



2025:AHC:161606-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 571 of 2017

Upendra

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Arvind Agrawal, Gaurav Singh, Jitendra Prasad Mishra, Kamendra Singh Jadaun, Sanjay Kumar Jain, Syed Fahim Ahmed
Counsel for Respondent(s)	: G.A.

Court No. - 43

HON'BLE SIDDHARTHA VARMA, J.
HON'BLE ASHUTOSH SRIVASTAVA, J.

1. The present Appeal under Section 374(2) of the Code of Criminal Procedure has been filed against the judgement and order dated 03.01.2017 passed by the Additional Sessions Judge, Court No. II, Firozabad in Sessions Trial No. 23 of 2007 (State Vs. Devendra & others) arising out of Case Crime No. 290 of 2006 under Section 302 IPC, Police Station Shikohabad, District Firozabad by which the appellant Upendra son of Shyam Sundar Yadav has been convicted for the offence under Section 302 IPC with a punishment of life imprisonment and fine of Rs. 10,000/- has also been imposed. It has been provided that if the appellant fails to deposit the fine, addition imprisonment for 6 months would have to be undergone.
2. We have heard Sri Arvind Agarwal, learned counsel for the appellant, Sri Amit Sinha, learned AGA for the State and perused the records.
3. Sri Arvind Agarwal, learned counsel for the appellant has vehemently argued that the impugned judgment and order dated 03.01.2017 passed by the Additional Sessions Judge, Court No. II, Firozabad is against the weight of the evidence on record and as such is liable to be set aside. The court below has utterly failed to evaluate the evidence on record in the correct perspective which established the fact that the appellant had no complicity in commission of the crime, the court below failed to notice the material contradictions in the prosecution story as well as the medical evidence on

record; the court below has based the conviction of the appellant wholly on the testimony of the alleged eye witness Nawab Singh (PW1) who is the father of the deceased whose presence on the spot was highly doubtful in the light of other circumstances which clearly established that he was not an eye witness of the incident. He had submitted that the other witnesses shown in the FIR namely Layak Singh and Sobaran Singh were not produced during the trial which demolished the case of the prosecution; the court below illegally discarded the evidence of DW, Suresh Chandra who had stated that the appellant had no complicity in the alleged incident; the prosecution failed to establish the motive of the appellant for the commission of the crime; the co-accused Shyam Sundar with similar role in the same set of evidence has been acquitted but the appellant has been convicted for the offence under Section 302 IPC, the prosecution utterly failed to prove the case against the appellant beyond reasonable doubt. It is, accordingly, prayed that the impugned judgement and order dated 03.01.2017 is liable to be set aside.

4. We now proceed to examine the case on the basis of the arguments placed and also on the basis of the perusal of the records.

5. Upon an incident said to have taken place on 22.08.2026 at around 8:30 PM, an FIR was got lodged by the father of the deceased. The name of the deceased was Udaybhan Singh @ Upendra Singh and the FIR was got lodged by Nawab Singh, the father of the deceased.

6. In the FIR, which is Exhibit K-1, it has been mentioned that while Udaybhan Singh @ Upendra Singh aged about 22 years was coming back from Shikohabad, after having sold his milk and when he had reached near Gowardhan Cold Storage from the side of Khera Tibdiya, Devendra, Dharmendra and Upendra sons of Shyam Sundar Yadav, R/o Umrai (Khera) came on a motorcycle with their illegal weapons along with them. While they were coming on their motorcycle, Shyam Sundar Yadav, came walking and after having reached near the son of the informant, they insistently fired on the deceased because of which the son of the informant was grievously

injured and he fell down in front of the cold storage gate and died.

7. It has been stated in the FIR that the informant himself along with Layak Singh son of Atiraj Singh and Sobaran Singh son of Atar Singh were coming on their cycles from behind the direction from which the deceased was coming on his cycle. In the FIR it has been further stated that the accused were recognized in the electric light which was coming out from the bulbs of the nearby cold storage. Further, it has been stated that there was previous enmity between the accused persons. It has been further stated in the FIR that he was drawing this inference because the accused on previous occasions had also killed one of the family members of the family of the first informant and the criminal case with regard to that murder was still going on. It has been stated in the FIR that the dead body was lying on the spot.

8. After the FIR having been lodged, the Police prepared the recovery memo with regard to the cycle, which is Exhibit K-2. The Police also prepared the recovery memo in respect of one empty cartridge of 3.15 bore, which is Exhibit K-4.

9. It has been further stated that the Police also prepared a recovery memo of blood stained soil, which was exhibited as Exhibit K-5. Thereafter, an inquest report was prepared in presence of the Panch Witness namely Yogesh Kumar, Rajesh Kumar, Udaiveer, Surendra Singh, and Jait Singh. Thereafter along with the Panchayatnama, a copy of the FIR, Panchayat Nas, Chalan Nas and other relevant papers, the dead body was sent for post-mortem and the post-mortem of the deceased was conducted on 23.08.2006 at 9:30 AM, Firozabad.

10. The Police having concluded the investigation submitted its charge-sheet naming, Devendra, Dharmendra and Shyam Sundar as accused. The Trial Court framed charges on 05.02.2007 against Devendra, Dharmendra and Shyam Sundar under Section 302 IPC and the accused denied the charges and asked for trial. The trial thereafter commenced.

11. From the side of the prosecution as many as 6 prosecution witnesses appeared in the witness box. From the side of the accused one defence

witness, Suresh Chandra appeared. During the trial, the accused Upendra was also summoned under Section 319 Cr.P.C. Charges were framed against him and the trial vis-a-vis him also undergone. During the trial Devendra died.

12. The prosecution witness PW-1, the first informant in his Examination-in-Chief proved the FIR and stated that on 22.08.2006 while the son of the informant namely Udaybhan Singh @ Upendra Singh was coming back after having sold his milk then at around 8:00 PM when he had reached near Gowardhan Cold Storage, Devendra, Dharmendra and Upendra came on their motorcycle and Shyam Sundar followed them on foot. All these persons had country made pistols with them and from their country made pistols they fired on Udaybhan Singh @ Upendra Singh and because of the firing the son of the informant was grievously injured and he fell down and died on the spot. The PW-1, the father of the deceased thereafter stated that he himself along with Layak Singh and Sobaran Singh were coming from Shikohabad market on their cycles and they were very much behind the deceased and he had himself seen the accused to have fired on the deceased. The PW-1 had stated that he was very much present on the spot at that point of time and that the bulbs and tube-lights of the Gowardhan Cold Storage were lighted and there was sufficient light and that he recognized the accused in the light of the bulbs and tube-light. He had also raised an alarm at that point of time. Thereafter, Dharmendra and Shyam Sundar ran away on the motorcycle. The motorcycle was being driven by Dharmendra. He has further stated that Devendra and Upendra turned back and ran away on foot. In the statement he has stated that there was previous enmity between the family of the accused and the first informant. He had thereafter stated that one year prior to that incident, the son of the uncle of the informant namely Vijaypal was killed by Devendra and a criminal case was still going on.

13. He had thereafter categorically stated that he left the spot leaving Layak Singh and Sobaran Singh near the dead body of his son to report the matter. He has stated that he had thereafter gone to the Station Road Shikohabad to the house of Purshottam Singh and on his dictation Purshottam Singh wrote

down the FIR. After the FIR was scribed, Purshottam Singh had read it out to the PW-1. What was dictated was written in the FIR. After having heard the report as it was written by the Purshottam Singh, the PW-1 put his signature on it. He has stated that the Investigating Officer had recovered the cycle by which his son had reached the spot where he died. The milk cans were also seized in presence of Ram Naresh and Nem Singh. On the recovery memo, he has stated that his signature was present.

14. In the cross-examination the PW-1 had tried to stick to the statement which he had made in the statement in chief. Upon a question being directly put as to whether he was educated he had stated that though he failed in the High School but he knew to read and write. He answered the question as to where the deceased used to sell his milk by stating that he did not know exactly where the deceased used to go for selling the milk and this work was being done every day in the morning as also in the evening. The deceased used to leave at 7-8 in the morning and return by noon or 1:00 P.M. He used to sell his milk on cycle which normally used to be 40-50 litres. In the evening he used to go at 5:30–6:00 PM. He has also stated that after completing some domestic work he had left his house at around 2:30-3:00 PM.

15. PW-1, thereafter again informed the location of the house of Purshottam Singh where he had stated that he had also visited prior to the murder. He has very categorically stated upon a question being put as to how much away he was from the deceased, he had stated that he was only 8-10 steps away behind the deceased and that he was on a cycle. The deceased was also on a cycle and in the Examination-in-Chief he had stated that at that point of time he was absolutely alone and it was dark and six bullets had been fired. He thereafter stated that the dead body of the son was lying at the spot after he died. He has also stated that he had seen the accused before the incident actually had occurred. He has further stated that the accused were very near his son before they had killed him. He has categorically stated that when he had seen the accused near the son, he had also stopped his cycle and got down from it. Seeing the assailants his son had got down from the cycle and

till that time there was no firing. On the right side of his son there was a pakka road and the accused, who were three in number came and alighted from their motorcycle and thereafter had fired. He had stated that the distance between the assailants and his son was only 2-3 feet. He had stated that no empty cartridge was found on the spot. Thereafter he had again stated that at the relevant point of time there was no one available as it was late in the night. When he had gone away to get the matter reported and had come back near the dead body of the son, Layak Singh and Sobaran Singh were still there.

16. Thereafter upon a question being asked as to where the FIR was written he had stated that he was sitting outside the police station and the FIR was got written there. He has stated that he had in fact informed the police that Layak Singh and Sobaran Singh were witnesses of the case. However, in the inquest neither he nor the two witnesses Layak Singh and Sobaran Singh were made the witnesses in the Panchnama. He has stated that no bullets had hit either the cycle of his son or the milk cans. He has stated that when the motorcycle carrying the assailants came on the spot the headlight of the motorcycle was on and it engulfed both him and the witnesses. Neither the cans were deshaped nor any damage was done to the cycle. However, he has stated that neither he nor his witnesses were attacked. He has stated that he made no efforts to get admitted the deceased to the hospital as he knew that he had died. He had further stated that there was blood on his hand and there was also blood on his clothes. He has stated that he had no idea whether the police personnel had seen the blood on his hand and clothes. He had thereafter stated that the police station was 2-3 Km away and it would take him around 15 minute to reach there. He has stated that in the FIR he had only stated that the incident had occurred in front of the gate of cold storage but he had not given the name of the cold storage but he had subsequently informed the Investigating Officer that the name of the cold storage was Gowardhan Cold Storage. He reiterated the fact that he himself and two witnesses, Layak Singh and Sobaran Singh were together and they had reached the place of incident together. In the cross examination, which took

place on 10.12.2009 he stated that there was no enmity between his son and the accused persons. It was just that the cousin brother of the PW-1 namely Vijaypal had been killed by the accused Devendra and therefore that was the reason that he had stated in the FIR that there was enmity between the two families. He had stated that in the FIR it should have been written that the assailants were examined but, he by mistake had written that there was ongoing enmity between the two families.

17. He thereafter had stated that just as the assailants were inimical to the deceased Udaybhan they were inimical to him (PW-1) also, however, none of the assailants fired upon him while he had stated that he was only around 15-20 steps behind the deceased and that elaboration about this distance he might have missed out while he was giving the statement to the Investigating Officer. He thereafter stated that all these accused had fired from a very close range and when they had fired they were at an equal distance from the target. He had stated that none of the 5 witnesses of the inquest were from his family. He had no information as to how the witnesses of the panchayatnama had reached the place where Panchayatnama was drawn. He had further stated that he had no idea as to whether he had signed the recovery memo of the cycle, empty cartridge, and of the blood stained soil. He had stated that he had no idea that he signed the Panchayatnama. He stated that he had made no efforts to save his son when firing was going on.

18. In the cross examination which was recorded on 11.08.2011, he had stated that there was neither blood on his hands nor on his clothes. He thereafter once again stated that he had gone to the house of Purshottam Singh to get the FIR scribed despite the fact that he himself was an educated person. Upon a question having been asked as to whether the dead body was found in the plot of one Sanjay Agarwal, he replied that it was not the case that the dead body was not found on the road side near the plot of Sanjay Agarwal. He further stated that he had no idea that as to why Layak Singh and Sobaran Singh were not made the witnesses of the Panchayatnama.

19. PW-2, Dr. R. K. Sharma, who had done the post-mortem has proved the

post-mortem. PW-3, Nem Singh, who has been the witness for the recovery memo of the cycle, empty cartridge and the blood stained soil, which were seized, has proved the recovery memo. PW-4, Sub Inspector, Diwari Lal Pal, is the Police Personnel, in whose presence the inquest report was got prepared. He has stated that in spite of the fact that in the FIR, there was mention of the name of accused but no name was mentioned in the Panchnama. He has stated that he did not appoint the owner of the plot as a Panchayat Nama witness where the body was found or the persons of the nearby college, fields or cold storage and only such persons who approached him at that point of time were made the witnesses in the Panchnama and he did not try to call anybody specifically for becoming witness of the Panchnama. He has also stated that the dead body was found in the plot of Sanjay Agarwal as was stated in the inquest report. He has further stated that in the Chalan Nas there was no mention of the case number. PW-5, Brij Mohan, who is the Chik Writer has proved the same. PW-6, is the Investigating Officer and has stated the manner in which he had arrested the accused person.

20. He had stated that during the preparation of the Panchnama, the constable Tiwari Lal Pal was present and he had not signed anywhere in the Panchnama. He had only kept the same in the case diary. It was written in the Panchayat Nama that the dead body was found near the empty plot of Sanjay Agrawal. He has very categorically stated that he had not seen blood on the clothes or on the hands of first informant or the witnesses. He had stated that in the site map prepared, he had not given any source of light.

21. After the trial was over, the statements of the accused persons, namely, Dharmendra, Upendra and Shyam Sunder were recorded under Section 313 Cr.P.C. They had denied having committed the crime and had prayed for being exonerated.

22. D.W.-1, Suresh Chandra, had in the testimony tried to establish that, in fact, the relations between the accused Upendra and his family members were not good and that on the date of incident he was away at the house of

Vireshwar where there was some programme going on.

23. Upon the conclusion of the trial, the accused Shyam Sunder was acquitted. Devendra Singh had died during the trial, the trial abated vis-a-vis him. So far as Dharmendra and Upendra are concerned, they were punished under Section 302 IPC with life imprisonment and a fine of Rs. 10,000/- each was imposed on them. Upon the non-payment of the fine, they were to undergo six months of further imprisonment.

24. Learned counsel for the appellant Sri Arvind Agrawal has assailed the judgement on the following grounds:-

i.) He submits that the P.W.-1 is not a very reliable and believable eye-witness. Learned counsel for the appellant states that the P.W.-1 had stated that when the assailants had reached the spot, he was 15 to 20 steps away from the place of occurrence. However, the light of the motorcycle on which the assailants had come had fallen on his face and that he had recognized the assailants from the light which emanated from the bulb of the cold storage. Learned counsel for the appellant, however, states that when the P.W.-1 was stating that the relations between the family of P.W.1 and that of the accused persons was strained and when they were going to kill the son of the P.W.1, then upon recognizing the P.W.-1 in the light of the head light of the motorcycle, they would have definitely killed him also. Learned counsel for the appellant states that in the natural course of events, no assailant who recognized a known enemy would leave him alive specially when he was an eye witness in the case. He submits that if one person who was inimical was being killed then the other person also would have been killed.

ii.) It is the case of the learned counsel for the appellant that one more circumstance goes definitely to show that the P.W.-1 was not there and that was that the P.W.-1 upon having got a feeling that the assailants had come up with an intention to kill his son never made any efforts to ward off the incident. He did not implore to the assailants to spare his child etc. Further, learned counsel for the appellant submits that even though the P.W.-1 had stated (at page 26 of the Paper Book) that "मेरे हाथ खून मे सन गये थे। मै खून लगे कपड़े

पहन कर थाने गया था।" (there was blood on his hands and there was blood on his clothes when he had gone to the Police Station), (at page 34 Paper Book), he had stated that "मैं घटना स्थल पर लायक सिंह को छोड़कर थाना गया था। मैं लड़के को इलाज हेतु अस्पताल नहीं ले गया था क्योंकि उसकी मृत्यु हो चुकी थी। इसीलिए मेरे हाथों व कपड़ों पर खून नहीं लगा था" Thus immediately when after the incident he had gone to the Police Station to report the matter, there was neither blood on his hands nor on his clothes. Learned for the appellant states that the evidence of P.W.-1 becomes absolutely unbelievable and cannot be relied upon to convict the accused persons.

iii.) Learned counsel for the appellant further submits (at page 30 of Paper Book) that "सभी मुल्जिमान ने पास से ही गोली मारी थी।" it had been clearly stated that all the assailants were standing very close to the target i.e. the deceased son and had fired from the same distance. However, learned counsel for the appellant relying upon the post mortem report submits that tattooing was of varied degrees. In fact, he has shown that the first injury did not contain any tattooing at all and must have come from a place which was very far away.

iv.) Learned counsel for the appellant has taken the Court through the various contradictions in the statements of the P.W.-1. He has stated that in the first information report, the informant (PW1) had stated that he had seen the incident in the light which was coming from the cold storage. However it has come in the evidence that the recovery memos were prepared in the light of patromax and torches. Also, he has stated that there was no source of light. In fact, he had also stated that the inquest report mentioned that there was no sufficient light. With regard to the contradiction vis-a-vis the statement of the P.W.-1 that there was blood on his clothes or hands, learned counsel for the appellant has stated that he had made already that argument when he had stated the P.W.-1 was not believable. While pointing out to the further contradictions, learned counsel for the appellant, states that at one place the P.W.-1 stated (at page 17 of Paper Book) that "मैं घटना के बाद स्टेशन रोड शिको० पर पुरुषोत्तम सिंह के घर गया था और उनसे मैंने घटना की तहरीर बोल 2 कर लिखाई थी।" (he had got the first information report scribed at the house of Purshottam) and

at another place he had stated (at page 24 of Paper Book) that “रिपोर्ट मैने थाने के बाहर बैठकर लिखवायी थी। पहले रिपोर्ट थाने के बाहर लिखवायी फिर अन्दर थाने मे गया” (the first information report actually was scribed at the police station).

v.) Learned counsel for the appellant further submitted that even though the appellant was sufficiently education and could have drafted the FIR himself but he took the help of another layman Purshottam who was never produced in the witness box.

vi.) Learned counsel for the appellant submitted that when a person wants action to be taken he would have approached the police station instead of going to a layman who was a relative. Learned counsel for the appellant further submits that even Purshottam had not accompanied the first informant to the police station. He submits that when the P.W.-1 was in such a bad state where his son had been murdered and Purshottam was a near relative of his, the natural relation of Purshottam ought to have been that he should have accompanied the first informant to the police station after he scribed the first information report.

vii.) Learned counsel for the appellant submits that simply because the P.W.-1 was wanting to implicate the accused persons in the case he had come up with the story that there was a motive for the killing of his son and, therefore, he had stated that there was long-standing enmity between the family members of the two i.e. the first informant and the co-accused persons. However, in his statement which he had made in the cross-examination, he had stated (at page 29 of Paper Book) that “मेरे लड़के व मुझसे मुल्जिमान की कोई रंजिश नहीं थी।” (there was absolutely no enmity between the accused and the deceased) and, he therefore, submits that when there was no motive there was every possibility that because the accused were known to the P.W.-1 because of a murder which had taken place prior in point of time by the family members of P.W.-1 he was only trying to implicate the accused in one more case.

25. Learned counsel for the appellant relied upon a judgment of Supreme Court in the case of **Chhote Lal vs. Rohtash & Ors** decided on 14.12.2023

to buttress the submission that a father before whom his son is being done to death and he is an eye witness would not remain a mere spectator and would most certainly intervene to save his son.

26. Learned AGA Sri Amit Sinha vehemently opposed the Appeal and has submitted that when there was an eye-witness account, the same could not be ignored lightly. He further submitted that the FIR was a prompt one and, therefore, could not be ignored. He also submitted that the post-mortem/medical evidence was corroborative of the prosecution version and could not, therefore, be in any manner ignored. Learned AGA further submitted that the contradictions which have been pointed out by the appellants are very minor.

27. Having heard the learned counsel for the appellant and the learned AGA, we are of the view that the judgement and order dated 3.9.2017 passed by the Additional Sessions Judge, Court No. 2, Firozabad, in S.T. No. 23 of 2007 arising out of Case Crime No. 290 of 2006, under Section 302 IPC, Police Station – Shikohabad, District – Firozabad, deserves to be set aside and the criminal appeal deserves to be allowed.

28. The P.W.-1 being the father of the deceased had definitely not behaved in the manner it was expected of him to have behaved. When the P.W.-1 had seen the accused in the light of the cold storage and when he knew that there was something untoward going to happen, he ought to have intervened and at least he could have implored that his son be not killed. We are further of the view that when the appellant/accused had specifically come to kill the son of the first informant with whom they were on inimical terms then the natural behaviour ought to have been that when they had seen the P.W.-1 in the head light of the motorcycle and recognized him then they ought to have killed him as well. Still further, we are of the view that in the light of the various contradictions, the statements/evidence of the P.W.-1 become unbelievable. The P.W.-1 at one place states that there was blood on his hands and his clothes and at the other place, he states, that there was no blood on his hands and clothes. Also, the manner in which the inquest report

was drawn wherein it was mentioned that the dead body was found in the plot of one Sanjay Agrawal whereas it was a consistent case of the P.W.-1 and also of the Investigating Officer that it was found near the side of the road in between the road and the cold storage then also the Court gets a feeling of doubt as to whether the prosecution had come up with a true case. In fact, upon the analysis of the entire evidence on record, a definite doubt is created as to whether the P.W.-1 was at all at the place of incident and as to whether he was giving his testimony truthfully. When the distance of the accused was given then also it was stated that they were all at an equal distance from the victim but the injuries showed that the tattooing was because of firing from different distances. In our opinion, the prosecution has thus utterly failed to prove the guilt of the accused both by circumstantial evidence and by means of evidence of the eye witnesses beyond reasonable doubt. The chain of events definitely is not complete and also the presence of the witness (especially PW1) at the place of occurrence is absolutely doubtful.

29. This being the case and for all the reasons which have been stated above, we are of the view that the judgement and order dated 3.9.2017 passed by the Additional Sessions Judge, Court No. 2, Firozabad, in S.T. No. 23 of 2007 arising out of Case Crime No. 290 of 2006, under Section 302 IPC, Police Station – Shikohabad, District – Firozabad, cannot be sustained in the eyes of law and, therefore, is set aside and the criminal appeal is **allowed**. The appellant is acquitted of all the charges. The appellant be released forthwith, if he is not required to be in jail in any other case.

September 11, 2025

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(Ashutosh Srivastava,J.) (Siddhartha Varma,J.)