



2026:AHC:196052-DB

Judgment Reserved On:-22.07.2026.

Judgment Delivered On:-18.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2123 of 1985

Raffu And Others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s) : Inder Pal Singh Tomar, Noor
Mohammad, S.K.Agarwal

Counsel for Respondent(s) : D.G.A.

Court No. - 43

HON'BLE SIDDHARTH, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Siddharth,J.)

1. Heard Sri Sushil Shukla, learned Senior Counsel assisted by Sri Kushagra Srivastava, Ankita Tiwari and Shahrukh, learned counsel for appellant; Sri Prem Shankar Prasad, learned AGA for State-respondent and perused the judgment and order of the trial court and trial court record.
2. The present Criminal Appeal has been preferred against the judgment and order passed by Addl. Sessions Judge, Ghaziabad, dated 13.08.1985 in Sessions Trial No. 280 of 1984(State Vs. Raffu and another) convicting the appellants under section 302 IPC read with section 34 IPC., and sentencing each of them to undergo imprisonment for life.
3. The prosecution case in brief is that on 2-5-1984 some of the gathered crop of Raffu was stolen by somebody. He suspected that deceased Yamin had removed it and had kept it at his own threshing- floor. Mohd. Umar and Raffu met in the mosque of the village. Mohd. Umar is the Pradhan of the village and is also related to the accused Raffu who complained to him about the removal of the gathered crop and also complained that it was kept at the

threshing floor of Yamin. Mohd. Umar and a few other persons went to the threshing floor of Yamin and found the complaint of Raffu to be correct. At this Mohd. Umar asked some of the villagers to assemble at the Panchayat ghar to discuss the matter. Number of persons assembled there Yamin also participated in the meet. He denied the allegations and stated that some body else might have put it there. At this there was a wordly duel between Raffu and Yamin. The persons assembled there separated them and sent the two brothers, accused Raffu and Kalloo to their house. Shortly afterwards Yamin also left Panchayat ghar for his house. When he reached near the house of Mahendi Hasan, Kalloo came out of his house and again began to quarrel with Yamin. He pushed down Yamin to the ground when Yamin was getting up, Raffu fired from a gun at Yamin injuring him in the stomach. Their houses were also nearby. The two accused ran towards their house and then escaped in the directions of village Mubarakpur. Number of villagers who were either returning from the Panchayat ghar or were at their houses, saw the entire incident.

4. Mohd. Umar tied a hand-kerchief on the wound and went to the police station for lodging the F.I.R. Near the bus-station he met Raja Matin. As Mohd. Umar did not know Hindi well, he got a written report prepared by Raja Matin and went to the police station. He lodged the F.I.R. at 10 A.M. The police registered the case under section 302 I.P.C. Station Officer, Sri Banshi Mohan Sharma took up the investigation of the case in his own hands. He took Sri Jagdish Singh Solanki S.I., Sri Rajendra Pratap Singh S.I. and some constables with him, reached village Nahal in the police jeep and started the investigations. Under his directions Panchayatnama was prepared by S.I. Sri Jagdish Singh Solanki. The dead body of Yamin was sealed and handed over to constables Rama Nand Tyagi and Dhiraj Singh, along with connected papers, to get the post mortem examination conducted. The investigation officer prepared the site plan, recorded the statements of the witnesses and also took samples of blood-stained earth and ordinary earth and sealed them in different containers. He searched for the accused but they

were not traceable. On 3-5-1984 also he attempted to trace out the accused but was unsuccessful. At this he submitted a report in the court of concerned magistrate for issuing processes under sections 82 and 83 Cr.P.C. Accused Raffu surrendered in court and was interrogated by the I.O. on 5-5-1984. Property of accused, Kalloo, was attached on 6-5-1984 and Kalloo surrendered in court on 7-5-1984. He was interrogated by the I.O. on 11-5-1984. On transfer of Sri Banshi Mohan Sharma, Sri Pritam Singh took charge as station officer on 21-5-1984, he took the remaining investigation of the case in his hands and, after completing it submitted charge sheet against the accused on 9-6-1984.

5. Both the accused were charged for the offence under section 302 I.P.C. read with section 34 I.P.C. They pleaded not guilty and claimed to be tried. Prosecution examined Mohd. Umar P.W.1, Abdul Wajid P.W. 2, H.C. Nawal Kishore Sharma P.W.3, Akhtar P.W.4, Dr. Hamid Ali Khan P.W.5, constable Dhiraj Singh P.W.6, Sri Banshi Mohan Sharma S.I. P.W.7 and Sri Pitam Singh S.I. P.W.8 to prove guilt of the accused.

6. Mohd. Umar P.W.1 is the *pradhan* of the village and is related to the accused. He narrated the prosecution story about accused Raffu making a complaint to him in the mosque about the removal of his gathered crop by Yamin, his visit to the threshing floor of Yamin to verify it and the holding of Panchayat at the Panchayat ghar where an altercation took place between accused Raffu and deceased Yamin. He continued to give evidence that due to exchange of hot words, he had sent away accused Raffu and Kalloo to their house and shortly afterwards the Panchayat was also dispersed, that Yamin also left for his house and the other participant also left for their houses gradually, that he remained behind in order to have a talk with a village and his attention was drawn by the noise created in the scuffle between Yamin and Kalloo and that he saw Kalloo throwing down Yamin on the ground and when Yamin was getting up Raffu fired at Yamin hitting him in the stomach and killing him. He also gave evidence that he did not know Hindi, so he got a written report prepared by Raja Matin on his way to

the police station which was handed over to the police at the police station. He proved the written report which is Ext. Ka 1 on the file.

7. P.W.2, Abdul Wajid, is the resident of the same village and his house is adjacent to the place of incident. He gave evidence that on the date of incident at about 9 A.M. he was smoking clay-pipe out side his house and saw Yamin coming from the side of Panchayat ghar on his way to his own house; that Yamin reached near the house of Mehdi Hasan which is opposite to the house of accused Kalloo, that accused Kalloo; reached there and started to quarrel with Yasmin and even threw him down on the ground and that when Yamin was getting up, accused Raffu fired at Yamin injuring him and thereafter both the accused ran away. He also stated that Wali Mohammad and several others had assembled there and seen the incident.

8. P.W.3 H.C. Nawal Kishore Sharma was Head Moharir at P.S. Musoori on 2-5-1984. He prepared the check report Ext. Ka2 at 10 :00 A.M., and also registered the case in the general diary copy of which is Ext. Ka.3 on the file.

9. P.W.4, Akhtar, was another witness of fact but he did not fully support the prosecution version and was cross examined by the prosecution to show that he had turned hostile. He gave evidence that on the date of incident he was at his gher at about 8 or 9 A.M., that Raffu and several other persons were coming from the side of fields and Raffu was saying that his gathered crop was removed by Yamin, that several persons assembled at the place where Panchayats are held and told Raffu that Yamin had not removed his crop, that those persons went away to their respective houses saying that the Panchayat would be held in the evening and that when he was intending to go to his fields, he heard the sound of gun fire and on going to the house of Mehdi Hasan, he saw Yamin lying dead but he did not see anybody murdering him.

10. P.W., 5 Dr. Hamid Ali Khan, was posted for post mortem duty on 2-5-1984. He gave evidence that he conducted post mortem examination of dead body of Yamin at 3.35 P.M. and found that he died due to injury received by him in the stomach which was a bullet wound. He also found two abrasions

on his body. He proved his report Ext. Ka 4.

11 P.W.6, Constable Dhiraj Singh, gave evidence that he took the sealed dead body of Yamin from village Nahal to Mohan Nagar Hospital via Police Lines, Ghaziabad and handed it over to the doctor for post mortem examination.

12. P.W.7, Sri Banshi Mohan Sharma, investigated this case. He proved *panchayatnama* Ext. Ka 4A, report to the Reserve Inspector, Police Lines Ext. Ka. 5, report to C.M.O. Ext. Ka 6, specimen impression of seal Ext. Ka 7, memo of location of injuries Ext. Ka 8 and the challan of the dead body Ext. Ka. 9. He visited the spot and prepared site plan Ext. ka 10. He also gave evidence that he recorded the statements of witnesses, took samples of blood-stained and ordinary earth and sealed them separately and prepared its memorandum Ext. Ka 11. He stated that he could not trace out the two accused on 2-5-1984 and 3-5-1984 but 4 but they were not traceable and therefore obtained processes under sections 82/83 Cr.P.C., ultimately the two accused surrendered in court on two different dates.

13. P.W.8, assumed investigation on transfer of Sri Banshi Mohan Sharma S.I., and, after completing it, submitted the charge sheet against the accused on 9-6-1984.

14. After hearing the rival contentions and going through the trial court record, we find that the prosecution has utterly failed to prove that the appellant no. 2 namely Kallu shared the common intention to commit the murder of the deceased Yamin with Appellant No. 1 namely Raffu. No evidence has been led by the prosecution to suggest any prior concert or arrangement between both the Accused-Appellants to commit the murder. From the evidence of both the eyewitnesses i.e. PW-1 & 2, it is not discernible that the Appellant Kallu shared common intention with Appellant Raffu before Appellant Raffu fired upon the deceased, Yamin, which was his individual act, even if it is so assumed. Neither prior to or post incident anything is alleged to have been uttered or done by the appellant, Kallu, to suggest if he too shared intention to commit murder of

the deceased, Yamin. On the contrary evidence of both the eyewitnesses examined by the prosecution goes to reveal that appellant, Kallu merely caught hold of the deceased, Yamin and immediately left him without causing any hurt and it is thereafter that all of a sudden, the appellant, Raffu came from behind on the spot and is alleged to have fired upon the deceased, Yamin, causing him singular firearm fatal injury. So there is no evidence even to suggest development of any plan at the spot and during incident to commit murder of the deceased Yamin between both the Appellants. Therefore, in any view of the matter, the conviction of the appellant, Kallu, is not sustainable on the strength of S. 34 IPC. Thus, having regard to all the attending facts & circumstances of the case, the appellant, Kallu, is liable to be acquitted of the singular charge as drawn by the trial court against him as it could not be established by the prosecution against him.

15. In ***Ramashish Yadav v. State of Bihar, (1999) 8 SCC 555*** the Apex Court considered the ingredients of Section 34 IPC as follows:-

"Section 34 lays down a principle of joint liability in the doing of a criminal act. The essence of that liability is to be found in the existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. The distinct feature of Section 34 is the element of participation in action. The common intention implies acting in concert, existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts. It requires a pre-arranged plan and it presupposes prior concert. Therefore, there must be prior meeting of minds. The prior concert or meeting of minds may be determined from the conduct of the offenders unfolding itself during the course of action and the declaration made by them just before mounting the attack. It can also be developed at the spur of the moment but there must be pre-arrangement or premeditated concert."

17. Therefore it is clear that the appellant no.1, Raffu, caused the fatal injury to the deceased and he died. There is sufficient evidence against the appellant no.1, Raffu, of causing the murder of Yameen, hence the

conviction and sentence awarded by the trial court against the appellant no.1 is **confirmed**.

18. As considered above, sharing of common intention by appellant no.2 has not been proved by the prosecution case. Accordingly, the appellant no.2, is acquitted of all charges.

19. Both the appellants are in jail. Bail bonds of appellant no.2, are cancelled and sureties are discharged.

20. Appellant no.1, is directed to carry out remaining sentences.

21. **Appellant no.2** is set free.

22. Criminal appeal is partly **allowed**.

23. Let the copy of this judgment along with trial court record be returned to the trial court within 10 days.

September 18, 2026
Abhishek

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