A.F.R.
RESERVED ON : 25.08.2026
DELIVERED ON: 13.11.2026

2026:AHC:233432

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 246 of 1986

Bachka and others

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s) : Satya Narayan Yadav

Counsel for Respondent(s) :

Court No. - 84

HON'BLE LAKSHMI KANT SHUKLA, J.

1. Heard Mr. Satya Narayan Yadav, learned counsel for appellant, learned A.G.A for State-respondent and perused the record.

2. The present criminal appeal has been preferred against the judgment and order dated 06.01.1986 passed by the Ist Additional Sessions Judge, Agra (hereinafter referred to as “the Trial Court”), in Sessions Trial No. 398 of 1984, State v. Bachka and others, Police Station Bah, District Agra, whereby the appellant Bachaka alias Bachu Mehtor has been convicted under Section 307 of the Indian Penal Code,1860 (hereinafter referred to as “IPC”) and sentenced to undergo seven years rigorous imprisonment, whereas the appellants Atar Singh alias Atra and Ugri have been convicted under Section 307/34 IPC and sentenced to undergo three years rigorous imprisonment each.

3. At the very outset, it is pertinent to mention that during the pendency of the present appeal, appellant nos. 1 and 3, namely, Bachaka and Ugri, respectively, died and the appeal, qua them, stood abated. Now, the present appeal survives for consideration only in respect of appellant no. 2, Atar Singh alias Atra.

PROSECUTION CASE IN NUTSHELL

4. The prosecution case, in brief, as unfolded in the written report lodged by the informant Smt. Baijanti wife of Summer, resident of Village Talgaon, Police Station Bah, District Agra, is that on the fateful night, at about 12:30 a.m., she was sleeping along with her husband in their house. At that time, some persons, armed with firearms and country-made pistols, entered into their house and woke up her husband, Summer. They made him sit and exclaimed that he is Summer and should be killed for having contested the case. Upon hearing the aforesaid words, the informant got down from her cot and moved aside. In the meantime, accused Atara caught hold of her husband, whereupon accused Bachaka fired a gun-shot at him with the intention to kill him, which struck her husband above his left eye.

5. It was further alleged that the appellants harbored enmity with the informant and her husband on account of previous litigation between her husband and accused Bachaka, in which her husband had succeeded. The informant further stated that she had seen and recognized the accused Bachaka, Atara and Ugri in the torch light, who are residents of Village Bateshwar. Upon her raising an alarm, the villagers fired gun-shot, whereupon the accused persons fled from the spot, leaving behind one shoe. It was also stated that two days prior to the incident, a conversation had taken place between Heera, a resident of the informant's village and accused Bachaka.

6. On the basis of the aforesaid written report (Exhibit Ka-1), a chik FIR (Exhibit Ka-3) was registered at Police Station Bah at about 02:20 AM on 13.07.1983 and its corresponding entry was made in the General

Diary (Exhibit Ka-4). The injured, Summer (P.W.-2), was medically examined by Dr. B.P. Singh (P.W.-3) on the same day at 02:30 AM, who found the following injury on his person, as recorded in the injury report (Exhibit Ka-2):

> *"Gun shot wound 10 cm × 8 cm x cannot be taken, on left eye, including abressed area on nose and eyebrow and forehead on left side. The wound is directly over the eye, sight of eye is lost completely. Tattooing and blackening present. Wound is freshly bleeding on cleaning. Advised for x-ray left forehead and face and refer to S.N. Medical College for treatment.*
>
> *Injury is grevious. Caused by some firearm object and fresh (6 hours). Refer to x-ray and treatment to S.N.M.C. Agra"*

7. The investigation was entrusted to Sri Sharan Singh Verma (P.W.-5), Sub-Inspector of Police. During the course of investigation, he recorded the statements of witnesses, inspected the place of occurrence, prepared the site plan and recovered one shoe, allegedly left behind by one of the assailants, along with blood-stained soil from the place of occurrence. A recovery memo (Exhibit Ka-6) was prepared in this regard.

8. Upon completion of the investigation, the Investigating Officer, having found sufficient material against the accused persons, submitted a charge-sheet (Exhibit Ka-7) on 09.09.1983. The Magistrate concerned took cognizance of the offence. Since the case was exclusively triable by the Court of Session, the same was committed to the Court of Session for trial. The charges under Section 307 read with Section 34 IPC against accused Ugri and under Section 307 IPC against accused Bachaka were framed on 15.10.1984. Subsequently, accused Atar Singh was summoned during the pendency of the proceedings and a charge under Section 307 read with Section 34 IPC was framed against him on 20.05.1985. The accused persons denied the charges, pleaded not guilty and claimed to be tried.

PROSECUTION EVIDENCE

9. To establish the prosecution case and prove the guilt of the accused persons, the prosecution examined the following witnesses:

PW-1	Smt. Baijanti (first informant and wife of the injured)
PW-2	Summer (the injured witness)
PW-3	Dr. B.P Singh (Doctor who medically examined the injured Summer)
PW- 4	Brij Mohan Gautam (Head Constable, who prepared Chik FIR, made its entry in the GD at Rapat No. 2 Time 02:20 AM)
PW-5	Sharan Singh Verma (the Investigation officer)

10. In addition to the aforesaid oral evidence, the prosecution relied upon the following documentary evidence:

Exhibit Ka-1	Written Report
Exhibit Ka-2	Injury Report
Exhibit Ka-3	First Information Report
Exhibit Ka-4	Copy of entry in the General Diary
Exhibit Ka-5	Site plan
Exhibit Ka-6	Recovery Memo
Exhibit Ka-7	Charge sheet

STATEMENTS OF THE PROSECUTION WITNESSES

11. **P.W.-1 Smt. Baijanti** wife of the injured Summer, is the first informant as well as an eyewitness to the alleged occurrence. In her examination-in-chief, she reiterated the prosecution version, as narrated in the written report. She deposed that on the date of the incident, at about 12:30 AM, she was sleeping along with her husband in their house. In the meantime, certain persons entered into their house and woke up her husband. Thereafter, accused Atara caught hold of her husband, whereupon accused Bachaka fired a gun-shot at him, which struck him above his left eye. She stated that she recognized the accused persons, namely, Bachka, Atara and Ugri, in the light of a torch. She further deposed that at about 02:00 AM, she reached Police Station Bah, where the report was lodged. According to her, the written report was scribed by one Awadhesh Chaturvedi at her instance and whatever she narrated to him was reduced into writing. She categorically stated that Awadhesh Chaturvedi had written the report in accordance with her instructions.

12. She also deposed regarding the previous enmity between the parties arising out of litigation relating to land. According to her, her husband had succeeded in the said litigation, on account of which the accused persons would harbour animosity towards him.

13. During her cross-examination, P.W.-1 stated that her husband Summer was a resident of Village Bateshwar, while they were residing at Village Talgaon. She deposed that after the firing, the villagers arrived at the place of occurrence. She also stated about the relationship between her husband and the accused persons. She further deposed that the written report was scribed by one Awadhesh Chaturvedi and that she had disclosed the names of all three accused persons to him for being mentioned in the report.

14. With regard to the manner of occurrence, she deposed that the accused persons had fired at her husband from a close distance and that

the person who fired the shot was at a distance of about ten steps from her husband. She stated that after sustaining the firearm injury, her husband became unconscious and blood had stained the cot. She further stated that she had shown the said cot to the Investigating Officer. According to her, after the arrival of the villagers, her husband regained consciousness. She also stated that the entire occurrence had taken place within one to two minutes.

15. She further stated that the accused persons were already acquainted with Summer. She stated that nobody had said that the person present there was Summer and that he should be killed, however, she does not know how it has been mentioned in the FIR. She also stated that in the written report she had mentioned that some persons had entered into the house. However, according to her deposition, three persons had entered the house, while one person was standing outside. She clarified that she had not seen the person who was standing outside.

16. **P.W.-2 Summer**, the injured witness, deposed that the incident took place on 12.07.1983 at about 12:30 AM. At that time, he was sleeping in his house along with his wife, Baijanti. He stated that accused Bachaka woke him up from his sleep and made him sit. Thereafter, two accused persons entered into the room, out of whom one caught hold of him, while accused Bachaka fired a gun-shot at him. The bullet struck him, as a result of which he lost his eyesight.

17. During his cross-examination, P.W.-2 reiterated the version stated by him in his examination-in-chief. He also deposed regarding the position and location of his house. With regard to the manner of occurrence, he stated that the person who fired gun-shot at him was standing near him and that the person who caught hold of him was also close to him. He further stated that the person who fired at him had said that they would teach him a lesson for contesting the case. He reiterated that accused Bachaka had woken him up from his sleep. He also stated that after sustaining the gun-shot he became unconscious.

18. He further deposed that after sustaining the firearm injury, he informed his wife about the gunshot, whereupon she raised an alarm. He stated that one person was standing at the door and that his wife raised the alarm after the accused persons had left the place of occurrence. He also stated that a torch was kept near the cot and that his wife had illuminated the place with the help of the said torch.

19. He further stated that approximately six to nine persons, including himself, had gone to the police station for lodging the report. He deposed that the report was lodged directly at the police station and that, thereafter, one or two police constables had visited the place of occurrence. With regard to the lodging of the First Information Report, he stated that he was not aware of any prior consultation or deliberation in connection with the lodging of the report, as he had remained unconscious.

20. **P.W.-3 Dr. B.P. Singh**, deposed that on 13.07.1983, he was posted as Medical Officer at Primary Health Centre, Bah. On the said date, at about 2:30 a.m., injured Summer was brought to the hospital for medical examination. On examination, the following injuries were found on the injured:

> *"Gun shot wound 10 cm × 8 cm x cannot be taken, on left eye, including addressed area on nose and eyebrow and forehead on left side. The wound is directly over the eye, sight of eye is lost completely. Tattooing and blackening present. Wound is freshly bleeding on cleaning.*
>
> *16. Injury is grevious. Caused by some firearm object and fresh (6 hours). Refer to x-ray and treatment to S.N.M.C. Agra "*

21. The witness further deposed that he advised an X-ray examination and, considering the seriousness of the injury, referred the injured to S.N. Medical College, Agra for treatment. He further opined that the injury was grievous in nature which was caused by a firearm and was fresh in duration.

22. During his cross-examination, P.W.-3 stated that although the injury had been caused by a firearm, it could not be definitively stated, in the absence of an X-ray report, whether the same had been caused by a bullet or a pellet. He further stated that blackening and tattooing were present around the entry wound, indicating that the gun-shot was fired from a close range. No exit wound was visible at the time of examination.

23. He further stated that the injured had been examined during the intervening night of 12/13.07.1983 at about 2:30 AM. Considering the presence of blackening and tattooing around the margins of the wound, he estimated the distance of firing to be approximately four to six feet. He also acknowledged that the injury could have been caused by a firearm which was fired from a close range.

24. **P.W.-4 Brij Mohan Gautam,** deposed that on 13.07.1983, he was posted at Police Station Bah. He stated that after the occurrence, the written report submitted by Smt. Baijanti was received at the police station. On the basis of the said written report, he prepared the Check FIR, which was in his handwriting and bore his signature. He further deposed that the corresponding entry was made in the General Diary at about 2:20 AM He stated that both the Check FIR and the G.D entry were prepared in his presence.

25. **P.W.-5 Sri Sharan Singh Verma,** Investigating Officer, deposed that on 13.07.1983, he was posted at Police Station Bah and the investigation of the present case was entrusted to him on the same day. During the course of investigation, he interrogated the witnesses and inspected the place of occurrence. He prepared the site plan, recovery memo and after completing the investigation and finding sufficient evidence against accused Bachaka and the other accused persons, submitted the charge-sheet before the competent Court. The charge-sheet bears his signature and was proved as Exhibit Ka-7.

26. During his cross-examination, the Investigating Officer further described the physical layout of the place of occurrence. He deposed that he had arrested accused Bachaka and Ugri from their house. He further stated that during the course of investigation, no person had informed him that accused Bachaka and Atara were employed in Calcutta or that accused Atara was present in Calcutta at the time of the incident. He also stated that he had not indicated the direction of the cot in the site plan.

DEFENCE EVIDENCE

27. In their statements recorded under Section 313 Cr.P.C., the accused persons denied the incriminating circumstances put to them and claimed their false implication. However, they did not adduce any evidence in defence.

28. Upon appreciation of the oral and documentary evidence brought on record and after considering the submissions advanced by the learned counsel for the parties, the Trial Court found the accused-appellants guilty and convicted and sentenced them in the manner indicated hereinabove.

29. Feeling aggrieved by the aforesaid judgment and order, the instant criminal appeal has been preferred on the ground that the impugned judgment and order of conviction and sentence passed by the Trial Court is contrary to law as well as the evidence available on record. The incident is alleged to have occurred in the mid-night and it would have been difficult to identify the accused in the absence of any source of light. It was a case of hit and run in which the applicants have been falsely implicated on account of previous enmity. The FIR is preposterous and incredible. The medical evidence does not support the prosecution story. The sentence awarded to the appellants is too severe.

30. On the basis of the aforesaid grounds, a prayer for allowing the instant criminal appeal and setting aside the impugned judgment and order has been made.

SUBMISSIONS ADVANCED ON BEHALF OF THE SURVIVING APPELLANT

31. Learned counsel for the surviving appellant No. 2, Atar singh alias Atra submitted that according to the prosecution version as set out in the first information report, only the role of catching hold of the injured has been assigned to appellant no. 2. The role of waking up the injured and firing of gun shot has been attributed to deceased-appellant No. 1, Bachaka.

32. It is stated that three accused persons entered into the room during the intervening night of the incident and woke up the injured, P.W.-2, from his sleep.

33. Learned counsel for the surviving appellant submitted that there are material contradictions in the statements of the prosecutions witness. In her examination-in-chief, the P.W.1 (informant) has stated that her husband raised alarm, while, in her cross-examination she says that her husband became unconscious on account of firearm injury and could not speak.

34. It is further submitted that there are only two ocular witnesses in the present case, namely, PW-1, who is the informant and wife of the injured and PW-2, the injured himself. Both the witnesses, in their respective examination-in-chief, fully supported the prosecution case and substantially reiterated the version contained in the first information report. However, during her cross-examination, PW-1 attempted to attribute a role to appellant No. 3 by stating that he was standing outside the door. Nevertheless, upon a careful examination of the testimonies of both the ocular witnesses, it appears that the presence of PW-1 at the place of occurrence is doubtful. PW-2, the injured, categorically stated

that after sustaining the firearm injury, he informed his wife about the gunshot, whereupon she raised an alarm. The aforesaid statement assumes significance in the backdrop of the prosecution version that accused-appellant No. 1 had awakened the injured from his sleep and caught hold of him. If PW-1 had actually been present at the place of occurrence and had witnessed the incident, there was no occasion for PW-2 to inform her about the firearm injury after sustaining the same. The fact that PW-2 had to communicate to his wife that he had sustained a gunshot injury gives rise to a reasonable inference that PW-1 was not present at the place of occurrence and reached there only thereafter.

35. Furthermore, according to the statement of PW-2, accused-appellant No. 1, Bachaka, awakened him from his sleep and made him sit. Thereafter, two accused persons entered the room, out of whom one caught hold of him, while accused Bachaka fired a gunshot at him. Thus, the testimony of PW-2 does not attribute any specific overt act to surviving appellant No. 2.

36. In these circumstances, the subsequent attempt made by PW-1 during her cross-examination to assign a role to appellant No. 2, particularly when her presence at the place of occurrence itself is doubtful, does not inspire confidence.

37. It is further submitted that in her examination-in-chief, PW-1 narrated the same version. However, PW-2, the injured witness, stated that accused-appellant No. 1 had awakened him from his sleep. According to the examination-in-chief of PW-2, after appellant No. 1 awakened him, two other accused persons entered the room, out of whom one caught hold of him, while appellant No. 1, Bachaka, fired at him. However, PW-2 specifies the identity of the accused appellant no. 2, who allegedly caught hold of him.

38. It is further submitted that according to the statement of P.W.-2, after sustaining the firearm injury, he informed his wife that he had sustained a gunshot injury and asked her to raise an alarm and call for

help. Thereafter, his wife raised an alarm. However, the same witness has also stated that immediately after sustaining the gunshot injury, he became unconscious. He further admitted that as he was unconscious, he cannot not state whether his wife had gone into the village raising an alarm or not. Thus, the statements made by this witness are self-contradictory and inconsistent, which seriously undermine his credibility and render his testimony unworthy of reliance.

39. It is, thus, contended that in view of the aforesaid circumstances, either P.W.-1 or P.W.-2 is making a false statement before the Court. It is submitted that if P.W.-1 was actually present at the place of occurrence, there was no occasion for P.W.-2 to inform her that he had sustained a gunshot injury and thereafter ask her to raise an alarm. Learned counsel for the appellant further submits that the conduct of both the aforesaid alleged eyewitnesses appears to be unnatural, particularly that of P.W.-2, who, despite having sustained a firearm injury, claims to have instructed his wife to raise an alarm. Ordinarily, a person confronted with such a dangerous situation would raise an alarm himself, while any other person present at the spot would also be expected to raise an alarm spontaneously upon witnessing the occurrence. The alleged exchange between P.W.-2 and P.W.-1 regarding the raising of an alarm, instead of being a spontaneous reaction to the incident, creates serious doubt about the genuineness of the prosecution version and the very manner in which the alleged occurrence took place.

40. In view of the aforesaid circumstances, it is contended that the injuries sustained by the injured might have been caused in some other incident and taking advantage of the existing enmity between the parties, the appellants have been falsely implicated in the present case.

41. Learned counsel for the surviving appellant further submits that the doctor who conducted the medical examination of the injured, Summer, opined that the injury was grievous in nature and referred him to S.N. Medical College, Agra for an X-ray examination and further treatment. However, neither the subsequent X-ray report nor any record

relating to further treatment of the injured has been brought on record by the prosecution.

42. In view of the aforesaid premise, it is thus contended that it is difficult to place reliance upon the prosecution evidence insofar as the involvement of appellant No. 2 is concerned. The involvement of the appellant no. 2 in the alleged incident is doubtful. The benefit of doubt, therefore, deserves to be extended to appellant no. 2. He is entitled to be acquitted of the charge under Section 307 read with Section 34 IPC. and the criminal appeal, qua appellant no. 2, is liable to be allowed.

43. *Per contra*, learned A.G.A. vehemently opposed the criminal appeal and submitted that the inconsistencies pointed out by learned counsel for the surviving appellant no. 2 are minor in nature and do not constitute any substantial impediment to the prosecution case. Such minor discrepancies are bound to occur in the testimonies of witnesses and cannot be made the sole ground to discard the prosecution version. The Court may overlook such inconsistencies and proceed to examine the prosecution case on the basis of the evidence as a whole. It is submitted that the Trial Court after careful examination of the evidence has rightly convicted the appellant no. 2.

44. It is submitted that, so far as the non-availability of the record relating to the X-ray examination and further treatment of the injured is concerned, the doctor who initially examined injured P.W.-3 had already opined that the injury was grievous in nature and that the injured had lost the vision of his left eye. In view of the aforesaid medical opinion, there remains no doubt regarding the existence and nature of the injury as well as the weapon used in causing the same. Therefore, merely because the records relating to the subsequent treatment of the injured have not been brought on record, the prosecution case cannot be discarded on this ground alone.

45. It is contended that, so far as the plea of false implication of accused-appellant no. 2 is concerned, the evidence on record reveals that

on two earlier occasions, the property dispute between the parties was decided in favour of the injured, whereas the appellants had suffered an adverse decision. In such circumstances, the injured had no reason to harbour any animosity towards the appellants. On the contrary, having lost the property dispute on both occasions, the appellants had a motive to commit the alleged offence. It is, therefore, submitted that in the peculiar facts and circumstances of the present case, the principle of a motive being a double-edged weapon has no application. It is thus contended that the present appeal is devoid of merit. It is liable to be dismissed by this Court.

46. Having heard the rival submissions advanced by learned counsel for the parties and upon careful consideration of the evidence available on record, this Court finds that the presence of the injured witness, P.W.-2 at the place of occurrence cannot be doubted. Even if the presence of P.W.-1 at the place of occurrence is not accepted, the same would not create any doubt regarding the presence or credibility of the injured witness. P.W.-2 has specifically attributed the role of catching hold of him to the surviving appellant no. 2 during the occurrence. It is also evident from the record that as a result of the incident, the injured lost his left eyesight. The injury was caused by a firearm, which is capable of causing death and was inflicted on a vital part of the body. The nature, location and severity of the injury indicate that the assault was made with the intention of causing the death of the injured. The specific role attributed to the surviving appellant no. 2 by the injured witness further establishes his active participation in the commission of the offence.

47. In view of the aforesaid discussions, this Court does not find any good ground to revert the finding of the Trial Court. The present Criminal Appeal lacks merit and the impugned judgment & order of conviction and sentence, deserves to be affirmed, qua appellant no. 2, Atar Singh.

48. So far as the question of extending the benefit of Section 4 of the Probation of First Offenders Act, 1958, to the surviving appellant is concerned, it is evident from the facts and circumstances of the case that the offence was committed in a premeditated and deliberate manner, reflecting the criminal intent and conduct of the offender. The provision of Section 4 of the Act is undoubtedly reformative in nature and is intended to provide an opportunity for rehabilitation to offenders in appropriate cases, particularly where the circumstances surrounding the commission of the offence do not disclose any criminal propensity or premeditation. However, the reformative object of the legislation does not warrant extending its benefit indiscriminately, irrespective of the nature and gravity of the offence and the manner in which it was committed. The provision is not intended to provide shelter or to extend undue leniency to an offender whose conduct demonstrates deliberate planning and a conscious determination to commit the crime.

49. In the facts and circumstances of the present case, in case the surviving appellant is granted benefit of Section 4 of the Probation of First Offenders Act, it would not only undermine the seriousness of the offence but may also send an undesirable message to society that even offences committed with deliberate planning and criminal intent may be dealt with leniently. Such an approach may adversely affect the deterrent effect of criminal law and undermine public confidence in the administration of justice. The reformative objective of the legislation must, therefore, be balanced against the gravity of the offence, the circumstances in which it was committed and the larger interest of society.

50. Accordingly, having regard to the nature and gravity of the offence, the premeditated manner in which it was committed and the conduct of the surviving appellant, this Court is of the considered opinion that the present case does not warrant the extension of the benefit of Section 4 of the Probation of First Offenders Act, 1958.

Therefore, the surviving appellant is not entitled to the benefit of the aforesaid provision.

51. Accordingly, the present criminal appeal, qua appellant no. 2 Atar Singh alias Atra, **fails** and is hereby **dismissed**. The impugned judgement and order of conviction and sentence, so far as it relates to appellant no. 2, is affirmed.

52. The surviving appellant no. 2 is on bail. He is ordered to surrender before the Trial Court within a week from the date of this judgment to serve out the remaining sentence.

53. If the appellant no. 2 fails to surrender before the Trial Court within the stipulated time as directed hereinabvoe, the Trial Court shall be at liberty to take coercive measures in accordance with law to procure his presence.

54. Let a copy of this order and the record of the Trial Court (in original) be transmitted forthwith to the Trial Court for compliance.

(Lakshmi Kant Shukla,J.)

November 13, 2026
Arti/Brijesh Maurya

Digitally signed by :-
BRIJESH KUMAR
High Court of Judicature at Allahabad