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RESERVED



2026:AHC:77353-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1062 of 1989

Brijendra Singh and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Raghuvansh Misra, Rahul Misra
Counsel for Respondent(s) :

Court No. - 44

HON'BLE SIDDHARTH, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Sri Raghuvansh Misra, learned counsel for surviving appellant no. 2; Sri. G.N. Kanaujiya, learned A.G.A.-I on behalf of the State; perused the judgment and the Trial Court record.

2. The instant criminal appeal has been preferred by the appellants, namely, Brijendra Singh and Brij Raj Singh, against the judgment and order dated 29.04.1989 passed by the learned Special Additional Sessions Judge, Pilibhit, in Sessions Trial No. 282 of 1985 (State vs. Brijendra Singh and another), arising out of Case Crime No. 127 of 1985, under Section 302/34 IPC, Police Station Bilsanda, District Pilibhit.

3. By the impugned judgment and order dated 29.04.1989, the learned Special Additional Sessions Judge, Pilibhit convicted the appellants and sentenced them to life imprisonment under Section 302/34 IPC. Aggrieved by the impugned judgment and order, the appellants have preferred the present criminal appeal.

4. On the basis of a written report (Exhibit Ka-1) dated 24.06.1985, a first information report (Exhibit Ka-14) was registered at Police Station Bilsanda, District Pilibhit, on 24.06.1985 at 6:30 A.M., as Case Crime No. 127 of 1985, under Section 302 IPC, against the appellants, namely, Brijendra Singh and Brij Raj Singh.

5. The brief facts of the prosecution case revealed from the written report (Exhibit Ka-1) are that informant Surat Singh (PW-1) stated in his *tahreer* that in my village, Bhuri Singh, son of Umray Singh, had no children. His nephew (sister's son), Brijendra Singh, son of Kadher Singh, resident of Nagariya, Police Station Sindhauli, whose in-laws (*sasuarl*) reside at Chhote Singh's house in our village, had been looking after Bhuri Singh's farming for a long time. Brijendra Singh repeatedly pressured his maternal uncle (Bhuri Singh) to transfer the land and property to his name. However, Bhuri Singh executed a sale deed for his house in my name. Due to this, Brijendra regarded grudge against me. He had stated several times that the land could only be acquired by killing Bhuri Singh. Based on this enmity, the incident occurred at approximately 1:00 A.M. at night. Bhuri Singh, my son Rishi Pal Singh, and I were lying in the courtyard talking amonth themselves. There was light from a lantern. Suddenly, Brijendra Singh and his friend Brij Raj Singh, son of Hanumant Singh, entered the house armed with guns from the north side. Brij Raj Singh is a resident of our village. Brij Raj Singh aimed his weapon at me and shouted, 'Kill them quickly, this is a good opportunity.' I raised an alarm, shouting "Save me! Save me!" Hearing the noise, Bhagwant Singh, son of Jangi Singh and Jagannath Singh, son of Bhudar Singh, arrived while flashing their torches. Right then, Brijendra Singh fired at Bhuri Singh with his illegal firearm. The bullet hit Bhuri Singh. After the shooting, Brijendra Singh and Brij Raj Singh

fled toward the north. Bhuri Singh passed away on the spot, his body is currently at the house.

6. After registration of the first information report (Exhibit Ka-14), and upon receiving information about the alleged murder, the Investigating Officer, S.O. Rahat Singh (PW-7), reached the place of occurrence with the police party. PW-7 took the investigation of the case in his hands. PW-7 inspected the place of occurrence. He got the necessary police papers prepared and the *panchayatnama* of the deceased prepared by S.I. Dan Singh. He also got the dead body of the deceased Bhuri Singh sealed and sent it for postmortem examination. PW-7 recorded the statements of the informant and other prosecution witnesses under Section 161 CrPC. He also prepared the recovery memo of the torch and lantern as Exhibit Ka-2 in the presence of witnesses and returned the same to them upon taking an undertaking that, when required, they would produce the above articles.

7. The Investigating Officer, S.O. Rahat Singh (PW-7), collected blood-stained soil and plain soil from the place of the incident. He also seized pellets, a blood-stained *kathri* (blanket) and a *charpai* (cot), and prepared a recovery memo for these items, marked as Exhibit Ka-11. He then conducted a raid at the house of the accused, Brij Raj Singh, son of Hanumant Singh, in an attempt to recover the murder weapon (gun). However, the weapon was not found, and no other incriminating items were recovered. A memo of these proceedings was prepared and marked as Exhibit Ka-12.

8. The Investigating Officer, S.O. Rahat Singh (PW-7), prepared the site plan of the place of occurrence. However, he was subsequently transferred from Police Station Bilsanda to another location. Consequently, the charge sheet was filed by Sub-Inspector Lakhan Singh, which was marked as Exhibit Ka-13, against the appellants, namely Brijendra Singh and Brij Raj Singh.

9. Prosecution witness Dr. A.K. Srivastava (PW-4) conducted the postmortem examination of the deceased, Bhuri Singh and prepared the

postmortem report, which was marked as Exhibit Ka-3. According to the report, the following ante-mortem injuries were found on the body of the deceased:-

"(i) A gunshot wound of entry 4 cm x 4 cm x chest cavity deep in left side of chest, 3 cm from left nipple. Blackening & Tattooing present. Margins inverted. Oval in shape. Injury present at 6'o clock position.

(ii) Multiple gunshot wounds of exist in an area of 11cm x 6 cm in back of left side of chest. It was situated 4 cm below the angle of the Scapula (shoulder blade), where semi-clotted blood was present. This injury was related to injury number 1."

According to the opinion of the Dr. A.K. Srivastava (PW-4), cause of death was shock and hemorrhage as a result of ante-mortem injuries.

10. Since the case was exclusively triable by the Court of Session, learned Magistrate committed the case to the Sessions Court for trial. Charges were framed against the appellants by the Trial Court on 14.07.1987, under section 302/34 IPC. Appellants denied from the charges and claimed trial.

11. To substantiate its case, the prosecution examined a total of seven witnesses, namely, the informant Surat Singh (PW-1), Bhagwant Singh (PW-2), Jagannath Singh (PW-3), Dr. A.K. Srivastava (PW-4), Omhari (PW-5), Rishi Pal Singh (PW-6), and Rahat Singh (PW-7). In addition to the oral testimony, the prosecution also relied on documentary evidence marked as Exhibit Ka-1 to Exhibit Ka-14.

12. After the evidence of all prosecution witnesses was recorded, the appellants were examined under Section 313 Cr.P.C. The appellants denied the allegations levelled against them and stated that they had been falsely implicated in the case due to prior enmity and at the instigation and influence of Jagannath Singh (PW-3). The appellants further stated that the informant Surat Singh (PW-1), was interested in acquiring the house of the deceased, Bhuri Singh, while Jagannath Singh, the Pradhan, intended to acquire five acres of agricultural land belonging to the deceased, situated in the same village. It was also contended that

Brijendra Singh, being the sole heir of Bhuri Singh, had been falsely implicated in the present case.

13. After hearing the arguments of both the prosecution and the defence, the learned Trial Court, *vide* order dated 29.04.1989, held the appellants guilty of the alleged offence and convicted and sentenced them to life imprisonment under Section 302/34 IPC. Aggrieved by the said judgment, the appellants have preferred the present criminal appeal before this Court.

14. During the pendency of the present criminal appeal, the appellant no. 1, Brijendra Singh, has died. Accordingly, *vide* order of this Court dated 06.02.2026, the present criminal appeal in respect of appellant no. 1, Brijendra Singh, stands abated. Hence, we are adjudicating the present criminal appeal solely in respect of the surviving appellant no. 2, Brij Raj Singh.

15. We have heard the arguments of the learned counsel appearing for the surviving appellant no. 2, Brij Raj Singh as well as the learned AGA appearing on behalf of the State-respondent. We have also perused the impugned judgment and order of conviction and sentence dated 29.04.1989 passed by the learned Trial Court and have also gone through the entire oral and documentary evidence available on record.

16. The main thrust of the arguments advanced by learned counsel for the surviving appellant no. 2, Brij Raj Singh, is that the prosecution has assigned to him only an ornamental role of exhortation. Brij Raj Singh neither had any motive nor has his participation been proved, inasmuch as, appellant no. 1, Brijendra Singh (now deceased) belonged to a different village and the prosecution evidence is inconsistent regarding his relationship with Brij Raj Singh. In the F.I.R., it is stated that Brij Raj Singh and Brijendra Singh were friends, whereas the informant (PW-1) has alleged that they were brothers. In any event, Brijendra Singh, who allegedly had a motive to eliminate the deceased, did not require any exhortation from Brij Raj Singh to commit the crime. It is further alleged that Brij Raj Singh kept PW-1 at gunpoint. If there was any motive, it

was stronger against PW-1, and had he been at gunpoint, he would not have been spared. There is no evidence of any prior concert between Brijendra Singh and Brij Raj Singh so as to establish the participation of Brij Raj Singh in the commission of the crime. Even if the prosecution evidence is accepted at face value, the only allegation against the surviving appellant is that he exclaimed that the opportunity was good. From the words allegedly uttered by Brij Raj Singh, it cannot be inferred that his intention was to have the deceased murdered. Thus, the conviction of Brij Raj Singh with the aid of Section 34 of the IPC is not sustainable in the eyes of law. Therefore, the impugned judgment and order dated 29.04.1989 passed by the Trial Court is liable to be set aside, and the instant criminal appeal deserves to be allowed.

17. *Per contra*, learned AGA on behalf of the State-respondent submitted that the name of the surviving appellant, Brij Raj Singh, was mentioned in the written report (Exhibit Ka-1) by the informant, Surat Singh (PW-1). He also submitted that, from the evidence of the prosecution witnesses, including informant Surat Singh (PW-1), the presence of surviving appellant no. 2, Brij Raj Singh, at the place of occurrence is clearly proved. Appellant no. 2, Brij Raj Singh exhorted appellant no. 1, Brijendra Singh (now deceased), to utilize the opportunity by killing Bhuri Singh. Upon this exhortation, appellant no. 1, Brijendra Singh (now deceased), fired a gunshot at Bhuri Singh, who died on the spot. The Trial Court, after appreciating the prosecution evidence, found ample role and evidence against the surviving appellant no. 2, Brij Raj Singh, justifying his conviction under Section 302/34 IPC. The Trial Court properly appreciated the evidence, and there is no illegality or perversity in the reasoning and findings given in the impugned judgment and order dated 29.04.1989. Hence, the instant criminal appeal by the appellant lacks merit and is liable to be dismissed.

18. In the light of the above arguments and counter arguments of both sides, we find that in the written report (Exhibit Ka-1), the only role assigned to the surviving appellant no. 2, Brij Raj Singh, was that he

pointed a gun towards informant Surat Singh (PW-1) and exhorted appellant no. 1, Brijendra Singh (now deceased), to kill Bhuri Singh.

19. From a perusal of the evidence of the informant Surat Singh (PW-1), we find that PW-1 stated that appellants, Brijendra Singh and Brij Raj Singh had illegal guns in their hands. Upon seeing them, he raised an alarm. Bhagwan Singh and Jagannath Singh arrived at the scene and lit their torches. Thereupon, Brij Raj Singh stated that it was a good opportunity to utilize, following which Brijendra Singh fired a shot at Bhuri Singh. The shot hit him in the chest, and after receiving the injury, he fell down. The accused then fled towards the north. From a perusal of the evidence of informant Surat Singh (PW1), we further find that this witness testified regarding the enmity of the appellant no. 1, Brijendra Singh (now deceased), towards the deceased, Bhuri Singh. This was because the deceased, Bhuri Singh, owned 50-60 *bighas* of agricultural land and was issueless. The appellant no. 1, Brijendra Singh (now deceased), wanted to take the land of the deceased, Bhuri Singh, but Bhuri Singh did not want to give his land to him. Two years prior to this murder, Bhuri Singh had executed a sale deed for his house in favour of the informant, PW-1. Due to which, appellant no. 1, Brijendra Singh (now deceased), regarded enmity with the deceased, Bhuri Singh.

20. From an overall appreciation and perusal of the evidence of informant Surat Singh (PW-1), it is apparent that there is not a single word stated in respect of the surviving appellant no. 2, Brij Raj Singh, suggesting any motive that would have impelled or forced him to assist and exhort appellant no. 1, Brijendra Singh (now deceased), to kill the deceased, Bhuri Singh. We find that the only reference, in simple words, which appears to be an afterthought and concocted with a view to implicate the surviving appellant no. 2, Brij Raj Singh, regarding his presence at the place of occurrence along with appellant no. 1, Brijendra Singh (now deceased), appears to be false, fabricated, and artificial.

21. It is also a notable fact that, according to the informant, the surviving appellant no. 2, Brij Raj Singh, pointed a gun at him, however,

he spared the informant's life and did not fire a single shot, either in the air or at any person present at the place of occurrence. We find it difficult to understand this peculiar circumstance as to why the surviving appellant no. 2, Brij Raj Singh, would point a gun at the informant, Surat Singh (PW-1), and yet leave him unharmed, thereby allowing him to remain a witness capable of deposing against him before the Court. In other words, it appears improbable that the surviving accused, Brij Raj Singh, or any other accused person, would intentionally spare an individual without causing harm, knowing well that such a person could later testify against him in relation to the alleged offence.

22. Thus, upon a perusal of the evidence of the informant, Surat Singh (PW-1), it emerges that there is no statement from which it can be inferred that the surviving appellant no. 2, Brij Raj Singh, was present at the place of occurrence with premeditation, pursuant to a prearranged plan, or with any criminal intent at the time of the commission of the offence by appellant no. 1, Brijendra Singh. Further, from the testimony of this witness, we find no material on record to establish that the surviving appellant no. 2, Brij Raj Singh, had prior concert with appellant no. 1, Brijendra Singh, for the commission of the alleged offence.

23. In the evidence of PW-1, there is not a single statement showing any intention or motive that would have caused the surviving appellant no. 2, Brij Raj Singh, to assist appellant no. 1, Brijendra Singh (now deceased), or to be present at the place of occurrence with him. It is a settled principle of law that, without a motive or reason, no person would take part in a heinous crime like murder. A perusal of the entire evidence of informant Surat Singh (PW-1) shows that there is no evidence oral or documentary that Brij Raj Singh, by his own motive or desire, participated in the crime or was present at the place of occurrence.

24. Further, it is also clearly established that there was a dispute between prosecution witness Jagannath Singh (PW-3) and appellant no.

1, Brijendra Singh (now deceased), regarding the agricultural land of deceased Bhuri Singh. It is further revealed that a case was pending between Jagannath Singh (PW-3) and appellant no. 1, Brijendra Singh (now deceased), in respect of the agricultural land of the deceased Bhuri Singh. It is also revealed that Jagannath Singh (PW-3) has got executed a will from deceased Bhuri Singh in respect of his whole agricultural land in his favor. Thus, surviving appellant no. 2, Brij Raj Singh had no enmity either from informant Surat Singh (PW-1) or from the deceased Bhuri Singh. Enmity was found to be established from the prosecution evidence between the appellant no. 1, Brijendra Singh (now deceased) and Jagannath Singh (PW3). Jagannath Singh (PW-3), after the death of the deceased Bhuri Singh, forcibly took possession of all the agricultural land of the deceased and began to cultivate the whole land.

25. Thus, from the above discussion and perusal of the evidence of informant Surat Singh (PW-1), we are of the considered opinion that the presence of the surviving appellant no. 2, Brij Raj Singh, at the place of occurrence and also his involvement, in the commission of the alleged crime is found to be highly suspicious and doubtful.

26. From a perusal of the evidence of prosecution witnesses, namely, Bhagwant Singh (PW-2) and Jagannath Singh (PW-3), it is evident that both witnesses turned hostile and did not support the prosecution case. Bhagwant Singh (PW-2) only stated that he had seen the appellants, Brijendra Singh and Brij Raj Singh, running away. However, during cross-examination, the hostile witness Bhagwant Singh (PW-2) admitted that Jagannath Singh is forcibly cultivating 50–60 *bighas* of the deceased Bhuri Singh's agricultural land. Jagannath Singh (PW-3) clearly stated that he did not witness the murder of Bhuri Singh and did not see the appellants committing the crime.

27. From a perusal of the evidence of Rishi Pal Singh (PW-6), it is revealed that this witness is the son of informant, Surat Singh (PW-1). In his examination-in-chief, PW-6 reiterated the same facts previously deposed by his father. During cross-examination, Rishi Pal Singh (PW-6)

stated that after Bhuri Singh's death, appellant no. 1, Brijendra Singh (now deceased), would be the heir to the land, as Bhuri Singh had no issue. He further stated that following Bhuri Singh's death, Jagannath Singh (PW-3) forcibly took possession of all of the deceased's land.

28. Thus, from a perusal of the evidence of Rishi Pal Singh (PW-6), it is apparent that there is no statement in respect of the surviving appellant no. 2, Brij Raj Singh, explaining the reasons or motive behind his participation or presence at the place of occurrence. It is further clear that as his father, informant Surat Singh (PW-1), stated regarding the presence of surviving appellant no. 2, Brij Raj Singh at the place of occurrence, PW-6 has also stated about the presence of the surviving appellant no. 2, Brij Raj Singh at the place of occurrence, in the same manner.

29. Further, no pre-planned act, pre-concert plan, or criminal act has been revealed within the evidence of Rishi Pal Singh (PW-6). Hence, it is apparent that with due consideration and afterthought, the name of the surviving appellant no. 2, Brij Raj Singh, was added in the written report (Exhibit Ka-1) by informant Surat Singh (PW-1). We have examined the findings and reasoning given by the the Trial Court in this regard and find that, without properly discussing the essential elements of Section 34 of the IPC, namely, pre-planning, premeditation, presence, and prior concert with appellant no. 1, Brijendra Singh (now deceased), the Trial Court convicted the surviving appellant no. 2, Brij Raj Singh, under Section 34 IPC solely on the basis of the statements of Surat Singh (PW-1) and Rishi Pal Singh (PW-6).

30. The Hon'ble Supreme Court in *Krishna Govind Patil v. State of Maharashtra, 1963 SCC Online SC 29*, has held in paragraph- 6 that:

"..... It is well settled that common intention within the meaning of the section implied a pre-arranged plan and the criminal act was done pursuant to the prearranged plan. The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so, before a court can convict a person

under Section 302, read with Section 34, of the Indian Penal Code, it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence."

31. Thus, in the light of the above legal principle as laid down by the Hon'ble Supreme Court, it is clear that for convicting any person under Section 302 IPC with the help of Section 34 IPC, there must be a clear and definite finding based on cogent evidence available on record that appellant no. 2, Brij Raj Singh had prior concert with appellant no. 1, Brijendra Singh for commission of the crime. This finding must establish that the accused person had a prior concert with one or other persons for the commission of the crime. In the present case at hand, it is clear from a perusal of the findings and reasoning as given by the Trial Court that there are no discussion or findings about the fact that surviving appellant no. 2, Brij Raj Singh had prior concert with appellant no. 1, Brijendra Singh (now deceased) for the commission of the alleged crime.

32. The Trial Court solely on the basis of the evidence of informant Surat Singh (PW-1) and his son, Rishi Pal Singh (PW-6), incorrectly held that surviving appellant no. 2, Brij Raj Singh was guilty of the alleged offence. Both witnesses had only made statements that the surviving appellant no. 2, Brij Raj Singh pointed a gun towards informant Surat Singh (PW-1), but did not fire any shot at him or towards any other person present at the place of the incident. The Trial Court, without keeping in mind this material fact and the ingredients of Section 34 IPC and without giving any finding on this point, has wrongly held the surviving appellant no. 2, Brij Raj Singh guilty for the commission of the alleged crime. Thus, we find force in the argument of learned counsel for surviving appellant no. 2, Brij Raj Singh in this respect.

33. In view of the above discussions, we find that the conviction of the surviving appellant no. 2, Brij Raj Singh, in the present case is not supported by any reliable evidence. The involvement of Brij Raj Singh in the commission of the alleged crime is, therefore, highly doubtful and

suspicious. We also find that his presence at the place of occurrence is very uncertain, as there is no evidence showing any motive or reason for him to be there with appellant no. 1, Brijendra Singh (now deceased).

34. Thus, we find that the impugned judgment and order of conviction and sentence dated 29.04.1989, passed by the learned Special Additional Sessions Judge, Pilibhit, in respect of the surviving appellant no. 2, Brij Raj Singh, is not supported by any cogent evidence and is contrary to the law laid down by the Hon'ble Supreme Court in *Krishna Govind Patil (supra)*. In light of the above discussions, we hold that the impugned judgment and order of conviction and sentence dated 29.04.1989, insofar as it relates to the surviving appellant no. 2, Brij Raj Singh, is not sustainable in the eyes of law and is liable to be set aside.

35. In view of the above, we *set aside* the impugned judgment and order of conviction and sentence dated 29.04.1989, passed by the learned Special Additional Sessions Judge, Pilibhit, in Sessions Trial No. 282 of 1985 (State vs. Brijendra Singh and another), arising out of Case Crime No. 127 of 1985, under Section 302/34 IPC, Police Station Bilsanda, District Pilibhit, in respect of surviving appellant no. 2, Brij Raj Singh. Consequently, the present criminal appeal is *allowed*.

36. The surviving appellant no. 2, Brij Raj Singh, is on bail and he need not surrender. His bail bonds are cancelled, and the sureties are discharged from their liabilities.

37. Let a copy of this judgment be transmitted to the Trial Court along with the lower court record forthwith for necessary compliance.

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

April 9, 2026
Aditya