

AFR

RESERVED



2026:AHC:130222-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4588 of 2022

Jugendra Singh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Akhilesh Srivastava, Arvind Kumar Singh, Harish Chandra Tiwari, Pushpendra Kumar, Ramdhan
Counsel for Respondent(s)	: G.A.

Along with :

1. Criminal Appeal No. 4617 of 2022:

Deputy Singh and another

Versus

State of U.P.

Court No. - 2

HON'BLE J.J. MUNIR, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

Sessions Trial No. 1009 of 2004 (State vs. Jugendra Singh and others), arising out of Case Crime No. 249 of 2004, under Section 302/34 IPC, Police Station Akrabad, District Aligarh; Sessions Trial No. 1010 of 2004 (State vs. Jugendra Singh), arising out of Case Crime No. 250 of 2004, under Section 25 of the Arms Act, Police Station Akrabad, District Aligarh; Sessions Trial No. 1011 of 2004 (State vs. Deputy Singh), arising out of Case Crime No. 276 of 2004, under Section 25 of the Arms Act, Police Station Akrabad, District Aligarh; and Sessions Trial No. 829 of 2005 (State vs. Ramveer), arising out of Case Crime No. 275 of 2004, under Section 25 of the Arms Act, Police Station Akrabad, District Aligarh.

2. The prosecution story, as per the written report (Exhibit Ka-1), is that the informant, Pappu Singh (PW-1), submitted a report written in his own handwriting, stating therein that in the intervening night of 9/10.08.2004, at about 2:15 A.M, his brother, Bhagwan Singh, was sleeping on a cot in front of their gher, which was illuminated by electric light. The informant himself was lying on the same cot, and his mother, Smt. Kalawati, was lying on another cot nearby. At that time, Naihna @ Mannu, son of Ramswaroop Baghel, resident of Village Hiranpura, Police Station Akrabad; Jugendra, son of Jangveer Baghel; Ramveer, son of Siyaram Baghel; and Deputy, son of Siyaram Baghel, residents of Village Bahadurpur, Police Station Akrabad, entered the premises, all armed with country-made pistols (*tamancha*). Ramveer and Deputy caught hold the informant and his mother, while Naihna and Jugendra, armed with *tamanchas*, shot at his brother, Bhagwan Singh. After killing his brother, the four accused fled towards the fields. Upon hearing the commotion and gunshots, family members and neighbours rushed to the spot and also saw the assailants in the light. They attempted to chase and

will see you. Naihna was also stated to be a frequent visitor to the house of Ramveer.

3. The written report (Exhibit Ka-1) was submitted by the informant, Pappu Singh (PW-1), at Police Station Akrabad on 10.08.2004 at about 5:15 A.M. On the basis of the said report, a case was registered against the named accused persons (appellants herein) at Police Station Akrabad, District Aligarh, as Case Crime No. 249 of 2004, under Section 302 IPC by Head Moharrir (H.M.), Rakshpal Singh (PW-3) on 10.08.2004.

4. After the registration of the first information report at Police Station Akrabad, District Aligarh, Sub-Inspector Subhash Chandra Tyagi (PW-7) took up the investigation of the case. The Investigating Officer, Subhash Chandra Tyagi (PW-7), reached the place of occurrence along with a police team. He inspected the place of occurrence and recovered a 315 bore bullet from near the cot of the deceased and prepared a recovery memo, which has been marked as Exhibit Ka-14. He also prepared the site plan in his own handwriting, which has been marked as Exhibit Ka-13.

5. Under the direction and supervision of the Investigating Officer, Sub-Inspector Shiv Kumar Singh (PW-5), the inquest report (*panchayatnama*) of the deceased, Bhagwan Singh, was conducted and marked as Exhibit Ka-8. He also collected samples of bloodstained soil and plain soil from the place of occurrence. Sub-Inspector Shiv Kumar Singh (PW-5) further prepared other necessary police papers, which have been marked as Exhibits Ka-7, Ka-9, Ka-10 and Ka-11. Thereafter, following the inquest proceedings of deceased Bhagwan Singh, the dead body was sent for autopsy.

6. The Investigating Officer, Subhash Chandra Tyagi (PW-7),

the permission of the competent Court having jurisdiction, interrogated Ramveer and Deputy Singh. During interrogation, Ramveer and Deputy Singh disclosed the place where the murder weapons had been concealed. He visited the place indicated by the appellants and searched for the *tamanchas*, however, they could not be recovered at that time. Thereafter, by order of the concerned Court, the Investigating Officer took appellants Ramveer and Deputy Singh into police custody remand for 24 hours. They were taken to the police station and subsequently to the place indicated by them. On the pointing out of appellant Ramveer Singh, a 12 bore *tamancha* in working condition was recovered. On the pointing out of appellant Deputy Singh, a 303 bore *tamancha*, also in working condition, was recovered. A recovery memo of these recoveries was prepared, which has been marked as Exhibit Ka-16, dated 11.09.2004.

7. On the basis of the above recovery of an illegal *tamancha* and cartridge from the possession of appellant Jugendra Singh, a case was registered as Case Crime No. 250 of 2004 under Section 25 of the Arms Act at Police Station Akraabad against appellant Jugendra Singh. On the basis of the recovery of the aforesaid illegal *tamanchas* and cartridge from appellants Ramveer and Deputy Singh, cases were registered against them as Case Crime No. 275 of 2004 and Case Crime No. 276 of 2004 under Section 25 of the Arms Act at Police Station Akraabad, District Aligarh, against appellants Ramveer and Deputy Singh, respectively.

8. After recording the statements of the prosecution witnesses and preparing the site plan of the places from where illegal *tamanchas* had been recovered from the possession of the appellants, the Investigating Officer submitted the charge sheet marked as Exhibit Ka-18 against

case registered as Case Crime No. 275 of 2004 against Ramveer under Section 25 of the Arms Act and submitted the charge sheet, marked as Exhibit Ka-26. Head Constable Suresh Chandra Pandey also investigated the case registered as Case Crime No. 276 of 2004 against Deputy Singh under Section 25 of the Arms Act and submitted the charge sheet, marked as Exhibit Ka-24.

9. Although the accused, Naihna @ Mannu, was named in the written report (Exhibit Ka-1), the Investigating Officer made repeated efforts to arrest him. The Investigating Officer also initiated proceedings under Sections 82 and 83 Cr.P.C. pursuant to the orders of the Court. However, despite the issuance of process under Sections 82 and 83 Cr.P.C. against the absconding accused, Naihna @ Mannu could not be arrested. Consequently, the Investigating Officer submitted the charge-sheet (Exhibit Ka-24) only against the present appellants. The present appellants were, therefore, put to trial and were ultimately found guilty and convicted by the Trial Court.

10. Doctor Vimal Kumar Gupta (PW-6), who conducted the postmortem examination of the dead body of the deceased, Bhagwan Singh, and prepared the postmortem report (Exhibit Ka-12), found the following ante-mortem injuries on the dead body of the deceased:

***"Injury No. 1:** An abraded wound measuring 3 cm × 5 cm on the left side of the forehead.*

***Injury No. 2:** A lacerated wound measuring 2 cm × 1 cm present on the margin of the right ear.*

***Injury No. 3:** A firearm wound of entry measuring 3 cm × 1.5 cm located on the right side of the face, directly in front of the right ear. This wound was deep enough to reach the jaw causing*

During the postmortem examination, Dr. Vimal Kumar Gupta (PW-6) recovered a bullet from near the left jaw of the deceased and handed over the same to the concerned constable in sealed cover. According to the opinion of PW-6, the cause of death was haemorrhage and shock as a result of ante-mortem firearm injuries.

11. After submission of the charge-sheets before the concerned Magistrate Court, since the main case under Section 302 IPC was exclusively triable by the Court of Session, the learned Magistrate committed all the cases to the Sessions Court for trial.

12. Charges were framed against appellants Jugendra Singh, Ramveer and Deputy Singh under Section 302 IPC by the Trial Court on 25.01.2005. Separate charges were also framed against the appellants as follows; against appellant Jugendra Singh under Section 25 of the Arms Act on 25.01.2005; against appellant Ramveer Singh under Section 25 of the Arms Act on 24.02.2006; and against appellant Deputy Singh under Section 25 of the Arms Act on 25.01.2005. Appellants denied all the charges levelled against them and claimed trial.

13. To substantiate its case, the prosecution produced a total of nine prosecution witnesses, namely Pappu Singh (PW-1), Kalawati (PW-2), Rakshpal Singh (PW-3), Narayan Singh (PW-4), Shiv Kumar Singh (PW-5), Dr. Vimal Kumar Gupta (PW-6), Sub-Inspector Subhash Chandra Tyagi (PW-7), Virendra Kumar (PW-8), and Umashankar (PW-9). Apart from the above ocular evidence, the prosecution also relied upon documentary evidence, from Exhibit Ka-1 to Exhibit Ka-30.

14. The Trial Court recorded the evidence of the prosecution witnesses. Thereafter, the appellants were examined under Section 313 Cr.P.C.. In their statements, the appellants denied all the allegations

Section 302/34 IPC and sentenced them to rigorous imprisonment for life along with a fine of Rs. 5,000/- each. In default of payment of fine, the appellants were directed to serve an additional two months of rigorous imprisonment. The appellants were also found guilty by the Trial Court under Section 25 of the Arms Act, and each of them was convicted and sentenced to two years of rigorous imprisonment along with a fine of Rs. 2,000/-. In default of payment of fine, the appellants were directed to serve an additional one month of imprisonment. The Trial Court ordered that all the sentences awarded to the appellants shall run concurrently.

16. We have heard the arguments of learned Counsel for the appellants and learned A.G.A. on behalf of the State-respondent, perused the impugned judgment and order of conviction and sentence dated 02.06.2022 passed by the learned Additional Sessions Judge, Court No. 8, Aligarh, and also gone through the entire evidence available on record.

17. Learned Counsel for the appellants has submitted that the informant, Pappu Singh (PW-1) and Kalawati (PW-2) are said to be the eyewitnesses of the incident by the prosecution. Both these eyewitnesses are highly interested and partisan witnesses and they are also family members of the deceased, Bhagwan Singh. The way in which PW-1 and PW-2 have stated about the alleged occurrence, is wholly unnatural and unbelievable. Although, according to PW-1, he was sleeping on the same cot upon which his brother, the deceased Bhagwan Singh, was sleeping, Pappu Singh (PW-1) has not received any injury on his body. He did not even try to catch the culprits. No bloodstains were found on the clothes of the informant, Pappu Singh (PW-1).

the incident and identified the accused in the presence of electric light, however, PW-1 and PW-2 have admitted in their evidence that they had no electricity connection at their home or at their *gher*. PW-1 and PW-2 have stated that electricity was available at the temple and that they had taken illegal electric supply from the temple through a wire. This fact also makes the availability of electric light at the time of the incident doubtful. There are many major and material contradictions in the evidence of the informant, Pappu Singh (PW-1) and Kalawati (PW-2). However, without considering and giving any cogent and reasonable findings, the Trial Court has wrongly held the appellants guilty of the commission of the alleged crime.

19. Learned Counsel for the appellants has also submitted that the recovery of the so-called illegal *tamancha* from appellant Jugendra Singh by the Investigating Officer, is highly doubtful and suspicious. The recovery of illegal *tamanchas*, on the pointing out of appellants Ramveer and Deputy Singh, after taking them on police custody remand, is also highly doubtful. The illegal *tamanchas* said to have been recovered from appellants Ramveer and Deputy Singh, are recovered from an open field, which is accessible to everyone, but despite this fact, the Trial Court has also held the appellants, namely, Jugendra Singh, Ramveer and Deputy Singh, guilty under Section 25 of the Arms Act and convicted them. The Trial Court, without any legal and reliable evidence, has held the appellants guilty under Section 25 of the Arms Act. The findings and reasoning of the Trial Court are based on improper appreciation of evidence and are against the settled principles of law. The Trial Court has not appreciated the evidence in the proper perspective and only on the basis of conjectures and surmises, without there being any cogent and reliable evidence against the appellants,

passed by the Trial Court, is not sustainable in the eyes of law and is liable to be set aside. Hence, the present criminal appeal is liable to be allowed.

21. *Per contra*, learned A.G.A. for the State has submitted that prosecution witnesses, informant Pappu Singh (PW-1) and his mother Kalawati (PW-2), have seen the alleged occurrence with their own eyes. They were sleeping at the place of occurrence along with the deceased Bhagwan Singh. Appellants Ramveer and Deputy Singh caught hold of informant Pappu Singh (PW-1) and his mother Kalawati (PW-2), and absconding accused Naihna @ Mannu and appellant Jugendra Singh killed the deceased Bhagwan Singh by firing gunshots from their *tamanchas*. PW-1 and PW-2 witnessed the incident in the light of electric bulb. Both these prosecution witnesses are natural witnesses who have seen the incident with their own eyes. There is no chance of false implication of the appellants. The *tahreeer* was lodged promptly. There are no such contradictions, omissions, or embellishments by reason of which the evidence of these prosecution witnesses can be doubted. The Trial Court has appreciated the evidence in a proper perspective based on the material available on record and has recorded findings and reasoning fully based on the evidence and facts of the case. There is no illegality or perversity in the judgment and order of the learned Trial Court. There is no force in these criminal appeals preferred by the appellants. Hence, both these criminal appeals are devoid of merit and liable to be dismissed.

22. In the light of the above arguments and counter arguments of the learned Counsel for the appellants and learned A.G.A. for the State, from a perusal of the written report (Exhibit Ka-1) as well as first information report (Exhibit Ka-2), it is apparent that alleged incident occurred on

First information report was registered against appellants on 10.08.2004 at about 5:15 A.M. Thus, it appears that first information report was lodged against the appellants promptly without any delay within three hours of the alleged incident.

23. Prosecution has produced the informant Pappu Singh as PW-1. PW-1 in his examination-in-chief has stated that “deceased Bhagwan Singh was my brother. The incident occurred about five years ago at around 2:15 A.M. I, my mother Kalawati and my brother deceased Bhagwan Singh, were sleeping in front of the *gher*. My brother Bhagwan Singh and I were on the same cot (*charpai*), my mother was on a second cot and my father was sleeping on a cart (*baggi*) at a short distance. Naihna, Jugendra and Ramveer came there. Naihna and Jugendra had *tamanchas* in their hands. Ramveer pinned me down on the cot. Deputy pinned my mother down. Naihna and Jugendra shot Bhagwan Singh. As soon as they grabbed us, my eyes opened. There was electric light. In the electric light, I clearly saw them shooting and identified them. After shooting, they fled while waving their pistols. The villagers chased them, but they could not be caught and escaped. Naihna had illicit relationship with Jugendra's sister, Shashi. Bhagwan Singh had seen Naihna and Shashi in an objectionable position. He had complained about this to Naihna, Deputy, Jugendra and Ramveer. Because of this, Naihna and Jugendra said, you are defaming us, therefore, we will not leave you. On this very matter, they killed my brother by shooting him.”

24. The informant, Pappu Singh (PW1), has stated in his cross-examination that “it is true that I and all accused are of the same family clan. On the date of the incident, it was summer season, not cold or rainy season. I have read up to seventh or eighth standard. It was a dark night. I have no knowledge about the date. I have no knowledge whether there

were sleeping in *damra*, in front of my *gher*. On the western side of the *gher*, there were open fields. These fields are mine. On the north side of the *gher*, the houses of Rajpal, Dharampal and school are located and the temple is in the south direction. Between my *gher* and the temple, there is no one else's house. After the temple, the house of Charandevi is situated. Jugendra had not said anything to my mother when he came. **At that time, I was in sound sleep.** I do not know from which direction the miscreants came. **My eyes opened upon hearing the sound of gunfire and noise.** Only two shots were fired; there was no continuous firing. At the time of the incident, my deceased brother and I were sleeping on the same cot. After firing the shots, the miscreants fled towards the western direction. I was sleeping on the eastern side. As soon as I woke up, I immediately started shouting. Hearing my cries, the villagers gathered at the spot without delay.”

25. PW-1 further stated that “my deceased brother had told me about the illicit relations of Naihna with Shashi, sister of Jugendra. I have not seen Shashi and Naihna in an objectionable condition. About this illicit relation, there were rumors from three to four years. Naihna was living at the house of Ramveer and Deputy. None was a criminal. Naihna had threatened my brother Bhagwan Singh by saying that I will see you. I had not made any complaint about this at the police station. At that time, I was not Pradhan. I was afraid, so I did not make any complaint. From my house, the *gher* is located three to four houses away, and a school was also located between my house and the *gher*. There is whole village between my house and *gher*. Between my house and *gher*, there are houses of Netrapal, Mahipal, Bhikamchandra, Om Prakash and Mahendra. My father was not at the house. My wife was sleeping at the house, and there was no other. The length of my cot was six feet and the

got arrested Jugendra from his house. I had got the accused caught from in front of his house. My mother was sleeping on another cot at a distance of one step from me. My father was sleeping at a distance of three-four steps from us.”

26. In his cross-examination, informant Pappu Singh (PW-1), has further stated that “my brother had an injury on the ear. Except the ear, there was no other injury. The bullet did not pass through the ear. My wife is Pradhan. Both things are true that I and my wife are Pradhan. Deputy and Ramveer are real brothers. I have told Darogaji that Shashi, sister of Deputy and Ramveer, had illicit relations with Naihna. If Darogaji has not written this fact in my statement, I could not give reason for this. It is wrong to say that on the date of the incident, there was no electricity in the village. The house of Ramveer and Deputy are 50 meters away from my house.”

27. Prosecution produced Kalawati, mother of deceased Bhagwan Singh as PW-2. In her examination-in-chief, she has stated that “It was about five years ago, after midnight; I, along with my sons Bhagwan Singh and Pappu, were sleeping on the same cot, which was next to my own cot in *gher*. The cot was made of sun and the electric light was on. At night, Ramveer, Deputy, Naihna and Jugendra arrived and all four were armed with *tamanchas*. Ramveer caught hold Pappu and Deputy caught hold me down. Naihna and Jugendra shot Bhagwan Singh. Bhagwan Singh died on the spot. I identified them in the electric light. After committing the crime, all four fled towards the forest. There was no prior enmity between the accused and my son. There had been an altercation with my son Bhagwan Singh. The altercation had occurred over Jugendra's sister, Shashi.” Thus, it is evident that Kalawati (PW-2), in her examination-in-chief, has deposed about the occurrence of the

relations with Shashi. At the time of the incident, Ramveer was the Pradhan of the village. She further deposed that the incident occurred on a dark night, however, electric light was available. She stated that there is no electricity connection in her house. Electricity was taken from the temple. She further stated that she was sleeping on a cot, while her husband was sleeping on a *buggy*, at a distance of about four to five steps from her. In the said incident, neither she nor her son, Pappu Singh, sustained any injuries. She also stated that I had become unconscious. She admitted that it is correct that neither she nor her son sustained any injury in the incident. She further deposed that in front of her *gher*, there are houses of Rajpal, Dharampal and the wall of Netrapal. Among them one of the houses was vacant. At the time of the alleged incident, these persons, along with other villagers, arrived at the spot. She also stated that the incident took place during the summer season and it was very hot. Her two sons were sleeping on a cot without any bed-sheet or covering. She further stated that she woke up when her son was caught hold of and killed. She also stated that I have no knowledge whether anyone other than me has an electricity connection. Lastly, she stated that the temple is situated at a distance of about 10-15 steps from her *gher*, from where her son had arranged electricity. She further stated that she had not become unconscious when she was caught hold of. She deposed that the faces of all four accused persons were uncovered. All the accused persons fled from the spot, and none of them was apprehended at the scene. She further stated that she disclosed the names of all four accused persons to the police officer who recorded her statement. My son was shot. Both of them fired. The bullet struck him in the ear.

29. From a perusal of the written report (Exhibit Ka-1), the evidence

and Shashi in a compromising situation. Bhagwan Singh is further alleged to have informed Jugendra Singh, Deputy Singh, and the absconding accused, Naihna @ Mannu, about this objectionable fact, stating that it was improper. According to the prosecution, the absconding accused, Naihna @ Mannu, along with the appellants, had warned and threatened Bhagwan Singh, stating that they would "see" him. Owing to this enmity, the prosecution alleges that Naihna @ Mannu along with the appellants murdered Bhagwan Singh by firing gunshots at him. However, the prosecution evidence further reveals that, except the absconding accused, Naihna @ Mannu, all the appellants and the family members of the deceased Bhagwan Singh, were residents of the same village and were neighbours. It is also revealed that the appellants and the family members of the deceased were kith & kins to each other. Furthermore, the prosecution evidence indicates that none of the witnesses had actually seen Naihna @ Mannu in a compromising situation with Shashi, sister of Jugendra Singh.

30. From the prosecution evidence, it is evident that the witnesses PW-1 and PW-2 had heard about the illicit relations from villagers, and that such a rumor was prevalent in the village. Pappu Singh (PW-1) stated in his evidence that my brother, the deceased Bhagwan Singh, told me that he had seen the absconding accused, Naihna @ Mannu with Shashi in a compromising situation. There was no prior enmity between the parties. Even according to the prosecution evidence, no civil or criminal litigation was pending between the parties. In view of these facts, the motive attributed by the prosecution to the appellants for the commission of the alleged crime appears to be suspicious and doubtful, because a rumor or hearsay about any person cannot be regarded as a verified, reliable or truthful fact. Therefore, the motive as narrated in the

A.M., the accused persons named in the written report arrived at the spot armed with *tamanchas*. It is alleged that appellant Ramveer caught hold of the informant, Pappu Singh (PW-1), while Kalawati (PW-2) was caught hold by Deputy Singh, and the absconding accused, Naihna @ Mannu, along with Jugendra, fired gunshots at Bhagwan Singh.

32. It is a matter of common knowledge that around 2:15 A.M. in the night, is a time when people are generally in deep sleep. During this period of the night, particularly after midnight, individuals are usually in a sound and relaxed state of rest. It is also a matter of common human experience, known to most adults, that assailants often choose night time for committing crimes, as darkness reduces the likelihood of identification or disclosure of their identity. Assailants generally consider the period after midnight to be a suitable and safe time for committing the offence. It is, therefore, a natural inference that assailants and criminals tend to operate silently under the cover of darkness, without creating noise at the place of occurrence, and thereafter quietly flee from the scene.

33. However, in the present case, appellant Ramveer is alleged to have caught hold of the informant, Pappu Singh (PW-1), while appellant Deputy Singh caught hold of Kalawati (PW-2). Upon being restrained, both PW-1 and PW-2 woke up. This version of the prosecution, as well as the testimony of PW-1 and PW-2 in this regard, appears to be untruthful and highly suspicious. According to the prosecution case itself, PW-1 and PW-2 were sleeping on their respective cots when they were apprehended by the aforesaid appellants. Pappu Singh (PW-1) was sleeping on the same cot with deceased Bhagwan Singh, while Kalawati (PW-2) was sleeping on another cot at some distance.

therefore, does not inspire confidence. It is a matter of common practice that when persons are in deep sleep at night, assailants or culprits, if they intend to commit a crime, would ordinarily enter the place of their target silently without making any noise and, after committing the offence, would also leave quietly so as to avoid disclosure or identification of them. However, in the present case, appellant Ramveer is alleged to have caught hold of PW-1, and appellant Deputy Singh is alleged to have caught hold of PW-2. This version appears to be unreliable and unconvincing. It is also natural that, in such a situation, the appellants, if they had come to commit the offence, would act silently and after causing the death of Bhagwan Singh, would fled from the place of occurrence silently without attracting attention of any person. The appellants would not ordinarily risk first catching hold of PW-1 and PW-2, thereby waking them up, enabling them to identify the assailants, and subsequently disclose their identity. Since, at the time of the commission of the crime, according to the prosecution version itself, Bhagwan Singh, Pappu Singh (PW-1) and their mother, Kalawati (PW-2), were in deep sleep, there was no necessity for appellant Ramveer to have caught hold of the informant, Pappu Singh (PW-1), or for appellant Deputy Singh to have caught hold of Kalawati (PW-2) for the commission of the alleged offence.

35. Thus, from the above discussions, the prosecution story as set out in the written report (Exhibit Ka-1) and as narrated by the informant, Pappu Singh (PW-1), and Kalawati (PW-2) in their testimony, appears to be highly doubtful and unbelievable. Consequently, the evidence of the prosecution witnesses, i.e., PW-1 and PW-2, in this regard appears to be untrustworthy, concocted and an afterthought story.

36. According to the written report (Exhibit Ka-1) and the evidence of

electric bulb at the place of occurrence, in front of the *gher*, which was illuminating, they have further stated that electricity was illegally drawn by means of a wire from a nearby temple situated at some distance from their *gher*. PW-2 has further stated, in her evidence, that the accused persons had not covered their faces and that their faces were visible. This version of the prosecution also appears to be doubtful. It is a matter of common knowledge that accused persons, at the time of commission of any offence, ordinarily attempt to conceal their identity so as to avoid recognition.

37. In the present case, according to the prosecution version, there was an electric bulb illuminating at the place of occurrence, and the accused persons are stated to be closely related to informant (PW-1). In such circumstances, it is difficult to believe that the accused persons would have come to the place of occurrence without covering their faces in the light of the electric bulb, thereby enabling PW-1 and PW-2 to easily identify them and name them in the written report as the perpetrators of the crime. These facts and circumstances also render the prosecution story doubtful.

38. The informant, Pappu Singh (PW-1) has stated in his evidence that on the date of the incident, he and his deceased brother, Bhagwan Singh, were sleeping on the same cot, while his mother, Kalawati (PW-2), was sleeping on another cot at some distance. Kalawati (PW-2) has also stated that her sons, i.e., the deceased Bhagwan Singh and the informant, Pappu Singh (PW-1), were sleeping on the same cot. Pappu Singh (PW-1), has further stated in his evidence that the length of the cot was 6 feet and its breadth was 2 feet. According to PW-1, both he and the deceased Bhagwan Singh were sleeping on a cot measuring 6 feet in length and 2 feet in width when the alleged incident occurred. However, despite

it appears that the prosecution has projected this version of the incident in order to establish PW-1 and PW-2 as the eyewitness and the story appears to have been developed deliberately and as an afterthought.

39. The above facts and circumstances of the case, also create a reasonable doubt about the veracity of the prosecution story. We find that, according to the informant, Pappu Singh (PW-1), two shots were fired and PW-1 accepted that the police recovered an empty cartridge of 315 bore in his presence. There was an injury on his brother's ear. Apart from the ear, there were no other injuries. According to Kalawati (PW-2), Naihna and Jugendra shot at Bhagwan Singh, meaning that two gunshots were fired at the deceased, Bhagwan Singh. Two accused persons fired gunshots which hit the ear of the deceased, Bhagwan Singh. Thus, from the eyewitnesses of the prosecution, namely, the informant Pappu Singh (PW-1) and Kalawati (PW-2), it emerges that, according to the prosecution witnesses, two gunshots were fired at Bhagwan Singh. However, according to Dr. Vimal Kumar Gupta (PW-6), who conducted the autopsy of the deceased Bhagwan Singh, has found in the postmortem report (Exhibit Ka-12), only one gunshot injury, i.e., **Injury No. 3;** "A firearm wound of entry measuring 3 cm × 1.5 cm located on the right side of the face, directly in front of the right ear. This wound was deep enough to reach the jaw, causing fracture of the jawbone. Upon dissection, it was found that the pharynx was ruptured. In addition to this, the right temporal bone was also found fractured." Dr. Gupta (PW-6) stated that injury no. 3 was caused by a firearm, while no definite opinion could be given regarding the weapon that caused injury nos. 1 & 2.

40. There was blackening and tattooing in injury no. 3. Thus, according to the medical witness, Dr. Vimal Kumar Gupta (PW-6), there

gunshots were fired at the deceased, Bhagwan Singh, but the medical witness, Dr. Vimal Kumar Gupta (PW-6) found only one gunshot injury, which is injury no. 3, which was caused by a firearm. In this way, there is a difference between the ocular evidence and the medical evidence regarding the injuries found on the dead body of the deceased, Bhagwan Singh. Thus, it is evident that the ocular evidence is not corroborated by the medical evidence. It is further evident that the medical witness and the ocular witnesses are stating different facts on the same points. It also follows that the prosecution version, particularly the evidence of PW-1 and PW-2, has not found any support or corroboration from the medical evidence of Dr. Vimal Kumar Gupta (PW-6). This fact also creates a reasonable doubt about the truthfulness of the prosecution story.

41. The Supreme Court in *Khambham Raja Reddy and another v. Public Prosecutor, High Court of Andhra Pradesh*; (2006) 11 SCC 239, has held in paragraph 19 that:

"The present case is an example of contradiction between the ocular evidence and the medical evidence, where the medical evidence is not borne out by the ocular evidence. In such a situation it was suggested on behalf of the appellants on the authority of a decision of this Court in State of M.P v. Dharkole; (2004) 13 SCC 308 where the medical evidence was at variance with the ocular evidence, the testimony of the eyewitness should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion. While there can be no difference of opinion with the principle explained in the aforesaid decision, the application thereof will depend on whether the story as made out by the prosecution is trustworthy and can be related to the injuries suffered by the victim in the manner as sought to be projected. If the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have been inflicted, the court has the discretion not to

a variation between the ocular evidence and the medical evidence regarding the gunshot injuries found on the dead body of the deceased, Bhagwan Singh. The prosecution witnesses, Pappu Singh (PW-1) and Kalawati (PW-2), have stated that two gunshots were fired at the deceased, Bhagwan Singh. However, from the postmortem report (Exhibit Ka-12), prepared by Dr. Vimal Kumar Gupta (PW-6), it is evident that only one gunshot injury was found on the dead body of the deceased, Bhagwan Singh and that injury showed blackening and tattooing. The presence of blackening and tattooing indicates that the gunshot was fired at Bhagwan Singh from a very close range. The difference between the ocular evidence and the medical evidence regarding the injuries, particularly the number of gunshot injuries, makes the prosecution story suspicious and unworthy of credit.

43. From a perusal of evidence of the informant, Pappu Singh (PW-1), it is apparent that this witness has stated in his evidence that he got arrested accused Jugendra by the police from the front of the house of the accused itself. However, Investigating Officer, Subhash Chandra Tyagi (PW-7), has arrested appellant, Jugendra Singh near 100 steps away from the G.T. road at a different place and recovered a *tamancha*, in its barrel an empty cartridge was stuck, and also recovered a live cartridge of 315 bore. *Tamancha*, empty cartridge and live cartridge were recovered from the appellant, Jugendra and the bullet, which was recovered from the dead body of the deceased Bhagwan Singh, were sent for forensic examination. However, according to report of the Vidhi Vigyan Prayogshala, Agra, paper number 45kha/2 to 45kha/3, disputed cartridge marked as EC-1 was not found to be fired from the country-made pistol (*tamancha*), marked as 1/2005. Disputed bullets, EB-1 and EB-2, could not be matched from the country-made pistol (*tamancha*)

not be matched and not found fired by the recovered country-made pistol (*tamancha*), from the possession of Appellant, Jugendra Singh.

44. From the evidence of Investigating Officer, Subhash Chandra Tyagi (PW-7), we find that the appellants Ramveer and Deputy Singh have surrendered in the Court. The I.O. submitted an application before the concerned Court seeking police custody remand of appellants Ramveer and Deputy Singh, and after obtaining their police custody remand, on 11.09.2004, i.e., ten days after the alleged incident, recovered a *tamancha* on the pointing out of Ramveer Singh from an open and empty field of maize (corn), and also recovered a *tamanacha* on the pointing out of Deputy Singh from below a *Jamun* tree in an open field. However, the illegal country-made pistols (*tamanchas*) recovered at the instance of the appellants Ramveer Singh and Deputy Singh were not sent for forensic examination by the Investigating Officer.

45. A perusal of the site plan (Exhibit Ka-25) reveals that a *tamancha* was allegedly recovered at the pointing out of appellant Ramveer from the place marked as 'A', which is an open area accessible to everyone. The said place is neither concealed nor of such a nature as to be within the exclusive knowledge or possession of appellant Ramveer. Similarly, a perusal of Exhibit Ka-17 shows that another *tamancha* was recovered from the place marked as 'B' at the pointing out of appellant Deputy Singh. The said place 'B' is also an open field accessible to all and is neither a concealed location nor a place within the exclusive knowledge or control of appellant Deputy Singh. It is further noteworthy that the appellants, Ramveer and Deputy Singh, were taken into police custody remand approximately ten days after the alleged incident, and only thereafter were the alleged country-made pistols (*tamanchas*) shown to have been recovered at their instance.

disputed cartridge marked EC-1 had not been fired from the country-made pistol (*tamancha*) marked as 1/2005. There is no evidence on record to show that the *tamanchas* allegedly recovered from appellants Ramveer and Deputy Singh were sent to the Forensic Science Laboratory for examination. Moreover, no report of the Forensic Science Laboratory has been produced in respect of the said *tamanchas*. From the aforesaid facts and circumstances of the case, it is evident that the country-made pistols (*tamanchas*) allegedly recovered from appellants Jugendra Singh, Ramveer and Deputy Singh cannot be connected with the commission of the alleged offence.

47. It is a settled principle of law that mere recovery of an incriminating article at the instance of an accused is not sufficient to establish guilt unless it is further proved that such recovered article is directly connected with the commission of the crime. In the present case, there is no evidence whatsoever to establish that the alleged incriminating articles, namely, the country-made pistols (*tamanchas*), were used by the appellants in the commission of the offence. In other words, the prosecution has wholly failed to prove that the said *tamanchas* were used in the alleged crime. This circumstance raises a serious doubt regarding the genuineness of the alleged recoveries and suggests that the said weapons may have been planted by the police to lend support to the prosecution case, particularly in relation to the offence under Section 302 IPC.

48. Despite these material deficiencies and inconsistencies in the prosecution case, the learned Trial Court failed to properly appreciate the evidence on record. The Trial Court, without adequately scrutinizing the testimony of the prosecution witnesses, namely, Pappu Singh (PW-1) and Kalawati (PW-2), whose evidence appears unreliable and doubtful

49. In our considered view, the Trial Court failed to appreciate the prosecution evidence in its proper perspective and in accordance with settled legal principles, and, in the absence of cogent evidence, erroneously held the appellants guilty of the alleged offence. The prosecution has thus been wholly unsuccessful in proving its case beyond reasonable doubt. The Trial Court, without due consideration of the evidence on record and without recording findings consistent with established principles of law, proceeded to convict the appellants for the alleged offence.

50. Thus, in light of the foregoing discussion, we are of the considered opinion that the judgment and order of conviction and sentence dated 02.06.2022, passed by the learned Additional Sessions Judge, Aligarh, is not sustainable in the eyes of law and is liable to be set aside. Accordingly, both the criminal appeals deserve to be allowed.

51. Consequently, the impugned judgment and order of conviction and sentence dated 02.06.2022 are hereby *set-aside*, and both the criminal appeals are *allowed*.

52. The appellants- **Jugendra Singh, Deputy Singh** and **Ramveer**, are stated to be in jail. They shall be released forthwith, if not required in any other case.

53. Let a copy of this judgment be transmitted to the Trial Court forthwith, along with the lower court record, for necessary compliance.

(Vinai Kumar Dwivedi,J.) (J.J. Munir,J.)

July 01, 2026