



2026:AHC:14939-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS No. - 33 of 2026

Rajesh Kumar

.....Appellant(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Rakesh Kumar Rathore, Sanjeev Kumar
Counsel for Respondent(s)	:	G.A.

Court No. - 43

HON'BLE SALIL KUMAR RAI, J.
HON'BLE DIVESH CHANDRA SAMANT, J.

1. Heard Sri Rakesh Kumar Rathore, learned counsel for the appellant, learned AGA for the State and perused the judgment and evidence annexed with the appeal.

2. Present criminal appeal has been preferred with the prayer to set aside the judgment and order dated 13.11.2025 passed by the Sessions Judge, Firozabad in Session Trial No. 1086 of 2022(State Vs. Ravi and others) arising out of Case Crime No. 182 of 2021 registered under Section 307, 323, 504, 506 I.P.C., Police Station Rasoolpur, District-Firozabad.

3. The case of the prosecution in short and as narrated in the F.I.R. is that on 05.05.2021 at about 2:30 P.M., the opposite parties came to the complainant's house and started abusing and threatening the complainant. When the complainant and his brother, Dinesh Kumar came out of the house, the opposite party no. 3 with the intention to kill, fired at Dinesh Kumar. The shot missed Dinesh Kumar. The opposite party no. 2 hit Dinesh Kumar with sticks and caused grievous injuries on his head. On hearing the screams of complainant and his brother many other persons came on the scene, upon which the accused left the place while beating Kishan Singh, aged 13 years, the son of the complainant. At the instance of the complainant, the First Information Report was registered on 05.05.2021 as Case Crime No. 182 of 2021 under Section 307, 323, 504, 506 I.P.C. Subsequently, charge-sheet was filed and the case was committed to trial by the Sessions Court. Consequently Session Trial No.

1086 of 2022 was registered against the accused. The accused-appellant pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case filed the different medical reports of Dinesh Kumar and Kishan Singh. The injury report prepared by the doctor who initially examined Dinesh Kumar disclosed a lacerated wound of 3cm x 0.8cm on the right side of the head of the injured surrounded by bruising 8 centimeters from the right ear, fresh bleeding was present in the wound. X-Ray was advised to detect any foreign body. The medical report was prepared by Dr. Mohd. Shahid who was examined by the prosecution as P.W.-8 and the witness opined that the injury was possibly caused by a firearm. One Dr. Anurag Shukla, who did the X-Ray of Dinesh Kumar on 06.05.2021 was examined as P.W.-9 by the prosecution. In the X-Ray report, the doctor had stated that the X-Ray of the victim's head showed three rounded radio opaque shadow on the right side, whose density was consistent with the metal, on the right temporal area. The X-Ray report also showed that there was no bony injury in the head of the injured. No bone injury was recorded in the initial injury report of Dinesh Kumar, which was proved by P.W.-8. Subsequently, Dinesh Kumar allegedly underwent a surgery at Synergy Hospital, District Agra. It is the claim of the prosecution that during the surgery, three pellets were recovered from the skull of the allegedly injured Dinesh Kumar. The surgery was conducted on 14.05.2021. There is no disclosure that the pellets contained human blood when they were given to the Investigating Officer.

5. There was some controversy regarding correctness of the injury report prepared by P.W.-8 and the X-Ray report of P.W.-9, therefore, the District Magistrate, Firozabad constituted a Medical Board to re-examine the injured Dinesh Kumar. One Dr. Rahul Jain examined the injured and submitted a report stating that after considering all the previous medical examinations, X-rays and C.T. scans conducted by him and also after personally examining the victim, the Board did not believe that the injury could have been caused by a firearm. The report of re-examination of the injured was marked as Exhibit Ka-9 in the Trial Court. Dr. Rahul Jain was examined as P.W.-7 by the prosecution and in his testimony the witness stated that the injury no.1 i.e. the injury about which the doctor who

initially examined Dinesh Kumar stated that it could be caused by firearm, could be caused by stick or baton. The doctor stated in his evidence that even if the wound had healed after a month, the scar left behind could be examined to determine the cause of injury. The witness, for obvious reason refused to comment on the medical examination of the injured Dinesh Kumar as conducted by Dr. Mohd. Shahid-P.W.-8. It is relevant to note that the medical examination of the injured was conducted by Dr. Rahul Jain-P.W.-7 on 07.06.2021. The evidence of P.W.-7 contradicts the evidence, opinion and reports prepared by P.W.-8 and P.W.-9.

6. So far as the injured Kishan Singh was concerned, he was also examined by Dr. Mohd. Shahid and his injury report records a lacerated wound of 0.2x0.2cm on the upper part of the head 14 cm from the right ear, bruising around it, fresh bleeding was observed on the wound which was kept under observation and X-ray was advised. The report was also filed by prosecution to prove its case. So far as Kishan Singh is concerned, P.W.-8, Dr. Mohd. Shahid also gave his opinion that the injury appeared to be caused by a firearm. Interestingly, no X-ray of Kishan Singh appears to have been done and any X-ray report was not produced as evidence in the Trial Court.

7. The trial court after considering that there was no bony injury in the head of the injured which implied that the bullets were not deep into the body after piercing the bones, found the initial injury reports unreliable. The Trial Court held that in case there were no bony injuries and pellets were not deep into the body of the injured, the pellets could have been easily detected by the Doctor i.e. P.W.-8. The pellets were not produced in the Court and there is nothing on record to show that the pellets had human blood. The pellets were not sent for ballistic examination. The aforesaid circumstances have not been explained by the prosecution and belie the case of the prosecution.

8. The allegation in the F.I.R. is that the bullets missed Dinesh Kumar and did not hit him. The allegation in the F.I.R. leads to the conclusion that no firearm injury could be caused to Dinesh Kumar. However, in his statement as P.W.-1, the complainant stated that bullet ricocheted off the

wall and entered into the body of his brother Dinesh Kumar and his son Kishan Singh. The site plan prepared by the Investigating Officer does not show any wall on the spot. Apparently, the wall from which the bullets rebounded was not shown to the Investigating Officer by the complainant. Further, in his testimony as P.W.-1, the complainant also stated that all the three accused had fired at the complainant and his family members named above. In his statement recorded under Section 161 Cr.P.C., the aforesaid fact was not stated by the complainant to the Investigating Officer. The said facts have also not been stated in the F.I.R. The F.I.R. version is that only opposite party no. 3 fired at Dinesh Kumar, the brother of the complainant. Apparently, the evidence of P.W.-1 that all the three accused had fired at him and his brother as well as his son is an improvement and also contradicts the F.I.R. version. It is also relevant to note that no weapon has been recovered from the accused by the Investigating Officer.

9. In his evidence as P.W.-1, the complainant also stated that when the accused arrived, he was sitting on the gate with his nephew Kishan Singh. The aforesaid statement is different from the F.I.R. version wherein it was stated that the complainant and his family members were inside the house when the accused came and started abusing and threatening them, whereupon the complainant and the injured came out after which accused assaulted the complainant and the injured.

10. We have also held that no independent witness was examined by the prosecution even though the case of the prosecution is that many persons had arrived at the place where the accused had allegedly assaulted the complainant and his brother and son.

11. After considering that the injuries as claimed by the prosecution were not proved and further there were major contradictions in the testimonies of prosecution witnesses, the Trial Court held that the prosecution had failed to prove beyond doubt its case and consequently acquitted the accused.

12. We do not find any illegality or perversity in the reasoning of the Trial Court. The judgment of the Trial Court has been passed after considering

all the evidences produced by the prosecution.

13. We do not find any reason to entertain the appeal to consider substituting our opinion for the judgment of the Trial Court which also had the opportunity to watch the demeanor of the witnesses.

14. In view of the above, the Appeal is summarily **dismissed** without issuing notices to the accused.

15. The file be consigned to record after certifying the judgment of this Court to the Trial Court.

(Divesh Chandra Samant,J.) (Salil Kumar Rai,J.)

January 21, 2026

ADY