



2026:AHC:24290-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS No. - 63 of 2026

Jaivir Singh

.....Appellant(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Siddharth Chaudhary
Counsel for Respondent(s)	:	G.A.

Court No. - 43

**HON'BLE SALIL KUMAR RAI, J.
HON'BLE DR. AJAY KUMAR-II, J.**

1. Heard learned counsel for the accused-appellant and learned A.G.A. for the State-respondent and also perused the judgment of the trial Court.
2. This appeal under Section 413 BNSS, has been filed by the first informant who is the brother of the deceased, challenging the order of acquittal dated 12.11.2025 passed by the Additional Sessions Judge, Court No.20, District Meerut in Sessions Trial No.160 of 2012 (State Vs. Shadab and others) arising out of Case Crime No.343 of 2011 registered under sections 147, 148, 302/149 IPC, Police Station Sardhana, District Meerut.
3. In short, the prosecution case as narrated in the First Information Report was that on 27.08.2011 Pratap Singh, the brother of the first informant had gone alongwith opposite parties Nos.2,3,4,5 and one Kiran Pal as well as Nithal alias Abhishek. The accused shot dead Pratap Singh in the agricultural field of one late Jagroop. It was stated in the First Information Report that the family of first informant which included the deceased were in litigation with the accused.
4. On 27.08.2011 one Devendra Singh in his statement given to the Investigating Officer under Section 161 Cr.P.C. stated that six persons had surrounded Pratap Singh and Devendra Singh and tried to robe them because of which there was a scuffle between the deceased Pratap Singh and the robbers, whereupon the robbers shot Pratap Singh. Devendra Singh stated in his statement under Section 161 Cr.P.C. that he could identify the robbers. It was also stated by Devendra Singh in his statement under Section 161 Cr.P.C. that one Vijay Pratap had also come on the spot afterwards.

5. After investigation, chargesheet was not submitted against opposite parties No.2 to 5, but against Shadab, Asif, Shahjad, Abid, Waseem and Shamim and the opposite parties alongwith Kiran Pal and Nithal alias Abhishek were excluded from the chargesheet. Session Trials were registered against the persons against whom chargesheets had been submitted. Subsequently the opposite parties No.2 to 5 alongwith Kiran Pal, Nithal alias Abhishek were summoned under Section 319 Cr.P.C. During trial Asif and Kiran Pal died therefore, the proceedings were declared to have abated against them. Nithal alias Abhishek was found to be a juvenile, therefore, the matter in relation to Nithal alias Abhishek was referred to the Juvenile Justice Board. All the session trials were connected and tried together as they arose from the same Case Crime No.345 of 2011. All the accused denied the charges and claimed trial.

6. A reading of the judgment of the Trial Court shows that Devendra Singh who claimed himself to be an eye-witness in the case, was not examined as prosecution witness, but was examined by the defence as DW-1 .

7. The prosecution examined one Ram Pal PW-2 who was also the brother of the deceased and Vijay Pratap as PW-10 who claimed themselves to be eye-witness of the incident and saw the opposite parties as well as Kiran Pal and Nithal alias Abhishek having shot the deceased. The first informant was examined as PW-1. The other witnesses examined by the prosecution are formal witnesses and the doctor who conducted the autopsy and witnesses of the inquest.

8. Ram Pal, who was examined as PW-2 stated in his testimony that at around 04:30 PM, he was returning from village Salavan where he saw the opposite parties and Kiran Pal as well as Nithal alias Abhishek having surrounded his brother, i.e. the deceased. Kiran Pal had a pistol in his hand and shot the deceased. When the deceased shrieked, the accused fled from the scene and the witness came home and told the first informant about the whole incident, after which the deceased was taken to hospital where he was declared dead. Subsequently the first informant got the FIR registered. The testimony of PW2 has been disbelieved by the trial Court on the ground that in his cross-examination the witness identified only Monu and Anil i.e. the opposite parties No.2 and 3 and stated that he could not recognize the other accused. The testimony of the witness has been disbelieved by the trial Court on the ground that there was no recital in the First Information Report that

the witness was an eye-witness of the incident, even though PW-2 is the brother of the first informant and of the deceased, and in his examination-in-chief the witness had stated that he had told the first informant about the whole incident, on which the first informant had accompanied him to the place where the incident took place. Further PW-2 had also denied any robbery and dacoity in the matter, which is not corroborated by the testimony of PW-10 who also claimed himself to be an eye-witness of the incident.

9. In his testimony, PW-10 stated facts regarding the commission of robbery with him and also refused to recognize the accused as the persons who were involved in the crime. PW-10 was declared hostile and the prosecution was permitted to cross-examine him. The evidence of the witness does not indicate that he was an eye-witness of the incident. In his cross-examination the witness denied having given any statement under Section 161 Cr.P.C. to the Investigating Officer. The witness also denied that he had seen the deceased in an injured state and also denied any acquaintance or knowledge with the deceased. The witness also refused to identify the accused.

10. The trial Court has also doubted the veracity of the inquest report as well as the recovery of the weapon allegedly used in the crime. After taking note of the fact that contradictory cases were presented by the prosecution, inasmuch as the chargesheet was submitted by the Investigating Officer against Shahjad, Shadab, Asif, Wasim, Shameem and Abid, but subsequently the opposite parties No.2 to 5 alongwith Kiran Pal and Nithal alias Abhishek were summoned under Section 319 Cr.P.C.. The trial Court held that the prosecution case was not proved beyond doubt. It is noted that so far as the accused named in the chargesheet are concerned, they were not recognized and identified by any of the prosecution witness. It is difficult to believe, as to on what basis the said persons have been charged in the chargesheet, even though the witness whom the prosecution claimed to be the eye-witness have not named the aforesaid accused in their statements under Section 161 Cr.P.C. So far as opposite parties No. 2 to 5 and Kiran Pal as well as Nithal alias Abhishek are concerned, the said accused have also not been identified by any of the eye-witness and PW-2 only identified opposite parties No2 and 3 i.e. Monu and Anil. The testimony of PW-2 as noted earlier is unbelievable and we do not find any perversity in the opinion of the trial Court is disbelieving his testimony. So far as the evidence of PW-1 i.e. the first informant is concerned that the accused i.e. opposite parties

No.2 to 5 alongwith Kiran Pal and Nithal alias Abhishek were last seen with the deceased is concerned, the same has been disbelieved by the trial Court on the ground that in his cross-examination the informant had stated that on the fateful day he was not present in the village Kankerkheda. The testimony of PW-1 also contradicts the testimony of PW-2.

10. In the aforesaid circumstances, we do not find any error, illegality or any perversity in the assessment of evidence by the trial Court, so as to re-examine the evidence in appeal. The opinion of the trial Court that the prosecution had failed to prove its case beyond doubt is a reasonable view, considering the evidence in the case.

11. The appeal lacks merit and is **dismissed**.

12. The file be consigned to record after certifying the judgment of this Court to the trial Court.

February 4, 2026

Ashish/-

(Dr. Ajay Kumar-II,J.) (Salil Kumar Rai,J.)