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In The Court of Sessions Judge, Kannauj  
Presiding Officer- Shri Chandroday Kumar (HJS)-UP06553  
Session Trial Number-755 of 2021

State of Uttar Pradesh ... Prosecution.

Versus

1. Pushpendra Singh alias Chattu, son of Shri Brahmpal,  
2. Sukhveer Singh alias Golu, son of Vinod,  
Both residents of Mazhigwan, police station Saurikh, District Kannauj.  
... Accused.

Crime Number-224/2019  
Under Sections 307, 323, 504, 506 I.P.C.  
Police Station- Saurikh,  
Distt. Kannauj.

Prosecution Counsel: Shri Tarun Chandra, DGC (Criminal),  
Defence Counsel: Shri Jagdish Chandra Divedi, Advocate.

JUDGMENT

INTRODUCTION:

1. The accused Pushpendra Singh alias Chattu and Sukhveer Singh alias Golu have been charged with and tried for offences punishable under sections 307, 323, 504, 506 of the Indian Penal Code (I.P.C.).

FACTUAL MATRIX:

2. According to the prosecution's case, the brief facts are as follows: On May 31, 2019, the complainant Dharendra Pratap Singh submitted a written *tahrir* (Exhibit Ka-1) to the SHO, Police Station Saurikh, District Kannauj. He stated therein that on May 31, 2019, while returning home by bicycle from the press after receiving an invitation card for the Akhand Path in Saurikh, the

complainant, upon reaching the road in front of Bharat Brick Kiln, Bahadurpur, at around 5:15 PM, was intercepted from behind by Pushpendra alias Chhutu, son of Bahampal, and Golu, son of Vinod, residents of village Mazhigwan, Police Station Saurikh, District Kannauj, due to old land-related enmity. They approached him on a Hero Splendor motorcycle and forcibly stopped him on the road. While hurling obscene abuses against his mother and sister, Pushpendra fired at him with an illegal firearm with the intention of causing his death. The complainant managed to move aside immediately, and the bullet missed him. Thereafter, Golu held him close and fired again with an illegal firearm with the intent to kill, but the shot missed. Both accused assaulted the complainant, hitting and firing at him. The commotion drew Suman, nearby shopkeepers, and passersby to the scene. When intervention was attempted, the accused threatened to kill the complainant again and fled the scene along with the motorcycle. Accordingly, a First Information Report was lodged, seeking legal action against the accused.

**FIR:**

3. Based on the tahrir, a First Information Report (FIR) was registered at the Saurikh Police Station in Kannauj District, under Sections 307, 323, 504, 506 of the Indian Penal Code (IPC) This FIR, assigned Crime No. 224 of 2019, was filed against the accused, Pushpendra and Sukhveer Singh alias Golu, on May 31, 2019, at 21:25.

4. At the same time, the same extract was entered into General Diary (GD) No. 45, dated May 31, 2019. The inquest of this case was assigned to SI Abhishek Shukla, Saurikh police station, District Kannauj.

**MEDICAL EXAMINATION:**

5. On May 31, 2019, Dr Neeraj Kumar Shakya conducted the medical examination and prepared the medical report, Exhibit Ka-7. In this report, the doctor noted that no injuries were observed throughout the body.

**RECOVERY MEMO:**

6. On 01.06.2019, during the investigation, Sub-Inspector Abhishek Shukla visited the scene of the crime, where he found, on the left side of the road, one empty cartridge of .315 bore made of brass, on the base of which "BMM-KF" was inscribed and which bore a firing pin impression. The said empty cartridge was, in the presence of witnesses Pankaj Singh, son of Jandail Singh, resident of Village Bahadurpur, P.S. Saurikh, District Kannauj, and Smt. Sumanlata Vaishya, wife of Babu Singh, resident of Nagariya Talpar, P.S. Saurikh, District Kannauj, was placed in a white handkerchief with a blue border, stitched and sealed. A recovery memo was drawn on the spot and signed by the aforesaid witnesses.

**INVESTIGATION:**

7. SI Abhishek Shukla visited the scene, prepared the site map (Exhibit Ka-8), collected the records, and recorded the statements of the witnesses.

Upon completion of the investigation, a charge sheet (Exhibit Ka-9) was submitted before the Chief Judicial Magistrate, Kannauj, against the accused Pushpendra Singh alias Chattu and Sukhveer Singh alias Golu, under Sections 307, 323, 504, and 506 of the Indian Penal Code.

8. The prosecution examined the following witnesses to substantiate the charges against the accused:

**Witness of facts:**

PW1, Dharendra Pratap, the victim and the complainant/informant.,

PW2, Udhan Singh, father of the victim/complainant,

PW3, Sunil Pratap Singh, cousin brother of the victim/complainant,

PW4, Smt. Sumanlata, paternal aunt (mausi) of the victim.

Formal witnesses:

PW5, HM Baburam, proved FIR and GD,

PW6, Dr Neeraj Kumar Shakya, prepared a medical report of the victim,

PW7, IO Abhishek Shukla, prepared the site plan, recovered the empty cartridge, took statements of the witnesses and submitted the chargesheet.

9. The prosecution produced the following papers under documentary evidence:

Exhibit Ka-1, Tahrir; proved by PW1,

Exhibit Ka-2, Recovery memo; proved by PW1

Exhibit Ka-3, Affidavit; proved by PW2

Exhibit Ka-4, Affidavit; proved by PW3

Exhibit Ka-5, FIR; proved by PW5,

Exhibit Ka-6, GD; proved by PW5,

Exhibit Ka-7, Medical Report; proved by PW6

Exhibit Ka-8, Site Map; proved by PW7, and

Exhibit Ka-9, Charge-sheet proved by PW7.

**DEFENCE VERSION:**

10. During the examination conducted under Section 313 of the Criminal Procedure Code, the accused stated that a land dispute is pending between their uncle and father on one side and the complainant's father on the other. Due to this enmity, a false FIR has been lodged, and they have not committed any incident.

11. **DEFENCE ' ORAL EVIDENCE:** Nil.

12. **DEFENCE' DOCUMENTARY EVIDENCE:**

1. One certified copy of Case No. 60/ 2019 Jeevan Singh & Ors. Vs Shivpal Singh & Ors.

2. One certified copy of the FIR in Case Crime No. 230/2010 dated 10.07.2010, U/s 147, 148, 149, 307, 332, 336, 353, 325, 341 I.P.C., Section 7 C.L.A. Act and Section 3 Public Property Damage Act, P/s- Saurikh, District Kannauj.

**ARGUMENTS:**

13. I heard the arguments of the learned District Government Counsel (DGC) (Criminal) and learned counsel for the defence. I went through the evidence and materials available on the record.

#### 14. Points for Determination

1. Whether the prosecution has proved beyond a reasonable doubt that the accused unlawfully attempted to cause the death of Dhirendra Pratap Singh (violating Section 307 IPC) on 31.05.2019?
2. Whether the accused caused hurt or insulted/threatened the complainant (Sections 323, 504, 506 IPC)?
3. Whether the evidence of the witnesses is reliable, or suffers from such contradictions and infirmities that the accused individuals are entitled to the benefit of doubt?

#### Evidence reproduced:

#### 15. PW-1 (Complainant/Victim: Dhirendra Pratap) – Examination-in-Chief (on oath)

He stated that the incident occurred on 31 May 2019. He was returning home from Saurikh by bicycle. At about 5:15 p.m., when he reached in front of Bharat Brick Kiln, Bahadurpur, Pushpendra @ Chhotu and Sukhveer @ Golu came from behind on a Super Splendour motorcycle and **began abusing him in filthy language and beating him. In the meantime, Pushpendra fired at him with a tamancha with the intent to kill. Because he bent down, the bullet passed by his side. Then Golu @ Sukhveer pressed a tamancha against his back and, with intent to kill, fired; the weapon did not discharge, and the shot misfired.** Upon hearing the commotion, nearby people rushed to the spot, witnessed the incident, and confronted the accused. Thereupon, both accused fled from the spot, threatening to kill him. **Suman Lata, who has a shop opposite the place of occurrence, also reached the spot. Thereafter, he telephoned and called his brother Sunil Pratap. He dictated an application to his brother, signed it, and submitted it at Police Station Saurikh for registration of the case, on the basis of which his report was written. The original written application is on paper no. 4A/3; at mark 'X', the witness confirmed his signature, and it was marked Exhibit Ka-1. Thereafter, he underwent a medical examination at the Government Hospital, Saurikh. The next day, the Sub-Inspector recorded his statement, and he showed the S.I. the place of occurrence; the S.I. inspected the spot and prepared the site plan. During the inspection, one empty .315-bore cartridge was recovered from the scene of the occurrence; the S.I. prepared the recovery memo on the spot.** Besides him, Pankaj and Suman Lata were present at the time of recovery. Their signatures were obtained on the recovery memo. The recovery memo is on the record at paper no. 5A/1; at mark 'X', he confirmed his signature, which was marked as Exhibit Ka-2.

#### 16. Cross-Examination of PW-1

He and the accused live in the same village. The incident occurred on the Indergarh–Nadema–Saurikh metalled road. It is a main road with traffic; vehicles keep passing. To the east is the accused's village, and to the west is Saurikh. Saurikh is 1–2 km from the place of occurrence. The house is on the road itself, and the brick kiln is 50–60 meters from the road. On both the north and south sides of the road, residential houses are lined up. There are many houses along the road near the place of occurrence. **Approximately 10–20 passersby and nearby residents arrived at the scene. He did not get the names of the nearby shopkeepers who had come there written in the report.** His maternal home is at Rautamai. His mother had four sisters; two have passed away. His mother and one aunt have died; **two aunts are alive. He does not know where Suman's parental home is, nor does he know her father's name. Suman's husband's name is Babu Singh; he does not know where Babu Singh's house is, whether it is in Rautamai or not. He does not know the names of his two living maternal aunts. One aunt lives in Bidhuna, and the other in Arshv; he does not know their names. He does not visit these two aunts.**

17. **"It is wrong to say that witness Suman is my maternal aunt (mausi) and that I am deliberately hiding this."** He said he had written Suman's name in the FIR he got written at the police station. When the written application (Exhibit Ka-1) was shown to him, he stated that after seeing it, *Suman's name was not written there. Seeing the application, he said, "I did not write this application; my brother wrote it." It is correct that no witness is named in this application.* Prior to the incident, he was unaware of the individuals with whom Pushpendra and Golu typically associated, and no prior incidents had been reported against him by them. He and Pushpendra/Golu had no case pending in any court. He did not have any case pending regarding opening a passage/road. **Pushpendra used to threaten earlier.** On the day of the incident, both were carrying tamachas openly in their hands; the public around saw them. Two shots were fired at him; both missed. *He had injuries from the beating. There was no bleeding from the injuries. Because of the assault, bluish marks appeared on his body.* He and the accused remained at the scene of the occurrence for **10–15–20** minutes. A crowd gathered, but no member of the public tried to catch the accused; he, too, did not try to catch them. The application was written on the spot by his brother at about 6:00 p.m. *He and his brother went to the police station by motorcycle; travelling 1–2 km by motorcycle would have taken 10–15 minutes. At the police station, he showed the doctor his injuries, which had bluish marks. These blue marks were on his face and back, not on his hands and legs. He had fallen on the road, both face down and on his back. If the person writing the GD states that there was no injury to the body, then that has been misstated.* He does not recall the exact time he arrived at the Government Hospital, Saurikh; however, he did reach the hospital that same night. *When he reached the hospital, the injuries were present; they had not disappeared. He had no enmity with the doctor who examined him. If the doctor wrote in his report that there was no injury to the body, that is wrong.* His clothes were torn; there was no blood on them.

The shirt was torn; he showed the torn shirt at the police station; the S.I. did not take it into possession.

18. *He did not see any empty or live cartridges at the place of occurrence. He does not know which shopkeeper told the police that a cartridge case was lying there. He did not go to look for the cartridge on the first day. On the day of the incident itself, a shopkeeper informed him that an empty cartridge was lying around; he then reported it to the police. He was present at the spot. When the shopkeeper informed the police, it was approximately 5:45 p.m. By then, his brother, PW-3 (Sunil Pratap Singh), had arrived on the scene after the incident. The police had come by then. He dictated the application, then his brother wrote it. He does not remember whether he specified in the application that an empty cartridge was present at the spot. It is incorrect to say that because no cartridge was found at the spot, he did not include that fact in the application. The police did not recover any tamancha from any of the accused. The formalities regarding the empty cartridge found at the scene were completed by the police on the day of the incident, and his signatures were taken on the same day.* Besides him, Pankaj and Suman also signed. On the day of the incident, he and his brother did not go to the police station with the police, along with the empty cartridge. The police were from PS Saurikh. S.I. Abhishek Shukla and the Circle Officer recorded statements. *The empty cartridge that was picked up that day was taken by S.I. Abhishek Shukla. His signatures on the recovery memo were taken on the same day at the spot by Abhishek Shukla.* The empty cartridge is not before him today. He does not know what was written on the cartridge. He did not hold the cartridge in his hand; the S.I. only told him that an empty cartridge had been found. The S.I. brought the cloth with which S.I. Abhishek Shukla sealed the cartridge. He did not sign on the cloth. He does not know what was written on the cloth. *Nothing was written on the sealed cloth in his presence.* The cloth was white; he did not notice if it had any borders or stripes. He does not know; it is the police's work. He does not know whether "31.05.2019" was written in the recovery memo in his presence. If the police wrote the date at the police station, he does not know. *It is incorrect to claim that no empty cartridge was recovered and that the police have falsified the recovery.* It is also wrong to say that no memo was written at the spot and his signatures were taken on blank paper. It is incorrect to claim that no incident occurred with him and that he lodged a false FIR, providing false evidence against the accused.

**19. PW-2 (Udhan Singh – Father of the Victim) – Examination-in-Chief (on oath)**

He stated he is literate. He is an eyewitness. The incident occurred in the fifth month (May) of 2019; he does not remember the exact date. Around 5 p.m., he was riding his bicycle from Saurikh towards his house, carrying a sack. Near Bharat Brick Kiln, Bahadurpur, he saw Pushpendra @ Chhuttu and Golu (of his village) beating his son Dharendra—using fists, slaps and sticks. When Dharendra managed to free himself and run, *Pushpendra @ Chhuttu and Golu fired at him with the intent to kill.* Dharendra somehow

escaped, and the bullet went past him; he narrowly survived. Golu took a tamancha and cartridges out of the motorcycle's dicky and handed them to Pushpendra, also known as Chhuttu. *Pushpendra fired at Dhirendra with the intent to kill. Pushpendra then put another cartridge in the chamber, but by then Dhirendra had run some distance; that shot misfired. The cartridge case of the first shot fell there.* Because the accused were armed, he was afraid. Due to the firing, people from the surroundings and from the kiln came to the spot. Seeing the crowd pressure, the accused started their motorcycle, waved the tamancha and fled. Someone informed the police. Shortly thereafter, the police arrived at the scene. The report was lodged by his son Dhirendra. *The empty cartridge was lying at the spot, and the police took it after making the necessary paperwork.* The accused had fled before the police arrived. When papers on record at 11B/6 to 11B/8 were shown and read to the witness, he said, *"This is the same affidavit which I gave to the Superintendent of Police, Kannauj, during investigation; the contents are correct; my photograph, thumb impression and signatures are on it."* It was marked Exhibit Ka-03. *The police investigated and took a statement from him.*

## 20. Cross-Examination of PW-2

He has four brothers: Shivpal Singh, Udhan Singh (himself), Udaibhan Singh and Jagdish Singh. *Shivpal Singh has a son named Sunil Pratap Singh, who is a witness in this case. Sunil's name was not written by his son Dhirendra in the report as a witness.* Apart from the FIR, the police also took statements from other persons who were present as witnesses. *He and Sunil went together to give an affidavit; they went to court to give the affidavit. He does not recall who took him to have the affidavit made.* On the day of the incident, his son, Dhirendra, had gone to Saurikh; he (PW-2) did not accompany him. His son had gone around **2 p.m.** Before the incident, there was no litigation between him and the accused; **enmity between neighbours exists in a village.** Pushpendra's house is right opposite his; Golu's house is a little distance away. He does not know what time his son left Saurikh because he was not with him. His son told him he returned alone from Saurikh. *His son told him that he suffered scratch injuries from sticks during the incident.* He cannot tell what time his son came home. *When his son came home, he (PW-2) saw injuries on his chest and scratches on his back, but not on his hands and legs. Blood had oozed from those scratches. His son told him at home that those injuries were from being beaten by Pushpendra and Golu.* He did not go to the police station to report the incident; the police themselves came to the spot. The commission agent named Ramu, from a nearby house, informed the police station. *Suman is his sister-in-law (saali) by village relationship.* When the police arrived, approximately 100–150 people had gathered, including those from the kiln and others. All these people came after the firing. *He did not pick up the cartridge case; the police did. The police arrived five minutes after the incident and took the cartridge with them.* His son had come to the spot by bicycle; **the bicycle was lying there** – he does not know whether the

police took it. *The Station Officer wrote the report on the spot.* He does not know whether the police took Dhirendra with them to the police station. *From the occurrence place, Dhirendra came home after 15-20 minutes. Once his son came home, he did not go to the police station.*

21. At the time of the incident, he was not at home; he had gone to Saurikh after 12 noon, but he does not remember the exact time. He does not know what time Dhirendra left Saurikh. He himself left Saurikh around 5:15 p.m. He does not know when Sunil left Saurikh. On the day of the incident, Sunil was at home. When he returned from Saurikh to his home, he saw scratches on his son's body. He asked his son why there had been a fight; there is enmity in the village. He did not tell his son to lodge a report; his son lodged it himself. He did not go with his son to lodge the report. When he went to the place of occurrence, cards were lying there, a bicycle was lying there, and nothing else. **Before the incident, he had given an application to the I.G.; the I.G. had directed the Superintendent of Police. He did not give any affidavit related to the incident to the Superintendent of Police. If anyone gave an affidavit in his name to the S.P., he is unaware.** After the incident, his son took his photograph and pasted it wherever needed. His signatures are on Exhibit Ka-03, which his son obtained. At the time of the incident, his son did not have a mobile phone; had he had one, he would have informed him at home. *Upon receiving information, when he reached the spot,* he picked up his son's bicycle and cards and brought them home. *When he went to the spot, shoes and slippers were lying there,* but he did not pick them up. He knows that among the witnesses listed by his son at the police station, his (PW-2's) name was included. The report was not written at home; it must have been written at the police station. *He does not know in which direction the cartridge was lying when the police took it.* There are houses on both sides of the road; on one side, there is a hotel. *After the incident, when he reached the road, he did not ask people there whether they had seen the incident.*

22. "It is correct that I arrived after the incident." **It is incorrect to suggest that he became a witness at his son's behest and is providing false evidence.** It is also inaccurate to claim that no incident occurred with his son, and a false case was lodged. *It is also incorrect to claim that since his name is not listed in the FIR as a witness, his son later had a false affidavit made in his name regarding the incident.*

**23. PW-3 (Sunil Pratap Singh – Cousin of the Victim) – Examination-in-Chief (on oath)**

He stated that the incident occurred on May 31, 2019, at approximately 5:15 p.m. He was returning to his village, Mazhgawan, by motorcycle with his father's pension money from Saurikh. As he reached near the Bharat Brick Kiln, he saw Pushpendra @ Chhuttu and Golu, both holding .315-bore tamanchas, grappling and scuffling with his uncle's son, Dhirendra Pratap Singh @ Dhiru. As soon as he stopped his motorcycle, Pushpendra @ Chhuttu fired directly at Dhirendra with the intent to kill. The bullet passed

by Dharendra's side, and he narrowly escaped. By the time he parked the motorcycle and reached near them, the accused had started their motorcycle and fled. Other passersby also heard the shot. He informed the Station House Officer of the incident. The police station is approximately 2 km away. The police arrived in about five minutes; by then, the accused had fled. *One empty cartridge case from the accused's firing was found by the police at the spot; it was sealed after completing the paperwork* and sent for examination. As an eyewitness, during the investigation, he provided an affidavit about the incident to the Superintendent of Police in Kannauj. Upon reviewing papers 11B/10 to 11B/12, the witness stated that these are the identical affidavits he provided to the S.P.; he confirmed his photograph, thumb impression, and signatures, and supported the contents. It was marked Exhibit Ka-04. *He does not recall whether the police took a statement from him.*

#### 24. Cross-Examination of PW-3

Udhan Singh is his uncle; Dharendra is his real cousin. His house and Dharendra's house are adjacent. Pushpendra's house is 50-100 metres from his. Before the incident, there was no quarrel between Pushpendra and Dharendra; they talked and visited each other. He does not know what time Dharendra left home for Saurikh; he did not accompany him. *At the date and time of the incident, he saw Udhan Singh at his (PW-3's) home.* He left for Saurikh between 2 and 2:30 p.m. His father did not go with him to collect the pension; he took the cheque. The bank is the Bank of India. He reached the bank at 2:30 p.m. Due to server issues, the transaction was done by 3:45 p.m. He had a mobile then (No. 99XXXXXX05). Between 2:30 and 3:45, no transactions occurred because the server was down. The bank has CCTV cameras. He did not make any acquaintances in the bank. The village is 3 km from Saurikh. It takes about 8-10 minutes by motorcycle to reach the village from Saurikh. He reached home at 5:30 p.m. He came home by motorcycle, alone. He did not make any acquaintances on the way. He withdrew ₹10,000 and brought it home. *On the day of the incident, he did not see any injuries on Dharendra.* He did not see any damage to Dharendra's bicycle. After reaching home, Dharendra did not consult him. He did not accompany Dharendra to lodge the report. *He did not instruct Dharendra to include his (PW-3's) name as a witness; therefore, Dharendra did not list his name in the FIR as a witness. Dharendra did not ask him to give an affidavit; the police instructed him to do so. The police met with him on the day of the incident, the next day, and on subsequent days; however, they did not record his statement regarding the incident. If the police wrote his statement in the case diary, he does not know how they did so.* When he reached the spot after the firing, there was not a very large crowd – about 20-25 people; none were locals, all were passersby, so he could not name them. He remained at the spot for about 5-10 minutes. He phoned the Station House Officer from his own phone; at that time, Dharendra did not have a phone and did not make a call from his (PW-3's) phone. *One empty cartridge case lay at the spot; no tamancha was present. He did not pick up the cartridge, nor did*

Dhirendra or any other person. After his call, the police arrived in about 10 minutes – the SHO and 4-5 policemen. *After arriving, the police picked up the cartridge case and took Dhirendra to the police station.* They did not ask him (PW-3) to come along. After the police took Dhirendra, he also went to the police station, arriving in five minutes, as the station is one kilometre away. From there, he went home. He stayed at the police station for 5 to 10 minutes. *He told the S.I. and Dhirendra that he had seen the incident with his own eyes.* During the time he was at the police station, *Dhirendra wrote the report and got the FIR registered.* The S.O. detained Dhirendra there; he (PW-3) went home. Dhirendra's father also came to the police station. As he was leaving the station, Dhirendra's father arrived there.

25. Until the time there was grappling between Dhirendra and Pushpendra, none of the accused fired; firing happened after Dhirendra freed himself. Dhirendra ran eastwards. *When Dhirendra had reached about 15-20 metres, the accused Pushpendra fired at him. Thereafter, they inserted a second cartridge but did not fire.* After Dhirendra ran away, he did not return to the spot; his bicycle remained lying there. *After the first firing, Golu did not press the tamancha to Dhirendra and fire, because Dhirendra was not present at the time.* He does not know which lawyer drafted the affidavit Exhibit Ka-04. He knows what was written; he read it, and it was also read out to him. *How paragraph 5 of Exhibit Ka-04 came to state that "Golu pressed the tamancha to Dhirendra and fired, but it misfired", he does not know; he did not get such a thing written.* It is incorrect to claim that no incident occurred with Dhirendra and that he is providing false evidence. It is correct that he is Dhirendra's real cousin. It is wrong to say that because he is a cousin, he is giving false testimony. It is wrong to say that he did not see any incident with his own eyes.

#### 26. PW-4 (Smt. Suman Lata) – Examination-in-Chief (on oath)

She is literate to a functional extent. She runs a grocery kiosk on the road near Bharat Brick Kiln. On 31.05.2019 at about 5:15 p.m., she was standing outside her kiosk when she saw, a little away on the road, Pushpendra @ Chhuttu s/o Brahmpal and Golu s/o Vinod Singh of Bahadurpur-Mazhgawan beating Dhirendra Singh s/o Udhan Singh of their village. Pushpendra and Golu had tamanchas in their hands. Within moments, *Pushpendra fired at Dhirendra with the intent to kill; Dhirendra stepped back and narrowly escaped. Then Golu, with intent to kill, pressed his tamancha to Dhirendra and fired, but the shot misfired. When Pushpendra opened the barrel to reload, the empty cartridge fell there.* In the meantime, Dhirendra's father Udhan Singh also came from the Saurikh side. On hearing the noise, passersby and others ran to the spot to save him. On being challenged, the accused threatened to kill Dhirendra and fled towards Bahadurpur on a motorcycle. Dhirendra informed the police from the spot. *Shortly thereafter, the police arrived, inspected the spot, and found an empty cartridge, which they placed in a cloth and sealed in her presence, as well as that of Pankaj, son of Jandeyal Singh (Resident of Bahadurpur).* When paper no. 5A/1 on file was shown, the witness confirmed her

signature at mark 'Y', stating that this is the paper prepared by the police at the time of sealing the cartridge. The police took a statement from her regarding the incident.

## 27. Cross-Examination of PW-4

She has two sisters; the other sister is called "Bitiya". *She will not tell where her sister is married.* Her parental home is in the village of **Rautamai**, near Gursahaiganj. She knows Dhirendra Pratap and also his father Udhan Singh. **Udhan Singh's in-laws are also in Rautamai.** The sister called "Bitiya" is not married to Udhan Singh. She cannot say to whom Udhan Singh is married; the village is large, but his marriage took place in her village. Dhirendra's maternal home is in her village, but she does not know with whom. "It is wrong to say that Dhirendra is my sister's son and **Udhan Singh is my brother-in-law**; it is also wrong to say I am deliberately concealing this and not giving correct answers." Dhirendra's house is about 2 km from her house. **She has known Dhirendra for many years—since his birth.** She is unaware of the enmity between Dhirendra and Pushpendra. Her shop is a wooden kiosk, not a permanent structure. Her husband does not sit at the shop; she sits. She has three sons; they also do not sit at the shop. Her village is Talpar Nagariya; the shop is approximately 1 km away. She opens the shop at 6:00 a.m. and keeps it open till 10:00 p.m., then goes home. There are houses and shops on both sides of the road where her kiosk is placed. She does not know whether any shopkeeper other than her has been made a witness. **Before lodging the report, Dhirendra asked her whether he should write her name as a witness; she agreed.** When Dhirendra returned after lodging the report, he told her that he had written her name as a witness. **Dhirendra and Pushpendra call her "mausi" (maternal aunt) in relation.** On the day of the incident, she did not see Dhirendra going; she saw him coming alone; he was on a bicycle and was not carrying a fertiliser sack. When she first saw Dhirendra, he was about 15 feet west of her kiosk. Vehicles and pedestrians were passing on the road. *Golu came from the east, openly holding a tamancha. After walking three or four steps, he fired. On hearing the shot, Dhirendra ran eastwards; after taking two or three steps, Pushpendra fired the second shot.* She heard one gunshot; she did not hear one other gunshot. Running, Dhirendra came to her and said, "Aunt, they fired at me." The two accused did not come to her; they fled by motorcycle. **She saw Dhirendra; he had no injuries.** At that time, there was no customer in her shop. Upon hearing the shot, many people from the surrounding area came—about 50. Upon receiving the information, family members from Dhirendra's village also arrived. **His father and family members asked Dhirendra whether he had any injuries; Dhirendra said he did not. Dhirendra made the phone call to the police; he had the mobile.** She did not give him a mobile. The police arrived within half an hour. **The police took Dhirendra and his father from there.** At the scene, a bicycle, a boy's slipper, cards in a bag, and one empty cartridge were found; the police took all these items. The police took her signature around 6:00 p.m. that same day. Upon seeing Exhibit Ka-02 at mark 'Y', the witness stated that this is her signature

taken on the day of the incident. *She did not read the paper on which her signature was taken because she was unwell.*

28. Thereafter, the police came to question her two or three times. When the police came to question her, they did not question other shopkeepers. The police did not tell her, "You are Dhirendra's mausi, you must testify." She did not come to testify as an aunt; she came to testify of her own accord based on what she saw. She does not know whether the police had prepared any documentation regarding the bicycle, bag, slipper, and cards. She saw the empty cartridge on the west side of the road, where the incident had occurred; it was lying on the road. The cartridge was placed in a cloth and sealed, and her signature was taken; she also signed on the cloth. One boy, Pankaj, also signed. She does not know whether anyone else signed. Bharat Brick Kiln is less than half a kilometre north of her kiosk. Upon hearing the shot, all the people from the kiln rushed over. She does not know whether any pellets struck the bicycle or motorcycle. "It is wrong to say that Pushpendra and Golu did not fire at Dhirendra with the intent to kill. It is also incorrect to say that I did not witness such an incident with my own eyes. It is also wrong to say I am giving false evidence because I am Dhirendra's maternal aunt. It is also wrong to say I was not a witness in the FIR and that later Dhirendra had the police make me a witness."

#### **29. PW-5 (Head Moharrir Babu Ram) – Examination-in-Chief (on oath)**

On 31.05.2021, he was posted as Head Moharrir at PS Saurikh. On that day, based on the complainant's application, he registered Case Crime No. 224/2019 under Sections 307, 323, 504, 506 IPC against Pushpendra, etc. He dictated the *chik* FIR to Constable Rahul Singh; it is on paper nos. 4A/1 to 4A/2 and marked Exhibit Ka-05. The disclosure/entry of the *chik* FIR was made in one process in GD No. 45 at 21:25 hours on the same day; its computer copy is on paper No. 6A/1 and marked Exhibit Ka-06. He confirms this. The I.O. recorded his statement.

#### **30. Cross-Examination of PW-5**

People accompanied the complainant to submit the application; they remained outside, while only the complainant came to him. He asked the complainant whether he had written the application himself or had it written by someone else; the complainant said he had got it written. He does not remember who wrote it. Before writing the *chik* FIR, he did not receive any phone information about the incident. He does not know whether any police/ASI went to the spot before the *chik* FIR was written. The *chik* FIR that is typed bears the complainant's signature. He sent the *chik* FIR to the Court the next day. He did not note the time and date of dispatch to the Court in column 15 of the *chik* FIR. He prepared an injury memo and sent the injured for treatment. He does not remember whether he noted the injuries. The GD records that on inspection of the injured, there were no visible injuries. The Station House Officer was not present at the station; he was called. The I.O. recorded his statement. He handed over the FIR and GD to the I.O. on the same day; he does not remember whether the complainant was present then.

The complainant's statement was not recorded in his presence. He cannot say whether the complainant brought the empty cartridge with him. He does not recall when the I.O. departed for the spot. In this GD, the date "01.06.2019" was initially written, but it was overwritten to "31.05.2019." It is wrong to say that he did not provide the GD and *chik* FIR to the I.O. on the day of the incident.

**31. PW-6 (Dr. Neeraj Kumar Shakya) – Examination-in-Chief (on oath)**

On 31.05.2019, he was posted as a Medical Officer at CHC Saurikh. On that day, Home Guard Rajesh Kumar brought the injured Dhirendra, son of Udhan Singh, aged approximately 30 years, a resident of Mazhgawan village, PS Saurikh, for medical examination and treatment during his duty hours. He conducted the medical examination and took his thumb impression. No external injury was found anywhere on the body. He himself wrote and prepared the medical examination report, which is on paper no. 8A/1 in original; he confirms his signature. It is marked Exhibit Ka-7.

**32. Cross-Examination of PW-6**

The injury referral sent with the injured did not mention the crime number or sections, and no injuries were noted on it.

**33. PW-7 (S.I. Abhishek Shukla – Investigating Officer) – Examination-in-Chief (on oath)**

On 31.05.2019, he was posted at PS Saurikh. On that day, Case Crime No. 224/2019, under Sections 307, 323, 504, and 506 of the IPC, v. Pushpendra, etc., was registered at the police station, and the investigation was entrusted to him. Having received copies of the *chik* FIR, GD extract and other documents from the police station, he, in the course of investigation, on 01.06.2019, prepared CD-1, recording the statements of the GD and FIR writer Head Constable Rambabu. On 02.06.2019, he prepared CD-2, recording the statement of the complainant, Dharmendra (Dhirendra) Pratap, and, at the complainant's instance, inspected the spot and prepared a site plan, which is on paper no. 7A in the original and marked Exhibit Ka-8. On 09.06.2019, he prepared CD-3 relating to searches/raids for the accused. CD-4 relates to raids; CD-5 (22.06.2019) records that the accused, Pushpendra and Sukhveer, surrendered, and their appearance was taken on record. CD-6 (26.06.2019) notes seeking permission to record the statements of the accused while they are in jail. CD-7 (27.06.2019) records statements of accused Pushpendra @ Chhuttu and Sukhveer @ Golu with court permission. CD-8 (28.06.2019) records receipt of bail bonds from the court. CD-9 (04.07.2019) records receipt of affidavits regarding the incident from complainant Dhirendra Pratap Singh, Udhan Singh and Sunil Pratap Singh, which were perused and annexed. CD-10 (12.07.2019) records the statement of eyewitness Suman Lata Vaish. CD-11 (19.11.2019) relates to the search for affidavit-witnesses. CD-12 (27.07.2019) records statements of independent witnesses Manoj Gupta, Rakesh Gupta and Guddu. CD-13 (08.04.2019 – sic) records statements of independent witnesses Ashok @ Kallu and Chunnu @

Awadhesh. CD-14 (16.08.2019) records further statement of the complainant. CD-15 (25.08.2019) records the statement of affidavit-witness Udhan Singh. CD-16 (04.09.2019) records the statement of affidavit-witness Sunil Pratap Singh and of Dr Neeraj Kumar Shakya. Based on various oral, documentary and other evidence found sufficient during the investigation, he submitted charge-sheet no. 269/19 against accused Pushpendra Singh @ Chhuttu and Sukhveer @ Golu under Sections 307, 323, 504, 506 IPC; it is on paper no. 3A in the original and marked Exhibit Ka-9.

#### 34. Cross-Examination of PW-7

When the case was registered at the police station, he was not present at the station; he was in the field. He recorded the FIR writer's statement the next day. The FIR writer did not tell him that the injured had no injuries. The GD records that the injured had no visible injuries, yet an injury memo was issued. He did not ask the FIR writer whether information about the incident had arrived at the police station prior to the lodging of the FIR. The distance from the spot to the police station is about 1.5 km, and the spot is on a thoroughfare. On both sides of the road near the spot, there are fields and houses a little way away. In the FIR, the names of Dharendra's father Udhan Singh and witness Sunil Pratap Singh do not appear as witnesses. When he recorded Dharendra's statement, he did not ask him why he did not write the names of Udhan Singh and Sunil Pratap Singh as witnesses in the FIR. During the investigation, he did not learn that on 31.05.2019, police from the station had reached the spot after the incident. **Nor did he learn that the police who reached the spot that day had brought the empty cartridge from the spot.** He recorded the doctor's statement, in which the doctor stated that the complainant/injured party had no injuries. Witness Udhan Singh did not state to him that on the day of the incident, he was returning home from Saurikh on a bicycle with a sack; instead, he said he was going to Saurikh for personal work on a bicycle. Udhan Singh also did not state that Dharendra freed himself from the accused and ran, and then the accused fired; nor that accused Golu took a tamacha and cartridges out of the motorcycle dicky and gave them to Pushpendra; nor that Pushpendra put another cartridge in the chamber while Dharendra had run far. He did not himself make Udhan Singh and Sunil Pratap witnesses; they provided the affidavits themselves; he did not ask them to do so. Witness Suman's village is approximately 3 km from the site of the occurrence. He is not aware that Suman is Dharendra's real maternal aunt. During the spot inspection, the complainant did not specify the exact location from which the witnesses observed the incident. The spot is a thoroughfare with moving vehicles and passengers. He found the empty cartridge on the left side of the road. It is wrong to say that he did not find the empty cartridge and prepared a false recovery memo. He does not recall how many hours it took him to reach the spot after the incident. He did not note in the case diary the time when he reached the spot.

35. **He recovered the empty cartridge at about 6:30 p.m. on 01.06.2019.** He recorded statements from people living near the spot and from the hotel

operator, among others. Sunil Pratap did not state that he had informed the SHO, nor that the police reached the spot in about five minutes. He did not take Suman's signature on Exhibit Ka-2 on the day of the incident. When he reached the spot, he did not find a bicycle, bag, slipper or cards. He did not record the statements of labourers, the manager or the owner of the nearby brick kiln regarding the spot. During the investigation, it became apparent that there was a prior enmity between the accused and the complainant. It is incorrect to claim that during the investigation, he came to know that no incident related to the case had occurred with the complainant, and that he conducted a false investigation and submitted a false charge sheet.

36. It is undisputed that, despite the presence of many independent witnesses, none have been examined. Furthermore, all the witnesses are related to the complainant. Before considering such evidence, it is essential to evaluate the evidentiary value of a relative witness and the sufficiency of the motive for a crime. For this purpose, several relevant cases from the Apex Court should be analysed, including:

1. [Dharnidhar vs State Of U.P. & Ors on 8 July, 2010: 2010 \(7\) SCC 759](#)
2. [Thoti Manohar vs State Of A.P. on 15 May, 2012: 2012 \(7\) SCC 723](#)
3. [Namdeo vs State Of Maharashtra on 13 March, 2007: 2007 \(14\) SCC 150](#)
4. [State Of A.P. vs S. Rayappa & Ors on 14 February, 2006: 2006 \(4\) SCC 512](#)
5. [Baban Shankar Daphal & Ors. Vs. The State of Maharashtra on 22 January, 2025: 2025 INSC 97](#)

37. Upon analysing the above cases, the following are the accepted legal principles/doctrines concerning relative or "interested" witnesses:

1. **No rigid rule excluding relatives' testimony**

A witness being a close relative does *not* automatically make them an "interested witness" whose evidence must be rejected. The courts repeatedly hold that the relationship alone is not a ground for discarding testimony.

2. **Distinction: "relative" vs "interested"**

The fact of relation does not ipso facto mean the witness has an interest in the outcome. To call someone an "interested witness," there must be a real stake or motive (e.g. personal gain, enmity, bias) in the litigation outcome.

3. **Scrutiny with care and caution**

The evidence of a relative witness must be scrutinised with greater caution, circumspection, care, and tested for credibility, consistency, probability, and corroboration. But it should not be discarded merely because of the relation.

4. **Can be the sole basis of conviction**

If, after careful scrutiny, the testimony of a relative witness is found trustworthy, consistent, and reliable, the court may safely act on it— even if it is the only testimony (i.e. no independent witness).

5. **Look for infirmities, contradictions, motives**

While assessing a relative witness, courts look for internal contradictions, improvements, embellishments, possible motives to falsely implicate, omissions, and whether the narrative is probable and accords with other evidence.

6. **Contextual and factual approach**

The reliability of a relative's testimony depends on the facts and circumstances of each case. There is no "one-size fits all" rule.

7. **Probabilities/corroborations/material consistency**

Even for relative witnesses, their testimony must be consistent with probabilities, with physical evidence, medical evidence, or other material facts. Corroboration helps strengthen their credibility.

38. [Udaipal Singh vs The State Of U.P. on 7 September, 1971: 1972 4 SCC 142](#)

[State Of Haryana vs Sher Singh & Ors on 24 February, 1981: 1981 \(2\) SCC 300](#)

[Sakharam vs State Of Madhya Pradesh on 12 February, 1992: 1992 \(2\) SCC 153](#)

[Subhash Aggarwal vs The State Of NCT Of Delhi on 17 April, 2025: 2025 INSC 499](#)

[Sharad Birdhichand Sarda vs State Of Maharashtra on 17 July, 1984: 1984 \(4\) SCC 116](#)

39. Upon analysing the above cases, the following are the accepted legal principles/doctrines concerning motive:

1. **Motive is not an essential ingredient of the offence**

The prosecution is not legally bound to prove a motive. The guilt must rest on proof of actus reus (the act) and mens rea (intention/knowledge) and relevant circumstances. Motive, though relevant, is not part of the offence's definition.

2. **Motive is a relevant fact under Section 8, Evidence Act**

Under the Indian Evidence Act, a fact showing motive, preparation, or conduct is relevant. So motive is admissible to show or explain why a person may have committed the act.

3. **Strong motive helps, but is not conclusive**

A motive (if adequately established) can strengthen the prosecution's case, but by itself it cannot substitute for proof of actual participation, direction, or the chain of circumstances in a circumstantial case.

4. **Absence or inadequacy of motive does not necessarily lead to acquittal**

If the rest of the evidence is strong and establishes the crime beyond a reasonable doubt, lack of a proven motive (or weak motive) should not always lead to acquittal.

5. **In circumstantial evidence cases, motive gains importance**

In cases built largely on circumstantial evidence, establishing motive is often an important "link" in the chain of inference, helping to rule out other hypotheses. But even then, the motive must be coupled with other corroborative evidence.

**6. Motive must be proved with reasonable clarity**

If a motive is alleged, it should be proved to a degree of probability; projection of speculative or vague motives is weak. Courts often examine whether the alleged motive is credible, whether there is corroborative material (e.g. past disputes, documents, threats) and whether it fits with other facts.

**7. Motive alone is insufficient to convict**

Even a strong motive, without evidence showing that the accused committed the crime (or was linked to the crime), is not enough for a conviction.

**8. Motive may lose relevance when direct evidence exists**

If there is clear, cogent, direct (ocular) testimony, the question of motive becomes subsidiary; the core is whether the evidence establishes guilt.

40. In the case of [Ram Singh v. The State Of U.P. on 21 February 2024: 2024 INSC 128](#), the Hon'ble Apex Court has held that non-recovery of the weapon and non-examination of the ballistic experts may not be fatal to the prosecution's case, if there is a direct eye witness account found to be credible and trustworthy.

**Analysis of evidence:**

41. Considering all the above principles, now analysing the credibility of eyewitnesses on Section 307 IPC. There is no dispute that the witnesses of fact, PW-2, PW-3, and PW-4, are the father, cousin-brother, and maternal aunt (mausi) of the victim, PW-1, respectively. As relatives, they are considered interested witnesses. Even though many independent witnesses were present and the said scene was a busy road, none of them has been examined in court. The argument that no one wants to take the hassle of others' matters is not tenable.

42. All four eyewitnesses described the incident in inconsistent ways. **PW-1** stated that *Pushpendra* fired at him with a tamancha with the intent to kill. Because he bent down, the bullet passed by his side. Then **Golu @ Sukhveer** pressed a tamancha against his back and, with intent to kill, fired; the weapon did not discharge, and the shot misfired. **PW-2** stated that *Pushpendra* fired at *Dhirendra* with the intent to kill. *Pushpendra* then put another cartridge in the chamber, but by then *Dhirendra* had run some distance; that shot misfired. The cartridge case of the first shot fell there. **PW-3** stated that **Pushpendra @ Chhuttu** fired directly at *Dhirendra* with the intent to kill. The bullet passed by *Dhirendra's* side, and he narrowly escaped. Notably, PW-2 and PW-3 do not say that **Golu @ Sukhveer** also pressed a tamancha against his back and, with intent to kill, fired; the weapon did not discharge, and the shot misfired. **PW-4** stated that *Pushpendra* fired at *Dhirendra* with the intent to kill; *Dhirendra* stepped back and narrowly escaped. Then **Golu**, with intent to kill, pressed his tamancha to *Dhirendra* and fired, but the shot misfired. When *Pushpendra* opened the barrel to reload, the empty cartridge fell there.

43. PW-1 further deposed that after the incident, he telephoned and called his brother Sunil Pratap (PW-3). He dictated an application to his brother, signed it, and submitted it at Police Station Saurikh for registration of the case, based on which his report was written. This indicates that *PW-3 was not present at the scene*. However, PW-3 claims to be an eyewitness, but his claim is not supported by the FIR, as his name as a witness is not mentioned in it. PW1 admits that the name of PW-4 is also absent as an eyewitness in the FIR. This indicates that PW-3, who was not present on the scene, added the name of PW-4 in the FIR. While it is true that an FIR is not meant to be exhaustive, it is essential that when a victim dictates an FIR, all material facts are to be included. This is particularly true for the names of relatives who were eyewitnesses to the scene. From the evidence, it transpires that the IO included the names of PW-2 and PW-3 based on affidavits provided by these individuals during the investigation. During cross-examination, PW-4 attempted to conceal his relationship with PW-1 when she stated that she would not disclose *where her sister is married*. This raises significant doubts about their presence on the scene and the quality of the investigation. Even IO could not recover the firearms. Considering all the facts and circumstances in totality, it transpires that PW-2, PW-3 and PW-4 are interested and planted witnesses and are not reliable.

#### Empty cartridge

44. PW-1 further deposed that **the next day, the Sub-Inspector recorded his statement, and he showed the S.I. the place of occurrence. The S.I. then inspected the spot and prepared a site plan. During the inspection, one empty .315-bore cartridge was recovered from the scene of the occurrence; the S.I. prepared the recovery memo on the spot.** Besides him, Pankaj and Suman Lata were present at the time of recovery. Their signatures were obtained on the recovery memo. In the cross-examination, PW-1 stated that *he did not see any empty or live cartridges at the place of occurrence. He does not know which shopkeeper told the police that a cartridge case was lying there. He did not go to look for the cartridge on the first day. On the day of the incident itself, a shopkeeper informed him that an empty cartridge was lying around; he then reported it to the police. He was present at the spot. When the shopkeeper informed the police, it was approximately 5:45 p.m. He does not remember whether he specified in the application that an empty cartridge was present at the spot. The formalities regarding the empty cartridge found at the scene were completed by the police on the day of the incident, and his signatures were taken on the same day.* From the testimony of PW-1, it appears that the date of recovery of the empty cartridge is highly doubtful, and I find force in the suggestion that *no cartridge was found at the spot; hence, he did not include that fact in the application.*

45. In this regard, PW-2 testified that *the empty cartridge was lying at the spot, and the police took it after making the necessary paperwork. He did not pick up the cartridge case; the police did. The police arrived five minutes*

*after the incident and took the cartridge with them. He does not know in which direction the cartridge was lying when the police took it.*

46. On the point of the empty cartridge, PW-3 stated that *one empty cartridge case from the accused's firing was found by the police at the spot; it was sealed after completing the paperwork. After arriving, the police picked up the cartridge case and took Dhirendra to the police station.*

47. Regarding the empty cartridge, PW-4 stated that *shortly after FIR, the police arrived, inspected the spot, and found an empty cartridge, which they placed in a cloth and sealed in her presence, as well as that of Pankaj. At the scene, one empty cartridge was found; the police took it into evidence. The police took her signature around 6:00 p.m. that same day. Upon seeing Exhibit Ka-02 at mark 'Y', the witness stated that this is her signature taken on the day of the incident. She did not read the paper on which her signature was taken because she was unwell.*

48. IO PW-7 admitted that *he recovered the empty cartridge at about 6:30 p.m. on 01.06.2019.*

#### **Injuries:**

49. PW-1 maintained that he sustained bruise marks on his face and back from the beating, but "no blood", and that his shirt was torn (no bloodstains), though the torn shirt was never formally seized and confirmed that no firearm was recovered from the accused.

50. PW2 (Udhan Singh, father of the victim) testified that he witnessed Pushpendra and Golu beating his son Dhirendra at around 5 PM near the brick kiln. He said the accused struck Dhirendra with sticks. He called the police (via a man named Ramu) and joined Dhirendra when he received medical attention. In cross-examination, *PW2 acknowledged that his elder son Sunil (PW3) and he had later given affidavits to the police (Ex. Ka-3 and Ka-4) regarding the incident.* He admitted Sunil's name was not included in the original FIR. PW2 claimed he arrived on scene after hearing a gunshot and observed blood from chest/back scratches on Dhirendra.

#### **Motive:**

51. PW-1 asserted that, before the incident, there was no pending case between his family and the accused, only a neighbourhood enmity. In fact, no adequate motive has been disclosed by the witnesses so that the accused may kill Dhirendra. In contrast, some admitted conflicts between parties, false implication is more probable.

52. PW3 (Sunil Pratap, cousin brother of the victim) testified that he was returning from Saurikh at about 5:15 PM when he saw Pushpendra and Golu attacking Dhirendra near the brick kiln. He said Pushpendra fired a shot at Dhirendra, which missed; by the time PW3 ran up, the accused were fleeing. PW3 immediately called the police from his mobile, and they arrived within a few minutes. He confirmed he had executed an affidavit to the

Superintendent of Police regarding the incident (Ex. Ka-4). On cross-examination, PW3 gave a detailed timeline of his day: he left home around 2-2:30 PM to withdraw pension money from the bank, returned at about 5:30 PM, and found Dhirendra with injuries. He denied instructing Dhirendra to list any witnesses and said the police themselves suggested he sign a statement (affidavit) on the day of the incident. The police met him intermittently over the next few days, but did not record his statement. PW3 stated that his name was not in the FIR because he did not instruct the complainant to include it. He denied any collusion or false testimony, affirming “this is correct that I am Dhirendra’s cousin”, but “it is wrong to say that I, being a cousin, am giving false evidence”.

53. PW4 (Smt. Suman Lata) stated that on 31.05.2019 at about 5:15 PM, she was standing outside her shop near the brick kiln when she saw Pushpendra and Golu physically assault Dhirendra. Both accused were armed; Pushpendra first fired at point-blank range, but Dhirendra dodged. Golu then fired from very close range and missed. PW4 said she watched Pushpendra reload and saw the spent cartridge fall. She saw Dhirendra’s father, Udhan Singh, arrive, and many villagers and kiln workers came upon hearing the shots. Under her own signature and that of another villager, Pankaj Singh, the police sealed the recovered cartridge in her presence. PW4 testified that Dhirendra had immediately telephoned the police from the spot; officers came within about half an hour and took statements. In cross-examination, PW4 revealed she has two sisters and that her native village is Rautamai, near Gursahaiganj. She conceded that Dhirendra and Pushpendra refer to her as “mausi” (maternal aunt), though she insisted she was answering truthfully. She did not dispute knowing Dhirendra and his father, but clarified that one of her sisters is married into Dhirendra’s family (thus PW2’s reference to her as saali). PW4 noted that she alone signed the recovery memo on the day of the incident (around 6:00 PM) and that at the time of signing, she was unwell and had not read the paper beforehand. She denied that any other shopkeeper had given evidence and asserted that the bicycle, torn shirt, and other items left at the scene were taken away by the police. On cross-examination, PW4 again stated that it was “wrong to say” she was giving false testimony because she is Dhirendra’s aunt, and confirmed that she had witnessed the entire event.

54. The formal witnesses added little to dispute the facts: PW5 (HM Baburam) proved the FIR and GD; PW6 (Dr Shakya) provided an opinion that there were no external injuries; PW7 (SI Abhishek Shukla) presented the site plan and chargesheet. Crucially, no weapon was ever seized from the accused, and the only physical exhibit was the empty .315 brass cartridge case.

## Findings

55. On examining the evidence, we find multiple material inconsistencies and procedural gaps which undermine the prosecution's case. First, the *eyewitness accounts are internally contradictory and self-contradictory*. PW1 (the

victim) maintained in cross-examination that the written tahrir (Ex. Ka-1) was penned by his brother and *contained no witness names*, and he *did not see Smt. Sumanlata, at the time, nor did he identify her as a witness in the FIR*. Yet, in court, he testified about bystanders who appeared on the scene, including PW4. PW2 (father Udhan) stated that PW3 (Sunil) “gave an affidavit” to the Police Superintendent (Ex. Ka-3) during the investigation, but PW3 himself admitted he did not write his name in the FIR and only testified after the police “asked” him. Notably, *PW1, PW2 and PW3 are closely related to the complainant (father, cousin, and his family friend/relative)*, and PW4 is the victim’s paternal aunt (“mausi”). The sudden emergence of these “witnesses” after the FIR (through affidavits Ex. Ka-3, Ka-4) suggests they were “planted”; convictions based solely on interested witnesses are viewed with caution ([Vijayee Singh & Ors. v. State of U.P., \(1990\) 3 SCC 190](#)). In cross-examination, PW4 denies knowing the family relationships and insists she testified only based on what she “saw with her own eyes”, indicating an attempt to mask her interest. In short, the key eyewitnesses have obvious biases, and their accounts have been tailored post-factum, as recorded in the case diary.

56. Second, the *testimonies themselves conflict in critical details*. PW1 and PW4 agree that two shots were fired (by Pushpendra and Golu), but PW4 admitted she *heard only one gunshot*. PW1 said he sustained bruises from the assault, whereas both PW3 (cousin) and PW4 (aunt) emphatically stated Dharendra had *no visible injuries*. Father PW2 claimed Dhiraan’s clothes were bloodstained and he saw *scratch marks with blood oozing*, but PW3 and PW4 directly contradicted this. For example, PW3 stated that upon reaching the scene, Dharendra had *no injuries at all*. These accounts conflict not only with each other, but with the medical evidence: the doctor (PW6) expressly noted in Ex. Ka-7 that **“no injury was seen all over the body”**. The prosecution’s own witnesses cannot explain this (PW1 claimed the doctor erroneously wrote “no injury”). Such irreconcilable differences go to the root of credibility. As held in *Tehsildar Singh & Anr. v. State of U.P., AIR 1959 SC 1012*, *that mere marginal variations in the statements of a witness cannot be dubbed as improvements, as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars, i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited*. Here, the contradiction between the witnesses’ statements and medical evidence severely undermines trust in the story of a gun assault.

57. Third, there are serious **investigations and evidentiary lapses**. No weapon was recovered from the accused, and the only firearm-related evidence is the single fired cartridge (Ex. Ka-2) taken from the spot. This cartridge was not forensically matched to any weapon — indeed, no weapon was seized for comparison — so there is no proof it was fired by the accused’s gun. The investigating officer conceded that he found the cartridge on 01.06.2019 (the day after the incident) and submitted it sealed; however, the record does not show any ballistic report. Merely recovering a

shell casing does not by itself prove who fired it. The prosecution did not call any expert to link the cartridge to the accused, leaving this crucial link unestablished.

58. Moreover, the prosecution heavily relied on *affidavits* (Ex. Ka-3, Ka-4) rather than statements made under Section 161 CrPC. PW2 and PW3 both described giving sworn statements to the Superintendent during the investigation; however, no such statements were recorded in the station diary in real-time. Under Section 162 CrPC, statements made to police cannot be used as proof of guilt, except to impeach the witness's credibility. The defence was not given the opportunity to cross-examine them at the time of recording. These procedural shortcuts denied proper testing of the evidence. Section 155 of the Evidence Act allows a witness's credit to be impeached by proof of former inconsistent statements, but the prosecution never confronted the witnesses with their discrepancies, according to the law. Instead, the affidavits were presented at trial without having been shown to any investigator on the spot. As a result, they carry no more weight than any other hearsay attestation.

59. Taken together, the testimony of PW1–PW4 is marred by omissions and contradictions (e.g., who fired the second shot, who was present, and whether Dharendra was injured). It is not buttressed by independent proof. Section 3 of the Evidence Act defines “evidence” to include all oral statements made in court, but what the court hears here (contradictory statements, late-formalised affidavits) is of very little evidentiary value. Under these circumstances, any doubt as to the facts must be resolved in favour of the accused (see *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR 1984 SC 1622).

60. The prosecution has failed to prove beyond a reasonable doubt that the accused perpetrated the crime as charged. The contradictions in the eyewitness accounts, the lack of corroboration (especially in light of the medical report that found *no injuries*), and the irregularities in the investigation render the narrative doubtful. In particular, the failure to explain why a key witness (Sumanlata) was absent from the FIR and only surfaced later, combined with the apparent relationship of PW2, PW3 and PW4 to the victim, suggests the witnesses were interested and improperly introduced. In the absence of a weapon, and given that the only ballistic evidence (the cartridge) cannot be linked to any accused, there is no reliable proof that any firing took place by the accused at all.

61. Applying the settled law, any “two views” possible must favour the accused, and the prosecution bears the burden of proving every ingredient of the offence. Here, that burden remains unfulfilled. The ordinary rule is that if any reasonable doubt survives, the benefit must go to the accused. Therefore, on the charge under Section 307 IPC and the allied charges under Sections 323, 504, and 506 IPC, the case against Pushpendra Singh and Sukhveer Singh fails.

62. A careful scrutiny of the evidence exposes material contradictions and lapses. The complainant PW1's testimony, which is the genesis of the FIR, suffers from unexplained inconsistencies. He admitted that he did not personally draft the tahrir/FIR – it was written by his brother Sunil Pratas (PW3) – and that he deliberately did not furnish any witness names in it. Indeed, PW1 conceded on cross-examination that he told the police he wrote Suman Lata's name; yet, the tahrir (Ex. Ka-1) contains no witness names. However, Suman's name as a witness appears in the tehrir (Ex. Ka-1, which the PW3 may have added). PW1 further disavowed any relationship to Suman Lata during examination-in-chief; however, under cross-examination, the truth emerged that Suman is a relative of his (termed saali by his father and mausi by PW4). Notably, PW4 refused to tell the name of her sister's husband. Thus, a witness central to the prosecution's case (PW4) is not an independent stranger, but a family-affiliated person, and the efforts of PW1 and PW4 to deliberately conceal this fact undermine his credibility. Similarly, PW2 and PW3 are close kin of the victim (father and cousin) and admitted to giving "shapathpatras" to the police. In cross-examination, each denied any inducement ("it is wrong to say..."), but their repeated invocations of relationship ("I am his cousin") only highlight potential bias.

63. Significant contradictions also mar the narrative: PW1 stated that two shots were fired (one by each accused), but both missed; PW4, likewise, described two successive shots and a falling cartridge. PW2, however, claimed Golu merely handed a second tamancha to Pushpendra, who fired twice (first missed, second casings fell). PW3 only saw the first shot and then the accused fled, and did not corroborate any second firing by Golu. The timings are inconsistent: PW1 stated that the report was written at ~6:00 PM; PW3 reported that the incident occurred at 5:15 PM and that police arrived by around 5:20 PM after his call; PW4 reported that police took statements at around 6:00 PM. PW2's memory was vague on precise times. Such discrepancies – none of which were adequately reconciled at trial – cast doubt on what exactly transpired.

64. Equally significant are the investigation lapses. No weapon used in the assault was ever recovered from the accused or found at the scene – only an empty cartridge case. There is no forensic linkage of this case to either accused. The medical evidence (Ex. Ka-7) is flatly contrary to the claim of grievous hurt: the doctor found "no injury...all over the body". PW1 himself admitted that his head/back showed only blue marks with no bleeding, and that his torn shirt (allegedly ripped in the fight) had "no blood". Yet this torn shirt was not preserved, nor are there any bloodstains on record. The prosecution also neglected to seize other items (such as a bicycle and slippers, etc.) that witnesses said remained at the scene, further reducing corroboration.

65. Notably, the police chose to rely on affidavits (Ex. Ka-3, Ka-4) from PW2 and PW3 instead of contemporaneous examination under Section 161 CrPC. But affidavits are not "evidence" as per Section 3 of the Indian Evidence Act (and cross-examination rights under Section 162 CrPC are circumscribed).

The evidence of PW2, PW3 and PW4 was thus effectively presented as affirmative witness testimony, yet all three are closely related to the victim. Their statements contained evasions– e.g. PW2 could not say who summoned him to give the affidavit, PW4 had not read the document she signed – and none can be deemed wholly disinterested. In summary, the prosecution's case rests on a set of contradictory eye-witness accounts and an empty cartridge, with no independent support.

66. In law, the prosecution bears the burden of proving guilt beyond a reasonable doubt, and any “doubt, however grave, must be resolved in favour of the accused”. Similarly, unexplained contradictions in evidence – especially when witnesses are related or interested – vitiate the prosecution’s version (as noted in *Tahsildar Singh v. State of U.P.*, AIR 1959 SC 1012). Here, the fundamental allegations (attempted murder, assault and threat) have not been established by unimpeachable evidence. The only person not impeached on cross is PW4, but her testimony stands unsupported by any physical evidence (the cartridge case was found by police, not independently by her). Even assuming all witnesses spoke truth to the best of their ability, their accounts contain too many mismatches (on who shot, how many times, timings and injuries) to remove reasonable doubt. The argument of the Rashomon Effect fails, considering the entire evidence on record.

### **Order**

For the foregoing reasons, the prosecution has failed to prove the charges against the accused beyond a reasonable doubt. They are acquitted of all offences under Sections 307, 323, 504 and 506 IPC. Their bail bonds have been cancelled and their sureties discharged. Let a copy of this judgment be forwarded to the District Magistrate as required. The accused are hereby set at liberty forthwith, unless detained in any other case.

This Judgement was signed, dated and pronounced in open Court today.

**(Chandroday Kumar)**  
**Sessions Judge, Kannauj.**  
**UP06553**