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IN THE COURT OF SESSIONS JUDGE AMBEDKAR NAGAR

Sessions Trial Number 126 of 2017

STATE OF UTTAR PRADESH

---Prosecution

VERSUS

1. SUNIL NISHAD

2. PINTU NISHAD

Residents of the village Nasrullahpur, Police Station Baskhari,
District Ambedkar Nagar

----Accused

FIR No. 42/2017

Section 302/34 IPC

Police Station: Baskhari

District: Ambedkar Nagar

Defence Counsel: Shri Pawan Kumar Yadav, Advocate

Prosecution Counsel: Shri Govind Srivastav, DGC (Criminal)

JUDGMENT

PROSECUTION NARRATIVE AND PROCEDURAL GENESIS

The present Sessions Trial, Number 126 of 2017, arose from an incident alleged to have occurred on the night of March 13, 2017, within the jurisdiction of Police Station Baskhari, District Ambedkar Nagar. The prosecution's case is anchored in the assertion that the accused persons, Sunil Nishad and Pintu Nishad, acting with common intention, committed the murder of one Bhopal Nishad, a seventeen-year-old youth. The police were set in motion on March 14, 2017, at approximately 09:15 AM, when the informant, Ram Gopal Nishad (PW1), presented a written application तहरीर (tehrir) at the Baskhari police station. According to this initial report, the deceased, Bhopal

Nishad, was at his residence on the night of March 13, 2017, at approximately 10:00 PM, when the accused duo arrived on a Hero Honda motorcycle borrowed from one Asharam Nishad bearing registration number UP 45K 4924. The accused persons induced the deceased to accompany them toward the Nasrullapur bridge, where they killed his brother and threw the body near Nasrullapur bridge and escaped. Bablu Nishad and Jiyalal Nishad from his village were seen accompanying the accused along with the deceased.

2. The procedural trajectory of this case involves several critical stages of investigative oversight. Following the registration of the First Information Report (FIR) under Case Crime Number 42 of 2017 for the offence of murder under [Section 302 of the Indian Penal Code](#), the Investigating Officer (PW8) conducted a series of spot inspections and evidentiary collections. The inquest proceedings (पंचायतनामा) were carried out to document the visible state of the body, which was found near the Nasrullapur bridge. The prosecution asserts that the motorcycle used in the commission of the crime belonged to Asharam Nishad (PW5), who had reportedly lent the vehicle to the accused earlier that evening for the purpose of travelling to Jalalpur.

3. The investigation culminated in the filing of a charge sheet (Ex. Ka-13) before the Court of the Additional Chief Judicial Magistrate, Ambedkar Nagar. Given that the offence of murder is exclusively triable by a Court of Session under the [First Schedule of the Code of Criminal Procedure](#), the case was committed to the Sessions Court on July 18, 2017. The court subsequently framed charges against Sunil Nishad and Pintu Nishad under [Section 302](#) read with [Section 34 of the Indian Penal Code](#). The accused persons pleaded not guilty.

4. I have heard the learned counsel for the accused and the learned DGC (Criminal) for the prosecution, and have perused the record with due diligence.

THE FORMAL CHARGES AND THE DEFENSE OF THE ACCUSED

5. The court, after perusing the material presented in the charge sheet and hearing the initial arguments, found sufficient grounds to proceed with a murder trial. The essence of the charge is that the accused persons, with the common intention of causing the death of Bhopal Nishad, took him from his home under false pretences and inflicted fatal blunt force injuries. This act, according to the prosecution, falls squarely within the definition of murder as provided under Section 300 of the Indian Penal Code, punishable under Section 302.

6. In response to these grave allegations, the accused persons adopted a multi-pronged defence strategy during the trial and in their statements recorded under [Section 313 of the Code of Criminal Procedure](#). They categorically denied their presence at the crime scene and refuted the claim that they had taken the deceased from his home. A primary contention of the defence is that the death of Bhopal Nishad was not a homicidal act but rather a tragic consequence of a road traffic accident. They pointed to the damage sustained by the motorcycle and the nature of the injuries found during the post-mortem as evidence of a high-speed collision or fall. They had been falsely implicated in a pre-existing land dispute involving a relative, Jagdish.

7. Furthermore, the defence argued that the entire prosecution's story was an elaborate fabrication motivated by village enmities. They suggested that the informant's family sought to use the accidental death of Bhopal as an opportunity to settle scores regarding a property dispute with Jagdish, the father-in-law of the accused Sunil Nishad. The defence also highlighted significant procedural delays, particularly the belated recording of the statement of the purported eyewitness, Raj Kumar Prajapati (PW4), as evidence of a "planted" or coached narrative.

POINTS FOR DETERMINATION

8. In adjudicating this matter, the court identifies several fundamental points that the prosecution must establish beyond a reasonable doubt to secure a conviction.

POINT 1: THE CORPUS DELICTI AND THE NATURE OF DEATH

9. The first and foremost determination is whether the prosecution has conclusively proven that the death of Bhopal Nishad was homicidal. This requires a detailed analysis of the medical evidence (PW6) and the physical evidence at the scene, specifically contrasting the prosecution's theory of assault with the defence's theory of an accident.

POINT 2: THE EFFICACY OF THE LAST SEEN THEORY

10. As the case relies significantly on circumstantial evidence, the "last seen together" doctrine becomes a pivotal link. The court must determine whether the evidence provided by PW1, PW2, and PW3 regarding the accused taking the deceased from his home is reliable and whether the time gap between this event and the death is minimal enough to exclude other possibilities.

POINT 3: THE CREDIBILITY OF THE BELATED EYEWITNESS

11. The direct evidence in this case hinges almost entirely on the testimony of Raj Kumar Prajapati (PW4). The court must evaluate

whether his account of witnessing the murder is credible, particularly in light of his relationship with the family of the deceased and his failure to report the incident for several months.

POINT 4: THE PROOF OF MOTIVE AS A LINKING CIRCUMSTANCE

12. While motive is not always essential for a conviction in direct evidence cases, it is critical in circumstantial evidence cases. The court must assess whether the alleged financial dispute over visa fees has been proven or is a post hoc fabrication designed to bolster a weak case.

POINT 5: THE INTEGRITY OF THE INVESTIGATIVE PROCESS

13. The court must examine whether the investigation conducted by PW8 and PW9 was objective and thorough. This includes an assessment of the failure to examine independent witnesses named in the FIR and the absence of forensic verification of the weapons used in the offence.

APPRECIATION OF EVIDENCE: THE TESTIMONY OF FAMILY WITNESSES

14. The prosecution’s case begins with the testimonies of the deceased’s immediate family members: Ram Gopal Nishad (PW1), Govind (PW2), and Gena Devi (PW3). These witnesses were presented to establish the preliminary circumstances of the crime, including the motive and the "last seen" event. However, a detailed comparative analysis of their depositions reveals systemic inconsistencies that undermine the prosecution’s narrative at its core.

Witness Category	Witness Name	Key Narrative Elements	Critical Contradictions / Omissions
Informant/Brother	Ram Gopal (PW1)	The accused took the deceased at 10 PM on Holi – motive: 40,000 INR visa debt.	FIR (Ex. Ka-1) makes no mention of visa debt or financial dispute.
Brother/Beneficiary	Govind (PW2)	The accused took the deceased.	Admitted during cross-examination that

Witness Category	Witness Name	Key Narrative Elements	Critical Contradictions / Omissions
		Motive: Deceased paid 40,000 INR for his (PW2's) visa.	he did not see the incident; the motive was not in the FIR.
Mother	Gena Devi (PW3)	The accused pressured the deceased to go for a refund – motive: 10,000 INR debt.	Contradicted PW1 and PW2 on the amount of debt (10k vs 40k).

15. The most significant dent in these witnesses' credibility is the introduction of a financial motive that was absent from the earliest version of the events – the FIR. PW1, who drafted the written report, claimed in court that the accused, Sunil Nishad, took 40,000 INR for providing a visa for his brother, Govind. The deceased was murdered so that the money would not have to be returned. Yet, the written report (Ex. Ka-1) submitted on the day the body was found contains no reference to this dispute. This omission is not a minor detail but a foundational element of the prosecution's theory of intentional murder. The Hon'ble Supreme Court has repeatedly held that when a motive is introduced as an afterthought, particularly when it is central to a case of circumstantial evidence, it must be viewed with great suspicion. Moreso, the question of a visa arises when a passport already exists. Still, no passport is shown to the court. To cover this up, PW3 stated that money was given for procuring a passport. This fact also makes the motive suspicious. It does not seem probable that a 17-year-old boy, the deceased, had an earning capacity and gave money for his elder brother's visa.

16. The discrepancy in the amount of money allegedly owed is equally troubling. While the brothers (PW1 and PW2) testified to a sum of 40,000 INR, their mother (PW3) stated that the deceased had

mentioned a debt of only 10,000 INR. This lack of uniformity among members of the same household regarding a significant financial transaction suggests that the motive may have been fabricated to provide a psychological context for the alleged crime. Furthermore, PW3 admitted during cross-examination that the accused Sunil is a relative – “I'm related to Sunil. Sunil is the son-in-law of my husband's elder brother. My husband's elder brother's name is Ramdhari. Ramdhari's son is Jagdish. Sunil is married to Jagdish's daughter, Malti”. This pre-existing relationship, coupled with the admitted property dispute between the families, raises the spectre of "interested witness" bias, necessitating a higher standard of corroboration that is noticeably absent in this case. Notably, the prosecution has not disclosed this relationship.

APPRECIATION OF EVIDENCE: THE LAST SEEN THEORY AND ITS LIMITS

17. The prosecution places heavy reliance on the "last seen together" doctrine to link the accused to the death of Bhopal Nishad (Ram Bhopal). The principle dictates that if an accused is seen with the victim shortly before the death, and the time gap is so small that no third party could have intervened, a strong presumption of guilt arises. However, the application of this theory in the present case is marred by both temporal and evidentiary gaps.

18. The prosecution claims that the deceased was taken from his home at 10:00 PM on March 13. The body was discovered at approximately 7:00 or 8:00 AM the following morning. While the time gap of roughly 9 to 10 hours is not, per se, excessive, the circumstances surrounding the "last seen" event are uncorroborated by independent sources. The FIR does not specifically mention that family members saw the accused being accompanied by the accused. **Still, it specifically mentions that two villagers, Bablu Nishad and Jiyalal Nishad, witnessed the deceased leaving with the accused.** Despite being named as critical eyewitnesses to the "last seen" event, the prosecution chose not to call them as witnesses.

19. This non-examination is a critical failure. Under Section [114\(g\) of the Indian Evidence Act](#), the court is entitled to draw an adverse inference that if these witnesses had been produced, their testimony would have been unfavourable to the prosecution. The failure to produce Bablu and Jiyalal, who were the only purported independent witnesses to the crime's genesis, leaves the "last seen" narrative entirely dependent on the "interested" testimony of the victim's family in the Court, where they added that they, too, witnessed the last seen. As noted

by the Hon'ble Supreme Court in [Nizam & Anr vs State Of Rajasthan on 4 September, 2015](#), AIR 2015 SUPREME COURT 3430, the "last seen together" theory is only one link in the chain and, in isolation, cannot form the basis of a conviction if other plausible explanations for the death exist. To establish guilt based on circumstantial evidence, the circumstances must be firmly established, and the chain of circumstances must be completed from the facts.

APPRECIATION OF EVIDENCE: THE TESTIMONY OF THE BELATED EYEWITNESS (PW4)

20. The prosecution's attempt to introduce direct evidence of the crime through the testimony of Raj Kumar Prajapati (PW4) is perhaps the most contentious aspect of the trial. PW4 claimed that at approximately 10:30 PM on the night of the incident, he was out in the fields for nature's call when he observed the accused Sunil and Pintu assaulting Bhopal Nishad with bricks and stones. He further alleged that the accused then placed stones on the deceased and fled toward the east.

The court finds several irreconcilable issues with the testimony of PW4 :

21. **The Issue of Belated Disclosure:** PW4 did not disclose his presence at the scene or his observation of the murder to the police or the family of the deceased for about a month. He admitted during examination that he only came forward after the accused were already sent to jail and that he came to court because PW1 "asked him to give evidence". The Hon'ble Supreme Court, in a catena of cases, has held that a significant delay in reporting a crime by an eyewitness, without a compelling and reasonable explanation, severely undermines their credibility. PW4's excuse of "fear" is unconvincing, especially given that he was a close friend and colleague of the victim's brother, PW2, in a musical troupe.

22. **Conduct Inconsistent with Natural Behaviour:** It is highly improbable that a person who witnesses the brutal murder of a neighbour would simply go home and sleep without alerting the family or the authorities. The fact that he continued to work with the victim's brother in a "videshiya nach" (folk dance) troupe without mentioning the incident is contrary to common human conduct.

23. **Friendship and Bias:** PW4 admitted to being a childhood friend of the informant's family. This relationship, combined with the extreme delay in his statement, suggests that he is a "chance witness" introduced later to fill evidentiary gaps in the prosecution's circumstantial case. When the prosecution relies on a sole eyewitness whose conduct is

unnatural and whose statement is delayed, it would be unsafe to base a conviction on such testimony. In the absence of forensic evidence – such as blood on the bricks or stones – PW4’s account remains a mere verbal assertion that fails the test of "sterling quality" required for a criminal conviction. He admits during cross-examination that he did not witness any of the events. It is true that he is testifying because he is friends with Govind. He admits that the incident occurred about 1 km from his home. He stated that he went 5-6 bigha away from his home for nature’s call. 1 km cannot be 5-6 bighas. Such statements undermine his testimony.

APPRECIATION OF EVIDENCE: THE MEDICAL EVIDENCE AND PHYSICAL ARTIFACTS

24. The core of the defence's argument is that the death of Bhopal Nishad was accidental, resulting from a motorcycle crash. This theory finds significant support in the physical evidence and the testimony of the motorcycle owner, Asharam (PW5).

Evidence Category	Source	Observations and Data Points	Legal/Forensic Significance
Vehicle Condition	Asharam (PW5)	Motorcycle UP 45K 4924 was found at the scene "broken from front and back."	Suggests a high-impact collision rather than a simple parked vehicle.
Bone Injuries	Dr. Sanjay Ram (PW6)	Fractures of the Tibia and Fibula in the left leg; lacerated Frontal and Parietal regions in the head.	These injuries are classic indicators of high-velocity trauma found in accidents.
Internal Trauma	Dr. Sanjay Ram (PW6)	Ruptured liver and spleen.	Indicates severe blunt force impact consistent with a fall or collision.
External	Dr. Sanjay Ram (PW6)	Peeled wounds in both knees.	Indicates rubbing on the road consistent with a bike accident.

Evidence Category	Source	Observations and Data Points	Legal/Forensic Significance
Cloths	Dr. Sanjay Ram (PW6)	Torned	Indicates rubbing on the road consistent with a bike accident.
Weapon Analysis	Investigating Officer (PW8)	No bricks or stones were seized as weapons; no FSL report on alleged blunt objects.	Failure to connect specific objects to the injuries creates reasonable doubt.

25. During cross-examination, Dr. Sanjay Ram (PW6) admitted that while blunt objects like bricks could cause the injuries, they were also entirely consistent with a road traffic accident. The presence of bilateral abrasions on the knees and severe fractures of the lower limb bones (Tibia/Fibula) strongly suggests that the deceased may have been involved in a motorcycle crash. This possibility is further corroborated by Asharam's testimony that his motorcycle was found at the site in a "damaged" state.

26. The prosecution's narrative fails to explain why the motorcycle was damaged both at the front and the rear if it was simply used to transport the deceased to the site of an assault. Furthermore, the IO (PW8) admitted that the body and the motorcycle were found on the side of a main road. The lack of forensic analysis of the "bricks and stones" mentioned by PW4—such as the absence of bloodstain patterns or fingerprinting—leaves the "assault by stones" theory purely in the realm of conjecture. In cases where two views of the cause of death are equally plausible—one homicidal and one accidental—the judicial standard requires the court to lean toward the view that favours the accused.

27. **PW-5 Asharam** stated in his examination-in-chief on 04.07.2019 that the incident occurred on 13.03.2017. On the day of the incident, the accused Sunil Nishad and Pintu Nishad borrowed his motorcycle, vehicle number UP 45 A 4924, at around 5:30 pm to go to Jalalpur. They did not return his motorcycle. At around 8:00 am, his motorcycle and a dead body were found lying on the road near the Nasrullahpur intersection. He was informed by villagers, so he went there. The motorcycle was broken at the front and back. He did not recognise the body. He then went to Pintu's house and asked how his motorcycle had

broken down. Pintu told him that Sunil was accompanied by a boy. He took your motorcycle. From PW-5's testimony, it appears that the deceased, a relative of Sunil, took the motorcycle from Sunil and met with an accident.

APPRECIATION OF EVIDENCE: INVESTIGATIVE LAPSES AND PROCEDURAL FAILURES

28. The investigation in this case, primarily conducted by Inspector Rajesh Kumar Yadav (PW8) and concluded by Inspector Mahendra Pratap Singh (PW9), exhibits several lapses that significantly weaken the prosecution's case.

29. **Failure to Secure the Crime Scene:** While the IO prepared a site map (Ex. Ka-6), he admitted during cross-examination that he did not record the statements of any neighbours, such as Sabhajit, whose house was in the immediate vicinity of the bridge. The failure to investigate the immediate neighbourhood for witnesses to a violent assault at 10:30 PM is a serious omission.

30. **Adverse Inference from Withholding Witnesses:** The decision to "give up" or not examine the independent witnesses named in the FIR (Bablu and Jiyalal) without a valid reason (such as they being "won over") is a major procedural defect. In [Deny Bora vs State Of Assam on 27 August, 2014, CRIMINAL APPEAL NO. 679 OF 2013, \(2014\) 14 SCC](#), the Hon'ble Supreme Court noted that the non-examination of material witnesses who were present at the scene creates a significant "dent" in the prosecution's story.

31. **Lack of Forensic Linkage:** The prosecution failed to produce any FSL (Forensic Science Laboratory) report regarding the blood-stained soil collected from the scene. Without scientific confirmation that the blood found at the spot was of the same group as the deceased, the mere collection of soil does not link the specific location to the crime.

32. **Perfunctory Motive Investigation:** PW9 admitted that he did not record any further statements regarding the financial dispute or the visa money. He did not verify whether the accused, Sunil Nishad, actually operated a visa business or whether any such transaction had ever taken place.

33. These lapses suggest that the investigation was directed toward confirming a preconceived narrative rather than exploring all potential hypotheses, including the possibility of an accident. In a catena of cases, the Hon'ble Supreme Court emphasised that it is the duty of the investigator to act with impartiality and to present all material facts before the court, whether they favour the prosecution or the defence.

JURISPRUDENTIAL SYNTHESIS: THE DOCTRINE OF REASONABLE DOUBT

34. The fundamental axiom of Indian criminal jurisprudence is that the accused is presumed innocent until proven guilty beyond a reasonable doubt. This standard is even more stringent in cases based on circumstantial evidence. In the landmark case of [Sharad Birdhi Chand Sarda vs State Of Maharashtra on 17 July 1984, 1984 AIR 1622](#), the Supreme Court delineated the "Panchsheel" or the five golden principles that must be satisfied for a conviction based on circumstantial evidence.

The circumstances from which the conclusion of guilt is to be drawn should be fully established.

The facts so established should be consistent only with the hypothesis of the guilt of the accused.

The circumstances should be of a conclusive nature and tendency.

They should exclude every possible hypothesis except the one to be proved.

There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused.

35. In the present matter, the prosecution has failed to satisfy these criteria on multiple counts. The "motive" link is broken by its omission from the FIR and by contradictions in the testimony. The "last seen" link is weakened by the failure to examine independent witnesses. The "homicidal death" link is challenged by the medical and physical evidence suggesting an accident. Finally, the "direct evidence" link attempted via PW4 is rejected for its belated and unreliable nature. When the chain of circumstances is broken, the benefit of the doubt must inevitably go to the accused.

FINDINGS ON THE POINTS FOR DETERMINATION

36. Following a meticulous appreciation of the evidence, the court records its findings as follows :

FINDING ON POINT 1: NATURE OF DEATH

37. The court finds that the prosecution has failed to prove that the death was homicidal conclusively. The injuries found on the body of Bhopal Nishad are equally, if not more, consistent with a road traffic accident involving the motorcycle found at the scene. The absence of

forensic verification of the alleged weapons of offence further deepens this doubt.

FINDING ON POINT 2: LAST SEEN THEORY

38. The "last seen" theory presented by the family members lacks independent corroboration. The deliberate non-examination of Bablu and Jiyalal leads the court to draw an adverse inference against the prosecution. Consequently, the "last seen" circumstance remains unproven beyond a reasonable doubt.

FINDING ON POINT 3: CREDIBILITY OF PW4

39. The testimony of Raj Kumar Prajapati is found to be unreliable and "planted". The unsatisfactorily explained delay in reporting the incident, combined with his close ties to the informant's family, renders his account unbelievable under the law.

FINDING ON POINT 4: MOTIVE

40. The court finds that the alleged motive of a financial dispute over visa/passport fees is an afterthought. Its absence from the FIR and the conflicting versions provided by PW1, PW2, and PW3 indicate that it was likely introduced to provide a foundation for a weak circumstantial case.

FINDING ON POINT 5: INVESTIGATIVE INTEGRITY

41. The investigation in this case was perfunctory and failed to explore alternative theories. The failure to examine neutral witnesses from the crime scene and the lack of FSL reports on critical artefacts constitute significant failures that entitle the accused to an acquittal.

FINAL REASONS AND RATIONALIZATION

42. The totality of the evidence presented leads to the inescapable conclusion that the prosecution has not bridged the gap between "may be true" and "must be true". While there is a strong suspicion that the accused persons may have been involved in the events leading to the death of Bhopal Nishad, suspicion, no matter how grave, cannot substitute for legal proof.

43. The defence's theory of an accidental death is a plausible one, supported by the medical reports of lower limb fractures and the damaged state of the motorcycle. In the presence of such a plausible alternative, the prosecution's burden to exclude all hypotheses of innocence has not been met. The behaviour of the family witnesses, in introducing a motive not found in the FIR and a belated eyewitness, further suggests an attempt to distort the facts to secure a conviction. In

such circumstances, the only just and legal course of action is to extend the benefit of doubt to the accused.

ORDER

In light of the detailed analysis and findings recorded above, the court arrives at the following verdict:

The accused persons, Sunil Nishad and Pintu Nishad, are hereby ACQUITTED of the charges framed against them under Section 302 read with Section 34 of the Indian Penal Code.

The accused persons are currently on bail. The personal bonds and bail bonds of the accused are hereby cancelled, and their sureties are discharged.

The case property, including the motorcycle bearing registration number UP 45K 4924, shall be disposed of in accordance with the law after the appeal period has expired.

The court further directs that the accused persons furnish personal bonds and sureties of 25,000 INR each under Section 437-A of the Code of Criminal Procedure to ensure their appearance before the Appellate Court if the State prefers an appeal.

The judgment is signed, dated and pronounced in open court today on February 27, 2026.

Dated: February 27, 2026

(Chandroday Kumar)
JO Code: UP06553
Sessions Judge,
Ambedkar Nagar