HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 675 of 1985

Naresh Babu Alias Ram Babu And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Ayush Mishra, Durga Prasad Tiwari, K.M.Misra, M.Islam, Nand Kishor Mishra, Prabha Shanker Mishra, Rajeev Chaturvedi, Ramesh Kumar, Saurabh Basu, Shilpa Ahuja, Shrawan Kumar Pandey, Sushil Kumar Dubey
Counsel for Respondent(s)	:	Dga, G.P.Dixit

Court No. - 46

Judgment Reserved on 29.01.2026

Judgment delivered on 16.02.2026

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Delivered by Jai Krishna Upadhyay, J)

1. Heard Sri Saurabh Yadav, learned counsel for the appellant no. 2, Satish Kumar @ Shailendra and Sri G.N. Kanaujia, learned A.G.A.-I for the State and perused the trial court record.

2. This Criminal Appeal has been preferred against the judgment and order of the Additional Sessions Judge / Special Judge (E.C. Act), Etawah dated 15.03.1985 in Sessions Trial No. 129 of 1984, Case Crime No. 65 of 1984, convicting and sentencing the appellants, Satish Kumar alias Shailendra Kumar to undergo imprisonment for life under Section 302 IPC and appellant, Naresh Babu alias Ram Babu to undergo imprisonment for life under Section 302 read with Section 34 IPC.

3. During pendency of this appeal, the appellants no. 1, namely, Naresh Babu, died. Hence the appeal filed on his behalf was dismissed as abated and appeal has been heard only for appellant no. 2 – Satish Kumar.

4. The case of the prosecution is that the deceased, Devendra Kumar, his sister, P.W.-1, Smt. Shashi Prabha (complainant) and the accused, Naresh Babu alias Ram Babu and his son accused, Satish Kumar alias Shailendra Kumar, belong to village-Rampura, P.S.- Bakewar, District- Etawah. The house of the accused is adjacent to

and to the west of the house of deceased, Devendra Kumar Dubey. A well is situated in front of the house of deceased, Devendra Kumar, from which the people living in neighbouring houses draw water and where they take baths. The water from this well flows towards the west through *Kacha Nali*. This *Nali* turns towards North near the house of Shiv Narayan. The main door of the house of the accused opens in the west on to the pathway, which leads from the north to south. Two years prior to the incident, there was no door on the north side of the house of accused, Naresh Babu and Satish Kumar. The door in the northern side shown by point 'G' in the site plan (Ext. Ka-12) was opened by the accused about 1 1/2 - 2 years prior to the incident and at the time of the marriage of Km. Mamta, daughter of Naresh Babu. Just after opening the Door 'G' *Chabutra* was also constructed towards north. The accused thereafter planted flower plants and had fixed a grass cutting machine and had thus started using the land situated to the north of their house, to the west of the well and to the south of the said *Nali*. The accused considered that the said *Nali*, which flows water from the well towards west, was a nuisance to the user of the said land, and therefore, they had asked Devendra Kumar Dubey to flow water of the well towards east. With this end in view, accused, Naresh Babu, had obstructed to the flow of water through the said *Nali* by collecting a heap of earth one day prior to the incident of murder. As a result of this obstruction in the *Nali*, the water started spreading in the nearby land.

5. On the date of occurrence that is 29.02.1984 when deceased, Devendra Kumar, observed obstruction to the flow of water at the time of drawing water from the well for domestic issues at about 10 a.m., Devendra at once went at the place of obstruction and started removing the obstruction by his foot, so that the water could flow through the *Nali*. Devendra Kumar had been able to remove only about half of the obstruction when both the accused reached there, passing through the northern door of their house. Both the accused told Devendra Kumar that the obstruction must not be removed. At this Devendra Kumar said that the water had been flowing in the past towards west through his *Nali* and therefore, it shall continue to flow in the same manner. Accused, Naresh Babu Alias Ram Babu, told Devendra Kumar Dubey not to remove the obstruction and if tries, he would be killed. Hearing this threat, Smt. Shashi Prabha, P.W.1, who was sitting on the *Chabutra* situated to the north of the house of the deceased, stood up and raised alarm. Hearing noise, witnesses, Jai Ram, P.W.-2 and Tijoli, had reached towards the north of the House of P.W.-2, Jai Ram and Ram Pratap, had reached towards the south of the house of Shiv Narayan. In the meantime, accused, Naresh Babu, took out country made pistol from the *phent* of his *dhoti* and saying that these people would not be able to protect, attempted to fire with his country made pistol with a view to kill Devendra Kumar, but the same mis-fired. Accused, Satish Kumar, then took out country made pistol, which was in his possession and fired a shot at Devendra Kumar. Devendra Kumar was hit by this shot on the left side of his chest. He put his right hand at this wound and ran towards the house of Jai Ram. Devendra Kumar entered the house of P.W.2, Jai Ram, and fell

down at the *Takhat* lying in the *Barotha*. Devendra Kumar died at the Takhat within one minute of falling down at it.

6. P.W.-1, Smt. Shashi Prabha, the real sister of deceased, Devendra Kumar, wrote a report about the occurrence soon after the occurrence and sent it to police station through Rajesh, her sister's son. Rajesh had handed over this written report at P.S.- Bakewar at 11:45 a.m on the same day i.e., 29.02.1984, the distance of police station, Bakewar from the place of occurrence being about 8 km. On the basis of this written report a case under Section 302 IPC was registered against the accused, Naresh Babu and Satish Kumar.

7. The investigation of the case was entrusted to S.I. Surendra Singh Sengar who had started the investigation at once. After recording the statement of Head Moharir, Meva Lal and Rajesh Kumar, the Investigating Officer had left Police Station- Bakewar at 0:30 p.m by motorcycle along with Surendra Singh. He had also instructed S.I. Ram Ashrey, Constable, Rakesh Kumar and Constable, Vijay Singh, to reach the place of occurrence. He had reached the place of accident at about 1 p.m on the same day. He had recorded the statement of Smt. Shashi Prabha, P.W.-1, first of all. He had thereafter dictated inquest report to S.I., Surendra Singh. He had directed S.I., Ram Ashrey and Constable, Rakesh and Vijay Singh, to read the house of the accused with a view to arrest them. These persons had informed the Investigating Officer, Shri Sengar at about 3:30 p.m that the accused could not be arrested. After preparation of the inquest report and other necessary documents, the dead body was handed over to Shri Vijay Singh and Rakesh Kumar, Police Constable for taking the dead body to Etawah for autopsy. Investigating Officer had inspected the place of occurrence and prepared the site plan at about 5 p.m with the help of Smt. Shashi Prabha (complainant). He had taken the samples of ordinary wood and blood stained wood from the *Takhat* upon which the dead body of Devendra Kumar was lying.

8. He had thereafter recorded the statements of other eye-witnesses and the witnesses of inquest report. At About 11:30 p.m on the same day, S.O., Surendra Nath Mishra, Police Station - Bakewar had reached the village Rampura and had undertaken the investigation. Shri S.N. Mishra had attached the property of both the accused on 08.03.1984 with a view to compel them to appear in the court or before the police. The accused had appeared in the court of Magistrate on 09.03.1984. S.O. Sri S.N. Mishra, had recorded statements of accused in the District- Jail Etawah, on 19.03.1984 and had thereafter submitted charge sheet against both the accused on 29.03.1984.

9. The autopsy of the dead body of Devendra Kumar was conducted by Dr. K.C Jain of District Hospital, Etawah on 01.03.1984 at about 03:30 p.m. He had found the following ante-mortem injuries:-

External Injury -

Gun shot wound of entry 2.5 cm x 2.0 cm infront of chest. 8 cm away from left nipple

at 7'o clock position. Tatooing and blackening present.

Internal Injuries

(i) Fracture of sternum and fracture of 7th, 8th right rib, middle part.

(ii) Right and left pleura lacerated.

(iii) Right pleural cavity contains 8 oz. blood and left 1/2 oz. blood.

(iv) Right and left lungs lacerated.

(v) Pericardium lacerated.

(vi) Heart right border lacerated.

10. In the opinion of the doctor the death of Devendra Kumar was caused due to shock and hemorrhage resulting from the injuries caused to him. The doctor had also found one metallic bullet underneath the right side chest wall in between ribs and chest muscle. He had taken the bullet Ext. V out and put it under a sealed cover.

11. The charges mentioned above were framed against the accused, Naresh Babu and Satish Kumar on 24.07.1984 by Sri J.K. Mathur, Additional Sessions Judge, Etawah. Both the accused had denied the charges and had claimed to be tried. Their case is that they have been falsely implicated in this case due to enmity.

12. In support of the prosecution version, the prosecution has examined P.W.1, Smt. Shashi Prabha; P.W.2, Jai Ram; P.W.3, Dr. K.C. Jain and P.W.4 S.I., Surendra Singh Sengar.

13. P.W.1, Smt. Shashi Prabha, is real sister of the deceased. She is complainant of this case and also the eye witness of the occurrence. She has proved the written report, Ext. Ka-I. She has also proved *Janeoo* (Ext. I), Banyan (Ext. II), underwear (Ext. III) and sweater (Ext. IV) for which deceased, Devendra Kumar was wearing at the time of occurrence. She stated that:-

(i) it was about a year ago on 29.2.1984 she was sitting on the *Chabutra* situated to the north of my house. A day before the incident, Naresh Babu had blocked the *Nali* (drain*)* by making a mud dam, due to which the water started spreading in the entire street instead of going towards the west in the drain. Devendra, while filling water on the day of the incident, said that what kind of dam have you made, the water keeps spreading. Saying this, Devendra started removing the mud from the drain dam with his feet so that the water could pass through the *Nali* (drain.

(ii) The accused came out of the newly broken door of their house and reached near the drain dam in the street and started saying what are you doing, the dam will not open. Devendra said what kind of justice is this, the water has always been flowing from here and will continue to flow now. Ram Babu accused said that the dam will not

open otherwise we will kill you. Meanwhile Naresh Babu accused took out a pistol from the waist of his dhoti saying will these people save you and fired from the pistol but the pistol did not go off. At the same time Satish accused fired from the pistol which hit Devendra in the chest. After the shot, Devendra ran towards the east with his right hand on his chest and fell on the *Takhat* lying in Jairam's veranda. I followed him and saw that Devendra's both hands were on the injured part of his chest, he died within a minute of my arrival. Jai Ram, Tijoli and Ram Pratap came upon my screams; all three had witnessed the incident.

(iii) After some time, many more women arrived at Jairam's house.I returned home and wrote a report, which is in front of me and is signed by me. (Exh. A-1 inserted in the report). The report was sent to the police station through my sister's son Rajesh. My brother Devendra was murdered around 10:00 in the morning.

(iv) Due to the dam, the *Nali* (drain) water had spread into the street to the north. It had not spread to the south. Animals crossing the drain caused some mud to accumulate around it. The plaintiffs had been relieving themselves in the area north of their house, requiring them to clean the water. Therefore, the defendants had asked Devendra to divert the well water to the east so that their land would remain dry. There was no blood from the spot of the incident to Jairam's *Takhat.*

(v) None of the accused loaded the cartridge in his pistol in front of me. When Satish came out of his door, he was not holding a pistol in his hand. I could not see from where he took out the pistol at the time of the incident. It is wrong to say that I did not see the incident. It is also wrong to say that the report was written to the Inspector after the Inspector reached the village. The day Devendra was killed was Shivratri and Devendra did not eat anything that day. Devendra woke up on the night between 28th and 29th and ate 1 1/2 rotis at about 1 1/2 - 2 o'clock in the night.

14. P.W.2, Jai Ram, is also the eye witness of the occurrence. The house of Jai Ram is situated at the distance of about 30-33 paces from the place of occurrence. He stated that :-

(i) It was about 11 months ago, around 10:00 a.m. I was sitting in the *Barotha* (veranda) of my house. Shashi Prabha and Munnu shouted, "Runners are killing our brother." From the *Barotha* (veranda), I came to the paved lane in front of my door. Tijoli immediately followed me. Naresh Babu, the accused, present in court, said, "Will the villagers save him?" Naresh Babu fired a shot, but it made no sound. The shot was aimed at Devendra. Devendra leaned back slightly, and Satish, the accused, fired from his pistol or something else lying in his handkerchief, hitting Devendra in the chest. Devendra placed his right hand on the bullet wound, ran into my *Barotha* (veranda), and collapsed on the *Takhat.*

(ii) The drain of Rambabu's house is located on the west side. This is where his house's water flows. The water from his house does not flow into the drain where the

dam was installed and the incident occurred. This drain is located near the western door.

(iii) As per my knowledge, there was no dispute between Devendra and the accused regarding the drain before the incident. Ram Babu's northern *Chabutra* had begun to expand. He would clean the drain and apply the mud from it to his *Chabutra,* raising the *Chabutra* higher and preventing water from seeping through.

At that time, the *Nali* (drain) was closed and water was filled in the street on the north side. The water was spread out near the dam on the north side of the *Nali* (drain), not full. At the little east of the dam, in the lane towards the north, about one hand of space was dry, the rest was covered with mud. This dry space was on the edge of the southern wall of Shivcharan Nai. I saw Devendra running, but I did not see whether he ran through a dry place or a wet place. The soil of the street was a bit wet.

(iv) I had not called Devendra at the time of the incident, he ran away on his own. I did not give this statement to the Inspector that "We both said come here, Devendra and took him to the *Takhat* of my *Baithak* room." How did the Inspector write this in my statement, I do not know where I was standing, the *Tijoli* was standing there, Ram Pratap was in the west direction of the accused, Devendra and when Devendra came and lay down on my *Takhat,* I did not see any scratch/mud on his feet.

(v) It is wrong to say that Devendra was shot in my *Baithak* room on the same *Takhat* on which his body was lying. It is also wrong to say that Devendra was shot close to his body, but rather from about a yard away. It is wrong to say that I am falsely implicating the accused. It is wrong to say that I am misrepresenting the time of the incident.

15. P.W.3, Dr K.C. Jain, had conducted the autopsy of the dead body of Devendra Kumar on 01.03.1984 at 3:30 p.m. He has proved the bullet (Ext. V), which was recovered from the body of Devendra Kumar. He has also proved label (Ext. Ka-2) pasted on the packet, inside which the bullet was under sealed cover. He had taken the apparels etc. (Ext. I to IV) of Devendra Kumar into possession and had prepared a list (Ext. Ka-3) of these articles. He has also proved post-mortem report (Ext. Ka-4).

16. P.W.-4, S.S. Sengar is the Investigating Officer. He has proved the inquest report (Ext. Ka-7), Chalan-nash (Ext. Ka-8), photo-nash (Ext. Ka-9), letter written by the Investigating Officer to the C.M.O., (Ext. Ka-10) and to R.I. Police Etawah (Ext. Ka-11) in connection with holding autopsy of the dead body of Devendra Kumar. He has further proved the site plan (Ext. Ka-12), memo (Ext. Ka-13) regarding taking into possession of the samples of ordinary and blood stained wood from the Takhat on which the dead body was lying. The sample of ordinary wood of Takhat (Ext. VI) and sample of blood stained of Takhat (Ext. VII) have also been proved by him. He has also proved charge sheet (Ext. Ka-15) and the memo regarding attachment of the property of accused under section 83 Cr.P.C Chik

F.I.R (Ext. Ka-16) and the G.D. (Ext. Ka-17) regarding registration of the case under Section 302 IPC against the accused have also been proved by him.

17. The apparels etc. (Ext. I to IV) of the deceased, Devendra Kumar, sample of blood stained *takhat* (Ext. VII) and ordinary wood (Ext. VI) of *takhat*, bullet (Ext. V) were sent to the Forensic Science Laboratory, U.P., Agra on 05.09.1984 through special messenger. Learned A.D.G.C has also produced the letter (Ext. Ka- 6) of the Joint Director of the State Laboratory and the report Ext. Ka - 5 regarding chemical examination of the said articles (Ext. I to IV, Ext. V and Ext. VII). The chemical examination revealed that sample of wood (Ext. VII), underwear (Ext. III), *banyan* (Ext. II) and jersey (Ext. IV) were stained with human blood and that bullet (Ext. V) was also stained with blood.

18. Although the accused had taken a specific defence case, yet they had not lead any evidence in defence. The question to the prosecution witnesses in cross-examination and the statements of accused under section 313 Cr.P.C lead to the conclusion that the accused did not disputed the fact that Devendra Kumar was killed by bullet. They, however, dispute the time and place of occurrence. Their case is that Devendra Kumar was killed in the night between 28-29.02.1984 at the very place where his dead body was lying, that is in the *baithak* of Jai Ram, on account of his illicit relationship in that household.

19. Learned counsel for the appellant has submitted that :-

(i) FIR is ante timed. He has pointed out that the dead body was handed over at 3:30 pm on 29.02.1984 to the constable for taking at the police station, but the same reached to the police line Etawah on 01.03.1984 and on the basis of this fact, he submitted that the time mentioned in the inquest report about handing over the dead body is false and the time of lodging of FIR is also false and ante time.

(ii) Non examination of independent witnesses namely Ram Pratap and Tijoli, makes prosecution case unreliable.

(iii) Motive of occurrence cannot be established because there is material contradiction in the statement of PW-1 and PW-2 and site plan.

(iv) Place of occurrence is doubtful because according to eye witness, place of occurrence is land around a drain *(Nali)* which became wet on account of spreading of water from the drain *(Nali)*, but according to PW-2, no mud was seen on feet of the deceased.

(v) The fact that no blood was found on the land situated between point 'B' (where Devendra Kumar was hit by bullet) and on point 'C' (where the dead body of Devendra Kumar was found) when the distance of place 'B' to place 'C' is about 30-35 paces, creates doubt regarding the place of occurrence.

(vi) There is contradiction in the statements of PW-1 and PW-2. PW-1 had mentioned

in the written report that Naresh |Babu and Sastish Kumar had come to the place of occurrence with the country made pistols in their hands but in the Court he has stated that Satish Kumar was not having country made pistol in his hand when he reached at the place of occurrence.

(vii) PW-2 in his statement under Section 161 Cr.P.C. had stated that Satish Kumar had loaded the country made pistol and had fired by that pistol, but in the Court he stated that he has not seen Satish Kumar loading the country made pistol.

20. On the other hand, supporting the impugned judgment and order, learned AGA has argued that :-

(i) Prompt FIR was lodged by the informant and also the accused-appellant was named in the FIR. Motive was also duly proved by the prosecution.

(ii) So far as non examination of independent witnesses is concerned, PW-2, Jai Ram, is an independent eye witness. Further, it is not the law that every independent witness cited in FIR should be examined.

(iii) The challan lash (Ex. Ka-8) shows that the distance of police line, Etawah from the place of occurrence is 34 KM. It is quite possible that no arrangement could have been made for carrying the body on 29.02.1984. In any case, the delay, if any, in carrying the dead body from the place of occurrence after inquest to the police lines, Etawah does not create any doubt about the time at which the FIR was lodged. Therefore, FIR is not ante timed.

(iv) PW-1 and PW-2 are eye witnesses of the case and they fully proved the prosecution case. There is no material contradiction in the statements of both the witnesses. Minor contradictions, if any, are ignorable.

(v) Prosecution has rightly proved its case beyond reasonable doubt. Therefore, the appeal lacks merit and deserves to be dismissed.

21. We find on considering the statement of PW-1 (Shashi Prabha) and PW-2 Jai Ram alongwith the evidence that the prosecution's theory regarding motive is not entirely convincing as obstruction of *Nali* (drain) would cause water to flood the accused person's own land, situated to the North side of their house, rendering it less useful.

22. We also noticed that account given by PW1(Smt. Shashi Prabha, sister of deceased) suffers from a serious infirmity. According to the prosecution, PW1 witnessed the incident from Point D [chabutra of her house (Ex.Ka.12)], while the deceased was allegedly shot at Point B(Ex.Ka.12). It is, however, evident from the site plan (Ex.Ka.12) that a structure*(chappar)* lies between these two points. The presence of such an obstruction makes it doubtful whether PW1 could have had a clear and unobstructed view of the occurrence. This circumstance, being material in nature, erodes the credibility of PW1's evidence.

23. The most important factor which creates substantial doubt in the prosecution case is that Point B in the site plan, where the deceased was allegedly hit by the firearm, and Point C, where the body was ultimately found, are shown by the evidence on record to be separated by approximately 30–35 paces, yet no blood stains were discovered along this stretch. If indeed the deceased had sustained firearm injuries at Point B and thereafter collapsed at Point C, it would be natural to expect blood stains along the intervening path. The complete absence of such blood marks casts a doubt on the prosecution version of events. Then again, on a careful consideration of the evidence placed before this Court, we notice that Point B (place where deceased was shot) was admittedly wet and muddy owing to drain(*nali)*, yet witnesses categorically stated that no mud was found on the feet of the deceased. This assertion stands in direct contradiction to the natural condition of the spot. The absence of mud on the feet of the deceased, despite the alleged presence at such a location, creates a serious doubt regarding the veracity of the prosecution version.

24. Another circumstance which materially weakens the prosecution case is that, the post-mortem report clearly indicates that the firearm injury was inflicted from a very close range (2.5 cm x 2.0cm) in front of chest leaving tattooing and blackening and resulting in fracture of sternum and fracture of 7^{th}, 8^{th} right rib and middle part. In such a situation, it is highly improbable that the deceased, having sustained a close-range gunshot wound of such severity, could have walked or moved further to cover this distance. The natural and immediate consequence of such an injury would have been collapse at or near the place of firing. The absence of any explanation from the prosecution as to how the deceased traversed this distance further weakens its case.

25. There is considerable uncertainty about the place at which incident took place and when the place of occurrence itself becomes doubtful, the entire prosecution case loses its foundation ***(Ramsewak and Others v. State of M.P., (2002) 11 SCC 259).*** It is the duty of the prosecution to prove the scene of crime with certainty, since it forms the basis for evaluating witness testimony. If the location of the incident cannot be fixed beyond reasonable doubt, the prosecution story becomes unreliable.

26. A material contradiction emerges in the statements of PW-1 and PW-2 regarding the role of appellant, Satish Kumar. PW-1, in the written report, had categorically mentioned that Naresh Babu and Satish Kumar came to the place of occurrence with country-made pistols in their hands. However, in his deposition before the Court, he stated that Satish Kumar was not carrying pistol when he reached the spot. Similarly, PW-2, in his statement under Section 161 Cr.P.C., had asserted that Satish Kumar loaded the country-made pistol and fired from it, but in Court he admitted that he had not seen Satish Kumar loading the pistol. These contradictions of the prosecution story cast doubt on the reliability of the witnesses and weaken the case against the accused.

27. The foregoing discussion leads us to conclude that the trial court did not consider certain material aspects apparent from the evidence and there was not complete or comprehensive appreciation of all the features of the case which, taken together, cast a reasonable doubt on the prosecution version. The findings of the trial Court are not based on proper application of the material evidence and are hereby set aside.

28. In the view of the facts and circumstances discussed above, we are of the opinion that prosecution has failed to establish its case beyond the reasonable doubt. Hence, the benefit of doubt would have to be extended to the accused-appellant no. 2, Satish Kumar. Consequently, the appeal deserves to be allowed regarding appellant no. 2, Satish Kumar. The judgment of the trial court is set aside regarding appellant no. 2, Satish Kumar. The appellant no. 2, namely, Satish Kumar is acquitted of all the charges for which he has been tried.

29. The appeal is allowed qua appellant no. 2, Satish Kumar.

30. Appellant no. 2, Satish Kumar, is on bail. His bail bonds are cancelled and securities are cancelled.

31. Let a certified copy of the judgment alongwith trial court record be sent to the concerned Chief Judicial Magistrate/Trial Court for compliance.

February 16, 2026
S.K.S.

(Jai Krishna Upadhyay,J.) (Siddharth,J.)

Digitally signed by :-
SUNIL KUMAR SINGH
High Court of Judicature at Allahabad