



2026:AHC-LKO:19969

Neutral Citation No. - 2026:AHC-LKO:19969

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 83 of 2005

Mihi Lal and 3 Ors.

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Vijay Pratap, Rama Kant Jaiswal
Counsel for Respondent(s)	: Govt. advocate,

**Reserved on 23.02.2026
Delivered on 19.03.2026**

Court No. - 28

HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

1. Heard learned counsel for the appellants and learned A.G.A. for the State.
2. The present appeal has been preferred against the judgment and order dated 20.01.2005 passed by the Additional Session Judge, Sitapur in Session Trial No. 865/97 (State v Mihi Lal & Others), arising out of Case Crime No. 96/96, under Section 307/304 Indian Penal Code (hereinafter referred to as "I.P.C."), Police Station Sidhauri, District Sitapur, whereby the trial court convicted each appellants under Section 304/34 I.P.C. sentencing them ten years simple imprisonment with a fine of Rs. 2000/- each with six months of additional imprisonment for default of fine.

3. The prosecution story in brief is that on May 21, 1996, at 7:00 PM, the complainant's neighbor, Mihi Lal (son of Parbhu), was laying a pipe in his drain extending toward the complainant's house. When the complainant protested, Mihi Lal (son of Parbhu), Bhagirath (son of Dunna), and Ramesh (son of Badlu), residents of Jhakra Majra Kirtapur, assaulted the complainant and his father, Hari Prasad, with sticks, kicks, and punches. The complainant went to the Sidhauri police station on May 22, 1996, to file a report. In his absence, Mihi Lal, Bhagirath, Ramesh, and Vidya Sagar again physically assaulted the complainant's father. Out of fear, the father fled the house. When the complainant returned home from Sidhauri, village residents Shivram (son of Ganga) and Babu (son of Chhail Bihari), who had intervened in the scuffle, informed him of the events. The complainant searched for his father and found him near village Manwa, subsequently bringing him home. Due to the lack of transport at night, he could not go to the police station. On May 23, 1996, while the complainant was transporting his father to the station on a handcart (theliya) to file the report, his father passed away on the way.

4. The First Information Report (hereinafter referred to as "FIR") of the incident was lodged by the complainant at the police station on May 23, 1996, at 6:30 PM, based on which the then Constable Clerk of Sidhauri Police Station prepared the entries in the General Diary. The inquest of the dead body of the deceased was conducted. The inquest report was prepared and dead body of the deceased was sent for autopsy along with police papers.

5. After lodging of the F.I.R. Investigating Officer (hereinafter referred to as I.O.) visited place of occurrence and prepared site plan,

recorded the statement of the witnesses and after collecting the evidence submitted the charge-sheet against the accused persons under Section 304 I.P.C.

6. Being a case exclusively triable by Session, learned Magistrate committed the case to the Session Court from where it is made over to the Additional Session Judge, Sitapur for trial according to law.

7. The trial court framed the charge under Sections 304/34 and 307/34 of the Indian Penal Code (IPC) against the accused persons and explained them, for which they denied and claimed to be tried.

8. In order to prove its case, the prosecution has adduced ocular evidence of Jagmohan PW-1, Shivram-PW-2 , Ramkumar alias Babu PW-3, Dr. G.L. Dixit PW-4, Constable Shubhkaran Gautam PW-5, Babu Lal Yadav PW-6, Ram Bahadur Pandey PW-7 (Pharmacist), and PW-8 Constable Ramadhar Pathak.

9. The prosecution also proved the following documentary evidences: Written report (Tahrir) (Exhibit Ka-1), Post-mortem report (Exhibit Ka-2), the formal FIR (chik FIR) (Exhibit Ka-3), Site Map (Exhibit Ka-12), Inquest report (Exhibit Ka-6) and the charge-sheet (Exhibit Ka-13), Injury Report (Ka-14).

10. After closing the prosecution evidence, statement of accused persons were recorded under Section 313 of the Code of Criminal Procedure (herein after referred to as "CrPC"). They denied all the evidence and attending circumstances emerged out during the testimony of the witnesses.

11. At the stage of defence, neither ocular nor documentary evidence has been adduced by the accused persons.

12. After having heard learned both the parties, trial court found that prosecution was not able to prove the case against accused persons under Section 307/34 I.P.C. and consequently, trial court acquitted the accused persons for the offence under Section 307/34 I.P.C., but on the same time learned trial court observed that prosecution has become successful to prove the charge against the accused persons under Section 304/34 I.P.C. and thereby convicted all the accused persons for the offence under Section 304/34 I.P.C. and sentence them for ten years simple imprisonment with a fine of Rs. 2000/- each with six months of additional imprisonment for default of fine.

Submission of the learned counsel for the appellant

13. Learned counsel appearing for the appellants submits that learned trial court passed the impugned judgment and order contrary to facts and evidence. He further submits that initially case was registered in NCR under Section 323, 504 of the I.P.C. and subsequently on the next day F.I.R. of this case had been lodged.

14. Learned counsel for the appellants further submits that as per the complainant the alleged incident has happened in two sets. In the first set of the alleged incident three accused-persons were alleged to have inflicted blows with kicks and fists to the complainant and his father while in another set of incident, which is said to have occurred on 22.05.1996 four accused persons were alleged to have inflicted blows to deceased with lathi, kicks and fists.

15. Learned counsel for the appellants further submits that as per prosecution case two independent persons have witnessed the incident that occurred with deceased but they did not support the prosecution version before the court. He further submits that the complainant is not an eye witness of the alleged second set of the event. He next submits that as per complainant the deceased fled away from his house but and if fact if he had sustained serious injuries, then he could not move away. Thus it transpires that incident had happened with deceased in some other place by some other persons and due to enmity, appellants were implicated in this false case, but the learned trial court without considering the material available on record passed the impugned judgment and order in a very cursory and mechanical manner. As per injury report all injuries are found simple in nature. The Complainant had not seen the alleged incident that who assaulted the deceased despite of the facts and lacking of the evidence, learned trial court passed the impugned judgment and the finding given in this regard is erroneous and perverse, therefore, the impugned judgment and order is liable to be quashed and the appeal is liable to be allowed.

16. Per contra, learned A.G.A. submits that the appellants-accused persons inflicted blows to complainant as well as deceased father on 21.05.1996 and when the complainant had gone for lodging the F.I.R. then accused persons again inflicted blows to the deceased father of the complainant and consequently the deceased suffered serious injuries and resultantly he died due to ante-mortem injuries. He further submits that though eye-witnesses have turned hostile, but whole prosecution story cannot be discarded on merely this ground when complainant, who is an injured witness and his presence was ascertained on the spot, then his

testimony cannot be thrown out. He also submits that the testimony of the complainant is wholly reliable, therefore, no other evidence is required for corroboration. Testimony of the injured witness coupled with injury report and autopsy report established that appellant-accused is the real culprit who had assaulted the complainant as well as deceased and by virtue of that deceased succumbed, trial court had given finding after considering the facts, evidences and circumstances in its entirety. There is no illegality or perversity in the impugned judgment and order and this appeal is devoid of merits and is liable to be quashed.

17. On the basis of submissions advanced by learned counsel for the parties following points are formulated for determination of this appeal;

Whether trial court is correct in convicting and sentencing the appellant-accused ?

To establish this point, the evidence adduced by the prosecution, finding given in this regard by the trial court has to be examined.

18. On the perusal of the record, it reveals that the alleged occurrence had happened in two sets. The First set of the incident happened on 21.05.1996 at 7.00 p.m. and after that incident NCR was registered on 22.05.1996 at 11.00 p.m. on oral information given by the informant, where it is stated by the complainant-Jagmohan that accused Mihi Lal, Ramesh and Bhagirath were constructing Nabdan, nearby complainant's house and when complainant resisted them, then they inflicted blows with kicks and fists and also hurled abuses. He also stated that in this incident his father also sustained injuries. After this incident another alleged incident had taken place as stated by complainant.

19. In another set of incident, it is stated by the complainant that when on 22.05.1996 he had gone to police station for lodging his F.I.R. in respect of occurrence that took place on 21.05.1996. In the meantime accused Mihi Lal, Bhagirath, Ramesh and Vidya Sagar assaulted his father with kicks and fists and being afraid of them his father left his house. He further submitted that when he returned back to his house then villagers Shivram and Babu met him and told that his father was beaten by the accused persons and they made endeavour to save him. He further stated that he traced his father and found him nearby the village Manwa and he brought him back to his home and on the next day when he was carrying his father on handcart (thelia), then on the way his father died.

20. Regarding alleged incident the complainant submitted a written application before the police Inspector of Police Station Sidhauli, District Sitapur, on that basis of which F.I.R. under Section 304 of the I.P.C. against accused persons had been lodged on 23.05.1996 at 6.30 p.m.

21. Now here it is pertinent to mention that learned trial court had framed the charge under Section 304/34 and 307/34 of the I.P.C. against accused persons. For the offence under Section 307/34 I.P.C., the trial court observed that on the perusal of evidence on record, it does not establish a case under Section 307/34 of the I.P.C. that charge was framed on the fact that the appellant-accused has caused injuries to the complainant Jagmohan, which could not be proved, therefore, the first set of the incident, which is alleged to have happened on 21.05.1996 on which the complainant had sustained injuries by virtue of being inflicted with blows, kicks and fists by the appellants has become worthless.

22. Now I move towards second set of the alleged incident, for which it is alleged that when complainant had gone to police station with regard to lodging of the F.I.R. for first set of the incident in the meantime the appellant-accused inflicted blows to the deceased.

23. Here it is to be mentioned that as per F.I.R. when deceased sustained injuries after being inflicted blows by the appellant-accused, then he fled away from his home and when the complainant returned back and persuaded him then he found him nearby village Manwa and he brought his father to his home, it indicates that if the injury was in fact so serious then how could he have fled from his house.

24. Now the autopsy report of the deceased is to be discussed. As per the evidence of the doctor G.L. Dixit PW-4, who has conducted the post-mortem of the deceased on 24.05.1996 had deposed that when he was posted in District Hospital, Sitapur, then the dead body of the deceased Hari Prasad was brought by police Constable Shailendra of Police Station Sindhauli and on his identification, he had conducted the autopsy of the deceased. He observed that the body of the deceased was of average built and aged about 65 years. The duration of death was approximately one and a half days. Rigor mortis had passed away. Staining was present on the back. Bruises were present on the body, and the skin had peeled off.

25. According to the Post-mortem Report (Exhibit-2), the following ante-mortem injuries were found on the **body of the deceased, Hari Prasad:**

- Lacerated wound: 4 cm x 2 cm x bone-deep, behind the head, 11 cm above the right ear.
- Multiple contusions overlapping to each other on the back, 43 cm x 32. Upon dissection, blood clots were found in the muscle layers beneath the injuries. The 9th, 10th, and 11th ribs on the left side were fractured.
- Contusion mark: 8 cm x 4 cm on the front surface of the right thigh, located 7 cm above the knee.
- Contusion mark: 3 cm x 2 cm on the front surface of the right knee.
- Contusion mark: 4 cm x 3 cm on the front surface of the left knee.

Internal Examination:

Pleura was found lacerated. The left lung was found lacerated. The chambers of the heart were found empty. The body measured 160 cm in length. About half a litre of blood clots was present in the chest cavity. There were 14 teeth in the upper jaw and 13 teeth in the lower jaw. The stomach was empty. Semi-digested food material was present in the small and large intestines. The liver, spleen, and kidneys were pale. The urinary bladder was empty.

In his opinion, the doctor stated that the death of the deceased was caused due to haemorrhage and shock, resulting from ante-mortem injuries.

In his cross-examination, he has stated that all the ante-mortem injuries were possible to be caused by a danda or lathi, and there was less possibility of such injuries being caused by kicks and fists. He further

opined that if a person sustained kicks and fists and fell backward, the injury on the head could be possible.

It is not disputed that due to ante-mortem injury the injured had died. The main question is that who had caused injury to deceased.

26. As per testimony of the **complainant-Jagmohan PW-1** on the first day of the alleged incident, accused persons had inflicted blows to him and his deceased father and when he had gone to police station for lodging of the F.I.R. on the next day, in the mean time accused persons again inflicted blows to his deceased father and being afraid of them, his father fled away from his house and when the complainant returned back to his house from police station, then villagers Shivram and Babu had told the story that his father was beaten by the appellant-accused, it reveals that the complainant was not present on the second set of the incident and he is not eye-witness of the second incident. He has given his statement of the basis of facts told by the witness Shivram and Babu, therefore, statement of Shivram and Babu is more important, who are said to be eye-witness of the alleged incident.

27. Here, it is expedient to mentioned that both the persons Shivram and Babu have been examined by the prosecution as PW-2 and PW-3 respectively, but from very inception, they did not support the prosecution story and they turned hostile and in cross-examination made by the prosecution they have also stated that they had not given statement before the Investigating Officer, meaning thereby the prosecution version regarding second set of incident, which is based on the evidence of the two prosecution witnesses Shivram and Babu comes under suspicion.

28. It is clarified that if a witness reiterates or recites from his earlier statement, it does not mean that his entire testimony is to be discarded. The law on this point is well settled that if any part of the testimony of a witness supports the version of the party who has adduced him, the evidence to that extent shall be taken into consideration, but unfortunately in the present case both the prosecution witness Shiv Ram and Babu did not support the prosecution version, least, therefore, their testimony has no significance, as it does not help to prosecution in any way.

29. Here it is notable that if the witness is wholly reliable then for his testimony no corroboration is required, but where his testimony is partially reliable then only corroboration of his testimony is needed as law envisaged in the celebrated case of **Vadivelu Thevar v. State of Madras, 1957 SCC OnLine SC** the court has observed thus:-

“11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way—it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

30. In view of the above settled law, on perusal of testimony of complainant, if it is found in the category of wholly reliable, then only the charge levelled against the accused persons would be proved because other eye witnesses did not support the prosecution.

31. Since the case rests solely on the testimony of the complainant, his evidence must be scrutinized very carefully. As per examination-in-chief of the complainant **Jagmohan PW-1** he admitted that when he had gone to police station for lodging of the F.I.R. with regard to the first set of the incident, then in the meantime his father was beaten by the accused persons, meaning thereby he was not present at the second set of the incident. In this record on cross-examination of this witness he has admitted that when his father was beaten by the accused persons, then he was not present and he has not seen the occurrence and this incident was narrated to him by the villager Mohan Lal who has not been examined in this case. He again deposed that on that basis his Tahrir was drafted by some Advocate and thereafter he had given it to the police station. Except this witness of the fact, no other evidence with regard to fact which may substantiate the testimony of the complainant has been adduced. Two witnesses who were examined had resiled from their version given to the Investigating Officer. Other witnesses, who have been examined are formal in nature and those are the Investigating Officer and F.I.R. subscriber, who had formally proved the prosecution papers.

32. Here it is also notable that it is settled law that if a crime is of a graver in nature then evidence must be in higher pedestal, mere shaky and non sterling quality of the evidence is not sufficient to prove the charge leveled against the accused persons. Surprisingly, in this case the complainant is the person who himself claimed to be injured in the first

set of the incident and for the first set of the incident charge leveled against the accused persons, they have been exonerated since the charge under Section 307/34 has not been found proved.

33. Unfortunately for the second set of the incident, the complainant was not present on the scene, as he himself admitted this facts and the persons who were claimed to have witnessed the second set of the incident did not support the prosecution case and no other witness, who had been present during second set of the alleged incident was examined, thus in the present case except testimony of the complainant, no other factual evidence remains and where the complainant himself admitted that he had not seen the second set of the incident, then how can trial court visualize and conclude that appellant-accused persons are the real culprits who had inflicted blows to the deceased on the second set of the incident and thus the finding given by the trial court in this regard is not based on cogent reason.

34. One thing is also important to be noted that in NCR only three persons Mihi Lal, Ramesh and Bhagirath were named with regard to inflicting blows with kicks and fists but in the second set of the incident four persons were named and the name of Vidya Sagar was added for the commission of the offence along with other co-accused and the role of all the accused persons were attributed that they were inflicting blows with kicks and fists and lathi and someone was scratching, as the complainant has stated on his examination that Bhagirath was having lathi in his hand and Ramesh had caught the hand and Vidya Sagar exhorted while Mihi Lal had inflicted blows. Moreover, for the first set of the incident, they have been exonerated by the trial court and for the observation given with regard to the charge under Section 307/34 of I.P.C. for which they were acquitted, no appeal by the State has been

filed, therefore, the finding given by the trial court is not justifiable in the present appeal.

35. On the perusal of the record it also reveals that the complainant has given his evidence which is in itself contradictory and there are inconsistencies, although as per law minor contradictions and inconsistencies are negligible, if remaining portion of the evidence of the witness is found reliable then on mere small inconsistencies and discrepancies, his evidence cannot be thrown out as law laid down in the case of **Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457** that:-

“Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details....”

36. Here it is also to be noteable that if the deceased was in fact so serious and he had sustained injuries in the first and second set of incident, then it was not possible for him to have fled from his house, therefore, evidence adduced by the prosecution to prove the charge against accused persons under Section 304/34 is not cogent, convincing and clinching and not of a sterling quality, therefore, charge leveled against accused persons under section 304/34 has not been duly proved

and the finding given by the learned trial court in this regard is erroneous, and contrary to law.

37. In view of the above, after analysis of facts, evidences and circumstances of this case, in the light of aforesaid settled legal principles, I come to the conclusion that the trial court has erred passing the impugned judgment and order and the same is liable to be set aside.

38. The present criminal appeal is **allowed** and consequently, the judgment and order dated 20.01.2005 passed by the Additional Session Judge, Sitapur in Session Trial No. 865/97 (State v Mihi Lal & Others), arising out of Case Crime No. 96/96, under Section 307/304 Indian Penal Code (hereinafter referred to as "I.P.C."), Police Station Sidhauri, District Sitapur convicting and sentencing the appellants-accused under Section 304/34 I.P.C. is hereby set aside.

39. The appellants-accused are acquitted of the charges under Section 304/34 I.P.C. They are reported to be on bail. They need not surrender, their bail bonds are cancelled and sureties are discharged. Further, they are directed to comply the provision of Section 437-A of the Cr.P.C. to the satisfaction of the trial court.

40. Let record of trial court be sent back to Court concerned along with copy of judgment and order for information.

(Pramod Kumar Srivastava,J.)

March 19, 2026

Arvind