



2026:AHC:11566-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL U/S 413 BNSS No. - 746 of 2025

Shabbir

.....Appellant(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Gyanesh Kumar Mishra, Rohit Kumar Mishra
Counsel for Respondent(s)	:	Akhilesh Kumar Singh, G.A.

Court No. - 43

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

Heard the counsel for the appellant and the AGA for the State.

The present appeal under Section 413 B.N.S.S. has been filed by the first informant against the judgment and order dated 23.9.2025 passed by the Additional Sessions Judge / F.T.C., Court No.01, District Hathras in Session Trial No. 238 of 2007 registered under Sections 452, 436, 504, 506 and 308 IPC and arises out of Case Crime No. 418 of 2003 registered at Police Station Sikandra Rao, District Hathras.

The prosecution case is that at 04:00 p.m. on 5.10.2003, the accused, i.e., opposite party nos. 2 to 4 along with one Shamshad assaulted the first informant Shabbir, his wife and daughter with knife, pistol, sticks and iron rebars with the intention to kill the first informant. It is the case of the prosecution that there was some dispute between the parties regarding financial transactions relating to guava grove. It is alleged that Shamshad assaulted Shamim Begum, i.e., the wife of the first informant with knife and injured her and also attacked his daughter Afsana. The accused also burned the house of the first informant and went away threatening the first informant and his family members with dire consequences and also to kill them. The first information report was registered on 5.10.2003 itself under Sections 452, 436, 504, 506 and 308 IPC against the opposite parties as well as Shamshad. Charge-sheet was filed against Shamshad and opposite party no. 2 under Sections 452, 504, 506, 324 IPC. However, Sections 436 and 308 IPC were subsequently added by the concerned Magistrate. The case was committed for trial by the Session Court and Session Trial No. 238 of 2007 under Sections 452, 436, 504, 506 and 308 IPC was registered against the opposite parties and Shamshad. Opposite party nos. 3 and 4 were

subsequently summoned by the trial court under Section 319 Cr.P.C.

The prosecution examined eight witnesses. Shabbir, i.e., the first informant was examined as PW-1, Shamim Begum @ Nathia, i.e., the wife of the first informant was examined as PW-2, one Shamshad was examined as PW-3 and Afsana, i.e., the daughter of the first informant was examined as PW-4. PW-5, PW-7 and PW-8 are police personnels and the Investigating Officers who were examined to prove the different documents filed by the Investigating Officers along with the charge-sheet and the doctor who examined PW-2 and had prepared the supplementary injury report was examined as PW-6.

In their evidence, PW-1, PW-2 and PW-4 have reiterated the FIR version. It is noticeable that in her cross-examination, PW-4 stated that the clothes of PW-2 and PW-4 were stained with blood after the alleged assault and blood was also on the ground of her house. The clothes were shown to the Investigating Officer but were not given to the Investigating Officer. In his cross-examination, the Investigating Officer, as PW-7, denied that he was given any blood stained clothes and stated that he had not taken possession of any blood stained clothes of the injured witnesses. It is also noticeable that no injury report proving the injuries to PW-2 as claimed by the prosecution was proved by the prosecution and the doctor who allegedly examined the injured witness was not examined as witness. It would also be relevant to note that PW-6 who is the medical witness submitted a supplementary injury report only regarding the X-ray of the head of PW-2 with the report that injury was simple in nature and no abnormality was detected in the X-ray. No report regarding injury to PW-4 as claimed in the first information report was filed by the prosecution in the trial court. Apparently, the injuries claimed by the prosecution to have been caused to either the first informant or PW-2 and PW-4 were not proved. It was on the aforesaid circumstances, the investigating agency had excluded Section 308 IPC from the charge-sheet filed by it.

So far as the claim of the prosecution that the accused had burned the house of the first informant is concerned, the same was also not proved from the evidence on record. PW-2 and PW-4 who were examined by the prosecution to prove the offence under Section 436 IPC were not able to describe the loss caused to the family because of the fire. No recovery memo was prepared by the investigating agency regarding the ashes and the half burned clothes

allegedly recovered from the spot. The claim of the prosecution that bronze, copper and brass utensils melted and were destroyed in the fire was found by the trial court to be unbelievable. The claim of the prosecution that the thatched roof of the house of the first informant was burned by the accused has also been disbelieved on the ground that the different witnesses produced indicated that there was no thatched roof in the house of the first informant. It is also noticeable that no blood stained soil was collected by the Investigating Officer and the clothes were not sent for forensic examination. No weapons have been recovered from the accused. PW-3 who ostensibly affirms the FIR version was a chance witness.

The claim of the prosecution has also been rebutted by the defense witnesses one of whom is the niece of the first informant and the other was shown as a prosecution witness in the charge-sheet but was not examined by the prosecution.

Considering the aforesaid facts, the trial court held that the prosecution had failed to prove its case beyond doubt and that the accused - opposite parties had assaulted the first informant and his family members with an intention to kill them or burned the house of the first informant.

A perusal of the records annexed with the appeal and the grounds raised in the appeal do not give us sufficient reason to further examine the case to substitute our opinion in place of the findings recorded by the trial court. The judgment of the trial court is supported by the evidence on record.

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

Let the file be consigned to records after allotment of regular number to the appeal and after certifying a copy of the present judgment to the trial court.

January 16, 2026
Satyam

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