



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Criminal Appeal No. 377/2022

Gurucharan @ Babloo S/o Yadram, Aged About 29 Years, R/o Village Nymadpur Police Station Halena, District Bharatpur Rajasthan (At Present Under Judicial Custody Central Jail Bharatpur)

----Appellant

Versus

State Of Rajasthan, Through P.P

----Respondent

For Appellant(s)	:	Mr. R B Sharma Ganthola
For Respondent(s)	:	Mr. Naresh Kumar Gupta, PP with Mr. Vinod Sharma Ms. Neha Goyal Mr. Sukhdev Singh Solanki with Mr. Abhishek Bhardwaj Mr. Rituraj Soni Ms. Barsha Kumari

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE SAMEER JAIN
Judgment

1.	Arguments Concluded on:	03.02.2026
2.	Judgment Reserved on:	03.02.2026
3.	Full Judgment/Operative Part Pronounced:	Full Judgment
4.	Pronounced on:	19.02.2026

(Per: HON'BLE SAMEER JAIN, J.)

1. By way of the instant criminal appeal, the accused-appellant (hereinafter referred to as the 'appellant') has approached this Court assailing the validity of the judgment and order of sentence dated 05.11.2022 passed by learned Additional Sessions Judge, Wair, District Bharatpur (hereinafter referred to as the 'learned Trial Court') in Sessions Case No.44/2021 (CIS No.45/2021).

2. Vide the impugned judgment, the learned Trial Court has convicted and sentenced the appellant as under:

i) **Under Section 460 IPC:** Simple Imprisonment for ten years with a fine of Rs.5,000/-; in default whereof, to undergo three months of simple imprisonment.

ii) **Under Section 302 IPC:** Life imprisonment with a fine of Rs.20,000/-; in default whereof, to undergo six months of simple imprisonment.

iii) **Under Section 3 read with Section 25 of the Arms Act:** Simple imprisonment for two years with a fine of Rs.3,000/-; in default whereof, to undergo one month of simple imprisonment.

All sentences were directed to run concurrently. The fine amount to the tune of Rs.20,000/- was directed to be paid as compensation to the legal heirs of the deceased.

FACTUAL MATRIX OF THE LIS AT HAND:

3. Succinctly stated, the prosecution case unfolds from a written report dated 14.11.2015 (Ex.P-8) filed by Ramkishan (PW-9) at Police Station Halena, District Bharatpur, which was later registered as FIR No. 289/15 (Ex.P-9). It was alleged that on the intervening night of 13.11.2015, at around 11:30 PM, while the informant was lying in bed and listening to music at his residence, he heard the sound of a gunshot. Upon rushing to the courtyard, the informant witnessed the appellant-Gurucharan@Babloo, firing a gunshot at his brother, Jagdish (deceased), which hit him hard on the stomach and hip region. The informant further stated that he chased the appellant, who then fled away on a running

motorcycle driven by another person, later identified as Abdul s/o Rehman.

4. It was further alleged in the FIR that the motive attributed to the commission of the said act was a prior animosity *inter se* the parties and that the appellant had ingressed into the house of the informant and threatened the entire family to withdraw the case registered against the appellant regarding the abduction of a girl belonging to the community of the informant and the deceased.

5. The deceased was initially taken to a hospital in Bharatpur and thereafter referred to SMS Hospital, Jaipur where he succumbed to his injuries. The FIR also discloses that on 14.11.2015, the appellant had issued threats to kill all the brothers of the deceased via mobile phone; the specific mobile numbers of the incoming threat calls to Satveer@Sattu (PW-10) have categorically been specified in the FIR.

6. Upon registration of the said FIR, the investigation commenced and the statements under Section 161 Cr.P.C. of close relatives of the deceased, such as PW-9 (Ramkishan), PW-7 (Mohan Singh), PW-2 (Hariom), PW-3 (Bheem Singh), PW-6 (Rahul Kumar), PW-8 (Hemant), PW-5 (Kamal Singh @ Kalua), PW-10 (Satveer @ Sattu), were recorded. The site plan was formulated (Ex.P-7), *panchnama* was drawn (Ex.P-3), and the Medical Board conducted the *post-mortem* of the body of the deceased (Ex.P-6). The shirt of the deceased (Ex.P-5), the cartridge which caused the injury/death (Ex.P-10), and blood samples of the deceased were duly seized by the investigating authorities.

7. During the course of investigation, the appellant was arrested on 06.12.2015. Pursuant to the recovery of a key attached to the pendant of the appellant and as per the information furnished under Section 27 of the Indian Evidence Act (Ex.P-22), a country-made pistol and four live cartridges came to be discovered/recovered on 08.12.2015 from the residence of the appellant (Ex.P-12). A separate site plan of the place of recovery was formulated (Ex.P-13). The seized articles were sent to the FSL, and a ballistic report (Ex.P-34) was obtained *qua* the recovered weapons.

8. The co-accused, namely Abdul, remained absconding and investigation; under Section 173(8) of the Cr.P.C, was kept pending against him. A detailed charge-sheet was filed *qua* the appellant. Thereafter, charges were framed and the appellant had disputed the same and claimed trial. After a full-fledged trial, the appellant was convicted and sentenced as stated above.

SUBMISSIONS PUT FORTH ON BEHALF OF THE APPELLANT

9. Assailing the impugned judgment, learned counsel for the appellant submits that the findings of the learned Trial Court are based on conjectures and surmises. It is contended that the conviction of the accused rests on legally inadmissible evidence. It is submitted that there has been an unexplained delay of approximately 18 hours in lodging the FIR, which casts a shadow of doubt on the prosecution story. It is averred that the entire case of the prosecution hinges upon the testimony of interested

witnesses i.e., the relatives of the deceased, and the testimony of independent witnesses was not paid much consideration by the learned Trial Court. It is further submitted that the theory put forth by the eyewitnesses, when nobody witnessed the incident firsthand, is not tenable. It is next submitted that the instant case rests purely on circumstantial evidence and the said chain of circumstances leading to the irresistible conclusion of the guilt is ill-founded. It is further contended that there have been glaring inconsistencies and stark contradictions amongst the contents recorded in the FIR, the statements recorded during the trial, and the statements recorded during the cross-examinations. It is also submitted that the prosecution story regarding threats on 14.11.2015 is not tenable as there was neither any recovery of the mobile phone used for the alleged threats, nor were any Call Detail Records (CDR) produced to substantiate the same. It is next averred that the material evidence in the instant case, i.e., the country-made pistol and four live cartridges recovered from the appellant, cannot be relied upon as the independent witnesses to the seizure memo turned hostile and the said recovery has been given the color of a tainted and planted recovery. In light of the said argument, learned counsel has relied upon the dictum encapsulated by the Hon'ble Supreme Court in **Raja Khan v. State of Chhattisgarh (Criminal Appeal No. 70/2025)**, submitting that once a witness to the seizure of material evidence turns hostile, the same cannot be relied upon. It is further contended that the appellant was detained in the custody at Ujjain, Madhya Pradesh, for the period starting from 10.11.2015

to 17.11.2015 and therefore, the presence of the appellant at the place of incident in the intervening night of 12.11.2015 and 13.11.2015 is not possible under any circumstance, and the entire story of the prosecution seems to be planted. It is argued that at the time of alleged incident, the family members of the deceased, who are alleged to be eyewitnesses in the instant case, were in different portions of the house and could not have witnessed the commission of the alleged offence. It is next submitted that it is improbable that despite the presence of more than half a dozen relatives of the deceased, the appellant entered the house of the informant armed with a loaded gun at late hours of 13.11.2015 and managed to escape on a running motorcycle with the co-accused after committing the murder of the deceased. It is also submitted that despite the presence of so many relatives, no attempt was made to restrain the appellant, nor did any resistance or altercation took place at the place of incident. It is further contended that neither the co-accused, namely Abdul, has been arrested, nor the said motorcycle has been recovered till date. It is next submitted that nothing has been produced on record *qua* the story and motive that the appellant has abducted a girl belonging to caste of the deceased, and therefore, there was no existence of any motive to commit the said act. Further, learned counsel has placed reliance upon Exhibits D-2/A and D-3, which categorically reflect that a compromise was executed *inter se* the appellant and the informant/deceased's family.

SUBMISSIONS PUT FORTH ON BEHALF OF RESPONDENTS:

10. *Per contra*, learned Public Prosecutor and learned counsel for the complainant submit that the prosecution has been able to prove the case against the appellant beyond reasonable doubt. It is submitted that in the instant case, there was a clear motive behind the commission of the said offence by the appellant and the same has been corroborated by the evidence available on record. It is next submitted that there has been recovery of a country-made pistol and four live cartridges, and the scientific evidence, such as the FSL report (Ex.P-33) and the ballistic report (Ex.P-34), evidently corroborates the ocular testimony. It is contended that the cause of death as cited in the *post-mortem* report (Ex.P-6) supported the fact that the injury has been caused by the recovered weapon. It is averred that there has been a large number of criminal antecedents registered against the appellant, and that the material available on record reveals that the plea of *alibi* as taken by the appellant is nothing but a sham, myth, and fraud. It is next contended that a case of abduction of a girl was ongoing against the appellant and the appellant had been continuously threatening the family of the deceased to not give testimony in the said case. It is also alleged in the FIR that on 12.11.2015, the appellant had trespassed into the house of the deceased and issued serious threats to the entire family. Lastly, it is submitted that the statements recorded by the prosecution witnesses have established the fact that all the witnesses have spoken in one voice, and minor inconsistencies and contradictions

do not dilute/vitiate either the veracity of their testimony or the case of the prosecution.

Reliance in this regard has been placed upon the dictum laid down by the Hon'ble Supreme Court in the case of **Mallikarjun & Ors. v. State of Karnataka, (2019) 8 SCC 359** and **Rameshbhai Mohanbhai Koli & Ors. v. State of Gujarat, (2011) 11 SCC 111**, and the ratio laid down by the Bombay High Court in the case of **Dattu Rohidas More v. The State of Maharashtra, Criminal Appellate Jurisdiction Appeal No. 455/2021**, refuting the claim of the appellant.

FINDINGS AND ANALYSIS:

11. Heard the arguments advanced by learned counsel for the parties, gone through the case laws cited at the Bar, scanned the material available on record, and perused the impugned judgment and the paper-book.

12. After hearing the matter at length and considering the material available on record, we arrive at the following findings:

12.1 The instant case unfolds from FIR no. 289/15, registered on 14.11.2015 by the brother of the deceased (PW-9), and the said FIR discloses that on 13.11.2015 at around 11:30 PM, the appellant, being equipped and armed with a loaded gun, entered the informant's house. It further discloses that the murder of the informant's brother, namely Jagdish (deceased), was committed by inflicting a fatal gunshot injury with an ill and ulterior motive of threatening and intimidating the witnesses, who were close relatives of the deceased and acting/deposing against the

appellant in a matter regarding the abduction of a girl belonging to the community of the deceased. Moreover, the said FIR discloses that immediately after firing the gunshot, the appellant managed to escape from the place of incident on a running motorcycle driven by another person.

12.2 The said fact has been buttressed by the judgment dated 16.07.2021 (Ex.D-1/A), produced by the learned counsel for the accused himself, which bears testimony to the existence of the said dispute/case registered under the POCSO Act, and therefore, the ulterior motive of the appellant behind commission of the said act cannot be denied and the same has duly been established.

12.3 The cross examinations and statements recorded by PW-9 (Ramkishan), PW-4 (Harveer Singh), PW-7 (Mohan Singh), PW-8 (Hemant), PW-6 (Rahul Kumar), and PW-5 (Kamal Singh @ Kalua) have, in one voice, reflected that on 14.11.2015 at around 11:30 pm, the appellant arrived at the house of the deceased on a motorcycle along with the co-accused Abdul, who is absconding till date, and fired a gunshot. The site plan reflects that the witnesses were present in the same house and that their presence in their residence at such late hours is natural. The argument adopted by learned counsel for the appellant that the witnesses lived in different portions of the house does not discredit their ability to witness the incident.

12.4 The ocular testimony of the witnesses is wholly and duly supported by the scientific evidence. The *post-mortem* report *qua* the deceased (Ex.P-6) expressly confirms the cause of death. The bullet recovered from body of the deceased was sent for FSL

analysis. The FSL report (Ex.P-33) and the ballistic report (Ex.P-34) confirm that the bullet recovered from the body of the deceased had been fired from the country-made pistol which has been discovered from the residence of the appellant in consequence of the information received by the Investigating Officer from the appellant under Section 27 of the Evidence Act (Ex.P-22). The testimony of the Investigating Officer, namely Premprakash (PW-19), and the medical expert, namely Dr. Mahendra Singh (PW-16), further corroborates the said fact and the testimony of the other witnesses.

12.5 As far as the contention of learned counsel for the appellant regarding the fact that all the witnesses to the seizure memo have turned hostile is concerned, it is settled law that if the testimony of the Investigating Officer (PW-19) is trustworthy and corroborated by other evidence such as the FSL report and the ballistic report, the hostility of *panch* witnesses is of no consequence and the recovery cannot be discarded merely on the said ground. The Co-ordinate Bench of this Court in the case of **Nidhi Sharma v. State of Rajasthan, 2015 (4) RLW 3190 (Raj.)** has categorically held that:

"85. In the case of Modan Singh v. State of Rajasthan: (1978) 4 SCC 435) and in the case of Surendra Singh v. State of Haryana: (2006) 9 SCC 247), the Hon'ble Supreme Court has opined that "in case the recovery witnesses were to admit their signatures on the recovery memo, but were to turn hostile, then the court should believe the contents of the recovery memo and deposition of the investigating officer." Therefore, the learned counsel for the appellant are unjustified in

claiming that merely because the recovery witnesses have turned hostile, the recovery should be disbelieved. In the present case, the recovery witnesses have admitted their signatures on the recovery memo. Although some of them have turned hostile, but under the principles prescribed by the Hon'ble Apex Court this court has to believe the contents of the recovery memo and the deposition of the investigating officer."

(emphasis supplied)

The Hon'ble Supreme Court in the dictum of **Surender Singh v.**

State of Haryana, (2006) 9 SCC 247 has further held that:

"6. So far the minor discrepancy, which has been pointed to us, we are of the view that it is not of such a nature, which creates infirmity in the prosecution's case. It is a well-established principle of law that every discrepancy in the witness statement cannot be treated as a fatal to the prosecution case. The discrepancy, which does not affect the prosecution case materially, does not create infirmity.

7. With regard to PWs 3 and 4 panch witnesses being turned hostile, this contention was also well considered by the Trial Court and the High Court. And both the courts held that their statements do not affect materially the prosecution story. PW-3 stated that pistol or cartridges or currency notes mentioned in Ex.PC were not recovered in his presence. He, however, admitted his signatures over Ex.PC and Ex.PD. PW-4 also stated that the pistol, cartridges or currency notes mentioned in Ex.PC were not recovered in his presence. He also admitted that Ex.PC and Ex.PD bear his signatures. Therefore, both the courts correctly held that the Ex.PC and Ex.PD were recovered in the presence of PWs 3 and 4 who were panch witnesses."

(emphasis supplied)

Further, the Hon'ble Apex Court in the case of **Mallikarjun & Ors.**

v. State of Karnataka (supra) on the same lines has also held that:

"23. As pointed out earlier, based on the disclosure statement of Accused No. 1, MO-1-dagger which was kept hidden in the haystack of fodder in the loft of the

cattle shed behind the house of Accused No. 1 had been seized under Ex.-P9-Panchnama in the presence of panch witnesses PW-8-Chandrappa and PW-9-Mahadevappa Needgera. The said panch witnesses have not supported the prosecution case and turned hostile. MO-2-dagger and MO-3-handle of the axe were recovered from the scene of occurrence under Ex.-P7-spot panchnama. On behalf of the Accused, learned Senior Counsel contended that the evidence of PW-17-PSI as to the recovery of MO-1-dagger at the behest of Accused No. 1 is doubtful and when PWs 8 and 9 have turned hostile, no weight could be attached to the alleged recovery of MO-1-dagger. There is no merit in the contention that merely because the panch witnesses turned hostile, the recovery of the weapon would stand vitiated. It is fairly well settled that the evidence of the Investigating Officer can be relied upon to prove the recovery even when the panch witnesses turned hostile. In *Rameshbhai Mohanbhai Koli v. State of Gujarat and Ors.*: (2011) 11 SCC 111, it was held as under:

33. In *Modan Singh v. State of Rajasthan*: (1978) 4 SCC 435 it was observed (at SCC p. 438, para 9) that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in *Mohd. Aslam v. State of Maharashtra*: (2001) 9 SCC 362.

34. In *Anter Singh v. State of Rajasthan* : (2004) 10 SCC 657, it was further held that: (SCC p. 661, para 10)

10. ... even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated.

35. This Court has held in a large number of cases that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant case, it is not the case of defence that the testimony of the investigating officer suffers

from any infirmity or doubt. (Vide Modan Singh case, Krishna Gopal case and Anter Singh case.)....”

(emphasis supplied)

Moreover, we have perused the ratio laid down by the Hon'ble Apex Court in **Safi Mohd. v. State of Rajasthan: (2013) 8 SCC 601**, wherein it has been held that:

"20. After referring to the evidence of the PW-22 and PW-24 the search of the house of the Appellant and seizure of certain documents along with diary particularly Ex D-3, handwritten map prepared with certain markings, it has proved the prosecution case. No doubt the independent witnesses have turned hostile, but the learned sessions judge has rightly accepted the testimony of the police witnesses after proper appreciation of their evidence and he has rightly placed reliance upon the police witnesses to prove the seizure of the documents from the house of the Appellant and therefore the same cannot be held to be bad in law as contended by the learned Counsel for the Appellant."

(emphasis supplied)

Lastly, in the ratio enunciated by the Hon'ble Supreme Court in the case of **Chetan v. The State of Karnataka, (2025) 9 SCC 31**:-

"11.1 For the reasons discussed above, on consideration of the circumstantial evidences and other proven facts, in our considered opinion, a clear pattern emerges out of the circumstances so proved with inferential and logical links which unmistakably points to the guilt of the Appellant for committing murder of the deceased Vikram Shinde, punishable Under Section 302 of the Indian Penal Code and also for committing offences Under Section 404 of the Indian Penal Code and Sections 3 and 5 of the Arms Act, 1959 punishable Under Sections 25 and 27 of the Arms Act.

These proved circumstances considered individually or taken together do not indicate the involvement of anyone else other than the Appellant.

In the circumstances so proved, the possibility of any other person being responsible for the death being ruled out, it can be safely said that the Prosecution has been able to prove the charges against the Appellant beyond reasonable doubt. There can thus be no doubt that no one else other than the Appellant could have committed the crime.

11.2. For the foregoing reasons, we are of the view that no material illegality has been committed by the Trial Court and the High Court in appreciating the evidence against the Appellant nor it can be said that any gross injustice has been caused to the Appellant by the impugned judgment by misreading or ignoring any material evidence."

(emphasis supplied)

12.6 As far as the plea of *alibi* taken by the appellant is concerned, we are of view that the submissions put forth *qua* the fact that the appellant was in custody in Ujjain, Madhya Pradesh, for the period starting from 10.11.2015 to 17.11.2015 are found to be a subterfuge. The said fact has further been corroborated by Exhibit P-32 which reflects that a case of forgery/fraud was registered at Ujjain, Madhya Pradesh, against the appellant *qua* the making of false and fabricated custody documents. Furthermore, the appellant has miserably failed to adduce any cogent evidence during the trial to substantiate the said claim. Rather, an adverse inference is drawn against the appellant for raising a false plea of *alibi* based on forged and fabricated documents.

12.7 Qua the submission put-forth by the learned counsel for the appellant vis-a-vis the improbability of the commission of the offence, as despite presence of approximately half a dozen close

relatives/witnesses, who were located in close surroundings of the house, at the time of incident, and that it is highly improbable for the appellant to escape the place, we upon a perusal of the material available on record i.e. the site plan (Ex.P-7) and the testimony given by the close relatives of the deceased such as PW-9 (Ramkishan), PW-7 (Mohan Singh), PW-2 (Hariom), PW-3 (Bheem Singh), PW-6 (Rahul Kumar), PW-8 (Hemant), PW-5 (Kamal Singh @ Kalua), PW-10 (Satveer @ Sattu), are opined to jot down the following findings:

- i) Being equipped with a loaded gun, the appellant trespassed into the house of the deceased during the late hours of 13.11.2015.
- ii) The appellant, well prepared and with an ulterior motive, as stated above, inflicted a gunshot injury at the stomach and hip region of the deceased.
- iii) The house in which the said incidence occurred was segmented, and the witnesses were present in different portions of the said house.
- iv) Immediately, after firing the gunshot, the appellant while pointing the gun towards the witnesses managed to escape from the place of incident with the co-accused Abdul, on a running motorcycle.

Therefore, as in presence of ulterior motive and culpable state of mind of the appellant and taking note of the fact that the appellant was equipped with a loaded firearm and the witnesses were scattered across different portions of the house, as

corroborated by the site plan (Ex.P-7), we are of the view that the appellant manage to escape from the place of incidence.

12.8 We are of view that the reliance placed upon Exhibits D-2/A and D-3 (compromise deeds executed *inter se* the parties) is misconceived. Firstly, the commission of an offence under Section 302 IPC is heinous and non-compoundable in nature. Secondly, no emphasis on the said compromise deeds was laid by the appellant during the statement recorded under Section 313 of the Cr.P.C. Therefore, we are of view that the said compromise executed between the parties is not valid in the eyes of law.

13. Considering the overall facts and circumstances of the instant case, submissions put forth by learned counsel for the parties, looking upon the material available on record, coupled with the consistent ocular testimony of the witnesses, and taking note of the recovery of the weapon from the residence of the appellant, the positive FSL report, and the failure of the appellant to substantiate the plea of *alibi*, we are of view that the prosecution has been able to establish the case *qua* the appellant beyond any reasonable doubt.

14. In light of the above, we are of the considered view that the findings and reasoning given by the learned Trial Court in the impugned judgment, relying upon the dicta encapsulated by the Hon'ble Supreme Court in the case of **Munshi Prasad & Ors v. State of Bihar, (2002) 1 SCC 351** and **Appabhai & Anr. v. State of Gujarat, 1988 (Supp) SCC 241**, are sound and the same suffer from no infirmity.

15. Accordingly, the present criminal appeal is dismissed. The impugned judgment of conviction and order of sentence dated 05.11.2022 passed by the learned Additional Sessions Judge, Wair, District Bharatpur in Sessions Case No.44/2021 is upheld. Pending applications, if any, also stand disposed of.

(SAMEER JAIN),J

Pooja /111

(MAHENDAR KUMAR GOYAL),J