



CNR No-UPKJ010014522022

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In The Court of Sessions Judge, Kannauj.

Presiding Officer- Shri Chandroday Kumar (HJS)-UP06553

Session Trial No.- 261/2022

State of Uttar Pradesh

.... Prosecution

versus

- 1. Muqeen Ali S/o Mustakim Ali
- 2. Bablu S/o Vakeel Ali
- 3. Afsar alias Jammu S/o Akhtiyar Ali

All residents of village Sarotop, Police Station Kannauj, District Kannauj.

.... Accused

And

Session Trial No.- 49/2023

State of Uttar Pradesh

.... Prosecution

versus

- 1. Kalim Ali S/o Mustakim Ali
- 2. Vakil Ali S/o Mukhtyar

Residents of village Sarotop, Police Station Kannauj, District Kannauj.

.... Accused

Crime Number- 893/2021

Under Sections 147, 307, 326, and 506 of the Indian Penal Code

Police Station- Kannauj, Distt. Kannauj.

Prosecution Counsel: Shri Tarun Chandra, D.G.C. (Criminal),

Defence Counsels: Shri Jagdish Dubey Advocate

Shri Fahim Jama Khan Advocate.

JUDGMENT

The accused, Muqeen Ali, Bablu, Afsar alias Jammu, Kalim Ali and Vakil Ali, have been charged with and tried for the offence punishable under sections 147, 307, 326 and 506 of the Indian Penal Code (for short, IPC).

2. According to the prosecution story, the facts related to the case, in brief, are as follows: First Informant/Complainant Noor Alam, son of Nafees Ali, is a resident of Sarotop, police station and district Kannauj. He stated that Muqem Ali and Kaleem Ali of his village have enmity against his father due to the position of the *Pradhan* and old enmity. On November 25, 2021, at around 5:00 am, he went from his house to the mosque with his father, Nafees Ali, to offer prayers. When he reached in front of Ibrar Ali's house, Muqem Ali, Kaleem Ali, Vakil Ali, Bablu and Afsar alias Jammu of the same village, who were already waiting in ambush with country pistols (*Tamanchas*) in their hands, stopped him. At the behest of Vakil Ali and Bablu, Muqem Ali fired at his father to kill him, which hit his father's face near the eyes. When he shouted, Kaleem Ali fired at him to kill him as well. When he sat down, the bullet did not hit. Naif Ali and Dilshad Ali of the same village also saw the incident. When the accused were challenged, all the accused threatened to kill them and fled away. His father was immediately taken to the police station and the district hospital in an injured condition, where he was referred to Kanpur in critical condition. He is still undergoing treatment at Kanpur Regency Hospital. After improvement, he has come to lodge a report. A request was made to lodge a First Information Report (FIR) and take legal action

3. Based on the above written Tahrir Exhibit Ka-1, a First Information Report for the offences under Sections 147, 307 and 506 of the Indian Penal Code was registered at the Police Station Kotwali Kannauj, District Kannauj on November 27, 2021, at 19:17 at Crime No. 893 of 2021 and extract of the same was entered into General Diary (GD) No. 39 on the same day. Subsequently, considering the medical reports of the injured Nafis Ali, section 326 of the IPC was appended.

4. The Sub-Inspector, Parul Chaudhari, visited the scene, prepared the site map and collected medical reports. During the investigation, she also recorded witnesses' statements. Then, after Parul Chaudhari's transfer, SI Surendra Singh investigated the case and recorded the other witnesses' statements. Upon completing the investigation, the IO submitted a charge sheet against the accused, Muqem Ali, Bablu and Afsar alias Jammu, under sections 147, 307, 506, and 326 of the IPC. Due to the non-arrestment of the remaining accused, Kalim Ali and Vakil Ali, the investigation against them was ongoing. Then, after Surendra Singh's transfer, SI Sudesh Kumar submitted a charge sheet against the remaining accused, Kalim Ali and Vakil Ali, under sections 147, 307, 506, and 326 of the IPC.

5. The learned CJM took cognisance of the matter and, upon determining the case to be triable by the Court of Sessions, committed both cases to the Court of Sessions, following compliance with section 207 of the CrPC.

6. This court registered the case as Session Trial Numbers 261 of 2022, 49/2023. This Court framed charges against Muqem Ali, Bablu, Afsar, Kalim Ali, and Vakil Ali under sections 147, 326, 307, read with sections 149 and 506 of the IPC. The accused denied the charges and sought trial.

7. The prosecution examined nine witnesses to substantiate the charges against the accused people, which are as follows:

Witnesses of facts:

PW1, Noor Alam, eyewitness and the complainant,

PW4, Nafis Ali, injured eyewitness, and

PW5, Naeef Ali, eyewitness,

Formal witnesses:

PW2, Dr Ankit Verma, performed surgery on the injured,

PW3, Dr Anil Kumar, medical examiner of the injured,

PW6, SI Parul Chaudhary, the first investigating officer, prepared the Site Map and recorded the statements of witnesses,

PW7, HCP Rampal Singh dictated the verbatim of the information for report lodging,

PW8, SI Sudesh Kumar, subsequent investigating officer, submitted the charge sheet against accused Kalim and Vakil,

PW9, SI Surendra Singh, the second investigating officer, submitted the charge sheet against accused Muqem Ali, Bablu and Afsar alias Jammu and

PW10, Dr Mohit Khatri, an eye surgeon

8. Prosecution produced the following papers under documentary evidence, which are as :

Exhibit Ka-1, Tehrir; proved by PW1,

Exhibit Ka-2, Injury report of Nafees Ali proved by PW2,

Exhibit Ka-3, Injury report of Nafees Ali, proved by PW3,

Exhibit Ka-4, Site map, proved by PW6,

Exhibit Ka-5, FIR, proved by PW7,

Exhibit Ka-6, GD No. 39, proved by PW7,

Exhibit Ka-7, Charge-sheet No. 89A/2022, proved by PW8, and

Exhibit Ka-8, Charge-sheet No. 89/2022, proved by PW9,

9. During his examination under section 313 of the Criminal Procedure Code (CrPC), the accused asserted that he was falsely implicated in the case.

10. DW1 Nadeem and DW2 Kaleem Ali were produced as oral evidence in defence.

11. I have considered the arguments presented by the learned DGC (Criminal) on behalf of the prosecution and those presented by the learned counsel for the accused. Additionally, I have meticulously examined the case records.

12. The written argument on behalf of the applicants is based on the following grounds:

1. The incident in the case is said to have taken place on 25-11-2021 at 5:30 AM, and the report of the incident was written on 27-11-2021 at 19:17 (7:17 PM). The report was written after a delay of two and a half days. No proper explanation has been offered for this delay.

2. The incident occurred in the dark; no light source was mentioned in the FIR.

3. No blood was found at or around the incident site, and neither any *tamancha*, shell, cartridge, pellet or bullet was found.

4. No person residing around the incident site has become a witness, and the investigating officer has not taken any witness's statement during the investigation. Only the family members of the complainant or injured have become witnesses. There is no independent witness.

5. PW-01 Noor Alam is the son of injured Nafees. PW-04 Nafees, injured, himself has appeared in evidence. Witness Naif Ali is the injured's actual brother.

6. PW-04 Nafees Ali, injured, has not stated in his statement examination-in-chief that any other witness was with him at the time of the incident. Injured Nafees Ali has stated in his statement that after the incident, he went to the mosque and performed ablution.

7. In the entire incident, the accused people do not appear to have any intention to kill. It has come to light in evidence that all the five accused had pistols, but only one person fired at Nafees; no one else fired, and it is not said that Nafees was fired upon again after the incident. This does not seem to indicate an intention to kill.

8. *Pradhani's* rivalry was said to be with Noor Alam, and at the time of the incident, Noor Alam was Pradhan. Noor Alam was present at the time of the incident, but he was not injured by firing.

9. In the map, the investigator did not show the place from where complainant Noor Alam and witnesses saw the incident.

10. On the day of the incident, the complainant or injured person reached the police station. The investigator said in his statement that they had also given an application regarding the incident. Still, the whereabouts of that application were not told, and the police of the police station had reached the spot on the day of the incident itself.

11. On the day of the incident, the injured person was sent with a medical examination request letter and a police constable. Still, neither the constable's departure from the police station nor GD was seen. Based on that letter, the injured person's medical examination was also not done in the district hospital in Kannauj. The constable's statement was not taken, and he is not produced in evidence.

12. There is no proof on record of the injured person being referred from the district hospital, Kannauj.

13. The CT scan and X-ray of injured Nafees Ali were done in Regency Hospital Kanpur. Still, the CT scan film and X-ray plate are not on the file, while the investigator collected the CT scan film and X-ray report from Regency Hospital.

14. The doctor who did the CT scan and the one who gave the report signed it, but they did not appear in evidence.

15. In the injury form of injured prepared by PW-03 Dr Anil Kumar, it is written that the wounded said that Mustakim Ali, son of Kaleem Ali, shot him.

16. At the time of the operation, a bullet was said to be stuck in the injured's cheek, and it is said that a bullet was taken out and given to the

investigator. That bullet was not presented in the court, even at the time of evidence during the trial.

17. PW3 Dr Anil Kumar has stated that he did the medical check-up of the injured. He was a private doctor in Regency Hospital Kanpur. He has not prepared any supplementary report.

18. The investigating officer, Sub-Inspector Surendra Singh, stated on page no. 3 that during the investigation, he did not find any X-ray plate in which it was visible that the bullet was stuck in the injured's body because the bullet had passed through it.

19. The investigating officer PW-9, Sub Inspector Surendra Singh, has stated on page no. 3 that the injured Nafees had got one of his eyes removed because he had lost one of his eyes. Neither injured's teeth nor jaw was broken.

20. The investigating officer, Surendra Singh, PW-9, stated on page 3 that the complainant indeed gave an application to the police station on the day of the incident, and based on that, an FIR was registered on the day of the incident itself.

21. The same witness stated on page 3 that when he reached the spot after the incident with the force, no one there said that he saw the incident with his own eyes.

22. The incident occurred on 25-11-2021, and the investigating officer, Sub-Inspector Surendra Singh, PW-9, recorded witness Naif Ali's statement in the case diary on 06-01-2022 after about one and a half months. No explanation was given for writing the statement late.

23. PW-9, Sub-Inspector Surendra Singh, also stated on page 3 that the Chik FIR, which he got in the investigation, was registered on the day of the incident itself; if any other report was registered later after the day of the incident, then that is a wrong report.

24. PW-6, Sub-Inspector Parul Chaudhary, stated in her statement on page 3 that during the investigation, she did not see the GD mentioning that the injured was sent to the district hospital with a constable; if she had seen it, she would have mentioned it in my case diary.

25. PW-6, Parul Chaudhary, has written the case diary in back dates, evident from case diary no. 1 to 13, on which the printed date is available, and the signature is on a date before the printed date.

26. During the investigation, the investigating officers, Parul Chaudhary and Surendra Singh, did not recover tamancha from possessing any accused.

27. The accused, Kaleem Ali himself, as DW2 and Nadeem Beg, as DW-1, have presented evidence that on the day and time of the incident, Kaleem Ali was not present at the scene; he was in Bela district Auraiya.

28. The investigating officer obtained the mobile locations of accused Mukeem Ali, Kaleem Ali, and Bablu Ali during the investigation but did not attach them to the file.

29. That the accused had a previous rivalry with Mukeem, and due to this, the complainant, Noor Alam, who was the District President of BJP

Minority at that time, pressurised the police and got a false report written against the accused people, whereas, on the day of the incident itself, he had given an application at the police station against Intezaar and others.

30. On the above grounds, it is concluded that the incident occurred in the dark of the night, and none of the witnesses have seen the assailants. The injuries reported by the accused are doubtful because the X-ray plate and CT scan film are not available on the file. The recovery of the bullet reported has not been presented in court. The statements of the witnesses are contradictory, and the case against the accused has not been proved beyond doubt. There are five accused, and there is only one injury. The benefit of the doubt must go to the accused, and the accused people deserve to be acquitted.

13. In the case at hands, the medical examination report prepared by the doctor of Private Regency Hospital reveals the following injuries to the injured Nafees Ali:

Injury No. 01- There was a 2.5cm x 2.5cm circular wound four and a half cm below the left eye. The edges of the wound were inward-facing, and there was redness around the wound, swelling, pain, and bleeding. The right eye was blue and black, swollen, and not opening.

General examination- The injured's blood pressure and pulse were normal, and the injured was fully conscious.

In the doctor's opinion, the injury of injured was caused by a firearm and was fresh and serious.

According to the Plastic Surgery Unit (Dr. SKG/AV)

Mr Nafees Ali, age 51 years male, was admitted to Regency Hospital on 25.11.2021 as an alleged case of gunshot injury to the left side face.

At the time of admission, the findings were:

- 1) No vision in the left eye.*
- 2) Wound on the left side of the face.*
- 3) Singing of beard & moustache present*
- 4) Nose & face abrasion present.*

After that, the patient was resuscitated in the ICU and then taken for surgery.

Surgical notes are as follows:

- 1) Soft tissue injury on the left side of the face with loss of skin,*
- 2) Shattered orbital floor left,*
- 3) Fracture of the left infraorbital rim,*
- 4) Fracture maxillary sinus wall left,*
- 5) Foreign Body (?? Bullet) present in left infra-temporal fossa for which debridement + F.B. removal + orbital floor reconstruction + Inferior orbital rim ORIF by plates & screws done & skin defect covered by pedicled flap. F.B. was preserved. After that, on 29.11.2021 - Evisceration & silicone ball implantation were done by the ophthalmology unit,*

6. The post-op period was uneventful & on 01.12.2021, the patient was discharged from the hospital.

14. The prosecution presented three eyewitnesses, PW1, PW4, and PW5, to substantiate the allegations against the accused individuals. Supporting the prosecution case, they claimed under examination-in-chief that they had seen the incident and identified the accused on the spot. Their statements under examination-in-chief are as follows:

15. PW1 stated that the accused, Mukeem Ali, Kaleem Ali, Vakil Ali, Bablu Ali, and Afsar alias Jammu, are from his village and have a grudge against him and his father due to the Pradhan post and old enmity. On 25.11.2021, at around 05.30 am, he and his father were going to offer Namaaz. When they reached near the house of Ibrar Ali of the village, then the five accused, who were sitting in ambush with Tamanchas in their hands, stopped them by abusing them and on the instructions of Vakil and Bablu, Mukeem fired, intending to kill, which hit the complainant's father's face near the eyes. Kaleem Ali fired at the complainant, but he sat down, so the bullet did not hit him. Naif Ali and Dilshad Ali of the village came to the spot after hearing the screams and saw the entire firing incident. On being challenged, the accused threatened to kill and left. In an injured condition, the complainant immediately took his father to the Kannauj police station. Due to the critical condition of his father, Nafees Ali, he was sent to the district hospital Kannauj for treatment by the police of Kannauj police station. When his condition became critical, he was sent to Kanpur for treatment, where he was treated. He was admitted to Regency Hospital Kanpur. On the third day, dated 27.11.2021, when there was some improvement in his father's condition, he went to the Kannauj police station with a typed application in Hindi. He lodged a report against the accused—the application on the record paper number 4A/3 signed by the complainant. The complainant verified his complaint, on which Exhibit Ka-1 was marked. After filing the report, Daroga Ji came to the complainant's village, took the complainant's statement and made a map of the crime scene after inspecting it at the place indicated by the complainant. The complainant's father, Nafees Ali, could not be treated in Kannauj due to his critical condition. His left eye was destroyed due to the firing.

16. PW4 stated that on the date of incident 25.11.2021, at around 05.30 am, he was going to the mosque from his house to offer namaz. When he reached in front of the house of Ibrar Ali of the village, Mukeem Ali and Kaleem Ali, sons of Mustakim Ali, Vakil Ali, son of Mukhtiyar Ali, Bablu son of Vakil Ali, Afsar alias Jammu, son of Ikhtiyar Ali were already waiting for him sitting in ambush with illegal Tamanchas and weapons in their hands. As soon as he reached near the house of Ibrar Ali, on the instructions of Vakil Ali and Bablu, Mukeem Ali fired at him, intending to kill him. This bullet hit his face near the left eye. When he raised the alarm, his family members, brother Naif, Dilshad, and many other people from the village came to the spot, and they saw this incident with their own eyes. When the people who went to the spot challenged the accused, they threatened to kill him and fled. He somehow managed to save his life. In a wholly injured state, he reached the mosque. A lot of blood was flowing from his face due to the bullet injury. Seeing him seriously injured, the Maulvi of the mosque made him lie down on a beadboard. Upon getting information about the incident, many people from the neighbourhood came to the mosque. These people immediately took him to the police station. From the police station, the police immediately sent him to the district hospital for treatment. Seeing his condition severe, the doctors

of the district hospital referred him to Kanpur, where he was admitted to Regency Hospital in Kanpur to save his life, where he was operated upon, and the bullet was removed. The police went to the hospital to record my statement, but his statement was not recorded at that time because his condition was serious. When he returned home from the hospital, the police came to his house and recorded his statement. He told the police everything in his statement that he was telling in court today.

17. PW-5 Naif Ali stated that on 25.11.2021 at around 05.30 pm, he was going to the village mosque with his elder brother Nafees Ali. Mukeem Ali, Kaleem Ali, Wakil Ali, Bablu Ali, and Afsar alias Jammu waited in the ambush. They stopped his elder brother, Nafees Ali. Mukeem shot him. His nephew Noor Alam, behind whom he was, shouted that the shot had been given. Noor Alam caught him. Then he ran there. These five people fled with the Tamanchas. Then they took him to the mosque. Then, his nephew Noor Alam came in a car after 15 minutes. We loaded him in the car and took him to the police station. He reached the district hospital. The doctor referred him to Kanpur. He was taken to Regency in an ambulance. He was referred to Hallet. He was admitted. He was shot in his left eye. He was treated there and remained admitted for eight days. This is all the information he knows. The police met him. The police went with him. The police took his statement on the third day. Noor Alam wrote the report. He told the police all these things in his statement, which he speaks in court today.

18. It is acknowledged that PW1, Noor Alam, is the son of the injured party, Nafis (PW4), while PW5 is Nafis's brother. In light of the learned defence counsel's arguments, I must first deal with the contention of interested witnesses and animosity in the context of a three-day delayed FIR.

19. In the case of [Periyasamy vs. The State \(18.03.2024 - SC\)](#): MANU/SC/0212/2024, Hon'ble Apex Court held as follows:

1. It is undisputed that PWs 1 and 2 are injured witnesses. It is a well-established principle of law, not requiring any underscoring or reiteration, that the evidence of an injured witness is considered to be on a higher pedestal than that of a witness simpliciter. [28]

2. Apart from the three star witnesses of the prosecution, failing the standard of scrutiny applied to a criminal proceeding, a perusal of the records reveals another facet, compromising in nature to the prosecution case. It has come forth in the evidence of PW-1 that upon his arrival at the hospital, he was in a conscious state, so why the recording of the statement delayed till 4.30 a.m. is unsubstantiated. This is further so because while PW-1 speaks of being operated upon, none of the witnesses examined as medical witnesses corroborate such a statement. For emphasis, we may refer to the statement of PW-17, the medical officer in the Seahorse Hospital, at the relevant time. He stated that upon admission, PW-1 was fully conscious. The wound certificate was issued by Dr. Pon Shanthi, who has not been examined. [41]

3. The delay, therefore, renders the circumstances questionable. Also, there is a significant gap in the examination of PW-2 as well. It cannot be said that the prosecution had succeeded in establishing its case against the two Accused persons beyond reasonable doubt, warranting a conviction Under Section 302 of the Indian Penal Code. [42]

4. Another direct contradiction concerns his examination of the doctors who allegedly gave wound certificates for PWs 1 and 2. In the testimony of PW-17, it is clear that he was not the one who gave the wound certificate as he was only on duty from 9 a.m. to 9 p.m., and PW-1 was brought to the hospital at 10 p.m. The wound certificate was issued by Dr. Pon Shanthi, who had not been examined in the instant proceedings. [44]

20. In the case of [State of Himachal Pradesh vs. Gian Chand \(01.05.2001 - SC\)](#): MANU/SC/0312/2001, the Hon'ble Apex Court observed as follows:

Delay has the effect of putting the Court under its guard. It searches to see if any explanation has been offered for the delay and, if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution.

21. In the case of [Nand Lal and Ors. vs. The State of Chhattisgarh \(14.03.2023 - SC\)](#): MANU/SC/0230/2023, Hon'ble Apex Court observed as follows:

Undisputedly, in the present case, the injuries sustained by Accused No. 11 Naresh Kumar cannot be considered minor or superficial. The witnesses are also interested, inasmuch as they are close relatives of the deceased. That there was previous enmity between the two families, on account of the election of Sarpanch, has come on record. As observed by this Court in the case of Ramashish Ray v. Jagdish Singh MANU/SC/0976/2004 : (2005) 10 SCC 498, previous enmity is a double-edged sword. On one hand, it can provide motive, and on the other hand, the possibility of false implication cannot be ruled out.

22. In the case of [Kailash Gour and Ors. vs. State of Assam \(15.12.2011 - SC\)](#): MANU/SC/1505/2011, Hon'ble Apex Court held that an accused is presumed to be innocent till he is proved guilty beyond a reasonable doubt is a principle that cannot be sacrificed on the altar of inefficiency, inadequacy or inept handling of the investigation by the police. The benefit arising from any such faulty investigation ought to go to the accused and not to the prosecution. So also, the quality and creditability of the evidence required to bring home the guilt of the accused cannot be different in cases where the investigation is satisfactory vis-a-vis cases in which it is not. In this case, the Hon'ble Court also held that poor visibility is a disabling factor for anyone to observe the occurrence from a distance when a huge mob of 30-40 people was on the rampage.

23. PW4 testified under cross-examination that his wife, Gul Jahan, served as Pradhan from 2010 to 2015. The accused, Kaleem's mother, Noor Jahan, held the position of Pradhan from 2015 to 2020. In 2021, Noor Alam was elected Pradhan. All accused parties belong to the same clan. Furthermore, it is recognised that there exists a factional dispute regarding the election of Pradhan, resulting in animosity between the witnesses and the accused individuals.

24. There is another reason for animosity. PW1 also reveals that in 2005, Kaleem's father was murdered, in which Zaheer Ali, his father (Nafis), Nafees Ali (PW5), Naushad Ali, and Dilshad alias Channi were the accused. The accused committed no crime against Zaheer Ali, Naushad Ali and Dilshad.

Then he stated that Muqem fired at Zaheer. Zaheer had given a written complaint at the police station. He does not have any record of it. The defence counsel has suggested that Muqem did not fire at Zaheer, and he is telling this to add colour to the case. I believe the statement that Muqem fired at Zaheer is an intentional exaggeration. I find force in the suggestion and conclude that PW1 is an interested witness as he is interested in the punishment of the accused due to the dual animosity. It is imperative to note that all individuals who testified to the events in question are close relatives, thus categorising them as interested parties given their interest in the outcome of this case. Interested witnesses should be appreciated cautiously. Furthermore, it is noteworthy that all accused individuals are also close relatives. Although enmity functions as a double-edged sword, it may serve to favour the accused if other circumstances indicate potential false implications.

25. The FIR was filed three days after the incident, which is considered an inordinate delay. It is acknowledged that the complainant, Noor Alam (PW1), his injured father, Nafis Ali (PW4), and several relatives went to the police station immediately following the event. However, they could not file a report at that time. The explanation offered is that an FIR could not be filed due to the urgent need for medical treatment. Therefore, it is crucial to evaluate whether the reason given for the delay in lodging the FIR is valid.

26. After receiving his injury, Nafis went to the mosque and performed Waju (the ritual hand washing before prayer). He remained conscious and able throughout. Given these circumstances, it appears that there was no immediate medical emergency. Furthermore, the doctors who treated Nafis confirmed that his overall condition was stable and that the wound did not pose a threat to his life.

27. PW4 stated that after the incident, he visited the police station and stayed there for approximately 10 to 12 minutes. Thus, the three-day delay in filing the FIR is detrimental to the prosecution, especially since the complainant, the injured party, and their relatives approached the police on the first day of the incident. The injured had six sons, including a minor and several brothers. From the evidence produced by the prosecution, it is clear that all of them were not engaged in taking care of the wounded. Still, the FIR was not lodged promptly.

28. Moreover, PW9, who conducted the investigation, confirmed that the complainant submitted an application to the police station on the day of the incident, and an FIR was registered that day. The Chick FIR obtained during the investigation was also registered on the day of the incident. If any other report was filed after that day, it is deemed false. However, he clarified that the application submitted by the complainant was not against other individuals in the village. This statement of PW9 raises questions about what happened to the original application made on the first day and the quality of the investigation.

29. The incident occurred on November 25, 2021, at around 5:00 a.m. It was Panchami of Krishnapaksh on November 24, 2021, and moonrise and moonset times were 09:21 PM and 10:57 AM respectively. The sunrise time was about 06:51, so natural visibility was poor. The investigating officer did not indicate the source of light or the positions of the witnesses. PW1, responsible for preparing the site map, failed to provide this information during the inspection. No source of light has been mentioned in the FIR and examination-in-chief. PW1 improved in his cross-examination that the lights

were glowing on both sides of the road. It can be reasonably inferred that no one could have identified the accused in the poor visibility, suggesting that the FIR was filed against known adversaries after considerable thought.

30. Witnesses are claiming that blood was dropped on the occurrence place, mosque and car. Still, no blood has been recovered from the occurrence, mosque or car by which the injured is said to have been transported, even though police claim they visited the occurrence place and mosque just after the incident. Even the blood-soaked clothes of the injured have not been produced before the court. Hence, the places of occurrence are doubtful.

31. PW1 admitted that Khusnoor Khan lives in the village and his son is in the army. There are ongoing cases under section 307 IPC involving Khusnoor and his family from both sides. Khusnoor's house is on the way but was closed then. PW4 confirmed that Sonu is his nephew; however, he is unaware if Nihal Khan, Khusnoor Khan's son, had previously filed a report (crime number 431/2021 IPC) against Imran Ali, son of Bhura Ali, Sonu Ali, son of Kallan Ali, and three unknown individuals at the Kannauj police station. Imran Ali and Sonu Ali, his nephews, faced jail time. PW4 stated that it is incorrect to say that he advocated for them, and it is also wrong to claim that he falsely registered a case under section 307 IPC against Nihal Ali and Khusnoor Ali or that he wrote a report against them.

32. PW4 stated that he is unsure whether he was aware upon returning home from the hospital that his family members had vandalised Nihal Khan's house on the day of the incident and had assaulted women and children. He cannot confirm whether Anwar Ali, Anees Ali, Akbar, Maulana Abu Tala, Zuber Alam, and others from the village witnessed his family members vandalising Nihal Khan's house. Additionally, he does not know if Khusnoor's wife, Bibi Fatima, submitted a complaint to higher authorities regarding the vandalism by his family members. Notably, the witness has not clearly denied these facts; instead, he said he is unsure. The witness admitted that his son, Noor Alam, is the District President of the Minority Front of the Bharatiya Janata Party, and he held this position at the time of the incident. Given these circumstances, I find merit in the defence counsel's suggestion that the primary doubt was on Nihal Khan, and when the police did not file a report against Muqem and others, the report was written under pressure from BJP officials.

33. The testimony of an injured witness is considered highly significant. Still, it is not definitive, especially when there is a delay in filing the First Information Report (FIR) and the parties antagonise each other. Witness PW4 did not state that PW1 and PW5 were with him at the time of the incident. Furthermore, why would PW4 tell the names of the accused to PW1 at the mosque if he was with them? This suggests that PW1 was likely not present during the occurrence.

34. Witnesses have testified that all the accused were carrying firearms, known as Tamanchas. At the direction of Vakil Ali and Bablu, Muqem Ali fired at Nafis with the intent to kill him. It is logically questionable why Vakil Ali and Bablu, who also had Tamachas, did not fire it themselves and instead instructed his companion Muqem Ali to shoot. This was not a situation in which Vakil Ali's and Bablu's Tamanchas malfunctioned. Additionally, the accused claimed to have thrown their Tamanchas into the Ganga River. Yet, the investigating officers made no effort to recover the firearms, cartridges or shells from the river or accused. This inaction indicates that the investigating

officers may have known that no Tamanchas were actually involved in the case.

35. No independent witness is produced. PW1, under cross-examination, stated that people of the village offer Namaaz in mosques. The population of his village is more than five thousand. His father used to go to offer Namaaz at around 5:30 in the morning. Usually, all the men used to go together. There are about 15 houses on the north side of the incident site. There is a Muslim population. Uncle Naif and Dilshad were with him. They were walking behind him. He did not write in his FIR that his uncles were walking with him. It is not written in the statement given to Daroga Ji that his uncle Naif and Dilshad were walking with him. He has appointed a private lawyer to plead this case. He gave statements to Daroga Ji 8-10 days after the incident. It is wrong to say that he is saying that he is walking with the witnesses on the advice of the lawyer. Many more people had come two to three minutes after the accused fled. Iqrar, Ali Shah and Israr Ali Shah had come. He does not know the names of the other people. Israr and Iqrar Ali's houses are not on that street. On the day of the incident, one or two people living near the mosque were seen going to offer namaaz. Their houses are near the mosque. Their names are Muqem Ali and Zainul Ali.

36. PW5, under cross-examination, stated that there are houses on both sides of the road, from Nafees Ali's house to the mosque where he used to go to offer namaz. The people of that house also go to the mosque to offer namaz. On the day of the incident, he could not see which people from that house had gone to the mosque to offer namaz. He heard the sound of firing. After the firing, Nafees Ali shouted and created a ruckus. He had reached there after hearing the noise, but the villagers had not come. Noor Alam had also reached there after hearing the noise. The mosque is about 170 meters away from his house. Nafees Ali had reached the mosque after he was shot. He had also reached the mosque from behind. Nafees Ali was lying on the bedboard in the mosque. Since the mosque was close to his house, he had heard the Azan of the mosque. It must have taken him 10-15 minutes to perform handwash and urinate. He had gone to the mosque after hearing the Azan, not after hearing the noise. The morning Namaaz is held at 05:50 in the mosque. He was not in the mosque till 05:50 in the morning on the day of the incident. Israr Ali Shah and Iqrar Ali Shah were in the mosque then. He did not see anyone else offering Namaaz in the mosque.

37. The cross-examinations clearly show that both PW1 and PW2 did not witness the incident; they arrived after it had occurred. The witnesses seemed biased, naming individuals they favoured while omitting the names of independent witnesses. Furthermore, PW4 did not mention during the examination-in-chief that PW1 and PW5 were present with him at the time of the incident. He stated that PW5 arrived only after the commotion began and did not confirm PW1's arrival at that time. There are numerous contradictions in the statements given by the witnesses. PW4's statement under section 161 CrPC was recorded with much delay on 16.12.2021, even though the injured remained conscious.

38. The point of Tamancha recovery has been discussed earlier. Now, we come to the point of the bullet. No X-ray film/report or CT scan film/report has been produced before the court to show that the bullet was present inside the body. No supplementary report has been produced. The doctor who carried out the medical examination opined the gunshot injury. The treating surgeon

did not disclose the path of the bullet inside the body. As per the doctor, the wound was found 4 cm below the left eye and damaged the left eye. No blackening, tattooing or scorching was recorded. This means that the bullet travelled upward while injured, stating that Tamancha was fired face to face. This suggests that it is more likely that the bullet came from the far lower side. In these circumstances, it was difficult for the injured to identify the accused persons in the dark morning. The singe of beard and moustaches was not the result of the flame of the barrel, as blackening or tattooing would possibly have occurred then. Singe may have been due to some other reasons. Bullet has not been presented before the court. What happened to the bullet alleged to be recovered from the body has not been mentioned in the Cacs Diary of the investigation officer. The doctor who prepared the medico-legal report has not been examined. No supplementary report has been proved before the court. The Medical examination and treatment were done in the hospital of his choice. The injured previously visited Regency Hospital and the staff knew him well. No medical examination request letter (Majroobi Chitthi) nor referral letter for Kanpur Hallot Hospital has been presented before this court by the police. In these circumstances, I find force in the suggestion that tainted medical evidence has been given before the court and injury may have been caused by some other means.

39. In these facts and circumstances, the evidence produced by the prosecution fails short of concluding beyond reasonable doubt that the accused persons, Muqem Ali, Bablu, Afsar alias Jammu, Kalim Ali, and Vakil Ali, have committed the offence charged. Hence, they deserve to be acquitted.

ORDER

The accused persons Muqem Ali, Bablu, Afsar alias Jammu, Kalim Ali, Vakil Ali are acquitted of the charges against them under sections 147, 307, 326, 506 of the Indian Penal Code. Accused Bablu, Afsar alias Jammu, Kalim Ali, Vakil Ali are on bail. Their bail bond stands cancelled, and sureties are discharged. Accused Muqem Ali is in jail. His release order shall be sent forthwith.

The copy of this judgement shall be placed on Sessions Case No. 49/2023. Records shall be consigned.

Date: January 15, 2025

(Chandroday Kumar)
Sessions Judge
Kannauj

I signed, dated and pronounced the judgment in the open court today.

Date: January 15, 2025

(Chandroday Kumar)
Sessions Judge
Kannauj