

A.F.R.

Reserved



2026:AHC:43794-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 7953 of 2022

Puneet

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Akash Dwivedi, Dinesh Kumar Sharma, Rajiv Lochan Shukla, Vinay Kumar
Counsel for Respondent(s)	: G.A., Shiv Bahadur Singh, Sunil Kumar Singh

Court No. - 43

HON'BLE SALIL KUMAR RAI, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. This criminal appeal has been preferred by the accused-appellant, Puneet, against the judgment and order dated 29.08.2022 passed by the learned Special Judge (SC/ST Act), Gautam Buddha Nagar, whereby the appellant was convicted and sentenced in Sessions Trial No. 536 of 2019 (State of U.P. v. Puneet), arising out of Case Crime No. 1025 of 2018, under Section 302/34 IPC, Police Station Dadri, District Gautam Buddha Nagar, and in Sessions Trial No. 537 of 2019 (State of U.P. v. Puneet), arising out of Case Crime No. 374 of 2019, under Sections 25/27 of the Arms Act, Police Station Dadri, District Gautam Buddha Nagar.

2. By the impugned judgment and order, the learned Special Judge (SC/ST Act), Gautam Buddha Nagar, convicted the appellant under Section 302/34 IPC and sentenced him to imprisonment for life with a fine of Rs.10,000/-, and in default of payment of fine, to undergo one month's additional imprisonment. Appellant was also convicted under Sections 25/27 of the Arms Act and sentenced to three years' rigorous imprisonment with a fine of Rs.5,000/-, and in default of payment of fine, to undergo fifteen days' additional imprisonment. Aggrieved by the said judgment and order of conviction and sentence dated 29.08.2022, the appellant has preferred the present criminal appeal before this Court.

3. According to the prosecution case, it is alleged that the informant, Mahesh Bhati, a resident of Village Luharli, stated that on 27.11.2018 his son, Mohit Bhati, aged about 25 years, was returning home from the Greater Noida Development Authority. At about 7:00 p.m., near Village Vasantpur (Naya Gaon), Mohit was shot by unknown persons, as a result of which he died. It is further alleged that the deceased's car bearing registration no. UP16 BE-7011 was found parked at the place of occurrence. Information regarding the incident was conveyed to the informant's younger son by unknown person. The injured Mohit Bhati was taken to Naveen Hospital, where he was declared dead by the attending doctors.

4. On the basis of a written report dated 27.11.2018 (Exhibit Ka-1) submitted by the informant, Mahesh Bhati (PW-1), a First Information Report dated 27.11.2018 (Exhibit Ka-4) was registered as Case Crime No. 1025 of 2018, under Section 302 IPC at Police Station Dadri, District Gautam Buddha Nagar, against an unknown person.

5. Investigating Officer, Ramsen Singh (PW-9) took charge of the investigation. He inspected the place of occurrence, collected blood-stained soil and simple soil from the place of occurrence, and prepared a recovery memo. He also prepared *Supurdginama* (handing over) (Exhibit Ka-2) of a car that was parked at the place of occurrence, to Sumit Bhati, son of the informant, Mahesh Bhati (PW-1) and brother of

the deceased, Mohit Bhati. Investigating Officer, Ramsen Singh (PW-9), got the inquest report (*Panchayatnama*) as well as other police papers, such as, *challannash*, letter to CMO, and other necessary documents, prepared by Sub Inspector, Braj Singh Yadav (PW-8). After preparing the necessary documents, the dead body of the deceased Mohit Bhati, was sent for postmortem.

6. Investigating Officer, Ramsen Singh (PW-9) prepared a site plan (Exhibit Ka-11) of the place of occurrence. He recorded statements of witnesses under Section 161 CrPC. Thereafter, the First Investigating Officer, Ramsen Singh (PW-9) was transferred and investigation of the case was taken up by Inspector, Niraj Malik (PW-10). The Second Investigating Officer, Niraj Malik (PW-10) also recorded statements of witnesses under Section 161 CrPC.

7. Second Investigating Officer, Niraj Malik (PW-10), arrested accused-appellant, Puneet on 31.03.2019 and recovered one country-made pistol of 32 bore along with two live cartridges of 32 bore and one Swift car of white colour bearing Registration No. UP16 CA-1156, and prepared *Fardbaramadgi* (Exhibit Ka-13). On the basis of recovery of country-made pistol of 32 bore along with two live cartridges of 32 bore, another case was registered against accused-appellant, Puneet as Case Crime No. 374 of 2019, under Sections 25/27 Arms Act, Police Station Dadri, District Gautam Buddha Nagar.

8. A bullet bearing size of 1.5 x 0.9 cm, was recovered from the body of the deceased, Mohit Bhati. The recovered bullet and country-made pistol of 32 bore along with two live cartridges of 32 bore, were sent to Forensic Science Laboratory, Uttar Pradesh, Agra for examination. After completing the necessary formalities of investigation, Second Investigating Officer, Niraj Malik (PW-10), submitted a charge sheet (Exhibit Ka-12) against accused-appellant, Puneet under Section 302 IPC.

9. Sub Inspector, Mahendra Singh (PW-11), investigated the Case Crime No. 374 of 2019, under Section 25/27 Arms Act. Investigating

Officer, Mahendra Singh (PW-11), after completing all necessary formalities, including recording of evidence of prosecution witnesses under Section 161 CrPC, prepared a site plan of the place, where accused-appellant, Puneet was arrested with country-made pistol of 32 bore and two live cartridges of 32 bore. After completing all formalities, PW-11 submitted a charge sheet (Exhibit Ka-15), against accused-appellant, Puneet under Section 25/27 Arms Act.

10. Dr. Lalit Kumar Singh (PW-6), conducted autopsy of the deceased Mohit Bhati on 28.11.2018 and prepared postmortem report (Exhibit Ka-3). According to the postmortem report, the following injuries were found on the body of the deceased:

"Entry Wound

(i) Entry wound size 1 x 1 cm x brain deep, pass through arm left side back of skull, 5 cm behind left ear. Blackening, tattooing, singeing of 3 x 3 cm in sizes around the wound (margin round) edges inverted.

(ii) Entry puncture wound size 1 x 1 cm x cavity deep over left side (sternal region) chest, 9 cm from left nipple at 10 o'clock position, margin round and edges inverted. Blackening, tattooing, singing 3 x 3 cm of are on size, surrounding.

(iii) Entry wound size 1 x 1 cm x cavity deep, over left side front of chest, 6 cm above and medial to left axilla. Margins wound & punctured, edges inverted. Tattooing, Blackening and singing of area surrounding size 2 x 2 cm.

Exit Wound

(i) Exit wound of this wound that over Right side face, 2 cm below Right eye. Size 2 x 2 in size, margins are everted.

(ii) Exit wound size 2 x 2 cm over left side back of chest, 26 cm below C7 Vertebra margins everted.

(iii) Exit wound size 2 x 2 over left side back of chest, at the level of axilla, 7cm x 7cm medial and above (away) from left Axilla. One bullet stucked in the exit wound.

11. Since, the case was exclusively triable by the Court of Session, the learned Magistrate committed the case to the Sessions Court for trial.

12. The learned Trial Court framed charges against the accused-appellant on 30.09.2021 under Section 302/34 IPC. The accused-appellant denied the charges and claimed trial.

13. From a perusal of the record of the learned Trial Court, it is apparent that in the light of the order passed by the learned Trial Court on 11.12.2019, accused Gaurav was declared juvenile and his file was separated and sent to Juvenile Justice Board, Gautam Buddha Nagar for trial.

14. The prosecution, in support of its case, adduced twelve witnesses, such as, the informant Mahesh Bhati (PW-1), Chandrahas (PW-2), Sumit Bhati (PW-3), Krishna (PW-4), Amit (PW-5), Dr. Lalit Kumar Singh (PW-6), Murari Lal (PW-7), Braj Singh Yadav (PW-8), Ramsen Singh (PW-9), Niraj Malik (PW-10), Mahendra Singh (PW-11), Sahil Kumar (PW-12). Apart from the oral evidence, the prosecution also relied upon the documentary evidence, marked as Exhibit Ka-1 to Exhibit Ka-15.

15. After recording the evidence of all the prosecution witnesses, the learned Trial Court fixed 21.04.2022 for recording the statement of the accused-appellant, Puneet under Section 313 of the CrPC. However, on perusal of the record, it is clear that questions numbered 1 to 18 were typed and prepared in advance, leaving blank space below each question for recording the answers. These questions for recording the statement of the accused-appellant, Puneet, under Section 313 CrPC were prepared in six pages bearing paper numbers 21Ka/1 to 21Ka/3. From a perusal of the statement recorded under Section 313 CrPC, it is evident that only the personal details of the accused, namely his name, age, father's name, profession and address, were filled in. Further, in paper numbers 21Ka/1 to 21Ka/3, no answer of the accused was recorded, and the columns meant for answers to question numbers 1 to 18 are completely blank. Only the signature of the accused-appellant appears on each page, along with the initials of the then Presiding Officer, Special Judge, SC/ST Act, Gautam Buddha Nagar, and a full signature on the last page dated 21.04.2022. Thus, it is apparent that although the questions under Section 313 CrPC were prepared, the answers of the accused-appellant were not recorded by the learned Presiding Officer.

16. The accused-appellant has not adduced any evidence in his defence. The learned Trial Court, after hearing arguments from both the parties, appreciated and evaluated the evidence on record and found the appellant guilty under Section 302/34 IPC and Section 25/27 Arms Act. The Trial Court convicted and sentenced the appellant to life imprisonment under Section 302/34 IPC with a fine of Rs.25,000/-, and in default, one month additional imprisonment. The Trial Court also convicted the appellant to three years imprisonment under Section 25/27 Arms Act along with a fine of Rs.5,000/-, and in default, fifteen days additional imprisonment. Both sentences were ordered to run concurrently. Aggrieved by the judgment and order of conviction and sentence dated 29.08.2022, the accused-appellant preferred this criminal appeal before this Court.

17. Learned counsel for the accused-appellant has submitted that the impugned conviction order passed by the learned Trial Court is based on surmises and conjectures. The prosecution has failed to prove its case against the accused-appellant beyond a reasonable doubt. The learned Trial Court has absolutely misread and misinterpreted the evidence and wrongly recorded finding of conviction against the accused-appellant. There are a lot of major and material contradictions in the statements of prosecution witnesses but the learned Trial Court has not given any heed/attention towards these major and material contradictions. There is no direct or indirect evidence against the accused-appellant. The sentence and conviction recorded by the learned Trial Court is absolutely perverse and deserve to be set aside. The appellant was not involved in the incident. The alleged recovery shown by the prosecution is false and planted one. The appellant is innocent and has been falsely implicated in the present case due to village politics and election rivalry. The learned Trial Court wrongly appreciated evidence against the accused-appellant.

18. It is also submitted by learned counsel for the accused-appellant that, from the perusal of the oral and documentary evidence, it is amply clear that the appellant was not involved in the commission of the alleged crime. However, the learned Trial Court, by misreading and mis-

appreciating the prosecution evidence and also against the settled principles of law, held the accused-appellant guilty for the commission of alleged crime. In view of the above points of argument, the learned counsel for the accused-appellant submitted that the present appeal filed by the accused-appellant is liable to be allowed and the judgment and order of conviction and sentence passed by the learned Trial Court is liable to be set aside.

19. *Per contra*, learned A.G.A. for the State and learned counsel for the complainant have submitted that the learned Trial Court, after perusing and appreciating all the prosecution evidence, held the accused-appellant guilty for the commission of alleged crime. It is also submitted that direct evidence against the accused-appellant is available on record from the evidence of prosecution witnesses; informant Mahesh Bhati (PW-1), Chandrahas (PW-2), Sumit Bhati (PW-3), Krishna (PW-4), Amit (PW-5). The recovery of a country-made pistol of 32 bore, along with two live cartridges of 32 bore, and the report of Forensic Science Laboratory, Uttar Pradesh, Agra, prove the direct involvement of the appellant in the present case beyond reasonable doubt. A bullet recovered from the deceased Mohit Bhati's body during autopsy was found to be fired from the same country-made pistol, which was recovered from the possession of the accused-appellant, Puneet. It is also submitted that there was previous enmity and rivalry between the prosecution and defence sides.

20. Due to the previous enmity and village rivalry, the deceased was murdered by the accused-appellant, Puneet with foolproof planning. The learned Trial Court has rightly appreciated the evidence and applied all relevant laws, thereby holding the appellant guilty for the commission of alleged offence. Consequently, the criminal appeal filed by the accused-appellant is devoid of merit and lacks force and is, therefore, liable to be dismissed.

21. In the light of the above arguments and counter-arguments of both the sides, we have gone through the entire evidence available on record.

We have also perused the judgment and order of conviction and sentence dated 29.08.2022 passed by the learned Special Judge (SC/ST Act), Gautam Buddha Nagar.

22. A perusal of the written report dated 27.11.2018 (Exhibit Ka-1) reveals that the deceased, Mohit Bhati, son of informant Mahesh Bhati (PW-1), was returning home from Greater Noida Development Authority on 27.11.2018. At about 7:00 p.m., near Village Vasantpur (Naya Gaon), Mohit was shot by unknown persons, as a result of which, he died. From a perusal of the written report (Exhibit Ka-1), it is also revealed that the car of the deceased, bearing registration no. UP16 BE-7711, was found lying/parked at the place of occurrence. The written report further indicates that information about the murder was given to the informant's younger son, Sumit Bhati by an unknown person. The injured Mohit Bhati was taken to Naveen Hospital, where he was declared dead by the attending doctors. Thus, from a perusal of the written report (Exhibit Ka-1) filed by the informant Mahesh Bhati (PW-1) after the alleged incident, it is clearly established that the informant has lodged the report against unknown persons. No one is named as an accused in the written report. The information about the murder of his son Mohit Bhati was received by the informant through his younger son, who had received it from some other person.

23. In his examination-in-chief, informant Mahesh Bhati (PW-1) has stated that "The incident occurred on 27.11.2018. The incident took place at 7:00 PM. The incident occurred near Naya Gaon, Vasantpur. I was informed about the incident by my son, Sumit. My son had a Kwid car, the number of which was UP16 BE-7011. I did not reach the place of the incident. Mohit was taken to the Naveen Hospital at Dadri by my younger son and his friend. Upon receiving the information, I reached Naveen Hospital, Dadri. I saw my son, Mohit, at the hospital. My son Mohit had been shot in the temple (side of the head) and the chest. I had a written report (*Tehrir*) prepared by Mahipal Bhati and I signed it. The witness identified the signatures on the complaint paper (Paper No. 4A/3). Paper No. 4A/3 was marked as Exhibit Ka-1. The police

questioned me and recorded my statement twice. My brother, Umesh, also told me that he had gone to Ajayabpur to bring some goods. While returning with the goods, he saw that Mohit's vehicle was parked ahead at the turn of Naya Gaon, and Puneet's vehicle was parked behind it. Puneet was sitting in the steering seat (driver's seat), and Mohit was sitting next to him, while other people were sitting in the back of the car. Alcohol was being consumed in the vehicle. As soon as he walked ten steps ahead, he heard the sound of a gunshot. When he looked back, Puneet had shot Mohit. He had reported this matter to the police."

24. In his cross-examination, the informant Mahesh Bhati (PW-1) has stated that many people from the village went to the police station to file the report, but Chandrahas did not go the police station. He further stated that "I did not give this statement to the police that 'unknown people shot and injured him.' If the aforementioned point is written in my statement, then I cannot explain the reason for it; that the police were in collusion with the accused, because the BJP MLA of the Dadri area is the maternal uncle of the accused, Puneet."

25. In his cross-examination, the informant, Mahesh Bhati (PW-1) further stated that I had given Puneet's name in writing in the FIR, but the police did not make him an accused. I had told the police in my statement that "I had filed a report against Puneet and his brothers regarding this murder, but due to pressure of the MLA, the police did not register the report. If police have not recorded the said fact in my statement, I cannot give any reason for it. I had given this statement to the police that 'my brother Umesh told me that shot Mohit.' If the police have not recorded this in my statement, I cannot give any reason for it. Because the police were under pressure."

26. In the light of the evidence as deposed by the informant, Mahesh Bhati (PW-1), it is necessary to peruse the evidence of First Investigating Officer, Ramsen Singh (PW-9). From a perusal of evidence of Ramsen Singh (PW-9), it is revealed that on 15.12.2018, statements of Mahesh Bhati, Chandrahas, Beg Raj, Subhash Nagar, Satish Bhati and Jaiveer

Singh were recorded by PW-9. During his cross examination, this witness has stated that "After recording the statement of witness Sumit, son of Mahesh, it came to my knowledge that 'Sumit had received information regarding Mohit's murder through a Brahmin (Pandit) and a Gurjar boy.' No effort was made by me to search for the aforementioned Pandit and Gurjar boy who provided that information."

27. In his cross-examination, First Investigating Officer, Ramsen Singh (PW-9) further stated that "I recorded the statements of the informant Mahesh and witness Chandrahas, son of Rampal, on 15.12.2018. I have not recorded any reason in the case diary for not recording the statement of Chandrahas, son of Rampal, prior to 15.12.2018. I have not recorded any reason for not recording the statement of the informant Mahesh prior to 29.11.2018. On 08.01.2019, I recorded the statements of witnesses Krishna, son of Chandrahas, and Amit, son of Rajendra. Their statements were not recorded before 08.01.2019 because no information had been received about them; said himself that their statements were recorded once their details surfaced. After recording the statement of witness Krishna, son of Chandrahas, on 08.01.2019, I came to know that Puneet had threatened Mahesh at the police station on 30.03.2018. I also came to know about the aforementioned threat from the statement of Amit, son of Rajendra. It is correct that the matter regarding Puneet threatening Mahesh, is not present in any police station records. Witness Chandrahas, son of Rampal, gave me this statement that; Sahab, on the date 27.11.2018, someone shot and killed Mohit, son of Mahesh, from the village. Upon hearing this, I also went to Naveen Hospital, Dadri, where the body was kept. I had gone to the police station with Mahesh to file the report." Further, in his cross-examination, the First Investigating Officer, Ramsen Singh (PW-9) has stated that "The informant witness Mahesh gave me this statement that at around 7:00 pm unknown people shot and injured him."

28. Thus, from a perusal of the evidence of informant Mahesh Bhati (PW-1) and First Investigating Officer, Ramsen Singh (PW-9), it is

evident that Mahesh Bhati is not an eyewitness to the alleged incident. The incident was not witnessed by informant Mahesh Bhati (PW-1). The information about the alleged incident was given to PW-1 by his younger son, Sumit Bhati. According to PW-1, a Pandit and a Gurjar boy had given information about the incident to Sumit. PW-1; after receiving the information about the incident did not go to the place of occurrence. PW-1 went to Naveen Hospital, Dadri, where dead boy of his deceased son, Mohit was kept. The written report (Exhibit Ka-1) was lodged by PW-1 against unknown person, however, in the course of recording his evidence, PW-1 stated against accused-appellant projecting a new theory that his brother, Umesh Bhati had told to him that he had heard and seen the noise of the firing and shooting by accused-appellant Puneet at Mohit Bhati.

29. From the evidence as given by this witness, in his evidence, it appears that in his statement recorded under Section 161 Cr.P.C. given to the Investigating Officer, this witness has not named any person as an accused person. This witness has not named or expressed any doubt against accused-appellant, Puneet in his statement recorded under Section 161 Cr.P.C. given to the Investigating Officer. But during the time of recording of his evidence in the Court, this witness deposed that statement, which was not given by this witness to the Investigating Officer in his statement recorded under Section 161 Cr.P.C.

30. From a perusal of the evidence of PW-1, it is clear that this witness had deliberately improved and changed his statement in the Court and given a new statement in the Court whereby he tried to implicate the accused-appellant, Puneet for the commission of alleged crime. Apart from this, from the reference of the evidence of first Investigating Officer, Ramsen Singh (PW-9), this fact is fully corroborated that this witness has changed his statement in the Court against his statement given to the Investigating Officer under Section 161 Cr.P.C. In this way, this witness tried hard to project a new prosecution story implicating accused-appellant, Puneet in this case. However, from a perusal of the overall evidence of this witness in the

light of the evidence of First Investigating Officer, Ramsen Singh (PW-9), it is clear that this witness has stated false and concocted facts. From the evidence of this witness, it is amply clear that major and material contradictions are present in the evidence of this witness, which is against the prosecution story. Thus, we find that there is no relevancy and veracity in the evidence of this witness. Evidence of this witness is totally unreliable and untrustworthy of credit.

31. Prosecution adduced Chandrahas as PW-2. This witness in his examination-in-chief has stated that "The incident have occurred at around 6:00 to 6:30 PM. It had become dark. I was returning from my aunt's village, Dadupur. A boy had dropped me off at Ajayabpur station on a motorcycle. From there, I started walking toward my village. I saw two cars parked on the road. Mohit and Puneet were sitting in one of the cars. Puneet was on the driver's side, and Mohit was on the passenger (conductor) side. I did not speak to them. I had only walked about 10-20 steps toward the village when I heard the sound of gunfire. When I turned around and looked, Puneet had shot Mohit twice. Out of fear, I ran toward the village. Before I reached the village, there was already a commotion/noise. I do not know which car left, but Puneet's car had gone. After the chaos broke out in the village, I did not go to Mahesh's house to tell him about the incident. I went to the police station and also to the mortuary. The inquest report (*panchayatnama*) was filled out in my presence. I saw Mohit's body. Mohit had two bullet wounds in his chest and one in his neck. On that day, I did not have any conversation with Mahesh because he was unconscious. I had told the police everything regarding the said incident. The police were under the pressure of the M.L.A."

32. In his cross-examination, Chandrahas (PW-2) has stated that "Before the incident with Mohit, I was in service. When I was in service, I did not keep a phone. I am aware that murder is a crime. Regarding the incident that happened with Mohit, I did not make any phone calls anywhere. I did not make any phone calls to either mine or Mahesh's relatives in connection with this incident, and I personally stated that I

do not know how to use a phone. I did not tell the police about the fact that I do not know how to make calls, nor did the police ask me about it. I cannot state any reason for this matter not being told. After the incident with Mohit, I remained in my village at home for four and half months. During those four and half months, the police visited the village several times in connection with Mohit's murder. It is wrong to say that after four and half months, I was not ready to testify against Puneet in connection with Mohit's murder. He then himself said that he had informed the police and Mahesh about the incident after it occurred. I went to Dadri Police Station with Mahesh to file the report. Mahesh wrote the report at the station itself. Mahesh dictated the report and the writer wrote it. It is wrong to say that Mahesh was not unconscious at the time of filing the report. I was also a witness (*Panch*) in the written documentation of the inquest (*Panchayatnama*) of Mohit's body. Besides me, there were many other witnesses (*Panchs*). The police did not take any opinion from us witnesses (*Panchs*). I had told the police everything about the incident at the time of the *Panchayatnama* of the body. If the police have not written the things told by me in the inquest report (*Panchayatnama*) regarding Mohit's murder, then I cannot state any reason for it. The police recorded my statement at the police station the day after the incident and then again questioned me later. The second questioning was done 2-3 months after the incident. It is wrong to say that Puneet was falsely implicated in the murder of Mohit with due consideration and planning after four months after the incident due to village politics and election rivalry."

33. During the cross-examination of PW-2, a question was put to him by the defence suggesting that in his first statement given to the police he had stated that on 27.11.2018, Mohit, son of Mahesh, a resident of the village, was shot dead by someone and upon hearing this, he went to Naveen Hospital, Dadri, where the dead body was kept. He had accompanied Mahesh to the police station for lodging the First Information Report. In reply, PW-2 stated that the said facts did not form part of his statement and that he had not given any such statement to the

police. He further stated that if the police had recorded such facts in his statement, he could not assign any reason for the same. PW-2 further denied having stated in his second statement dated 16.04.2019 that, after proceeding 50-60 steps forward, he heard the sound of 3-4 gunshots. He also denied having stated that on reaching home he came to know that Mohit had been shot and was taken to Naveen Hospital, Dadri. He reiterated that if these facts were recorded by the police in his statement, he could not explain the reason for the same.

34. In the light of the above evidence as given by Chandrahas (PW-2), it is judicious to peruse the evidence of the Investigating Officer so that it could be clear that whether this witness is stating true facts about the incident in the Court during his evidence or not.

35. First Investigating Officer, Ramsen Singh (PW-9) has deposed in his cross-examination that "I had recorded the statements of the informant Mahesh and witness Chandrahas, son of Rampal, on 15.12.2018. I have not recorded any reason in the case diary for not recording the statement of Chandrahas, son of Rampal, prior to 15.12.2018."

36. Second Investigating Officer, Niraj Malik (PW-10) has stated in his cross examination that "Witness Chandrahas had given me this statement that when he reached about 50-60 yards ahead, the sound of three or four fires was heard. Witness Chandrahas had also given the statement that upon reaching home, it came to his knowledge that Mohit had been shot and he had been taken to Naveen Hospital. Witness Chandrahas did not tell me in his statement that when he turned back, Puneet fired two bullets at Mohit. Witness Chandrahas did not give me a statement saying that Puneet was on the driver's side and Mohit was on the conductor's side of the vehicle. Instead, he stated that apart from Puneet, Mohit was sitting in the vehicle and Gaurav, the son of Rajendra's brother-in-law, was sitting in the back seat. Witness Chandrahas did not give me the statement that I had any conversation with them or not. Witness Chandrahas also did not give me the statement

that he ran toward the village due to fear. Instead, he stated that he went straight to the village. Witness Chandrahas also did not give me a statement that there was noise and commotion in the village before he arrived. Instead, he gave a statement that by the time he reached the village, it became known that Mohit had been shot dead. Witness Chandrahas also has not given the statement that after the stampede broke out in the village, he did not go to Mahesh's house and inform him about the said incident. Instead, he had given the statement that he had not told anyone because of fear."

37. In this way, from a perusal of the evidence of the prosecution witnesses and the First Investigating Officer, Ramsen Singh (PW-9), and also the Second Investigating Officer, Niraj Malik (PW-10), it is revealed that Chandrahas (PW-2) was projected by the prosecution as an eyewitness to the incident. However, from the evidence of Chandrahas (PW-2), it is clear that although in his examination-in-chief, PW-2 tried to depose himself in a way that he is an eyewitness to the alleged incident, but during his cross-examination by the defence, from the answers of this witness, it is revealed that PW-2 is stating a totally false and concocted story in the Court. This witness stated in his evidence a totally different and changed statement in the Court, which this witness had not stated before the Investigating Officer of the case in his statement recorded under Section 161 Cr.P.C.

38. This witness totally changed his statement at the time of recording of his evidence in the Court. What has been given and stated by this witness before the Investigating Officers of the case under Section 161 Cr.P.C. and in the Court in his evidence, it show that, in the evidence of this witness, material and major contradictions are present. This witness stated in the Court a totally false, fabricated, and afterthought prosecution story, thereby falsely implicating the accused-appellant in the alleged crime in this case. The falsity of this witness, that this witness has been stating wrong and false facts in the Court, is now clear and proved by the evidence of the Investigating Officers in this case.

39. In view of the above discussion and appreciation of the evidence of this witness, we are legally unable to accept the evidence of this witness as true and reliable. In other words, the evidence of this witness is highly doubtful and suspicious. After the alleged incident, the prosecution tried to project this witness as an eyewitness, but from a perusal of the evidence of this witness, it is amply clear that the prosecution miserably failed in its attempt, therefore, the evidence of Chandrahas (PW-2) is fully unreliable and unworthy of credit.

40. Sumit Bhati was also produced by the prosecution as PW-3. This witness is the younger brother of deceased Mohit Bhati. PW-3 in his evidence has stated that "I received information about the incident at around 7:15 PM from two boys of the village. They told me that vehicle no. 7011 is parked on the road near the field and my brother has been shot and is lying dead in the field. I had went out for the place of incident on my bike with Pradeep, a boy from my neighborhood. On the way, I called Pradeep's father from Pradeep's phone. My brother was lying dead straight in the field, his feet were towards the field and his head was towards the road. Among the boys, I mentioned as informants, one was a Pandit and other was a Gurjar. Both these boys were from our village."

41. Thus, from a perusal of the evidence of Sumit Bhati (PW-3), it is revealed that this witness is also not an eyewitness to the alleged incident. At the time of the incident, this witness was not present at the place of occurrence. This witness received information about the murder of his brother, Mohit Bhati, from two boys of the village, among whom one was a Pandit and the other was a Gurjar. After receiving information about the murder of his brother, Mohit Bhati, this witness, along with one Pradeep of his village, reached the place of the incident, and the dead body of his brother, Mohit Bhati, was taken to Naveen Hospital, Dadri, where he was declared dead by the attending doctor. Therefore, from the evidence of this witness, it is amply clear that this witness is not an eyewitness to the alleged incident. After the incident, this witness reached at the place of occurrence. From the evidence of this witness, we

found no relevant fact by which the accused-appellant could be connected with the alleged crime.

42. The prosecution also produced Krishna as PW-4, who is the son of Chandrahas (PW-2). From a perusal of his evidence, it appears that in 2018, during a game of *Kabaddi*, a quarrel took place between him, Deepak, and Puneet. According to this witness, reports were lodged from both sides at the concerned police station, and both parties went to jail. He further stated that the accused, Puneet, threatened Mahesh Bhati at the Dadri Police Station, saying that you are supporting the other side and I would take revenge after returning from jail. However, it is clear from the evidence that neither this witness nor Mahesh Bhati made any complaint whether written or oral, at the Dadri Police Station.

43. From the evidence of this witness, it is revealed that the prosecution, with a considered and afterthought approach, tried to narrate the fact of previous enmity with the accused-appellant through this witness. It is amply clear that the prosecution attempted to project this witness to establish a motive and fact of enmity so that its story could gain force. However, from a perusal of the evidence, we find no reliability or truthfulness in the statement of this witness. In view of the above, the evidence of this witness is not such that it could lend any support to the prosecution's story. Therefore, the statement and evidence of this witness are neither reliable nor trustworthy.

44. In the same manner as stated by Krishna (PW-4), prosecution witness Amit (PW-5) also narrated the fact of previous enmity, which had been mentioned by Krishna (PW-4). In his evidence, this witness stated that the quarrel occurred during a game of *Kabaddi*, and first information reports were lodged from both sides under Section 307 IPC, with the informant Mahesh Bhati supporting Krishna (PW-4) and Amit (PW-5). Due to this, Puneet threatened Mahesh Bhati, stating that he would suffer and that he would take revenge after returning from jail. According to this witness, when Puneet threatened Mahesh Bhati, a written complaint was lodged by him at the police station. However, in

his cross-examination, he stated that he had received no receipt of the written complaint, kept no copy, and had no explanation for the absence of the complaint in the police records. He also stated that if the police had not recorded this fact in his statement, he could not provide any reason for it.

45. Thus, from a perusal of the evidence of Amit (PW-5), it is amply clear that the prosecution, after due consideration and deliberation, tried to project this witness in Court to introduce the fact of previous enmity and the quarrel between the parties in order to give force to the prosecution's story. However, from the overall evidence of Amit (PW-5), it is evident that he is narrating a fabricated, false, and concocted story in Court. For this reason, the evidence of this witness is fully unreliable and unworthy of credit.

46. From a perusal of the evidence of Head Constable, Murari Lal (PW-7), who registered the first information report (Exhibit Ka-4) on filing of the written report (Exhibit Ka-1) by the informant, Mahesh Bhati (PW-1), has deposed in his evidence that Vegraj, son of Chahtaram, Subhash Nagar, son of Surendra and Chandrahas, son of Ramphal, all residents of Village Luharli, P.S. Dadri, District Gautam Buddha Nagar, had come with the informant Mahesh Bhati (PW-1) to lodge the report. These three people who came with the informant Mahesh did not give me any statement regarding the murder of the deceased Mohit Bhati.

47. Prosecution witness S.I. Braj Singh Yadav (PW-8), who prepared the *Panchayatnama* of the dead body of deceased Mohit Bhati, has stated in his evidence during cross-examination that witness Chandrahas, a *Panch*, had not given any statement to him regarding the murder of Mohit.

48. Thus, from a perusal of the overall evidence of the prosecution witnesses, such as, the informant Mahesh Bhati (PW-1), Chandrahas (PW-2), Sumit Bhati (PW-3), Krishna (PW-4), and Amit (PW-5), who are witnesses of fact as discussed above, and also from a perusal of the

police witnesses, such as, Murari Lal (PW-7), S.I. Braj Singh Yadav (PW-8), First Investigating Officer Inspector Ramsen Singh (PW-9), and Second Investigating Officer Inspector Niraj Malik (PW-10), it is amply clear that the written report (Exhibit Ka-1) was lodged by the informant Mahesh Bhati (PW-1) at Police Station Dadri against an unknown person.

49. The prosecution witnesses, such as, PW-1, PW-2, PW-3, PW-4, and PW-5, have not named or implicated the accused-appellant, Puneet, in the alleged crime in their statements recorded under Section 161 Cr.P.C. before the Investigating Officer. Even in their statements recorded under Section 161 Cr.P.C. before the Investigating Officer, these prosecution witnesses have not expressed or indicated any suspicion or doubt against the accused-appellant, Puneet, and also have not expressed any kind of enmity with the accused-appellant, Puneet. However, at the time of recording of their evidence in the Court, all the above prosecution witnesses, namely, PW-1, PW-2, PW-3, PW-4, and PW-5, totally changed their statements from those given before the Investigating Officer under Section 161 Cr.P.C. In the Court, during the recording of their evidence, all the above prosecution witnesses of fact, in a totally different manner, drastically changed their statements and have given improved and changed evidence before the Court by retracting from their statements as given before the Investigating Officer under Section 161 Cr.P.C. These above prosecution witnesses, in their statements before the Court, gave totally changed statements and, contrary to the settled principles of law, falsely implicated the accused-appellant, Puneet, for the commission of the alleged crime.

50. Hon'ble Supreme Court in the case of ***Dhanna v. State of M.P.***; (1996) 10 SCC 79 has held in para-12 that:

"The trial court which relied on the evidence of Nanuram (PW-6) pointed out that the witness did not refer to any role played by Dhanna when he gave statement to the police during investigation and hence a conviction for the offence of murder cannot be passed against Dhanna on the strength of improvement made at the trial. The said sound reasoning should not have been sidelined by the High Court without providing sufficient and convincing reasons. None has been given. We have scrutinized the evidence and we too are satisfied that PW-6 Nanuram

has, in fact, omitted to mention anything about Dhanna when PW-6 was questioned by police and has later on tried to give an improved version."

51. Similarly, a Division Bench of this Court in the case of ***Munesh v. State of U.P.***; 2004 CRI.L.J. 1529 has held in para-16 that:

"16. We have no reservations in observing that if witnesses do not state about the core/substratum of the prosecution case in their statements under Section 161, Cr.P.C. and when during the course of their cross examination, in the trial Court, confronted with the omission, fail to give a plausible explanation for it, as is the case with Madan Lal P.W. 2 and Suresh Chandra P.W. 3, it would be extremely hazardous to accept their testimony, for there is always the lurking fear in the mind of the Court that in order to fill the lacuna in their evidence, they have made improvements. We make no bones in observing that in Criminal cases, evidence of witnesses can only be accepted, if on the core/substratum of the prosecution case their statement in the trial Court is consistent with their statement under Section 161, Cr.P.C. and where it is not, as is the case here, the Court would have no compunction in rejecting it."

52. In the light of the law as laid down by the Hon'ble Supreme Court in ***Dhanna (supra)*** and the Division Bench of this Court in ***Munesh (supra)***, we find that, in the present case at hand, the prosecution witnesses, namely, the informant Mohit Bhati (PW-1), Chandrahas (PW-2), Sumit Bhati (PW-3), Krishna (PW-4), and Amit (PW-5), have completely changed and materially improved their statements from those given by them to the Investigating Officer during the course of investigation, and have narrated wholly altered and improved versions in their evidence before the Court. Thus, the testimony of all the aforesaid prosecution witnesses is not consistent with their statements recorded by the Investigating Officer during the investigation of the case. In view of the above, the evidence of the aforesaid prosecution witnesses is wholly unreliable and is liable to be rejected outright.

53. From a perusal of the evidence of the prosecution witnesses, we further find that the prosecution witnesses subsequently attempted to develop a story of enmity against the accused-appellant, Puneet. However, the prosecution witnesses have failed to establish the said allegation, and the attempted to falsely implicate the accused-appellant in the alleged crime.

54. From a perusal of the findings and reasoning recorded by the learned Trial Court on this aspect, we find that the learned Trial Court

has failed to consider the evidence in a legal manner and in the light of settled principles of law applicable to appreciation of evidence. For this reason, the findings and reasoning recorded by the learned Trial Court on this point are not sustainable in the eyes of law and, accordingly, the same are liable to be set aside and are hereby rejected.

55. From a perusal of the evidence of the First Investigating Officer, Inspector Ramsen Singh (PW-9), it is apparent that till 09.02.2019 he was unable to trace the person who had committed the alleged crime. Thereafter, PW-9 was transferred, and the investigation of the case was taken over by the Second Investigating Officer, Inspector Niraj Malik (PW-10). From a perusal of the evidence of the second Investigating Officer (PW-10), it is evident that after a lapse of about four months from the alleged incident, the statement of one Umesh was recorded under Section 161 Cr.P.C. on 22.03.2019, and for the first time the name of the accused-appellant, Puneet, surfaced on the basis of the said statement. Subsequently, after about four months from the date of the incident, the accused-appellant, Puneet was arrested by PW-10 on 31.03.2019.

56. It is also revealed that on the basis of information provided by a police informer (*mukhbir*), so-called murder weapon i.e. a country-made pistol of 32 bore along with two live cartridges of 32 bore, was recovered from the possession of the accused-appellant. The recovery memo (Exhibit Ka-13) reveals that although the accused-appellant is shown to have been arrested on 31.03.2019, the recovery memo was prepared on 01.04.2019, as is evident from the signature of PW-10 dated 01.04.2019.

57. On the basis of the said recovery memo (Exhibit Ka-13), a separate case was registered against the accused-appellant as Case Crime No. 374 of 2019, under Sections 25/27 of the Arms Act at Police Station Dadri, District Gautam Buddha Nagar. Sub-Inspector, Mahendra Singh (PW-11), who investigated the Case Crime No. 374 of 2019, has stated in his cross-examination that no public witness was ready to be a witness

to the arrest of the accused-appellant or the recovery of the country-made pistol and live cartridges. PW-11 further stated that the said place is situated at a distance of about 1.5 kilometres from village Luharli.

58. The absence of any public witness to support the prosecution version, clearly demonstrates that the arrest of the accused-appellant and the alleged recovery were effected without independent corroboration, despite the place of arrest and recovery being in close proximity to an inhabited area. The arrest of the accused-appellant after about four months from the date of the alleged incident and the alleged recovery of the so-called murder weapon under such circumstances, render the prosecution case highly doubtful and suspicious.

59. In view of the aforesaid facts and circumstances, it appears that in order to work out the case and to pacify the public as well as the informant side, the police falsely arrested the accused-appellant, Puneet, and planted the alleged weapon, namely a country-made pistol of 32 bore along with two live cartridges of 32 bore, upon him. Consequently, the arrest of the accused-appellant and the alleged recovery are not free from doubt and cannot be relied upon.

60. From the report of the Forensic Science Laboratory, Uttar Pradesh, Agra, it is further evident that the disputed bullet marked as "EB-1", which was recovered from the dead body of the deceased, Mohit Bhati, was fired from a 7.62×25 mm pistol. It is also stated in the FSL report that cartridges of 7.62×25 mm could neither be loaded into the chamber nor fired from the disputed country-made pistol marked as "1/2021". Thus, the prosecution story does not find support from the findings of the Forensic Science Laboratory report.

61. However, from a perusal of the findings and reasoning recorded by the learned Trial Court in paragraph-72 of the judgment and order of conviction and sentence dated 29.08.2022, it appears that the learned Trial Court relied only upon the presence of gunshot residue, i.e., nitrate, lead, and copper, allegedly found on the recovered country-made pistol, and on that basis wrongly held that firing was made from disputed

country made pistol (Material Exhibit-4) recovered from the possession of the accused-appellant, Puneet. This finding of the learned Trial Court is wholly contrary to the report of the Forensic Science Laboratory. Even if the findings of the Trial Court on that count are accepted, the same cannot be relied upon to convict the appellant because the recovery of the country made pistol and live cartridges, as held earlier, is suspicious and not supported by any independent witness.

62. Upon perusal of the oral as well as the documentary evidence, we find that there is no direct or circumstantial evidence against the accused-appellant, Puneet. The police failed to recover any incriminating object, article, or material from either the place of occurrence or the possession of the accused-appellant that could legally connect him to the alleged crime.

63. To hold a person guilty of a grave and heinous crime such as murder, the prosecution is duty-bound to adduce direct or indirect evidence, including circumstantial evidence or the last seen together theory, of such a nature as to connect the accused with the commission of alleged crime. It is the responsibility of the prosecution to prove its case against the accused beyond reasonable doubt.

64. However, from a perusal of all the evidence of prosecution as available on record, we find that there is no evidence against the accused-appellant by which he could be connected with the alleged crime. The learned Trial Court in a very casual and cursory manner without appreciating and analyzing prosecution evidence only on the basis of surmises and conjectures convicted appellant for heinous crime like murder. Trial Court has not appreciated and discussed evidence of prosecution in reasonable and legal manner but only on the basis of surmises and conjectures held the appellant guilty for commission of alleged crime. Trial Court recorded finding of conviction and sentence against accused-appellant in a very causal and cursory manner, is also evident from this fact that the learned Presiding Officer, who recorded so-called statement of accused-appellant, Puneet under Section 313

Cr.P.C. has not filled any answer of accused-appellant. Meaning thereby, so-called questions, which were prepared by the then Presiding Officer of the Court are totally blank, having only signature of the appellant on every page and also the initials of the Presiding Officer/Special Judge, SC/ST Act (Prevention of Atrocities Act), Gautam Buddha Nagar on every page and signature on the last page dated 21.04.2022.

65. The learned Trial Court, while delivering the judgment and order of conviction and sentence dated 29.08.2022 against the accused-appellant, Puneet, has not perused the statement of accused recorded under Section 313 Cr.P.C. and failed to consider the material fact that the statement recorded under Section 313 Cr.P.C. is completely blank, as no answers were written or recorded by the then Presiding Officer of the Court.

66. In view of the foregoing discussions, we are of the view that the judgment and order of conviction and sentence dated 29.08.2022 passed against the accused-appellant, Puneet, under Sections 302/34 IPC and Sections 25/27 of the Arms Act, are not sustainable in the eyes of law. Hence, the criminal appeal preferred by the accused-appellant deserves to be allowed, and the impugned judgment and order of conviction and sentence dated 29.08.2022 is liable to be set-aside.

67. Accordingly, the present criminal appeal is *allowed*. The impugned judgment and order of conviction and sentence dated 29.08.2022 passed by the learned Special Judge (SC/ST Act), Gautam Buddha Nagar, in Sessions Trial No. 536 of 2019 (State of U.P. v. Puneet), arising out of Case Crime No. 1025 of 2018, under Section 302/34 IPC, Police Station Dadri, District Gautam Buddha Nagar as well as in Sessions Trial No. 537 of 2019 (State of U.P. v. Puneet), arising out of Case Crime No. 374 of 2019, under Sections 25/27 of the Arms Act, Police Station Dadri, District Gautam Buddha Nagar, are hereby set-aside.

68. Upon perusal of record, it appears that accused-appellant, Puneet is in jail, hence, we direct to release the appellant, **Puneet** forthwith, provided he is not wanted in any other case.

69. The lower Court records, along with the copy of this judgment be transmitted to the Court concerned forthwith.

70. Let a copy of this judgment be forwarded to the concerned Jail Authorities for necessary compliance.

(Vinai Kumar Dwivedi,J.) (Salil Kumar Rai,J.)

February 26, 2026

Aditya