



2026:AHC:10434-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS No. - 729 of 2025

Dr. Rohitash Kumar

.....Appellant(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Manoj Kumar Gautam
Counsel for Respondent(s)	:	G.A.

Court No. - 43

HON'BLE SALIL KUMAR RAI, J.

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

This is a victim's appeal which has been filed under Section 413 BNSS, 2023 against the order of acquittal dated 04.11.2025 passed by the Additional Sessions Judge, Nagina, Bijnor in Sessions Trial No. 2378 of 2024, State vs. Kuldeep Singh and Others (arising out of Case Crime No. 154 of 2021) under Section 323, 325, 504, 307, I.P.C., Police Station Rehad, District Bijnor.

The case of the prosecution, in short, is that on 04.12.2021, the accused/ opposite party nos. 2 to 5 demolished the boundary wall of the complainant/ appellant and took away the construction materials lying on the plot of the appellant. When the appellant resisted the opposite parties, the opposite party no. 3 fired at the appellant which missed the appellant. The appellant tried to catch hold of the opposite party no. 3 but the opposite party no. 3 was able to fled by hitting the appellant with the butt of his pistol. The said incident is stated to have happened in the morning of 04.12.2021 and the FIR states that the incident was witnessed by Nahnhe Singh and Gaurav. The FIR was lodged on 06.12.2021 and consequently Case Crime No. 154 of 2021 under Sections 307, 323, 504, 379 and 427 IPC was registered against the opposite parties. The charge-sheet was submitted under Sections 323, 325 and 504 IPC, but subsequently, the Magistrate included Section 307 IPC in the charge-sheet. The matter was committed for trial to the Sessions Court and Session Trial No. 2378 of 2024 under Sections 323, 325, 504 and 307 IPC was registered against the opposite parties. The opposite parties pleaded

not guilty and claimed trial. The trial court vide its order dated 04.11.2025 has acquitted the opposite parties by giving benefit of doubt to the opposite parties.

We have perused the judgment of the trial court.

The injury report of the appellant was prepared on 06.12.2021 at 12.50 p.m. The injury report shows four injuries on the upper part of the body of the appellant. The report does not corroborate the manner of assault as reported in the FIR. In the FIR, the appellant has alleged only one hit by the opposite party no. 3 and that was by the butt of a pistol. The injuries shown in the injury report could have been caused only by *lathis* and sticks. Apart from the aforesaid, the injury report also shows that the injuries were fresh and could have been caused in the morning of 06.12.2021. The incident is alleged to have taken place in the morning of 04.12.2021. The FIR was registered two days after the incident. The appellant, in his testimony as PW-1, has repeated the FIR version. Apparently, the injury report does not corroborate the prosecution case and the trial court taking note of the aforesaid discrepancy, has held that the claim of the prosecution regarding the incident on 04.12.2021 was doubtful.

The claim that opposite party no. 3 had fired at the appellant has also not been proved. In his testimony, the Investigating Officer has denied having collected any empty cartridge from the spot or having found any evidence of firing. In his testimony, PW-9 states that he had seen an empty cartridge on the spot. However, no recovery of any bullet or any empty cartridge has been shown by the Investigating Officer.

The independent witnesses examined by the prosecution, i.e., PW-2 to PW-5 and PW-10 did not support the prosecution case in their evidence and were declared hostile. However, the prosecution could not extract anything material from their cross-examination. It is noticeable that PW-10 Nannhe Singh is alleged in the FIR to be an eye-witness of the incident.

A perusal of the judgment of the trial court also shows that PW-11 Ghanshyam Singh is a chance witness and is also not an eye-witness of

the incident. The witness reached the spot after the incident and had seen the appellant lying on the ground. So far as PW-9 is concerned, the trial court has disbelieved his testimony and doubted his status as an eye witness on the ground that the testimony of PW-9 is not corroborated by the testimony of the appellant himself. PW-9 has stated that the appellant had fainted, though, the said fact is not stated by the appellant in his evidence. In his testimony, PW-11 also stated that the appellant was lying on the floor and had his hand on his nose. PW-9 is also the nephew of PW-1, i.e., the appellant. The prosecution witness have been disbelieved by the trial court and we do not find any reason to interfere in the opinion of the trial court. It also comes out from the judgment of the trial court that there is some property dispute between the appellant and the accused and the parties are at litigation with each other.

Considering the aforesaid aspects, the trial court has held that the prosecution has not been able to prove its case beyond doubt and we do not find any reason to substitute our opinion in place of the findings of the trial court.

There is no merit in the appeal and the appeal is ***dismissed*** summarily without issuing notices to the opposite parties.

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

January 16, 2026

Vipasha