



2026:AHC:35736-DB

A.F.R.

Reserved on : January 12, 2026

Delivered on: February 18, 2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1188 of 1989

Khunni Lal

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s) : Amar Saran, Sikandar B Kochar
Counsel for Respondent(s) : G.A.

Court No. - 42

**HON'BLE SIDDHARTHA VARMA, J.
HON'BLE PRASHANT MISHRA-I, J.**

(Delivered By Hon'ble Prashant Mishra-I, J.)

1. Heard Mr. Sikandar B Kochar, learned counsel for the appellant, Mr. Amit Sinha, learned Additional Government Advocate representing the State and perused the materials on record.

2. The instant criminal appeal has been preferred by appellant, namely, Khunni Lal, against the judgment and order dated 17.05.1989 passed by learned Additional District and Sessions Judge, Kannauj, Farrukhabad in Sessions Trial No. 219 of 1987, arising out of Case Crime No. 56 of 1987, under Section 302 I.P.C., Police Station Thathiya Sub-District Kannauj, District Farrukhabad, whereby the appellant has been convicted and sentenced to imprisonment for life, under Section 302 I.P.C.

3. As per the prosecution case, in brief, the accused persons, namely, Khunni Lal, Bhagwan Din and Jagdish belong to the family of complainant Ram Singh and they are co-sharers of half of the house and land of the complainant. Accused Khunni Lal is a Lekhpal and Bhagwan Din is an inspector in the canal department in district Kanpur. The accused persons built their house by encroaching the land of the complainant. On 09.05.1987, at around 6 PM, when the accused persons were cutting the eastern platform (*chabutra*) of the complainant, his father objected, then the accused persons started abusing. At the same time, the complainant's younger brother Mauji Lal also reached there. He also objected and brought his father to his doorstep and the villagers pacified them. After an hour, at around 7 pm, accused Khunni Lal armed with a big knife, Bhagwan Din armed with a pistol and Jagdish armed with a spear arrived there. At that time, informant's

brother, Mauji Lal, was smoking outside the shed. Complainant ran and grabbed Jagdish's spear. At that very moment, Bhagwan Din and Jagdish grabbed both the hands of Mauji Lal, and Khunni Lal stabbed Mauji Lal in the left side of his neck. Mauji Lal died on the spot. Complainant, his brother Bechelal, his father Keshari Lal, Mauji Lal's wife, Chhammi Lal, and other villagers witnessed the said incident. The accused persons fled away with knife and pistol extending fire shots. Report of the said incident got lodged on the next day.

4. The police conducted *panchayatnama* of the body of the deceased and seized a broken spade and blood-soaked soil from the place of occurrence. After the investigation, a charge sheet was submitted against the aforesaid accused persons.
5. The accused persons, namely, Khunni Lal, Bhagwan Din and Jagdish were charged with commission of offence under Section 302/34 I.P.C. They denied the charges and sought trial.
6. To prove the prosecution case, the prosecution examined PW-1 Ram Singh, PW-2 Chhammi Lal, PW-3 Bhagwati, PW-4 Head Constable Dinesh Pal Singh, PW-5 Dr. V.K. Bhatiya, PW-6 Rajendra Singh Solanki (S.I., investigating officer).
7. Statements of the accused persons were recorded under Section 313 Cr.P.C., wherein they claimed their innocence and said that they have been falsely implicated in this case. The accused persons furnished two defence witnesses in defence.
8. In documentary evidence, written report (exhibit-Ka.1), F.I.R. (exhibit-Ka.2), chick copy (exhibit-Ka.3), postmortem report (exhibit-Ka.4), site plan (exhibit-Ka.5), site plan (exhibit-Ka.6), *panchayatnama* (exhibit-Ka.7), *arakshi* receipt (exhibit-Ka.8) photo nash (exhibit-Ka.9), police station report (exhibit-Ka.10), police station report (exhibit-Ka.11), letter to CMO (exhibit-Ka.12), recovery memo of plain soil (exhibit-Ka.13), recovery memo of blood stained soil (exhibit-Ka.14), recovery memo of blood stained 'tehmad' (exhibit-Ka.15), recovery memo of Javelin etc. (exhibit-Ka.16), charge-sheet 'mool' (exhibit-Ka.17) were filed.
9. Application to Superintendent of Police (exhibit-Kha.1), Telegram (*Taar*) to S.S.P (exhibit-Kha.2), copy of Telegram (*Taar*) (exhibit-Kha.3) and copy of Telegram (*Taar*) (exhibit-Kha.4) produced and proved by DW-1.
10. The trial court after considering the evidence on record acquitted the co-accused, namely Bhagwan Din and Jagdish and convicted and sentenced the appellant-Khunni Lal as aforesaid.
11. Learned counsel for the appellant argued that there is manipulation of date in the F.I.R., it appears that figure '10' has been manipulated as '11'

that goes to create doubt. The prominent witnesses Bechelal and Kesari Lal, who are allegedly the eye-witnesses of the incident have not been examined by the prosecution. One more witness-Jalil was also not examined. The testimony of PW-1, Ram Singh is contrary to the F.I.R., which was lodged by him only. PW-1 has specifically denied that he did not see the appellant assaulting Mauji Lal with a knife because it was dark in the night. He has also stated that Chhammi Lal and other people came there after the incident, whereas in the F.I.R., he states that Khunni Lal assaulted his brother with a knife on the left side of the neck. Bhagwan Din had country made pistol (*tamancha*) and Jagdish was having spear in his hand at the time of incident. He states that he rapidly caught hold of the spear which was in the hand of Jagdish and in such act the spear broke down. So this version in the F.I.R. is absolutely contrary to the testimony of PW-1 recorded in the learned trial court. PW-3 Bhagwati Devi who is the wife of the deceased Mauji Lal also deposed as if she was the eye-witness of the incident, but during the course of evidence, she has admitted that when her husband raised alarm, she could not come out from the thatched hut. Learned trial court has committed gross mistake in acquitting two accused persons and convicting the appellant on the same set of evidence led before the trial court. The interpolation in the F.I.R. also shows that F.I.R. was lodged as a result of afterthought due to some enmity. It was also argued that there was no F.I.R. in existence at 9:30 P.M. The written report, inquest etc. were prepared next morning at the police station. The inquest shows to be conducted on 10.05.1987. This also creates doubt on the version as regards the alleged incident. Hence the appeal deserves to be allowed.

12. On the other hand, learned A.G.A. for the State vehemently opposed the argument of the learned counsel for the appellant and stated that the appellant with his brother Bhagwan Din and nephew Jagdish were having dispute with the informant and his family members regarding construction of *Chabutra*. On 09.05.1987, at about 6:00 P.M., father of the informant opposed the appellant from constructing the *Chabutra* then the appellant started hurling abuse. At the same time, the brother of informant-Mauji Lal (deceased) reached there and objected the appellant and they brought their father to the house of Mauji Lal. After an hour at about 7 P.M., appellant-Khunni Lal armed with knife, Bhagwan Din with a country made pistol and Jagdish with spear came there and assaulted Mauji Lal. Bhagwan Din and Jagdish caught hold of Mauji Lal and Khunni Lal, assaulted with his knife on the neck. Mauji Lal sustained fatal injuries which resulted in his death. The eye-witness account to the incident has clearly corroborated the incident. Postmortem report of the deceased also shows that he sustained incised wound on the left side of the neck and contusions on the chest and right shoulder. The learned trial court while evaluating the evidence on record found accused-Khunni Lal guilty and convicted him. On the other hand, it was found that co-accused Bhagwan Din and Jagdish were innocent, hence they were acquitted of charges. Therefore, no interference is required by this Court and appeal deserves to be dismissed.

13. After hearing the rival submissions and going through the materials on record, we find that PW-1, Ram Singh is the informant of the case who has lodged the F.I.R. against Khunni Lal, Bhagwan Din and Jagdish, as per the prosecution case stated above. PW-1, Ram Singh, in his testimony recorded before the trial court specifically stated that at around 6:00 P.M. in the evening he was present in his house, all the three accused persons were constructing their house by cutting down his *Chabutra*. His father Keshari objected to this. The accused persons started abusing him. When PW-1 reached there, Mauji Lal and Beche Lal also came. All of them tried to stop the accused persons from abusing his father Keshari Lal. All of them escorted his father to the house of Mauji Lal. Ram Singh along with his father and two real brothers, namely, Mauji Lal and Beche Lal were sitting at Mauji Lal's house where at about 7 P.M., Jagdish armed with spear, Khunni Lal armed with a knife and Bhagwan Din with a country made pistol arrived there. Accused persons tried to attack Mauji Lal when PW-1 caught hold of the spear in the hand of Jagdish which broke down. Soon after Bhagwan Din and Jagdish caught hold of Mauji Lal, and Khunni Lal assaulted Mauji Lal on the left side of his neck. Mauji Lal fell down and died. He has also specifically stated that he along with Beche Lal, Ganga Ram and Jalil along with Keshari saw the whole incident. This witness has given specific role of assault to Khunni Lal, assigned the role of firing to Bhagwan Din in his examination-in-chief. He also stated that he dictated the written report to one Putti Lal and has proved the written report (exhibit-Ka-1). Role of catching hold has been assigned to other co-accused jagdish.

14. It is pertinent to mention here that the scribe of the F.I.R. Putti Lal has not been examined by the prosecution or else he had deposed that whatever Ram Singh stated, he reduced it in writing and then was read over to him.

15. Next besides PW-1 Ram Singh, his father Keshari Lal, Beche Lal, Ganga Ram and Jalil also witnessed the incident as per testimony on oath recorded before the learned trial court, but Beche Lal, Ganga Ram, Jalil and Keshari were not examined by the prosecution and the reason of their non-examination has not been explained.

16. On the other hand in his cross-examination PW-1 Ram Singh on page No. 3 has stated very clearly that he could not see assaulting with knife because it was dark of night. At one place in his statement he clearly says that he saw the incident and in his cross-examination he denies that because it was dark of night he could not see the assault with knife.

17. The prominent witnesses, who have been named as eye-witnesses to the incident, namely, Beche Lal, Ganga Ram, Jalil and Keshari, have not been examined. The reason of their non-examination is best known to the prosecution. Another most important fact relating to incident is that on page No. 4 of the cross-examination, PW-1 has stated that he could not see Khunni Lal at the place of occurrence as it was dark in the night. These two versions of the witness are altogether contrary. It has also been said that he

along with Beche Lal went to the police station. Beche Lal is said to accompany him from place of occurrence to the police station, but he has not been examined. On page No. 5 of the cross-examination this fact has been reiterated by the witness PW-1 that he did not see Khunni Lal assaulting with knife or Bhagwan Din and Jagdish catching hold of Mauji Lal. Next he also says that earlier he had a scuffle with the accused persons and therefore, he opined that the incident might have been caused by them. Opinion of a witness is of no value as it is not based on credible piece of evidence.

18. Another eye-witness again who had been examined by the prosecution is PW-2 Chhammi Lal and PW-3 Bhagwati Devi. Chhammi Lal is an eye-witness to the incident as per the F.I.R. lodged by the complainant PW-1 Ram Singh. PW-2 has also stated the same story as has been stated by the complainant of the case, PW-1. PW-1 has also stated that Chhammi Lal is resident of his village. PW-2 admits in his cross-examination that he borrowed Rs. 1000/- from accused Khunni Lal for purchasing a buffalo and he has denied the fact that he had a scuffle with Khunni Lal on account of interest payable on the debt. The informant has although named PW-2, Chhammi Lal as witness in the F.I.R., but in his testimony at page No. 3 he has stated that at the time of occurrence only the members of the family were present. None of resident villager was there, whereas Chhammi Lal in his statement has tried to explain the incident as if it all happened in his presence and view. Hence here also a big doubt comes into light which shadows the prosecution case.

19. PW-1 and PW-2 both have given statement before the court that on the place of occurrence Bhagwati Devi was also present. She is said to be the wife of Mauji Lal. Bhagwati Devi has been examined as PW-3. In her cross-examination, she has stated that she was sitting in a thatched hut and cleaning her house. She was inside the house when her husband raised alarm even then she did not come out from her house. She also said that when she came out of the hut she saw the accused persons running away from there after the incident. These two versions are also contrary to each other. At one point of time she was saying that she did not come out of the hut even after the alarm of the deceased-Mauji Lal her husband, and her father-in-law Keshari. How did she see the assailants running, from what distance she saw because it is very obvious that when the assailants ran away she might have seen them running from behind.

20. It is also remarkable to note that thumb impressions of exhibit Ka-1 (report), *Panchayatnama* and few other prosecution papers appear to be written in the same ink. Even the defence witness No. 2 (writing expert) examined before the learned trial court has deposed that the thumb impression on the report, inquest and other police papers are in the same ink. It may also indicate a situation where all these papers were prepared at one and the same time. F.I.R. is said to have been registered on 09.05.1987 at 9:30 P.M. whereas inquest conducted bears the date 10.05.1987 at 5:30 A.M.

PW-3 Bhagwati Devi has also in her testimony admitted that police came there at 5:30 A.M. in the morning. Why this inquest was conducted on 10.05.1987, 5:30 A.M. also remains unexplained and makes a possibility that F.I.R. was not in existence at the time shown in it i.e. 9:30 P.M. When the witnesses depose contrary to the prosecution version and when it finds no corroboration, it goes to affect the prosecution version negatively and renders F.I.R. suspicious. Further as per PW-1 informant, earlier a scuffle took place with the accused persons and therefore, he opined that the incident might have been caused by them reflects that F.I.R. was lodged on the ground of suspicion. Suspicion cannot at all take place of proof, howsoever strong it may be.

21. In the instant case, Dr. V.K. Bhatiya-PW-5 conducted the postmortem on the body of the deceased on 11.05.1987 at 3:30 P.M. and found the following injuries:

- (i) Incised wound of size 7 cm x 1.5 cm on the lateral side of the neck and back.
- (ii) Contusion 9 cm x 4 cm downward the right side of the chest.
- (iii) Contusion 4 cm x 2 cm upward the right shoulder.

22. In his cross-examination, PW-5 has stated that dry soil was found at certain parts of the body of the deceased. He has also opined that injury Nos. 2 and 3 may be caused by some hard and blunt object and also death might have taken place somewhere in the midnight of 09.05.1987.

23. It is true that there were injuries found on the body of the deceased, but this is not sufficient to entail conviction as prosecution owes a legal obligation to prove that those injuries found on the body of the deceased were inflicted by the accused persons and this has to be proved by the prosecution beyond all reasonable doubts, in which prosecution has not succeeded.

24. It is also noteworthy to mention here that in the instant case there were three accused persons, namely, Khunni Lal, Bhagwan Din and Jagdish. Evidence led by the prosecution witnesses defines the specific role of each of them. All the three accused persons were tried together under Section 302 read with Section 34 I.P.C. Hon'ble Apex Court, in *Javed Shaukat Ali Qureshi vs. State of Gujarat, (2023) 9 SCC 164* and in *Ram Singh vs. State of Uttar Pradesh, (2024) 4 SCC 208*, has laid down the principle that when there is similar or identical evidence of eye-witnesses against two accused by scribing the same or similar role, the Court cannot convict one accused and acquit the other. It was also held that in such a case both the accused will be governed by the principles of parity, which means that the criminal court should decide like cases alike. Thus the Hon'ble Apex Court on carefully analyzing the evidence on record gave the benefit of doubt to the

accused persons.

25. In the instant case before the learned trial court there are three accused, one is convicted and two others are acquitted on the same set of evidence.

26. In view of the above, we are of the opinion that the judgment and order of conviction recorded by the learned trial court dated 17.05.1989 suffers from infirmity and is liable to be set aside.

27. Hence, the judgment and order of the trial court convicting and sentencing the appellant for life imprisonment for the offence under Section 302 I.P.C. is **set aside** for the reasons mentioned above.

28. Accordingly, the instant appeal is hereby **allowed**.

29. The appellant shall be set free, if not wanted in any other case.

30. Office is directed to return the trial court record as expeditiously as possible and notify this judgment to the trial court too.

(Prashant Mishra-I,J.) (Siddhartha Varma,J.)

February 18, 2026

Kashifa