



2026:AHC:17450-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2739 of 1985

Babu And Others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	G.C. Saxena, Keshari Nath Tripathi
Counsel for Respondent(s)	:	A.G.A.

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

1. Heard Sri Aniket Kumar, Advocate holding brief of Sri Keshari Nath Tripathi, learned counsel for the appellants and learned A.G.A for the State.
2. As per office report dated 22.01.2026, the appellants, namely, Babu, Iddan, Chidda and Khairati, have reportedly died.
3. Only appellant no. 5, Zafar, is reported to be alive. In view of the death of appellant nos. 1 to 4, the appeal stands dismissed as abated against the aforesaid appellants.
4. So far as the surviving appellant, Zafar, is concerned, this Court finds that the trial court record is missing. Despite the order dated 23.08.2025, the trial court record has not been sent to this Court. It further transpires from the report dated 27.03.2025 submitted by the learned District Judge, Moradabad, that despite all possible efforts, the trial court record of the case could not be traced and there is no possibility of reconstruction of the same.
5. It is also relevant to note that the present appeal pertains to the year 1985, while the incident in question occurred on 10.07.1983. At this highly belated stage, there is a remote possibility that any of the witnesses would be alive, or even if alive, would be in a fit mental or physical condition to depose before the Court.
6. In view of Section 118 of the Indian Evidence Act, on account of the extreme old age or death of the witnesses, as well as their possible mental or physical unfitness, the witnesses may not be able to appear in the witness

box at this belated stage.

7. Hence, we have no option but to set aside the judgment of the trial court dated 08.10.1985 passed by Sessions Judge, Moradabad in Sessions Trial No. 785 of 1983 under Section 302 IPC read with Section 148/149 IPC and Section 301 IPC read with Section 302/149 IPC and sentencing all the appellants to undergo for life imprisonment and under Section 307/149 IPC to five years rigorous imprisonment and under Section 324 IPC read with Section 149 IPC for 2 years rigorous imprisonment vis-à-vis the surviving appellant no. 5, Zafar.

8. Accordingly, the appeal is allowed in respect of appellant no. 5, Zafar, and he is acquitted of the charges.

January 27, 2026
Rohit

(Jai Krishna Upadhyay,J.) (Siddharth,J.)