



2026:AHC:26221-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1746 of 2015

A.F.R.

Reserved on 08.01.2026

Delivered on 06.02.2026

Guddu

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Abhishek Kumar Jaiswal, R.P.S. Chauhan

Counsel for Respondent(s) : G.A., Govt. Advocate

Court No. - 48

HON'BLE CHANDRA DHARI SINGH, J.

HON'BLE DEVENDRA SINGH-I, J.

(Per: Hon'ble Devendra Singh-I, J.)

1. The instant Criminal Appeal has been preferred against the judgment dated order dated 23.03.2015, passed by the learned Additional Sessions Judge Court No.4, Kasganj, in Session Trial Nos. 94/2011 arising out of Case Crime No. 663 of 2010, under Section 384 and 302 IPC and in S.T. No. 95 of 2011 arising out of Case Crime No. 666/2010, under Section 25/27 of Arms Act, P.S. Kasganj, District-Kasganj, whereby the appellant-Guddu has been convicted and sentenced under Section 302 IPC for the life imprisonment along with fine of Rs.40,000/-, under Section 384, for three years imprisonment along with fine of Rs.5,000/- and under section 25/27 of Arms Act, for one year imprisonment along with fine of Rs.1000/-. It has also been directed that all the sentences will run concurrently.

2. The prosecution story in brief is that, on 20.12.2010 at 06:30 p.m. when Abid Hasan (informant), who is real brother of Wajid Hasan (deceased) along with his cousin brother namely, Jalis

Ahmad had gone to meet his brother Wajid Hasan (hereinafter referred to as the 'deceased') at Maa Ganga Petrol Pump near Bilram Gate, District-Kasganj, where deceased was working as a Manager, at that point of time, accused-appellant (Guddu) reached there and demanded the Chauth money, when he refused for giving the same, accused-appellant took out a gun and opened fire upon the deceased in front of his real and cousin brothers namely, Abid Hasan and Jalis Ahmad and waiving the pistol, ran away from the spot. Thereafter, seeing his brother's serious condition, Abid Hasan (informant), immediately, took him to the Government Hospital, Kasganj with the help of other workers, whereafter, he was referred to Medical College, Aligarh. Thereafter, he was taken to Medical College, Aligarh, where doctors declared him dead. The complainant/informant reported the matter to the police authority on 21.12.2010 by submitting written Tahreer (Ext. Ka-1) at the police station. Consequently, the case was registered on 21.12.2010 at 02:30 hours, under Sections 302 and 384 of IPC vide FIR, Ext. Ka-14 and on 22.12.2010, case was registered at 09:30 hours, under section 25/27 of Arms Act against the accused-appellant vide FIR, Ext.Ka-12.

3. The post-mortem of the deceased was conducted on 21.12.2010 by PW-8, Dr. K. K. Gupta at Pt. Deendayal Upadhyay Joint Hospital, Aligarh at 04:00 p.m., vide postmortem report Ex. Ka-8, following ante-mortem injuries were found on the person of the deceased.

"1. Blister 2.5 c.m. X 1.5 c.m. on the right knee.

2. A firearm penetration wound measuring 0.5 c.m. X 0.4 c.m. Deep to muscle and bone, was located on the left side of the face, 3 c.m. Anterior to the ear. There edges were curved. There was blackness. There was tattooing around the wound measuring 12 c.m. X 10 c.m. The direction of the wound was from left to right, from top to bottom, from front to back, and was connected to injury no.3

3. Another firearm injury which is an exit wound, measuring 0.9 c.m. X 0.8 c.m. On the right side of the neck at a distance of 03 c.m. from the jaw bone. 1.5 c.m. Below the right ear, the edges were protruding outwards."

4. During the course of investigation, site plan of the spot of incident was prepared, the samples of blood stained and sample of soil were taken from the spot. The blood stained clothes of deceased were seized on 21.12.2010 by seizure memo. On 22.12.2010 accused (Guddu) was arrested by the police and he admitted his crime and on his pointing out a country made pistol of 315 bore along with four live cartridges were recovered from which, he had committed crime. The recovered pistol and cartridges were taken into possession vide recovery memo Ex. Ka-5. Regarding recovery of country made pistol, separate case under Section 25/27 of Arms Act, 1959 was registered against the accused-appellant.

5. Investigating Officer recorded the statements of witnesses and after completion of investigation, accused-appellant was charge-sheeted for the offence under Sections 384/302 of IPC vide chargesheet Ext.Ka-18 and separate charge-sheet under Section 25/27 of Arms Act 1959, Ext.Ka-11 was also submitted against the accused-appellant (Guddu).

6. Learned Trial Court has framed charges under Sections 302/384 of IPC and Section 25/27 of Act, 1959 against the accused-appellant.

7. Accused-appellant pleaded not guilty and claimed to be tried.

8. In order to bring home the guilt of accused-appellant, prosecution has examined eleven witnesses.

9. The accused-appellant was examined u/s 313 CrPC, wherein he denied the prosecution evidence and claimed false implication. However, no evidence was led in defence.

10. After hearing and analysing the evidence on record, accused-appellant was convicted under Sections 302/384 of IPC and Section 25/27 of the Act, 1959 by the Trial Court vide impugned judgment and order and sentenced as stated above. Being aggrieved by the impugned judgment and order, the appellant (Guddu) has preferred the instant Criminal Appeal.

11. We have heard Sri Abhishek Kumar Jaiswal, learned counsel for the accused-appellant (Guddu), Sri S.K. Ojha, learned AGA for the State and perused the trial court record.

12. Learned counsel for the appellant has submitted that PW-1 (Abid Hasan) and PW-2 (Miya Jalis) who claim themselves to be natural witnesses of the incident whereas, in reality, they are interested witnesses as they are close relatives of the deceased. He further submits that neither their residence is near the place of incident nor they were working there, therefore their probability of being present at the time of incident is highly improbable and they are implanted by the prosecution to prove their case. It is further submitted that as per prosecution version, the accused-appellant had opened fire upon the deceased with the intention to kill him in the presence of PW-1 (Abid Hasan) and PW-2 (Miya Jalis) but they had not sustained any single injury, as such, the presence of these witnesses at the time of incident is highly doubtful. He has further submitted that there is material contradiction in the statements of the prosecution witnesses. Appellant had no motive to commit the crime in question as, in this regard, complaint had never been made before the police authority by the prosecution. He has further submitted that PW-6 (Allanoor) and PW-7 (Shiv Charan) are independent and natural witnesses, however, in their testimony, they have not supported the prosecution case. He has further submitted that there is no ballistic expert report of the said pistol and cartridges, which shows that the said pistol was used in commission of murder of deceased. No case under Section 384 IPC is made out against the accused-appellant as allegation of

demand of extortion by the accused-appellant from the deceased has not been proved by the prosecution. Apart from this case, appellant does not have any criminal history and he is languishing in jail since 22.12.2010.

13. Learned counsel for the accused-appellant has further submitted that there is delay of one day in lodging the FIR, which has not been explained properly by the prosecution. The entire facts and circumstances indicate that FIR was lodged after consultation.

14. Refuting above contentions, learned A.G.A. has submitted that accused-appellant is named in the FIR. He has further submitted that the incident took place in the presence of PW-1 and PW-2, thus, they are natural witnesses of the incident and their testimony cannot be ignored only on the ground that they are interested witnesses. He has further submitted that so far as the delay in lodging the FIR is concerned, deceased had sustained firearm injuries, and first he was taken to Government Hospital, Kasganj, whereafter, he was referred to Medical College, Aligarh, thus, delay of one day in lodging the FIR is quite natural as the first priority of family/relative of the deceased, would be to save life of the deceased and not to rush to police station to lodge the FIR. The natural witnesses examined by the prosecution have been subjected to cross-examination but no important contradiction or infirmity could emerge in their cross-examination. The conviction of appellant is based on evidence and Trial Court was fully justified in convicting accused-appellant. In support of his submission, he has relied upon the judgments of the Hon'able Apex Court in the case of **Namdeo vs. State of Maharastra; 2007 AIR SCW 1835, Maqbool @ Zubir @ Shahnawaz vs. State of Andhra Pradesh; 2011 AIR SC 184 and Ravi Mandal vs State of Uttarakhand; 2023 3 AICLR 508.**

15. We have considered the rival submissions made by the learned counsel for the parties and perused the trial court record.

16. The scrutiny of evidence reveals that PW-1, complainant, (Abid Hasan), in his testimony, supporting the prosecution version, has stated that on 20.12.2010 (Monday), he along with PW-2 (Miya Jalis) had gone to meet his brother (deceased) at Maa Ganga Petrol Pump. At 06:30 p.m., there was light of tube-light in the room. At that point of time, accused-appellant reached there and demanded Rs.5000/- as outstanding Chauth Collection, when his brother (deceased) refused to give the same, he took out a pistol and opened fire upon the deceased, due to which, he fell down. When he and Miya Jalis (PW-2) ran behind him, accused-appellant, waiving the pistol, ran away from the spot. The deceased was taken to the Government Hospital, Kasganj, whereafter, he was referred to Medical College, Aligarh. Thereafter, he was taken to Medical College, Aligarh, where doctors declared him dead. After returning from there, he has given written '*Tahrir*' and proved it as Ext. Ka-1.

17. PW-2 (Miya Jalis), in his testimony, has also supported the prosecution story and stated that deceased was working as a Manager at the Maa Ganga Petrol Pump. He has further deposed that on 20.12.2010 when he along with PW-1 (Abid Hasan) had gone to meet the deceased, then at about 06:00 p.m., accused-appellant reached there and demanded Rs.5000/- as outstanding Chauth Collection, when deceased refused to give the same, he took out a pistol and opened fire upon the deceased. Thereafter, he along with complainant (PW-1) and other workers, who were working at the Petrol pump tried to catch him but accused-appellant, waiving the pistol and jumping the boundary-wall, ran away from the spot. Thereafter, he and PW-1 (Abid Hasan) took away the deceased in the Government Hospital by the vehicle of the police, whereafter, deceased was referred to Medical College, Aligarh, where doctors declared him dead.

18. PW-3, Sagir Ahmad, in his testimony, has also supported the prosecution story and stated that PW-9, S.I. (Arun Kumar) had called him at about 07:45 p.m. and said to come at Vilram Gate.

When he went there after leaving his bike, he saw accused-appellant was sit in the vehicle (Jeep) of the Police. Thereafter, he along with police officials, following the direction of the accused-appellant went on foot to a mango orchard situated at behind the Petrol Pump i.e. place of occurrence, from where, accused-appellant produced the alleged pistol along with a live cartridge to the police officials and admitted that he had used the said pistol to kill the deceased.

19. PW-4 (Raj Ahmad), in his deposition, has also supported the prosecution story. In his testimony, he has stated that he has written the *Tehrir* on the saying of brother of the deceased i.e. PW-1 (complainant).

20. PW-5 (Firoz Khan), in his testimony, has stated that the proceedings of the Panchayatnama of the deceased was held in his presence at the Aligarh Medical Outpost. He proved it as Ext.Ka-7.

21. PW-6 (Alla Noor) is an electrician, who, at the time of the incident, was working at the Maa Ganga Petrol Pump. In his testimony, he has stated that he had seen PW-1 and PW-2 and the deceased at the Petrol Pump and heard the voice of firing. He has further deposed that he saw that someone after firing upon the deceased, ran away from the spot but he had not seen, who has fired upon the deceased.

22. PW-7, Shiv Charan, is a formal witness. In his testimony, he has stated that neither he had seen the incident nor any incident was occurred in his presence.

23. PW-8, Dr. K. K. Gupta, has conducted the post-mortem of the deceased. He proved it as Ext.Ka-8. PW-9 (Arun Kumar), SD has investigated the case. PW-10 (Ajay Singh Chahar), has conducted the further investigation of the case.

24. PW-11 (Pradeep Kumar Sharma), SI currently posted at CCR, Aligarh. In his testimony, he has stated that at the time of

the incident he was posted as SSI at Kasganj Police Station. He further deposed that he had prepared the site plan. He further deposed that during inspection, bloodstained piece of floorboard, a blood-stained piece of quilt and a fired bullet were seized by him from the spot. He proved it as Ext.Ka-16.

25. So far as this contention is concerned that PW-1 (Abid Hasan) and PW-2 (Miya Jalis) are interested witnesses, it is well settled that a natural witness may not be labelled as interested witness. Interested witnesses are those who want to derive some benefit out of the litigation/case. In case the circumstances reveal that a witness was present on the scene of the occurrence and had witnessed the crime, his deposition cannot be discarded merely on the ground of being closely related to the victim. Generally close relations of the victim are unlikely to falsely implicate anyone. Relationship is not sufficient to discredit a witness unless there is motive to give false evidence to spare the real culprit and falsely implicate an innocent person is alleged and proved. A witness is interested only if he derives benefit from the result of the case or as hostility to the accused. In **State of Punjab Vs Hardam Singh, 2005, S.C.C. (Cr.) 834**, it has been held that ordinarily relations of deceased would not depose falsely against innocent persons so as to allow real culprit to escape unpunished, rather such witness would always try to secure conviction of real culprit.

26. In **Dalip Singh Vs State of Punjab, A.I.R. 1953, S.C. 364**, it was held that the ground that witnesses being close relatives and consequently being the partisan witness would not be relied upon has no substance. Similar view has been taken in **Harbans Kaur V State of Haryana, 2005, S.C.C. (Crl.) 1213**; and **State of U.P. vs. Kishan Chandra and others, 2004 (7), S.C.C. 629**. The contention about branding witnesses as interested witness and credibility of close relationship of witnesses has been examined in a number of cases. A close relative, who is a very natural witness in the circumstances of a case, cannot be

regarded as an 'interested witness', as held in **Dalbir Kaur v. State of Punjab, AIR 1977 SC 472**. The mere fact that the witnesses were relations or interested would not by itself be sufficient to discard their evidence straight way unless it is proved that their evidence suffers from serious infirmities which raises considerable doubt in the mind of the court. Similar view was taken in **State of Gujrat v. Naginbhai Dhulabhai Patel, AIR 1983 SC 839**.

27. In the present case, it is correct that PW-1 (Abid Hasan) is brother of the deceased while PW-2 (Miya Jalis) is cousin brother of the deceased but the incident has taken place at about 06:00 PM at the Petrol Pump, wherein deceased was working as a Manager, as such, their presence at the spot is quite natural. It is correct that none of these witnesses have sustained any injury in the alleged incident while version of these witnesses is that accused-appellant had opened fire upon the deceased but in this regard it may be seen that as per prosecution case, accused-appellant (Guddu) was angry with the deceased only, on account of outstanding of Chauth money, which was refused by the deceased and it is the consistent version of prosecution that the accused-appellant had opened fire upon the deceased with the intention to kill him. When accused-appellant had opened fire pointing out the deceased, it is not unnatural that witnesses present at the spot might not sustain any injury. These witnesses have been subjected to cross-examination, but no material contradiction or infirmity could be pointed out. Their version is consistent with the medical evidence. Further post-mortem report of deceased shows that he has sustained fire-arm injuries, which indicate that fire-arm used by the accused-appellant was country made pistol of 315 bore, which do not discharge pellets, rather bullet hit at the object. In such weapons question of dispersal of pellets does not arise so as to cause injury to any other persons near to the object.

28. In this regard it may be observed that both the witnesses

have clearly stated that accused-appellant had opened fire upon the deceased with the intention to kill him. Even in FIR, this version was clearly stated. As the testimony of PW-1 and PW-2 appears cogent and trustworthy, their depositions cannot be discarded merely on the ground of being closely related to the victim.

29. So far as the question of delay in lodging FIR is concerned, it is well settled, if delay in lodging FIR has been explained from the evidence on record, no adverse inference can be drawn against prosecution merely on the ground that the FIR was lodged with delay. There is no hard and fast rule that any length of delay in lodging FIR would automatically render the prosecution case doubtful. In "**Ravinder Kumar & Anr. Vs. State of Punjab**", (2001) 7SCC 690, has held; *"The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly FIR is not an unreserved guarantee for the genuineness of the version incorporated therein. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people*

also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquility of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident."

30. In **Amar Singh Vs. Balwinder Singh & Ors. (2003) 2 SCC 518**, the Hon'ble Apex Court held that *"In our opinion, the period which elapsed in lodging the FIR of the incident has been fully explained from the evidence on record and no adverse inference can be drawn against the prosecution merely on the ground that the FIR was lodged at 9.20 p.m. on the next day. There is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR."*

31. In this connection it will also be useful to take note of the following observation made in **Tara Singh V. State of Punjab AIR (1991) SC 63**.

"The delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are, one cannot

expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course, in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts should be cautious to scrutinize the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstance of each case."

32. In Sahebrao & Anr. Vs. State of Maharashtra (2006) 9 SCC 794, Court has held: *"The settled principle of law of this Court is that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR would put the Court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory."*

33. From the above discussed exposition of law, it is manifest that prosecution version cannot be rejected solely on the ground of delay in lodging FIR. Court has to examine the explanation furnished by prosecution for explaining delay. There may be various circumstances particularly number of victims, atmosphere prevailing at the scene of incidence, the complainant may be scared and fearing the action against him in pursuance of

the incident that has taken place. If prosecution explains the delay, Court should not reject prosecution story solely on this ground. Therefore, the entire incident as narrated by witnesses has to be construed and examined to decide whether there was an unreasonable and unexplained delay which goes to the root of the case of the prosecution and even if there is some unexplained delay, court has to take into consideration whether it can be termed as abnormal. Recently in **Palani Vs. State of Tamilnadu, Criminal Appeal No. 1100 of 2009, decided on 27.11.2018**, it was observed by Supreme Court that in some cases delay in registration of FIR is inevitable. Even a long delay can be condoned if witness has no motive for falsely implicating the accused.

34. In the present case, it is clear that the deceased has sustained firearm injuries at vital parts of his body and soon after the incident he was taken to Government Hospital, Kasganj and on the same night he was referred to Medical College, Aligarh. Thus, it is apparent that there was no occasion on the part of complainant to lodge report on the day of incident as he was attending the deceased. In such facts and circumstances, it is quite natural that first priority of the family member/relative of the deceased would be to save the life of the deceased and not to rush to police station to lodge FIR. PW-1 (Abid Hasan)/complainant has given sufficient and reliable explanation that on the next day when he came to his house, he reported the matter to the police by submitting written Tahreer Ex. Ka-1. In the attending facts and circumstances, this version of PW-1 is quite convincing and there is nothing to doubt this version. As the delay in lodging the FIR has been explained by satisfactory and reliable evidence, no adverse inference can be drawn against the prosecution case on account of delay in lodging the FIR.

35. In view of the above observations, we are of the opinion that conviction of the appellant-accused (Guddu) under Sections 302, 384 of IPC and Section 25/27 of Arms Act is based on evidence

and the trial court was justified in convicting the appellant-accused.

36. Accordingly, the appeal is, hereby, **dismissed**. The conviction and sentence of the accused-appellant (Guddu) in Session Trial Nos. 94/2011 arising out of Case Crime No.663 of 2010, under Section 384 and 302 IPC and in S.T. No.95 of 2011 arising out of Case Crime No.666/2010, under Section 25/27 of Arms Act, is affirmed.

37. Sri Abhishek Kumar Jaiswal, learned Amicus Curiae shall be paid Rs.25,000/- as fee within a month from the date of production of a copy of this judgment, for assisting the Court.

(Devendra Singh-I,J.) (Chandra Dhari Singh,J.)

February 6, 2026
Sanjeet