni Fauji, and Sanu Tiwari were already present, along with two more persons whom the complainant did not know. These people have already made arrangements for food and drinks there. All these people started eating and drinking, then started arguing among themselves about some issues. They all said to the complainant's brother, Sonu, that he was becoming a hoodlum. Let's see. They started fighting with his brother, and two unknown persons caught hold of the complainant at gunpoint. Vinay, Manoj, Manni, and Sanu Tiwari caught the complainant's brother Sonu, and Rahul shot Sonu and locked the complainant in a room, and all of them fled from there. Somehow, the complainant came out of the room and saw that his brother's body was not there. The complainant ran here and there and saw that his brother's body was lying in a peanut farm on the

side of Usmanpur Road. A motorcycle was lying some distance away. All these people together shot and killed the complainant's brother. The complainant requested that legal action be taken by lodging a report.

3. Based on the above written Tahrir, Exhibit Ka-1, a First Information Report under Section 147, 302, 201/34 of the IPC was registered at the Police Station Vishungarh, District Kannauj on May 19, 2018, at 13:26 at Crime No. 58 of 2018 against the accused Vinay alias Pitari, Manoj, Rahul, Mannu Fauji, Sanu Tawari and an unknown person. Simultaneously, the extract was entered into General Diary (GD) No. 22, dated May 19, 2018, at 13:26. The SSI, Gauri Shankar Verma, entrusted the case investigation on this FIR.

4. SSI Gauri Shankar Verma of the police station Vishungarh, District Kannauj, conducted an inquest regarding the cause of the death of Sonu. He visited the occurrence seven Kilometers from the police station at 13:26 on May 19, 2018, conducted the inquest between 14:00 and 15:00, and prepared its report (Panchayatnama) at the occurrence place. Panchayatnama mentioned the death of the deceased due to a firearm injury. To know the exact cause of death, postmortem (PM) was suggested. In furtherance of PM, a letter to CMO Exhibit Ka-13, Challan Corpse Exhibit Ka-14, Challan Corpse Form No- 33 Exhibit Ka-15 and Photo Corpse Exhibit Ka-16 were prepared.

5. On May 19, 2018, Dr Amit Verma conducted the post-mortem of Sonu (Thakur) between 04:40 pm and 05:30 pm and prepared the post-mortem report, Exhibit Ka-2. The findings of the postmortem are as follows:-

*Injury No. 1- A 10x5 cm contusion was present over the right parietal region.*

*Injury No. 2- A 12x8 cm contusion was present over the left parietal region.*

*Injury No. 3- A Contusion 8x6 cm was present over the left side of the forehead with the left eye region.*

*Injury No. 4- An entry wound size 1x1 cm was present over the abdominal region 19 cm below the right nipple, 19 cm below the left nipple, and 12 cm above the umbilicus. 3 cm blackening (as per statement of PW2 due to similar pronunciation of KALIMA and LALIMA) was present around the wound region.*

*On dissection, the right lung was found to be punctured, and the heart ruptured. The bullet was recovered from the heart. The bullet size was 3x0.7 cm.*

In the opinion of the doctor, the deceased died about half a day or one day before the post-mortem was conducted. The cause of death was *shock & haemorrhage due to antimortem firearm injury.*

6. The SHO, Shri Sunil Kumar Yadav, visited the scene, prepared the site map of the first incident place marked as Exhibit Ka-4 and the site map of the second place from where the body was recovered marked as Exhibit Ka-5, collected inquest and postmortem reports, and recorded witnesses' statements. After SHO Shri Sunil Kumar Yadav's transfer, SI Sujit Kumar Verma investigated the case and recorded the other witnesses' statements. Upon completing the investigation, the IO submitted a charge sheet only against the

accused, Vinay alias Pitari and Manoj, son of Darshanlal, under sections 147, 148, 149, 302 and 201 of the IPC in the Court of Chief Judicial Magistrate (CJM), Kannauj and closed the investigation, finding non-involvement of other named people based on the accusation of three other people Darshanlal, Anil son of Darshanlal and Awadhesh son of Darshanlal after story change by the first informant. The case was further investigated and closed by Shesh Mani Upadhyay, Circle Officer in Chhibramau, due to false implication of Darshanlal, Anil and Awadhesh.

7. The learned CJM, Kannauj, took cognisance of the matter and, upon determining the case to be triable by the Court of Sessions, committed the case on August 03, 2018, following compliance with section 207 of the Code of Criminal Procedure (CrPC).

8. This court registered the case as Session Trial Number 220 of 2018 and framed the charges against the accused, Vinay alias Pitari and Manoj, under sections 147, 148, 302/34 and 201/34 of the IPC. The accused pleaded innocence and claimed to be tried.

9. The prosecution examined nine witnesses to substantiate the charges against the accused people, which are as follows:

**Witness of facts:**

PW1, Aman Singh, brother of the deceased, complainant and eyewitness,

PW3, Rajesh, witnessed the panchayatnama and

PW8, Suresh, witnessed the recovery of the blood-soaked jack towel.

PW9, Upendra Singh, witnessed the recovery of the blood-soaked bed sheet.

**Formal witnesses:**

PW2, Dr Amit Verma, conducted the post-mortem of the deceased.

PW4, SHO Sunil Kumar Yadav, the investigating officer, provided the site map of the first place of the incident and the site map of the second place where the body was recovered.

PW5, SI Sujeet Kumar Verma, prepared the memo of the bed sheet and site map of the recovery place, the memo of the blood-soaked jack towel and a site map of the recovery place and submitted the chargesheet.

PW6, SI Balram Singh, proved the FIR and G.D. and

PW7, SI Gaurishankar Verma, prepared the deceased's inquest report and letter to the CMO for postmortem, Challan Corps, and Photo Corps.

10. The prosecution produced the following papers under documentary evidence:

Exhibit Ka-1, Tahrir, proved by PW1,

Exhibit Ka-2, Postmortem report, proved by PW2,

Exhibit Ka-3, Panchayatnama, proved by PW3,

Exhibit Ka-4, Site map of the place of the shooting, proved by PW4,

Exhibit Ka-5, Site map of the place where the body was recovered, proved by PW4,

Exhibit Ka-6, Memo of the blood-soaked sheet, proved by PW5,

Exhibit Ka-7, Site map of recovery of the bed sheet, proved by PW5,

Exhibit Ka-8, Blood-soaked jack towel, proved by PW5,

Exhibit Ka-9, Site map of recovery of the jack towel, proved by PW5,

Exhibit Ka-10, Chargesheet, proved by PW5.

Exhibit Ka-11, FIR, proved by PW6,

Exhibit Ka-12, G.D., proved by PW6,

Exhibit Ka-13, Letter to CMO, PW7,

Exhibit Ka-14, Challan Corps, proved by PW7,

Exhibit Ka-15, Challan Corps Form No. 33, proved by PW7 and

Exhibit Ka-16, Photo Corps, proved by PW7.

11. In his examination under section 313 of the CrPC, the accused defended false implication.

12. No oral or documentary evidence has been produced in defence.

13. I heard the arguments of the learned District Government Counsel (DGC) (Criminal) and learned counsel for the defence. I went through the evidence and material available on the record with all anxiety.

14. Based on the postmortem report and testimony of other witnesses, it is unequivocal that the deceased was fatally shot, and a murder was perpetrated. The pertinent inquiry pertains to the identity of the perpetrator. PW1 has accepted the authorship of Exhibit Ka-1. The prosecution's case hinges on the testimony of PW1, the sole eyewitness, as well as the motive and the recovery of a blood-soaked bed sheet and a Gamchha (scarf) on the behest of the charge-sheeted accused Vinay Pitari and Manoj. Since PW1 claims himself to be an eyewitness, his credibility warrants meticulous examination.

15. While an FIR is not inherently considered conclusive evidence, it can serve to corroborate the statements of prosecution witnesses, particularly the first informant, if they are aligned with the prosecution. Additionally, it can be utilised to challenge the veracity of prosecution witnesses, including the first informant. In the present case, the first informant stands as the sole eyewitness to the incident, thus constituting a pivotal witness. Given that the first informant omitted three individuals named in the FIR and instead implicated three new individuals, Darshanlal, Anil and Awadhesh, as accused in his testimony, thorough scrutiny of his credibility and presence at the scene is imperative. It is crucial to ascertain the plausibility and persuasiveness of the rationale behind the altered names.

16. PW1, in his Tahrir, has implicated Rahul, Manni Fauji, and Sanu Tiwari, along with Vinay Pitari and Manoj and two unknown persons. He has assigned the gunshot to Rahul, which caused death. Assigning the deadly gunshot to Awadhesh, it is deposed that this action was taken due to the non-identification of these three witnesses by names at the time of the incident, as he did not know Darshanlal, Anil and Awadhesh then. There was a misunderstanding about the names. There is a lack of evidence regarding the manner and timing by which the new accused were identified, and the confusion over names was resolved. Furthermore, the initial account involving seven accused was refuted, with the witness asserting that only five were present at the scene.

17. Notably, the witness altered the narrative from a single gunshot to two gunshots, one discharged into the air and another resulting in a fatality. The account of gunfire in the air appears to have been strategically introduced to suggest that additional witnesses arrived at the scene after hearing the shot in the air and subsequently witnessed the fatal shot. However, none of these purported witnesses have come forward to substantiate this claim.

18. The witness sought to justify the naming of Rahul, Manni Fauji, and Sanu Tiwari based on suspicion, citing a prior altercation with Sonu the day before the incident. Nevertheless, the manner in which the witness came to possess the names of the newly implicated individuals remains unclear. The witness endeavoured to safeguard the integrity of the accused names by asserting that the police had made him identify the three names and two unfamiliar individuals. However, this assertion remains uncorroborated by any police witness. Here, another question arises: how and when did the police come to know the actual perpetrators? Which also remained unanswered. Proverbs, being rooted in time-tested wisdom, convey enduring truths. It is commonly acknowledged that a deceitful individual lacks a credible

foundation, necessitating a web of falsehoods to maintain the initial untruth. Although the Latin maxim "falsus in uno, falsus in omnibus" may not be universally applicable, it is imperative to exercise scepticism towards a witness whose testimony is consistently devoid of veracity, as an erroneous conviction represents a profound miscarriage of justice.

19. At this juncture, it is essential to transcribe the entire verbatim evidence to discern the witness's misrepresentations, particularly concerning his presence at the scene. The examination-in-chief of the witness is as follows: It was around nine or 9:30 pm on May 18, 2018, when Vinay alias Pitari called his elder brother Sonu. Then he and Sonu went to Vinay alias Pitari's house in Kaushalpur Kairada by motorcycle, where Vinay alias Pitari, Manoj, Darshanlal, Anil and Awadhesh were present. He knew Vinay alias Pitari and Manoj. He did not know Darshanlal, Anil and Awadhesh then; all these people had arranged food and drink there. He and his brother Sonu started talking to them while eating and drinking. There was a heated argument in the conversation. Those people said to his brother that he was acting like a big hoodlum; today, they will see his bullying, and then his brother Sonu also started arguing with them. Then, these people started hitting his brother with a stick. When he intervened, they abused him, took him to a gallery and locked him in a room. First, Awadhesh fired a shot in the air. After that, his brother and these people got into a scuffle. Hearing the shot, more people from the village came, and then Awadhesh shot Sonu. All these people put Sonu's body on a cot and took it out of the house. While leaving, they also threatened to kill him. On hearing Awadhesh's air firing, Ritendra Singh and Hakim Singh came, who took him out of the room and saw the incident. When he came out of the room, he saw his brother Sonu's body lying in a peanut field on the side of Usmanpur Road. The motorcycle was also lying at a little distance. He was very scared. A day before the incident, his brother Sonu had a fight with Shanu Tiwari, Rahul and Manni, the report of which was lodged by his brother Sonu at Saurikh police station. He was aware of this, that is why he wrote the names of Rahul, Manni and Shanu Tiwari in the FIR, whereas the real names of these three killers were Anil, Awadhesh and Darshanlal. He came to know about this after filing the report. He had written an application regarding the murder of his brother at Vishungarh police station, signed it and submitted it to the police station, on which Exhibit A-1 was marked. The Panchayatnama of his brother's body was prepared, and the body was sent for postmortem. After the postmortem, Brother Sonu's last rites were performed, and on his indication, SHO Sahab made a map of the spot after inspecting it. His statement was also recorded.

20. On cross-examination of the witness, the following facts emerged: The witness, aged 25 and holding a B.Sc. degree, was pursuing studies in Kanpur while residing with his sister. The witness denied the deceased's involvement in any case. It was acknowledged that the witness's maternal uncle resided in Kairda, the village adjacent to Kushalpur and that his brother frequented Kairda.

21. The witness could not provide the motorcycle's registration number utilised for the visit to Kushalpur Kairda on the day of the incident. Additionally, the witness could not identify the individual at whose residence the motorcycle was parked, nor could he recall the specific location within the village where the vehicle was parked. The witness indicated that he parked the motorcycle after walking approximately 5 to 10 houses upon reaching Vinay's house; however, it was noted that according to the site map, only two house is located after Vinay's residence. The witness stated that Vinay's house is situated in the middle of the village, while the site map indicates that before

Vinay's house there were two houses are located on the village border. The witness could not recollect the direction from which he entered the village.

22. He declined to provide the first information prior to the inquest (panchayatnama). Furthermore, the witness confirmed that the FIR was lodged at the police station prior to the postmortem, and it was verified that the Tahrir was submitted to the police station after the preparation of the inquest (panchayatnama) and before the postmortem. The witness was unable to ascertain the individual who composed the Tahrir.

23. Although the witness claimed to have been present during the Panchayatnama of the deceased, he was unable to recall the specific time of day or the date of the inquest. The witness was uncertain about whose signatures were obtained as Panchan and whether his signature appeared on the inquest.

24. The witness provided conflicting accounts regarding his activities on May 18, 2018. Initially, he asserted that he had returned from Kushalpur on that date but could not specify the time. Subsequently, he claimed to have spent the entire night at the location where the deceased individual was discovered without returning home or contacting the police. He was uncertain whether he had informed the family members that night. Additionally, he stated that he remained in the vicinity of the deceased from midnight until sunrise but was unable to ascertain the direction of the sunrise despite the universally recognised fact that the sun rises in the east. The presence of falsehood in one's cognition can result in rejecting universally acknowledged truths. He also stated that he returned from Kushalpur on May 18, 2018, but he does not know what time. The witness is highly unstable on almost all the facts. These inconsistencies raise doubts about the veracity of his assertions. The notion that the accused spent an extended period of half a night with his deceased brother without informing anyone and seeking assistance, despite the proximity of his residence, approximately five to six kilometres away, and the availability of a motorcycle, is highly implausible and runs counter to expected human behaviour. He did not even inform his maternal uncle, who was residing within walking distance, Kairda.

25. The witness presented an additional fabricated account, alleging that the inspector had obtained his statement and conducted an interrogation. However, the witness had not provided such a statement to the inspector, wherein he accused Rahul of shooting and killing his brother Sonu before locking him in a room. The witness did not assert that individuals named Vinay, Manoj, Manni, and Sanu Tiwari had restrained his brother while Rahul shot him. This narrative is documented in the witness's Tahrir for FIR. Despite this, the witness refutes the account and attributes the discrepancy to the investigating officer. There is no plausible rationale for the investigating officer to document an inaccurate version of events. An FIR is a vital document that starts the criminal justice process, but during cross-examination, the witness could not be able to tell when he went to lodge the FIR. Indeed, an FIR is not an insurmountable script nor a vital document based solely on which the accused's conviction is possible. Courts thus generally ignore the proposition of its invalidity in toto if such an FIR does not really adversely affect the accused's rights in the true sense. Although the FIR is not a substantial piece of evidence, it can be used for corroboration or contradiction to determine the witness's credibility. The inconsistencies in the statements of a witness regarding the specific facts unquestionably undermine the witness's credibility. In this instance, PW1 has wholly altered the entire story of the FIR without providing a plausible and acceptable explanation.

26. As per the statement of PW1, there was a difference of twenty minutes between the air-fire and the lethal shot. It is inconceivable that a lethal shot would be withheld for twenty minutes after the commencement of scuffle and air-fire. What motive prompted the accused to retain his pistol for such a duration is not understandable.

27. The witness admits that he named the accused on suspicion as one day before, a fight took place between the deceased and Rahul, Manni, and Shanu, and the next night, his brother was murdered; he felt that Rahul, Manni, and Shanu were involved in the murder of his brother, so he had written their names in the FIR. This statement suggests that the witness was not present at the occurrence and was actually at his sister's house in Kanpur. When the body was discovered in the morning, the witness came and lodged the FIR against Rahul, Manni, and Shanu on suspicion due to the previous fight and against Vinay and Manoj due to the body being found near their village and they had a friendship with the deceased, stating the motive of the money dispute. The maternal uncle of the informant living in Kairda adjacent to Kushalpur may have played a role in suggesting the facts of FIR. Defence counsel stressed that the deceased was an unmarried young hoodlum with many criminal cases against him and used to visit village Kairda, 5 to 6 kilometres away from his village, frequently. Who shot him dead and for what reason is a mystery. However, he did not produce any criminal history by saying that, firstly, the prosecution had to stand on his own legs.

28. The witness admitted that his brother was friends with Vinay and Manoj. But he does not know whether these people visited each other's house because, before the incident, he did not live in the village of Hetrampur. He used to study in Kanpur. By which methodology did the witness acquire knowledge of the names Anil, Awadhesh, and Darshan Lal despite not having prior acquaintance with them? This is a million-dollar question that remains unanswered and poses a significant doubt. Furthermore, the witness affirmed uncertainty regarding whether Manoj had previously visited his residence. Noteworthy is the fact that Anil, Manoj, and Awadhesh are the progeny of Darshan Lal. Consequently, the veracity of the accused individuals' identities is subject to considerable doubt.

29. Apart from the above-discussed material, notable disparities exist between the site map and PW1's testimony, encompassing various contradictions, uncertainties, and inconsistencies in PW1's cross-examination. Some of these are as follows:

He did not know whether that house was small or big. He did not know in which direction the door of the room he was locked was. He cannot tell in which direction the gallery was. He did not remember whether there was a fan in this room. He did not know if there was a bulb or a CFL in the room. He did not remember whether this light was white or yellow. He did not remember whether that room had plaster or open bricks. He did not remember what colour the door was. He did not notice whether the grill of the room was made of iron or wood. He did not see if there was a staircase in this house or not. He had food at the party. He did not remember whether non-vegetarian or vegetarian food was at that day's party. He did not know whether alcohol was consumed at this party or not. Food and drinks were served while sitting on the floor on the night of the incident. He did not know whether any woman or girl was in the house where the party was held. He did not remember whether the main door of the house where the party was held was made of wood or iron. He did not know when Awdhesh fired the shot for the first time. He did not know why Daroga Ji had not shown that room on

his map. He did not know the directions of the incident spot. He could not tell whose house was in front of the incident house. He could not tell what was behind the house where the party was being held. He did not go to the house's roof where the party was held. There was no margosa (neem) tree in front of the house where the party was held. He did not know if a thatched roof existed in front of that house. He did not know if a hand pump existed in front of that house or inside the house. He did not know whether the night of the incident was dark or bright. There was no source of light in the peanut field. He recognised the dead body in the moonlight. The investigating officer did not take any statement from him again. If the inspector had written in his statement that three shots were fired, it would be wrong. He did not give Daroga Ji a statement that when his brother fell after being shot, he was hit on the head with an iron rod. He did not tell Daroga Ji that he came out by breaking the latch of the room in which he was locked. The accused had taken his brother's body on a cot. They had not taken it wrapped in a sheet or towel. The statement of someone pulling him out of the room is neither in his written complaint nor his statement under 161 CrPC. He cannot tell whether the ground where his brother was shot was muddy (kutchra) or paved. That place was the open courtyard of the house. The house in which the incident took place also had a verandah. The verandah was inside the house. He did not remember whether the staircase was near the verandah or next to the room in which he was locked. He did not pay attention to the staircase. His brother was not shot on the staircase. He did not see the staircase. He did not know whether Daroga Ji took blood-soaked soil from where his brother's body was thrown or not. Daroga Ji did not take any blood-soaked soil from the courtyard of the incident site in front of him. He did not take Daroga Ji to the house where the incident site was on the day of the incident. He did not go to the incident site to show Daroga Ji the incident scene. He did not know how many cases were against his brother Sonu because he lived outside. He does not know whether his brother Sonu and Rahul are accused together in any case. It is wrong to say that his brother Sonu accused Rahul of committing the robbery, and Sonu was killed due to the division of the looted goods. He does not know that a gangster case is against his brother Sonu.

30. Based on the above evidence, it is unequivocally apparent that the witness was not physically present at the scene. He admits that he was in Kanpur till the incident. Even if, for the sake of argument, it is assumed that the witness was indeed present, it would have been implausible for the witness to have observed the incident from inside the securely fastened room. The Investigating Officer has refuted the possibility of any external source of air or light entering the room, and upon inspection of the incident site, it was ascertained that no window existed through which observation could have taken place. The PW1 is totally unreliable.

31. There are three investigating officers in this case: PW4 is the first, and PW5 is the second. The third one will be discussed later. PW4, Inspector Sunil Kumar Yadav deposed that on May 19, 2018, he took over the investigation of the case registered as Case Crime No. 58/2018 against Vinay alias Pitari and others. On pointing the complainant, he prepared a map of the incident place. During the inspection, he prepared a map of the place where the deceased Sonu was caught and shot in Vinay's house. The witness verified the authenticity of the original site map contained in the case records, which was marked as Exhibit Ka-4. In the same sequence, he had inspected the place



where the dead body was found and prepared a map of the spot. The witness verified the authenticity of the original site map contained in the case records, which was marked as Exhibit Ka-5. On the same day, he recorded the statements of witnesses Deepak and Santram. On the same day, he received the carbon copy of the PM report. After observing that, he made a brief description on the CD, and the maps and PM report were attached to the CD.

32. The witness stated in cross-examination that on May 29, 2018, he was posted as the station in-charge at Vishungarh police station. The complainant did not come to him to file the case. He went directly to the office. He came to know about the incident before the case was registered. The case was registered on whatever complaint was given. It happened in his knowledge. The Panchayatnama was prepared in his presence. He received the investigation of this case on May 19, 2018. On the map, he had not shown the room where the plaintiff claimed he was locked. On the day Vinay alias Pitari's house was inspected, there was no one at Vinay alias Pitari's house. The lock was open. On enquiring with the people around, it was found that Vinay, alias Pitari, and his family members had not been present since the incident. The door and window of the room where the complainant had said he was locked were not broken. But he saw that the latch was broken. The latch was broken from the top on the outside. The room where the plaintiff had said he was locked had no place other than the door from where one could see outside. He had gone to Manoj's house, but nobody was there. The motorcycle was found a little far from the dead body.

33. PW5, Inspector Sujit Kumar Verma stated on oath that on May 31, 2018, he was posted as an inspector in charge of police station Bishungarh District Kannauj. That day, he took over the C.C. No. 58/2018 investigation registered against State v. Vinay alias Pitari and others under sections 147, 302, 201 read with 34 of the IPC. Before him, Mr Sunil Kumar Yadav was investigating the case. After taking over the investigation, he observed the previous investigation and GD report. On this day, CD 8 was written. In CD 8, it was mentioned that the investigation was taken over. He wrote CD 9 on June 01, 2018. In this, he observed the pre-investigation CD. He started the investigation under Sections 147, 148, 149, 302, and 201 IPC. He has written CD No. 10 on June 02, 2018. In this, he wrote about raids conducted at the possible places to find the wanted accused. CD No. 11 was also written about the raids conducted. CD No. 12 was written on June 06, 2018, in which he mentioned Vinay Pitari's surrender in the concerned case in the Hon'ble Court of CJM, Kannauj, whose Court's Order of Attendance (Robakar) was received. The Court's Order of Attendance was attached to the CD, and raids were also conducted at the houses of other accused. In CD No. 13, it was mentioned on May 07, 2018, that a request has been made to Hon'ble CJM Kannauj for recording the statement of accused Vinay alias Pitari. The statement of accused Vinay, alias Pitari, lodged in District Jail, was recorded in On the same day, after recording the statement of the accused, the house of Vinay alias Pitari was searched by going to his house in the presence of two witnesses, Vivek Singh and Kaptan Singh were mentioned in CD 14 on June 08, 2018. CD 15 was made on June 09, 2018, wherein the visit of the forensic team on May 19, 2018, to the crime scene, inspection report of the collected evidence, and the receipt of 10 exhibits, which were mentioned after observing the same. On the same day, the statements of the witnesses Brajendra Singh, Sanjeev Singh, Pankaj, Govind Singh Rajesh and Dr Amit Verma, who conducted the postmortem, were also recorded. On June 14, 2018, CD 16 was prepared, and it was mentioned that a report was given to the Hon'ble Court requesting the PCR of the accused. On June 14, 2018, CD

16A was prepared, and the accused Manoj's surrender before the court, whose attendance was obtained, was mentioned in this CD after observing it. On June 15, 2018, CD 17 was prepared, and it was mentioned that the approval order for PCR had been received from the Hon'ble Court. The approval details were recorded on this CD, and the order was attached. On June 16, 2018, CD 18 was prepared. It was mentioned that after getting PCR permission, accused Vinay alias Pitari was brought from the district jail to the police station, and his additional statement was recorded. In the additional statement, confessing his crime, he said that after committing the murder, he had hidden the sheet in which the dead body of Sonu Thakur was wrapped. If he was taken to his house, he could effectuate recovery of that sheet. On his confession, he reached the trifurcation with the police force and the accused. There, he asked the witnesses, Upendra Singh and Anuj Pratap, to accompany him, and they agreed. He reached the place told by the accused, and just before the house, he stopped the vehicle. After getting down from the vehicle, the accused walked ahead, and they, along with the witnesses, followed behind. He took out a blood-stained sheet from behind the cupboard in his room and presented it to the witness, and told that the dead body of the deceased Sonu was wrapped in this sheet. He kept apologising for his act. Under his direction, the memo of this sheet was prepared by SI Sobaran Singh in writing in the presence of witnesses on the spot. The recovered sheet was sealed and stamped in the presence of witnesses on the spot. After reading this, he signed and got the signatures of the witnesses, Upendra and Anuj, who were present there. He gave the carbon copy of the memo prepared in the same process at the spot to the accused Vinay alias Pitari and got the signature of the accused Vinay alias Pitari as well. Signatures of the companions were also taken. On witness authentication, Exhibit Ka-6 was marked on the recovery memo. The recovered sheet was sent to the Forensic Science Laboratory for examination. The FSL report was not received during the investigation. In this regard, the officer in charge of the concerned police station had sent a special messenger along with the investigation report and requested time to get the said goods. An application to this effect has been given. On the same day, he prepared a map of the place of recovery on the spot. Accepting paper No. 7A/3, he admitted it to be in his handwriting and signed it. Exhibit Ka-7 was marked on it. After this, accused Vinay alias Pitari was sent back to the district jail after getting his medical done. CD19 was prepared on June 18, 2018. The accused, Manoj's statement, was recorded after going to jail with the court's permission. Accused Manoj told in his statement that when he shot and killed deceased Sonu Thakur, he was wearing a towel around his neck, which he removed and hid in his house. He could effectuate recovery of the blood-stained towel. On the basis of the accused's statement, witnesses Jagat and Binu were taken as witnesses, and the room of the house of accused Manoj was searched in front of them. No blood-stained towel was recovered from the place mentioned by the accused. CD 20 was prepared on June 21, 2018, in which, not recovery of the blood-stained towel related to the place mentioned by the accused in his statement was not recovered; a request was made to the Hon'ble Court for PCR of the accused, Manoj, which was mentioned in the said CD. CD 20A was prepared on June 21, 2018, wherein it was mentioned that permission was obtained to extend the remand of accused Vinay alias Pitari. CD 20B was prepared on June 21, 2018, wherein it was mentioned that the Hon'ble Court fixed the date for presenting the accused Manoj for PCR on June 22, 2018, for arguments. CD 21 was prepared on June 22, 2018, and it was mentioned that the Hon'ble Court accepted the PCR of accused Manoj. CD 22 was prepared on June 23, 2018, and it was recorded that accused Manoj was brought to the

police station on PCR from the district jail, and his additional statement was recorded. Accused Manoj, while confessing his crime in the additional statement, had said that after the murder of deceased Sonu Thakur, he had hidden the blood-stained towel around his neck in his house. He will make the recovery of towel from the spot if they take him home. While taking him from the police station to his village for recovery, witnesses Dharmendra and Suresh Nuniya were asked to accompany them, and they agreed. He took the accused witnesses along with him for the recovery of near the house of accused Manoj in the village of Manoj and stopped the car before Manoj's house and Manoj started walking ahead and he along with the witnesses and police force started walking behind. After reaching home, he took out a blood soaked gamchha from under a stone in the courtyard of his house and presented it to the witness and told that this is the same blood soaked gamchha which was around the neck of deceased Sonu Thakur at the time of his murder, which he had taken out and hidden here. The memo of recovery of gamchha was prepared by him by writing it on the spot and the gamchha was sealed and stamped on the spot. He read out the report to everyone and signed it, and he also got the signatures of his companions and witnesses. The carbon copy of the report was prepared simultaneously using the same process as the original. By giving the carbon copy of the memo to the accused Manoj on the spot, he was also made to sign the original memo. He also confirmed that the original report is available on the records as paper no. 15A/3. Exhibit Ka-8 was marked on it. The recovered gamchha was sent to the forensic science laboratory for examination. On the same day, he prepared the map on the spot at the place of recovery. It is paper No. 7A/4 on the court records. It is in his handwriting and signature, he confirmed it. Exhibit Ka-9 was marked on it. After this, the accused, Manoj, was sent back to the district jail after getting his medical done. CD 23 was recorded on June 25, 2018, wherein it was mentioned that raids were conducted at the houses of wanted accused Manni, Rahul and Sanu Tiwari, but they were not found. CD 24 was recorded on June 28, 2018, and it is mentioned that 14 days' remand of accused Manoj and Pitari has been approved. CD 25 was recorded on July 04, 2018, and it was mentioned that raids were conducted at the houses of wanted accused Manni, Rahul, and Sanu Tiwari, but they were not found. CD 26, dated July 18, 2018; CD 27, dated July 19, 2018; CD 28, dated July 20, 2018; CD 29, dated July 21, 2018, and CD 30, dated July 22, 2018, were related to the raids for wanted to be accused. CD 30A was prepared on July 22, 2018, in which the statements of witness Con. Sanjay Parihar, Con. Navneet Kumar and Con. Surendra Singh was recorded. CD 31 to 36 are written in relation to the raids on wanted accused. CD 36A was prepared on July 28, 2018, and the statements of Ramendra Shankar Srivastava, in-charge of forensic unit team Kannauj, Senior Sub-Inspector Gaurishankar Verma, Constable Sunil Dev and Sub-Inspector Sobaran Singh were recorded. CD 37 was prepared on July 29, 2018, and statements of witness Vivek Singh, witness Kaptan Singh, Jagat Singh, Binu, Upendra Singh, Anuj Pratap Singh, Dharmendra Singh and Suresh Nunia were recorded. Based on various types of evidence collected from all the investigations till then, witness statements, spot inspection and recovery, etc., the crime under sections 147,148,149,302,201 IPC against the accused Vinay alias Pitari, Manoj, Rahul, Manni Fauji alias Abhishek and Sanu Tiwari was proved well, and charge sheet no. 64/2018 was sent to the Hon'ble Court under the said sections against the accused Vinay alias Pitari and Manoj, who were imprisoned in jail, while the accused Rahul, Manni Fauji alias Abhishek, who are absconding, were sent to the Hon'ble Court and the investigation against Sanu Tiwari was kept going on. The charge sheet he

sent is originally included in file 64/2018 from 3A/1 to 3A/4, on which he confirmed his signature and seal. Exhibit Ka-10 was marked on it. The action was taken against the absconding accused, but they were not found. After this, the investigation was transferred from me, the inspector, to Circle Officer Chhibramau.

34. During the investigation, ACP Agra Shesh Mani Upadhyay, who held the position of Circle Officer in Chhibramau at the time, meticulously probed the case as the third investigating officer. This involved thoroughly examining various witness testimonies and scrutinising call detail records (CDR) to establish alibis. The findings revealed that the allegations against the individuals Rahul, Manni Fauji, also known as Abhishek and Sanu Tiwari, were unsubstantiated. Consequently, the investigation was formally closed.

35. No witness has been presented regarding the recovery of human blood from the residence of the accused, Vinay Pitari. Consequently, despite a forensic report indicating the presence of human blood on items retrieved from Vinay Pitari's house, it remains unestablished that the murder took place at this location.

36. PW8 and PW9 are public witnesses to the recovery from the accused Manoj and Vinay Pitari's residences, respectively, and their confessions to the police. Needless to say, any confession to the police is not admissible. The retrieval of the bed sheet from the accused Vinay Pitari's open and unattended residence raises doubts due to the likelihood that if the sheet had been used to wrap and carry the body, it would have been discarded alongside the body. In the open and unattended house, there were chances to plant sheets. It is improbable that a perpetrator would retain incriminating evidence within his premises when afforded the opportunity to dispose of it. The recovery of the sheet was witnessed by PW9, a public and chance witness, who claimed to have observed the process. The witness has given no specific reason for being there from where police picked him up for becoming a witness. However, he acknowledged that during the commission of the dacoity by the Rahul and deceased Sonu, he remained on the road. He further admitted to being a fellow community member of the deceased individuals, residing in the same village and engaging in recreational activities together. He affirmed his appearance in court for evidence with the first informant and the inspector obtaining his signature on a plain paper. He expressed uncertainty regarding the location where the inspector obtained his signature, whether at the police station or at the residence of the accused, Vinay alias Pitari. The witness's inability to accurately describe the layout of Vinay Pitari's residence, his unfamiliarity with the direction of Vinay Pitari's village from his own and his connections with the deceased and first informant raise doubts about his impartiality and his presence during the recovery process.

37. PW8 is also a chance witness and resident of the informant. This witness has not given any specific reason for being there from where police picked him up to become a witness. He claimed to have observed Gamchha's recovery process from the accused Manoj's house. However, he accepted that he does not remember what was in the east-west and north-south directions of the accused Manoj's house. He does not remember in which direction the door of accused Manoj's house was. In front of him, the policemen searched the accused Manoj's house and opened every room. He does not remember how many rooms were in accused Manoj's house. He did not see the bathroom in Manoj's house. He does not know whether household items were present in the accused Manoj's house or not. There was no lock on any room. All the rooms of Manoj's house were open. He does not know the length and width of the Gamchha. He could not see the colour of the gamchha and the Gamchha

properly due to chaos. He knows Sonu Thakur. He used to visit Sonu Thakur's house. He used to go to Sonu Thakur's house whenever needed. Today, he has come to the court with the first informant, Aman Thakur, who is present with him in the court. He has come to the court on Aman's motorcycle. The witness's inability to accurately describe the layout of Manoj's residence, his unfamiliarity with the direction of residence doors and his connections with the deceased and first informant raises serious doubts about his impartiality and presence during the recovery process. The doctor indeed recovered the Gamchha from the dead body during the postmortem and subsequently returned it to the authorities; it is surprising that it later emerged in the possession of the accused, Manoj, at his open and unattended residence.

38. Police failed to recover the murder weapon.

39. The sole eyewitness to the incident and the bedsheet and Gamchha recovery witnesses have been disbelieved, the place of occurrence could not be established, and the murder weapon could not be recovered. Consequently, the prosecution miserably failed to substantiate the charges levelled against the accused; hence, the accused are liable to be acquitted.

**ORDER**

The accused, Vinay alias Pitari and Manoj, are found not guilty and acquitted of the charges punishable under sections 147, 148, 302, and 201, read with section 34 of the Indian Penal Code. The accused are on bail. Their bail bond stands cancelled, and sureties are discharged.

Date: September 23, 2024

(Chandroday Kumar)  
Sessions Judge  
Kannauj

I signed, dated and pronounced the judgment in the open court today.

Date: September 23, 2024

(Chandroday Kumar)  
Sessions Judge  
Kannauj