



HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL U/S 413 BNSS No. - 414 of 2026

Jayram

.....Appellant(s)

Versus

State of U.P. and 4 others

.....Respondent(s)

Counsel for Appellant(s)	: Ajit Kumar Singh Chauhan
Counsel for Respondent(s)	: G.A.

Court No. - 46

HON'BLE RAJEEV MISRA, J.
HON'BLE DR. AJAY KUMAR-II, J.

(DICTATED BY HON'BLE DR. AJAY KUMAR-II, J.)

1. Heard Mr. A.K. Singh Chauhan, the learned counsel for appellant and the learned A.G.A. for State-opposite party-1.
2. Challenge in this criminal appeal is to the judgment dated 02.04.2026 passed by Additional Sessions Judge, Court No. 11, Shahjahanpur in Sessions Trial No. 717 of 2013, (State of U.P. vs. Gayadeen and others), arising out of Case Crime No. 399 of 2023, under Sections 147, 304 IPC, Police Station Jalalabad, District Shahjahanpur, whereby Court below has acquitted accused-opposite parties 2 to 5 of the charges framed against them.
3. Brief facts of the case are that appellant-complainant Sunil moved a written report/Tehrir (Ex.Ka-10) on 17.08.2023 at 6:30 pm at Police Station Jalalabad, District Shahjahanpur stating therein that on 16.08.2013, Gayadeen's goat entered in his field and damaged his crop. When complainant forbade, Gayadeen came with a stick and started beating the complainant. In the meantime, his uncle Moola came and tried to intervene, then, Gayadeen hit his uncle Moola with a stick. His uncle fell down. Immediately, he was taken to hospital but he died on the way. This incident is of 9:00 pm.

4. On the aforesaid written report/Tehrir (Ex.Ka-10), a First Information Report (Ex.Ka-2) as Case Crime No. 399/2013, under Section 304 IPC was registered on 17.08.2013 at 6:30 pm at Police Station Jalalabad, District Shahjahanpur against accused-opposite parties and same was registered in G.D. No. 08 at 6:30 pm dated 17.08.2013.

5. The Investigating Officer PW-8 Avanish Gautam conducted inquest proceedings and prepared inquest (Ex.Ka-4) alongwith other documents and sent the body of deceased for post mortem examination.

6. Dr. Vikramjeet Singh PW-6 conducted post mortem of the body of deceased Moola at 4:25 pm on 17.08.2013, who was aged about 55 years. Height of deceased was about 156 cm, weight 62 kilograms and was having an average build body. Post mortem staining on body of deceased was present in upper and lower parts of the body, eyes and mouth were closed.

A 6.0 cm x 1.0 cm lacerated wound on the right side of temple of deceased was present, which was 7.0 cm above and behind left ear, beneath it parietal bone was broken and a blood clot was found accumulated beneath it. Weight of his brain was 1220 grams, teethes were 16/16. Both lungs were congested. Left lung weighed 320 grams and right lung weighed 350 grams. Right chamber of heart was filled and left chamber was empty. Weight of heart was 240 grams. 100 grams of food material was present in stomach. Liver was congested, weight 1050 grams, gall bladder was half full. The spleen was congested, weighed 140 grams. Both kidneys were congested, right weighed 130 grams and left weighed 110 grams, urinary bladder was empty.

Cause of death of deceased was suggested by the Autopsy Surgeon as coma, which was due to ante-mortem head injury. The meninges of brain was torn.

In the opinion of Autopsy Surgeon, death of deceased might have occurred one day prior, meaning thereby that deceased died at 4:25 pm on 16.08.2013. In the opinion of Autopsy Surgeon, only

injury sustained by deceased could also be caused by falling on some blunt object on left side.

7. The Investigating Officer, Head Constable Avanish Gautam PW-8 took over the investigation. He visited the spot, prepared the site plan, recorded the statements of complainant as well as other witnesses and collected post mortem report, inquest report and other papers. During course of investigation, involvement of informant Sunil as well as that of Sonpal and Sitaram also emerged.

8. After completion of investigation, charge-sheet was submitted on 15.11.2013 against Gayadeen, Sonpal, Sitaram and Sunil, i.e., accused-opposite parties 2 to 5 herein. Thereafter, cognizance was taken upon same on 20.11.2013 and case was committed to Court of Sessions. After hearing both the parties, the charges were framed by concerned Sessions Judge under Sections 147 and 304 IPC against accused-opposite parties 2 to 5 on 15.02.2014. Accused pleaded not guilty and claimed to be tried.

9. In order to prove it's case, prosecution adduced PW-1 Raghunandan (cousin brother-in-law of deceased), PW-2 Ramsaran (cousin of deceased), PW-3 Mewaram (neighbour of deceased) PW-4 Smt. Shrikanti (daughter of deceased), PW-5 Maharaj (son-in-law of deceased as well as husband of PW-4), PW-6 Dr. Vikramjeet Singh (Autopsy Surgeon), PW-7 Jairam (real brother of deceased), PW-8 Head Constable Avanish Guatam (G.D. Writer) and PW-9 Ramveer Singh (scribe of FIR). The witnesses adduced by the prosecution have given their respective oral evidence and also proved 10 prosecution papers, which were marked as exhibits. Same are tabulated herein below :-

Sl. No.	Name	Nature of evidence	Documents proved
PW-1	Raghunandan	Cousin brother-in-law of deceased, who was an eye-witness but turned hostile	-
PW-2	Ramsaran	Cousin of deceased, who, was an eye-witness but turned hostile	-
PW-3	Mewaram	Neighbour of deceased,	-

		who is an eye-witness	
PW-4	Smt. Shrikanti	Daughter of deceased and eye witness	-
PW-5	Maharaj	Son-in-law of deceased and eye witness	-
PW-6	Dr. Vikramjeet Singh (Autopsy Surgeon)	Doctor, who conducted post mortem of deceased	Post mortem report as Ex.ka-1.
PW-7	Jairam	Real brother of deceased and eye witness	-
PW-8	Head Constable Avanish Gautam	Formal witness/ Investigating Officer	FIR as Ex.Ka-2, G.D. Entry as Ex.Ka-3, Inquest as Ex.Ka-4, Challan Naash as Ex.Ka-5, Photo Naash as Ex.Ka-6, Letter to C.M.O. as Ex.Ka-7, Sita Plan as Ex.Ka-8, Charge Sheet as Ex.Ka-9
PW-9	Ramveer Singh (Constable)	Formal witness (scribe of FIR)	Written Report/Tehrir (Ex.Ka-10)

10. After prosecution evidence was over, all adverse/ incriminating circumstances relied upon by the prosecution were disclosed to accused-opposite parties 2 to 5, in question answer form for their version of occurrence as per mandate of Section 313 Cr.P.C. They denied all suggestions put to them one by one by repeatedly saying that it is false or they have been falsely implicated or the prosecution case is false or the depositions of prosecution witnesses are false. Accused Gayadeen in his additional statement took specific stand that he was innocent as at the time of the incident, co-accused Sunil, Sonpal, Sitaram etc. were beating him and deceased Moolaram came to save him, then these accused had also beaten Moolaram with sticks. Later on, co-accused Sunil to save himself and his family members, took injured Moolaram in his Bolaro vehicle to police station Jalalabad and got registered a false FIR against him. On that time, accused Sunil had not taken family members of deceased Moolaram with him. Accused Sonpal took specific stand of plea of ali-bi in his additional statement that at the time of the incident, he was at his residence in Tilhar Sugar Mill, which is at a distance of 80 km from the place of the incident. Accused Sitaram also took plea of ali-bi and stated that he was in his village Bacchupur at the time of the incident, which about 12 km from the place of the incident. He has been falsely implicated

on account of he being the son-in-law of accused Sonpal. Accused Sunil took specific stand that he was innocent and it was he who got the FIR registered. He took deceased Moolaram for treatment in his Bolaro vehicle, which shows his bona-fide. However, co-accused Gayadeen had assaulted deceased Moolaram in the incident.

11. By the impugned judgment dated 02.04.2026, Court below acquitted accused-opposite parties of the charges under Sections 147 and 304 IPC.

12. Thus, feeling aggrieved by the said judgment, present appeal has been preferred by the State-appellant.

13. Mr. A.K. Singh Chauhan, the learned counsel for appellant-complainant submits that impugned judgment is manifestly illegal and erroneous and, therefore, liable to be set aside by this Court.

14. It has been argued by the learned counsel for appellant that prosecution has successfully proved the charges levelled against accused-opposite parties-2, 3, 4 and 5. PW-3 Mewaram, PW-4 Shrikanti, PW-5Maharaj and PW-7 Jairam have consistently deposed that there was a fight between two sides, i.e. one side of Gayadeen and other side of Sunil. Deceased tried to intervene, however, he was assaulted by the members of both the parties and sustained a fatal blow to his head. The deceased Moolaram died as a result of aforesaid ante-mortem head injury. The medical evidence corroborates the prosecution story as put forth by aforesaid witnesses. Learned counsel for appellant further submitted that Court below has misread the evidence and further failed to appreciate the oral and documentary evidence available on record in it's correct perspective. The prosecution has proved its case beyond reasonable doubt but Court below has wrongly recorded a finding of acquittal in favour of opposite parties 2 to 5. As such, the impugned judgment is liable to be set-aside by this Court and this appeal may be allowed.

15. Learned A.G.A. for State-opposite parties 2 to 5 on the other hand has vehemently opposed present appeal. He submits that the

impugned judgment passed by Court below does not suffer from any illegality of law or fact, so as to warrant interference by this Court. Court below has examined the prosecution case in the light of evidence on record threadbare, without leaving any aspect of the matter untouched. Lastly, it has been urged that no ground to interfere with the impugned judgment and order is made out. Learned A.G.A. thus urged for dismissal of present appeal.

16. We have heard the learned counsel for appellant, the learned A.G.A. for State-opposite party and also carefully perused the record in the light of above arguments.

17. Court below while acquitting the accused, has recorded the following reasons/findings:-

i. Independent witness Raghunandan and PW-2 Ramsaran have not supported prosecution story and were declared hostile.

ii. Mewaram PW-3 in his deposition has stated the time of the incident to be 7:00 pm and has clearly deposed that dispute was between two parties, i.e., Gayadeen on one side and Sonpal on other side. A fight took place between the two parties, in which sticks were used. He further stated that deceased Moola was beaten with sticks by the persons of both the parties. He also fairly stated that accused Sunil took deceased Moola in his Bolaro vehicle to the Hospital. There are lot of improvements in his deposition from his statement recorded under Section 161 Cr.P.C. during course of investigation, therefore, his deposition was not found trustworthy.

iii. Shrikanti PW-4, who was the daughter of deceased, has stated the time of the incident to be 9:00 pm. Her deposition was not found independent and natural.

iv. Mewaram PW-5, who is son-in-law of deceased as well as husband of Shrikanti PW-4, has stated the time of the incident to be 8:00-9:00 pm, however he has fairly admitted in his cross-examination that the place of the incident was about half km away from the place he was sitting at the time of the incident and had not gone to the place of the incident.

v. Jairam PW-7, who is the real brother of deceased, has fairly conceded in his cross-examination that he was inside the house when his brother Moola was beaten and had not gone to the spot. Aforesaid admission on his part, raises grave suspicion on his deposition. He was found to be not

present when the actual physical assault took place, hence his deposition is not worthy of credit and reliance.

vi. PW-3, PW-4, PW-5 and PW-7 are relatives of deceased, however, there are lot of contradictions in their depositions regarding the time of the incident, place of the incident, place from where they saw the incident, who struck whom, who was inside and outside the house. From the depositions of these prosecution witnesses, it is clearly established that it was not an incident of one sided assault, rather it was an incident of fight between two parties. In this background, it was necessary for the prosecution to assign the fatal injury to some specific accused as well as motive behind the same, however, the prosecution has failed to prove the same.

vii. It has come in prosecution evidence that number of accused struck the deceased with sticks, however, only one ante-mortem injury was found on the head of deceased, which was fatal one. Autopsy Surgeon has opined that ante-mortem injury could have been caused by falling on some hard and blunt surface.

viii. It has clearly come in prosecution evidence that it was accused Sunil, who took deceased in his Boralo vehicle to the Hospital and also got the FIR registered. In this background, it was not expected from near relatives and family members of deceased, namely, PW-3 Mewaram, PW-4 Shrikanti, PW-5 Maharaj and PW-7 Jairam that they neither take the deceased to Hospital for medical treatment nor report the incident to Police. Resultantly, their presence on the spot appears to be suspicious.

ix. After recording above findings, Court below came to the conclusion that prosecution has failed to prove that it was accused-opposite parties, who have caused fatal injury to deceased. It was a case of fight between two parties, in which, deceased came to intervene and was injured in his attempt to pacify the parties. It is an established principle of criminal law that if there are two possibilities, one pointing towards guilt of accused and other towards their innocence, then the possibility favouring accused must be adopted. In the present case, the facts as such as inconsistencies in oral depositions, the status of interested witnesses, doubts regarding eye witness account, the nature of the incident as a mutual fight and limits of medical evidence collectively create a reasonable doubt, the benefit of which ought to be extended to the accused.

18. After recording above findings, Court below deduced that prosecution has failed to prove the charges framed against accused-opposite parties.

19. While considering the scope of interference in an appeal against acquittal, it has been held by Supreme Court that if two views are possible, one supporting the acquittal and other indicating conviction, the High Court in such a situation, should not reverse the order of acquittal recorded by Court below. Reference in this regard be made to the judgment of Supreme Court in **Chandrappa and Ors. vs. State of Karnataka, 2007 (4) SCC 415: AIR 2007 SCC (SUPP) 111.**

20. While dealing with an appeal against acquittal the Supreme Court in **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC OnLine SC 561**, has observed as under:-

"39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."

21. It has also been observed in above-mentioned judgment that an appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of an accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. It has also been observed that the appellate court can interfere with an order of acquittal only when it comes to a conclusion that the only

conclusion which can be recorded on the basis of the evidence on record is that the guilt of accused stands proved beyond reasonable doubt and no other conclusion is possible.

22. Supreme Court in the case of **Gamini Bala Koteswara Rao vs. State of Andhra Pradesh, (2009) 10 SCC 636**, observed that interference in an appeal against acquittal should be rare and in exceptional circumstance. It was further held that it is open to the High Court to reappraise the evidence and conclusions arrived at by the trial Court. However, it is limited to those cases where the judgment of the trial court is perverse. Apex Court further went on to declare that the word "perverse", as understood in law, has been understood to mean, "against the weight of evidence". If there are two views and the trial court has taken one of the views merely because another view is plausible, the appellate court will not be justified in interfering with the verdict of acquittal.

23. Perusal of the impugned judgment in the light of above-noted well settled legal position reveals that present case relates to culpable homicidal not amounting to murder of deceased Moolaram. Out of abundant caution and further to find out whether as per depositions of PW-3 Mewaram, PW-4 Shrikanti, PW-5 Maharaj and PW-7 Jairam, necessary ingredients of charging sections are borne out/ satisfied or not, we have carefully perused depositions of aforementioned witnesses as transcribed in the impugned judgment.

24. Mewaram PW-3 in his deposition has stated 7:00 pm to be the time of the incident. He has further stated that deceased was elder brother of his wife, who had gone to save Gayadeen and then Moolaram was assaulted by accused-opposite parties-3, 4, 5 alongwith Nanhey @ Katauwa. He was assaulted with sticks. He further deposed that Moolaram was badly assaulted by members of both sides. When he reached on the spot, Moolaram was lying down in front of house of Gayadeen and was still alive. Accused Sonpal brought police, which arrived on the spot within half an hour.

Moolaram was thereafter taken by accused-opposite party Sonpal to Shahjahanpur in his Bolaro vehicle, however, he died on the way.

25. Shrikanti PW-4 is the daughter of deceased, who has stated be the time of the incident to be 9:00 pm. She also stated that her father tried to intervene, however while saving others, he was assaulted by accused-opposite parties-3, 4 and 5 with sticks. Her father received a blow behind his head and fell down. Accused-opposite party Sunil took her father in his Bolaro vehicle in an unconscious state and lodged a false report. This witness in her cross-examination has stated that she lodged the report at concerned police station in which she named Sonpal, Sunil, Sitaram and Gayadeen as accused. She also got a copy of report. However, surprisingly, **this witness in her cross-examination has fairly conceded that she got information of the incident from PW-3 Mewaram and after receiving information, she went on the spot by travelling through a bus.** Thus, it is clear that PW-3 is not an eye-witness of the incident and arrived on the spot only after receiving information. She being daughter of deceased has deposed in the light of prosecution story as an interested witness. It is also apparent from record that she had not lodged any FIR regarding the incident. Hence, her deposition is not trustworthy.

26. Maharaj PW-5 has stated the time of the incident to be 8:00-9:00 pm. He further stated that Moolaram tried to intervene between both sides, however, he was beaten by accused-opposite parties-2, 3, 5, Mukhiya and Puselal with sticks. After sustaining head injury, Moolaram fell down on the spot and blood was oozing out of head injury sustained by him. **At that time, he was inside his house alongwith his wife Shrikanti and kids. After hearing noise, they came out, then he saw the incident.** Accused-opposite party Sunil took his father-in-law in his Bolaro vehicle for medical treatment to Hospital. He had not gone with Moolaram out of fear. Later on, he came to know that he had died. In his cross-examination, he has however clearly stated that the place of the incident is half a km from the place where they were sitting. He had not gone to the place of the incident, meaning

thereby that this witness is not an eye witness of the incident. He further deposed that FIR was lodged by brother of Moolaram, namely Jairam. He had gone for lodging an FIR with Jairam at the concerned police station. Admittedly, Jairam had not lodged any FIR in this matter.

27. PW-7 Jairam (who has wrongly been written as PW-6 in para-17 of the impugned judgment) has stated that Sonpal and Gayadeen were fighting in front of his door. His brother Moolaram was trying to stop them, who also tried to intervene by going on the spot in the street. Then both sides started fighting with sticks. Thereafter, they all assaulted his brother with sticks. His brother sustained injury and fell down on the spot. The deceased was taken by accused-opposite party Sunil in his vehicle. They had not gone outside because of fear. After getting information in morning, he went to police station. **In his cross-examination, this witnesses has clearly conceded that when deceased was being assaulted, he was inside his house and was not present on the spot.** He further stated that he had not opposed Sunil while taking deceased, as he was inside the house. Therefore, this witness is also not an eye-witness of the incident.

28. From the above analysis, it is clear that Shrikanti PW-4, Maharaj PW-5 and Jairam PW-7 are not eye-witnesses of the incident. PW-4 is daughter of deceased, whereas PW-5 is son-in-law of deceased and PW-7 is real brother of deceased. As such they all are interested witnesses. PW-3 Mewaram in his deposition has deposed that Moolaram was thrashed by members of both sides meaning thereby that Moolaram was repeatedly struck with blows of sticks. However, Autopsy Surgeon PW-6 Dr. Vikramjeet Singh has found only one ante-mortem head injury on the body of deceased. Therefore, version of the incident as narrated by Mewaram PW-3 does not find corroboration from ocular as well as documentary medical evidence available on record. This witness is a near relative of deceased, who alongwith family members of deceased Shrikanti PW-4, Maharaj PW-5 and Jairam PW-7 neither took deceased to Hospital for medical treatment nor have reported the incident to

police. Aforesaid conduct of this witness (PW-3), prima facie seems to be a suspicious one. As per depositions of PW-4, PW5 and PW-7, the time of the incident was around 9:00 pm, whereas according to PW-3, the time of the incident was 7:00 pm. Therefore, deposition of this witness (PW-3) does not inspire confidence. Moreover, it is clear that on the date, time and place of the incident, two sides quarrelled with each-other, in which, deceased Moolaram tried to intervene and was injured in his attempt to end this fight. When members of two sides allegedly had beaten deceased with sticks and deceased allegedly sustained only one head injury, then in this background, it becomes all the more important that author of the said injury is identified. Unfortunately, there is no evidence in this regard. In our considered opinion, PW-3 is also not worthy of credit. Therefore, Court below has rightly arrived at the conclusion that a reasonable doubt is created in the prosecution story and has rightly therefore, granted benefit of doubt to the accused-opposite parties.

29. Apex Court in the case of **Bhaskarrao and others Vs. State of Maharashtra, (2018) 6 SCC 591**, has observed in paragraph Nos. 15 and 23 as under:-

*15. In **Ramesh Babulal Doshi v. State of Gujarat, 1996 CriLJ 2867**, this Court observed:*

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

"23. Before we proceed to analysis of the case, we must first focus on the aspect concerning the standard the High Court has to apply, while hearing a case against an acquittal order of the trial court. In the case on hand, the trial court, followed by a full fledged trial, comes to the conclusion and by cogent reasoning acquits the accused. In such a case the appellate Court is further burdened with the task of reaffirming the innocence of the accused. In such cases, the appellate Court is expected to be very cautious and its interference with the order of acquittal is called for only when there are compelling reasons and substantial grounds. In other words, the High Court has full power to review the evidence upon which an order of acquittal is founded, yet the presumption of innocence of the accused being further reinforced by his

acquittal by the trial Court, the findings of that Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons (refer Surajpal Singh & Ors. v. The State, 1952 Cri LJ 331)".

30. In the light of well settled principles of law regarding appeal against acquittal, we pointed out the findings recorded by the trial Court as reproduced in paragraph-17 of this judgment as well as anomalies noted by us regarding PW-4, PW-5 and PW-7 being not the eye-witnesses of the incident as well as PW-3 not being worthy of credit. We also asked the learned counsel for appellant to explain the same and how the said anomalies occurring in the prosecution case stand dislodged as per the submissions urged by him. However, the learned counsel for appellant made a futile attempt to explain the said anomalies.

31. In view of the discussion made above, we do not find any perversity in the judgment so as to interfere with the findings returned by the trial Court. The conclusion drawn by Court below is the outcome of due appreciation of evidence on record. No misreading or omission could be pointed out by the learned counsel for appellant. However, being the last Court of fact, we have ourselves evaluated the evidence on record to find out whether there is any perversity in the impugned judgment or Court below has misconstrued any material evidence. However, we could not gather any such fact from the record so as to conclude that the conclusion drawn by Court below is against the weight of evidence on record. It thus, cannot be said that only the view consistent with the guilt of accused is possible as per the evidence on record. We, therefore, do not find any good ground to entertain the present appeal filed under Section 413 BNSS, which consequently fails and is, accordingly **dismissed**.

(Dr. Ajay Kumar-II,J.) (Rajeev Misra,J.)

August 14, 2026

Monika