



2026:AHC:77684

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 7234 of 2023

Sanjay @ Bhagat @ Sitaram

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Kamla Singh, Sudarshan Singh
Counsel for Respondent(s)	:	G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Counter affidavit filed today is taken on record.

2. The present Criminal Appeal has been preferred against the judgment and order dated 16.06.2023 passed by the learned Additional District and Sessions Judge, Court No. 2, Chandauli in S.T. No. 06 of 2019 (State of U.P. vs. Sanjay @ Bhagat @ Sitaram), arising out of Case Crime No. 88 of 2001, under Section 307 I.P.C., Police Station Balua, District Chandauli, and S.T. No. 07 of 2019 (State of U.P. vs. Sanjay @ Bhagat @ Sitaram), arising out of Case Crime No. 89 of 2001, under Section 25 of the Arms Act, Police Station Balua, District Chandauli, whereby the appellant has been convicted under Section 307 I.P.C. and sentenced to undergo rigorous imprisonment for ten years along with a fine of Rs. 5,000/-, and in default of payment of fine, to further undergo additional imprisonment for six months.

3. The prosecution case, in brief, is that on 22.05.2001 at about 9:00 P.M., S.H.O. Mangala Prasad Tiwari, along with S.I. Subhash Tiwari, Head Constable Abul Ahad Khan, Constable No. 407 Kabilash Yadav, Constable No. 263 Kamal Kumar Rastogi, and Constable No. 72 Rakesh Singh, were on patrolling duty in a government jeep, accompanied by driver Constable Munni Lal Pandey, in search of wanted criminals. Upon receiving secret information that three miscreants armed with illegal weapons were approaching on a motorcycle, the police party laid a trap on the southern side of village Hardhan Juda.

4. Shortly thereafter, a motorcycle was seen approaching. When signalled to stop, the miscreants allegedly started firing at the police party with the

intention to kill. The police personnel managed to save themselves and apprehended one accused, namely Bhagat @ Sitaram, son of Girju Yadav, resident of Sherpur, Saraiya, Police Station Balua, District Chandauli, along with a country-made 12 bore pistol. The other two accused persons managed to escape from the spot.

5. From the possession of the arrested accused, one country-made 12 bore pistol along with one empty cartridge and two live cartridges were recovered. The weapon was seized and sealed at the spot, and a recovery memo was prepared. Thereafter, the accused and the recovered articles were brought to the concerned police station.

6. An F.I.R. was registered on the basis of the recovery memo, and the relevant G.D. entries were made. Prosecution sanction for the offence under Section 25 of the Arms Act was obtained from the District Magistrate. Upon completion of investigation, a charge-sheet was submitted.

7. Charges under Section 307 I.P.C. and Section 25 of the Arms Act were framed against the accused, who pleaded not guilty and claimed trial.

8. In order to prove its case, the prosecution examined six witnesses, namely P.W.-1 Mangala Prasad Tiwari, P.W.-2 I.O. Pramod Kumar Pandey, P.W.-3 Prem Chandra Mishra, P.W.-4 Kamal Kumar Rastogi, P.W.-5 Head Constable Kabilash Yadav, and P.W.-6 Abdul Ahad.

9. The documentary evidence produced included: Recovery Memo (Ext. Ka-1), Site Plan (Ext. Ka-2), Charge-sheet under Section 307 I.P.C. (Ext. Ka-3), F.I.R. (Ext. Ka-4), carbon copy of G.D. (Ext. Ka-5), Prosecution Sanction (Ext. Ka-6), and Charge-sheet under Section 25 of the Arms Act (Ext. Ka-7). The recovery of the country-made pistol, empty cartridge, and live cartridges was also proved as material exhibits.

10. After hearing both the parties and considering the oral and documentary evidence on record, the learned Trial Court recorded findings of conviction against the accused for offences under Section 307 I.P.C. and Section 25 of the Arms Act and sentenced him accordingly.

11. Learned counsel for the appellant submitted that the judgment passed by the learned Trial Court is illegal, arbitrary, and against the settled principles of law. It is contended that the Trial Court, without proper application of judicial mind, convicted the appellant in a routine manner. It is further

argued that no police personnel sustained any injury in the alleged incident, and there is no independent witness to the alleged arrest and recovery. All prosecution witnesses are police personnel and thus interested witnesses.

12. It is further submitted that the appellant is an innocent person and has been falsely implicated in the present case due to ill will on the part of the police. It is also contended that the alleged recovery of the country-made 12 bore pistol from the possession of the appellant is doubtful, as the weapon produced before the Court did not bear the signature of the appellant, which indicates that the alleged recovery was forged and planted by the police.

13. The primary issues for consideration are-

Whether the prosecution has proved beyond reasonable doubt that the appellant fired upon the police party with the intention to kill, and whether the recovery of the firearm and cartridges is reliable and legally proved.

14. The entire prosecution case hinges upon the allegation that the accused, along with his associates, fired multiple shots at the police party with the intention to kill. However, it is noteworthy that no empty cartridges allegedly fired by the accused persons were recovered from the place of occurrence. Further, no member of the police party sustained any injury, nor was any damage caused to the police jeep or surrounding objects. No physical marks, such as bullet impacts or other signs of firing, have been produced on record.

15. The absence of such corroborative evidence renders the alleged firing highly doubtful. As per the prosecution evidence, the accused and his companions fired multiple shots while fleeing; however, there is no evidence to show that the police made any serious attempt to chase and apprehend the fleeing miscreants. No effective steps appear to have been taken to arrest them. Such conduct of the police party creates doubt regarding the genuineness of the alleged encounter.

16. The prosecution case regarding the recovery of the illegal firearm also suffers from serious infirmities. The use of seal at the time of seizure has not been properly proved.

17. P.W.-1 Mangala Prasad Tiwari, in his deposition, failed to describe what was inscribed on the seal. The sealed parcel did not bear the signature of the accused. Further, the alleged copy of the recovery memo was not found with

the accused at the time of search in the lock-up. The prosecution case that the recovery memo was prepared on the spot in torchlight and a copy was handed over to the accused appears doubtful, particularly when no independent witness was associated. The accused was not found in possession of any such copy of the recovery memo.

18. All the prosecution witnesses are police personnel, and no independent witness has been examined, despite the alleged occurrence having taken place on a public road.

19. Though a conviction can be based on police testimony, such evidence must be wholly reliable and inspire confidence, which is lacking in the present case.

20. For an offence under Section 307 I.P.C., the prosecution must establish intention or knowledge to cause death along with an overt act. In the present case, the very act of alleged firing is doubtful; hence, the essential ingredients of Section 307 I.P.C. are not proved.

21. A perusal of the record also reveals that the alleged recovered country-made pistol and cartridges were not sent for ballistic examination. In the absence of such examination, it cannot be established whether the weapon was in working condition or whether it was actually used in the alleged firing. The Hon'ble Supreme Court in ***Mohd. Aman vs. State of Rajasthan, (1997) 10 SCC 44***, has emphasized the importance of proper forensic examination in such cases.

22. The alleged recovery was made only in the presence of police witnesses. No independent witness was associated, despite the place of occurrence being a public place. In such circumstances, the possibility of false implication, as pleaded by the accused, cannot be ruled out in the absence of reliable corroboration.

23. The cumulative effect of the above discrepancies creates reasonable doubt in the prosecution story. It is well settled that suspicion, however strong, cannot take the place of proof. The prosecution has failed to prove its case beyond reasonable doubt. The findings recorded by the learned Trial Court suffer from non-appreciation of material contradictions and inherent improbabilities in the prosecution case.

24. Accordingly, the prosecution has failed to prove its case beyond

reasonable doubt against the appellant. The conviction recorded by the trial court and the sentence imposed upon the appellant is liable to be set aside.

25. The appeal is **allowed**.

26. The impugned judgment and order dated 16.06.2023 is set aside.

27. The appellant is acquitted of the charges.

28. Since the appellant is on bail, his bail bonds are cancelled and sureties are discharged.

29. A copy of this judgment along with the trial court record, if received, be sent back forthwith to the court concerned for necessary compliance.

April 9, 2026
Pravesh Mishra

(Mrs. Vani Ranjan Agrawal,J.)