



2026:AHC:66564-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS DEFECTIVE No. - 61 of 2026

Anujesh Pratap Alias Narendra Kumar

.....Appellant(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Bhupendra Kumar Yadav, Krishna Kant Yadav
Counsel for Respondent(s)	:	G.A.

Court No. - 43

**HON'BLE SALIL KUMAR RAI, J.
HON'BLE DEVENDRA SINGH-I, J.**

(Order on Criminal Misc. Delay Condonation Application Nos. 01 of 2026)

The present appeal under Section 413 B.N.S.S. has been filed against the judgment and order dated 21.11.2025 passed by Additional Sessions Judge/Additional Special Judge (POCSO), Court No.2 Firozabad in Session Trial No.600 of 2013 arising out of Case Crime No.323 of 2012 under Sections 307/34, 326/34, 307 & 326 I.P.C, Session Trial No. 601 of 2013 arising out of Case Crime No.362 of 2012 under Sections 25/27 Arms Act and Session Trial No. 602 of 2013 arising out of Case Crime No.415 of 2012 under Sections 25/27 Arms Act, Police Station Sirsaganj District Firozabad. Through the aforesaid judgment, the trial court has acquitted the accused / opposite parties.

The appeal is reported to be beyond time by 26 days.

The delay has been satisfactorily explained in the affidavit filed in support of the delay condonation application.

The delay condonation application is allowed.

The delay in filing the appeal is hereby condoned.

Office to allot regular number to the appeal.

(Order on Memo of Appeal)

Heard the counsel for the appellant and the A.G.A. for the State.

The prosecution case is that at 07:15 a.m. on 18.05.2012, the opposite parties / accused abused Kamal Singh and the appellant, who is the nephew of

Kamal Singh, and when Kamal Singh protested, the opposite parties fired at the appellant and Kamal Singh injuring them. The opposite parties fled from the scene thinking that the injured had died. The first information report was registered on the same date at 07:00 p.m. on 18.05.2012 at the instance of the son of Kamal Singh.

The first information report registering Case Crime No. 323 of 2012 was registered under Section 307 IPC. After investigation, a charge sheet was filed against opposite parties under Sections 307/34, 326/34, 307 and 326 IPC and also under Sections 25/27 of the Arms Act against the opposite party nos. 4 and 5, i.e., Saurabh Kumar and Varun Kumar. The charge sheets under Sections 25/27 Arms Act were occasioned by the recovery of weapons allegedly on the disclosures of opposite party nos. 4 and 5. As the matter was cognizable by the session court, the concerned Magistrate remitted the cases to the session court for trial. Charges were framed against opposite parties under Sections 307/34, 326/34, 307 & 326 IPC and 25/27 Arms Act. The opposite parties denied charges and demanded trial.

To prove its case, the prosecution examined the first informant as PW-1, the injured Kamal Singh and Narendra as PW-2 and PW-4 respectively, the alleged eye-witnesses who belonged to the same family as that of the injured as PW-6, PW-7 and PW-8. The doctors who examined the injured were examined by the prosecution as PW-3 and PW-11. The Investigating Officers and the FIR writer were examined by the prosecution as PW-5, PW-9 and PW-10.

In his testimony, PW-1 denied that he was present on the spot when the crime was committed and stated that he had narrated the incident and named the accused on the information given by the villagers. PW-2, who was one of the injured, testified that they were fired at but denied that the opposite parties had abused the injured. PW-2 also denied that he had seen the accused firing at him or PW-4. Similarly, PW-4 also in his testimony stated that the assailants had covered their faces while firing at them, therefore, he and the other injured, i.e., PW-2 could not identify or see the persons who were firing at them. PW-6 who is the daughter of PW-2 also denied having seen the opposite parties, i.e., accused, firing at the injured. Similarly, PW-7 also denied the said fact. PW-1, PW-6 and PW-7 have stated in their testimonies that they reached the spot after the incident and saw that PW-2 and PW-4 were injured by the bullets fired at them. PW-1, PW-2, PW-4,

PW-6 and PW-7 were declared hostile by the prosecution and were permitted to cross-examine the aforesaid witnesses. However, the trial court notes in its judgment of acquittal that the prosecution was not able to elicit anything of significance from the said witness in their cross-examination. The memorandum of appeal challenging the judgment of the trial court does not state or refer to any recital in the evidence of the aforesaid witness which would support the prosecution case.

The only witness examined by the prosecution who stated that he had seen the accused firing at the injured is PW-8 who is the son of PW-7. PW-8 in his testimony stated that the accused were armed with rifles and country-made pistols and indiscriminately fired at PW-2 and PW-4 injuring the aforesaid persons. The trial court has held the witness unreliable on the ground that there were major contradictions between the testimony of PW-8 and other witnesses. Further, the testimony of PW-8 was not corroborated either by the site plan or other documents on record. The trial court has noted that the site plan does not corroborate the claim of PW-8 regarding the direction from which the accused had come to fire at the deceased. Further, the site plan also does not show the presence of the injured on the spot. It is noticeable that even though PW-8 has testified that the accused had indiscriminately fired at the injured after abusing them, no recovery of any empty cartridge or any other incriminating material was made by the police from the grove where the injured were allegedly sitting when they were fired at by the accused. The trial court has also noted that the testimony of PW-8, that the accused had abused PW-2 and PW-4 is also not corroborated by the testimony of PW-2 and PW-4, who have denied that the accused had ever abused them.

It is also noticed that the injured - appellant who was examined by the prosecution as PW-4 in the trial court has stated that he could not identify the assailants as the assailants had covered their faces. The aforesaid testimony of PW-4 contradicts the claim of PW-8 regarding identification of assailants. The trial court has also taken note that in his testimony PW-8 has stated that he had told PW-1 about the incident and the fact that he was the eye-witness of the incident. The first information report which was registered at the instance of PW-1 does not contain the name of PW-8 as eye-witness to the incident. On the aforesaid grounds, the trial court has rejected the testimony of PW-8 and has held his testimony unreliable.

Apart from the testimony of PW-8, the prosecution relies on the recovery of the arms on the disclosure statements of opposite party nos. 4 and 5. The recovery of the arms allegedly used in the crime has been made from an open public place and there is no independent witness from the public of the said recovery. The trial court records that there is no entry in the general diary regarding the fact that the accused were escorted to the place from where the arms were allegedly recovered on the disclosure of opposite party nos. 4 and 5. It has been stated that the arms were sent for examination to the Forensics Laboratory but no forensic reports have been submitted and the trial court has noted that it could not be proved by the prosecution that the arms allegedly recovered on the disclosure of opposite party nos. 4 and 5 were operable.

After noting the aforesaid shortcomings in the prosecution case, the trial court has rejected the prosecution case and acquitted the accused on the ground that the prosecution has not been able to prove its case beyond doubt.

We do not find any perversity or any other illegality in the assessment of evidence by the trial court. The view taken by the trial court is a plausible view and is based on evidence. No grounds either of fact or law or regarding assessment of evidence by the trial court arise in the present appeal.

For all the aforesaid reasons, we do not consider it a case to re-assess the evidence at the instance of the appellant after summoning the records of the case.

The appeal is ***dismissed*** summarily.

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

March 30, 2026

Vipasha

(Devendra Singh-I,J.) (Salil Kumar Rai,J.)