

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL U/S 413 BNSS No. – 464 of 2026

Avanish KumarAppellant(s)

Versus

State of UP And 4 OthersRespondent(s)

Counsel for Appellant(s) : Lavakush Kumar Shukla

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 RAJEEV MISRA,J)

1. This appeal is directed against judgment dated 04.06.2026 passed by the Additional Sessions Judge, Court No.-10, Agra in Sessions Trial No. 525 of 2016 (State Vs. Satish and Others) arising out of Case Crime No. 76 of 2015, under Section 307/34, 504 and 506 IPC, Police Station-Barhan, District-Agra, whereby the accused/opposite parties 2, 3, 4 & 5 have been acquitted of the charges framed against them.
2. We have heard Mr. Lavkush Kumar Shukla, the learned counsel for appellant and the learned A.G.A. for State-opposite party-1.
3. Perused the record.
4. It transpires from record that an incident is alleged to have occurred on 05.06.2015 at 08:30 p.m., in which, one person namely Ajay Kumar is alleged to have sustained gun shot injury in his stomach. Accordingly, Avanish Kumar (elder brother of injured Ajay Kumar) submitted a typed written report dated 06.06.2015 (Ext-

Ka-1) at Police Station-Barhan, District-Agra. Since the prosecution story is clearly discernible from the written report, therefore, the prosecution story is clearly discernible from the written report, therefore, the written report as transcribed in the impugned judgment is reproduced herein below;-

"अभियोजन कथानक संक्षेप में इस प्रकार है कि वह व उसका छोटा भाई अजय कुमार पुत्र उदयपाल सिंह दूध का व्यापार करते हैं। वह रोजाना की तरह दिनांक 05.06.2016 को समय करीब 08:30 बजे शाम को ईसेपुर से दूध लेकर अपने गांव खुशालपुर वापस आ रहा था। रास्ते में उसके गांव के ही सतीश पुत्र छत्रपाल, सुरेश पुत्र पप्पू सिंह, मानपाल पुत्र श्रीपाल व राजबहादुर पुत्र नवलकिशोर, गांव के सतेन्द्र पुत्र छत्रपाल के साथ घात लगाये हुए रास्ते में बैठे थे कि जैसे ही उसका भाई अजय कुमार ईसेपुर मोड़ पर पहुंचा, उपरोक्त लोगों ने उसके भाई को रोककर घेर लिया और कहने लगे कि साले तुम बहुत पैसे वाले बनते हो, तुमने हमारे खिलाफ थाने में दिनांक 20.05.2015 को जो रिपोर्ट लिखाई है, उसे वापस ले लो। वादी के भाई के मना करने पर सतेन्द्र ने कहा कि ये ऐसे नहीं मानेगा, साले को गोली मारकर खत्म कर दो, मुकदमा अपने आप ही खत्म हो जायेगा। इतना सुनते ही सुरेश पुत्र पप्पू सिंह ने अपने हाथ में लिये हुए तमंचे से वादी के भाई के ऊपर जान से मारने की नीयत से फायर किया, जो वादी के भाई के पेट में लगा। उसी समय वादी भी ग्राम हसन जहानपुर से दूध लेकर वापस आ रहा था। उसने उक्त घटना को अपनी आंखों से देखा व अपने भाई को बचाया। उपरोक्त लोगों द्वारा वादी के ऊपर भी जान से मारने की नीयत से कई फायर किये गये। उसने किसी तरह अपनी जान बचायी और घटना की सूचना तुरन्त अपने परिवारीजनों को एवं पुलिस को 100 नम्बर पर फोन से दी। परिवारीजन तुरन्त बुलेरो गाड़ी लेकर घटनास्थल पर आ गये तथा थाना बरहन व एत्मादपुर की पुलिस भी मौके पर आ गयी, गम्भीर हालत में वादी अजय कुमार को लेकर एस०एन० अस्पताल, आगरा आया, जहां वादी के भाई की हालत ज्यादा खराब होने की वजह से उसने जी०जी० नर्सिंग होम, संजय पैलेस, आगरा में भर्ती कराया। जाते समय उपरोक्त लोग यह धमकी दे गये कि साले तेरे भाई को तो आज खत्म कर दिया है, अगर इस घटना की रिपोर्ट तूने लिखाई, तो तुझे भी अबकी बार जान से मार देंगे। फायर की आवाज सुनकर अन्य राहगीर भी मौके पर आ गये थे, वादी ने मोटरसाइकिल की रोशनी में उपरोक्त लोगों को अच्छी तरह पहचाना है। सूचना अपने भाई के इलाज में व्यस्त होने की वजह से देरी से दे रहा है। उसकी रिपोर्ट लिखकर आवश्यक कानूनी कार्यवाही किये जाने की याचना की गई।"

5. Upon submission of aforementioned written report, one Vishnu Dutt Sharma, who was posted as Constable Clerk at Police Station-Barhan, District-Agra entered the same in General Diary of above-mentioned police station as G.D. Entry No.-19 timing 19:30 hours

dated 06.06.2015 (Ext-Ka-9). On the basis of above, the check FIR dated 06.06.2015 (Ext-Ka-8) was prepared by aforesaid Constable Clerk and registered as Case Crime No. 76 of 2015, under Section 307, 504 and 506 IPC, Police Station-Barhan, District-Agra. In the said FIR, four persons, namely, Satish, Suresh, Manpal and Raj Bahadur were nominated as named accused.

6. After aforementioned FIR was lodged, PW-5 Inspector Mahatam Singh, who was posted as Sub Inspector at Police Station-Barhan, District-Agra was appointed as the Investigating Officer. Accordingly, PW-5 first completed the formality of copying the written report, check FIR and medical report in the case diary. He, thereafter, recorded the statements of Vishnu Dutt Sharma, the scribe of GD and FIR and Rohit Kumar. He thereafter proceeded to the place of occurrence. He also recorded the statements of first informant PW-1, the injured PW-2 and other witnesses. Thereafter, on the pointing of first informant PW-1 Avanish Kumar prepared the site plan of the place of occurrence (Ext-Ka-6). Upon completion of investigation, Investigating Officer came to the conclusion that occurrence giving rise to present criminal proceedings is established and complicity of named accused in the crime in question is prima-facie apparent. He, therefore, opined to submit a charge sheet. Resultantly, PW-5 submitted the charge sheet/police report no. 107 of 2015 dated 14.08.2015, whereby all the named accused were charge sheeted under Sections 307/34, 504 and 506 IPC.

7. Upon submission of aforementioned charge sheet, cognizance was taken upon same by the Jurisdictional Magistrate. However, as offence complained of is triable by the Court of Sessions, therefore, the Jurisdictional Magistrate committed the case to the Court of

Sessions. Resultantly, Sessions Trial No. 525 of 2016 (State Vs. Satish and Others) came to be registered in the Court of Additional Sessions Judge, Court No.-10, Agra.

8. Upon committal, concerned Sessions Judge proceeded with the trial. He, accordingly, framed charges under Sections 307/34, 504 and 506 IPC against accused, vide framing of charge order dated 30.11.2016.

9. Charge sheeted accused denied the charges so framed against them and pleaded not guilty. As a result, the trial procedure commenced.

10. Prosecution in discharge of it's burden to bring home the charges so framed, adduced the following prosecution witnesses:-

- (i). PW-1, Avanish Kumar (First informant and elder brother of injured)
- (ii). PW-2, Ajay (injured eye witness)
- (iii). PW-3, Mahesh (witness)
- (iv). PW-4, Dr. Dinesh Chandra Goyal
- (v). PW-5, SI Mahatam Singh (Investigating Officer).
- (vi). PW-6, H.C. Raj Kumar Singh
- (vii). PW-7 Dr. S.P. Sharma

11. In addition to above, prosecution also filed documentary evidence in proof of it's case. For ready reference, the same is tabulated herein under;-

Sl. No.	Exhibits	Details of documents
1.	Ext-Ka-1	Typed written report dated 06.06.2015 submitted by PW-1 Avanish Kumar, first

		informant and proved by PW-1
2.	Ext-Ka-2	Bed Head Ticket of injured Ajay of G.G. Medical Institute Sanjay Place Agra and proved by PW-4 Dr. Dinesh Chandra Goyal
3.	Ext-Ka-3	X-Ray Report of injured Ajay prepared by PW-4 Dr. Dinesh Chandra Goyal and proved by PW-4
4.	Ext-Ka-4	Ultra Sound report of injured Ajay prepared by PW-4 Dr. Dinesh Chandra Goyal and proved by PW-4
5.	Ext-Ka-5	Medical Prescriptions of injured Ajay prepared by PW-4 Dr. Dinesh Chandra Goyal and proved by PW-4
6.	Ext-Ka-6	Site plan of the place of occurrence prepared by PW-5 Inspector Mahatam Singh, the Investigating Officer and proved by PW-5
7.	Ext-Ka-7	Charge Sheet No. 107/16 dated 14.08.2015, whereby named accused were charge sheeted under Sections 307/34, 504 & 506 IPC prepared by PW-5 Inspector Mahatam Singh, the Investigating Officer and proved by PW-5
8.	Ext-Ka-8	Check FIR dated 06.06.2015 timing 12:30 p.m. prepared by Constable Clerk Vishnu Dutt Sharma and proved by PW-6 H.C. Raj Kumar Singh
9.	Ext-Ka-9	Challan copy of G.D. dated 06.06.2015 prepared by Constable Clerk Vishnu Dutt Sharma and proved by PW-6 H.C. Raj Kumar Singh
10.	Ext-Ka-10	Medical Examination Report of injured Ajay Kumar prepared by PW-7 Dr. S.P. Sharma, who was posted as Emergency Medical Officer at S.N. Medical College Agra i.e. Ext-Ka-10 and proved by PW-7
11.	Ext-Ka-11	Supplementary Medical Report of injured Ajay Kumar prepared by PW-7 Dr. S.P. Sharma and proved by PW-7

12. After the prosecution evidence was over, all the adverse and incriminating circumstances were disclosed to accused in Question-Answer form for their version of the occurrence as per mandate of Section 313 Cr.P.C. However, they denied all the suggestions put to them one by one. In addition to above, they commonly stated that prosecution story is false. The depositions of PW-1, PW-2, PW-3, PW-5 & PW-6 are false and wrong. Regarding the deposition of PW-4, it was stated that the Doctor did not find any bullet but rest of his deposition is wrong. The deposition of PW-8 was stated to be correct. The criminal prosecution of accused has been lodged due to enmity. Since the first informant wants to take possession of land of accused forcibly, therefore, the present false prosecution has been launched. All the accused, however, stated that defence evidence shall be led.

13. Accused in proof of their innocence adduced one Rakesh @ Bhola as DW-1.

14. After the stage of evidence was over, it was contended on behalf of prosecution that accused after surrounding Ajay Kumar with an intention to kill him fired a gun shot, which stuck him in his stomach. Offence complained of against accused is grievous. As per the oral and documentary evidence, adduced on behalf of prosecution, the charges framed against accused stand proved. The prosecution witnesses in their respective depositions have proved the complicity of accused in the crime in question. As such, the accused be convicted and sentenced for the offence committed by them.

15. On the other hand, on behalf of accused, it was urged before Court below that no incident as alleged by the prosecution ever

occurred. The first informant in order to falsely implicate the accused has got a false case registered against accused. There is no independent eye witness of the occurrence. As per the evidence led by prosecution, no such fact stands proved on the basis of which, complicity of accused stands established in the crime in question. The prosecution story itself does not stand proved as per prosecution evidence. Prosecution has failed to establish the guilt of accused beyond doubt much less a reasonable doubt. As such, accused are liable to be acquitted of the charges framed against them.

16. In view of the rival contention urged on behalf of respective parties, Court below examined the entire evidence and material on record to flush out the contentious issues between the parties. On the basis of aforesaid, Court below came to the conclusion that following points of determination emerged for adjudication in the trial;-

(i). Whether the prosecution has been successful in proving the guilt of accused as per the evidence adduced by the prosecution?

(ii). Whether the ingredients of charging Sections i.e. Sections 307/34, 504 & 506 IPC stand established as per the oral and documentary evidence adduced by the prosecution.

(iii). For what offence can the accused be convicted.

17. To answer the aforesaid points of determination, Court below evaluated and examined the prosecution case in light of oral and documentary evidence on record. Having undertaken aforesaid exercise, Court below meticulously examined the evidence on record and on basis of same, it came to ultimate synthesis that medical evidence does not support the prosecution case. In other words, the

oral and documentary medical evidence does not support/corroborate the ocular version of occurrence. Apart from above, prosecution witness of fact i.e. PW-1, PW-2 and PW-3 are unworthy of trust and therefore, their deposition are unworthy of credit. Court below thus concluded that prosecution has failed to establish and prove the very story, which it set out to prove.

18. In view of above, Court below by means of the judgment dated 04.06.2026 passed by the Additional Sessions Judge, Court No.-10, Agra acquitted the accused of the charges framed against them.

19. Thus feeling aggrieved by the impugned judgment dated 04.06.2026 passed by Court below, appellant Avanish Kumar, who is the first informant has approached this court by means of present criminal appeal.

20. Mr. Lavkush Kumar Shukla, learned counsel for appellant in challenge to the impugned judgment contended before us that the impugned judgment passed by Court below is unsustainable in law and fact. Therefore, same is liable to be set aside by this Court. The bedrock of aforesaid submission urged by learned counsel for appellant is that in the incident giving rise to present criminal proceedings, one person namely Ajay sustained injuries. The medical evidence on record clearly proves that the injured was first taken to Govt. Hospital i.e. S.N. Medical College on a Majroobi Chitthi, {letter requesting for medical examination} and in the company of Police Constable C.P. 2311 Mahendra Prakash. The injured was initially treated at S.N Medical College, which is proved by Ext-Ka-10 and Ext-Ka-11. Thereafter, the injured was treated at G.G. Medical Institute Sanjay Place, Agra, which fact is proved by Ext-

Ka-2, Ext-Ka-3, Ext-Ka-4 and Ext-Ka-5. It has come in the evidence of PW-4 Dr. Dinesh Chandra Goyal that the accused was operated upon for the injuries in his stomach, which was having burn injury at the mouth of the wound. With the aid of above, he would submit that the medical evidence clearly supports the ocular version of the occurrence. However, irrespective of above, Court below by ignoring the aforesaid prima-facie inference regarding guilt of accused but by conducting an uncalled for in-depth analysis of oral and medical evidence on record, disbelieved the prosecution case and acquitted the accused of the charges framed against them. As such, the impugned judgment is against the weight of evidence on record and therefore, liable to be set aside and the appeal be allowed.

21. Per contra, Mr. Amit Singh, the learned A.G.A.-Ist for State-opposite party-1 on the other hand has vehemently opposed the present appeal. Countering the submissions urged by the learned counsel for appellant in challenge to the impugned judgment, learned A.G.A.-Ist firstly contended that Court below has taken into consideration the entire evidence and material on record. As such, nothing relevant has remained untouched or was misconstrued by court below. Apart from above, there is nothing in the impugned judgment to suggest that Court below has misconstrued any evidence or material on record either. In view of above, no perversity can be attached to the impugned judgment.

22. It was next contended by the learned A.G.A. that PW-2 Ajay, the injured eye witness in his deposition before Court below has specifically deposed that accused Suresh fired a gun shot in his stomach, whereas co-accused Satish also fired a gun shot, which went touching his temple. However, no gun short injury was found

on the body of injured PW-2 by the two Doctors i.e. PW-4 and PW-7, who had attended and treated the injured i.e. PW-2 Ajay. Thus the ocular version of the occurrence does not stand corroborated by the medical evidence on record.

23. As an ancillary objection to the submissions urged by the learned counsel for appellant, the learned A.G.A. contended that once the basic prosecution case itself does not stand proved the occurrence could not be conducted on the hypothesis that some injury was sustained by the injured and thereafter accused are guilty of having committed the offence complained of.

24. Apart from above, the learned A.G.A. further urged that since basic prosecution case does not stand evidenced as per the evidence adduced by the prosecution itself, the charge under Sections 504 & 506 IPC shall accordingly fall like a house of cards.

25. On the edifice of above submissions, the learned A.G.A. vehemently urged that impugned judgment does not suffer from any illegality of law or fact. The conclusion drawn by Court below is the only logical conclusion which could be arrived at. As such, no interference is warranted by this Court in present appeal. The instant appeal is, therefore, liable to be dismissed by this Court.

26. We have considered the rival submissions.

27. Before dealing with the submissions urged by learned counsel for appellant and learned A.G.A. for and against the present appeal, it would be prudent to refer to the reasons recorded by court below as well as the adverse circumstances that emerged against the prosecution noted by Court below;-

- (i). The FIR was lodged with a delay of 4 hours. However, the delay in lodging the FIR is not fatal to the prosecution as no final opinion can be given on account of delay or no delay in lodging the FIR.
- (ii). The burden of proof is upon the prosecution to prove all the ingredients of each of the charging Sections.
- (iii). The prosecution in order to prove the guilt of accused, adduced three prosecution witnesses of fact. PW-1 Avanish Kumar, who is the first informant and elder brother of deceased and an eye witness. PW-2 Ajay, the injured eye witness and PW-3 a formal witness of fact but not an eye witness of the occurrence.
- (iv). There are serious inconsistencies and contradictions in the depositions of PW-1 and PW-2 regarding the no. of motor cycles in the house, the mode of transport used by the injured PW-2 at the place, where the alleged incident took place, the arrival of PW-1 first informant at the time and place of occurrence and the manner of occurrence.
- (v). The presence of PW-1, first informant at the time and place of occurrence is highly doubtful as PW-2, the injured, in his deposition before Court below, has clearly and specifically stated that PW-1 arrived at the place of occurrence after 3-4 minutes of the occurrence.
- (vi). PW-1 and PW-2 are inconsistent about the no. of motorcycles in the house. Thus the fact whether the injured was driving a motor cycles at the time of occurrence is itself not conclusively proved by the prosecution evidence.

(vii). PW-3 is not an eye witness of the occurrence. This witness has stated about the the scene of occurrence after the occurrence had taken place. This witness in his cross-examination has stated that he had recognized the accused. However, he has also stated that two motor cycles were seen by him at a distance of 200 meters from the place of occurrence but he could not identify the drivers and pillion passengers sitting on the same.

(vii). As per depositions of PW-1, PW-2 and PW-3, it is apparent that there is enmity between the parties. An FIR was lodged against PW-1 and PW-2, by accused Suresh, in which, bail was granted to the accused therein i.e. PW-1 and PW-2 by the 11th ACJM. As such, there is strong presumption of false prosecution of accused.

(viii). While PW-4 Dr. Dinesh Chandra Goyal has opined that the there was blackening around the wound, therefore, it appears that the wound is a fire arm injury. However, no bullet was found, therefore, it cannot be said that the injury was a gun shot injury. However, PW-7 Dr. S.P. Sharma has stated that the injuries were kept under observation. The same were simple injuries and not fire arm injuries. Moreover, the same could have been caused by hard and blunt object or a blunt weapon. He has however stated that he cannot definitely state that injuries sustained by the injured were caused by fire arm or sparkler (Phuljhhadi). The Doctor, who had cleaned the wounds can alone identify whether the injury was a gun shot injury or not?

(ix). Both the Doctors PW-4 and PW-7 in their respective depositions before Court below have stated that no fire arm injury was found on the body of injured Ajay PW-2.

(x). The documentary medical evidence i.e. Ext-Ka-2, Ext-Ka-3, Ext-Ka-4, Ext-Ka-5, Ext-Ka-10 and Ext-Ka-11 does not show that any gun shot injury was sustained by the injured Ajay PW-2.

28. At the time of hearing of present appeal, we specifically brought to the notice of learned counsel for appellant, aforesaid anomalies. We further asked him to explain as to how on account of aforementioned anomalies the impugned judgment can be interfered with on the basis of submissions urged by him. However, the learned counsel for appellant made an half hearted attempt to impress upon us by repeating the submissions already urged by him.

29. Be that as it may, being the last Court of fact, we are not required to find out the perversity in impugned judgment but to find out whether Court below has examined the entire evidence on record and conclusion so drawn is the logical conclusion upon evaluation of such evidence. Therefore, we have ourselves examined the record and re-evaluated the evidence on record. The only question which has attracted us in this appeal is;- whether Court below has rightly evaluated the deposition of PW-2, the injured eye witness.

30. Before proceeding to answer the above question, reference be made to the judgment of Supreme Court in **Manjeet Singh Vs. State of Haryana and Others**, 2021 SCC Online SC 632, wherein Court has observed that deposition of an injured eye witness has greater evidentiary value than an ordinary witness. His deposition can be discarded only on compelling grounds. This Court has to thus find out whether compelling circumstances exist on record so as to discard the deposition of PW-2.

31. We have, therefore, examined the deposition of PW-2 Ajay, the injured eye witness with care, caution and circumspection. PW-2 Ajay in his

deposition before Court below has specifically stated in his examination-in-chief that two of the accused fired two gun shots. While the shot fired by accused Suresh struck him in his stomach, the shot fired by co-accused Satish struck him on his temple. However, the Doctor (PW-7), who treated the injured Ajay did not find any fire arm injury on his person. It is thus proved that no gun shot injury was sustained by the injured. To the contrary, PW-7 Dr. S.P. Sharma has opined that the injuries sustained by the injured could have been caused by hard and blunt object or blunt weapon. He has also suggested that the injury could have been caused by a fire cracker i.e. sparkler (Fuljhadi). However, the exact nature of the injury can be disclosed by the Doctor, who had cleaned the wounds. There is no evidence in this regard. Thus the basic prosecution case that injured Ajay PW-2 sustained gun shot injuries is not corroborated/supported by the medical evidence on record. In view of above, the intention of accused to cause death of injured Ajay (PW-2) will also not arise for determination by this Court. We have taken this exercise because of the principle that it is not the injury, which decides the implication of Section 307 IPC but the intention to cause death, which is the determining factor. However, there is a corollary to this Rule i.e. the intention of accused to cause death must manifest itself in the corresponding action of the accused.

32. As a passing note, we may also observe that in a case based on direct evidence, the prosecution can succeed only when it is established that the prosecution witnesses of fact are worthy of credit and therefore, worthy of trust. In the present case, the prosecution in order to bring home the charges against accused relied upon the depositions of three prosecution witnesses of fact namely PW-1, PW-2 & PW-3. However, as already noted above, all the three prosecution witnesses are neither worthy of credit nor worthy of acceptance because of inherent contradictions, inconsistencies and embellishment emerging in their respective depositions.

33. In view of the discussion made above, it is thus apparent that neither the prosecution witnesses of fact are neither credible nor reliable , therefore, their depositions are not worthy of trust. The oral/documentary medical evidence on record also does not supports the prosecution case. Thus the prosecution miserably failed to prove the very story, which it set out to prove. Consequently, it cannot be said that conclusion drawn by Court below is illegal, perverse or against the weight of evidence on record.

34. As a result, the present appeal fails and is liable to be dismissed.

35. It is, accordingly, **dismissed**.

Date: 05.08.2026
Vinay

(Dr. Ajay Kumar-II,J.)

(Rajeev Misra,J.)