



2026:AHC:174471-DB

A.F.R.

RESERVED ON 31.07.2026
DELIVERED ON 19.08.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 2040 of 1988

Asgar and others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Sanjeev Kumar, Sudhanshu Dhuliya
Counsel for Respondent(s)	: A.G.A.

Court No. - 45

HON'BLE SALIL KUMAR RAI, J.
HON'BLE PADAM NARAIN MISHRA, J.

(Delivered by Hon'ble Salil Kumar Rai, J.)

Heard Sri Sanjeev Kumar, the counsel for the appellants and Sri Nagendra Kumar Srivastava, the A.G.A. for the State / prosecution.

The present appeal arises out of the judgment and order dated 9.9.1988 passed by the Sessions Judge, Bijnor in Sessions Trial No. 50 of 1986, State v. Asghar & Others, arising out of Case Crime No. 586 of 1985, under Sections 307 and 323 IPC, Police Station Chandpur, District Bijnor. The trial court convicted the appellants under Sections 302, 307 and 323 IPC with the aid of Section 34 IPC and sentenced them to rigorous imprisonment for life under Section 302 read with Section 34

IPC and six months rigorous imprisonment under Section 323 read with Section 34 IPC. Additionally, appellant no. 1 was sentenced to three years rigorous imprisonment and appellant nos. 2 and 3 were sentenced to five years rigorous imprisonment under Section 307 read with Section 34 IPC.

By order dated 28.11.2019, the appeal was declared to have abated insofar as appellant nos. 1 and 3 were concerned. The appeal, therefore, survives for adjudication only in respect of appellant no. 2.

The prosecution case is that Ashraf was the nephew of appellant no. 1 and the cousin of appellant nos. 2 and 3, who were sons of appellant no. 1. Ahsan was distantly related to Zahid, the first informant. It was alleged that at about 4.00 p.m. on 18.12.1985, the appellants assaulted Mamman Hussain, the father of Zahid, as a result of which Mamman subsequently died, and also caused injuries to Zahid and his wife Sharifan.

According to the first information report, about four or five months before the occurrence, Ashraf's wife had allegedly eloped and it was suspected that she had gone with Ahsan. Ashraf suspected Mamman Hussain and Zahid of having facilitated the elopement and had abused and threatened them. The prosecution further alleged that on the morning of 18.12.1985 there was a heated exchange and scuffle between Sabir, appellant no. 3, and Zahid. On intervention by villagers, Sabir left the place threatening to teach Zahid a lesson that evening.

At about 4.00 p.m. the same day, when Zahid and Mamman Hussain were proceeding to cut fodder from the fodder-cutting machine installed within their enclosure, the three appellants entered the enclosure. Appellant no. 1 was armed with a lathi and appellant nos. 2 and 3 with tabals and they assaulted Zahid and Mamman. When Sharifan intervened to save them, appellant no. 1 also assaulted her with a lathi. On hearing their cries, Ahsan, Jahri and Bashir arrived and challenged the appellants, whereupon the appellants left the place. The FIR alleged that the appellants had assaulted the deceased and the injured with the

intention of killing them and that the occurrence had been witnessed by the persons named therein.

Zahid took Mamman Hussain and Sharifan to the police station, where on the basis of his statement Case Crime No. 586 of 1985 was registered at 6.15 p.m. on 18.12.1985. The FIR was exhibited as Ka-1.

Mamman Hussain, Zahid and Sharifan were medically examined on the same day. Mamman was examined at 6.45 p.m. and was found to have four incised wounds, one lacerated wound on the scalp and one abrasion. One of the incised wounds, measuring 25×7 cm and extending into the cavity, had resulted in protrusion of the intestines and one incised wound was found on the scalp. Zahid was examined at 7.10 p.m. and was found to have one lacerated wound on the scalp, one incised wound, one contusion and one abrasion. Sharifan was examined at 7.20 p.m. and had a lacerated wound on her scalp. The corresponding injury reports were proved by PW-4 and marked as Exhibits Ka-5, Ka-4 and Ka-3 respectively.

Mamman Hussain subsequently succumbed to his injuries at about 10.25 a.m. on 23.12.1985. Following the inquest, his body was sent for post-mortem examination, which was conducted at 4.30 p.m. the same day. The post-mortem report was exhibited as Ka-2.

During investigation, the Investigating Officer collected blood-stained and plain soil from the place of occurrence on 19.12.1985 and prepared the recovery memo, Exhibit Ka-9. On 20.12.1985, blood-stained clothes of Mamman Hussain, Zahid and Sharifan were also taken into possession and the corresponding recovery memos were exhibited as Ka-10, Ka-11 and Ka-12.

After investigation, a charge-sheet was submitted under Sections 302 and 323 IPC. The case was committed to the Sessions Court and registered as Sessions Trial No. 50 of 1986. The appellants were charged under Section 302 read with Section 34 IPC for the murder of Mamman Hussain, under Section 307 read with Section 34 IPC for attempting to murder Zahid and under Section 323 read with Section 34 IPC for causing hurt to Sharifan. They pleaded not guilty and claimed trial.

The prosecution examined six witnesses. PW-1 Zahid, the first informant, and PW-2 Sharifan, wife of the deceased, were the witnesses of fact. PW-3 was the doctor who conducted the post-mortem examination, PW-4 the doctor who examined the injured, PW-5 a formal witness who proved the charge-sheet and PW-6 the Investigating Officer.

PW-1 substantially reiterated the prosecution version. He stated that the appellants suspected Ahsan of having eloped with Ashraf's wife and that this suspicion was the background to the dispute between the parties. He proved the FIR and stated that after the occurrence he took his parents, Mamman and Sharifan, to the police station, from where they were sent for medical examination. In cross-examination, however, he stated at one stage that he had first taken Mamman to the police station but later stated that he had first taken him to the hospital. When the inconsistency was pointed out to him by the Court, the witness became disturbed and did not explain the inconsistency. He subsequently stated in cross-examination that the doctor had initially refused to admit Mamman and had asked that the Investigating Officer be called, whereupon Bashir went to the police station and brought the Investigating Officer to the hospital. He further stated that the Investigating Officer interrogated him at the hospital. PW-1 denied that the FIR had been lodged after deliberation or that the appellants had been falsely implicated because of previous enmity. He consistently maintained that the appellants had assaulted him and the deceased with lathi and tabal. He attributed the injury on his head to a tabal blow, but when questioned as to which accused had caused it, stated that he did not know and accepted that it might have been caused by a lathi. He denied that his injury was self-inflicted or that darkness had prevented him from seeing the assailants.

PW-2 also supported the prosecution version. She stated that appellant nos. 2 and 3 were armed with tabals and appellant no. 1 with a lathi and that when she intervened to save Zahid and Mamman, appellant no. 1 assaulted her with the lathi. She denied that her injury had been

caused by the fodder machine and also denied that she could not have identified the assailants because of darkness.

PW-3 proved the post-mortem report and opined that the injuries sustained by Mamman Hussain were sufficient in the ordinary course of nature to cause death. PW-4 proved the injury reports of the three injured persons and stated that they had been brought to the hospital accompanied by a police constable. His cross-examination elicited that some injuries on Zahid could have been self-inflicted and that Sharifan's injury could have been caused by a hard object.

PW-6 proved the recovery memos and stated that he had recorded the statement of Mamman under Section 161 Cr.P.C. on 20.12.1985. He denied that Bashir had gone to the police station to call him or that the FIR had been registered after deliberation.

In their statements under Section 313 Cr.P.C., the appellants denied the incriminating circumstances and also denied knowledge of the alleged elopement of Ashraf's wife or any suspicion against Ahsan. They admitted the relationship between appellant no. 1 and Ashraf but denied any other relevant relationship or motive and alleged false implication because of prior enmity. The defence examined Sirajuddin as DW-1, who stated that there was litigation between the appellants and Munshi Wahid, a person related to the first informant.

The trial court accepted the prosecution case regarding the alleged elopement of Ashraf's wife and treated it as the motive for the occurrence. It also relied upon the fact that the injured had been medically examined shortly after registration of the FIR and found no satisfactory reason for the false implication of the appellants. The fact that the appellants had arrived together, armed with weapons, and had jointly participated in the assault was treated as establishing their common intention. The appellants were accordingly convicted under Sections 302/34, 307/34 and 323/34 IPC and sentenced as noted before.

The counsel for the appellants submitted that the evidence of PW-1 was materially inconsistent on the question whether Mamman Hussain had first been taken to the hospital or to the police station. It

was argued that PW-1 had initially stated in cross-examination that he had taken the deceased to the police station and had thereafter corrected himself by stating that he had first taken him to the hospital. The inconsistencies in the statement of PW-1 as noted before regarding the injury on his head was also relied upon to argue that the witness was not reliable. The further statement that the Investigating Officer had come to the hospital and interrogated him, according to the counsel, showed that the FIR was ante-timed. Reliance was also placed upon the letter of reference sent by the police to the doctor, which did not contain the case crime number. It was submitted that these circumstances rendered PW-1 unreliable and demonstrated that the trial court had erred in relying upon his testimony. The counsel further submitted that the prosecution had withheld independent and material witnesses. According to the FIR, Ahsan, Jahri and Bashir had witnessed the occurrence, yet none of them was examined. Particular emphasis was placed upon the non-examination of Ahsan, with whom, according to the prosecution, the wife of Ashraf had eloped and who, therefore, was a material witness not only to the occurrence but also to its alleged motive. It was argued that the prosecution had failed to establish the alleged motive. The evidence of DW-1, the fact that Ashraf's wife was admittedly living with him and the fact that Ashraf had never lodged a report regarding her alleged elopement were relied upon to submit that the prosecution had concocted the story of elopement merely to provide a motive for the occurrence. It was further argued that the evidence did not disclose any common intention on the part of the appellants to commit the murder of Mamman Hussain or to assault Zahid and Sharifan. According to the counsel, even if the occurrence was accepted, the appellants could not be convicted of the offences charged with the aid of Section 34 IPC. It was also argued that the trial court had failed to properly appreciate the evidence of DW-1. On these grounds, it was submitted that the conviction of the appellants and sentence awarded to them deserved to be set aside.

The AGA, on the other hand, supported the judgment of the trial court and submitted that the prosecution case stood established by the

evidence of PW-1 and PW-2, both of whom were injured witnesses. The discrepancies relied upon by the defence were described as minor and incapable of affecting the credibility of the ocular account. It was submitted that the witnesses examined by the prosecution were sufficient to establish the occurrence and that non-examination of other witnesses did not weaken the prosecution case. The motive was also stated to have been proved through the prosecution evidence, while the testimony of DW-1 was challenged on the ground that, in cross-examination, he had denied even knowing the name of Ashraf's wife. In any event, it was submitted, motive was of limited significance in a case based on direct evidence. The manner in which the occurrence took place, the presence of all the appellants and they having arrived together armed with deadly weapons, followed by their joint participation in the assault, according to the AGA, clearly established their common intention. The appeal was accordingly prayed to be dismissed.

We have considered the submissions of counsel for the parties and carefully perused the record of the trial court.

The first question is whether the evidence of PW-1 and PW-2 can safely be relied upon.

The appreciation of ocular evidence admits of no fixed formula. The testimony of a witness has to be considered as a whole to determine whether it bears the ring of truth. Minor discrepancies, variations in narration, errors in estimating time or sequence and omissions which do not affect the core of the prosecution case ordinarily do not justify rejection of otherwise credible evidence. Human memory is not photographic and a witness cannot be expected to reproduce every detail, every word of a conversation or the precise duration and sequence of an unexpected occurrence. The relevant question is whether the discrepancy is such as to render the testimony inherently improbable or materially affect its credibility. This principle assumes particular relevance where witnesses are from a rural or rustic background. Their evidence has to be appreciated having regard to their normal behavioural and perceptive patterns and without applying an unduly sophisticated or hyper-technical

standard of scrutiny. Variations at the margins, errors of perception, lapses of memory and minor discrepancies in sequence or detail may coexist with a substantially truthful account. At the same time, the Court is not required to accept every part of the testimony merely because its broad substratum appears credible. It is permissible to separate the reliable portion from exaggeration or embellishment and to consider whether the remaining evidence is sufficient to establish the charge. The maxim *falsus in uno, falsus in omnibus* has no application in India. Similarly, every inconsistency between a previous statement and the testimony in court does not amount to a contradiction sufficient to discredit a witness. The inconsistency must have the capacity to materially affect the version under consideration. The ultimate test is whether the discrepancy shakes the credibility of the witness on a material aspect of the occurrence.¹

Tested on these principles, the discrepancy in the evidence of PW-1 as to whether he first took Mamman Hussain to the police station or to the hospital does not materially affect his account of the occurrence. The FIR was registered at 6.15 p.m., while Mamman, Zahid and Sharifan were medically examined between 6.45 p.m. and 7.20 p.m. The injured were accompanied by Constable Mohan Pal Singh. PW-4 confirmed their presence at the hospital and the defence did not put to him that they had been brought there without police reference or were not accompanied by any police personnel. The time recorded in the injury reports was also not seriously challenged.

The absence of case crime number from the letter of reference, by itself, does not establish that the FIR was ante-timed. No requirement of law has been shown which made mention of the crime number an indispensable part of such a letter. The surrounding circumstances, namely, the prompt registration of the FIR, the medical examination shortly thereafter and the presence of a police constable with the injured, do not support the suggestion that the FIR was subsequently prepared after deliberation.

¹ Goverdhan v. State of Chhattisgarh, (2025) 3 SCC 378 ; Rajan v. State of Haryana, 2025 SCC OnLine SC 1952

The next submission concerns the non-examination of Ahsan and the other persons named in the FIR. Non-examination of a material witness is not by itself a ground for discarding evidence which is otherwise natural, trustworthy and convincing. The effect of withholding such a witness has to be considered in the circumstances of each case. The Court must first assess the quality and reliability of the evidence actually brought on record. If that evidence is found worthy of acceptance, it may be acted upon notwithstanding that other witnesses who could also have been examined were not produced. An adverse inference may arise where the witness was available and could have explained the genesis of the occurrence, supplied an important link or cured an existing infirmity in the prosecution case, but was withheld. The relevant question is therefore not merely whether a material witness was not examined, but whether his non-examination has left a material gap which his evidence could reasonably have supplied or cured.²

In the present case, PW-1 and PW-2 were themselves injured in the occurrence and their evidence, if found reliable, directly establishes the assault. There is no material infirmity in their evidence which required the testimony of Ahsan to supply a missing link. His evidence would, at best, have been additional evidence regarding an occurrence already spoken to by the injured witnesses. The non-examination of Ahsan, therefore, does not render the prosecution case deficient.

The submission regarding motive also does not assist the appellants. The prosecution attributed the occurrence to the suspicion that Ashraf's wife had eloped with Ahsan. The defence pointed out that she had subsequently returned and was living with Ashraf and that Ashraf had never lodged any report regarding her alleged elopement. DW-1 also disputed the prosecution version.

Motive, however, does not occupy the same position in every criminal case. It may assume considerable importance where the prosecution seeks to establish guilt by circumstantial evidence, but where there is direct and reliable evidence connecting the accused with

² State of H.P. v. Gian Chand, (2001) 6 SCC 71; Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145.

the occurrence, absence or weakness of motive ordinarily loses much of its significance. The prosecution is not required to establish a strong or specific motive once the direct evidence is otherwise found worthy of acceptance.³

We have already held that the ocular evidence proves the occurrence and participation of the accused and in that regard we do not find any infirmity in the ocular evidence. Also even if the alleged motive arising from the elopement of Ashraf's wife is left aside, the prosecution evidence establishes that there had been a scuffle between PW-1 and appellant no. 3 in the morning of the same day, followed by a threat to teach PW-1 a lesson that evening. The occurrence in the afternoon was therefore not an isolated or unexplained encounter. Consequently, even if the prosecution has failed to establish the precise motive attributed to the appellants, that circumstance by itself cannot discredit reliable ocular evidence.

The testimony of DW-1 also does not materially assist the defence. His evidence regarding previous enmity establishes, at most, a circumstance which could furnish a reason for false implication but could equally furnish a reason for the commission of the offence. His denial of knowledge even of the name of Ashraf's wife and of the details of the litigation further limits the weight which can be attached to his evidence regarding the genesis of the occurrence. The trial court, therefore, committed no error in not attaching decisive significance to his testimony.

The remaining question is the applicability of Section 34 IPC. The evidence shows that the appellants came together, armed with tabal and lathi, and immediately participated in the assault upon Mamman Hussain and PW-1. When PW-2 intervened to save them, she too was assaulted. The deceased sustained four incised wounds and a lacerated wound, while PW-1 sustained an incised wound and a lacerated wound. The appellants thereafter left together when the villagers assembled and challenged them.

³ 3 Molu v. State of Haryana, (1976) 4 SCC 362.

Section 34 requires participation in the commission of the offence charged. The mere fact that several persons participated in the same occurrence does not make each of them liable for every offence committed during it. Their participation must have a functional relationship with the offence in question. In the present case, however, the participation of any of the appellants was not confined to their presence at the scene or to some other act committed during the occurrence. All the accused/appellants came together, were armed and actively joined in the assault upon the deceased and PW-1 and, when Sharifan intervened, the assault extended to her as well. The participation of all the appellants, including the surviving appellant no.2, was thus directly connected with the offences for which the appellants were charged. The circumstances as a whole establish the requisite common intention.

On a consideration of the evidence as a whole, we find that the discrepancies relied upon by the defence do not affect the core of the prosecution case. The evidence of PW-1 and PW-2, both injured witnesses, is consistent on the material features of the occurrence and receives support from the prompt medical examination and the surrounding circumstances. The non-examination of Ahsan does not leave any material gap in the prosecution case, and the failure to establish the precise motive attributed by the prosecution does not displace otherwise reliable direct evidence. The evidence further establishes the participation of appellant no. 2, who was armed with Tabal, in the offences charged and the common intention necessary to attract Section 34 IPC. The assault by the appellants was on vital part of the body.

We are, therefore, satisfied that the prosecution has established the guilt of appellant no. 2 beyond reasonable doubt. The findings of the trial court do not suffer from any illegality warranting interference.

The appeal having already abated insofar as appellant nos. 1 and 3 are concerned, the conviction of appellant no. 2, Jabir, under Section 302 read with Section 34 IPC, Section 307 read with Section 34 IPC and

Section 323 read with Section 34 IPC is affirmed. The sentences imposed by the trial court are also affirmed which shall run concurrently.

Appellant no. 2 is on bail. He shall surrender before the trial court within one month from today and, in any event, on or before 20.9.2026. Upon surrender, he shall be taken into custody to serve the sentence. The period already undergone shall be adjusted in accordance with law. In the event he fails to surrender as directed, the trial court shall take such coercive measures as are permissible in law to secure his presence and execution of the sentence.

The Superintendent of Police, Bijnor shall ensure execution of any warrant issued by the trial court for compliance with the sentence.

The trial court and the Superintendent of Police, Bijnor shall submit a compliance report to this Court by **30.9.2026**.

The appeal is ***dismissed***.

Let the trial court record be remitted forthwith. A certified copy of this judgment shall be transmitted to the trial court for information and compliance. A copy of this order shall also be sent to the trial court and the Superintendent of Police, Bijnor through the Registrar (Compliance) within 24 hours.

(Padam Narain Mishra,J.) (Salil Kumar Rai,J.)

August 19, 2026

Satyam