



2026:AHC:126301-DB

RESERVED ON 27.4.2026

DELIVERED ON 9.6.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2457 of 2002

Ram Nagina Yadav

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Along with :

1. Criminal Appeal No. 2495 of 2002:

Virendra Yadav and another

Versus

State of U.P.

Counsel for Appellant(s)	: Akhilesh Singh, I.j.s. Yadav, K.s. Tiwari
Counsel for Respondent(s)	: Anand Kumar Srivastava, Anand Kumar Srivastava, Atul Kumar Srivastava, Govt. Advocate

Court No. - 44

HON'BLE SIDDHARTH, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

(Per Hon'ble Siddharath, J.)

1.Connected Criminal Appeal Nos.2498 and 2524 of 2002, preferred by appellants, Shyam Narayan Yadav and Ran Narayan @ Narayn Yadav,respectively have already been dismissed as abated by the order dated 27.4.2026 by this court on account of death of the appellants.

2. Heard Mr. P.C. Srivastava, learned Senior Counsel, assisted by Mr. Aryan Srivastava, Mr. Chandra Shekhar Pandey and Mr. K.S. Tiwari, learned counsel for the appellant; Mr. Anand Kumar Srivastava, learned counsel for the informant; Mr. G.N. Kanaujiya, learned A.G.A.-I for the State, perused the material on record as well as the judgment of the trial court impugned in Criminal Appeal No.2457 of 2002.

3. Heard Mr. Anuj Srivastava, learned counsel for appellant no. 1; Mr. Anand Kumar Srivastava, learned counsel for the informant; Mr. G.N. Kanaujiya, learned A.G.A.-I for the State, perused the material on record as well as judgment of the trial court impugned in Criminal Appeal No. 2495 of 2002.

4. As per office report dated 08.10.2025, appellant no. 2, Badan Rajbhar, has reportedly died in Criminal Appeal No. 2495 of 2002.

Accordingly, the appeal was dismissed as abated in respect of appellant no. 2, Badan Rajbhar on 27.4.2026.

5. The Criminal Appeal nos. 2457 and 2495 of 2002 have been filed against the judgement and order dated 18.6.2002 passed by Sessions Judge, Ghazipur in S.T. No. 157 of 1999(State Vs. Ram

Nagina Yadav @ Nagina Yadav and others) convicting and sentencing the appellants under sections 302/149 I.P.C. for life imprisonment and under section 147 I.P.C. for a period of one year R.I..

6. The prosecution case is that the nephew of informant, Doodh Nath Rajbhar, namely, Tribhuan Rajbhar, was returning to his village at about 7.30 P.M. from Jakhaniya Bazar, alongwith co-villagers Dhanai and Shambu. As soon as he reached south of Kavala Jakhaniya accused, Nagina Yadav, Shyam Narayan Yadav, Virendera Yadav, Ram Narayan Yadav and Badan Rajbhar, who were hiding in the bushes, came out on the road and stopped Tribhuan Rajbhar. Ram Nagina Yadav and Shyam Narayan Yadav exhorted to kill Tribhuan Rajbhar since he opposes a lot functioning of their school and then Virendra Yadav, Badan Rajbhar and Ram Narayan Yadav fired on him from country made pistols in their hands killing him on the spot. Dhanai Rajbhar and Shambhu Rajbhar, who were accompanying the deceased at that time, ran and informed the informant about the incident. The informant went at the scene of the incident and saw the dead body of Tribhuan Rajbhar lying. He got the application written by Sangam Bhardwaj and gave it to the police station for lodging First Information Report.

7. After completing the necessary formalities of inquest, postmortem, recording the statements of the witnesses, charge sheet was filed against the accused. Trial court framed the charges against the accused. They denied the charges and sought trial.

8. The prosecution produced P.W.1, Dood Nath Rajbhar, the informant, to prove the prosecution case. He is clearly not the eye witness of the incident. His report was based on the information received from Dhanai Rajbhar(P.W.2) and Shambu Rajbhar(P.W.3). However, regarding the motive of the crime he stated that deceased, Tribhuan Rajbhar, was a social man and used to make complaints against the wrong deeds in the school of Ram Nagina Yadav, (appellant). Ram Nagina Yadav was the principal of the school and appellant, Shyam Narayan Yadav (since deceased) was teacher in the school. Hence they exhorted the other co-accused, Virendra Yadav, Ram Narayan Yadav and Badan Rajbhar and got the offence of murder of Tribhuan Rajbhar committed.

9. P.W.2, Dhanai Rajbhar, was examined as eye witness of the incident. He proved that he informed about the incident to P.W.1.

10. P.W.3, Shambu Rajbhar, also deposed before the trial court in the same manner.

11. P.W.4, constable, Ram Surat Ram, was the formal witness, who entered the report in the G.D.of the police station.

12. P.W.5, Dr. Arun Kumar Pandey, proved the postmortem report of the deceased, which is as follows:-

13. Antemortem injuries-

1. Gun shot wound of entry of 3 cm x 2 cm. near right ear, blackening and tattooing present all around wound. Irregular margins. On probing in the direction of wound, one metallic cylindrical, F.B.recovered from left temporal area.

2. Gun shot wound of entry of 3 cm x 6 cm near left nipple 10'oclock position, blackening and tattooing present , irregular margins.

3. Gun shot wound of exit of 4 C.M. on back of neck of right neck .C-4 spine communicating to injury No.2..

4.Gun shot wound of 3 cm x 5 cm blackening and tattooing present irregular margins situated right on hypochondriac region.

5.Gun shot wound of exit of 4 cm x 5 cm. everted margin situated at 4 cm. left.Lateral to T-11 spine communicating to injury no.4.

Cause of death was found to be Hemorrhagic shock as a result of antemortem fire arm injuries.

14. P.W.6, the investigating officer of this case ,Sub-inspector, Om Prakash Singh, conducted investigation of this case and during investigation he implicated three other persons as accused in this case later, namely, Chandra Bhan Yadav, Dharendra Yadav alias Dhurandar Giri and another accused, who died during the trial.The trial court found that investigation conducted by the investigating officer , P.W.6, to be bad.

15. Constable Rishidev Yadav, was examined as P.W.7, who proved that he took the dead body of the deceased for postmortem.

16.The accused were examined under section 313 Cr.P.C. where they denied the prosecution case and claimed false implication in this case.They did not produced any defence witnesses in their defence. However, they produced three documentary evidence in the form of passbook of pumping set, charge sheet and F.I.R. of other cases.

17.After hearing the rival contentions, we find that the first argument of learned counsel for the appellant is that First Information Report is ante-timed.We find from the record that the incident took

place on 5.8.1998 at 7.30 P.M. and First Information Report of the incident was lodged on the same day at 8.45 P.M. P.W.4, constable, Ram Surat Prasad proved that special report was sent to the Magistrate on the same day at 22.50 P.M. Alongwith the inquest memo all the police papers were sent and case crime number and the name of the accused were mentioned therefore, we are of the view that the First Information Report was not ante-timed.

18. The second argument of the learned counsel for the appellant is that there is no documentary evidence of motive of crime set up before the court by P.W.1 regarding the deceased, Tribhuan Rajbhar, of making a complaint of the functioning of the school of appellant Ram Nagina Yadav and Shyam Narayan. In case any complaint was moved, it should have been made in writing and should have been placed before the court. We find that there is substance in the argument of learned counsel for the appellant. Even if the motive goes, direct eye witness account of P.W.2 and P.W.3 remains qua appellant, Virendra Yadav and two dead appellants, Shyam Narayan Yadav and Ram Narayan Yadav. It has also come in the statements of P.W.1 and P.W.2 that wife of the deceased contested election against the wife of accused, Shyam Narayan Yadav. Shyam Narayan Yadav was also teacher of

the school of Ram Nagina Yadav. Therefore the motive of election dispute between Shyam Narayan Yadav and the deceased was also set up against Shyam Narayan Yadav.

19. The next argument of the learned counsel for the appellant is that statements of P.W.1, P.W.2 and P.W.3 are not reliable. The deceased was murdered by some one else and First Information Report was lodged by P.W.1 because of his enmity with accused Ram Nagina Yadav and others. P.W.2 and P.W.3 were set up as eyewitness to falsely implicate the appellants.

20. The argument has no force since P.W. 2 and P.W.3 reached P.W.1 soon after the incident, which took place at about 7.30 P.M. and First Information Report was lodged at 8.45.P.M. Therefore there was not much time for confabulation in getting false First Information Report lodged against the appellants.

21. The next argument raised is that P.W.2, Dhanai Rajbhar, was an interested witness because in the passbook of pumping set his name finds place with deceased and two others jointly. The aforesaid passbook was produced by the appellant in defence evidence before the trial court. The trial court has found that the aforesaid passbook was made on 5.8.2001, while cross examination of

P.W.2 took place on 28.7.2001. Therefore trial court has rightly held that this passbook was got prepared after the cross examination of P.W.2 and filed in documentary evidence by the defence side.

22. The next argument of the learned counsel for the appellant is that P.W.2 and P.W.3 are only a chance witness of the incident and their testimonies are not a much credence.

23. We find that as per prosecution case deceased, P.W.2 and P.W.3 were coming together when the deceased was stopped by the accused persons and fired upon.

24. P.W.2 and P.W.3 ran to save their lives and reached P.W. 1. From the statements of the witnesses on record, it does not appear that P.W. 2 and 3 were chance witnesses when they were cross examined before the trial court and there is nothing in the statements of P.W.2 and P.W.3, recorded before the trial court which may compel us to hold that they were chance witnesses of the incident.

25. The place of incident is not doubtful since P.W.6 has collected blood stained and plain earth from the place of incident. The bicycle of the deceased was also found on the place of incident.

26. However, we find that incident in dispute took place at 7.30 P.M. on 5.8.1998. There is no source of light as mentioned in the site plan prepared by the investigating officer nor the prosecution witnesses of the fact, P.W.2 and P.W.3 have stated anything about the source of light. P.W.2 admitted there were bulbs in the market but they were not turned on at the time of incident. We find that it was only 7.30 P.M. when the incident took place. In the month of August it is not so dark at 7.30 P.M. that well known co-villager cannot be identified by an eye witness. In village people can identify each other from their mannerism.

27. We further find that except the role of exhortation, no other role has been assigned to the appellant, Ram Nagina Yadav and Shyam Narain Yadav (since deceased). No weapon has been assigned to them and motive assigned to them was not proved by means of any documentary evidence to the effect that the deceased used to make complaints against the school of Ram Nagina Yadav and therefore they exhorted the other accused to kill them. However other three appellants, namely, Virendra Yadav, Ram Narayan Yadav and Badan Rajbhar were alleged to have made four fires on the deceased and three of them hit him. There are three gunshot wounds of entry found on the person of the deceased and one

empty cartridge was also recovered from the spot. Therefore prosecution case stands corroborated regarding role of Virendra Yadav, Ram Narain Yadav and Badan Rajbhar, from the postmortem report of the deceased.

28. It is settled principle of criminal jurisprudence that reliable direct evidence is sufficient to pass the judgment of conviction even in the absence of further corroboration as held by the Apex Court in the case of **State of U.P. Vs. Krishna Gopal and another, (1988)4, SCC 302.**

29. The medical evidence in this case has fully supported the prosecution case. The prompt First Information Report clearly excluded the possibility of false implication of appellants, Virendra Yadav, Ram Narain Yadav and Badan Rajbhar. The defence failed to point out any material contradictions in the statements of the prosecution witness regarding role of the three appellants named above.

30. Learned counsel for the informant has submitted that exhortation amounts to a active participation and has relied upon the judgement of the Apex Court, **Krishnan and another Vs. Stater of Kerala (1996)10, SCC 508.**

31. We have found that accused, Ram Nagina

Yadav and Shyam Naryan Yadav, were assigned the role of exhortation and motive was set up against them that since they were principal and teacher of the school and deceased used to make complaints against their school hence they got him murdered by exhorting the co-accused. However we have not found motive of crime set up by them was proved by leading any documentary evidence or producing any witnesses from the school or education department that deceased used to make complaint of the school of Ram Nagina Yadav and Shyam Narain. Further P.W.2 has admitted that he did not assigned any role of exhortation to Ram Nagina Yadav and Shyam Narayan Yadav before the investigating officer. For the first time he assigned such a role to them in court only.

32. The Apex Court in the case of **Kuldip Yadav and others Vs. State of Bihar, AIR, 2011 (SC) 1736** held that before convicting a person with the aid of section 149 IPC, the court must give clear finding regarding nature of common object and that it was unlawful. Same is the ratio of the judgment of Apex Court in the case of **Allauddin Mian and Ors. Vs. State of Bihar 1989 AIR 1456 (SC)**. In this case the common object of appellant Ram Nagina Yadav with the other accused, was not proved.

33. There was election dispute regarding their

wives between Shyam Narayan Yadav and the deceased. There was no such motive of crime assigned to the appellant, Ram Nagina Yadav. He was assigned another motive that deceased used to make complaint of his school, hence he was annoyed with him, but this was not proved by the prosecution on the basis of any credible oral or documentary evidence.

34. Moreover, the role of exhortation assigned to appellant, Ram Nagina Yadav, is very weak type of evidence as held by Apex Court in ***Jainul Haque v. State of Bihar, 1974 AIR SC 45***. The Apex Court held that eye witnesses are prone to exaggerate things and to involve as many accused as possible.

35. Therefore we are of the view that surviving appellant, Ram Nagina Yadav, who has preferred Criminal Appeal No. 2457 of 2002, deserves to be granted benefit of doubt but conviction and sentence of appellant, Virendra Yadav, by the trial court deserves to be upheld and Criminal Appeal No. 2495 of 2002, deserves to be dismissed.

36. Appellant, Virendra Yadav is already on bail, His bail bonds are cancelled and sureties are discharged. He is directed to surrender forthwith and carry out remaining sentence.

37. Criminal Appeal No. 2457 of 2002 is allowed

qua Ram Nagina Yadav and Criminal Appeal No. 2495 of 2002 is dismissed qua Virendra Yadav.

38. Office is directed to send back trial court record and notify this judgement to the trial court within two weeks.

(Vinai Kumar Dwivedi,J.) (Siddharth,J.)

June 9, 2026

Atul Kr. Sri.