



2026:AHC:22572-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 450 of 1987

Madho and another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Anurag Yadav, Mahendra Pratap
Counsel for Respondent(s)	: A.G.A.

Court No. - 48

HON'BLE CHANDRA DHARI SINGH, J.
HON'BLE DEVENDRA SINGH-I, J.

1. This criminal appeal has been filed by the appellants namely Madho alias Mewa Lal and Ram Deo against the judgement and order dated 10.02.1987 passed by the Additional Sessions Judge, Gyanpur, Varanasi in Sessions Trial No. 6 of 1983, whereby the learned Judge convicted and sentenced the appellants Mithai Lal to life imprisonment under Section 302 IPC. Accused Ramdeo and Madho alias Mewa Lal were convicted and sentenced to imprisonment for life under Section 302 read with Section 34 IPC.

2. Accused Mithai Lal has not filed criminal appeal against his conviction.

3. Since appeallant-Ramdeo has died, the appeal filed on his behalf abated vide order dated 19.11.2025.

4. Now, this Court is deciding the appeal filed on behalf of Madho alias Mewa Lal.

5. The facts that formed the bedrock of the present criminal appeal, in short compass, are that a written report was handed over by the first informant Panna Lal Yadav to the Station House Officer, police station Bhadohi that *Tipkari* (filling the gap between bricks by cement) of his house was to be done. The bricks and stones (*Patiya*) of Madho alias Mewa Lal were kept besides the eastern wall of the informant, which causes hindrance in the work. The informant asked Mewa Lal and his father Ramdeo to shift the brick and stones (*Patiya*) to another place, whereupon they started abusing him. In the meantime, Kanhaiya Lal reached there and asked them to refrain from abusing. At this juncture Madho Lal and Ramdeo exhorted for the killing of Kanhaiya Lal, whereupon Mithai Lal had fired at Kanhaiya Lal from his licensed gun from his roof. The FIR further alleges that on hearing the sound of fire, Raja Ram, first informant's mother, his brother and sister-in-law and several persons of the vicinity rushed to the spot. The accused-Mithai Lal again fired at Kanhaiya Lal, because of which, he became injured and tried to hide below the staircase of the house of Ram Saran. Thereafter accused Madho Lal and Ramdeo again exhorted to eliminate Kanhaiya. Thereupon, accused Mithai Lal jumped from his roof to the roof of Ram Saran, went down the stairs and again fired at the injured Kanhaiya Lal, who was hiding himself below the

stairs of Ram Saran. The injured Kanhaiya (hereinafter referred to as 'the deceased') fell down and succumbed to the injuries at the spot. On being challenged by the witnesses and others, the accused fled away extending threats.

6. On the basis of the aforesaid report, a Chik FIR No. 89 was written by Head Moharrir Tej Narain Singh for the offence punishable under Section 302/34 IPC, which was marked as Ext. Ka-3.

7. After the registration of the first information report, PW-6, Station House Officer Raj Narain Tiwari started investigation of the case. He reached the place of occurrence and recorded the statement of the first informant and got the inquest on the body of the deceased conducted, Ext. Ka-5. Thereafter, he got the dead body sealed and sent it for postmortem examination through Constables Suresh Chandra Tiwari and Rameshwar Ram. He also prepared required documents and inspected the spot and prepared site plan. On the information of the informer, he arrested the accused Mithai Lal and Ramdeo. From the possession of the accused Mithai Lal, one double barrel gun No. 22531 A-9, which was built in Indian Head Factor was recovered. In the gun, cartridges were loaded. After removal, it was noticed that on the cartridge B.P. was written. Three live cartridges were also recovered and memo was prepared and was signed by the witnesses Prem Shanker Dubey and Vansh Narain Singh. After the recovery of fire arm and cartridges, a case was also registered against the accused Mithai Lal (who is not before us) under Section

25/27 of the Arms Act. He also collected plain and bloodstained earth and made memos thereof.

8. After culmination of investigation, the charge sheet was submitted against the accused by PW-6 Raj Narain Tiwari.

9. Charge sheet under Section 25/27 of the Arms Act was filed by SI Kawal Nath Singh.

10. As the case was exclusively triable by the Court of Sessions, learned Magistrate vide order dated 23.12.1982 committed the case to the Court of Sessions, where case was registered as ST No 6 of 1983 against all the accused persons and ST No. 7 of 1983 against accused Mithai Lal. Learned Additional Sessions Judge, Gyanpur, Varanasi framed the charges against the accused persons vide order dated 04.6.1983, which were read over and explained to the accused in Hindi, who pleaded not guilty and claimed to be tried.

11. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as six witnesses, out of whom PW-1, Panna Lal was the first informant and eyewitness of the case, PW-2 Nand Lal was also eye-witness of the case, PW-3 was the witness of arrest of accused Mithai Lal Yadav and Ramdeo as well as recovery of firearm and other articles from their possession. PW-4, Constable Parmeshwar Ram took the dead body for postmortem examination, PW-5, Dr. R.S. Shukla, conducted autopsy on the cadaver of the deceased, PW-6, SHO, Raj Narain Tiwari is the investigating officer of the case.

12. PW-1, Panna Lal, who is the first informant of the case, in his deposition has more or less reiterated the versions given in the first information report.

13. PW-2, Nand Lal in his examination-in-chief has stated that on the date of occurrence at about 8:00 AM, when he was having breakfast in his house, on hearing the noise, when he came out of the house, he saw that accused Ramdeo and Madho alias Mewa Lal were exhorting to kill and on their exhortation, Mithai Lal fired from the roof, which hit the deceased on his hand. On being injured, he ran towards the staircase of Bade Lal. Thereafter accused Madho Lal and Ramdeo again exhorted to eliminate Kanhaiya. Thereupon, accused Mithai Lal jumped from his roof to the roof of Bade Lal, went down the staircase and again fired at the injured Kanhaiya Lal, who was hiding himself below the staircase of Bade Lal. Mithai Lal was having a licensed gun, from which he made fire, due to which deceased died. On being challenged, accused fled away towards east extending threats.

14. PW-3, Prem Shanker Dubey is the witness of arrest of Mithai Lal and Ramdeo. He is also the witness of recovery of weapon of assault.

15. PW-4, Constable Parmeshwar Ram, in his examination-in-chief deposed that on 09.07.1982, he was posted as Constable at police station Bhadohi. On that date, he took the dead body of Kanhaiya Lal for postmortem examination along with Constable Suresh Chandra Tiwari in a sealed condition.

16. PW-5, Dr. R.S. Shukla, in his examination-in-chief deposed that on 07.09.1982, he was posted at Government Hospital Maharaja Chet Singh at Gyanpur. He found the following antemortem injuries on the person of the deceased”

1. Bullet entry wound 2 cm x 2 cm on the back of the neck. Several irregular bullet fragments were present around the wound. The edges of the wound showed entry marks. Each mark was approximately 0.2 cm in diameter. The wound edges were inverted. There was blackening around the wound.

2. Bullet exit wound 4 cm x 3 cm on the lower left side of the chest, 10 cm below the nipple. Omentum was protruding from the wound. The wound edges were everted.

3. Lacerated wound: 2 cm x 1 cm x bone depth. There was blackening around the injury on the back of the right index finger.

4. A lacerated wound 2 cm. x 1 cm. deep on the back of the right middle finger. There was blackening around the injury.

5. An abrasion 6 cm. x 2 cm. on the front of the right foot above the ankle joint.

17. PW-6, SHO Raj Narain Tiwari was the investigating office of the case. His evidence has already been discussed above.

18. After the closure of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C., who denied the charges leveled against them. Accused-Mithai Lal further stated that on the date of occurrence, when he was sitting on his door, Kanhaiya and others came there and asked for removing the stones, which were lying alongside his

wall. When he asked them that he will shift the stones after sometimes, Kanhaiya and others started abusing and throwing bricks and stones. When he tried to specify them, they started beating him. On the exhortation of Panna Lal, Kanhaiya brought country made pistol from his house and fired at him, which missed and hit the wall. Thereafter he ran to save himself shouting for help (Bachao bachao). However, he was surrounded by Panna Lal, who was armed with lathi and Kanhaiya, who was armed with country made pistol and when Kanhaiya Lal pointed pistol towards him, his father (Ramdeo) fired at Kanhaiya from the roof of Bade Lal.

19. Dr. R.S. Shukla was examined in this case as DW-1. In his deposition, he has stated that on 15.07.1982, he was posted as Surgeon at Maharaja Chet Singh. He was also Medical Officer of the Gyanpur Jail. On that date at 07:15 PM on 15.07.1982, he has examined Ramdeo and found the following injuries:

1. *Lacerated wound 4 cm x 1.5 cm x skin deep on the back of the head, 9 cm above the ear. The wound was healing and infected.*
2. *Bluish mark on the nail.*
3. *Abrasion 2 cm x 1 cm on the back of the left elbow. There was a black scab over the injury.*

At the time of examination, the injuries were approximately 6 days old.

20. He also examined Mithai Lal, son of Ramdeo at 09:20 PM on 15.07.1982 and found the following injuries on his person:

1. *Abrasion 2 cm x 1 cm on the posterior aspect of the right elbow. A hard, dark scab was present over the wound. The wound was healing from the edges.*

2. *Abrasion 1 cm x 0.5 cm on the right palm near the wrist joint. A hard scab was present over the wound.*

3. *Bruise 2 cm x 1 cm on the left hand. The bruise was greenish in colour. There was swelling around the bruise, approximately 4 cm x 4 cm in size. Tenderness was present.*

21. Learned Additional Sessions Judge, Gyanpur at Bhadohi after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

22. Hence, this appeal.

Submissions on behalf of the appellant

23. It is contended by the learned counsel for the appellant that there are material contradictions in the statement of PW-1, who is the first informant and eye-witness of the case and PW-3, who is the witness of arrest of Ramdeo and also witness of recovery.

24. It is also pointed out by the learned counsel for the appellant that the co-accused Ramdeo has not been arrested from the place as alleged by the witnesses, which makes the entire prosecution story doubtful. The Trial Court has convicted and sentenced the appellant only on the basis of conjecture and surmises without there being no evidence.

Submissions on behalf of the State

25. On the other hand, Shri S.K. Ojha, learned Additional Government Advocate submits that there are no major contradictions in the statement of the witnesses and that the trial court has convicted the appellant after evaluating the evidence on record.

26. Learned Additional Government Advocate further submits that the prosecution has successfully proved its case beyond reasonable doubt.

27. Heard Shri Mahendra Pratap, learned Senior Advocate assisted by Shri Anurag Yadav, learned counsel for the appellant and Shri S.K. Ojha, learned Additional Government Advocate-Ist, representing the State and gone through the record of the case.

Analysis and Conclusions

28. The allegations against the appellant-Madho alias Mewa Lal was that he along with Ramdeo exhorted Mithai Lal to eliminate Kanhaiya and thereby Mithai Lal fired at Kanhaiya from his licensed gun from the roof of his house. On hearing the sound of fire family members of the deceased and several persons of the vicinity rushed to the spot. The accused-Mithai Lal again fired at Kanhaiya Lal, because of which, he became injured and tried to hide below the staircase of the house of Ram Saran. Thereafter accused Madho Lal and Ramdeo again exhorted to eliminate Kanhaiya. Thereupon, accused Mithai Lal jumped from his roof to the roof of Ram Saran, went down the staircase and again fired the injured Kanhaiya Lal, who was hiding himself below the

staircase of Ram Saran. The injured Kanhaiya fell down and succumbed to the injuries at the spot.

29. Now coming to the contention of learned counsel for the appellant that there was contradictions in the statements of the witnesses. Before appreciating the point that there are material contradictions in the statements of the witnesses, it would be useful to refer certain pronouncements of Hon'ble Supreme Court:

30. In **State represented by Inspector of Police Vs. Saravanam and another, ,** Hon'ble Supreme held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.

31. In **State of Rajasthan Vs. Rajendra Singh,** (2009) 11 SCC 106 held as under:

“Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence

acceptable, it cannot be safe to rely upon such evidence."

32. In **Mahendra Pratap Singh Vs. State of Uttar Pradesh**, (2009) 11 SCC 334) held as under:

"The discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that prosecution proved its case beyond reasonable doubt."

33. In the light of the aforesaid observations of Hon'ble Supreme Court, we will now consider whether the contradictions/omissions had been of such magnitude that they may have materially affected the trial.

34. PW-1- Panna Lal, who is the first informant of the case, in his cross-examination, which was recorded on 26.04.1984, has specifically stated that on hearing the sound of fire, Raja Ram, son of Phoola Yadav, first informant's mother, his brother and sister-in-law and several persons of the vicinity rushed to the spot. Further PW-2, Nand Lal, in his cross examination, which was recorded on 03.07.1985 deposed that after the death of the deceased, he along with Raja Ram brought the deceased downstairs. However, Raja Ram has filed

an affidavit before the Additional Sessions Judge, Gyanpur denying his presence at the scene of occurrence. He further stated that he came to know that he has been made witness in this case when he received the notice, but the facts are that that he has neither witnessed the occurrence nor brought the deceased downstairs.

35. Further PW-1, Panna Lal, in his cross-examination, which was recorded on 26.04.1985 deposed that the persons present at the place of occurrence as well as witnesses apprehended the accused Ramdeo at the spot. “रामदेव वही घटना स्थल पर ही पकड़ लिया गया। माधव भाग गया। In this case PW-3, Prem Shanker Dubey has been examined as witness of arrest of Mithai Lal Yadav and Ramdeo. In his examination-in-chief, which was recorded on 01.11.1085, he deposed that about 3-3-1/2 months ago when he was sitting on the Roadways Bus Station, SHO Raj Narain Tiwari along with three police personnel came there and enquired about the accused. Thereafter, SHO took him along with him and on Umri-Piyari road two persons were seen and on noticing the police party, they started running. They were chased and apprehended by the police near the *Mazar* of Ghazi Miya. On interrogation they disclosed their names as Mithai Lal and Ramdeo. Weapon of assault along with cartridges were also recovered from Mithai Lal. The aforesaid statement of PW-3, Prem Shanker Dubey belies the deposition of PW-1, Panna Lal, the first informant of the case that accused-Ramdeo was apprehended by the witnesses at the spot.

36. From the above deposition of the first informant, PW-1, Panna Lal and PW-3, Prem Shankar Dubey, false implication of the accused-appellant cannot be ruled out. Further the appellant has only been convicted with the aid of Section 34 IPC and the role assigned to the appellant was only of exhortation, which is a weak type of evidence as held by Hon'ble Supreme Court in **Jainul Haque Vs. State of Bihar**, AIR 1974 SC 45, in which Hon'ble Supreme Court observed as under:

“ The evidence of exhortation is, in the very nature of thing, as weak piece of evidence. There is quite often a tendency to implicate some person in addition to the actual assailant, by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant. The evidence adduced at the trial in respect of the part alleged to have been played by the appellant is contradictory and far from convincing. We would, therefore, accept the appeal, set aside the conviction of the appellant and acquit him.

37. In view of of the above, this Court is of the view that the evidence produced by the prosecution has neither quality nor credibility and it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in this case is not sufficient to bring home guilt of the appellant under Section 302/34 IPC beyond reasonable doubt.

38. Accordingly, the order dated 10.02.1987 passed by the Additional Sessions Judge, Gyanpur, Varanasi in Sessions Trial No. 6 of 1983, convicting and sentencing the appellant under Section 302/34 is set aside.

39. Consequently, the appeal is allowed.

40. The appellant Madhav alias Mewa Lal is on bail. His bail bond is cancelled and sureties are discharged.

41. Office is directed to transmit a copy of this order along with trial court record to the court concerned for compliance and compliance report be submitted to this Court within two months.

(Devendra Singh-I,J.) (Chandra Dhari Singh,J.)

January 29, 2026
Ishrat