



2026:AHC-LKO:60588

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 2048 of 2026

Mohd Kamil Alias Guddu and another

.....Appellant(s)

Versus

State of U.P. Thru. Addl. Secy. Home Deptt. Lko

.....Respondent(s)

Counsel for Appellant(s)	: Shivam Sharma,
Counsel for Respondent(s)	: G.A.,

ALONGWITH

CRIMINAL APPEAL No.1792 of 2026

Aarif Ali @ Aarif

.....Appellant(s)

Versus

State Of U.P. Thru. Addl. Secy. Home Deptt. Lko.

.....Respondent(s)

Judgment Reserved on: 12.08.2026

Judgment Delivered on: 25.08.2026

[A.F.R.]

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Both the aforesaid appeals have been filed challenging the validity of a judgment and order dated 05.06.2026 passed by Shri Manoj Kumar Singh-II, the learned Additional Sessions Judge, Court No. 2, Lakhimpur Kheri, in

Sessions Trial No. 301 of 2011 arising out of Case Crime No.388 of 2006, under Section 307 IPC, Police Station Phulbehad, District Kheri whereby Aarif Ali @ Aarif son of Abdul Rauf (the appellant in Criminal Appeal No.1792 of 2026), Mohd Kamil @ Guddu son of Abdul Rauf (the appellant No.1 in Criminal Appeal No.2048 of 2026) and Abdul Rauf (the appellant No.2 in Criminal Appeal No.2048 of 2026) have been convicted for the offence under Section 307 IPC and all of them have been sentenced to undergo rigorous imprisonment for 7 years and to pay Rs.20,000/- each as fine for the aforesaid offence.

2. As both the appeals challenge the validity of the same judgment and order and identical questions are involved in both the appeals, submissions of Sri. Shivam Sharma, the learned Counsel for the appellants and Sri. Jayant Singh Tomar, the learned Additional Government Advocate – I, were heard in both the appeals on 12.08.2026 and both the appeals are being decided together by this common judgment.

3. The aforesaid case was instituted on the basis of a written complaint given by the complainant Subarati son of Hafizulla to the Station House Officer, Police Station Phulbehad, Kheri on 09.09.2006 (Exhibit A-1), stating that while returning from namaz at about 6:30 p.m., he found his children quarrelling with those of Rauf near his house; when he intervened, the accused, armed with illicit weapons, exhorted to eliminate him and opened fire with the intention of killing him. On his crying out, Salamu son of Saifu, Karamat, and several other villagers arrived, whereupon the accused fled. He stated that he had suffered pellet injuries on his face, neck, and chest⁴. On the basis of the aforesaid written complaint, an FIR (Exhibit A-5) was lodged on 09.09.2006 at 20:25 hours against the appellants.

4. The medico-legal examination of the complainant was conducted on 09.09.2006 at 20:45 in the District Hospital, Kheri and the medical report (Exhibit A-7) mentions multiple small lacerated wounds on the face, on both sides of chest and on the upper part of abdomen. The smallest wound measured 0.2 x 0.2 cm, whereas the largest measured 0.3 x 0.2 cm.

An area of blackening was present. The injuries were kept under observation and the complainant was admitted under the care of a surgeon. The medical opinion records that the injuries had been caused by some hot burning objects and the duration of the injuries was fresh.

5. The X-ray examination report (Exhibit A-2) mentions four small (smallest size 3 mm x 3 mm, largest size 4 mm x 4 mm) almost rounded radio-opaque shadows of metallic density, suggestive of foreign body, seen in face region and 7 small (smallest size 3 mm x 3 mm and largest size 4 mm x 4 mm) almost rounded radio-opaque shadows of metallic density suggestive of foreign body, 4 on the right side of chest, 2 on the left side of chest and 1 in almost the mid-line of chest.

6. The investigating officer prepared a site plan (Exhibit A-3) which shows the house of the accused persons and the house of the complainant (Subarati son of Hafeezulla). The linear distance between the two houses is 14 steps. The accused persons are said to have fired from inside a room in their house and the complainant is said to be standing inside his compound. The distance between the place from where the appellants are said to have fired gunshots and the place where the complainant is said to have suffered gunshot injuries, is 22 steps. The site plan does not show the existence of any door or window in the wall of the room through which the gunshots are said to have been fired and there is no window or door in the boundary of the house of the complainant through which the gunshot could have passed.

7. After investigation, the investigating officer submitted a charge-sheet against the appellants on 28.09.2006 for the offence under Section 307 IPC. On 15.11.2011, the Sessions Judge, Lakhimpur Kheri framed charge for the offence under Section 307 IPC against both the appellants.

8. The complainant was examined as PW-1. He stated that his children and the children of the appellant Rauf were quarrelling near his house and when he intervened, the accused persons fired at him with country-made pistols, causing pellet injuries to his face, neck, and chest. Upon hearing his cries, , Tauqeer, Salamu, Karamat and several other villagers came and witnessed

the incident, whereupon the appellants fled. He stated that the written complaint (Exhibit A-1), was inscribed at his dictation, read over to him, and thumb-impressed by him.

9. During cross-examination, PW-1 stated that his father Hafizulla was alive at the time of the incident and he had a large family of 7 brothers, all of whom lived together and a total of 70-75 members of his family were living in the village. The complainant's house was situated towards the East of the appellants' house in which all his family members were living. The distance between his house and the house of the appellants is about 20-25 steps. The appellant's family is also very large, but only the appellant resided in Gangabehad while his four brothers resided in Ghotala which and it would take about 10 minutes to go from Gangabehad to Ghotala.

10. PW-1 further stated that appellants Guddu and Aarif, sons of Rauf, were major and there was no small child in the house of Rauf. PW-1 stated that he had 7 children - 6 sons and a daughter. The eldest son was aged about 25 years at the time of the incident and the youngest son was aged 16 years.

11. PW-1 also stated that the appellants' pakka house lay to the West of his own, it was surrounded by 10-foot boundary walls on all sides, with ingress and egress only towards the East. He further stated that he suffered the gunshot injuries at a place towards the West of the well. He had bled profusely and his clothes had got blood-stained, though he could not say whether blood had fallen on the ground. He collapsed on the earth, sunken in blood, and was taken home by his brothers.

12. PW-1 stated that gunshots were fired continuously, but he could not estimate the number of shots or their duration. He stated that the first shot, fired by the appellant Rauf, hit him. He could not say how many subsequent shots, or fired by whom, hit him thereafter. All the three appellants were inside their house at the time and they were firing from within.

13. PW-1 stated that his brothers Tauquir and Salim carried him to the police station after the incident and that the complaint was inscribed at a crossing

on the way. His account of his consciousness during this time was inconsistent, he first said he was speaking on the way, then that he was unconscious, then that he had partial consciousness, regaining it only at the police station, where he narrated the incident to the Sub-Inspector and constable. He denied that the complaint was inscribed at the police station, maintaining that he had taken a pre-written complaint with him. He further stated that he had remained admitted to the hospital for about 10–12 days.

14. PW-1 denied the suggestion that he and his companions had surrounded the house of the appellants and someone from amongst themselves had fired a gunshot negligently, which had hit him and thereafter he lodged the FIR to save himself. PW-1 denied the suggestion that the appellant Aarif had been beaten up by his family members and he had suffered injuries.

15. PW-2 was the radiologist who had conducted the X-ray examination of the complainant, he proved the X-ray report and stated that the X-ray of the abdomen was normal. During cross-examination, PW-2 stated that no vital part (organ) of the complainant had suffered any damage.

16. PW-3, the investigating officer, proved the prosecution papers. During cross-examination, he stated that he had arrested Aarif, whose medical examination was conducted at the District Hospital, Lakhimpur Kheri. Aarif had suffered injuries in the incident. No country-made pistol or similar weapon was recovered from him. The other appellants, Rauf and Guddu, had surrendered in court. PW-3 further stated that on visiting the spot the day after the incident, he had not found any bloodstains, cartridge, tikli, pellets, footwear or any other article at the place of occurrence.

17. PW-3 also stated that the appellant Rauf's house was pakka, surrounded by pakki boundary walls on all sides. He stated that the complainant had told him that the quarrel took place because Rauf's buffalo had damaged his tatiya. PW-3 stated that he had not seen any small child from the complainant's family and he had not recorded the statement of any child.

18. The doctor who had conducted the medico-legal examination of the complainant, was examined as PW-4. He stated that there were seven small lacerated wounds on his face, both sides of chest and on the upper abdomen, the smallest of which was of 0.2 cm and the largest was 0.3 cm X 0.2 cm. Blackening was present in the area of the injury. The injuries were on a vital part and had been caused by some hot object. During cross-examination, PW-4 stated that he had recorded only a single injury in the medico-legal examination report and he had not recorded the measurement of the injuries. He had not mentioned in the medical report that the injuries could have been fatal.

19. The complainant's brother Tauqir was examined as PW-5. a quarrel was taking place between the children from his side and the children of Rauf. The complainant forbade the children from quarrelling. The dispute escalated and Rauf fired a shot with a country-made pistol due to which the complainant suffered pellet injuries on his neck. All the appellants were involved in the incident and all of them were carrying illegal weapons.

20. During cross-examination, PW-5 stated that his family consisted of about 75 persons and it was the largest family in Gangabehad. He stated that only he was present at his house at the time of the incident, which is opposite the complainant's house. He stated that the appellant Rauf's house was about 50 meters from the complainant's house and that there was no small child in Rauf's family at the time. The appellants did not have any cattle. PW-5 further stated that after the incident, Rauf had sold away his house to the complainant's brother Rauf son of Hafizulla because of fear. He also stated that the house of the appellants was surrounded by 10 feet high boundary walls on all the sides and had its ingress and egress towards the East. The house had no other passage. Several shots were fired but as it was dark, he could not know as to whose fire had hit the complainant. The injury of the complainant showed that a single shot had hit him. Blood had fallen on the earth at the place where the gunshot had hit the complainant and his clothes had got bloodstained but clothes of PW-5 had not got any bloodstains. The

injured had fallen unconscious after the incident. PW-5 stated that the complaint was dictated by the Sub-Inspector to a police Constable.

21. In the statements of the appellants recorded under Section 313 CrPC, they denied all the allegations.

22. The doctor who examined the appellant Aarif was examined as DW-1. He stated that a police constable had brought Aarif to the hospital, and he had : (i) a scalp-deep lacerated wound of 3 cm x 0.3 cm, 8.5 cm above the left ear; (ii) a scalp-deep lacerated wound of 2.5 cm x 0.8 cm, 9 cm above the right ear; (iii) a deep red, bluish contusion of 6.5 cm x 3 cm on the right side of the back, 19 cm below the neck; and (iv) a traumatic swelling of 6 cm x 4 cm on the right hand behind the wrist. All the injuries were about one day old and those could have been caused by a stick and could possibly have been inflicted at about 7:30 p.m. on 09.09.2006.

23. One Mehraj son of Siddiq, examined as DW-2, stated that he was a neighbour of both the parties. The incident occurred amid an old property dispute between the complainant and the appellant Rauf. He stated that Haroon and Kalamuddin from the complainant's family had beaten up the appellant Aarif with sticks, causing him to flee. The complainant and his family then surrounded the appellants' house. Some companion of the complainant fired a shot that injured the complainant himself. He stated that all the appellants were innocent, the FIR was false and motivated by animosity. During cross-examination, DW-2 stated that sons of the complainant were quarrelling with Aarif near the well. In response to some questions put by the Court, DW-2 stated that he had not seen any gunshot being fired. He had heard the sound of a single gunshot but he could not tell as to who had fired the gunshot. The gunshot hit the complainant.

24. The trial court held that the testimony of PW-1 established that the accused persons had fired on his face and chest and not on the lower part of the body. Three accused persons had fired shots with pistols and the pellets of the shots hit the complainant due to which he suffered injuries, his clothes had got bloodstained, he had fallen unconscious and had to remain admitted

to the hospital for 10–12 days. The trial Court held that the intention of the accused persons was to kill the complainant. The trial court further held that no good hospital was situated near the place of the incident where the bullet could be removed from the body of the injured and he could be cured and, therefore, there was every possibility of the injured dying due to the gunshot injury.

25. The trial Court rejected the testimony of DW-1 regarding the four injuries suffered by the appellant Aarif in the incident because no FIR had been lodged from the appellants' side and they did not state anything in this regard in their statement recorded under Section 313 CrPC. The trial court further held that the testimony of DW-2 establishes that a quarrel had taken place between the children of Rauf and the complainant, which supports the prosecution case.

26. Regarding motive of the incident, the trial court held that the FIR specifically stated that the children of the complainant and the appellant Rauf were quarrelling, the complainant tried to intervene due to which the appellants fired at him. PW-1 and PW-5 reiterated the same motive and DW-2 had also accepted this motive, from which the motive was established.

27. A plea was raised on behalf of the appellants that the distance between the place from which the shot was fired and the place where the injury was suffered shown in the site plan is such as cannot cause the nature of the injuries inflicted. The trial court rejected this contention on the ground that it depends on the nature of the pistol used as to what kind of injury could be caused from what distance.

28. The trial court held that PW-1 and PW-3 had stated that all the appellants had fired numerous gunshots. The medical report mentions four injuries on the face and seven on the chest, which establishes that more than one gunshot was fired. It proves that all the accused persons had fired the gunshots with the intention of killing the complainant. Accordingly, the trial court convicted all the appellants for the offence under Section 307 IPC and sentenced them as aforesaid.

29. Assailing the validity of the trial Court's order of conviction and sentence, Sri. Shivam Sharma, the learned Counsel for the appellants has submitted that the FIR attributes the occurrence to a petty quarrel between children. However, the Investigating Officer (PW-3) stated that the injured complainant had informed that the incident took place because a buffalo of Rauf had damaged the complainant's 'Tatiya'. While in the FIR lodged by him, the injured complainant himself hinges on a fight amongst the children of the complainant and the children of Rauf, during cross-examination he admitted that there were no children in Rauf's family. Learned counsel for the appellant has submitted that the aforesaid discrepancy proves that the prosecution had failed to establish the true genesis of the occurrence, which rendered the foundation of the story completely unreliable.

30. The learned Counsel for the appellant next submitted that PW-1 stated that the complaint was written out while on the way to the police station by an unknown person after dictation, whereas PW-5 stated that the FIR was dictated by the Thanedar to the Munshi at the Thana. The informant's thumb impression was obtained on it without informing its contents to them. PW-1 stated that he had lost consciousness on the way to the police station whereas PW-5 contradicted this by stating that PW-1 became unconscious immediately after the incident on the spot. This contradiction fundamentally shakes the prosecution story regarding how, when, and by whom the FIR could have been reliably narrated, rendering the finding perverse.

31. The learned Counsel for the appellants next submitted that there is complete lack of clarity or uniformity on who exactly fired the shots. The PW-5 could not have identified the specific movements or faces of the assailants inside their house in the prevailing darkness. Taken together, these inconsistencies give rise to a substantial cloud of reasonable doubt as to the specific degree of participation attributable to each of the accused.

32. Sri. Shivam Sharma has also submitted that the site plan prepared by the Investigating Officer completely belies the testimonies of the eyewitnesses. The site plan details a physical distance of 22 paces, which makes the close-range ocular narrative as being narrated by the prosecution, an impossibility.

He has submitted that the prosecution has alleged a violent, bloody crime scene, yet failed to secure any physical proof at the alleged site. The I.O. has stated that he did not find blood at the spot. No blood-stained clothes were provided to him. The failure to secure the spot proves that the true place of occurrence was never discovered or was deliberately suppressed.

33. The learned Counsel for the appellants further submitted that the PW-3 (IO) has deposed that the accused Aarif had sustained four distinct injuries during the very same occurrence. The prosecution has offered absolutely no explanation for how the accused sustained these injuries. The total suppression of injuries on the accused indicates that the prosecution has hidden the real sequence of events and suppressed the true genesis of the fight, hiding the fact that the accused had acted in self-defence.

34. Sri. Sharma has also submitted that DW-2 Meraj proved there was a sudden, volatile cross-altercation. A violent mob from the complainant's side descended upon the scene. The situation gave rise to a distinct and undeniable possibility that the firing occurred accidentally in the course of the chaotic altercation.

35. The learned Counsel for the appellant has alternatively submitted that as per the IO and DW-2 the fight began due to the breaking of the fence (tatiya) of informant's house by a buffalo of Rauf. In such circumstances, it is natural to assume that the prosecution side would have been enraged by the loss and damage. The complainant and his family might have attacked Aarif, who suffered 4 injuries, he ran inside his house in order to save himself from the attack and he fired a single aerial shot, which accidentally injured Subarati. As per the prosecution witnesses, there were 10 feet high boundary walls on all sides of the appellants' house. Therefore, Aarif or anyone could have only fired aerial shorts.

36. The learned Counsel for the appellants has submitted that the prosecution side were the assailants. As per the injured informant, he fainted on receiving the firearm injury and was taken to the police station. Naturally, lathi blows to Aarif could not have been given after the complainant had

fainted. If Aarif already had a firearm and had fired indiscriminately, he would not have been assaulted with lathis. So, going by the common course of events, the informant side injured Aarif with lathi blows. He ran to his house from where he fired aerial shots.

37. The learned Counsel for the appellant has also submitted that besides the complainant PW-1, only his brother (PW-5) has been examined as a prosecution witness. There is a long history of deeply entrenched previous enmity between the families. Despite the incident having taken place in a populated area, independent witnesses were intentionally withheld by the police. No firearm, pellet, cartridge, or empty shell was recovered from the spot or from the possession of any of the accused persons which might have corroborated the statements of the prosecution witnesses. The I.O. admitted that he found absolutely no traces of blood at the alleged spot and this falsifies the statement of PW-1 that he had bled profusely, his clothes had got blood soaked and he had collapsed on the ground.

38. The learned Counsel for the appellants lastly submitted that the medical evidence records only a single injury, which was not declared by medical expert as 'dangerous to life'. The injury is superficial pellet injury with mere redness, no bleeding and no mention of gravity or depth. The mere location of the injury cannot attract Section 307 IPC, especially given that it resulted from a shot fired from a long distance of 50–55 feet. This fails to establish: (1) an intention to kill or knowledge that death was likely, (2) that the injury was sufficient in the ordinary course of nature to cause death, or (3) any overt act showing a clear intention to commit murder.

39. The learned counsel for the appellants has placed reliance on a judgment rendered by a Division Bench of this Court in **Bhanu Pratap Singh Yadav v. State of UP: 2021** (1) ALJ 738, wherein the medical report described the injuries as superficial and simple, with the X-ray revealing only 'shadows of metallic density' and no retrieval of pellets or bullets. The depth of the wound was not recorded and the type of firearm used was not established. The doctor had categorically stated that the collar of abrasion noted in the

first injury could only emerge from a firing distance of 1 to 1½ feet, and not from 8–10 feet. In this factual background, the Court held that: -

“41. In the facts and circumstances of the present case, statutory element of Section 307 IPC are not attracted. “Intention” or “knowledge” are two alternative statutory elements to hold any person guilty for the commission of offence u/s 307 IPC. Therefore, one should have mens-rea intending to commit murder or should have possess knowledge that overt act, in all probability, would cause death of victim. Term “attempt” as embodied in the aforesaid sections could stem from the specific intention to commit murder and such blameworthy condition of mind could be gathered from the direct or circumstantial evidence, including the conduct of accused. Mere bodily injury capable of causing death or not, are not sufficient to hold any person guilty for committing crime under aforesaid sections.

42. After considering the medical report and circumstances in totality, it cannot be said that the accused have made attempt to murder as defined under Section 307 IPC. There are no such circumstances to suggest the intention of the accused persons for committing homicidal death of the informant or his wife.”

40. *Per contra*, Sri Jayant Singh Tomar, the learned AGA-1 has filed written submissions stating that medical treatment was administered to the injured immediately following the registration of the FIR. He had suffered 4 pellet injuries on his face and 7 pellet injuries on his chest. He had to remain admitted to a hospital for 10-12 days.

41. It is stated in the written submissions that as per the police report, the informant died on 10.01.2026. This Court fails to understand the relevance of the aforesaid fact mentioned in the written submissions that the complainant who had got injured in an incident on 09.09.2006, died on 10.01.2026, i.e. almost after two decades. This statement appears to have been made in an attempt to gain sympathy of the Court towards the complainant and to instigate a negativity towards the appellant. There appears to be no other reason for mentioning this fact, which is otherwise wholly irrelevant for examining the validity of the conviction order passed by the trial Court. This Court cannot appreciate this endeavour to prejudice the Court by stating the irrelevant fact of death of the complainant about two decades after the incident.

42. The learned AGA-I has submitted that the accused habitually obstructed the public way, giving rise to recurring disputes and consequent animosity, which furnished a strong motive for the crime. He has submitted that the injured complainant (PW-1) categorically deposed that all three appellants were armed with country-made pistols and the fired upon him, causing injuries to his face, chest, and neck. He further stated that the written report was inscribed by another person on his dictation and he had signed it. Sri. Tomar has submitted that the injured has clearly stated that the first shot was fired by Rauf, followed by firing by the other two appellants, which caused multiple injuries to him. He specifically stated that Aarif and Guddu had fired shots from inside the house. The injured also deposed that due to the injuries, he was intermittently losing and regaining consciousness; however, at the time of dictating the report he was fully conscious. He further affirmed that at the police station he did not lose consciousness and narrated the entire incident to the police officials. He categorically denied the defence suggestion that the FIR was prepared at the police station.

43. Sri. Tomar has submitted that PW-1 is the injured witness and the law accords special status to the testimony of an injured witness, as his presence at the scene of crime is established beyond doubt by the injuries sustained. He has relied upon the judgments in the cases of **Abdul Sayeed v. State of M.P.**: (2010) 10 SCC 259, **State of U.P. v. Naresh**: (2011) 4 SCC 324, **Rakesh v. State of U.P.**: (2021) 7 SCC 188, **Jarnail Singh v. State of Punjab**: (2009) 9 SCC 719, **State of M.P. v. Saleem**: (2005) 5 SCC 554 and **State of M.P. v. Kanha**: (2019) 3 SCC 605.

44. In **Abdul Sayeed v. State of M.P.** (supra), the Hon'ble Supreme Court referred to several precedents on the point of importance of the testimony of an injured witness and summarised the law as follows: -

“30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there

are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

45. In **State of U.P. v. Naresh** (supra), it was held that: -

“27. ...the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.

* * *

30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

(emphasis added)

46. The learned AGA-I has also relied upon the judgment in the case of **Jarnail Singh v. State of Punjab** (supra), but it has already been followed and reiterated in **State of U.P. v. Naresh** (supra).

47. In **Rakesh v. State of U.P.** (supra), it was held that: -

“9. ...There may be some minor contradictions, however, as held by this Court in a catena of decisions, minor contradictions which do not go to the root of the matter and/or such contradictions are not material contradictions, the evidence of such witnesses cannot be brushed aside and/or disbelieved.

* * *

12. ...For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non. ... ”

(emphasis added)

48. The aforesaid judgment on the point of effect of non-recovery of weapon has been followed in **Ghanshyam Mandal v. State of Bihar**: 2026 SCC OnLine SC 307.

49. In **State of M.P. v. Saleem**: (2005) 5 SCC 554, the Hon'ble Supreme Court held that: -

*“13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. **The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.** Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”*

(emphasis added)

50. In **State of M.P. v. Kanha**: (2019) 3 SCC 605, the Hon'ble Supreme Court held that: -

“19. In the present case, the nature of the injuries shows that there were eleven punctured wounds. The weapon of offence was a firearm. The circumstances of the case clearly indicate that there was an intention to murder. The presence of 11 punctured and bleeding wounds as well as the use of a firearm leave no doubt that there was an intention to murder. Thus, the second part of Section 307 of the Penal Code is attracted in the present case. The judgment of the High Court overlooks material parts of the evidence and suffers from perversity.”

51. The learned AGA-I has concluded by submitting that the gravity and heinous nature of the offence is such that any minor or mechanical lapse on the part of the prosecution ought not to enure to the benefit of the appellants and the conviction order deserves to be upheld.

52. Before proceeding to examine the facts of the case, as the learned AGA-I has cited numerous precedents, it would be appropriate to refer to the judgment in the case of **Parasa Raja Manikyala Rao v. State of A.P.**: (2003) 12 SCC 306, wherein the Hon'ble Supreme Court held that: -

“9. Each case, more particularly a criminal case, depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against

the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

53. In **Kalyan Chandra Sarkar v. Rajesh Ranjan**: (2005) 2 SCC 42, elaborating upon the applicability of precedents in criminal cases, the Hon’ble Supreme Court held that: -

“42. While deciding the cases on facts, more so in criminal cases the court should bear in mind that each case must rest on its own facts and the similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case. (See Pandurang v. State of Hyderabad [(1955) 1 SCR 1083].) It is also a well-established principle that while considering the ratio laid down in one case, the court will have to bear in mind that every judgment must be read as applicable to the particular facts proved or assumed to be true since the generality of expressions which may be found therein are not intended to be expositions of the whole of the law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides, and not what logically follows from it. See: (1) Quinn v. Leathem [1901 AC 495: (1900-03) All ER Rep 1], State of Orissa v. Sudhansu Sekhar Misra [AIR 1968 SC 647], (3) Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213].

54. The aforesaid ratio has been followed and reiterated in **Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya**: (2024) 2 SCC 86.

55. In **Sayarabano v. State of Maharashtra**: (2007) 12 SCC 562, the Hon’ble Supreme Court held that *“criminal cases are decided on facts and on evidence rather than on case law and precedents”*.

56. Therefore, I proceed to examine the facts of the case. The genesis of the case is a written complaint given by Subarati, the injured victim himself, stating that when his children and Rauf’s children were quarrelling near his house, he tried to intervene whereupon the accused persons, who were carrying illicit weapons in their hands, started firing gunshots with the intention of killing him. The complainant suffered pellet injuries on his face, neck and chest. As per his own version, the complainant was trying to intervene in a dispute between his children and the children of the appellant

Rauf and so obviously, all of them would be standing at the same place when all the three appellants are said to have fired gun-shots. However, the site plan prepared by the Investigating Officer shows that the appellants had fired from inside a room in their house and the complainant was standing inside the compound of his house, at a distance of 22 steps. The investigating officer proved the site plan and it was marked as Exhibit A-3. The prosecution did not put any question to the Investigating Officer disputing the correctness of the site plan.

57. In his testimony recorded in the trial, the injured complainant PW-1 stated that his children and the children of the appellant Rauf were quarrelling near his house and when he tried to intervene, all the accused persons fired at him and he had suffered gunshot injuries while he was towards the West of the well. Therefore, there is a discrepancy in the narration made in the FIR, the site plan, the statement of the complainant and the statement of the Investigating Officer, regarding the place from where the appellants had fired the gun-shots and the place where the complainant was hit by the gun shots.

58. The complainant (PW-1) stated that he had bled profusely and his clothes had got blood-stained. He had got sunken in blood and had fallen down on the earth. The medical report and the statement of the doctor (PW-4) do not make a mention of any bleeding. The Investigating Officer did not find presence of blood on the spot of the incident. No blood stained clothes were provided to the police. Therefore, this narration of the complainant is not corroborated by any other evidence.

59. The complainant stated that the dispute started when he tried to intervene in a dispute between his children and the children of the appellant Rauf. During cross-examination he admitted that there were no children in Rauf's family. The complainant or any other prosecution witnesses did not mention the name of any child who was present on the spot and no child witness has been examined to prove the alleged quarrel. The Investigating Officer stated

that he had not seen any small child from the family of the complainant and he had not recorded the statement of any child regarding the incident.

60. The Investigating Officer stated that the complainant had told him that a buffalo of the appellant Rauf had damaged his tatiya (a boundary wall made of bamboo sticks) and that was the reason for the quarrel between them. However, the complainant's brother (PW-5) stated that the appellants did not have any cattle. Therefore, the genesis of the dispute told by the appellant in the first narration of the incident given to the Investigating Officer also becomes suspicious. The aforesaid material produced by the prosecution gives rise to a reasonable doubt against the correctness of the statement of the complainant.

61. The learned AGA-I has submitted that the accused habitually obstructed the public way, giving rise to recurring disputes and consequent animosity, which furnished a strong motive for the crime, whereas it is nobody's case.

62. PW-1 stated that gunshots were fired continuously, though he could not estimate their number or duration, whereas PW-5 stated that he heard only one shot which is consistent with injuries which are attributable to a single gunshot. PW-5 further stated that Rauf had fired from inside his home, with Aarif and Guddu also firing from within the house. However, the site plan shows no door or window in the wall of the room from which the shots are said to have been fired. PW-1 himself stated that the appellants' pakka house was surrounded by 10-foot boundary walls on all sides, with ingress and egress only from the East. On this material, it appears impossible that all three appellants could have fired at the complainant from inside a room with no opening in the relevant direction, in a house surrounded by 10 foot high boundary walls on all four sides.

63. PW-1 also stated that after he had suffered the gunshot injuries, his brothers had taken him to the police station. He had got the complaint inscribed on the way to the police station and he had taken the written complaint to the police station. Initially, he said that he was speaking on the way but thereafter he said that he was unconscious on the way to the police

station. Thereafter PW-1 said that he had a little bit of consciousness. However, PW-5 stated that his injured brother had fallen unconscious after the incident and the FIR was dictated by the Sub-Inspector to a police Constable. Thus, there are serious discrepancies in the statements of the complainant and his brother regarding the place where the FIR was inscribed and the person on whose dictation it was written.

64. Although PW-1 denied the suggestion that the appellant Aarif had been beaten up by his family members and he had suffered injuries, the investigating officer stated that the medical examination of Aarif was conducted in the District Hospital, Lakhimpur Kheri. Aarif had suffered four injuries in the incident. Absence of any explanation regarding the injuries of Aarif also gives rise to a reasonable doubt that the prosecution witnesses have not disclosed the complete truth and it fortifies the contention of the learned Counsel for the appellants that persons from the complainant's side were the assailants. They initiated the attack. The complainant claims to have fallen unconscious on receiving the firearm injury. The lathi blows to Aarif could not have been given after the complainant had fainted.

65. The medico legal examination report of the complainant states that area of blackening was present. The doctor (PW-4) stated that blackening was present in the area of the injury. Blackening is caused only when a gunshot is fired from a close range and it cannot be caused due to a gunshot fired by a country made pistol from a distance of 22 to 25 steps, which would come to about 55-60 feet. Therefore, it is highly doubtful that the complainant received the gunshot injury in the manner alleged by him.

66. The doctor (PW-4) stated that he had recorded only a single injury in the medico-legal examination report. He had not recorded the measurement of the injuries (i.e. depth of the injuries). He had not mentioned in the medical report that the injuries could have been fatal. The radiologist (PW-2) stated that the X-ray of the abdomen was normal. No vital part (organ) of the complainant had suffered any damage.

67. It is also significant to notice that the complainant's brother PW-5 stated that his family consisted of about 75 persons and it was the largest family of Gangabehad. After the incident, Rauf sold away his house because of fear and the house had been purchased by the complainant's brother Rauf son of Hafizulla. This lends credibility to the submission that the complainant's side was the aggressor and that the possibility of the complainant being accidentally injured by a shot fired from his own side cannot be ruled out. This appears more probable since, even on the prosecution's own case, the appellants were firing from about 22–25 steps away, a distance from which a country-made pistol could not have caused the blackening found around the wounds, which occurs only when a shot is fired from close range.

68. Although non-recovery of the firearm from the appellants itself cannot be the sole decisive factor in any case, this fact assumes a greater significance when it is looked at cumulatively alongwith all the aforesaid facts.

69. However, this Court is not required to record a finding as to how did the complainant suffer the injury. The Court is only required to examine whether the prosecution has been able to prove the allegations beyond reasonable doubt. It is settled law that the standards of proof for the prosecution and the defence are different. While the prosecution has to prove its case beyond any reasonable doubt, the defence is merely required to create a doubt in the prosecution story merely by preponderance of probabilities.

70. In **Vaibhav v. State of Maharashtra**: (2025) 8 SCC 315, the Supreme Court held that: -

“29. In criminal jurisprudence, it is a time-tested proposition that the primary burden falls upon the shoulders of the prosecution and it is only if the prosecution succeeds in discharging its burden beyond reasonable doubt that the burden shifts upon the accused to explain the evidence against him or to present a defence. In the present case, the version of the prosecution suffers from inherent inconsistencies and doubts, as discussed above, and in such a scenario, the inability of the appellant to explain certain circumstances could not be made the basis to relieve the prosecution from discharging its primary burden.”

71 A cumulative reading of the evidence on record reveals that the prosecution's version suffers from several material infirmities which cast a reasonable doubt on the very genesis and manner of the alleged occurrence.

72. The trial Court held that no good hospital was situated near the place of the incident where the bullet could be removed from the body of the injured and he could be cured and, therefore, there was every possibility of the injured dying due to the gunshot injury, whereas the learned A.G.A.-I has stated in his written submissions that medical treatment was administered to the injured immediately following the registration of the FIR. There was absolutely no evidence before the trial Court to for the basis of the finding that no good hospital was situated near the place of the incident where the bullet could be removed from the body of the injured and there was every possibility of the injured dying due to the gunshot injury. This finding is perverse.

73. The trial Court rejected the testimony of DW-1 regarding the four injuries suffered by the appellant Aarif in the incident because no FIR had been lodged from the appellants' side and they did not state anything in this regard in their statement recorded under Section 313 CrPC. The trial Court has acted in ignorance of the position of law that it is the duty of the Court to put questions to the accused under Section 313 Cr.P.C. and the accused is not required to give a narration of the story. In case no question was put to the accused on any aspect of the matter, no adverse inference can be drawn against him.

74. In view of the foregoing discussion, I am of the considered view that the prosecution has failed to prove the guilt of the appellants. The trial Court has convicted and sentenced the appellants without a proper appreciation of the prosecution evidence, which renders its judgment unsustainable in law.

75. The learned Counsel for the appellants has also submitted that Mohd. Kamil alias Guddu the appellant no. 1 in Criminal Appeal No. 2048 of 2026 was a juvenile and he has wrongly been tried, convicted and sentenced as an adult accused. He had advanced submissions for awarding compensation to

the said appellant. Although the appellant no. 1 is well within his rights to raise this point at the appellate stage, this Court has not gone into the question of his juvenility for two reasons – (1) since all the appellants have been acquitted of all the charges and nothing remains to be decided unless, of course, the State challenges this order before the Hon'ble Supreme Court, the question of juvenility of the appellant no. 1 has become merely an academic question which need not be decided by this Court and (2) since this issue was not properly raised and pressed at any earlier stage, the appellants have also to be blamed and the State alone cannot be held responsible for trial of a juvenile as an adult so as to make it liable for payment of compensation.

76. Accordingly, both the Criminal Appeal Nos. 2048 of 2026 and 1792 of 2026 are **allowed**. The judgment and order dated 05.06.2026 passed by Shri Manoj Kumar Singh-II, the learned Additional Sessions Judge, Court No. 2, Lakhimpur Kheri, in Sessions Trial No. 301 of 2011 arising out of Case Crime No.388 of 2006, under Section 307 IPC, Police Station Phulbehad, District Kheri, whereby the appellants have been convicted and sentenced for the offence under Section 307 IPC, is hereby **set aside**. The appellants are **acquitted** of the charge of offence under Section 307 IPC.

77. The appellants are in custody. They are directed to be released on furnishing personal bonds and two sureties as per the provision contained in Section 437-A Cr.P.C., for their appearance before the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal and the bonds shall hold good for a period of six months from today.

(Subhash Vidyarthi, J.)

Whether the judgment is speaking – Yes
Whether the judgment is reportable – No

(Subhash Vidyarthi, J.)

August 25, 2026
-Amit K-