



2026:AHC:126149-DB

Order Reserved On:-13.04.2026.

Order Delivered On:-08.06.2026.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3488 of 2005

Farukh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Along with :

1. Criminal Appeal No. 3839 of 2005:

Feema

Versus

State of U.P.

Counsel for Appellant(s)	: A.c. Srivastava, Mani Shanker Pandey, Manish Tiwari, Pushpendra Singh, S.k. Pandey, Samit Gopal, Samit Gopal(elevated), Saurabh Yadav
Counsel for Respondent(s)	: Ashok Kumar Nigam, Govt. Advocate, Satya Niwas Prasad

In Chamber

HON'BLE SIDDHARTH, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Siddharth,J.)

1. Heard Sri Saurabh Yadav, learned counsel for appellant; Sri Ashok Kumar Nigam, learned counsel for informant; Sri Prem Shankar Prasad, learned AGA for State-respondent and perused the trial court record and judgment & order of trial court.

2. The present criminal appeals have been filed against the judgment and order dated 30.07.2005 passed by the Additional Sessions Judge/Fast Track Court-II, Banda, in Sessions Trial No. 161 of 2003 (State v. Feema and Another), whereby the appellants were convicted under Section 302 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life along with a fine of Rs. 1,000/- each. They were also convicted under Section 324 read with Section 34 IPC and sentenced to one year's rigorous imprisonment. In default of payment of the fine, they were directed to undergo an additional three months' rigorous imprisonment. Both sentences were ordered to run concurrently.

3. The prosecution's case, in brief, is as follows: On 25-11-2002, the complainant—Ubaid Khan S/o Hanif Khan, a resident of Village Goyra, Police

Station- Mataundh, District Banda, filed a written complaint of First Information Report (FIR) at the Kotwali Nagar Police Station, Banda. In this report, he stated that on the date of the incident, 25-11-2002, he had travelled to Banda along with his elder brother Jameel, Ali Hussain and Zabbar, in his jeep to visit the market. After parking the jeep at the Cantonment Cross section, and having concluded their deal of selling grain at Lallu's commission shop (adhat) in Dilhaganj, they were walking back toward their jeep at approximately 2:15 PM. At that moment, Feema and Farooq sons of Mahjar, both residents of the same village, with whom the complainant had a long-standing enmity—arrived on a Rajdoot motorcycle bearing registration number UP-90 2772. With the intention to kill, they opened fire at the complainant's brother, Jameel, using country-made pistols held in their hands. The shots struck Jameel in the left side of his chest and his arm, causing him to sustain injuries and collapse to the ground. Another individual present nearby also sustained injuries. The sound of the gunshot attracted a large crowd, due to which the accused left their motorcycle and fled from the scene. After admitting Jameel to the hospital, the complainant arrived to file a report to register the same and take appropriate legal action. Based on the written complaint (Exhibit Ka-1) and pursuant to Report No. 43, recorded at 16:30 hrs on 25.11.2002, at the Kotwali Nagar Police Station (Banda), a case crime No. 661/2002 was registered against the accused u/s 307 of the Indian Penal Code (IPC).

4. The investigation of the case was given to Sub-Inspector (S.I.) Sabhapati Yadav. On 28.11.2002, vide report No. 34 recorded at 18:25 hours at the Kotwali Nagar Police Station (Banda), Shri R.K. Upadhyay (Station House Officer, Mataundh) informed that the injured victim mentioned in Crime No. 661/2002 u/s 307 IPC had succumbed to his injuries at a hospital in Kanpur. The body was brought to the village Goyra on 27.11.2002—following a post-mortem examination—where the final rites had already been performed. Consequently, the case crime No. 661/2002 was amended to Section 302 IPC from section 307 IPC. On 29-11-2002, Head Moharrir Akeel Ahmed prepared the memo regarding the blood stained Shirt (Kurta) of deceased Jameel, entry of which was made at report no. 28 time 10:15, date 29-11-2002 in GD of police station Kotwali Nagar, Banda that Qudoos Khan, Ali Hussain, Shamim, and Zabbar residents of village Goyra, PS- Mataundh, District- Banda. The blood-stained shirt (Kurta) of deceased Jameel was filed, which was sealed & stamped, and a medical examination of injured Jameel was conducted on 25-11-2002 at 2:45 hrs when he was brought to Government Hospital, Banda, and the injured Jameel (deceased) was admitted on 25-11-02. Medical examination of Santosh Dwivedi was conducted at 3:00 pm on 25-11-02. Upon receiving information regarding the death of the deceased, Jameel, at the Swarup Nagar Police Station in Kanpur Nagar, S.I. Harishankar, accompanied by his constables, proceeded to the L.L.R. Police Chowki, Kanpur Nagar. After collecting the documents pertaining to the inquest report from there, he along with constable Ramlakhan arrived at the mortuary and, on 26.11.2002, prepared the inquest report for the body of the deceased, Jameel and prepared the

photo of dead body and prepared a letter addressed to the Medical Officer of Kanpur Nagar regarding post-mortem examination, prepared a sample seal, and filled out Police Form No. 33. RI had prepared the letter addressed to Medical Officer, Kanpur Nagar. On 27-11-02, post mortem of the body of deceased was conducted at S.H.D. Hospital, Kanpur Nagar. On 10-12-02, S.S.I. had inspected the incident place related to Crime No.- 661/02 u/s 307, 302 IPC and had prepared the Site map.

5. On 10-12-2002, Inspector-in-Charge Shri V.K. Srivastava—accompanied by his team comprising Constables Dinesh Singh, Rajman Singh, Sabhajit Singh, and C.P. Pratap Singh, and traveling in a government jeep driven by Rajnarayan Mishra—departed from the police station at 9:35 AM. After concluding his official duties regarding the 'Tehsil Divas' proceedings at the Banda Tehsil, he arrived at the Aliganj Police Outpost. There, he received intelligence from an informant stating that an accused, named Feema, involved in the murder of Jameel Pradhan was traveling from the Kewatra intersection towards Bhuragarh, and was carrying a country-made pistol. Believing upon this information, he summoned S.S.I. Shri Ram Shankar who was engaged in investigation. Investigation Officer (I/O) arrived at the outpost. The Investigating Officer was apprised of the objective. Upon conducting a mutual body search of one another, it was confirmed that no one present was in possession of any illicit articles. Accompanied by the informant, the team proceeded to the location indicated by him; after parking the jeep at the Kewatra intersection, they reached a spot just short of the road leading to the 'Bachcha Jail.' At this point, the informant pointed out the suspect and then departed. The individual in question was apprehended right there—approximately 25 paces west of the Bachcha Jail Road Tri-junction, on the roadside verge—at around 7:45 hrs.

6. The arrested individual identified himself as Feema, son of Mahjar, a resident of Goyra Mugli, under the jurisdiction of Mataundh Police Station, District Banda. A body search yielded one country-made 12-bore pistol (Tamancha) found in his right hand, and one empty 12-bore cartridge shell along with one live cartridge recovered from his pant. Upon dismantling and inspecting the country made pistol, a 12-bore cartridge was found loaded inside, which was subsequently extracted. When asked to produce a license for the pistol and cartridges, he was unable to do so. He disclosed that he is a named accused in a case registered under Section 302 of the IPC. He further stated that he has an ongoing enmity with Jameel, a resident of his village; on 25-11-02, at 2:15 PM, he had shot Jameel Pradhan using this very country made pistol, while his brother, Farooq, had fired at him using a .315-bore country made pistol. Both of them had fled the scene on a motorcycle subsequently escaped through a narrow street. Subsequently, Jameel succumbed to his injuries at the hospital. He affirmed that this is the very country made pistol used in that incident, and the spent cartridge shell is also the original one from that event. He added, "I face a threat from the opposing party; therefore, I carry this pistol for my protection." Deeming the act a

cognizable offense punishable under Section 25 of the Arms Act, the recovered country made pistol, cartridges, and spent shell were sealed in a cloth and stamped in the presence of witnesses. Bystanders who had gathered at the incident place, intimidated by the situation, refused to come forward and testify. The memo was dictated to Sub-Inspector (S.I.) Ram Shankar on the spot and recorded under the light of a torch; upon completion, a copy of the Memo was handed over to the accused. The accused and the seized goods were brought to the police station together. Based on the recovery memo and Report No. 60 (dated 10.12.02 at 21:40 hours), Case Crime No. 693/02 under Section 25 of the Arms Act was registered against the accused, Feema, at Police Station Kotwali Nagar. The investigation of the case was given to S.I. Shri B.D. Verma. Upon completion of the investigation, he obtained sanction for prosecution from the District Magistrate, Banda, on 17.01.2003. He prepared a site map (Naksha Nazri) on 13.12.2002. On 27.12.2002, a charge sheet was submitted against the accused, Feema, under Section 25 of the Arms Act.

7. Upon the conclusion of the (Delivered by Hon'ble Siddharth, J.) investigation in Crime No. 661/2002, the Investigating Officer compiled the prosecution records; subsequently, V.K. Srivastava, SSO, Kotwali Nagar, Banda—who served as the subsequent Investigating Officer—filed a charge sheet against the accused, Feema, under Sections 302 and 307 of the IPC on 23-2-2003. On 26-9-2003, Shri Satish Chandra Sharma framed charges against the accused, Feema, under Sections 302/34 and 307/34 of the IPC. The accused denied the charges and demanded for trial.

8. On behalf of the prosecution, the statements of P.W.-1 Ubaid Khan, P.W.-2 Ali Hussain, P.W.-3 Nanke Singh, P.W.-4 Head Constable Akeel Ahmed, P.W.-5 Dr. A.K. Singh, P.W.-6 Qudoos Khan, P.W.-7 S.I. Harishankar, P.W.-8 Dr. D.S. Mishra, P.W.-9 Shri Ramshankar, P.W.-10 V.K. Srivastava, P.W.-11 Constable Sabhajit Singh, P.W.-12 Constable Dinesh Singh, and P.W.-13 Bhagwandas Verma were recorded. P.W.-1 proved the written complaint (Tehrir) of the First Information Report as Exhibit Ka-1; P.W.-3 Nanke Singh proved the 'Chik' F.I.R. regarding Crime No. 661/2002 as Exhibit Ka-2, and the copy of the General Diary (G.D.) entry regarding the registration of the case as Exhibit Ka-3. PW-4, Constable Akeel Ahmed, proved the copy of the G.D. entry dated 28-11-02 regarding the amendment of the case (No. 661/02) from Section 307 to Section 302 of the I.P.C. as Exhibit Ka-4; the memo regarding the blood-stained kurta as Exhibit Ka-5; the copy of the G.D. entry recording the mention of the said *kurta* as Exhibit Ka-6; and the copy of the G.D. entry as Report No. 60 dated 10-12-02 as Exhibit Ka-7. (The prosecution) proved the recovery memo Exhibit Ka-8 pertaining to Case Crime No. 693/02, under Section 25 of the Arms Act, PW-5 Dr AK Singh proved the medical report of the injured Jameel (Exhibit Ka-9), the original Bed-Head Ticket (Exhibit Ka-10), Exhibit Ka-11, and the medical report of Santosh (Exhibit Ka-12). PW-7 S.I. Harishankar Soni proved the Panchayatnama (inquest report), which was initially marked as Exhibit Ka-12 but was

subsequently re-numbered as Exhibit Ka-12A. He proved the information memo regarding the deceased Jameel (Exhibit Ka-13), photo of the dead-body (Exhibit Ka-14), the letter to the CMO (Exhibit Ka-15), the sample seal stamp (Exhibit Ka-16), and the Challan of the dead-body (Exhibit K-17). He also proved the letter (Exhibit Ka-18) issued by the Reserve Inspector to the Medical Officer. PW-8 Dr. V.S. Mishra proved the Post-Mortem Report (Exhibit Ka-19); S.I. Ramshankar proved the site map pertaining to Section 302 IPC (Exhibit Ka-20); and Inspector V.K. Srivastava proved the charge sheet related to Section 302 (Exhibit Ka-21), the memo under Section 25 of the Arms Act (Exhibit Ka-22), the country-made pistol (Material Exhibit-1), the live cartridges (Material Exhibits 2, 3, & 4), the partially filled cartridge (Material Exhibit-5), and the four fragments of a 12-bore cartridge (Material Exhibits-6,7,8, & 9). PW-13 S.I. Bhagwandas proved the site-map under Section 25 of the Arms Act (Exhibit Ka-23), the charge sheet under Section 25 of the Arms Act (Exhibit Ka-24), and the sanction for prosecution (Exhibit Ka-25). (illegible) is Exhibit Ka-26.

9. The statements of the accused persons were recorded under Section 313 of CrPC. Stating the incident as false, the accused persons asserted that a false report had been lodged and that they had been falsely implicated; in their defense, the accused submitted a certified copy of the judgment in S.T. No. 42/92 (District Banda) as Exhibit Kha-1, a certified copy of the judgment in S.T. No. 89/95 (District Banda) as Exhibit Kha-2, and a photocopy of the 'Chik' F.I.R. pertaining to Crime No. 66/89. Furthermore, a certified copy of the judgment in S.T. No. 71/91 (District Banda) was submitted as Exhibit Kha-3, and Paper No. 120Kha was submitted as Exhibit Kha-4.

10. After hearing the rival submissions and perusal of the record, we find that the issue to be determined is whether or not the deceased, Jameel, died as a result of a gunshot wound inflicted by a firearm. On this point, PW-5, Dr. A.K. Singh, stated in his statement that on 25.11.2002, he (PW-5) was posted at the Banda Hospital. On that day, at 2:45 PM, the injured Jameel—aged 40 years, a resident of Goyra Mungli, PS – Mataundh, District Banda—was admitted to the hospital by his brother, Zabbar. PW-5 conducted a medical examination immediately thereafter. The following injuries were found on his body:

1. An entry wound caused by a firearm, measuring 3 cm x 1.5 cm, was found on the upper and inner side of the left arm and it was situated 10 cm below the shoulder joint. The edges of the wound were charred inwards. Blackening was present. An scorched area measuring 12 cm x 10 cm was present around the wound. Injury No. 2 was a "through-and-through" to Injury No. 1.

2. An exit wound caused by a firearm, measuring 2 cm x 2 cm; its edges were charred and turned outwards. It was located on the posterior side of the left forearm, 2 cm below the right shoulder. This injury was a "through-and-through" injury relative to

Injury No. 1.

3. An entry wound caused by a firearm, measuring 3 cm x 2 cm; its edges were charred inwards. It was situated 8 cm away from the left nipple, at the 2 o'clock position. It was on the left side of the chest; I did not measure its depth.

11. In the opinion of PW-5, all these injuries were kept under observation. The nature of the injuries was grievous, and they were caused by a firearm. The injuries were fresh. The condition of the patient was extremely critical. During the examination, PW-5 prepared a report. With the original register of injury reports placed before him, he proved the photocopy—marked as Exhibit Ka-9—and, considering the injured person's critical condition, referred him to Kanpur Medical College for advanced treatment.

12. PW-8, Dr. B.S. Mishra, of K.P.M. Hospital, Kanpur, stated in his statement that on 27.11.2002, he (PW-8) was posted as the Medical Officer-in-Charge at S.V.D. On that day, PW-8 was assigned duty for conducting post-mortem examinations at Lala Lajpat Rai Hospital, Kanpur. On the said day, at 1:20 PM, he conducted the post-mortem examination on the body of Jameel Khan—aged 38 years, S/o Hanif Khan, r/o Goyra Mungli, PS – Mataundh, District Banda—which had been brought by Constable Ram Lakhan Yadav of Police Station Swarup Nagar, Kanpur, and sent in a sealed bundle by the Station Officer (S.O.) of Police Station Swarup Nagar, Kanpur City. The post-mortem examination was conducted after the body was identified by the aforementioned Constable, the seal on the bundle was broken, and the accompanying police forms were cross-verified. The post-mortem rigidity (rigor mortis) had subsided in the upper arms but was still present in the legs. The eyes and mouth were closed. Post-mortem lividity was observed covering the entire back and the undersides of both thighs. The wound on the left side of the chest was packed with bandages. The following injuries were present prior to death:

1. A firearm entry wound measuring 1.5 cm x 1 cm till the depth of muscle tissue, located on the outer aspect of the left upper arm, 10 cm below the shoulder. The edges of this wound were turned inwards, and singeing was present around the wound.

2. A firearm exit wound measuring 2 cm x 2 cm till the depth of muscle tissue, located on the inner aspect of the right upper arm, 10 cm below the shoulder. The edges of this wound were charred outwards.

Wounds No. 1 and 2 were internally connected to each other.

3. Firearm entry wound: 2 cm x 2 cm extending deep into the chest cavity, located on the left side of the chest, 5 cm below the axilla (armpit). The edges of the wound were

turned inwards. Singeing was present around the wound.

4. Surgical wound (operation performed by a doctor): 3 cm x 2 cm x extending deep into the chest cavity, located on the left side of the chest, 11 cm below the lateral margin.

13. In internal examination the brain and its membranes appeared pale; likewise, all internal organs—with the exception of the right lung—were pale. The left lung and its pleura were lacerated. One liter of blood was present within the cavity of the left lung. Both chambers of the heart were empty. The mouth contained 16 teeth in the upper jaw and 16 in the lower jaw. The stomach contained 4 ounces of watery fluid; the gastric mucosa appeared normal. The gall bladder was half-filled, and the urinary bladder was empty; all other findings were normal. In the opinion of PW-8, death resulted from excessive hemorrhage caused by the firearm injury sustained prior to death. As per the records, the deceased's death occurred on 26.11.2002, at 12:25 PM. It is estimated to have occurred approximately 24 hours prior to the post-mortem examination. The items recovered from the deceased's body during the post-mortem examination were duly handed over to the police. The post-mortem report was marked as Exhibit Ka-19.

14. Based on the post-mortem report, the statements of PW-5 and PW-8, and the medical records, it is evident that Jameel sustained firearm injuries on 25.11.2002. Consequently, Jameel succumbed to these injuries on 26.11.2002, in Kanpur.

15. It now remains to be determined whether the prosecution has succeeded in proving that it were the appellant, Farukh and Feema, who shot and killed Jameel.

16. P.W.-1 Ubaid Khan, complainant of the case, has stated on oath in his examination-in-chief that on 25.11.2002, P.W.-1 Ubaid Khan, his brother Zameel, Zabbar, Nafees, Ali Hussain and Mahmood had come Banda in a Jeep. After reaching Banda, these people went to the adhat of Lallu (commission agent) situated at Dilhaganj to know the rate of wheat. At that time, it was 2:00-2:15 O' Clock. When they returned after asking the rate of wheat, Farookh and Feema of the village of P.W.-1, came by motorcycle having no. U.P. 90-2772. Both people opened fire at Zameel with country made pistol with intention to kill him. Zameel received gunshot on his left chest. After having gunshot, P.W.-1 Ubaid Khan alarmed. Zameel had fell down at that time at the spot. Having received the gunshot, Zameel fell down. People chased the accused persons. P.W.-1 and others took the brother Zameel to the hospital; till then, Zameel was alive. P.W.-1 and others took Zameel to District Hospital, Banda, in the vehicle of S.O., Girwan, who was passing from there. Zameel was treated at Banda Hospital. On the same day, he was taken to Kanpur. P.W.-1 did not go to Kanpur. The report was written by Mohammad Raza, resident of Zamalpur,

police station Girwan. The report was written on dictation. Then, the same was read over and the signature was obtained on the same, and the same was given to S.I, Kotwali. P.W.-1 Ubaid Khan got the place of incident inspected. It was stated in cross-examination that Zameel was admitted in the District Hospital at around 2:45 O' Clock where he lived till 4:30 O' Clock. Thereafter, he was referred to Kanpur. The fare for ambulance was given. My brother Zabbar had gone to bring ambulance. Shameem is the brother-in-law of the brother of P.W.-1. Zabbar, Ali Hussain, Mahmood and Shameem had gone Kanpur along with Zameel. P.W.-1 did not go. The paper was written near a Masjid near the kachahari. Raza Hussain had reached the hospital. Raza Hussain is related to P.W.-1 by shared village ties. After writing the report, the copy was received at 7:45 O' Clock. Zameel, Zabbar, Qudoos and Ubaid Khan are four brothers out of which Zameel died. Shameem has seen the incident. Rasoola is the brother of Ali Hussain. Before this incident, Rasoola has been murdered. P.W.-1 did not know whether Farookh was the accused in the murder of Rasoola. Before the murder of Zameel, Haneef, the father of P.W.-1, was murdered. P.W.-1 did not know how many days earlier his father was murdered than Zameel's murdered. Idarish son of Badlu, Farhat son of Badlu and Sahjar were involved in the murder of Haneef and P.W.-1 has no information. Shahjar is the father of the accused persons. Shahjar is the uncle of the accused persons. Shahjar's son's name was Ajeet. Ajeet was murdered on 4.10.89. P.W.-1 did not know whether Daai of the accused i.e. Barkat was murdered or not. P.W.-1 does not know whether his father Haneef was accused in the murder of Mehendi, Barkat and Bhajji or not. P.W.-1 does not know whether the witness Ali Hussain son of Nabi Gilla Tikiya(Sic.) was the accused in the three murders or not. Shameem is the brother-in-law of Zameel, the brother of P.W.-1. Mahmood is my brother by village relation. Ali Hussain is also as the brother of P.W.-1. P.W.-1 had written in the tehrir that Shameem and Mahmood had come to Banda from village along with P.W.-1 by a Jeep. Zameel was taken to the hospital in the Jeep of S.O., Girwan. The Jeep was passing through there and he was taken to the Banda hospital through the same. I cannot say the reason if the Sub-inspector did not write this fact. P.W.-1 had nothing to shop on that day but he had to go with the brother. P.W.-1 had told the Sub-inspector that he was returning after getting the information about the rate of wheat(Sic.). I cannot give reason for it if the sub-inspector did not write this fact in the statement. A road leads to the Sabji Mandi from Cantonment crossing and another one leads to the Mayur Talkies in the east direction. A road leads to the Chhatpatiya petrol pump in the north. A road leads to Dilahaganj. If one comes towards Dilahagnaj in the west from Contonment crossing, one more crossing falls in Dilahaganj. One road leads to the Maheshwari Devi temple from this crossing. One road leads to station road in the north. The road leads to the Cantonment Crossing in the east and to Dilahaganj in the west. There is no way to bring any Jeep ride from the south of Lallu's adhat (commission agent). The place where Zameel was shot is 14-15 steps away from the location of commission agent(adhat) at the north door. That place falls towards south of the north door of Lallu's location (Adhat). The accused persons

had fired at Zameel from east. Accused persons did not fire at the brother of P.W.-1 i.e. Zameel from south. P.W.-1 had shown the sub-inspector at the time of preparing the sitemap the place where he and the other witnesses were standing. One country made pistol was of 12 bore and the other was of 315 bore. I cannot say which accused was carrying a country-made pistol of what bore. Feema had fired firstly. Later, Farookh had fired and as Feema's fire hit Zameel, he fell down. Later, Farookh had fired. Feema sat behind on the motorcycle, Farookh was driving the vehicle. The fire was opened by sitting on the motorcycle. The accused persons had fled away towards west. As Zameel received the first bullet, he fell down in prone position. The blood was spilled on the ground. At the time of the incident, Zameel worn white kurta, brown(Katthai) Sadari, Payjama and vest. There was hole in the Sadari and Kurta. Diwan Ji did not see the blood of P.W.-1. P.W.-1 did not know which people had received bullet injury apart from Zameel. Two fire were opened at the spot. Except two fire, no other fire was opened.

17. P.W.-2, Ali Hussain, stated in the light of prosecution story in his examination-in-chief that on 25.11.2002, P.W.-2, Zameel's brother Ubaid Khan, Zabbar and Mahmood were also in the Jeep along with Zameel. After parking the Jeep on the cantonment road in front of Dev Kumar Yadav's house, these people went to Lallu's location (commission agent) to know the rate of grain and after asking the rate, they returned. Zameel was ahead. P.W.-2 was behind him. Accused Feema and Farookh came from Padmakar crossing by motorcycle and stopped in front of Zameel. Both took out their country made pistol and opened the fire. Both the fire hit in the chest of Zameel. Zameel fell down. The accused persons were chased there. The accused persons left the motorcycle and fled away. Santosh Dubey who was present there also received injury from fire. Zameel's brother Ubaid went to police station to report the incident. On being Zameel's condition serious, he was referred to Kanpur from Banda. It was 2:15 O' Clock when the fire was opened. During treatment, Zameel died in a hospital in Kanpur. Panchayatnama and Postmortem were conducted there. Barkat was Daai of Feema and Farookh. She was murdered and Shameem Bano was injured. Shameem Bano is the sister of the accused persons. Zameel was accused in the matter of causing murder and injury to them(sic.). The accused Farookh and Shameem Bano were injured witnesses in the case of Barkat Mehandi. They had given testimony against the P.W.-1 and got him sentenced. It is wrong to say that due to that reason, false testimony was given. P.W.-2 and the deceased Zameel were accused in the murder of Idarish. Idarish is the brother-in-law of Shahjar. P.W.-2, Zameel, Pappu, Kudoos, and Gilla were accused in the murder of Barkat Mehandi and all were sentenced. P.W.-2 was implicated in two separate murder cases along with the deceased Zameel. P.W.-2 did not meet with any person of Jamapur on the day of the incident, neither in the Banda hospital nor with Mehandi/Mohd. Raja. When Zameel was shot, his face was towards South. Two gun shots were fired at Zameel. First bullet hit him in his chest. After being hit by first shot, fell on the ground. Second gun shot

struck him in his left arm. The bullet that hit him in his arm passed right through. I did not know Santosh beforehand. After reaching hospital, I got to know that Santosh had also been shot. Santosh was standing with other 3-4 people towards North direction of Zameel. Santosh, too, received treatment in the emergency ward, in the bed right next to Zameel's. On the day of the incident, Zameel was sent to Kanpur at around 4:30 'O' clock. Farooq was riding Motorcycle. Feema was sitting behind.

18. P.W.-3 Nanke Singh proved copy of the chik FIR as Ex-ka-3 in C.C.No. 661/2002 u/s 307 IPC and also proved copy of the report no. 43 of registered case and further stated that crime no. 662/2002 was amended as 661/2002 in chik FIR.

19. P.W.-4, HCP Akeel Ahmad stated that – on 28-11-2002, In on the oral instructions of the SHO Mataundh, G.D. No. 34, at 18:25 'O' clock, section 307 IPC of the Crime no. 661/02 is amended as section 302 IPC, which is marked as Exh-ka-4. On 29-11-2002, Ali Hussain, Shamim, Zabbar R/o Goyra Mungli, along with Qudoos Khan, came to PS- Mataundh, Banda. In Crime no. 661/2002 u/s 302 IPC, Qudoos was holding Zameel's blood-stained white kurta. It was taken into possessions of police and memo was prepared and the kurta was sealed and stamped. Which is marked as Ex-ka-5. It was recorded in report no. 38 at 15:10 'o' clock on 29-11-02 and the copy of GD report no. is marked as Ex-ka-6. In C.C.No. 693/2002 u/s 25 Arms Act, on the basis of the memo, a chik (Exh-ka-8) was prepared by Shri V.K. Shrivastava, SHO, Kotwali Nagar, Banda and it was recorded in report no. 60, at 21:40 'O' clock, on 10-12-02. Carbon copy of which is marked as Ex-ka-7.

20. P.W.-6, Qudoos Khan stated that on 29-12-02, he along with Shameem, Zabbar and Ali Hussa in took the blood-stained white kurta of the deceased Zameel to the PS- Kotwali Nagar, Banda. Paper-work of which was completed and memo was prepared by Sub Inspector. A sealed bundle related to C.C.No. 661/2002 u/s 302 IPC, was opened in presence of the witnesses, in which one kurta was found, PW-6 identified it and said that it was submitted to police station. In cross-examination, it was stated that the country-made pistol was not in sealed condition, cartridge is also in open condition, country-made pistol and cartridge were also found in the same bundle in which kurta was found, which were opened before the Court. It is wrong to say that kurta, country-made pistol and cartridge were sealed altogether.

21. P.W.-7, S.I. Harishankar Saini stated that on 26-11-02, he was posted as chowki (outpost) in-charge at chowki (outpost) Benajhabar, under PS- Swaroop Nagar, Kanpur. On 26-11-02, panchayatnama of the deceased Zameel S/o Haneef R/o Goira, Mungali, PS- Mataundh, District-Banda was prepared at mortuary of the hospital in Kanpur. There dead-body was taken out and examined before the panchas. Panchayatnama was marked as Ex-ka-12. PW-7 received the death information (Ex-ka-13) of the deceased Zameel from the hospital. Photo of the dead-body (Ex-ka-15),

letter CMO (Ex-ka-15), sample seal (Ex-ka-16) and challan of the dead-body (Ex-ka-17) were also said to be prepared. Information from the hospital was received at the police station at night on 26-11-02, which is recorded in report no. 5 of police station at 2:30 am. On 26-11-02, at 9 am, information was received at chowki Benajhabar. Panchayatnama was prepared between 10:30 'o' clock and 12 'o' clock. Reserve Inspector proved the letter CMO (Ex-ka-18) Kanpur for conducting postmortem of Zameel.

22. PW-9, S.I., Ramshankar submitted evidence saying that on 25-11-02, case registered and investigation was handed over to Sabhapati Yadav, S.I., Kotwali nagar, Banda. After Shri Sabhapati being transferred, investigation was handed over to S.I. (P.W-9). On 26-11-02, copy of chik, copy of memo and motorcycle bearing no. UP90 2772, which was left by the accused while escaping, were taken into possession. After P.W.-9 went on leave, parcha no. 2 of this case was prepared and statement of Ubaid Khan was recorded. Thereafter, on 10-12-02, investigation was begun and spot was inspected at the instance of the complainant. Statement of the witness Shameem Zabbar was recorded. On 10-12-02, accused Feema was arrested and his statement was recorded. On 12-12-02, entry of the copy of the blood-stained kurta was made. On 22-12-02, statements of Ali Hussain and Mehmood were recorded. It was stated in cross-examination that Feema was arrested on 10-12-02 at three way intersection near Juvenile detention center (Baccha Jail). Inspector from the police station also arrived. Inspector had summoned. I along with him (Inspector) arrested Feema at around 7:45 pm from the three-way intersection near by Juvenile detention center. Death information was received from Aliganj chowki. The people from public did not tell their names and addresses. It would have taken around half an hour to reach Kewtara 3-way intersection from Aliganj. I do not remember the direction from which the accused was coming or to which direction he was going. Without seeing the site-map, I can not say that how far the accused Feema was from the main gate of Juvenile detention center. I can not say that at what distance the jeep was parked from Kewtara three-way intersection. The accused was arrested at the distance of 50-60 steps from the place where the jeep was parked. The memo related to the country-made pistol of 12 bore along with 2 live and empty cartridges was dictated by the Inspector and prepared by PW-9. A live cartridge was found lodged in the barrel of the country-made pistol and an empty cartridge of red colour was found in the left pocket. A copy of the memo was given to the accused. While reaching the police station, where it was hidden I can not say. No witness came forward to testify at the place from where the accused, Feema, was apprehended. The people of abadi or passersby were not willing to testify. In that first parcha, it was mentioned by the P.W.-9 that the complainant of the case had gone to Kanpur. Upon return, statements will be recorded, and the spot will be inspected. Motorcycle was not recovered from the spot, instead it was recovered from Padmakar cross roads. Site-map of which was not prepared. Though, complainant of the case had gone to get his brother treated, therefore, inspection of the

spot was not conducted on that day. I could not get the Information regarding the owner of the Rajdoot motorcycle because P.W.-9 has been transferred. P.W.-9 conducted the investigation in the case till 24-12-02. I do not know where the motorcycle is registered. I recorded the statement of the witness Ali Hussain before 22-12-02. In his statement, he had not told the Investigating Officer (P.W.-9) that they went to Lallu's aadhat (grain commission shop) to inquire about the grain prices. Blood-stained not found at the spot as several days had passed since the incident occurred. Statement of the injured Santosh was recorded on 24-12-02.

23. P.W.-10, S.I., V.K. Shrivastava, Inspector In-charge, has stated that on 25-11-02, he was posted at PS Kotwali Nagar, Banda. The preliminary investigation of this case was conducted by S.I. Ramashankar. After his transfer, on 2-1-2003, P.W.-10 began the investigation of this case. On 8-1-2003, I received warrant against the accused Farooq and sent him to jail Hamirpur. On 4-2-2003, entry of panchayatnama was made in case diary. On 16.02.2003, the recovered country-made pistol and the deceased's blood-stained kurta were sent to the Forensic Science Laboratory, Agra, for examination, and the statements of the panchnama witnesses—Shamim, Ali Hussain, and Zabbar—were recorded. On 08.02.2003, the statement of Nizam Uddin was recorded. On 23.02.2003, the statement of Mahmood was recorded, and the charge sheet Exhibit Ka-21 against the accused was submitted. On 10.12.2002, P.W.-10, accompanied by a jeep and the government driver Rajnarayan Mishra—along with Constables Dinesh, Sabhajit Singh, and Pratap—was present within the Tehsil premises. Upon completing their official duties, they proceeded to the Aliganj Police Outpost. Acting on information received from an informer, they learned that the accused Feema —involved in the murder of Jamil Pradhan in Dilhaganj—was moving from the Kewatra locality towards the Bhuragarh side via the T-junction. SSI Ramashankar was summoned via the RT set after being apprised of the objective; subsequently, having frisked one another, the team moved forward. They parked the jeep at the Kewatra T-junction and proceeded towards the 'Bachcha Jail' area. There, the informer pointed out a specific individual, whereupon that person was arrested, and a country-made pistol along with cartridges were seized from his possession. It was evening time at that moment. The recovered pistol and cartridges were sealed and stamped. Furthermore, the seizure memo was dictated to and recorded by SSI Shri Ramashankar right there at the scene, under the illumination of a torch. The sealed bundle was subsequently opened before the Court. Inside, the contents were found to include one 12-bore country-made pistol, three live 12-bore cartridges, one cartridge that was partially empty, and two 12-bore cartridge cases with torn caps (to which a portion of the casing remained attached), as well as two partially empty cartridge cases lacking caps. It was affirmed that the pistol and cartridges had been recovered from the accused. The live cartridges have been marked as Material Exhibits 2, 3, and 4. One of these is a misfired cartridge. Another—a half-filled cartridge—is marked as Material Exhibit 5. The witness stated that one empty cartridge casing and one live

cartridge had been sent for forensic testing. It is possible that, during the testing process, the experts utilized one of the cartridges for their procedures, subsequently mixing it back in and resealing the package. Alternatively, it is conceivable that a cartridge went missing while the items were being returned from the experts' facility.

24. During cross-examination, PW-10 stated that he could not recall the names of all the constables present at the time of the recovery. He noted, however, that he could provide the names of a few individuals. The witness recalled the names of Constable Sabhajit, Constable Dinesh Singh, Constable Pratap Singh, and SSI Ramshankar. He stated that he did not remember the names of the others present. They had gone directly from Aliganj to the Kewatra T-junction. He could not recall the exact time of their arrival. The jeep was parked at the T-junction, facing east towards the Kachahri. The location where the accused was apprehended lies slightly to the west of the T-junction, along a stretch of road that features a slight curve. The 'Bachcha Jail' is situated approximately one furlong from the T-junction. The accused was apprehended on the road near the Bachcha Jail. The witness could not recall the exact distance from the Bachcha Jail at which the arrest took place. He clarified that the accused was not apprehended on the Banda-Mahoba Road itself; rather, the Bachcha Jail Road adjoins the Mahoba-Banda Road. A road leading to Hardauli Ghat also branches off from the area in front of the Bachcha Jail. The witness could not recall whether the arrest was effected on the Bachcha Jail Road or the Hardauli Road. The Bachcha Jail is situated approximately one furlong away from the main road. The area immediately adjacent to the spot where the accused was apprehended is inhabited; specifically, residential dwellings are located a short distance away—likely within a radius of 50 yards. A few local residents gathered at the scene, but they were unwilling to come forward and serve as witnesses. A constable was using a torch to provide illumination; the witness could not recall the name of that constable. He also could not recall from whom the empty cartridge casing was recovered, nor could he state the exact number of empty cartridge casings recovered in total. Finally, he stated that he could not recall the specific time at which they returned to the police station, adding that he would be able to provide that information only after seeing the General Diary (GD) entry at the station. I do not recall whether or not the accused's signatures were affixed to the bundle containing the country-made pistol and cartridges. I cannot state what the accused did with the copy of the seizure memo. I do not recall whether the site inspection was conducted by P.W.-10. I do not recall which Investigating Officer recorded the statement of P.W.-2 Ubaid. The country-made pistol, cartridges, and the blood-stained clothing of the deceased—pertinent to this case—were sent to the Forensic Science Laboratory on 23.02.2002. The statements of Shamim, Ali Hussain, and Zabbar were recorded on 16.02.2003. The statement of the eyewitness, Ubaid, was recorded on 02.12.2002, during the afternoon, at Goyra. In his statement, Ubaid Khan (P.W.-1) did not mention the price of wheat; rather, he spoke of returning from the grain market with information regarding the prevailing grain rates.

25. P.W.-11, Constable, Sabhajit Singh, stated in his testimony that on 10.12.2002, after concluding the proceedings of 'Tehsil Diwas', he arrived at the Aliganj Police Outpost accompanied by Shri V.K. Srivastava (Inspector-in-Charge, Kotwali Nagar, Banda), Constables Dinesh Singh, Rajbhan Singh, and Pratap Singh, along with the government jeep and its driver, Rajnarayan Mishra. There, they received information that Feema—accused in the murder of Jameel, the Pradhan (Village Head) of Goyra Mungli—was heading from the Kewatra T-junction towards Bhuragarh and was in possession of a country-made pistol. Acting on this intelligence, the Inspector-in-Charge summoned SSI Ramshankar to the Aliganj Outpost via RT set. After briefing the team on the objective and conducting a mutual body search, they drove the jeep to the Kewatra T-junction; leaving the vehicle there, they proceeded on foot towards 'Bachcha Jail.' At a distance of 25 paces to the west of the road, the accused was spotted walking. The informer signaled to them and then departed. At 7:45 PM, at a spot 25 paces from the Bachcha Jail road, the accused, Feema, was apprehended. A 12-bore country-made pistol was recovered from his person, while a used 12-bore cartridge casing and one live 12-bore cartridge were recovered from the left pocket of his trousers. He confessed that he had used this very pistol to shoot and kill Jameel Pradhan on 25.12.2002, before fleeing the scene, and stated that he carried the 12-bore pistol with him at all times due to this ongoing enmity. Under the illumination of a torch, the seizure memo was dictated to and recorded by SSI Ramshankar. The memo bears the signatures of the accompanying police personnel as well as that of the accused. The accused, along with the seized items, was subsequently brought to the police station. During cross-examination, he stated that the government jeep driver Rajnarayan Mishra, Constable Pratap Singh, Constable Dinesh Singh, and Constable Rajbhan Singh had served as witnesses. He could not recall until what time they had remained at the Tehsil Diwas proceedings. He also could not recall how long they had stayed at the Aliganj Police Outpost. He did not remember the specific time at which the Inspector-in-Charge of Kotwali, Banda, had summoned SSI Ramshankar to the outpost. Furthermore, he could not state the exact time at which the intelligence tip-off was received. No attempt was made to bring public witnesses from the Aliganj Police Outpost. I cannot state how far the accused was from the Kewatara T-junction. I cannot state in which direction the accused was positioned when I observed him. The accused, Feema, was not apprehended on the Mahoba-Kacheri Road. The accused was apprehended approximately 25 paces to the west of the jail. However, the Sub-Inspector has recorded that the accused was apprehended on the Mahoba-Kacheri Road; I cannot state whether this is accurate or not. I do not recall on which road the accused was walking. Upon opening the bundle containing the allegedly recovered items and observing the cartridges, PW-11 Sabhajit Singh stated that, among the live cartridges recovered from the accused, one bears the inscription "Indian Ordnance Factory No. 1," while the other bears the inscription "Indian Ordnance Factory No. 1." I do not recall whether the two cartridges bearing the inscription "Indian Ordnance

Factory No. 1"—one of which clearly shows a pin-mark indentation on its base—were, in fact, recovered from the accused or not. The cartridge bearing the inscription "K.F. Special Range Cartridge" was not recovered from the accused. Of the two live cartridges recovered from the accused, Feema—which are currently placed before this witness—one bears a pin-mark indentation on its base. The recovery memo does not record that the live cartridges bearing the inscription "A.F." on their caps were recovered from the accused, nor does it record that the spent cartridge case recovered from the accused lacked a cap at its base. I cannot state how long it took to draft the recovery memo. I do not recall the specific time at which the recovered items were sealed. I do not recall who was holding the torchlight. No person from the general public came to the spot after the apprehension of the accused. People in the nearby area did not come up for testifying in order to avoid taking sides.

26. P.W.-12, Constable, Dinesh Singh, stated in his statement that on 10-12-2002, the I/C Inspector, V.K. Srivastava, accompanied by Cons. Sabhajeet Singh and Cons. Pratap Singh in a government jeep driven by driver Rajnarayan Mishra, came for Tehsil Diwas. From there, when they reached Police Post-Aliganj, the informer informed them that the accused, Feema, wanted in the murder of Jameel Pradhan, was going towards Bhuragarh from Kewatara Tiraha carrying a country-made pistol in his hand. Acting on the information, S.S.I. Shri Ramshankar was called via R.T. set. The police personnel, having checked one another, departed for Kewatara Tiraha with the informer. They parked their jeep there and headed for Bhuragarh. A little before juvenile detention center [Baccha Jail (sic)], the informer pointed at Feema, and Feema was arrested there itself at 07.45 o' clock. The accused disclosed his name and a 12 bore country-made pistol, two cartridges of 12 bore, and a live cartridge were recovered from his left pocket. The pistol was opened and a live cartridge of 12 bore was found in it. The materials were sealed and stamped, and were taken away by the accompanying staff. During the cross-examination, PW-12 stated that he does not remember how long they remained at the tehsil. He does not remember at what time the secret information was given. He did not remember at what time the SSI Ramshankar arrived. He does not remember whether the Inspector informed him about the secret information before the arrival of Ramshankar or afterwards. He does not remember who the officer was at the Tehsil Diwas. He does not remember at what time they came to the police post, Aliganj. He does not remember the time when the secret information was given. He does not remember when Ramshankar arrived. No effort was made to join any public witness. He does not remember at what time they came to the Kewatara Tiraha. From the Collectorate, a bitumen road runs east-west to Mahoba, also. A branch of this road goes to the juvenile detention center. A tri-junction is formed there. He does not remember how far away from the tri-junction the jeep was parked. He does not remember who arrested the accused. The copy of the arrest memo was given to the accused at the time of taking his signature on the memo. The accused tore off the memo and threw it away. He does not remember whether the

pieces of the torn paper were collected or not. No one came up for testimony after the apprehension of the accused.

27. P.W.-13, Bhagwan Das Verma, stated on oath that he took up the investigation of Crime No. 693/2002 u/s 25 of Arms Act in the capacity of Sub-Inspector on 10-12-2002. On 11-12-2002, he recorded the copy of chik, report, and statement of FIR scribe, Head Moharrir Akeel Ahmad. Statement of SSI Ramshankar was recorded on 13-12-2002. Statements of Cons. Rajbhan, Cons. Sabhajeet Singh, Dinesh Singh, and Cons. Pratap Singh were recorded also recorded on 13-12-2002. Sitemap, Exhibit Ka-23, was prepared on the pointing out of S.S.I Ramshankar. Statement of case complainant, V.K. Srivastava, was recorded on 15-12-02. Chargesheet, Exhibit Ka-24 was submitted. Sanction for prosecution, Exhibit Ka-25, was obtained from the then District Magistrate, Banda. The road from the collectorate to Mahoba, runs east-west. On the south is shown the place of occurrence 'C'. The place from where the accused was apprehended is shown as 'C'. The witness, Sabhajit Singh, did not mention that a copy of the memo was handed to the accused which the accused tore it up and threw it away. He did mention the cartridge found inside the barrel, but provided no information regarding any live cartridge.

28. From the perusal of the statements of the witnesses of fact, namely, P.W.-1 and P.W.-2, it is clear that they are eye witnesses of the incident. They proved the prosecution case beyond reasonable doubt against the appellants. There is nothing in their statements which may compel us to disbelieve their testimony. They have given vivid account of incident as seen by them. F.I.R. of the incident was lodged by P.W.-1 at 07:45 p.m. When the incident took place at about 02:00 to 02:15 p.m. The deceased was alive in the hospital till 4:30 p.m., and after his death at Kanpur, F.I.R. was lodged at the police station. The incident was committed in broad day light and there is no dispute regarding the identity of the accused or place of incident. The investigating officer of this case, P.W.-9, proved the record of investigation before the trial court. He has also proved the place and manner of arrest of the appellant, Feema. The recovery of country made pistol was made from the possession of appellant, Feema, at the time of his arrest. He admitted that he kept the country made pistol after committing the offence of murder of deceased because of his ongoing enmity. The witness of prosecution succeeded in proving the prosecution case against the appellants beyond reasonable doubt. The accused only put the defence that they have been falsely implicated in this case and documentary evidence in the form of some judgments of earlier sessions trial, but the defence did not proved its relevance.

29. We are of the view that the prosecution has succeeded in proving the prosecution case against the appellants beyond reasonable dobut. The judgment of the trial court is affirmed.

30. The criminal appeal lack merits and are accordingly dismissed.

31. The appellants, namely, Farukh and Feema, are on bail. Their bail bonds are cancelled and sureties are discharged.

32. They are directed to surrender forthwith and carry out remaining sentences.

33. In case they do not surrender, court concerned, shall take all coercive measures for securing the arrest of the appellants.

34. The appeals are **dismissed**.

35. Let the trial court record along with the copy of this judgment be sent to the trial court within 10 days.

June 8, 2026
Abhishek

(Vinai Kumar Dwivedi,J.) (Siddharth,J.)