



2026:AHC:19628-DB

Order Reserved On:-05.01.2026
Order Delivered On:-29.01.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 213 of 1991

Nathu Singh And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	, Vijaya Shankar Shukla
Counsel for Respondent(s)	:	

In Chamber

HON'BLE SIDDHARTH, J.
HON'BLE SANJIV KUMAR, J.

(Delivered by Hon'ble Siddharth,J.)

1. Heard Sri Vijaya Shankar Shukla, learned counsel for the appellants; Sri Prem Shankar Prasad, learned AGA for State-respondents and perused the trial court record.
2. This criminal appeal has been filed against the judgment and order dated 06.02.1991 passed by Additional Sessions Judge, Budaun, in Sessions Trial No. 197 of 1986, (State Vs Nathu Singh and others), convicting the appellants under sections 302 read with section 34 IPC and sentencing them to under go R.I. for life and a fine of Rs. 5,000/- in default of payment of fine of Rs. 5,000/- each of the appellants shall undergo further R.I. for a period of one year .
3. On 01-06-1985 at about 9-05 P.M. in the night,. Rajoo, a wardboy of District Hospital Budaun, presented a memo at P.S.Kotwali, Budaun, informing that one Murli Singh injured was brought by Dariao Singh and Nawat of Village Alipura, P.S.Alapur, at 07-50 P.M. in the O.P.D. Emergency who expired at 08:00 P.M. and his dead body is kept in the mortuary. An entry about this information was made at G.D. No.62 time 21-05 dated 1-6-85 P.S.Kotwali, Budaun, and it was further written in the G.D. that the ward-boy was sent back to the District, Hospital Budaun and the copy of memo shall be given to the Sub Inspector for preparing inquest report.
4. Thereafter, Smt. Narayan Devi wife of deceased Murli Singh lodged a written report at Police Station Kotwali, Budaun, to the effect that on 01-06-1985 at about twelve noon at village Alipura, accused Natthu Singh, Vedpal Singh and Brijraj Singh committed *marpit* with her husband, Murli Singh and nephew, Narendra Singh and Umendra Singh in the presence of witnesses, Chokhey and Khushi Ram. At the same time, the police of P.S. Alapur arrived at the spot and arrested all the three accused

persons as well as Umenira Singh and Narendra Singh. The rest of the villagers fled away from the spot. Her husband received injuries on his head and other places. when the police went away from the village, she with the help of Nauwat Ram, Indar Pal Singh and Deriso brought deceased-injured, Murli Singh, to the District Hospital Budaun. Her husband succumbed to the injuries at the Hospital in the night. She remained with the dead body during night time and in the morning, when other persons of her village arrived, she left them at the with dead body and came to the Police Station to lodge the report.

5. A case under section 302 of the I.P.C. was registered against the accused persons at Police Station Kotwali Budaun, and S.I., Sri Naipal Singh was entrusted with the task of preparing the inquest report of deceased Murli Singh alongwith other police personnel. Sri Naipal Singh S.I. prepared the inquest report. The dead body of the deceased was handed over to the Medical Officer for postmortem examination. The papers of the case were sent to P.S. Alapur. Sri V.P.Singh, S.H.O., Alapur, investigated the case. He recorded the statements of witnesses, went to the spot and prepared site plan of the place of occurrence. After completion of the investigation, chargesheet against the accused persons was submitted.

6. All the three accused persons were charged under section 302 read with section 34 of the I.P.C., to which they pleaded not guilty and claimed to be tried.

7. Accused, Brijraj Singh, died during the pendency of the trial and the case against him was abated on 04-02-1991.

8. The prosecution in support of its case examined, Smt. Narayan Devi, wife of deceased Murli Singh, as P.W.1 who is the informant and also the eye-witness of the occurrence. She has stated that accused, Nathu Singh is the elder cousin of her deceased husband and accused, Ved Pal, is the son of Nathu Singh. She has further stated that Brijraj is the sister's son of accused, Nathu Singh, who lived with him since childhood. According to her, the quarrel between her husband deceased, Murli Singh, Narendra and Umendra and the accused persons arose when the accused persons were putting clay on their roof and were passing over the roof of her house. The roof of her house was weak, and therefore, her husband, Murli Singh, directed them not to pass with clay from his roof, whereupon the accused persons started abusing her husband and insisted that they will take the clay through the roof of Murli Singh. On hearing the noise, she came at the doorstep and witnesses Chokhey, Khushi Ram, Narendra Singh and Umendra Singh also arrived at the spot, i.e., in front of her door in the lane. All the three accused persons also arrived at the same place. All of them were armed with *lathis* and started beating her husband, Murli Singh. The *lathi* of accused, Nathu Singh, struck on the head of her husband. He rushed inside his house after receiving the injury. The accused persons, there upon, also beat Umendra and Narendra with *lathis*. The accused persons withdrew on being intercepted by the witnesses.

9. The police also arrived at the spot and arrested the accused persons and Umendra and Narendra and went to Police Station at Alapur. She alongwith her husband came to District Hospital Budaun where her husband succumbed to injuries at about 8-00 P.M. She also proved the written report Ext-Ka-1. During her cross-examination, she stated that she is twenty four years old. She was preparing food when the incident took place but on hearing the noise she came out at her doorstep and saw Murli Singh receiving injuries. Her husband Murli Singh died before he was treated at the hospital. She has further explained that she did not go to Police Station Alapur as the condition of her husband was very serious. His statement was recorded by police on third day of incident. She has admitted that Gulab Singh is the husband of her real sister. She has further clarified that only Nathu Singh's *lathi* had struck her husband while the rest of the accused persons grabbed her husband. She has denied the suggestion that she had illicit relations with her sister's husband Gulab Singh. She has further denied the suggestion that her husband had received injuries in quarrel with Gulab Singh. She also denied the suggestion that she tried to hide the incident of Murli Singh's death from Surajpal Singh and Ganga Singh and that's why she did not come to Budaun.

10. P.W.2, Chokhey Lal, has also narrated the ocular account of the incident and corroborated the prosecution version on material points. During his cross-examination he has stated that besides the *lathi* blow on Murli Singh's head, one or two *lathi* blows were also given on the back on Murli Singh. He has also admitted that litigation between him and Ram Sahai in respect of land continued from the year 1982 till 1986. Ram Sahai had also instituted a case at Jullundhar (Punjab) against him and Sobaran in which he had to file sureties. He denied the suggestion that he is famous in the village as Chokhey dacoit.

11. P.W.-3, Narendra Singh, is also the eye witness of the occurrence who has supported the prosecution version. He has stated that Smt. Narayani Devi, wife of deceased, Murli Singh, was present at the time when Maris Singh received the lathi blow. He has also stated that the police of P.S. Alapur had arrested him and Umendra along with the accused persons. He could know about the death of Murli Singh only when he was released on bail on the next day. He has further stated that he and Waendra had also received injuries by *lathi*, but he was not medically examined, although he had insisted upon the Deewanji to get himself medically examined. He has also clarified that now there is a wall between the house of Murli Singh and his house but that wall did not exist at the time of the occurrence.

12. P.W.4 Head Constable Rajpal Singh is a formal witness who has stated that Constable Narendra Pal Singh had brought the copy of chick-FIR in G.D. alongwith other papers to Police Station Alapur. He has proved the copy of G.D.report no.14 dated 02-06-1985 which has been marked as Ext-Ka2.

13. P.W.5, Dr.N.K.Maheshwari (wrongly described as Dr.M. N. Maheshwari), Medical Officer, District Hospital, Budaun, prepared the postmortem examination report at 4-30 P.M. on 02-06-85 of deceased Murli Singh. He found the following anti-mortem injury on the deadbody of deceased Murli Singh:

(1) Lacerated wound 2 cm X 0.5 cm x bone deep on the right side of the head 7 cm above the right eyebrow.

14. He also found fracture of frontal parietal bone of skull. He also found clotted blood on the right side of the brain matter. About 4 ounce water was found in the stomach. The deceased had died due to ante-mortem injury. He has proved his postmortem report Ext-Ka-3. He has also stated that the ante-mortem injury was sufficient to cause the death of the deceased. According to him, injury could be caused at twelve noon on 01-06-85 by *lathi*.

15. P.W.6, S.I. Sri Virpal Singh, the then S.H.O. Alapur, investigated the case. He has proved the copy of G.D. marked Ext-Ka-2. According to him, the papers of the case were received at the Police Station in his presence. He recorded the statement of Constable/Clerk Narendra Pal Singh and He ad Moharrir Rajpal Singh the same day and came to P.S.Kotwali, Budaun, where he recorded the statements of Head Constable Hori Lal and Constable Mohan Singh. Thereupon, he went to District Hospital, Budaun, in search of the informant Smt. Narayan Devi. He was told that she had gone to Kachhla alongwith her other relations for the cremation of the dead body. On 03-06-85 he recorded the statement of Smt. Narayan Devi and witness Narendra Singh and also inspected the spot and prepared the siteplan which has been proved by him as Ext-Ka-4. On 07-06-85 he recorded the statements of witnesses, Umendra Singh, Shishupal and Chokhey Lal. On 10-06-85 he recorded the statement of Khushi Ram and some other statements concerning hearsay evidence. On 10-06-85 he recorded the statements of accused Natthu Singh and Vedpal Singh and S.I. Sri Krishna Nand. After completing the investigation, he submitted charge sheet Ext-Ka-5 against the accused persons. He also proved the copy of G.D. report no.25 time 17-00 P.M. dated 01-06-05 which has been marked as Ext-Kc-6. S.I. Sri Krishna Nand had arrested five persons from Village Alipura u/s 151 Cr.P.C. The arrival of the accused persons and the police was entered by S.I. Krishnanand himself in the copy of G.D. the foret marked Ext-Ko-6. During cross-examination he has disclosed that village Alipura is about 8 Kms. away from P.S.Alapur. He has further stated that, Murli Singh was also present in the incident inwhich S.I. Krishna-nand had arrested five persons, came to his knowledge only on the third day of the occurrence. He has also stated that P.W.3 Narendra Singh did not state to him during his statement under section 161 Cr.P.C. that Smt. Narayani Devi was present at the spot. He has also denied the suggestion that Smt. Narayani Devi had illicit relations with Gulab Singh. He has further denied that after the occurrence. u/s 151 Cr.P.C., Murli Singh might have seen her wife lying together with Gulab Singh, and thereupon, Murli Singh's making noise,

Gulab Siggh might have given the *lathi* blow to Murli Singh. He has also denied that Suraj Pal Singh, to take the revenge of his sons might have forcibly got the report written through Smt. Narayani Devi against the accused persons.

16. P.W.7, Sri Naipal Singh, (S.I.) is the witness who prepared the inquest report of deceased Murli Singh. He has also formally proved the chick-FIR Ext-ka-7 written by Head Constable Hori Lal and copy of G.D. Ext-ka-8 written by the same Hori Lal at Police Station Kotwali, Budaun. He has also proved the inquest report prepared by him Ext-Ka-9, letter to Chief Medical Officer Budaun Ext-Ka-10, letter to R.I. Ext-Ka-11, letter in respect of taking the clothes of the deceased to C.M.O. Budaun Ext-Ka-12, challan-lash Ext-Ka-13, and Khakalash Ext-Ko-14. He has also stated that the deadbody was sealed in a cloth and the sample seal was prepared which is Ext-Ka-15. He has also proved the G.D. report no.61 time 21-05 dated 01-06-85 written by Constable/Clerk Mohan Singh which is marked as Ext-Ka-16. During his cross-examination, he has admitted that there are cuttings in date and time in the inquest report Ext-Ka-9. He has explained that he has written the time 7-50 x by mistake, but he could not say the purpose for which the time 7-50 was written in the inquest report. He has also stated that he has not written the names of the accused persons in the inquest report because he did not know that the dead body was related to which case. He has admitted that he entered three injuries on the persons of deceased, Murli Singh. Out of these injuries, two were visible and the other one was invisible. About the invisible injury he stated that there was swelling on the right jaw. He denied the suggestion that he did not carefully inspect the injuries of the deadbody of the deceased. He denied the suggestion that no report was lodged at the Police Station at the time when he prepared the inquest report.

17. All the accused persons admitted the relationship between the accused that Vedpal Singh is the son of accused, Nathu Singh and accused Briiral is the sister's son of Nathu Singh and lives with Natthu Singh since his birth. All the accused persons have denied the occurrence in their statements under section 313 Cr.P.C. They have, however, stated that they want to produce evidence in defence but no evidence was produced by them except the certified copy of *challani* reports Exts-Kha-1 and Kha-2.

18. After hearing the rival submissions, going through the material on record of the trial court record and perusal of the judgment passed by the trial court, we find that this appeal has been preferred by appellant no.1, Natthu Singh and his son, Ved Pal. During pendency of this appeal, appellant no.1, Natthu Singh, has died and the appeal has been dismissed as abated against appellant no.1., Natthu Singh.

19. As per the statement of P.W.-1, appellant no.1, Nathu Singh, who caused single *lathi* blow on the right side of the head of the deceased, Murali Singh, which resulted in fracture of his frontal parietal bone. No other injury was found on the body of the deceased, Murali Singh.

20. As per the prosecution case, the accused persons were putting clay on their roof and passing over the roof of the house of deceased, Murali Singh, which was weak. Murali Singh forebade them not to pass with clay from his roof and, thereafter, the dispute took place between him and the accused persons and deceased-appellant, Nathu Singh, is alleged to have caused one injury by *lathi* on the head of the deceased which proved fatal for his life. There is nothing on record to indicate that there was any premeditation, planning and thereafter execution of the same, which resulted in causing of the only fatal blow on the head of the deceased, Murali Singh. Main accused, Natthu Singh, has already died.

21. The case comes within the purview of Exception 4 to Section 300 IPC. The appellant has been convicted in this case under section 302 read with section 34 IPC. He is aged about 60 years now and does not appears to have any criminal history to his credit.

22. In the F.I.R. the prosecution implicated three persons out of which Brijraj had died during the the course of trial. Appellant no.1 died during pendency of this appeal. Now only Vedpal, appellant no.2, remains.

23. Section 34 IPC is attracted only when a criminal act is done by several persons in furtherance of common intention. All and each of such person is liable for that act in the same manner, if it was committed by him alone.

24. The Apex Court in the case of **Sauklaram Nangare Vs. State of Maharashtra 2012(9) JT 116** has held that for invoking section 34 IPC there is requirement of proving of prearranged plan and it presupposes prior concert and there must be prior meeting of minds. In this case, there was no evidence led by the prosecution that any pre-planning was involved in this case and acting in pursuance of the same, the alleged offence was committed by all the accused. The burden of proof was on the prosecution to prove that the alleged criminal act was committed by the all the accused in furtherance of common intention [See-**Ram Bilas Singh Vs. State of Bihar AIR 1989 (SC) 1593**]. Further from the solitary injury caused to the deceased also there does not appears to be any participation of the surviving appellant no.2, Vedpal, proved in this case.

25. Under the totality and facts and circumstances of the case, we are of the view that conviction and sentence of the appellant under section 302 read with section 34 IPC is not justified. The appellant is entitled to benefit of doubt and is hereby acquitted of all charges.

26. The appellant is on bail, his bail bonds and sureties are discharged.

27. The criminal appeal is **allowed**.

28. Office is directed to return the trial court record to the trial court along with copy

of this order.

January 29, 2026
Abhishek

(Sanjiv Kumar,J.) (Siddharth,J.)