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RESERVED



2026:AHC:130322-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1140 of 1990

Shaheed and others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Musarrat Parveen, Syed Farman Ahmad Naqvi(senior Adv.)
Counsel for Respondent(s)	: A.G.A.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

This criminal appeal No. 1140 of 1990 has been preferred by the accused-appellants against the judgment and order of conviction and sentence of the learned IXth Additional District & Sessions Judge, Allahabad dated 28.05.1990 in S.T. No. 72 of 1988 State Vs. Shaheed and others arising out of Case Crime No. 166 of 1987 under Section 302/34 I.P.C., Police Station Cantt, District Allahabad. By the impugned judgment, the learned Trial Court has found guilty to accused-appellants

2. Fact of the case as is revealed by written report Exhibit Ka-1 is that informant Shakeel Ahmad PW-1 had got ascribed written report dated 21.09.1987 Exhibit Ka-1 and lodged the same at police station Cantt on 21.09.1987. Informant Shakeel Ahmad PW-1 has stated in written report Exhibit Ka-1 that my brother Nanhey @ Abdul Rehman son of Safiur Rehman, resident of 112 A, Rajapur, Allahabad, before some years ago, had some illicit relations with Safina, sister of Shaheed, resident of Rajapur, Allahabad. Due to this reason, Shaheed Son of Naseeruddin, resident of Rajapur, Allahabad and Laddan son of Nanhu, resident of Rajapur, Rehmat resident of Dariyabad, who were relatives of Smt. Nazma, resident of Rajapur, Chunnu son of Ramjan Khan, resident of Rajapur has regarded enmity. Today, my brother and Sri Chiku @ Nandlal son of Ram Aadhar, resident of Rajapur had gone to drink tea at Rajapur tri-junction (*Tiraha*). After some delay happened, then I and my mother Smt. Kuresha went to call upon my brother. At that time it was about 8:30 pm in night. When reached near this iron door of Rehman Ali then, from this direction my brother was returning with Nandlal; that on reaching near his door, near the wall of the house of Sri Majnu, the above four persons were standing. Out of them, Shaheed had shot a fire at my brother Nanhey @ Abdul Rehman, which hit my brother Nanhey @ Abdul Rehman, due to which he injured. On making hue and cry of weep, Rehmat and Laddan have also fired and run away. We have seen this incident in the light of the tube-light and identified the accused with the help of Chiku @ Nandlal, I took my brother to Beli Hospital, Allahabad, there he died.

3. On the basis of the above written report Exhibit Ka-1, as lodged by the informant Shakeel Ahmad PW-1, an FIR Exhibit Ka-3 was registered against accused-appellant under Section 302 I.P.C., at Police

tube-light and prepared the map of site-plan. The Investigating Officer also prepared Panchayatnama of deceased Nanhey @ Abdul Rehman. The Investigating Officer also recovered a bullet from the place of occurrence where incident happened after three days of the incident on 21.09.1987 and prepared recovery memo Exhibit Ka-9. The Investigating Officer also prepared other necessary police papers and got sealed the dead body of the deceased and sent the dead body of the deceased Nanhey @ Abdul Rehman for postmortem examination. The Investigating Officer recorded the statement of prosecution witnesses of facts and other formal witnesses. After completing all the formalities and necessities of the investigation, the Investigating Officer submitted a charge-sheet Exhibit Ka-18 against accused-appellant.

4. After happening of the incident, deceased Nanhey @ Abdul Rehman was taken to T.B. Sapru Hospital by Chiku son of Ram Aadhar and Dr. Swatantra Singh, PW-2 has examined the injured Nanhey @ Abdul Rehman and prepared an injury report Exhibit Ka-2. Dr. Swatantra Singh, Medical Officer, T.B. Sapru Hospital, Allahabad PW-2 has found the following injuries on the body of the then injured Nanhey @ Abdul Rehman were found :

“(1) Firearm wound of entry left side chest $1\frac{1}{2}$ ' x $1\frac{1}{4}$ ' x depth, kept under observation margin inverted no blackening & tattooing, bleeding present.

2' above costal margin, & 6' from mid line.

(2) Firearm wound of exit-right side abdomen $\frac{1}{4}$ ' x $\frac{1}{4}$ ' x depth kept under observation margin everted, no blackening and tattooing, bleeding present. 1' below right costal margin 6' lateral to umbilicus.”

5. Dr. U.S. Sinha, PW-9, who examined and conducted the postmortem of the dead body of deceased Nanhey @ Abdul Rehman and prepared the postmortem report Exhibit Ka-20, according to postmortem

and blackening and tattooing present all around the wound. Cause of death: shock and hemorrhage due to gun shot. Cause of death, according to Dr. U.S. Sinha, PW-9, was hemorrhage and shock due to ante-mortem injuries.”

6. After charge-sheet was filed against accused-appellant by the Investigating Officer in the concerned Magistrate Court, case was committed to the Court of Sessions for trial, since the case exclusively triable by Court of Session.

7. Charge were framed against the names accused-appellant Laddan , Rehmat and Chunnu by the trial Court on 04.05.1988 under Section 302 read with Section 34 IPC. Charge was also framed against the accuse-appellant Shaheed under Section 302 IPC on 04.05.1988 but the accused persons have denied from the charge and claimed trial.

8. In support of the prosecution case, the prosecution adduced informant Shakeel Ahmad PW-1, Dr. Swatantra Singh PW-2, Nand Lal PW-3, Ram Bachan Yadav PW-4, Devmani Tripathi, PW-5, Karan Singh PW-6, Kailash Nath Katiyar PW-7, Santosh Kumar Shukla, PW-8 and Dr. U.S. Sinha, PW-9 as prosecution witnesses. Apart from the ocular evidence, prosecution has also relied on documentary evidence from Exhibit Ka-1 to Exhibit Ka-22.

9. After recording of the evidence of prosecution witnesses, accused persons were examined under Section 313 Cr.P.C., by the trial Court. In their statement under Section 313 Cr.P.C., accused persons have denied from all allegations of the prosecution. They have also stated that due to enmity, prosecution witnesses have given evidence against them. They are innocent. Accused appellant Laddan has stated in his statement under Section 313 Cr.P.C., that he has no relation with Shaheed or his family members. There were many enemies of the deceased, any one has killed him. I was implicated due to confusion in this case. The accused-

behalf of defence, documentary evidence have also been filed on the record as Exhibit Kha-1, Kha-2 and Kha-3.

10. After recording of the evidence of prosecution and defence, trial Court has heard arguments of both sides. In the light of arguments and after perusal of the evidence of prosecution and defence, learned Trial Court acquitted named accused Chunnu under Section 302 IPC read with Section 34 IPC. However, Trial Court found guilty to accused-appellant Shaheed for the alleged crime under Section 302 IPC and convicted and sentenced him for life imprisonment. The Trial Court convicted and sentenced accused-appellant Laddan and Rahmat under Section 302 IPC read with Section 34 IPC for life imprisonment. Thus, aggrieved by the above judgment and order of conviction and sentence dated 28.05.1990, accused-appellants Shaheed, Laddan and Rahmat have approached this Court by preferring this Criminal Appeal.

11. During the pendency of this criminal appeal, accused-appellant Shaheed and Rahmat have died. Due to this reason, appeal was abated against these accused-appellants Shaheed and Rahmat by order of this Court dated 6th November, 2025.

12. Thus, in the present criminal appeal, we are only adjudicating in respect of surviving accused-appellant No.2 Laddan.

13. We have heard learned counsel for the surviving accused-appellant Laddan and learned AGA on behalf of the State-respondents. We have gone through the whole evidence as available on records and we have also perused the finding and reasoning of the learned trial Court in this regard.

14. Learned counsel for the surviving accused-appellant No.2 Laddan has submitted that accused-appellant Laddan has been falsely implicated in this case. Due to *Mohalla* enmity, he was implicated on the ground of

only one bullet was found by the Investigating Officer from the place of occurrence. No pellets, ticklis were recovered from the place of occurrence by Investigating Officer. It is also submitted that Investigating Officer could not recover *Tamancha*/pistol from the possession of Laddan, thus there is no evidence against surviving accused-appellant Laddan and that he also fired a shot to threaten the informant and other prosecution witnesses. However, without considering and keeping in mind this fact, the learned Trial Court without any evidence against accused-appellant Laddan has convicted with the aid of Section 34 IPC for the commission of the crime. No person can be convicted with the aid of Section 34 IPC without pre-plan, pre-concert with other accused persons. There is no any pre-meditation, preplanning and pre-concert of the surviving accused-appellant Laddan with deceased accused-appellant Shaheed in the commission of the crime, but the Trial Court without any evidence has also convicted and sentenced the surviving accused-appellant Laddan with the aid of Section 34 IPC, which is against the settled principles of law. There is no cogent and reliable evidence against the surviving accused-appellant Laddan that he was present at the place of occurrence, therefore, the surviving accused-appellant Laddan is innocent and is falsely implicated in this case. Hence, the judgment and order of conviction and sentence as passed by the Trial Court in respect of the surviving accused-appellant Laddan is without any evidence and against the settled principles of law, therefore, the judgment and order of conviction and sentence as passed by the trial Court dated 28.05.1990 is liable to be set aside in respect of accused-appellant Laddan. Hence, the criminal appeal is liable to be allowed and the judgment and order of conviction and sentence dated 28.05.1990 in respect of surviving accused-appellant Laddan is liable to

AGA has also submitted that informant Shakeel Ahmad PW-1, Nand Lal PW-3, who were the eye-witness of the case, have fully supported the prosecution case. The above eye-witnesses of the case in their evidence have stated that at the time of commission of the crime, accused-appellant Laddan was also present and he fired shot from Tamancha intimidated the prosecution witness, in this way presence of surviving accused-appellant Laddan at the place of occurrence at the time of commission of the offence is proved by the prosecution witness Shakeel Ahmad PW-1, and Nand Lal PW-3. The learned Trial Court has appreciated the evidence in proper perspective and found that presence of surviving accused-appellant Laddan is proved by the prosecution evidence at the place of occurrence. Due to this reason, trial Court has also convicted and sentenced to accused-appellant Laddan with the aid of Section 34 IPC for the commission of the alleged crime. There is no perversity and illegality in the judgment and order of conviction and sentence of the trial Court dated 28.05.1990. The finding and reasoning of the trial Court is based on cogent evidence and according to the settled principles of law. Hence, the criminal appeal, as filed by the accused-appellant is devoid of merit and liable to be rejected.

16. In the light of the arguments of learned counsel for the surviving accused-appellant Laddan and learned AGA appearing for the State respondents, from the perusal of the written report Exhibit Ka-1, we find that in written report Exhibit Ka-1 informant Shakeel Ahmad PW-2 has stated that near the wall of the house of Majnu, the above four persons were standing in which, Shaheed had fired shot at my brother Nanhey @ Abdul Rahman, which hit to Nanhey, due to which he injured. When we people made hue and cry, then Rahman and Laddan fired shot and fled away. We have seen this incident in the light of the tube-light and

members of informant have not wanted to solemnized this marriage. My brother Nanhey @ Abdul Rahman also was not desirous for this marriage. Nanhey @ Abdul Rahman had stated to his family members that he shall not solemnize this marriage. From then, accused had regarded enmity. In written report Exhibit Ka-1, motive for the commission of the crime has also been stated on the same point and in the same manner by Shakeel Ahmad PW-1. In his examination-in-chief, the informant PW-1 has also stated that when my brother Nanhey @ Abdul Rahman reached near Iron Gate of the house of Majnu, near his wall, accused- Shaheed, Laddan and Rahmat were standing. The accused Shaheed has shot from pistol at my brother Nanhey @ Abdul Rahman, that shot hit my brother Nanhey. We people make hue and cry then Laddan and Rahmat also fired shot in air. In his cross-examination, this witness has also stated that Laddan and Rahmat had no relationship with Shaheed. Laddan and Rahmat had no enmity with Nanhey @ Abdul Rahman. Chunnu Khan had many enmities with Nanhey. Total three fires of the gunshot were made at the place of occurrence. Shahkeel had fired one shot, Rahmat and Laddan had fired one-one shot, but the shot fired by Laddan and Rahmat has not hit to any one.

17. Next eye-witness of the prosecution is Nand Lal PW-3, who supported the prosecution story, has also stated in his examination-in-chief that there I have saw that behind the wall of Majnu, Shaheed, Laddan and Rahmat and Chunnu were standing. Shaheed had shot a gunshot at Nanhey @ Abdul Rahman; I have made a hue and cry then upon this Chunnu Khan exhorted to kill, so that could not escape and go. Upon this Laddan and Rahmat by firing, went towards triangle. That people were firing from pistol. During cross-examination, Nand Lal PW-3 has stated that there was no pellets, ticklis, empty cartridges at the

between them. Nanhey has refused to marry. This thing, I have heard from the people of the locality and from Nanhey.

18. Thus, from the perusal of the written report Exhibit Ka-1 and oral evidence of informant Shakeel Ahmad PW-1 and other eye-witnesses Nand Lal PW-3, it is revealed that deceased accused appellant Shaheed has fired a shot at Nanhey @ Abdul Rahman due to which Nanhey died at the hospital during his treatment. The only role against the surviving accused-appellant Laddan has been assigned according to the written report Exhibit Ka-1 and as per evidence of PW-1 and PW-3 that after accused-appellant Shaheed has fired shot at deceased Nanhey @ Abdul Rahman, informant PW-1 and PW-3 have made a hue and cry, upon this surviving accused-appellant Laddan and Rahmat have fired shot in air. These witnesses have also in their evidence stated that accused-appellant Laddan and Rahmat fired shot in air. The Investigating Officer Karan Singh PW-6, who reached at the place of occurrence on receiving information about the occurrence has recovered a bullet on 21.09.1987 and prepared recovery memo Exhibit Ka-9. The Investigating Officer PW-9 has not found any pellets, ticklis, empty cartridges from the place of occurrence. If the Investigating Officer PW-6 would have found any pellets, ticklis and empty cartridges from the place of occurrence, he would have also disclosed the same in the recovery memo. In his cross-examination, Investigating Officer, Karan Singh PW-6 has clearly stated that when I had reached at the place of occurrence then, I have not found blood stains there. There was also no empty cartridge, pellets and ticklis recovered from the place of occurrence.

19. In view of the above evidence of the Investigating Officer Karan Singh PW-6 it is clear that if in reality a fire has been made by the surviving accused-appellant Laddan at the prosecution witnesses such as

condition also bullets and pellets would have surely be found at the place of occurrence or nearby place of occurrence. However, only one bullet was found by the Investigating Officer Karan Singh PW-6 from the place of occurrence. This fact indicate that only one fire by deceased accused-appellant Shaheed was made at the deceased Nanhey @ Abdul Rahman, but no pellets, empty cartridges were found by the Investigating Officer or other prosecution witnesses from the place of occurrence. This fact also indicate that implication and involvement of the surviving accused-appellant Laddan appears to be doubtful. This fact revealed that it was an afterthought story and it is possible that on the ground of suspicion, surviving accused-appellant Laddan was purposely named in the written report Exhibit Ka-1 with other accused-appellant and a role of firing in the area was mechanically assigned against accused-appellant Laddan, so that he be also implicated in this case for the commission of the alleged crime. In view of the above facts and circumstances, we find that presence of surviving accused-appellant Laddan at the place of occurrence is highly doubtful.

20. Apart from the above facts, informant PW-1 has also stated in his cross-examination that Laddan and Rahmat had no relationship with Shaheed. Laddan and Rahmat had no enmity with Nanhey @ Abdul Rahman. In this way, in cross-examination, informant PW-1 clearly accepted this fact that Laddan had no enmity with Nanhey @ Abdul Rahman then in this condition, why surviving accused-appellant Laddan could be present at the place of occurrence and fired in the air. It appears that surviving accused-appellant Laddan has been implicated in this case on the ground of suspicion because accused-appellant Laddan often used to come at the house of Smt. Nazma in Mohalla Rajapur since the accused-appellant Laddan, a resident of Rajapur was relative of Smt.

the commission of the crime, but from the perusal of the whole prosecution evidence, we find no any cause, reason or motive that why surviving accused-appellant Laddan would be present at the place of occurrence. The accuse-appellant Laddan had no any relationship with accused-appellant Shaheed. This fact is also very material fact. Thus, from the above facts and evidence, we find that surviving accused-appellant Laddan is named in the written report Exhibit Ka-1 only on the ground of suspicion because Smt. Nazma was his relative who resides at Rajapur and surviving accused-appellant Laddan used to come to his relatives house at Rajapur. Thus, we find that implication, involvement of the surviving accuse-appellant Laddan has not been corroborated by any oral or documentary evidence and his involvement in this case for the commission of the crime are found to be suspicious and highly doubtful.

21. It is settled principles of law that suspicion, however, be grave and strong but a man cannot be held guilty for the commission of any crime only on the ground of suspicion and doubt. The Supreme Court in **Sujit Biswas Vs. State of Assam; (2013) 12 SCC 406** has held in **para-13** as under:

“13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is

evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

22. The Supreme Court recently in ***State of Odisha v. Banabihari Mohapatra And Another***, (2021) 15 SCC 268 has held:

"It is well settled by a plethora of judicial pronouncement of this Court that suspicion, however strong cannot take place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt."

23. Thus, no person can be held guilty on the ground of suspicion for commission of any crime. From the perusal of the prosecution evidence it is clear that surviving accused-appellant Laddan has been named in this case only on the ground of suspicion and doubt. Hence, finding and reasoning of the learned Trial Court is not sustainable against surviving accused-appellant Laddan. From a perusal of the finding and reasoning as recorded by the learned Trial Court, we find that Trial Court has held guilty to surviving accused-appellant Laddan with the aid of Section 34 I.P.C., but the Trial Court has not considered on this legal point that without being cogent evidence adduced by the prosecution that there was a prearranged plan and criminal act pursuant to the prearranged plan, no person can be held liable for guilty with the aid of Section 34 I.P.C. Apart from this for holding guilty to any person with the aid of Section 34 I.P.C., a definite conclusion by the Court should be given of this nature that the said person, who is accused for the commission of crime had a prior concert with one or more other persons named or unnamed for commission of the said offence. When we perused the finding and

We find that finding and reasoning as delivered by the Trial Court is without any cogent evidence and also against settled principles of law.

24. The Supreme Court in ***Krishna Govind Patil Vs. State of Maharashtra AIR 1963 SC 1413*** has also held on Section 34 IPC., in paragraph 6 thus:

“..... it is well settled that common intention within the meaning of the section implied a prearranged plan and the criminal act was done pursuant to the prearranged plan. The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so, before a court can convict a person under Section 302, read with section 34 of the Indian Penal Code, it should come to a definite conclusion that the said person, had a prior concert with one or more other persons, named or unnamed, for committing the said offence.”

25. Thus, in the light of the legal principles as laid down by the Supreme Court in ***Krishna Govind Patil (supra)***, finding and reasoning of Trial Court is also found to be without any evidence and against the settled principles of law. The Trial Court has not kept this major legal aspect in mind that for the conviction of any person, with the help of Section 34 I.P.C., there must be a prearranged plan and a prior concert with one or more other persons named or unnamed for the commission of the crime and also some criminal act must be done by the alleged person pursuant to the prearranged plan. However, we find that there is no any prearranged plan and any prior concert of surviving accused-appellant Laddan with other accused-appellant for the commission of the alleged crime. Therefore, we find that the judgment and order of conviction and sentence as passed by trial Court in respect of surviving accused-appellant Laddan is without any evidence on the record and is against the settled principles of law in this respect. Finding and

Court in respect of surviving accused-appellant Laddan is without evidence and against the settled principles of law, have not sustainable in the eyes of law. Due to above reasons, we are inclined to set aside the judgment and order of conviction and sentence as passed by the Trial Court in respect of surviving accused-appellant Laddan. Hence, the criminal appeal deserves to be allowed and the judgment and order dated 28.05.1990 of conviction and sentence as passed by the Trial Court in respect of surviving accused-appellant Laddan is liable to be set aside.

27. The Criminal Appeal is **allowed**. We **set aside** the judgment and order of conviction and sentence in respect of surviving accused-appellant Laddan dated **28.05.1990** as passed by the Trial Court in **Sessions Trial No. 72 of 1988 State Vs. Shaheed and others** arising out of Case Crime No. 166 of 1987 under Section 302 I.P.C., read with Section 34 IPC, Police Station Cantt., District Allahabad. The surviving accused-appellant Laddan is on bail. His bail bonds are cancelled and sureties are discharged from their liabilities.

28. Let this judgment and order be sent with record to the Trial Court for necessary compliance, forthwith.

(Vinai Kumar Dwivedi,J.) (J.J. Munir,J.)

July 01, 2026
NSC