



2026:AHC:203986

AFR
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HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2257 of 1984

Ballu and another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Ashish Kumar Singh, M.a. Qadeer, Mohammad Abdul Haseen, R.p. Tewari
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

HON'BLE SANTOSH RAI, J.

1. Heard Ms. Mayuri Mehrotra, learned Amicus Curiae for appellant no.2, Shri Rajmani Yadav, learned AGA for the State and perused the material available on record.

2. The present criminal appeal arises out of the judgment and order passed by the learned trial court in Sessions Trial No. 153 of 1982, State Vs. Munnial and another, connected with Sessions Trial No. 259 of 1982, State Vs. Hassu, whereby the appellant Hassu and Ballu were convicted under Section 307/34 IPC and sentenced to undergo five years R.I. and a fine of Rs.2,000/- on each of the

appellants. In case of default of payment of fine, to undergo additional one year R.I.

3. During pendency of the present appeal, appellant no.1 Ballu died and, accordingly, the appeal stood abated against him. Thus, the present appeal survives only on behalf of appellant no.2 Hassu.

4. The prosecution case, according to the First Information Report is that the complainant, Hiralal (PW-2), who was working as an orderly (peon) at the Family Welfare Centre, Hamirpur, was going on 20.07.1981 at about 9.30 a.m. with his son Chunnu (PW-4) from Hathi Darwaza, via Dharamshala, towards the bus station. In front of Nasim's shop, the accused persons Munnilal (since deceased) and Ballu, his nephew (sister's son), resident of Maudaha, who was also carrying a pistol ("tamancha"), and two other persons met them. On seeing the complainant's son Chunnu, Munnilal (deceased) said that he had come on behalf of Gorelal to have "the matter settled," and saying "now I will show you," he grabbed hold of his son. On seeing this, the complainant raised an alarm, on hearing which Gorelal Kewat (PW-3) and other persons came running while shouting a challenge. The accused persons, with the intention of killing the complainant's son, fired at him and caused him injury by gunshot, and then fled. Complainant Hiralal took his son to the hospital, and having left him there, got a written report of the incident prepared through one Shivkumar Gupta,

writer, and lodged it at Police Station Kotwali, Hamirpur, on the basis of which Head Moharrir Mahadev Prasad (PW-1) registered the First Information Report on 20.07.1981, 45 minutes after the occurrence, at 10.15 a.m. The distance from the place of occurrence to the police station is recorded in the report as one-and-a-half furlongs to the west. Particulars of the case were entered by Head Constable Mahadev Tripathi in General Diary Report No. 18, at 10.15 A.M., dated 20.07.1981.

5. At the District Hospital, Hamirpur, where the complainant left his son Chunnu, he was medically examined at about 10 a.m. by Dr. B.K. Nigam (PW-7), whose injury report is Exhibit Ka-13. The following injuries were found on the body of Chunnu:

“Injury 1: Multiple gunshot wounds of entry in an area of 15 cm x 14 cm x cavity deep, on the right side of the abdomen, scorching present; each wound 0.2 cm x 0.2 cm in size, except one wound measuring about 3 cm x 2 cm through which a portion of the small intestine was protruding, the intestine being perforated at two places. This wound was 8 cm away from the umbilicus, on the right side, at the 7 o'clock position; fresh bleeding present; direction of the wound right to left.

Injury 2: Gunshot wound of entry, 4 cm x 4 cm x muscle deep, on the left [upper-arm/humeral] eminence, scorching present, fresh bleeding present; direction left to right.

Injury 3: Lacerated wound, 3 cm x 0.3 cm x scalp deep, on the back of the head, left side, just lateral to the midline, bleeding present, obliquely placed.

Injury 4: Lacerated wound, 1 cm x 0.2 cm x scalp deep, on the left parietal region, 2 cm above injury No. 3, bleeding present.

Injury 5: Lacerated wound, 1 cm x 0.2 cm x scalp deep, on the left parietal region, 1.5 cm above injury No. 4, bleeding present.

Injury 6: Lacerated wound, 0.5 cm x 0.5 cm x scalp deep, on the left parietal region, bleeding present, 9 cm above the left eyebrow, 3 cm lateral to the midline.

Injury 7: Abrasion, 1.5 cm x 1.5 cm, on the outer surface of the left lower leg, 25 cm below the knee joint.

Injury 8: Three grazed wounds within an area of 1 cm x 1.5 cm on the middle, anterior part of the left thigh, scorching present; each wound 0.2 cm x 0.5 cm; direction right to left.

Injury 9: Five gunshot wounds of entry within an area of 4 cm x 3.5 cm on the back, left side, in the interscapular region, each wound 0.5 cm x 0.5 cm, scorching present, wounds just lateral to the midline, bleeding present; direction back to front.

All the injuries were fresh. Injuries Nos. 1, 2, 8 and 9 were kept under observation and X-ray was advised; these injuries were opined to have been caused by some firearm. Injuries Nos. 3, 4, 5 and 6 were also kept under observation and X-ray was advised for these as well, although it does not appear from the record that any X-ray was, in fact, got done. Injury No. 7 was simple and was caused by friction/rubbing.”

6. At the time the First Information Report was lodged, Sub-Inspector Sri D.N. Chaturvedi was present at the police station, and investigation of the case was entrusted to him. He went immediately to the hospital along with the complainant, where he recorded the statement of Chunnu, and took into police custody his blood-stained clothes, kurta and underwear worn by him at the time of the incident, in the presence of the witnesses Nirpat Singh and Chhimman, sealed them, and prepared a recovery memo, Exhibit Ka-5. Thereafter, he proceeded to inspect the place of occurrence and, in the presence of the witnesses, prepared a site plan, Exhibit Ka-6, showing the relevant points by letters on the site map. At the place of occurrence he found mud and water and blood was not

found there. In the mud and water, a pair of sandals stuck in the mud were found, together with 5 live cartridges (4 of them No. 1 bore and one of No. 2 bore), and one blood-stained, mud-stained and torn pyjama. In the presence of the said witnesses, the Investigating Officer took these articles into possession, wrapped them in cloth and sealed them. The recovery memo for the sandals and the 5 cartridges is Exhibit Ka-7, and for the pyjama is Exhibit Ka-8. At the place of occurrence, he also recorded the statements of certain other persons and of Gorelal, and commenced the search for the accused.

7. Accused Hassu, who was not named in the First Information Report but whose name was disclosed by the injured Chunnu in the statement given to the Investigating Officer immediately after the occurrence, was arrested on 07.08.1981 at 2 p.m. near the Idgah with an illegal knife. He was lodged in the lock-up of Police Station Kotwali, Hamirpur, at 3.45 p.m., which fact is recorded in General Diary Report No. 22 dated 07.08.1981, a copy of which is Exhibit Ka-9. After this arrest, identification proceedings in respect of accused Hassu were held on 02.12.1981 before the then Special Magistrate, Sri M.P. Awasthi (PW-5), at the District Jail, Hamirpur. Complainant Hiralal is said to be identified him, and the identification memo is Exhibit Ka-4. On the basis of this identification memo, a supplementary charge-sheet against accused

Hassu was filed on 03.12.1981. Accused Ballu and Munnilal had earlier appeared before the Chief Judicial Magistrate, Hamirpur, on 17.08.1981 and 18.08.1981, respectively, and were taken into custody and sent to jail.

8. After committal by the Chief Judicial Magistrate to the Sessions Court, charges under Section 307/34 IPC were separately framed against accused Munnilal and Ballu, and against accused Hassu.

9. To prove its case, the prosecution examined seven witnesses in all, namely: PW-1 Head Moharrir Mahadev Prasad Tripathi, PW-2 Hiralal, his father, an eyewitness, PW-3 Gorelal, an eyewitness, PW-4 Chunnu, the injured in the occurrence, PW-5 Special Magistrate Sri M.P. Awasthi, PW-6 Investigating Officer D.N. Chaturvedi and PW-7 Dr. B.K. Nigam, on the basis of whose testimony and the documentary evidence produced, the prosecution contends that it has proved its case beyond reasonable doubt.

10. Accused Ballu and Hassu, in their statements, state that false cases have been foisted upon them and that the prosecution has been launched out of enmity. Accused Ballu states that Chunnu is his sister's son (nephew). The accused deny any enmity with the family of Munnilal.

11. Of the factual witnesses, the prosecution has produced three witnesses to the occurrence, of whom PW-4 Chunnu is the principal

witness, being the injured in the incident. In his statement, he states that he knows accused Munnilal (deceased) and his nephew Ballu, and also Hassu. Munnilal and Hassu reside in Hamirpur city, and accused Ballu is a resident of Maudaha. Describing the occurrence, he states that in those days he was living with his father at Hathi Darwaza, Hamirpur. On the day of the incident, at 9.30 a.m., he was going with his father Hiralal via Dharamshala towards the bus station when, near Nasim's shop, accused Munnilal (deceased), Ballu, Hassu, and one other unknown person met him. Munnilal and Ballu had pistols (tamache) in hand. Hassu was carrying a knife. They caught hold of him over an incident of about a week earlier relating to the settlement of a dispute concerning Gorelal, taunting/challenging him, and after the challenge all three accused grabbed him; during this scuffle, witnesses Gorelal and Suresh also arrived. Before these witnesses, shouting, could reach the spot, Munnilal and Ballu each fired one shot from their respective pistols, both of which struck his abdomen, and again, as the witnesses were arriving, each fired one further shot, of which one struck his palm and the other struck his back at the moment he was trying to flee. On the arrival of the witnesses, the accused fled towards the Jamuna river. His father took him to Hospital, Hamirpur, where he received medical examination and dressing at Hamirpur Hospital, and

thereafter, on account of his serious condition, was taken by his father to Kanpur Hospital, where he remained admitted for 22 days.

12. The other principal witness to this occurrence is PW-2 Hiralal, father of injured Chunnu. His statement is that in July 1981 he was posted as an orderly (peon) in the Family Welfare office and was residing as a tenant in the house of Chhedalal Ramnarayan near the Dharamshala, Hamirpur. On 20.07.1981, at about 10-11 A.M. in the day, he was returning from his office to pay rent to Chhedalal, and on hearing an uproar, as soon as he reached the spot, he saw Munnilal, Ballu, Hassu. He saw a pistol in Munnilal's hand but could not see anything in the hands of the other three. On reaching the spot, he found his son fallen, having already received three gunshots; one in the abdomen, one in the palm, and the third in the back. He states that he saw two further persons fleeing in addition to these four, whom he could not identify. He further stated that at the time of the occurrence many persons reached the spot, and that he took his son by rickshaw to Tarkari Hospital, and got the report of the occurrence written by someone and lodged it at the police station, Exhibit Ka-3. He stated that his son's medical examination took place at Sadar Hospital, Hamirpur, and that he was later taken to Kanpur, where he remained for one month. He went to District Jail, Hamirpur, for the identification of accused Hassu and identified accused Hassu.

13. The third fact witness is PW-3 Gorelal, who is described in the First Information Report as an eyewitness, but he does not support the prosecution case regarding the occurrence. He denies knowing Chunnu and denies having seen any attack on him. He has been declared hostile. All the remaining witnesses are formal witnesses.

14. The principal question which arises for consideration is whether the prosecution has been able to establish beyond reasonable doubt the participation of the surviving appellant Hassu in the alleged occurrence and, in particular, his common intention with Munnilal and Ballu to commit the offence punishable under Section 307/34 IPC.

15. It is not in dispute that Chunnu sustained firearm injuries. The medical evidence of PW-7 substantially establishes that fact. However, the mere fact that the injured sustained firearm injuries cannot, by itself, establish the participation of the present appellant Hassu. The prosecution is required to establish his identity and participation in the occurrence by reliable and cogent evidence.

16. PW-2 Hiralal is the informant and father of the injured. His testimony, however, suffers from material and irreconcilable contradictions regarding his presence at the place of occurrence. At one stage, PW-2 stated that he had seen the occurrence and identified the accused. He also stated about having identified

appellant Hassu in the jail. However, during his cross-examination, particularly at page 7 of his statement, he categorically stated that he had not seen the occurrence with his own eyes and that, on the relevant date, he was at Bhalwa Sumerpur and came to know about the incident through a telephone call.

17. Thus, the testimony of PW-2 cannot safely be treated as that of an eyewitness. His statement contains a material contradiction going to the root of the prosecution case. The fact that he is the informant and that he subsequently participated in the identification proceedings does not make him an eyewitness when he himself, in cross-examination, disclaims having seen the occurrence. The prosecution has attempted to rely upon the fact that PW-2 took the injured to the hospital and lodged the FIR promptly. These circumstances may establish his subsequent conduct, but they cannot cure the material contradiction concerning his presence at the actual occurrence. PW-3 Gorelal was projected as an eyewitness. However, he has not supported the prosecution case and was declared hostile. His evidence, therefore, does not provide any independent corroboration to the participation of appellant Hassu.

18. The evidence of PW-4 Chunnu requires careful scrutiny as he is the injured witness. There can be no dispute with the settled principle that the testimony of an injured witness ordinarily carries considerable weight. At the same time, the status of an injured

witness does not dispense with the requirement that his testimony, insofar as it implicates a particular accused, must inspire confidence. PW-4 has specifically attributed the firing of shots to Munnilal and Ballu. According to him, both of them were armed with counter-made pistols (Tamancha) and fired upon him, causing firearm injuries. In contrast, the role attributed to the present appellant Hassu is materially different. According to PW-4, Hassu was carrying a knife and was involved in catching hold of him.

19. Significantly, the medical examination of PW-4 does not disclose any knife injury. The injuries which are relevant to the occurrence are predominantly firearm injuries and the medical evidence does not furnish corroboration to the alleged role of Hassu as a person armed with a knife.

20. Another circumstance which requires consideration is that, during his examination, PW-4 stated that he was lodged in Naini Jail in connection with the murder case of Munnilal. This circumstance indicates that there existed a serious dispute or enmity connected with Munnilal. It does not, however, furnish any independent basis for establishing the participation of the present appellant Hassu.

21. More importantly, the testimony of PW-4 itself contains material omissions and improvements concerning the role of Hassu. In his cross-examination, he first stated the distinct roles of

Munnilal and Ballu in firing upon him. He did not assign any specific overt act to Hassu at the relevant point. Subsequently, he stated that Hassu had caught hold of his hair.

22. The material aspect is that such specific role of catching hold of his hair was not stated by PW-4 before the Investigating Officer in his statement under Section 161 Cr.P.C. The 'omission' is not merely a minor discrepancy regarding an insignificant detail, it concerns the very participation and role of the surviving accused. In the facts of the present case, the subsequent introduction of such a specific role amounts to a material improvement.

23. The principle governing omissions which amount to contradictions is well settled by the Constitution Bench judgment of the Supreme Court in **Tahsildar Singh and another Vs. State of Uttar Pradesh, AIR 1959 SC 1012**. The relevant para nos. 19, 24, 25 and 26 are extracted below:

"19. "Contradict" according to the Oxford Dictionary means to affirm to the contrary. Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining counsel shall put the part or parts of the statement which affirms the contrary to what is stated in evidence. This indicates that there is something in writing which can be set against another statement made in evidence. If the statement before the police officer in the sense we have indicated and the statement in the evidence before the court are so inconsistent or irreconcilable with each other that both of them cannot coexist, it may be said that one contradicts the other.

24. It is not necessary to multiply cases. The two conflicting views may be briefly stated thus: (i) omissions, unless by necessary implication be deemed to be part of the statement,

cannot be used to contradict the statement made in the witness box; and (ii) they must be in regard to important features of the incident which are expected to be included in the statement made before the police. The first proposition not only carries out the intention of the legislature but is also in accord with the plain meaning of the words used in the section. The second proposition not only stretches the meaning of the word "statement" to a breaking point, but also introduces an uncertain element, namely, ascertainment of what a particular witness would have stated in the circumstances of a particular case and what the police officer should have recorded. When the section says that the statement is to be used to contradict the subsequent version in the witness box, the proposition brings in, by construction, what he would have stated to the police within the meaning of the word "statement". Such a construction is not permissible.

25. From the foregoing discussion the following propositions emerge: (1) A statement in writing made by a witness before a police officer in the course of investigation can be used only to contradict his statement in the witness box and for no other purpose; (2) statements not reduced to writing by the police officer cannot be used for contradiction; (3) though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradiction, not because it is an omission strictly so-called but because it is deemed to form part of the recorded statement; (4) such a fiction is permissible by construction only in the following three cases: (i) when a recital is necessarily implied from the recital or recitals found in the statement; illustration in the recorded statement before the police the witness states that he saw A stabbing B at a particular point of time, but in the witness box he says that he saw A and C stabbing B at the same point of time; in the statement before the police the word "only" can be implied i.e. the witness saw A only stabbing B; (ii) a negative aspect of a positive recital in a statement; illustration in the recorded statement before the police the witness says that a dark man stabbed B, but in the witness box he says that a fair man stabbed B; the earlier statement must be deemed to contain the recital not only that the culprit was a dark complexioned man but also that he was not of fair

complexion; and (iii) when the statement before the police and that before the court cannot stand together: illustration: the witness says in the recorded statement before the police that A after stabbing B ran away by a northern lane, but in the court he says that immediately after stabbing he ran away towards the southern lane; as he could not have run away immediately after the stabbing i.e. at the same point of time, towards the northern lane as well as towards the southern lane, if one statement is true, the other must necessarily be false.

26. The aforesaid examples are not intended to be exhaustive but only illustrative. The same instance may fall under one or more heads. It is for the trial Judge to decide in each case, after comparing the part or parts of the statement recorded by the police with that made in the witness box, to give a ruling, having regard to the aforesaid principles, whether the recital intended to be used for contradiction satisfies the requirements of law.”

Thus, it has been explained that an ‘omission’ may amount to contradiction when it is significant and relevant to the facts stated subsequently in evidence. Applying the above guiding principle, the ‘omission’ made by PW-4 with respect to the specific and distinct role of appellant Hassu assumes significance and it comes within the meaning of ‘an important improvement’.

24. Thus, while the testimony of PW-4 establishes that he suffered firearm injuries, his testimony does not inspire the requisite confidence with regard to the participation of appellant Hassu. The specific firearm role is attributed to Munnilal and Ballu, whereas the role of Hassu has emerged in an inconsistent manner and is not supported by the medical evidence also.

25. So far as appellant Hassu is concerned, the specific role attributed to him by injured witness PW-4 Chunnu is materially different from that attributed to co-accused Munnial and Ballu. According to PW-4, Munnial and Ballu were armed with country-made pistols and they fired upon him, whereas the role assigned to Hassu was only that he was carrying a knife and had caught hold of the hair of the injured. The medical evidence, however, discloses several firearm injuries on the person of Chunnu, including injuries on the abdomen, upper arm, back and thigh, but does not disclose any injury caused by a knife or any other injury corresponding to the alleged act of Hassu. In the circumstances, if Hassu was actually catching hold of the injured at the time when repeated shots were allegedly fired at close quarters by the other accused, the absence of any firearm injury or other injury upon him is a circumstance which assumes significance. Though such absence, by itself, may not be conclusive, when considered along with the other material contradictions in the prosecution evidence and the doubtful role attributed to Hassu, it creates a 'reasonable doubt' regarding his presence and participation in the manner alleged by the prosecution. Such doubt necessarily has to enure to the benefit of the appellant Hassu.

26. It is also material that appellant Hassu was not named in the FIR. The FIR was lodged promptly within about 45 minutes of the

occurrence and the prosecution case itself indicates that the informant was in immediate contact with the injured. In such circumstances, although mere non-mention of the name of an accused in an FIR is not invariably fatal, where the accused is subsequently implicated and the substantive evidence against him is itself inconsistent, the omission assumes considerable significance. In the present case, the non-mention of Hassu in the FIR assumes importance because the evidence regarding his participation is otherwise not consistent. The prosecution has not furnished a 'convincing explanation' which would satisfactorily reconcile his subsequent implication with the prompt FIR.

27. The prosecution also relies upon the test identification parade conducted in respect of appellant Hassu on 02.12.1981, whereas the occurrence took place on 20.07.1981. The identification parade was thus held after a considerable lapse of time. The evidence of PW-5, Special Magistrate Sri M.P. Awasthi, who conducted the identification proceedings, also creates serious doubt regarding the manner in which the identification proceeding was conducted. From his cross-examination, it appears that the accused was not actually produced before him in the manner ordinarily expected for a proper test identification proceeding. PW-5 stated that the accused was not brought before him and that identification was made on the basis of the identification by his advocate. The circumstances narrated by

PW-5, therefore, do not inspire confidence in the fairness and reliability of the identification proceeding. There is also an apparent inconsistency in the identification memo regarding the custody/status of the accused. The memo refers to the accused being on bail, whereas the identification was stated to have been conducted in jail. The prosecution has not satisfactorily explained how the accused, if he was on bail, came to be available in jail for the purpose of identification. The test identification parade is essentially corroborative in nature. It cannot become a substitute for substantive evidence of reliable identification. Where the substantive testimony itself is doubtful and the identification proceeding is also attended with unexplained circumstances, such identification cannot safely be made the basis of conviction.

28. Section 34 IPC embodies the principle of joint liability where a criminal act is done by several persons in furtherance of the common intention of all. Two essential elements have to be established before liability can be fastened with the aid of Section 34 IPC, namely, (i) the existence of a common intention amongst the persons sought to be made liable, and (ii) participation of the accused in the criminal act in furtherance of such common intention. Common intention need not invariably be proved by direct evidence and may be inferred from the conduct of the accused and the surrounding circumstances. Nevertheless, such

inference must arise from reliable evidence and cannot be founded upon conjecture or mere presence, mere participation in the crime is not, by itself, sufficient to establish common intention and that the prosecution must establish by cogent evidence that the criminal act was done in furtherance of the common intention shared by the accused. It is equally well settled that the law does not require every accused to perform an identical overt act. An accused may be liable under Section 34 even though the ultimate act causing the injury is committed by another, provided his participation in the criminal enterprise and the requisite common intention are established. The act of the accused may be overt or covert and need not be substantial, but there must nevertheless be some act or conduct having a nexus with the offence and such act must be proved to have been done in furtherance of the common intention.

29. Applying these principles to the present case, the prosecution has not established by reliable evidence that appellant Hassu shared the common intention of Munnilal and Ballu to cause the firearm assault upon Chunnu. The specific firearm assault is attributed to Munnilal and Ballu, whereas the alleged participation of Hassu is confined to catching hold of the injured's hair. The said role is itself doubtful, particularly in view of the material omission in his statement under Section 161 Cr.P.C., the absence of any corresponding knife injury and the other contradictions noticed

hereinabove. Thus, the foundational requirement of participation in furtherance of a proved common intention is not satisfactorily established against Hassu. Mere presence or an uncertain allegation of having caught hold of the injured cannot, in the facts of the present case, be converted into constructive liability under Section 34 IPC. Consequently, the appellant cannot be held vicariously liable for the firearm injuries caused by the other accused with the aid of Section 34 IPC.

30. The Court is conscious of the fact that the occurrence is of the year 1981 and that the injured Chunnu did sustain serious firearm injuries. However, the Court has to examine the prosecution evidence separately with regard to the surviving accused. The conviction of one accused cannot be sustained merely because the occurrence and injuries are proved, unless the participation of the particular accused is also established beyond reasonable doubt. In the present case, the following circumstances cumulatively create a reasonable doubt regarding the involvement of appellant Hassu. The appellant Hassu was not named in the prompt FIR. PW-2 Hiralal, the informant, gave materially contradictory statements regarding his presence and ultimately stated in cross-examination that he had not witnessed the occurrence. PW-3 Gorelal, an alleged eyewitness, did not support the prosecution case. PW-4 attributed the firearm assault specifically to Munnilal and Ballu. The alleged role of

Hassu was that he was carrying a knife, whereas no knife injury was found on the injured. The specific role of catching the hair of the injured was introduced by PW-4 during cross-examination and was not stated by him before the Investigating Officer under Section 161 Cr.P.C.. The prosecution evidence does not disclose any consistent or specific overt act of appellant Hassu demonstrating his participation in the assault and the test identification proceedings conducted after considerable delay are themselves rendered doubtful by the evidence of PW-5 and the circumstances emerging from the identification memo. So far as Section 34 IPC is concerned, the prosecution was also required to establish the requisite common intention of appellant Hassu with the other accused. In view of the doubtful evidence regarding his own participation and the absence of reliable evidence showing his sharing of the common intention, the conviction of appellant Hassu with the aid of Section 34 IPC cannot be sustained.

31. In Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793), the landmark observation of Hon'ble Apex Court is as under:-

"6.The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a

false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community....."

32. In The State of Punjab vs. Jagir Singh, Baljit Singh and Karam Singh, (1974) 3 SCC 277, the Apex Court held as under:

"23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

33. In Yogesh Singh vs. Mahabeer Singh and Others, (2017) 11 SCC 195, the Apex court held as under:

"15. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the

observations made by Venkatachaliah, J. in State of U.P. v. Krishna Gopal, (1988) 4 SCC 302:

"25.Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice."

*16. Another golden thread which runs through the web of the administration of justice in criminal cases is that if **two views** are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his*

innocence, the view which is favourable to the accused should be adopted. (Vide Kali Ram v. State of H.P., (1973) 2 SCC 808, State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, Chandrappa v. State of Karnataka, (2007) 4 SCC 415, Upendra Pradhan v. State of Orissa, (2015) 11 SCC 124 and Golbar Hussain v. State of Assam, (2015) 11 SCC 242)

17. However, the rule regarding the benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations, as has been held by this Court in State of Punjab v. Jagir Singh, (1974) 3 SCC 277 (para 23)."

(emphasis added)

34. In Suresh Thipmppa Shetty vs. The State of Maharashtra, 2023 LiveLaw (SC) 682, the Apex Court held as under:

"18. We have borne in mind the cardinal principle that life and liberty are not matters to be trifled with, and a conviction can only be sustained in the absence of reasonable doubt. The presumption of innocence in favour of the accused and insistence on the Prosecution to prove its case beyond reasonable doubt are not empty formalities. Rather, their origin is traceable to Articles 21 and 14 of the Constitution of India. Of course, for certain offences, the law seeks to place a reverse onus on the accused to prove his/her innocence, but that does not impact adversely the innocent-tillproven-guilty rule for other criminal offences."

35. It is true that minor discrepancies or omissions which do not affect the substratum of the prosecution case may safely be ignored. However, the discrepancies in the present case are not of such nature. They relate directly to the identity, presence and role of the surviving appellant. The prosecution is required to prove its case

beyond reasonable doubt. Suspicion, however strong, cannot take the place of proof. Where *two views are reasonably possible* on the evidence, the view favourable to the accused is required to be adopted.

36. Upon an overall assessment of the evidence, this Court finds that the prosecution has succeeded in establishing that an occurrence took place in which Chunnu sustained firearm injuries. However, the evidence does not establish beyond reasonable doubt that the present appellant Hassu participated in the occurrence or shared the common intention attributed to the other accused.

37. The learned trial court, while appreciating the evidence, has not adequately considered the material contradictions in the testimony of PW-2 and PW-4, the absence of the appellant's name in the FIR, the absence of any knife injury, the material omission regarding the alleged role of Hassu, and the doubtful circumstances surrounding the test identification parade etc.

38. Consequently, the conviction of appellant **Hassu** under Section 307/34 IPC cannot be sustained. He is entitled to the benefit of doubt.

39. The appeal is **allowed**.

40. The judgment and order of conviction dated 16.08.1984 passed by the learned 5th Additional Sessions Judge, Hamirpur in

Sessions Trial No.153 of 1982 convicting the appellant Hassu under Section 307/34 IPC, is set aside.

41. The appellant **Hassu** is acquitted of the charge under Section 307/34 IPC by giving him the benefit of doubt. If he is in jail, he shall be released forthwith if not detained in any other criminal case. The bail bonds, if not cancelled earlier, are cancelled and the sureties stands discharged accordingly.

42. Let a copy of this judgment be transmitted *within a week* to the trial court concerned along with trial court record for compliance.

43. The Registrar (Compliance) is also directed to send a copy of this order by FAX/e-mail to the concerned court through District & Sessions Judge, Hamirpur **within 48 hours** for compliance.

44. Let Ms. Mayuri Mehrotra, learned Amicus Curiae, be paid her remuneration as fixed by this Court vide order dated 08.09.2026, within a period of two weeks from today.

(Santosh Rai,J.)

September 29, 2026

Ankit.