



2026:AHC:54773-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 383 of 2006

Mahendra And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Anjali Rajpoot, Anjaly Rajpoot, D.R. Choudhary, D.R.Azad, J.H.Khan, Kuldeep Kumar, M.Islam, P.K.Rajpoot, Sachin Kanauiya, Sanjay Kumar Yadav, Sanjay Srivastava, Saurabh Gour
Counsel for Respondent(s)	:	Govt. Advocate

AND

CRIMINAL APPEAL No. - 724 of 2006

Pappu @ Mahipal

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	D.R. Choudhary, Kuldeep Kumar, P.K.Rajpoot, Pahal Singh Chauhan, R.R.Chaudhary
Counsel for Respondent(s)	:	Govt. Advocate

Judgement reserved on 22.01.2026

Judgment delivered on 18.03.2026

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J**(Delivered by Jai Krishna Upadhyay, J)**

1. Heard Sri Sachin Kanaujia, learned counsel for the appellant no.1 who also appeared as Amicus Curiae appointed to argue appeal on behalf of appellant no. 2 in Criminal Appeal No. 383 of 2006 and in connected Criminal Appeal No. 724 of 2006, also heard Mr. Pawan Kumar Srivastava, learned AGA for State and perused the trial court record.

2. The present criminal appeals have been preferred against the Judgement and order dated 16.01.2006 passed by Additional Sessions Judge, Court No. 3, Bulandshahar, in Sessions Trial No. 1059 of 1995 (State vs. Mahendra and others) u/s 302 IPC, Police Station Siyana, District -Bulandshahar and thereby convicting the appellants under section 302/34 IPC and sentencing them for life imprisonment and fine of Rs. 5,000/- each and in default of payment of fine, one year's further R.I.

3. A brief narrative of the prosecution story as discernible from the F.I.R is that on 24.8.1995 at 22:45 hours, one Sri Rakesh of village, Makdi, within the jurisdiction of Police Station Siana, District Bulandshahr, lodged a written report with the S.H.O., Police Station- Siana, to the affect that about two and half months(2-1/2) ago some scuffle took place between his father, Fateh Singh and Mahendra of his village over a certain issue and Mahendra had threatened his father with dire consequences and he started harboring enmity against his father. Today, he and his grand-father, Shiv Charan, uncle, Chandra Kiran and father Fateh Singh, were returning to their home after listening the speech of political leaders and when at about 5.00 p.m., they reached at Tri-crossing in front of the house of Amar Singh, who is the uncle of accused, Mahendra, then the accused, Mahendra, and Bankey of his village and Nempal and Pappu Pandit came out of the hut of Amar Singh. They were armed with *Tamanchas*. All the four accused challenged his father, Fateh Singh and accused, Mahendra , exhorted by saying that Fateh Singh,

should not be permitted to escape. Upon this, he, his father, grand-father and uncle started fleeing away. His father was chased by all the four accused persons and they opened fire upon him from country-made pistols. After killing Fateh Singh all the accused fled away towards canal. In this episode Kanchhid and his son Ratan Singh may also be involved. A hue and cry was raised but on account of fear of the accused nobody dared to come there. The accused could also not be chased due to fear. The dead body of his father was lying in the field of Phool Singh, since, no conveyance was available. Due to fear, informant has come to the police station after hiding himself.

4. On the basis of this written report an FIR bearing case crime no. 161/95, under section 302 IPC was registered against the accused, Mahendra, Bankey, Nempal and Pappu and its substance was entered in G.D.No. 40 at 22:45 hours on 24.8.1995. The investigation was taken up by Sri Virendra Singh, the then S.H.O. Siana. During the course of investigation he recorded the statement of informant, Rakesh, and thereafter, proceeded to the spot accompanied with S.I. Jagdish Singh, and police constables, Kishan Singh and others. The inquest on the dead body of the deceased was conducted by S.I. Jagdish Singh under the supervision of Police Inspector, Virendra Singh. After inquest proceedings, the sealed dead body of the deceased was sent to mortuary for post-mortem through constable, Kishan Singh, and constable, Sunder Pal, along with necessary papers. The Investigating Officer collected blood stained and plain earth from the place of occurrence and the prepared memo thereof. He also collected 4 pairs of slippers belonging to the deceased and accused persons. They were sealed and memo thereof was prepared. The Investigating Officer inspected the place of occurrence. On 25.8.95 he recorded the statement of the other witnesses. After completion of investigation he submitted charge-sheet against the accused, Mahendra, Bankey and Nempal in the court of C.J.M., on 15.11.1995. Since, accused, Pappu Pandit @ Mahipal, could not be arrested and, therefore, his name was not included in the charge-sheet submitted against other accused persons.

5. The case against accuseds, Mahendra, Bankey and Nempal being exclusively triable by the Court of Sessions was committed to the Court

of Sessions by the learned C.J.M., Bulandshahr on 29.11.1995. Accordingly, it was registered as S.T. No. 105/1995 on 04.12.1995.

6. The accuseds, Mahendra, Bankey and Nempal, were charged for offence punishable under section 302/34 IPC on 19.01.1996. They denied the charges and claimed to be tried.

7. An application 16 B was moved on behalf of the prosecution to summon the accused, Pappu Pandit. This application was allowed on 21.3.1998 and accordingly accused, Pappu @ Mahipal, was summoned under section 319 Cr.P.C., on 05.09.2000. He was also charged for offences punishable under section 302/34 IPC. He pleaded not guilty and claimed to be tried.

8. During the pendency of the trial accused, Nempal, died and, therefore, trial against him was abated on 10.09.2001.

9. To prove the prosecution case the prosecution has examined, P.W.-1, Rakesh; P.W.-2, Chandra Kiran; P.W.-3, Constable, Sunder Pal Singh; P.W.-4, Virendra Singh, PW-5, Deputy S.P. and P.W.-6, Constable, Hetram Singh.

10. P.W.1, Rakesh, has proved tehrir report as Ex. ka-1. P. W.-4, Dr., M.K.Bansal, has proved post mortem report as Ex.ka 2. Sri Virendra singh has proved inquest report as Ex. ka 3, police form no. 13 as Ex. ka 4, photo lash as Ex. ka 5, letter to R.I., as Ex. ka 6, letter to C.M.O. as Ex.ka 7, memo regarding taking in possession of blood and plain earth as Ex. ka 8, memo regarding taking in possession of 4 pairs of slippers of the deceased and the accused as Ex.ka 9, site-plan as Ex.ka 10, charge-sheet as Ex.ka 11. P. W.-6, Constable, Hetram Singh has proved chik FIR as Ex.ka 12, report regarding weeding out of original G. D. as Ex.ka 13, carbon copy of G.D. no.40 dated 24.8.95 as Ex. ka 14. P.W.5 has also proved 4 pairs of slippers of the deceased and the accused persons as material. exhibits 1 to 4.

11. After closure of prosecution evidence, accuseds Mahendra, Bankey and Pappu Pandit and Mahipal were examined u/s 313 Cr.P.C. The accused, Mahendra, stated that the evidence tendered is false and a false

report was lodged. He was not present at the place of occurrence. The accused, Bankey, has also stated that the evidence tendered by the prosecution is false and a false report was lodged and false charge-sheet has been given. Accused, Pappu Pandit alias Mahipal, also stated that the evidence given by the prosecution is false and a false report was given and false charge-sheet has been submitted.

12. No evidence in defence was led by the accused persons.

13. Learned counsel for the accused-appellants submitted:-

(i) that the FIR is delayed and the prosecution has failed to explain the delay in lodging the FIR.

(ii) that PW-1, Rakesh is son of the deceased Fateh Singh and PW-2 – Chandra Kiran is brother of the deceased and they are highly interested witnesses and no other independent witness has been examined.

(iii) that PW-1, Rakesh in his statement has deposed that speech of a political leader Dharam Veer ended at 8:05 pm and it took about 1-1/2 hours to reach at the place of occurrence, and thus from his evidence, it is proved that the incident did not take place at 8:05 pm as alleged in the FIR.

(iv) that after sustaining injury no. 1, it was not possible for the deceased to run away up to the field of Phool Singh.

(v) that FIR is ante-timed because PW-6, constable Hetram Singh has admitted in his cross examination that it took about 10-15 minutes in preparing the chick FIR, and thereafter entry in GD was made which took 5-10 minutes.

14. Per contra, supporting the impugned judgment, learned AGA appearing for the State has submitted that there is no infirmity or illegality in the order impugned. The trial court has rightly convicted the accused persons. There were two eye witnesses produced by the prosecution and there is no material contradiction in the statements of PW-1 and PW-2. It was further submitted that prosecution has proved its case beyond reasonable doubt, therefore, this appeal lacks merit and is liable to be dismissed.

15. Having noticed the rival submissions to weigh their respective merit, it would be appropriate to first notice the testimony of the witnesses.

16. PW-1, Rakesh is informant of the case and son of the deceased. He stated that about 2 years and 2 months ago at about 5:00 pm, he, his father, uncle and his grandfather were returning after listening the speech of a political leader and when they reached in front of the house of a village person namely Lakshman, then accused Mahendra, Nempal and Pappu came out of the house of Lakshman with pistol in their hands and they ran towards his father and his father ran away towards south direction of the field of Phool Singh and then accused fired at his father who died on the spot. He stated that PW-2 – Chandra Kiran and his grandfather Shiv Charan witnessed this incident. After Mahendra allowed a girl to stay overnight at his residence, a dispute arose between Mahendra and father of infoirmant. Due to this, disagreement escalated into a conflict that has since resulted in ongoing enmity. The incident of fighting had occurred 2, 2-1/2 months before the death of his father. He has written tahrir of this incident and on his tehrir, FIR was lodged. He proved the tehrir as paper No. 4/A-1. In his cross examination, he admitted that in the FIR, he has not mentioned any dispute over the prosecution.

17. PW-2, Chandra Kiran stated that he know Mahendra, Banke, Nempal and Pappu. Banke is Mahendra's brother, Nempal is Mahendra's Aunt's son and Pappu is their friend. The deceased Fateh Singh was his elder brother. Before 2, 2/12 months prior to happening of this incident, Mahendra had kept the daughter of one Babu at his house for an overnight which has led to fight between them. Mahendra had threatened his brother. About 10 years and 2 months ago, his father Shiv Charan, his nephew Rakesh and his brother Fateh Singh went to listen speech of a leader. After listening the speech, they left for home at 5:00 pm. When he reached *tiraha* crossing with his brother, then near the house of Lakshman, four persons namely Mahendra, Pappu, Banke and Nempal came out of Lakshman's house with pistol in their hands. Mahendra challenged his brother saying that he could not be skipped today and all four persons fired at his brother Fateh Singh and they ran away towards the canal. Upon hearing the hue and cry, the villagers came on the spot. He stated that Rakesh and his father Shiv Ram witnessed the incident.

The incident occurred approximately 35-40 yards from his home. The accused surrounded them from all sides. He did not count how many shots were fired. They were present at the time of the incident. No one from the village had come. He further stated that his nephew has gone to lodge the FIR after about 5-1/2 hours after the incident. It is not known to him that who has gone with him to lodge the FIR.

18. PW-3, Suder Pal Singh, constable has stated that on 24.08.1995, he was posted at Siana police station. On that date, SHO – Virendra Singh (PW-5), Jagdish Singh S.I., and constable Kishan Singh arrived at the place of occurrence. S.I. Jagdish Singh prepared Panchyatnama and sealed the body and handed over the body to him for sending to mortuary for postmortem and after that the body was handed over to his family members.

19. PW-4, Dr. M.K. Bansal, Sr. Medical Officer of District Hospital, Bulandshahar, on 25.08.1995 at about 4.00 pm conducted post-mortem examination of the deceased, Fateh Singh. The deceased was aged about 40 years and had died one day before. He was average-built, blood was oozing from his right ear. Rigor mortis was present all over the body. The following ante mortem injuries were found on the dead body of the deceased:

(1) Fire arm wound of entry 1 c.m. x 1 c.m. x brain deep on back of head. 6 c.m. away and above from right ear, blackening and tattooing present.

(2) Fire arm wound of entry 1.5 c.m. x 1 c.m. x bone deep on left side neck. 4 c. m. away and below to left ear labule. Blackening and tattooing present.

(3) Abraded contusion 1.5 c. m. x 1 c.m. on right side face. 2 c. m. below right eye on lateral aspect.

(4) Fire arm wound of entry 3.5 c. m. x 3.00 c.m, x cavity deep on right side chest. About 20 c.m. below right nipple at 7' O clock position.

On internal examination right side occipital bone was fractured and membranes were lacerated. Brain lacerated and haematoma present near. Injury no. 1. Pleura was found lacerated. Right lung was lacerated. Heart

empty. One liter blood present in right pleural cavity. Paritoneum lacerated. 2 liters blood present on abdominal cavity. Semi-solid food material of 40 grams was found in the stomach. Intestines were lacerated at places. Liver was also lacerated. 2 metallic pieces recovered from injury no.1 (brain), one metallic piece was recovered from injury no.2(from left mendvil side) 30 small metallic pellets recovered from injury no.4. Death was due to shock and haemorrhage as a result of ante mortem injuries.

20. PW-5, Virendra Singh, I.O. of the case, has stated that on 24.08.1995, he was posted as Inspector In-charge of police station Siana. The FIR was lodged in his presence. Investigation of the present case was entrusted to him. After receiving the copy of the chick FIR, form of panchayatnama and other related documents, he reached at the place of occurrence. He recorded statement of witness in his presence on direction of Jagdish Singh, S.I., who prepared panchayatnama. He proved this document as Ex-ka-3 to Ex-ka-7 (Panchayatname and other related documents). He prepared Naksa Nazri and proved Ex-ka-10. After that he submitted charge sheet under Section 302/34 IPC.

21. PW-6, Hetram Singh, Constable, on 24.08.1995 stated that he was constable Clerk at that time. He prepared GD, chick FIR and proved as Ex-Ka-13 and Ka-14.

22. So far as the delay in lodging the FIR is concerned, the incident is alleged to have occurred at about 5:00 pm on 24.08.1995 and the FIR was lodged on 24.08.1995 at 10:45 pm. In the written report, it has been mentioned that due to fear of the accused persons and non availability of any conveyance, the informant came to the police station after hiding himself. Informant is the son of deceased and eye witness of the case has explained the delay in cross examination. He stated that after the incident, the information was given to the house inmates and thereafter he remained near the dead body for about an hour and when his family members came to the place of occurrence then he had gone to the police station after making arrangement of light near the dead body.

In Kilakkatha Parambath Sasi and others v. State of Kerala AIR 2011 SC 1064, it has been observed that:-

"when an FIR has been lodged belatedly, an inference can rightly follow that the prosecution story may not be true but equally on the other side, if it is found that there is no delay in the recording of the FIR, it does not mean that the prosecution story stands immeasurably strengthened."

However, mere delay in lodging FIR is not held fatal to the case of prosecution, but it is obligatory on the part of prosecution to explain delay satisfactorily and the Court must take notice of it in light of facts and circumstances of the case."

In State of Himachal Pradesh Vs. Gian Chand 2001 (6) SCC 71, wherein a three-Judge Bench of Supreme Court has expressed thus: -

"Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case."

Since sufficient explanation has been given by PW-1 regarding cause of delay in lodging the FIR, and therefore, there is no reason to disbelieve the credibility of the prosecution case.

23. So far as the argument of learned counsel for appellants that PW-1 and PW-2 are interested witnesses is concerned, it is true that PW-1 and PW-2 are related witnesses to the deceased. 'Related' is not equivalent to the 'interested'. A witness may be called interested only when they derives some benefit from the result of a litigation and seeing an accused person punished.

Law in this regard is settled that if witnesses are related friendly with the

deceased then their evidence cannot be discarded only on this ground unless other circumstances rendered same in worth of credit. So far the statement of PW-1 in his cross examination is concerned, he stated that “the speech of Netaji concluded about 8 P.M. and they reached the place of occurrence after about one to one and half hours thereafter” is concerned. It is to be noted that occurrence took place on 24.08.1995 and the examination-in-chief was recorded on 01.09.1997 but cross examination was deferred on the application of accused counsel and finally on 06.10.2005, his cross examination was conducted after more than 10 years and with the paucity of time, human memory becomes weak. The discrepancy which is not fatal for the prosecution case does not create any infirmity. It is further to be noted that in FIR, in his examination-in-chief and one time in his cross examination, PW-1 has specifically stated that time of occurrence is about 5-5:30 P.M..

PW-1 and PW-2 have stated that when the deceased reached in front of house of Lakshman then fire was shot upon him by the accused persons and when the Deceased started running away, then he was chased and after accosting him another rounds of fire were made upon him, as a result of which he fell on the ground in the field of Phool Singh and died. There is no suggestion in the statement of PW-1 that he was not present at the time of occurrence.

24. So far as the non-disclosure of motive in the FIR is concerned, it is settled legal principle that FIR is not an encyclopedia as contents of minutes.

In **CBI v. Tapan Kumar Singh (2003) 6 SCC 175; Hon’ble Apex Court** elaborately dealt with the need of an FIR. It was inter alia observed as follows: (SCC pp. 183-84, paras 20 and 22)

"20. It is well settled that a first information report is not an encyclopædia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given

must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.'

Therefore, an FIR is fundamentally a mechanism to set the investigative machinery in motion and is not intended to be an exhaustive encyclopedia of the crime. Legally, the informant is not required to provide a minute-

by-minute chronicle or identify all parties involved; rather, the document is sufficient if it discloses the commission of a cognizable offense that provides a "reason to suspect" for the police to act.

25. So far as ante-time FIR is concerned, there is no evidence on record from which it can be inferred that FIR was lodged anti-time. PW-6, constable, Het Ram Singh has proved the GD entry no. 40 at 22.45 pm as Ex-ka-14 and there is no contradiction in his statement and in the inquest report (Ex-Ka-3) which was conducted at 23:15 pm. The details of case crime number and sections were also mentioned. Upon perusal of the FIR, inquest report and other documents attached to inquest report, it cannot be inferred that FIR was ante-timed.

26. In the present case, as it is clear that the prosecution case is based on eye account of two eye witnesses and no major infirmity or inconsistency could be pointed out in their testimony. All the above stated factors are minor inconsistencies and do not affect the substance of testimony of PW-1 and PW-2. So far as the above stated inconsistencies are concerned, in all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal error of observations, namely errors of memory due to lapse of time or due to mental disposition, such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction creating a serious doubt about the truthfulness of the witnesses and other witnesses also make material improvement while deposing in the Court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, establishments or improvement on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be recited in its entirety. The Court has to form its opinion about the credibility of witness and record a finding as to whether his deposition inspires confidence. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. to the root of the case / materially affect the trial or core of the prosecution's

case, render the testimony of the witness liable to be discredited. [Vide **State Inspector of Police v. Saravananm & Anr**, AIR 2009 SC 152; **Arumugam v. State**, AIR 2009 SC 331; **Mahendra Pratap Singh v. State of Uttar Pradesh** (2009) 11 SCC 334; and **Dr. Sunil Kumar Sambhudayal Gupta & Ors Vs. State of Maharashtra**, JT 2010 (12) SC 287].

27. In the present case, no major contradiction or inconsistency could be pointed out in the statements of PW-1 and PW-2. As stated earlier, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of prosecution case, should not be made a ground on which ocular testimony can be rejected in its entirety. Court has to form its opinion about the credibility of witness and record a finding, whether his deposition inspires confidence. Court has to determine after examining the entire factual scenario whether a person has participated in the crime or has falsely been implicated. The informant or witness fully acquainted with the facts may lack necessary skill or or ability to reproduce details of the entire incident without anything missing from this. Some people may miss even the most important details in narration. They were named in FIR and no such reasons could be shown as to why these witnesses would depose falsely against the appellants. The instant case is required to be examined in the totality of circumstances and in the light of aforesaid legal propositions. In view of the evidence on record and aforesaid analysis of facts and evidence on record, we reach the inescapable conclusion that prosecution has succeeded in bringing home the guilt of the all the appellants.

28. We are of the view that the prosecution has successfully proved its case beyond its reasonable doubt against the accused-appellant. The trial Court has rightly convicted and sentenced the appellants, Mahendra, Bankey and Pappu @ Mahipal. Therefore, the impugned judgment and order of the trial court do not require any interference and are liable to be affirmed.

29. The criminal appeals are, accordingly, dismissed.

30. All the three appellants are on bail. Their personal bonds and surety bonds are cancelled. They be taken into custody forthwith and be sent to jail to serve out the remaining part of the sentence.

31. Let the certified copy of the order be transmitted to the trial court for compliance.

32. The trial Court record be also transmitted to the Court concerned.

33. Sri Sachin Kanaujia, learned Amicus Curiae has ably assisted this Court and Rs. 20,000/- to be paid to him as his remuneration from the High Court Legal Services Authority.

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

March 18, 2026
S.K.S.