



2026:AHC:154660-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1409 of 1990

Babu Ram Pradhan And
Ors.

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s)	: Rakesh Kumar Rathore, Ravi Prakash Srivastava, Sanjeev Kumar, Shivajee Srivastava, Sukhvir Singh
Counsel for Respondent(s)	: A.G.A.

Court No. - 44

**HON'BLE SIDDHARTHA VARMA, J.
HON'BLE ACHAL SACHDEV, J.**

1. Heard Sri Rakesh Kumar Rathore, learned counsel appearing for the appellant and Sri Ajay Sharma, learned A.G.A. for the State.

2. The instant Criminal Appeal has been filed against the judgement and order dated 17.07.1990 passed by the IVth Additional District & Sessions Judge, Etah, convicting the appellants Babu Ram, Veer Sahai and Gulab Chandra under Section 302 read with section 34 of the Indian

3. When on 19.03.1984 the first informant Chiraunji Lal was informed by one Dulare that his son Khet Pal had been murdered, the first information report (*hereinafter referred to as "F.I.R."*) was lodged. Initially probably when it was not being lodged, the help of the S.S.P. was taken and ultimately on 21.03.1984 the F.I.R. was lodged. As per the F.I.R., on the 18th of March, 1984 at around 05:00 – 06:00 PM Babu Ram Pradhan, Veer Sahai and Gulab Chand, the three accused, had come to the house of the first informant and had taken Khet Pal, the son of the first informant, to another village for a Holi Milan. The three accused who had taken the deceased along with them had assured the first informant that they would be bringing back the son of the first informant by the fall of night. However, when till 09:00 AM in the morning on the 18.03.1984, the son did not come back and an information came from Dulare son of Chaubey that Khet Pal had been murdered by Babu Ram Pradhan, Veer Sahai and Gulab Chand near a tubewell in Rasakpur then the F.I.R. was lodged. Further, in the F.I.R. it was mentioned that in the hand of Babu Ram Pradhan there was a country made pistol, in the hand of Gulab Chand there was a *bhala* and Veer Sahai was having a *lathi*. When the incident had taken place, Dulare, the person who had come to inform the first informant about the incident, raised a hue and cry then witnesses i.e. Ram Das, Ram Dayal and Hublal came on the spot and

F.I.R. further it was mentioned that the three eye-witnesses, Ram Das, Ram Dayal and Hublal, were belonging to the village Kulla Habibpur. The lodging of the F.I.R. on the 21st of March, 1984 had resulted in some investigation. However, even before the F.I.R. was lodged on 19.03.1984 the panchayatnama was already prepared. The panchayatnama had stated that along with the other documents, F.I.R. was also forwarded on the 19th of March, 1984. Thereafter, the postmortem was conducted on the 19th of March, 1984 at 04:45 PM and the opinion of the doctor was that the death had occurred due to the injury no. 1. The injuries which were found on the body of the deceased, as per the postmortem report, were as follows:

(1) Lacerated wound 3 cm x 1 cm x bone deep on frontal region of head just to the right of midline placeo on exploration haematoma & ecthymosis under the injury. Frontal bone fractured. Membrane and brain congested.

(2) Abraded contusion 4 cm x 1 1/2 on left side upper part (syinal cord) - not exposed.

(3) Contusion 5 cm x 2 cm on top of left shoulder.

(4) Contusion 5 cm x 2 cm on top of right shoulder.

(5) Multiple abraded contusions overlapping and criss-crossing each other on whole of right side chest. On exploration, 4th, 5th, 6th and 7th ribs fractured underneath.

(6) Abraded contusion 6 cm x 2 cm on back and middle part of left forearm.

(7) Lacerated wound 4 cm x 1 cm muscle deep on inner aspect

4. Thereafter, the police submitted its report and the court thereafter took cognizance and framed charges against the three accused persons namely Babu Ram Pradhan, Veer Sahai and Gulab Chand under Section 302 read with section 34 of I.P.C. From the side of the prosecution as many as four prosecution witnesses appeared.

5. PW-1, Hublal, was the person who was allegedly there at the place of incident. The F.I.R. had also stated that Hublal was there at the place of incident. PW-1 had appeared before the court and it was noticed by the court that he was hard of hearing. He had stated that on the relevant date at around 12:00 in the mid night, he was watering the fields of Siya Ram. Along with him Dulare, Ram Das and Ram Dayal were also there. They had heard 3 to 4 rounds of firing shots and thereafter had rushed towards the place from where the sound was emanating. He had stated in his examination-in-chief that he had seen himself that Khet Pal, deceased, was being beaten by Babu Ram Pradhan, Veer Sahai and Gulab Chand. Babu Ram Pradhan had a country made pistol with him, Gulab Chand had a *bhala* and Veer Sahai had a *lathi*. Upon seeing that the four persons were nearing them, the accused had run away. The deceased was lying in an injured state. PW-1 had stated that he had recognized the accused persons in the moon light because the three accused were known to him from before. He had also stated that Khet

belonging to Nagla Shri Kishan which was two kilometers away from his village.

In his cross-examination, he had stated that Khet Pal had absolutely no relatives in the village where he died. He had also admitted that he had no idea if any case of theft etc. was going on against Khet Pal. About the rivalry with regard to the pradhan elections between Babu Ram Pradhan and Subedar, he had stated that he had no idea. He had also denied that any case with regard to theft etc. was going on vis-a-vis he himself and Khet Pal. He had also denied the suggestion that the PW-1 was involved in some case with the accused persons. He had reiterated the reasons for his being there in the agricultural fields as he was watering the fields of Siya Ram. He had stated that he had seen the incident from 15-20 steps away and he had also stated that while Gulab Chand was hitting the deceased with the *ballam/bhala*, he was using it as a *lathi*. None of the accused had fired on the witnesses. He had also not noticed the cloth which the deceased was wearing. He had denied the fact that Khet Pal had come to steal some vehicle in the village and the villagers had killed him. He had specifically denied that he had given any information to the family members of Khet Pal. Despite the incident, he had stated that he had continued with his work of irrigating the fields.

6. PW-2 was the other witness Ram Das who claimed himself to be

coming and in the moon light he had seen the three accused beating the deceased. He had denied any enmity between the accused persons and he himself. He had also stated that he had seen the incident but had not cared to inform the family of the deceased. He had categorically stated that the accused had not fired upon them. As the PW-1 had stated, he had also stated that he had not noticed the clothes which the deceased was wearing.

7. PW-3 was the Sub-Inspector G.S. Rawat. He had proved the panchayatnama i.e. Exhibit – 2 and the accompanying documents i.e. Exhibits 3 to 7. He had sealed the dead-body and sent it for post-mortem.

8. PW-4 was the Head Constable Laxman Singh, who had proven the chik.

9. Thereafter, upon the completion of the statements of the prosecution witnesses, the accused persons got their statements recorded under Section 313 of Cr.P.C. Upon the judgment and order dated 17.07.1990 being passed by the IVth Additional District & Sessions Judge, Etah, wherein the three accused persons were convicted for the offence under Section 302 read with section 34 of I.P.C., the instant Appeal was filed.

10. During the pendency of the Appeal, the appellant no. 1, Babu Ram Pradhan, and the appellant no. 2, Veer Sahai, died and the Appeal,

(i) Learned counsel for the appellant has stated that the F.I.R. was not proved by the first informant and the post-mortem was also not proved by the doctor who had conducted the post-mortem. Learned counsel for the appellant has also submitted that the F.I.R. was in fact lodged on the 21st of March, 1984 but the panchayatnama which was prepared on 19th of March, 1984 when was sent with it the dead-body for post-mortem on 19th of March, 1984, strangely enough it was accompanied by the F.I.R. dated 21.3.1984 which is annexed to the panchayatnama.

(ii) Learned counsel for the appellant states that even though the tehrir, post-mortem report and the site plan were admitted under Section 294 of Cr.P.C. but when the accused persons got their statements recorded, they had denied about the admission in their statements under Section 313 of Cr.P.C. He, therefore, submits that any admission made under Section 294 of Cr.P.C. of the tehrir, post-mortem report and the site plan would be of no consequences whatsoever.

(iii) Learned counsel for the appellant has further submitted that if the case of the prosecution is seen, then it would become evident that Babu Ram Pradhan had a country made pistol and he had also as per the PW-1 and PW-2 fired 3-4 shots but not a single

a colour to the incident, learned counsel for the appellant states that the PW-2 in his statement before the court had stated that the *bhala* was used as a *lathi*. Almost all the injuries were of laceration and contusion. Also there were abrasion wounds.

(iv) Learned counsel for the appellant, therefore, submits that only to create a case against the accused persons, the PW-1 and the PW-2 had appeared in the witness box. The other two eye-witnesses did not care to appear in the witness box. What is more, even the first informant, Chiraunji Lal, never appeared in the witness box.

(v) Learned counsel for the appellant has also submitted that when the accused persons had seen the four persons watching them and following them then they had not tried to nip the evidence in the bud by killing them. They had not fired even a single shot on the eye-witnesses who were only 15-20 steps away from the place of incident.

12. Sri Ajay Sharma, learned A.G.A. has opposed the Appeal and has submitted that the accounts of the two witnesses could not be disbelieved. He states that it mattered little if Ram Dayal, Dulare and Chiraunji Lal did not appear in the witness box. He submits that when under Section 294 of Cr.P.C. the documents were admitted then it

13. Having heard the learned counsel for the parties, we are definitely of the view that if the incident, as had been reported in the F.I.R., if is analyzed then we find that the accused Babu Ram Pradhan had allegedly fired 3-4 shots but not a single empty cartridge was found. Still further, we find that none of the injuries corresponded to the weapons which were assigned to Babu Ram and Gulab Chand i.e. a country made pistol and a *bhala*. Still further we are of the view that the F.I.R. when was lodged on 21.03.1984, how the F.I.R. itself accompanied the panchayatnama which was conducted on 19.03.1984. What is more, the F.I.R., the post-mortem report and the site plan had not been proved by the relevant persons but they were only admitted by the defence counsel under Section 294 of Cr.P.C., but when the accused persons had come before the Court and had got their statements recorded, then they had denied the documents which had allegedly been admitted by the counsel. We are also of the view that when the witnesses had stated that they were only 15-20 steps away from the place of incident and they had seen the accused persons and also the accused persons had seen them, then there ought to have been some reaction from the side of the accused persons and they should have tried to ward off the witnesses who were coming near them.

14. Thus, for all the reasons stated above, we are definitely of the

appellant no. 3, Gulab Chandra, be acquitted from all the charges for which he was tried.

15. The Appeal vis-a-vis the appellant no.3, Gulab Chandra, is **allowed**. The judgment and order dated 17.07.1990 passed by the VIth Additional District & Sessions Judge, Etah, in Session Trial No. 47 of 1986 is hereby set-aside vis-a-vis the appellant no.3.

16. If the appellant is on bail, he need not surrender and his sureties and bail bonds be discharged. The trial court record be sent back to the concerned trial court.

(Achal Sachdev,J.) (Siddhartha Varma,J.)

July 22, 2026

M.S. Ansari