



2026:AHC:165930-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1106 of 1989

A.F.R.

Judgment reserved on 29.07.2026

Judgment delivered on 07.08.2026

Anil Kumar and Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Krishna Copoor, Nrapendra Kumar
Chaturvedi, Rahul Misra, Salilendu
Kumar Upadhyay

Counsel for Respondent(s) : A.G.A.

Court No. - 42

HON'BLE ATUL SREEDHARAN, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Per : Jai Krishna Upadhyay, J.)

1. The validity and sustainability of the judgment and order dated 9.5.1989 passed by the Vth Additional Sessions Judge, Agra in Sessions Trial No. 232 of 1987 under Section 302 read with Section 34 IPC, Police Station Firozabad (North), District Agra has been challenged by way of instant criminal appeal whereby the appellants Anil Kumar Pachauri @ Guddu and Rama Kant were convicted and sentenced to undergo imprisonment for life.

2. At the outset, it may be mentioned here that appellant no. 1 – Anil Kumar Pachauri @ Guddu has died and vide order dated 23.3.2026 appeal against him has been abated and only appellant no.2- **Rama Kant** is surviving.

3. Brief facts of the case, as culled out from the record, are that a written report was submitted by the complainant, Ram Noth, at Police Station,

alarm. As nearby witnesses rushed to help, Ramakant caught hold of Neksey and Anil Pachauri delivered multiple fatal knife blows to his chest. The assailants immediately fled towards the post office. Ram Nath took him to the hospital in a rickshaw but Neksey succumbed to his injuries on the way to the hospital.

4. On the basis of written report, *chik* F.I.R. was lodged on the same day at 9.35 p.m. for the offence under Section 302 IPC and G.D. report was prepared. Investigation in the matter started. The Investigating Officer visited the place of occurrence, prepared site plan and sketch of the dead body of the deceased to mark the injuries. Inquest report was prepared by S.I. Sobran Singh. The Investigating Officer prepared all other papers and after completing necessary formalities submitted charge sheet in the matter.

5. Dr. P.K. Jain conducted the postmortem of the deceased on 12.11.1983 at 11.30 a.m. He found three incised wounds on the body of the deceased. The cause of the death was shock and hemorrhage owing to ante mortem injuries.

6. The accused persons appeared and charges under Sections 302/34 IPC were framed against them. They denied the charges, pleaded not guilty and claimed their trial.

7. Trial proceeded and in order to prove its case on behalf of the prosecution eight witnesses, namely, Ram Gopal (P.W.-1), Ram Nath (P.W.-2), Praveen Kumar (P.W.-3), Dr. P.K. Jain (P.W.-4), S.I. Nand Lal Dixit (P.W.-5), Constable Kamal Singh (P.W.-6), S.I. Sobran Singh (PW-7) and Ram Prakash (P.W.-8) were examined.

8. In documentary evidence, documents / papers exhibited as Ext. Ka.-1 to Ext. ka-15 respectively have been proved.

9. **PW-1** - Ram Gopal is the real brother of the deceased. He has stated that on 11.11.1983 at about 8.00 – 8.30 p.m. his younger brother Neksey alias Vinod (deceased) and Kishan had come to Kotla Chungi to give him food. Thereafter, both of them returned from there. He further stated that a boy from the locality told him that his brother had been murdered, and he did not know his name. He did not even try to know his name. He has supported the F.I.R. version.

and said that they were sparing him because of Diwali, but someday they would kill him and would not spare him. He did not consider it necessary to report this to the police as the matter was amicably settled by them. On 11.11.1983 at about 8.00 p.m. he and Praveen were at Mohan panwala's shop which was on Kotla road in Gandhinagar locality. They both were eating paan. Neksey and Bal Kishan were returning after delivering meal to Ram Gopal. As soon as Neksey alias Vinod came in front of the street of Gandhinagar, Ramakant and Anil Kumar caught him and dragged him into the street of Gandhinagar. When his brother shouted, he and Praveen ran towards him. They saw that Ramakant had caught Vinod alias Neksey and Anil stabbed him. He stabbed three times. Upon being stabbed, Neksey walked two-four steps and fell down. There was electric light at the place of the incident and the electric bulb was also burning on the poles. Both the accused ran towards the post office after killing his brother. He further stated that he took his brother in a rickshaw and went to the hospital, but he died on the way. He also states that he got the report of this incident written by dictating it to Padam Chand Jain, he (informant) signed it and Padam Chand Jain read out the report to him and thereafter it was given at the Police Station Firozabad North. He also stated that at the time when the quarrel between the accused and deceased Neksey took place behind the calendar, Praveen and he were present there. He then added that his brother Ramgopal was also present at that time. They had settled the matter. He further stated that Ramakant caught Neksey's hands from behind. He also stated that Ramakant did not catch Neksey at the same place where Anil stabbed him. Neksey was caught in front of the street of Gandhi Nagar on the road. The place where Neksey fell was right in front of Babulal's shop. He further stated that the place where he was stabbed was 6-7 steps away from Mohan Lal pan wala's shop. He also states that at the time of the quarrel, all the shops were closed and only Mohan Lal pan wala's shop was open. By the time of the quarrel, Praveen Kumar and he had not been able to buy paan from Mohan Lal and they had asked to give paan, and just then this incident happened. Praveen Kumar was coming towards Kotla locality, he asked him to eat paan, so he came to the paan shop. He also states that at the time of the quarrel, two-four people were standing at the paan shop. He further states that he and Padam Chand Jain went to the police station together, and no one

to reach. Blood had fallen in the rickshaw. Blood had also fallen where he was stabbed, and blood also fell where Neksey fell. By the time they reached near their brother, the accused had fled away. They did not try to save Neksey from the accused persons because they had already fled. Both the accused ran towards the post office after killing his brother.

11. PW-3 - Praveen Kumar stated that at around 8.00 and 8 1/2 p.m. he was taking paan at Mohan Lal pan wala's shop alongwith Ram Nath. While he was going to give food to his brother-in-law, who lived in Mohalla Kotla at Firozabad, Neksey and Kishan were coming from the side of Kotla Chungi and when both these people came to the street near Gandhi Nagar, which was 8-10 steps ahead of the pan wala's shop, Ramakant caught Neksey and Anil Kumar stabbed him two-three times and the knife hit Neksey's chest. When Neksey shouted, Ram Nath and he ran to save him. The accused left him and fled towards Kotla. He also stated that after being injured, Neksey ran about eight to seven steps and fell down. Ramnath took him to the hospital and later it was found that Neksey had died. There was electric light at the place of the incident, tube was burning at the government bhang shop and also at the paan shop. Ramakant first caught the collar of Neksey. He kept holding him until he was stabbed. The paan shop was closed at the time of the incident. There was no one else at the paan shop except him and Ramnath, and after the incident about 20-30 people had gathered, whose names he did not know. He and Ramnath took Neksey in a rickshaw. He also states that no rickshaw or rickshaw puller was present there at the time of the incident. Neksey got injured and fell down, everything happened in about a minute, and it was wrong to say that he was dragged from the rickshaw. The accused had a shop of copies and books.

12. PW-4 - Dr. P.K. Jain has stated that on 12.11.1983, he was posted as Medical Officer at S.M.N. Hospital Firozabad. On that day at 11.30 a.m. he had conducted the post-mortem of the dead body of Neksey @ Vinod. During post mortem, three incised wounds were found on his body. On internal examination it was found that the membrane covering the lungs in the pleura was torn, the membrane covering the heart was also torn, and the heart was also torn. The peritoneum membrane was present inside the upper part of the epigastrium. The death of the deceased was due to bleeding and

started the investigation. He reached the place of incident, where the statement of the complainant was recorded. After that, S.I Sobaran Singh was left on the spot to take the blood-stained and plain soil into his possession and he was also instructed to go to the hospital and prepare the inquest report (panchayatnama) of the deceased. After completing the investigation, he filed a charge sheet against the accused.

He also stated that when he reached the spot for the first time that night at 10.00 p.m. all the nearby shops were closed. In the inquest report, the date and time of the F.I.R were marked in the first column but there was overwriting on the date.

14. PW-6 - Kamal Singh was posted as Head Moharrir at Police Station Firozabad North on the date of incident. He proved the chick FIR and other papers and relevant formalities relating to the case.

15. PW-7- S.I. Sobaran Singh stated that on 11.11.1983, he was posted as a Sub-Inspector at Police Station Firozabad North. On that day, he went to the scene of the incident in this case with Inspector N.L. Dixit. As per the instructions of N.L. Dixit, he collected blood-stained soil and plain soil from the spot, sealed them in separate boxes. He stated that blood was lying on the road. He prepared the memo for taking the blood-stained and plain soil. He further stated that on 12.11.1983, he prepared the inquest report of the deceased. He stated that by place of incident he meant the place where blood was lying, and the blood was lying in front of Babbu Ram's shop.

16. PW-8 - Ram Prakash was posted as a constable at Police Station Firozabad North. He had carried the dead body of the deceased for post mortem.

17. After closure of prosecution evidence, statement of accused appellants under Section 313 CrPC was recorded in which they denied the prosecution case and stated that they have been falsely implicated.

18. In defence evidence, D.W.-1 Mohan Lal has been produced.

19. D.W. 1 – Mohan Lal has stated that no such incident of murder had happened in front of his shop on 11.11.1983 at 8.00 or 8.30 p.m. He had also

20. The learned trial court upon scrutiny of the evidence on record concluded that the case of prosecution was proved beyond reasonable doubt against the accused appellants and recorded conviction and sentenced them, as mentioned here-in-above.

21. We have heard Shri Rahul Mishra and Shri Vineet Kumar Dubey, learned counsel for appellants and Shri Deepakh Kapoor, learned A.G.A. appearing for the State at length.

22. As mentioned above, only appellant No.2- **Rama Kant** is surviving in this case and the appeal against the appellant No.1 - Anil Kumar Pachauri @ Guddu has been abated.

23. Castigating impugned judgment and order, learned counsel appearing for the surviving appellant submitted that the appellant Rama Kant is innocent and he has been falsely implicated in this case. He further submits that the FIR is ante-timed and is not a genuine document. It is also submitted that the surviving appellant has been assigned only role of catching hold. It has also been submitted that PW-2 Ram Nath – informant and PW-3 Praveen Kumar were not present on the spot at the time of the incident and they are not reliable witnesses. It has also been submitted that they are interested and related witnesses. Despite availability of independent witnesses at the scene of crime, none has been produced by the prosecution. There are material contradictions in the testimony of PW-2 and PW-3. He further submits that the medical evidence does not support the prosecution version. Nothing has been recovered from the possession of the appellant or on his pointing out. Findings recorded by the trial court in the impugned judgment and order are not based on correct appreciation of facts, evidence and law and the impugned judgment and order suffers from infirmity and illegality warranting interference by this Court.

24. In reply, learned AGA submitted that prosecution was able to prove its case beyond reasonable doubt. Medical evidence fully supports the oral version. F.I.R. is a genuine document. PW-2 and PW-3 were present on the spot at the time of occurrence and their presence at the place of occurrence cannot be doubted. Laches on the part of Investigating Officer are also not fatal to the prosecution case. Findings recorded by the learned trial court in

26. In the present matter incident is said to have taken place on 11.11.1983 at 8.30 p.m. and FIR was lodged on the same day at 9.35 p.m. by PW-2 (Ram Nath). From a perusal of the explanation given by the informant as to how after the incident he managed to lodge the FIR, it cannot be said that the FIR is an ante-timed document. It was lodged very promptly.

27. As regards the presence of PW-2 and PW-3 on the scene of crime at the time of incident is concerned, it is settled and consistently reiterated principle of criminal jurisprudence that before an eyewitness can be safely relied upon by the Court, he must establish beyond reasonable doubt his presence on the spot at the time of the occurrence through some strong and confidence inspiring evidence. Although ocular evidence constitutes direct evidence, its probative value is wholly dependent upon the credibility of the witness, which is inseparably linked with proof of his presence at the scene of occurrence. Where the presence of an eyewitness becomes doubtful, his entire testimony is rendered suspect and unsafe for reliance. The unnatural conduct of the alleged eyewitnesses is yet another strong circumstance which negates their presence at the place of occurrence. In the case in hand, the prosecution's narrative hinges entirely on the assertion that PW-2 and PW-3 were present at the scene of the crime. However, a close scrutiny of their cross-examinations reveals material contradictions that strike the root of their reliability. PW-2 claimed that at the time of the incident, he and PW-3 were present at Mohan panwala's shop on Kotla road. He further stated that by the time of the quarrel, they had asked the shopkeeper for paan but had not yet been able to buy it whereas in his examination-in-chief he has stated that they were eating paan and only Mohan Lal's shop was open while all other shops were closed. Conversely, PW-3 categorically admitted during his cross-examination that the paan shop was closed at the time of the incident. This contradiction regarding the operational status of the very shop where they were allegedly standing casts a heavy shadow of doubt on their presence there. Moreover, the testimony regarding the arrival of the deceased at the scene of crime is riddled with irreconcilable flaws. PW-3 first asserted that no rickshaw or rickshaw puller was present at the scene of the incident but in the very next breath, he stated that the deceased, Neksey was coming in a rickshaw. The conduct of both PW-2 and PW-3 during and immediately succeeding the assault is inherently unnatural and runs contrary

save their kin, or pursue the attackers is highly abnormal conduct. The post-incident conduct of PW-2 further deepens the suspicion of a fabricated case. PW-2 stated that after taking the deceased to the hospital, where he was declared dead, he went alone to the house of Padam Chand Jain to get the FIR dictated. Startlingly, PW-2 deposed in his cross-examination that he did not remember whether he signed the FIR or put his thumb impression on it. He also presented shifting versions of his journey to the police station, first stating he and Padam Chand went by rickshaw and thereafter stating on foot. Further, PW-2 alleged that there was ample electric light at the place of the incident and PW-3 supports it in the same tone but this claim is completely denied by DW-1, Mohan Lal, the very shopkeeper in front of whose paan shop the incident happened and the eyewitnesses were supposedly standing. He deposed that there was absolutely no electricity on that night from 6:00 PM until 9:00 or 9:30 PM. PW-3 also stated that at the time of the occurrence, the paan shop was closed whereas PW-2 states that they had ordered for paan to the shopkeeper Mohan Lal. Therefore, failure to offer a satisfactory explanation gives rise to presumption that PW-2 and PW-3 were not present at the scene of crime at the time of the incident.

28. The defence has heavily relied upon the testimony of DW-1, Mohan Lal. He unequivocally deposed that no such incident of murder had happened in front of his shop on 11.11.1983 at 8.00 or 8.30 p.m. Striking at the very root of the prosecution's claim regarding illumination, he categorically stated that from 6.00 in the evening to 9.00 or 9.30 in the night, there was no electricity on that night. This completely falsifies the assertions made by PW-2 and PW-3 regarding the burning of electric tubes and bulbs. Furthermore, DW-1 affirmed that his paan shop was opened till 10.00 p.m. It is a well-entrenched principle that the testimony of a defence witness must be evaluated on the same anvil as that of a prosecution witness. In **Munshi Prasad v. State of Bihar, (2002) 1 SCC 351**, the Hon'ble Supreme Court categorically held that the evidence tendered by defence witnesses is entitled to equal treatment and respect, and it cannot be brushed aside merely because they are examined on behalf of the accused. Defence witness cannot always be termed as tainted or biased, and their deposition must be weighed on the standard touchstone of reliability at par with the prosecution's own witnesses. The Apex Court further crystallized this position in the case of

unblemished and credible. His specific, unrebutted assertion regarding the widespread power outage and the absence of any occurrence of incident in front of his operational paan shop inflicts a fatal blow to the case of the prosecution.

29. As far as the submission regarding relativeness and closeness of the witnesses of fact is concerned, the admitted position of law is that testimony of eye-witnesses, which is otherwise convincing and consistent, cannot be discarded simply on the ground that deceased was related to eye-witnesses but the same is subject to scrutiny, and must be corroborated by other evidence to ensure its reliability. In the instant case, from a perusal of the record it is evident that PW-2 is the brother of the deceased and PW-3 is his friend and is closely related to him. There exist major contradictions in their testimony on the same alleged issues/topics i.e. presence of rikshaw, operational status of paan shop etc.. The fact that PW-3, after having seen the brutal murder of his close friend, returned to his ordinary course of life and went to deliver food to his brother-in-law and he did not even bother to accompany the deceased and his brother to hospital and police station also shows his unnatural conduct. Further, a quarrel had taken place on 4.11.1983 on the day of Diwali between the accused persons and the deceased, which was compromised then and there by the family members of both sides and no report about the same was lodged. Thus, on the basis of close scrutiny, it appears that PW-2 and PW-3 have named the accused persons in this matter on account of relativeness, closeness and enmity, as enmity is a double edged weapon, the possibility of false implication of the accused persons in this case can not be ruled out.

30. Hence, on close scrutiny of entire evidence, in our view, though deceased was done to death and this fact finds support with the medical evidence but by someone else and not by the surviving accused appellant. Presence of the witnesses of fact i.e. PW-2 and PW-3 at the place of occurrence at the time of the incident is doubtful, they have deposed against the accused persons on account of relativeness and closeness and the accused appellants have been implicated in this case due to existing animosity. DW-1 has stated that murder of deceased was not committed before his paan shop. Findings of the trial court regarding guilt of the

the surviving accused appellant on the ground of rule of caution.

31. In view of the above discussions, we are of the opinion that the prosecution has failed to establish the guilt of the surviving accused appellant for the offence punishable under Section 302 read with Section 34 IPC beyond reasonable doubt and to the satisfaction of the judicial conscience of the Court. So, the impugned judgment and order of conviction and sentence dated 9.5.1989, which has been sought to be assailed, call for and deserves, interference. The criminal appeal is liable to be allowed.

32. Accordingly, criminal appeal is **allowed** and the conviction and sentence imposed upon the surviving accused appellant – Rama Kant for the offence punishable under Section 302 read with Section 34 IPC is set-aside as the accused appellant found not guilty for the aforesaid offences. He is acquitted of all the charges framed against him. Accused appellant is on bail, he need not surrender. His bail bonds are cancelled and sureties are discharged.

33. Copy of this judgment alongwith trial court record be sent forthwith to the trial court for compliance.

August 7, 2026

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(Jai Krishna Upadhyay,J.) (Atul Sreedharan,J.)