



2026:AHC:55251-DB

**AFR**

Judgement Reserved on 26.02.2026

Judgement Delivered on 18.03.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL APPEAL No. - 7645 of 2017**

Irfan and 2 others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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Counsel for Appellant(s)	: Najakat Ali, Nazrul Islam Jafri, Nazrul Islam Jafri(senior Adv.), Rajrshi Gupta, Rizwan Ahamad, Swati Agrawal Srivastava
Counsel for Respondent(s)	: G.A., Zafar Abbas, Zafeer Ahmad

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**Court No. - 48**

**HON'BLE CHANDRA DHARI SINGH, J.  
HON'BLE DEVENDRA SINGH-I, J.**

**Per: Hon'ble Chandra Dhari Singh, J**

1. This Criminal Appeal has been filed against a judgement and order dated 28.11.2017 passed by the learned Sessions Judge, Rampur in ST No. 524 of 2013 arising out of case crime No. 72 of 2013, under Sections 302, 120B, 506 IPC, police station Bhot, District Rampur

whereby the learned Judge convicted and sentenced the appellants as under:

(a) Accused- Faeem to life imprisonment and a fine of Rs. 20,000/- under Section 302 IPC and in default of payment of fine, he shall further undergo simple imprisonment for a period of six months.

(b) Accused-Irfan and Saleem to life imprisonment and a fine of Rs. 20,000/- each under Section 302 read with Section 120-B IPC and in default of payment of fine, the accused Irfan and Saleem shall further undergo simple imprisonment for a period of six months.

2. However, by the same impugned judgement and order, the learned Judge acquitted accused Irfan, Faeem and Saleem under Section 506 IPC.

### **Facts of the case**

3. The facts that formed the bedrock of the present criminal appeal are that a written report was filed by the first informant Mohammad Yusuf, son of Laddan, resident of village Patthar Kheda, police station Bhot, district Rampur at police station Bhot on 09.03.2013 with the allegations that on 07.03.2013, his nephew Mohammad Rafi, aged about 25 years, son of late Mohammad Yunus, resident of village Patthar Kheda, was returning to Patthar Kheda from village Khaudpura by his motorcycle No. UP-22F/4481 and when he reached near culvert of village Kaudpura at about 07:00 AM, accused Irfan, Mohammad Faeem, son of Saleem and Saleem, son of Shaukat Ali,

resident of village Nagla Ganesh, Police Station Azimnagar, district Rampur, who were having animosity from before and had also earlier attacked, on 07.03.2013 with an intention to kill, accused Faeem, in connivance with accused Irfan and Saleem ran over Mohammad Rafi (hereinafter referred to as the deceased) by tractor No. UP-23E/1142, as a result thereof he received fractures in his leg and hand and injuries on his head. The incident was witnessed by Iftexhar Hussain and Arshad Ali, who were going to village Kishanpur by a motorcycle, who informed the first informant. With the help of above persons, the first informant took his nephew to the District Hospital, Rampur, where he died. The first information report further recounts that the first informant was informed by the persons present at the spot that the incident was caused with an intention to kill and the accused persons had also threatened the witnesses of dire consequences.

4. On the basis of the aforesaid written report made by the first informant, a case was registered at Case Crime No. 72 of 2013, under Sections 302, 120-B and 506 IPC at police station Bhot, district Rampur against accused Irfan, Faeem and Saleem, which was entered in GD No. 14 on 09.03.2013 at 08:20 hours.

5. After registration of the case, the law set into motion and investigation of the case was taken up by PW-6, Baljeet Singh. He copied the FIR in the case diary and prepared site plan on the pointing out of the first informant, Ext. Ka-10. He also collected pieces of plain

concrete and bloodstained concrete from the spot and also recovered motorcycle bearing registration No. UP-22F/4481 of the deceased and took into possession and also prepared recovery memo, Ext. Ka-2. He also took into possession Tractor No. UP 23E/1142 along with trolley allegedly used in the commission of the crime from the house of the accused persons and prepared recovery memo (Ext. Ka-11). On 12.3.2013, the investigating officer arrested accused-Irfan and recorded his statement in the case diary. On 18.03.2013, the investigating officer perused the inquest and postmortem report and entered the contents of the same in the case diary and thereafter recorded the statement of eyewitness of the occurrence namely Iftexhar Husain and Arshad Ali in the case diary. On 18.04.2013, he recorded the statement of accused Faeem and Saleem in the case diary and thereafter he again interrogated the first informant and recorded the technical inspection report of the tractor-trolley. On 16.5.2013, the investigating officer sent the materials related to the crime to the Forensic Science Laboratory, Agra and made necessary entries in the case diary. After completing the necessary formalities and after culmination of investigation, the investigating officer, submitted charge sheet against the accused Irfan, Faeem and Saleem under Sections 302, 120-B and 506 IPC, which he proved as Ext. Ka.12.

6. As the case was exclusively triable by the Court of Sessions, the learned Magistrate, committed the case to the Court of Sessions where case was registered as ST No.

524 of 2013. Learned Sessions Judge, Rampur vide order dated 06.01.2014 framed the charges against the accused-appellants Faeem, Irfan and Saleem under Sections 120-B, 302 and 506 IPC, which were read over and explained to them, who denied the charges levelled against them and claimed to be tried.

7. To bring home guilt of the appellants beyond the hilt, the prosecution has examined as many as seven witnesses, out of whom, PW-1 Mohammad Yusuf is the first informant, PW-2, Iftekhhar Husain and PW-3 Arshad Ali are eyewitness of the occurrence and remaining are formal one.

8. PW-1, Mohammad Yusuf is the first informant of the case. He reiterated the versions given in the FIR. He further stated on oath that tractor was being driven by accused Faeem, whereas accused Irfan and Saleem were sitting on the mudguards of the tractor. On seeing the deceased, accused Saleem and Irfan asked Faeem to run over the deceased. Thereupon, accused Faeem crushed the deceased, due to which deceased sustained grievous injuries on his leg, hand and head. The occurrence was witnessed by Iftekhhar Husain and Arshad Ali and thereafter they also informed him. He further deposed that on being informed, he reached the spot and took the deceased to the District Hospital, Rampur where he breathed his last. He also deposed that written report of the incident was scribed by a person of Bhot on his dictation and he put his signature on it. He proved the written report as Ext. Ka.1.

9. This witness is not the eye witness of the occurrence and on being cross examined, he stated that when the incident took place, he was at his house at Pattharkheda and the incident did not take place in his presence.

10. PW-2 Iftexhar Husain has deposed in his examination-in-chief that on 07.03.2013 at about 07.:00 AM he along with Arshad Ali was going to Kishanpur from Sankara by motorcycle and when they reached just before the culvert of Khaudpura, they saw Rafi coming by motorcycle and a tractor which was being driven by accused Faeem was going from east side and Faeem ran the tractor over Mohammad Rafi with an intention to kill him. Rafi sustained injuries and motorcycle was also crushed. He further deposed that injured Rafi was rushed to the hospital, where he succumbed to the injuries. This witness also deposed that he did not know about enmity of the accused persons with the deceased and that deceased-Rafi was trying to escape, but accused-Faeem ran tractor over him. Irfan and Saleem were sitting on the mudguards of the tractor and instigating accused-Faeem.

11. PW-3, Arshad Ali in his examination-in-chief has reiterated the facts mentioned by PW-2, Iftexhar Husain in his examination-in-chief. He further deposed that the tractor was being driven by accused Faeem, who ran tractor over the deceased-Rafi at the instance of Irfan and Saleem. He also deposed that thereafter accused-Faeem moved the tractor back side and again ran over the deceased with an intention to kill him due to some enmity.

12. PW-4, SI Pankaj Kumar, in his examination-in-chief deposed that on 07.3.2013, he was posted at Police Station Bhot as Sub-Inspector. On that date, he prepared inquest report of the deceased and other related documents and sealed the dead body and sent it for post-mortem examination through Constable Jagveer Singh and Home Guard Lakhan. He also proved inquest report, letter to RI, Challan Lash, letter to the Chief Medical Officer, photo lash and specimen of seal as Ext. Ka-3 to Ext. Ka-8.

13. PW-5, Dr. Vinod Kumar Mishra, deposed that on 07.3.2013, he was posted as Medical Officer at District Hospital, Rampur. On that date, he conducted autopsy on the cadaver between 2:30 PM and 03:10 PM. He further deposed that the deceased was admitted to the District Hospital at 07:40 AM on 07.3.2013 and died on the same day at 08:40 AM. Doctor found the following ante-mortem injuries on the body of the deceased:

- 1. Stitched wound 19 cm long on right side of face and head with six stitches. After removing stitches the wound was located 10 cm x 0.5 cm x bone deep. Blood was clotted.*
- 2. Lacerated wound 3 cm x 0.5 cm scalp deep on top of head, 9 cm above right ear.*
- 3. Contusion 4 cm x 3 cm on dorsum of right hand, just below the wrist joint and metacarpal bone was found fractured.*
- 4. Multiple abraded contusion in area of 14 cm x 8 cm on front of right knee joint and right lower leg.*

5. *Traumatic swelling 10 cm x 6 cm on anterior medial aspect of right thigh.*

6. *Abrasion 3 cm x 1.5 cm on posterior aspect of right lower leg, just above the ankle joint.*

14. On internal examination, PW-5, Dr. Vinod Kumar Mishra found that brain was congested and a large sized haematoma was found present on the right temporal parietal regions of skull. Lungs were congested, right chamber of heart was filled with blood, while the other chamber was empty. Liver, spleen and kidneys were congested.

15. In the opinion of the doctor, the deceased died due to coma as a result of head injury. The above ante-mortem injuries of the deceased were possible to cause on 07.3.2013 at 07:00 AM by hard and blunt object, such as crushing by tractor. He proved his postmortem report as Ext. Ka-9.

16. PW-6, Inspector Baljeet Singh is the investigating officer of the case, who conducted investigation and submitted charge sheet against the accused-appellants. His evidence in detail has already been discussed above.

17. PW-7, Dr. Sanjiv Manglik, in his evidence has deposed that on 07.3.2013, he was posted at District Hospital, Rampur as Senior Surgeon and he was on emergency duty. At 07:40 AM, he examined injured-Mohammad Rafi (deceased), aged about 25 years, who was brought by his father and during medical examination, he found that the patient was unconscious

and his general condition was very serious and his blood pressure was unable to be recorded. Doctor found the following injuries on his person:

- “1. A deep lacerated wound 6.0 cm x 2.0 cm on right side of head in parietal region.*
- 2. There was fracture in right wrist joint.*
- 3. A fracture was present at thigh on right side.”*

18. In the opinion of the doctor, above injuries were possible to sustain on 07.3.2013 at 07:00 AM by hitting/crushing by a tractor and at the time of medical examination, the condition of the injured was critical.

19. After the closure of the prosecution evidence, the statement of the accused-appellants were recorded under Section 313 Cr.P.C., in which they denied the charges levelled against them and stated that they have been falsely implicated in this case due to enmity. However, they stated that Laddan, the father of the first informant Mohammad Yusuf, was murdered in the year 1995, who had two sons namely Mohammd Yusuf and Mohammad Yunus. Mohammad Yunus died leaving his two sons, namely Mohammad Rafi and Mohammad Rauf. Mohammad Yusuf ousted Mohammad Rauf from the house and Mohammad Rafi was killed through accident and FIR was lodged against them and 70 bigha of land of Laddan including the land of Mohammad Rafi and Mohammad Rauf was usurped by the first informant on the basis of forged and unregistered Will in the year 2015 and the accused persons have been implicated in this false case of murder.

20. In defence, the accused persons have examined DW-1, Firasat Husain. In his evidence, DW-1, Firasat deposed that on 07.3.2013 at about 07:00 hours he was going to village Bhot by his car to drop his children at St. Marry School and when he reached just ahead of the first culvert of Khaudpura, ahead of his car, a young man was going towards village Thunapur by motorcycle and when the young man reached near second culvert, a tractor trolley loaded with sugar cane, coming from the side of Thunapur, hit the motorcycle and in this accident the motorcyclist was seriously injured. This witness stopped his car and saw the injured. Passer-by also stopped there. In the meantime, the first informant (Mohammad Yusuf) resident of village Pattharkheda came there and carried the injured towards police station.

21. Learned Sessions Judge, Rampur after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

22. Hence, this appeal.

### **Submissions on behalf of the appellants**

23. Mrs. Swati Agrawal Srivastava, learned counsel for the appellants submits that there was an inordinate and unexplained delay of two days in lodging the first information report as the first information report of the incident, which took place at about 07:00 AM on 07.3.2013 was lodged at 08:20 AM on 09.3.2013 for

which no plausible explanation has been tendered by the prosecution.

24. Learned counsel for the appellants further submits that it was an accidental death, which has been given colour of homicidal death on account of enmity.

25. Lastly, it is submitted that PW-2, Iftexhar Husain and PW-3, Arshad Ali are the chance witnesses and their presence at the place of occurrence is highly doubtful.

### **Submissions on behalf of the State**

26. On the other hand, Shri S.K. Ojha, learned Additional Government Advocate-1st supported the findings of the learned trial court by stating that the learned trial court has correctly martialled the evidence and considered each and every aspect of the case while convicting the appellants.

### **Analysis and conclusion**

27. First submission of learned counsel for the appellants is that there was an inordinate and unexplained delay of two days in lodging the first information report.

28. Admittedly, the first information report of the incident, which took place at about 07:00 AM on 07.3.2013 was lodged at 08:20 AM on 09.3.2013. Before delving into the contention of the learned counsel for the appellants in respect of delayed lodging of the first information report, it would be worthwhile to mention certain pronouncement of Hon'ble Supreme Court on the point.

29. In **Tara Singh Vs. State of Punjab**, 1991 Suppl (1) SCC 536, Hon'ble Supreme Court held as under:

*"It is well-settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the" report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated*

*by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case.”*

30. In **Mukesh Vs. State of NCT of Delhi** (2017) 6 SCC 1, Hon’ble Supreme Court held thus”

*“Delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by courts with suspicion because there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a long delay can be condoned if the informant has no motive for implicating the accused.”*

31. In **Palani Vs. State of Tamil Nadu**, (2018) 15 SCALE 178, Hon’ble Supreme Court held as under:

*“Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of FIR. But there may be cases*

*where the delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the witness has no motive for falsely implicating the accused. In the present case, PW-1 had no motive to falsely implicate the accused. As pointed out earlier, PW-1 seeing her own son being brutally attacked, the effect of the incident on the mind of the mother cannot be measured. Being saddened by the death of her son, it must have taken sometime for PW-1 to come out of her shock and then proceed to police station to lodge the FIR. The delay of two and half hours in lodging the complaint and registration of FIR and the delay in receipt of the FIR by the Magistrate was rightly held as not fatal to the prosecution case.”*

32. In **Hari Lal Vs. State of Madhya Pradesh (now Chhatisgarh,)** 2023 SCC OnLine SC 1124, Hon’ble Supreme Court held as under:

*“Although there might not have been a specific question put to PW-9 as regards the delay in lodging the FIR but the fact that it was a delayed FIR cannot be ignored. When an FIR is delayed, in absence of proper explanation, the courts must be on guard and test the evidence meticulously to rule out possibility of embellishments in the prosecution story, inasmuch as delay gives opportunity for deliberation and guess work. More so, in a case where probability*

*of no one witnessing the incident is high, such as in a case of night occurrence in an open place or a public street.” (emphasis added)*

33. From the perusal of the aforesaid pronouncement of Hon'ble Supreme Court, it is clear that delay in lodging FIR by itself cannot be ground to doubt the prosecution case, but when FIR is delayed and there is no proper explanation, the Court must consider the evidence meticulously to rule out any possibility of embellishment in the prosecution story inasmuch as delay gives an opportunity for deliberation.

34. Before considering the argument of learned counsel for the appellants on the point of delay in lodging the first information report, it would be apposite to mention that the deceased-Mohammad Rafi was admitted to the District Hospital, Rampur in an injured condition by his father, the first informant (Mohammad Yusuf) on 07.3.2013 at 07:40 AM as a case of accidental injuries and he was medically examined by PW-7, Dr. Sanjiv Manglic, the Medical Officer and after sometime, he died at 08:40 AM on the same day as is evident from Ext. Ka-16 and Ext. Ka-17.

35. Admittedly, the occurrence took place at 07:00 AM on 07.3.2013. The first information of the incident was lodged at 08:20 AM on 09.3.2013 after a delay of more than 49 hours by the first informant, Mohammad Yusuf, who is father of the deceased. The first information report was lodged with the allegations that on 07.03.2013, his

nephew Mohammad Rafi, aged about 25 years was returning to Patthar Kheda from village Khaudpura by his motorcycle No. UP-22F/4481 and when he reached near culvert of village Khaudpura at about 07:00 AM, accused Irfan, Mohammad Faeem and Saleem, who were having enmity from before and had also earlier attacked, on 07.03.2023 with an intention to kill, accused Faeem, in connivance with accused Irfan and Saleem ran over Mohammad Rafi, the deceased by tractor No. UP-23E/1142, as a result thereof he received fractures on his leg and hand and injuries on his head. The incident was witnessed by Iftekhar Hussain and Arshad Ali, who were going to village Kishanpur by a motorcycle, who informed the first informant. On receiving information, the informant rushed to the spot and took his nephew to the District Hospital, Rampur with the help of Iftekhar Hussain and Arshad Ali, where he died. It was also mentioned in the FIR that the first informant was told by the persons present at the spot that the incident was caused with an intention to kill and the accused persons had also threatened the witnesses of dire consequences.

36. PW-2, Iftekhar Hussain and PW-3, Arshad Ali in their evidence have stated that after the incident, they took the injured to the hospital, where he breathed his last.

37. From the cumulative perusal of the contents of the first information report as well as evidence of PW-2, Iftekhar Hussain and PW-3, Arshad Ali, it is evident that after the incident, the information was given to the first informant, who rushed to the spot and with the help of

PW-2, Iftexhar Hussain and PW-3, Arshad Ali, he took the injured to the hospital where he succumbed to the injuries.

38. This Court fails to understand as to when PW-2, Iftexhar Hussain and PW-3, Arshad Ali have seen the occurrence and told the first information about the incident, who also rushed to the spot and took the injured to the hospital, why the injured was admitted to hospital as an accidental death. Exhibit Ka-17, which was a letter dated 07.3.2013 written by Dr. Rakesh Kumar to the In-charge Inspector, Kotwali, Rampur informing him that one Mohammad Rafi, aged about 28 years, son of Mohammad Yusuf, resident of Patharkheda, police station Mot, Rampur has been admitted to the District Hospital, Rampur at 07:40 AM on 07.3.2013 as an accidental injury case, who died at 08:40 AM on 07.3.2013 and his dead body has been kept in mortuary.

39. So far as delay in lodging the first information report is concerned, PW-1, Mohammad Yusuf in his cross-examination has stated that after the incident, he had gone to the hospital with the deceased and that he has given report of the occurrence at the police station Bhot on 08.3.2013. He also stated that on 09.3.2013, he was provided copy of the report by the police. He further stated that he has not given any report on 07.3.2013. The explanation given by PW-1, Mohammad Yusuf for lodging the FIR is unreasonable inasmuch as from the perusal of Ext. Ka-1, it is very much clear that the report was given

on 09.3.2013, on the basis whereof case was registered at 08:20 AM on 09.3.2013.

40. Moreover, PW-1, in his examination-in-chief has stated that when he was taking the injured to the hospital, PW-2, Iftexhar Husain, PW-3, Arshad Ali and one another person were with him, whereas PW-2, Iftexhar Husain in his cross-examination, which was conducted on 04.06.2015 stated that he did not take the injured to the hospital left the place of occurrence after 15 minutes. PW-3, Arshad Ali in his cross-examination has stated that he did not take the injured to the hospital and left for his village Dariyagarh.

41. In view of the above, this Court is of the view that it was an accidental death and the accused-appellants have falsely been dragged in this case after due deliberation and that the first information report has been lodged after two days for which no plausible explanation has been tendered by the prosecution. From the nature of the evidence placed on record by the prosecution, the possibility of the present appellants being falsely implicated on account of previous enmity cannot be ruled out. In our opinion, therefore, the appellants are entitled to benefit of doubt.

42. In view of the above, we are of the view that the prosecution has failed to establish the guilt of the appellants beyond all reasonable doubt.

43. Accordingly, the appeal is allowed. The judgement and order dated 28.11.2017 passed by the learned

Sessions Judge, Rampur in ST No. 524 of 2013 is set aside. The appellants are acquitted of the charges levelled against them

44. Appellant Nos. 1 and 3 namely Irfan and Saleem are on bail. Their bail bond are cancelled and sureties are discharged.

45. Appellant No. 2, Faeem is in jail. He shall be released forthwith unless wanted in any other case.

46. Office is directed to send a copy of this order to the court concerned for compliance and compliance report be submitted to this Court within two months.

**(Devendra Singh-I,J.) (Chandra Dhari Singh,J.)**

**March 18, 2026**  
Ishrat