



2026:AHC:21424-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS No. - 384 of 2025

Jagmohan

.....Appellant(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Ram Surat Patel
Counsel for Respondent(s)	:	G.A.

Along with :

1. Government Appeal Defective No. 476 of 2025:

State of UP

Versus

Manoj Kumar and 3 others

Court No. - 43

HON'BLE SALIL KUMAR RAI, J.

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

(Order on Delay Condonation Application in Government Appeal Defective No. 476 of 2025)

1. The Government appeal is reported to be beyond time by 77 days. A delay condonation application has been filed for condoning the delay in filing the Appeal.

2. The delay in filing the Government Appeal is condoned and the delay condonation application is allowed.

3. Office to allot regular number to the Appeal.

(Order on Criminal Appeal)

1. We have heard Shri Gaurav Pratap Singh, Brief Holder for

the State and Shri Ram Surat Patel for the victim whose appeal has been filed U/S 413 BNSS.

2. The accused shall be referred as opposite parties in the numerical order as given in the array of parties in the Government Appeal.

3. The appeals have been filed against the acquittal order dated 30.04.2025 passed by the Additional Sessions Judge/ Special Judge (E.C. Act) Jalaun at Orai in Sessions Trial No. 119 of 2018, arising out of Case Crime No. 66 of 2018, under Section 302, 201, 120-B I.P.C., P.S. Kadaura, District Jalaun against opposite party nos. 1, 2 and 3 connected with Sessions Trial No. 167 of 2018 arising out of Case Crime No. 66 of 2018, under section 120-B I.P.C., P.S. Kadaura, District Jalaun against opposite party no. 4 and with Sessions Trial No. 123 of 2018, arising out of Case Crime No. 97 of 2018, under Section 3/25 Arms Act, P.S. Kadaura, District Jalaun against opposite party no.1.

4. Opposite parties no. 2 and 3 are the parents of opposite party no. 1 and opposite party no. 4 is the brother of opposite party no. 1. The prosecution case is that at 10:00 a.m. on 08.04.2018, Manoj i.e. the son-in-law of Mahavir, the opposite party no. 1 called Mahavir (hereinafter referred to as 'deceased') at Kalpi Bus Stand, Orai at Jalaun. On the call of opposite party no. 1, the deceased went to meet the opposite party no. 1 at Kalpi Bus Stand. At 5:40 p.m., the deceased called his wife Shakuntala Devi and informed her that opposite party no. 1 had given him

something to eat which caused dizziness. The first informant immediately went to Orai but could not trace the deceased. The first informant is the brother of the deceased. Subsequently, on 09.04.2018, the dead body of the deceased was found at Village Barkhera, District Jalaun near Police Station Kadaura and a First Information Report registering case crime No. 66 of 2018, under section 302, 201, 120-B I.P.C. was registered on the same date at around 01:07 p.m. The *panchayatnama* of the body was prepared, and as there were firearm injuries on the body of the deceased, the same was sent for post-mortem. The post-mortem report noted lacerated wounds on the body of the deceased which according to the doctor were caused by firearm and the doctor opined that death was due to anti-mortem firearm injuries. It is also the claim of the prosecution that fifteen days after the registration of the FIR, the weapon allegedly used in the crime, i.e., a country-made pistol and live bullets and empty cartridge were recovered at the instance of opposite party No. 1. A recovery memo was prepared. It comes out from the judgment of trial court that the first informant-Jagram is also a witness to the recovery.

5. Charge sheet was filed and cognizance was taken by the concerned Magistrate, who committed the case for trial by Sessions Court and subsequently Sessions Trial No. 119 of 2018, Sessions Trial No. 167 of 2018 and Sessions Trial No. 123 of 2018 were registered against the accused.

6. In the trial court, the prosecution examined three witnesses as witnesses of fact. The first informant was examined as PW-

1. Maan Singh and Gopal, who were relatives of the deceased were examined as PW-2 and P.W.- 3. PW4 was the witness to the *panchayatnama*. Doctor who conducted the post-mortem was examined as PW6. The FIR writers of Case Crime 97 of 2018 and Case Crime No. 66 of 2018, were examined as PW-7 and P.W.-8. The investigating officers of the case were examined as P.W.-5, P.W.-9 and P.W.-10.

7. The trial court vide its judgment and order dated 30.04.2025 acquitted the accused holding that prosecution had failed to prove its case beyond doubt. Hence the present appeal. For reasons stated subsequently, we do not consider it a case for re-examining the evidence at the instance of the prosecution and the appeals are liable to be dismissed.

8. There is no eyewitness to the crime. The case of the prosecution depended on circumstantial evidence. It was the case of the prosecution that the deceased was last seen with the opposite party no. 1, who was the son-in-law of the deceased. In order to prove that the deceased was last seen with the opposite party no. 1, the prosecution examined Maan Singh, P.W.-2, who is a nephew of the deceased and also of the first informant. In his evidence, the witnesses stated that he had seen the deceased with opposite party no.1 at Jolhapur crossing near Bus Stand Kunara. On the other hand, P.W.-1, who is the first informant, stated in his evidence that at 5:40 p.m., a call was received from the deceased that he was feeling dizzy because he had eaten something given by his son-in-law Manoj and the deceased had stated to his wife that he was at Kalpi

Bus Stand, Orai, District Jalaun. In its judgment, the trial court has noted that the distance between Kalpi Bus Stand and Jolhapur crossing was almost 20 kms. Considering that the deceased had informed his wife that he was feeling dizzy, the trial court has disbelieved the testimony of PW-2 that deceased could have been present at the Jolhapur crossing, within 50 minutes after having called his wife. The trial court found two testimonies inconsistent and contradictory. The trial court also considered the testimony of P.W-3 Gopal, who stated that he had seen the deceased talking to the opposite party at 4:00 p.m. at Kalpi Bus Stand. The trial court also disbelieved the aforesaid evidence on the ground that the evidence did not explain as to what the deceased and the opposite parties were doing at Kalpi Bus Stand between 4 to 5:40 p.m., when at 5:40 p.m., the deceased according to the testimony of P.W.-2 was present at Jolhapur crossing in Jalaun. For the aforesaid reason, the trial court has rejected the claim of the prosecution that the opposite party no.1 was last seen with the deceased. We do not find any error in the assessment of evidence on that score by the trial court.

9. So far as the recovery of weapon used in the crime is concerned, the said recovery was made fifteen days after the registration of FIR. The first informant i.e. P.W.-1 is incidentally a witness to the recovery. The witness P.W.- 1, so far as recovery is concerned, was a chance witness and has not been able to properly explain his presence on the spot at the time of recovery which was, as noted earlier, fifteen days after

the commission of the crime. Apart from the aforesaid, the ballistic report submitted by the prosecution shows that the cartridge which was recovered at the instance of the accused did not match the weapon which was recovered allegedly at the instance of the accused. The aforesaid creates a doubt on the claim of the prosecution that the weapon recovered at the instance of the accused was used in committing the crime.

10. We have also taken note of the fact that no call detail records had been produced by the prosecution to prove its case that the opposite party no. 1 had called the deceased or that the deceased had called his wife, informing that he was with Manoj i.e. opposite party no. 1 and was feeling dizzy because he had taken something given by Manoj. The aforesaid circumstances create doubt on the prosecution case. The trial court after taking note of the aforesaid shortcomings in the prosecution case held that the prosecution had not been able to prove its case beyond doubt and we do not find any reason to re-examine the evidence at the instance of the prosecution. The appeals are accordingly dismissed.

11. Let the file be consigned to records after certifying a copy of the present judgment to the trial court.

**January 30,
2026**

Bhanu

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