


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal (DB) No. 208/2021

1. Kallu @ Yogendra Son of Shri Mool Chand, Resident of Falen, Police Station Kosi Kalan, District Mathura (U.P.)
2. Sonu Son of Shri Mool Chand, Resident of Falen, Police Station Kosi Kalan, District Mathura (U.P.) At Present Lakhan Ki Kothi Ke Pichhe, Officer Colony, Kosi Kalan, District Mathura (U.P.)
3. Sachin Panchal Son Of Shri Devendra Panchal, Resident of House No. 551, Bajrang Chowk, Sector-37, Sarai Khwaja, Faridabad, Haryana
4. Vinod Panchal Son of Shri Narottam Lal, Resident Of Sector 37, Sarai Khwaja, Faridabad, Haryana.

Accused-appellants are confined in Central Jail, Alwar.

----Appellants

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

For Appellant(s)	:	Mr. Surendra Singh, Adv. with Mr. Anoop Kumar, Adv. Mr. Deepak Soni, Adv.
For Respondent(s)	:	Mr. Amit Kumar Punia, PP with Ms. Divyangana, Adv. & Ms. Neha Goyal, Adv.
For Complainant(s)	:	Mr. Parth Sharma, Adv. & Mr. Yatharth Agarwal, Adv. for Mr. Sudhir Jain, Adv.

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Judgment

1. **Date of conclusion of arguments :** **20.05.2026**
2. **Date on which the judgment was reserved :** **20.05.2026**
3. **Whether the full judgment or only the operative part is pronounced :** **Full Judgment**
4. **Date of pronouncement :** **27.05.2026**

(Per Hon'ble Mr. Justice Anil Kumar Upman)

1. The instant Criminal Appeal has been filed by the accused-appellants under Section 374 of Cr.P.C. being aggrieved of the judgment dated 05.10.2021 passed by learned Additional Sessions Judge No.1, Tijara, District Alwar in Sessions Case No.85/2014 whereby they have been convicted for offences punishable under Sections 302 & 302/34 of IPC and Section 3/5 of Arms Act and sentenced as under:

Offences	Sentence	Fine	Default Sentence
U/s 302 & 302/34 of IPC	Life imprisonment	Rs.10,000/-	6 months' SI
U/s 3/5 of Arms Act	2 years	Rs.2,000/-	2 months' SI

2. Both sentences were ordered to be run concurrently.

3. The brief facts of the case are that the complainant, Baney Singh (PW-2), filed a report (Ex-P/2) stating that on 07.05.2014, between approximately 7:30 and 8:00 AM, his brother, Mahendra Tanwar, was returning home after dropping his nephew at the bus stop for school. During this time, Mahendra Tanwar was shot and killed by unknown assailants, who were standing near an ironing shop located in the Chowk of Sector 7. According to the complainant, there were three accused, one of whom appeared stout while the other two appeared to be childlike. They were reportedly riding a black Pulsar motorcycle without a number plate. On the basis of said report, an FIR No.162/2014 (Ex.P/51) was registered at the Police Station, Bhiwari Phase-III for offence

punishable under Section 302/34 of IPC and investigation was commenced.

4. After thorough investigation, the police filed a charge-sheet against the accused-appellants before the concerned Court for the offences under Sections 302, 120B & 34 of IPC and Section 3/25 of Arms Act.

5. Thereafter, the case was committed for trial to the Court of Additional Sessions Judge No.1, Tijara, District Alwar (hereinafter referred to as the 'learned trial Court'). Learned trial Court framed charges against the appellants under Sections 302 or 302/34 & 120B of IPC and Section 3/25 of Arms, which were denied and trial was claimed.

6. The prosecution in support of its case examined as many as 19 witnesses and got exhibited 67 documents. Details of which are reproduced as under:

List of witnesses:

PW-1	Omprakash
PW-2	Baney Singh (Complainant)
PW-3	Bhagat Singh
PW-4	Dayaram
PW-5	Surendra Singh
PW-6	Mahipal
PW-7	Rahul
PW-8	Devendra
PW-9	Ravindra
PW-10	Dr. Satpal Yadav
PW-11	Dr. Shiv Kumar Gupta
PW-12	Deepu
PW-13	Praveen Kumar
PW-14	Keshar Singh
PW-15	Rakesh Kumar
PW-16	Tej Singh
PW-17	Kailash Choudhary

PW-18	Suresh Kumar
PW-19	Ravindra Kumar

List of documents:

Exhibit-P/1	Seizure memo of two sealed Jar containing sample
Exhibit-P/2	Written report lodged by Baney Singh
Exhibit-P/3	Memo of Panchnama of deceased Mahendra @ Pappu
Exhibit-P/4	Site plan of place of incident
Exhibit-P/5	Seizure memo of blood smeared clothes of deceased Mahendra @ Pappu
Exhibit-P/6	Seizure memo of simple Grit (Rodi) and blood smeared Grit (Rodi) taken from the Coltar road
Exhibit-P/7	Seizure memo of shell of cartridge and bullets
Exhibit-P/8 to Exhibit -P/18	Identification parade of accused Sonu Panchal, Kallu @ Yogendra, Sachin and Vinod Panchal
Exhibit-P/19	Post-mortem report of deceased Mahendra @ Pappu
Exhibit-P/20 to P/31	Photographs of deceased Mahendra @ Pappu
Exhibit-P/32	Seizure memo of various mobile SIMs and articles
Exhibit-P/33	Seizure memo of one Desi Katta .315 bore and nine live cartridge
Exhibit-P/34	Seizure memo of one Desi Katta .315 bore and one live cartridge
Exhibit-P/35	Seizure memo of one Motorcycle Pulsar No.HP SI-R-8932
Exhibit-P/36	Seizure memo of one Desi Pistol and three live cartridge
Exhibit-P/37	Seizure memo of one Motorcycle Hero Honda SPL+ No.HR SI-S-1052
Exhibit-P/38	Seizure memo of one Desi Pistol and four live cartridge
Exhibit-P/39 to P/42	Arrest and personal search memo of accused appellants
Exhibit-P/43	Memo of site plan of the place of incident
Exhibit-P/44	Memo of site plan of the place of recovery of one pistol and cartridge
Exhibit-P/45	Memo of site plan of the place of recovery of one desi katta .315 bore

Exhibit-P/46	Memo of site plan of the place of recovery of one pistol at the instance of accused Sonu
Exhibit-P/47	Memo of site plan of the place of recovery of one desi katta at the instance of accused Vinod Kumar
Exhibit-P/48	Verification memo and site plan of the place of incident
Exhibit-P/49	Acknowledgment receipt of SFSL, Jaipur, Raj.
Exhibit-P/49A	Extract copy of Malkhana Register
Exhibit-P/50	Acknowledgment receipt of SFSL, Jaipur, Raj.
Exhibit-P/51	FIR No.162/14 registered at PS Bhiwadi, Alwar
Exhibit-P/52 to P/61	Information memo u/s 27 of Evidence Act given by the accused persons
Exhibit-P/62 & P/63	Report of SFSL, Jaipur, Raj.
Exhibit-P/64	Letter from Cumulative Inspector, Police Line, Alwar to SHO, PS Bhiwadi, Alwar
Exhibit-P/65	Charge-sheet No.266/14
Exhibit-P/66	Supplementary charge-sheet No.266A
Exhibit-P/67	Order of sanction for prosecution

7. The accused-appellants were examined under Section 313 Cr.P.C. wherein they denied the allegations levelled by the prosecution and stated that they had been falsely implicated in this case.

8. At the conclusion of the trial, the learned trial Court, vide impugned judgment dated 05.10.2021 found the accused-appellants guilty for offences under Sections 302 & 302/34 of IPC and Section 3/25 of Arms Act and as a consequence, convicted and sentenced them as mentioned above. Hence, this appeal.

9. Learned counsel appearing on behalf of the accused-appellants submitted that the learned trial Court failed to properly appreciate the evidence available on record and that the findings of conviction recorded against the accused-appellants are not supported by any proper or judicious assessment of the evidence

adduced during trial. Rather, the conclusion arrived at by the trial Court seems to be based on surmises, conjectures, and assumptions unsupported by reliable and cogent evidence. Counsel submitted that the complainant is not an eye-witness of the incident and the so-called eye-witnesses of the case namely Rahul (PW-7), Devendra (PW-8) & Ravindra (PW-9) had deposed in their testimony that at the time of alleged incident, they were present in a park situated near the place of alleged incident. Counsel submitted that no park was situated near the place of alleged incident. The three so-called eye-witnesses are the relatives of the deceased and they gave false testimony just in order to implicate the appellants in the alleged crime. If these three eye-witnesses were present at the place of alleged incident, they would have participated in the *panchnama* proceedings, but they did not participate in the same. Thus, their testimony as well as their presence at the place of alleged incident is very doubtful and unreliable. The trial Court failed to take notice of the material inconsistencies, omission and improvements in the testimony of these eye-witnesses. Counsel submitted that instead of scrutinizing the evidence with the caution required in a criminal trial, the trial Court appears to have drawn adverse conclusions against the accused-appellants on the basis of speculative reasoning, thereby rendering the findings of conviction unsustainable in the eyes of law.

10. Learned counsel further submits that the identification parade of the appellants is also doubtful as before identification parade, the Police had already shown the appellants to the witnesses, who participated in the said identification parade.

Moreover, the prosecution has not obtained sanction against the appellants for offence under Section 3/25 of Arms Act. Thus, the said offence is not proved against the appellants.

11. In these circumstances, it is contended that the appellants have not committed any offence as alleged and they have been implicated in this case on the basis of false and fabricated evidence. Therefore, they may be acquitted from the offences as indicated above.

12. Per contra, learned Public Prosecutor assisted by the learned counsel for the complainant has submitted that the learned trial Court after meticulous examination of the evidence as well as testimony of the witnesses has rightly convicted the accused-appellants. He submits that there is ample evidence against the appellants which proves that they, in a criminal conspiracy, murdered the deceased Mahendra by using multiple firearms. The allegations against the appellants have duly been proved from the testimony of the prosecution witnesses, recovery memo as well as identification parade. Thus, there is no question to accept the prayer of accused-appellants to acquit them from offences under Sections 302 & 302/34 of IPC and Section 3/25 of Arms Act.

13. We have duly considered the arguments advanced by learned counsel appearing for both sides. We have also gone through the impugned judgment as well as all the relevant material on record in the Trial Court.

14. Out of total 19 prosecution witnesses, 12 are formal witnesses, who have either proved the documents or witnessed the seizure made in the case during the course of investigation. The main witnesses in this case are PW-2 complainant, PW-7 to

PW-9 three eye-witnesses, PW-10 & PW-11 medical experts, who conducted the post-mortem of the dead-body and PW-17 the Investigating Officer of this case.

15. For proving the charges framed against the accused appellants, the prosecution has mainly relied upon the statements made by the complainant, i.e., Baney Singh (PW-2) as well as the three eye witnesses, namely, Rahul (PW-7), Devendra (PW-8), Ravindra (PW-9), medical experts who did post-mortem of the dead body, Dr. Satpal Yadav (PW-10), Dr. Shiv Kumar Gupta (PW-11), and Investigating Officer, Kailash Chaudhary (PW-17). The FIR (Ex.-P/51) was lodged by Baney Singh (PW-2), wherein it was alleged that his brother was shot and killed by three unknown assailants when his brother was returning home after dropping his nephew at the bus stop for school. It was further alleged that out of the three accused, one appeared stout while the other two appeared to be childlike. They were reportedly riding a black Pulsar motorcycle without a number plate and started firing indiscriminately at his brother.

16. A bare perusal of the FIR gives an impression that the complainant (PW-2) was an eye-witness to the occurrence; however, during the course of his cross-examination, he candidly admitted that he was not present at the place of occurrence at the relevant time and could not even recollect as to who had informed him about the incident.

17. Eye-witnesses Rahul (PW-7), Devendra (PW-8) and Ravindra (PW-9) have deposed in almost identical terms. A careful analysis of their testimony would reveal that they have provided consistent, reasonable, and reliable versions of what transpired in

the case. All three eye-witnesses have stated with absolute certainty that they were present at the scene of occurrence during the relevant period of time and observed everything that happened there. As per their testimony, four persons were present at the said location, out of which, three had arrived on a motorcycle, while the fourth person was standing nearby. Their testimony further reveals that immediately after the deceased Mahendra had dropped the child and was returning towards his residence, the person standing nearby signalled the three persons on the motorcycle, whereupon they indiscriminately fired at Mahendra, thereby causing him fatal gunshot injuries leading to his immediate death at the spot. Thereafter, all the accused persons fled from the scene of occurrence. It is stated by the witnesses that, during the course of investigation, they were taken to the jail for the purpose of identification proceedings, wherein they accurately and definitively identified the accused persons who fired the shots, as well as the other accused person who stood watching and had signalled the assailants to open gunfire. The identification made by the witnesses did not end there, but was further reiterated by them during their appearance before the Court during the course of the trial. The witnesses have also remained consistent in their statements that they had gone out for their daily morning walk and happened to witness the occurrence. Moreover, they stated that they were residing in the same vicinity, which makes their presence at the place of occurrence quite natural and believable. It is pertinent to note that, upon an objective analysis of the evidence elicited during cross-examination, no serious challenge was raised regarding their

identification of the accused persons. The only objection raised against them was that they were deposing falsely on account of their close relationship with the deceased. Mere alleged relationship with the deceased cannot be regarded as a ground to reject their evidence, especially when nothing contrary or inconsistent has been established during cross-examination. A holistic and careful appreciation of the testimony of these three eye-witnesses leaves no scope for any doubt regarding the fact that their presence at the place of occurrence stands firmly established and that they have unhesitatingly and clearly identified the accused persons as the perpetrators of the crime. In fact, the testimony of these eye-witnesses appear to be convincing and trustworthy. There has been no major discrepancy or inconsistency in their testimony affecting the core structure of the prosecution case. Even the minor inconsistencies or discrepancies, if any, are only natural and cannot detract from the basic foundation of the prosecution case.

18. It is also noteworthy that all necessary precautions were taken prior to conducting the Test Identification Parade in presence of PW-18 the then Tehsildar, Suresh Kumar Hasoliya as their faces were kept muffled. During the identification proceedings, the accused-appellants' were mixed with persons of similar appearance. The mere assertion that the appellants were shown to the witnesses at the police station before the Test Identification Parade would not, by itself, cast any doubt upon the reliability and validity of the identification procedure unless proven convincingly by tangible material. Therefore, evidence regarding

the identification will not be rejected merely because of bald assertions made by the defence.

19. Another point of contention raised by the learned counsel for the appellants is that neither the presence of the three eye-witnesses at the scene of the occurrence could be established, nor did it seem probable. All three eye-witnesses testified that they went to the park for a morning walk. In sharp contrast, the investigating officer affirmed that no such park existed at or around the spot of occurrence, a fact also not reflected in the site plan drawn up during the investigation.

20. We have carefully considered the aforesaid submissions and minutely examined the testimony of the three eye-witnesses, the statement of the investigating officer, as well as the site plan of the place of occurrence. Upon such scrutiny, we do not find any substance in the contention advanced on behalf of the appellants. Merely because the word "park" has not been specifically mentioned in the site plan cannot, by itself, lead to the conclusion that no place suitable for walking existed near the place of occurrence. The investigating officer, in his deposition, has clearly stated that there was an open vacant area adjoining the place of occurrence, having grass and trees, where local residents used to walk. The description reflected in the site plan is also consistent with the said statement of the investigating officer. Thus, the omission to describe the area specifically as a "park" is of no consequence and does not materially affect the prosecution case.

21. It is also noteworthy that during cross-examination, no material or effective questions were put to the eye-witnesses so as to cast doubt upon their presence at the spot. No contradiction

or circumstance could be elicited to show that they were not present at the relevant time and place. The witnesses were merely given a bald suggestion that they were deposing falsely on account of their relationship or proximity to the deceased. Such vague suggestions, unsupported by any cogent material or convincing evidence, are wholly insufficient to discredit otherwise reliable testimony. Apart from this, it is also evident from the record that all three eye-witnesses are residents of the same vicinity and their presence at the crime scene cannot be doubted. Under these facts and circumstances, we find no reason to doubt the presence of the eyewitnesses at the scene of the crime.

22. Coming to the medical evidence adduced by the prosecution, it is evident from the record that it fully corroborates the ocular and forensic evidence relied upon. The post-mortem examination of the deceased was conducted on the very same day by a duly constituted Medical Board comprising PW-10, Dr. Satpal Yadav, and PW-11, Dr. Shiv Kumar Gupta. In clear and unequivocal terms, both doctors stated before the Court that the death of the deceased was caused by excessive bleeding and hemorrhagic shock due to firearm injuries to vital organs. This makes it absolutely clear that the injuries sustained by the deceased were sufficient to cause death in the ordinary course of nature.

23. It was further submitted by the medical experts that during the process of post-mortem examination, bullets and bullet fragments taken out from the body of the deceased were properly sealed and were given to the investigating agency. Thereafter, the recovered bullets together with the firearms, which were seized at the instance of the accused-appellants, were sent to the State

Forensic Science Laboratory for their ballistic and forensic examination. Furthermore, the prosecution has relied upon another report which has been prepared by the FSL (Ex.-P/62), which makes it clear that the bullets found in the body of the deceased have definitely been fired from the firearms which were recovered from the possession of the appellants. In other words, the ballistics report of the State Forensic Science Laboratory establishes a significant scientific connection between the appellants and the commission of the crime. The relevant extract of the said report is reproduced hereinbelow:-

"3. based on comparison microscopic examination it is the opinion that:-

- (i) Two 8mm K.F. cartridge cases (C/2 & C/3) from packet 'B' and two 8mm/.315" soft round nose copper jacketed bullets (B/1 & B/4) from packets 'B' and 'B(M.O.)' respectively have been fired from submitted 8mm/.315 country made pistol (W/1) from packet 'E'.
- (ii) One 7.65mm K.F. rimless cartridge case (C/4) from packet 'B' and two 7.65mm round nose copper jacketed bullet/copper jacket part of 7.65mm bullet (B/2 & B/3) from packet 'B' have been fired from submitted 7.65 mm country made pistol (W/2) from packet 'G'.
- (iii) One 7.65mm K.F. rimless cartridge case (C/1) from packet 'I' and one damaged 7.65mm copper jacketed bullet (B/5) from packet 'B(M.O.)' have been fired from submitted 7.65mm country made pistol (W/3) from packet 'I'.
- (iv) It has not been possible to link definitely five 7.65mm K.F. rimless cartridge cases (C/5 to C/9) from packet 'B' with any 7.65mm country made pistols (W/2 & W/3) from packets 'G' & 'I' respectively, due to lack of sufficient evidence."

24. Thus, the medical evidence, duly supported by the scientific and forensic evidence available on record, conclusively proves that

the deceased succumbed to firearm injuries and that the said injuries were caused by shots fired from the weapons recovered pursuant to the disclosures and recoveries made at the instance of the accused-appellants. The prosecution evidence on this aspect is cogent, reliable and wholly consistent, thereby lending substantial assurance to the case of the prosecution.

25. The learned counsel for the appellants further contended that the prosecution has failed to establish any motive for the commission of the offence, inasmuch as the FIR does not contain any allegation regarding prior enmity between the parties. In order to appreciate this submission, we carefully examined the evidence available on record as well as the testimony of the complainant recorded during trial.

26. Upon scrutiny of the evidence, it emerges that the complainant has categorically deposed that accused Vinod was having prior enmity with the deceased, who was the complainant's brother. The complainant further stated that both, Vinod and Sonu had extended threats to the deceased prior to the incident. Significantly, this part of the testimony remained unshaken during cross-examination and no material contradiction or infirmity could be elicited by the defence so as to discredit the same.

27. Apart from this, it is a settled proposition of criminal jurisprudence that motive assumes significance primarily in cases based on circumstantial evidence. Where there is reliable and cogent ocular testimony available on record, mere failure to establish motive with precision does not by itself demolish the prosecution case. The absence of a motive cannot override strong and trustworthy evidence which shows that the accused has been

involved in the crime. Hence, the mere fact that the FIR does not specify any pre-existing animosity between the parties is not sufficient enough to say that the motive has not been proved by the prosecution in any manner whatsoever, especially when the complainant has always spoken of the pre-existing animosity on the part of the accused persons.

28. The contention raised by the appellants regarding the existence of motive is absolutely baseless and in no way affects the case made by the prosecution.

29. Another ground urged by the learned counsel for the appellants was that the sanction for prosecution under the Arms Act had neither been supplied to the appellants nor duly proved in accordance with law, inasmuch as the authority issuing the sanction was not examined as a prosecution witness. We have carefully considered the said contention and find no substance in it. The record clearly reveals that the prosecution sanction was not only brought on record but was also formally exhibited during the course of the prosecution evidence as Exhibit P-67. Significantly, at the time when the document was tendered and exhibited, no objection whatsoever was raised on behalf of the appellants regarding either its admissibility or its mode of proof. It is further evident from the record that the prosecution had obtained the original sanction order from the Collector, produced the same before the trial Court, and got it duly exhibited in evidence. During the course of arguments, the only contention advanced was that the sanction had never been produced at all, a submission which stands completely belied by the record itself. Once the sanction order was exhibited without objection, the

appellants cannot subsequently contend that the sanction was not proved merely because the sanctioning authority was not examined as a witness. Moreover, the defence failed to point out any prejudice caused to the accused-appellants.

30. In the considered opinion of this Court, the foregoing discussion unequivocally establishes that all four appellants acted in concert and in furtherance of their common intention to commit the murder of the deceased. As has been made evident by the materials on record, it can be concluded that three of the appellants discharged the gunshots in relation to the death of the deceased while the fourth appellant was acting as an accomplice in the commission of the crime. The method and means of shooting as committed by the appellants do not admit to the existence of any doubt regarding the fact that the appellants had been acting together in committing murder.

31. In addition to the foregoing, it must be noted that the findings reached by the learned trial Court are based on sound considerations and have been made after a proper appreciation of the material evidence on record. There appears to be no sort of material illegality or arbitrariness in the case that necessitates the intervention of this Court in relation to the same. Accordingly, this Court is fully satisfied that the prosecution has succeeded in proving the guilt of all four appellants beyond reasonable doubt, and therefore, the finding of conviction recorded by the learned trial Court deserves to be upheld in its entirety.

32. In the backdrop of discussions made hereinabove, the present Criminal Appeal fails and the same is dismissed. The

judgment and order passed by the learned trial Court convicting and sentencing the appellants is affirmed.

33. Record of the trial Court be sent back forthwith.

34. Since the accused-appellant No.3, Sachin Panchal is absconding and arrest warrant has already been issued against him by this Court, the same shall remain in force till its execution. The learned trial Court is directed to take appropriate steps in order to take accused-appellant No.3 in custody and send him to jail to serve the sentence.

(ANIL KUMAR UPMAN),J

(MAHENDAR KUMAR GOYAL),J