



2026:AHC-LKO:37345-DB

A.F.R.**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW****CRIMINAL APPEAL No. - 1097 of 2026**

Pramod Kumar Singh Alias Guddu Singh

.....Appellant(s)

Versus

State Of U.P. Thru. Secy. Deptt. Of Home Lko

.....Respondent(s)

Counsel for Appellant(s)	:	Suyesh Pradhan
Counsel for Respondent(s)	:	G.A.

Court No. - 9**HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE SUBHASH VIDYARTHI, J.**

1. Heard Sri Suyesh Pradhan, the learned counsel for the appellant and Sri Vipul Kumar Singh, the learned State Counsel.
2. By means of the instant appeal, the appellant has challenged the validity of a judgment and order dated 28.03.2026 passed by the learned Additional Session Judge, Court No. 3, Hardoi in Session Trial No. 465/2008, arising out of Case Crime No. 230/2008, under Sections 302/149, 307/149, 506(2) & 148 IPC, Police Station Beniganj, District Hardoi whereby the trial Court has convicted the appellant for the offences under Sections 302 read with Section 149, Section 307 read with Section 149, 148 and 506(2) IPC and has sentenced him to undergo rigorous imprisonment for life and Rs.10,000/- fine for the offence under Section 302/149, rigorous imprisonment for ten years and Rs.5,000/- fine for the offence under Section 307/149, rigorous imprisonment for two years and Rs.2,000/- fine for the offence under Section 506(2) and rigorous imprisonment for two years and Rs.2,000/- fine for the offence under Section 148.
3. The aforesaid judgment is a composite judgment whereby four sessions trial have been decided. The appellant was an accused only in one of the four trials, namely, Sessions Trial No. 465/208 and the judgment of the trial court, so far as it decides Sessions Trial No. 465A/2008, 466/2008 & 468/2008, has not been challenged and the same is not being scrutinized by this Court.

4. The appeal was admitted by means of the order dated 21.04.2026 and the trial court's record was summoned. The state was granted time to file objections against the application for release of the appellant on bail. The State has filed a counter affidavit and the appellant has filed a rejoinder affidavit. However, as the trial Court's record is available, instead of deciding the bail application the Court proceeds to decide the appeal itself after hearing the submissions of the learned counsel for the parties in support of an in opposition of the appeal and after perusal of the trial court's record.

5. The aforesaid case was instituted on the basis of an FIR lodged on 09.03.2008 alleging that the informant's cousin Vijay Kumar Singh @ Pappu was having animosity because of a prior criminal litigation against Bhau Singh, Bhanna Singh, Kallu Singh and Sport Singh and all the aforesaid persons are accused in a case under Section 307 IPC. Vijay Kumar Singh @ pappu was sitting on a platform in front of his door at about 08:00 p.m. on 08.03.2008. There was a lantern which was emanating light. Bhau Singh, Bhanna Singh and Sport Singh, sons of Chhotkau Singh came there carrying firearms. Pramod Kumar Singh @ Guddu Singh, son of Harnam Singh (the appellant) also came with them and he was carrying a country made pistol. All the aforesaid persons started firing gun shots. Vijay Kumar Singh got seriously injured because of the gun shot injuries. The complainant Pramod Kumar Singh @ Pintu Singh also suffered injuries in the incident. Several persons reached there and the accused persons ran away while threatening them. Vijay Kumar Singh @ Pappu was taken to the District Hospital, Hardoi but keeping in view his serious condition he was referred to Lucknow. He succumbed to his injuries on 09.03.2008.

6. After investigation, the Investigating Officer submitted a charge-sheet on 27.05.2008 against Sport Singh, Bhanna Singh, Bhau Singh and Kallu Singh only. The charge-sheet stated that the appellant's involvement in the incident could not be established during investigation.

7. The trial proceeded against the aforesaid four accused persons. After recording of testimony of some prosecution witnesses, the prosecution filed an application under Section 319 Cr.P.C. for summoning of the appellant to face the trial. The application was allowed by means of an order dated 04.06.2012 and thereafter the prosecution witnesses were examined again.

8. After commencement of the trial against the appellant, the injured complainant Pintu Singh alias Pramod Kumar son of Indra Pal Singh was examined again as PW-1 on 05.09.2013 and he categorically stated that the appellant was not involved in the incident and that he was not present on the spot. PW-1 specifically stated that he had falsely implicated the appellant in his earlier statement, under pressure of his family members and some villagers.

9. Although the judgment refers to the testimony of Ajay Kumar Singh as that of PW-2, the record reveals that after summoning of the appellant and commencement of his trial, Ajay Kumar Singh was not examined. After commencement of the trial against the appellant, Indrapal Singh was examined as PW-2 on 05.09.2013. This witness was the uncle of the deceased Vijay Kumar Singh @ Pappu and father of the injured complainant Pintu Singh alias Pramod Kumar. PW-2 stated that at the time of the incident he was sitting in front of his house. Upon hearing the noise, he went to the house of the victim and saw Bhanna Singh, Bhau Singh, Sport Singh, and Kallu Singh were standing in front of the victim's house carrying firearms and all the aforesaid four persons had fired shots with their weapons. He categorically stated even during his examination in chief that he did not see the appellant Pramod Kumar Singh alias Guddu Singh on the spot of the incident.

10. The trial court held that in the written complaint it had been stated that the appellant was accompanying the other accused persons Bhau Singh, Bhanna Singh, Sport Singh and Kallu Singh and that all of them had fired gunshots. During their statements recorded by the trial court, the injured witness Pramod Kumar Singh alias Guddu Singh and the independent witness Ajay Kumar Singh had stated about the appellant's involvement in commission of the offences and thereafter he was summoned under Section 319 CrPC. to face the trial, relying on the statement of injured witness Pintu Singh. Even though Pintu Singh had resiled from his earlier statement and has stated that the appellant was not involved in the incident, there are statements of two other persons, one of whom Indra Pal Singh had specifically stated that the appellant had fired gunshots along with other accused persons causing injuries to Vijay Kumar Singh alias Pappu and the witnesses' son Pintu Singh.

11. The trial Court erred in so holding, because Indra Pal Singh had stated about involvement of the appellant in the incident in his

statement recorded on 01.02.2011, i.e., before the appellant was summoned to face the trial, and this statement cannot be read against the appellant. In his statement recorded on 05.09.2013, after commencement of the appellant's trial, Indrapal Singh had stated that the appellant was not involved in the incident and only this evidence could be read by the trial Court for deciding the correctness of the charges leveled against him.

12. The trial Court held that PW-2 Ajay Kumar was also an eyewitnesses of the incident and he had also stated that Pramod Kumar Singh alias Guddu Singh was carrying a country-made pistol and all the accused persons had fired with intention of killing Pappu Singh. The trial Court held that from the aforementioned statements, it is established that the appellant Pramod Kumar Singh alias Guddu Singh was involved in the incident and merely because Pintu Singh has stated in his examination that Pramod Kumar Singh alias Guddu Singh was not involved in the incident, the prosecution story does not become doubtful.

13. However, this statement of Ajay Kumar Singh was recorded on 25.02.2009. After the appellant was summoned to face the trial, Ajay Kumar Singh did not come forward to get his testimony recorded. The testimony of Ajay Kumar Singh recorded before the appellant was summoned to face the trial, cannot be read against the appellant.

14. The trial court further held when once the court has acted upon the testimonies to summon the appellant to face the trial under Section 319 CrPC, those testimonies cannot be ignored and those can form the basis of conviction of the appellant.

15. In **Hardeep Singh v. State of Punjab**, (2014) 3 SCC 92, the Hon'ble Supreme Court held that: -

“106. ...In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.”

16. Therefore, the evidence recorded in absence of an accused person, which is relied upon for summoning him under Section 319 Cr.P.C., cannot form the basis of his conviction.

17. The trial Court has ignored the provision contained in Section 273 Cr.P.C., which reads as follows: -

“273. Evidence to be taken in presence of accused.—Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

Explanation.—In this section “accused” “includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.”

18. Section 273 Cr.P.C. provides that except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his attendance is dispensed with, in the presence of his pleader. Therefore, the evidence recorded when the appellant had not been summoned by the trial Court and he was not present before the trial for this reason, cannot be relied upon by the trial Court.

19. Section 299 Cr.P.C. provides an exception where the evidence of a witness recorded in absence of an accused person can be read against him and this Section reads as follows: -

“299. Record of evidence in absence of accused.—(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try, or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.”

20. It would be appropriate to have a look at the provision contained in Section 33 of the Evidence Act, which reads as follows: -

“33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.—Evidence given by a witness in a judicial proceeding, or

before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.”

21. Section 33 of the Evidence Act, 1872, provides relevancy of certain evidence for proving the truth of the facts stated therein, in any subsequent proceeding, according to which evidence given by a witness is treated to be relevant in a subsequent proceeding or at a later stage in the same proceeding under certain eventualities.

22. In **Nirmal Singh v. State of Haryana**: (2000) 4 SCC 41, the Hon'ble Supreme Court discussed the scope and requirements of Section 33 of the Evidence Act, 1972 and Section 299 CrPC and observed as follows: -

“4. ... On a mere perusal of Section 299 of the Code of Criminal Procedure as well as Section 33 of the Evidence Act, we have no hesitation to come to the conclusion that the preconditions in both the sections must be established by the prosecution and it is only then, the statements of witnesses recorded under Section 299 CrPC before the arrest of the accused can be utilised in evidence in trial after the arrest of such accused only if the persons are dead or would not be available or any other condition enumerated in the second part of Section 299(1) of the Code of Criminal Procedure is established.”

23. Section 278 Cr.P.C. provides that as soon as the evidence of each witness in a criminal trial is taken under Section 275 or 276, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected. Section 279 CrPC also provides for interpretation of evidence to the accused in open court, in case he is present and such evidence is given in a language not understood by him.

24. In **Jayendra Vishnu Thakur v. State of Maharashtra**: (2009) 7 SCC 104, the Hon'ble Supreme Court held that: -

“18. The right of an accused to watch the prosecution witnesses deposing before a court of law indisputably is a valuable right. ...

*23. An accused is, however, always entitled to a fair trial. He is also entitled to a speedy trial but then he cannot interfere with the governmental priority to proceed with the trial which would be defeated by conduct of the accused that prevents it from going forward. In such an event several options are open to courts. What, however, is necessary is to maintain judicial dignity and decorum. The question which arises for consideration is whether the same will take within its umbrage the said principle. We will examine the said question a little later. We will proceed on the premise that **for invocation of the provisions of Section 299 of the Code the principle of natural justice is inbuilt in the right of an accused.***

24. A right to cross-examine a witness, apart from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-à-vis opinion.

(See — Sarabjit Rick Singh v. Union of India [(2008) 2 SCC 417]).

25. It is also beyond any cavil that the provisions of Section 299 of the Code must receive strict interpretation, and, thus, scrupulous compliance therewith is imperative in character. It is a well-known principle of interpretation of statute that any word defined in the statutory provision should ordinarily be given the same meaning while construing the other provisions thereof where the same term has been used. Under Section 3 of the Evidence Act like any other fact, the prosecution must prove by leading evidence and a definite categorical finding must be arrived at by the court in regard to the fact required to be proved by a statute. Existence of an evidence is not enough but application of mind by the court thereupon as also the analysis of the materials and/or appreciation thereof for the purpose of placing reliance upon that part of the evidence is imperative in

character.”

(Emphasis added)

25. Further, the trial court's observation that besides the injured witness Pintu Singh alias Pramod Kumar Singh, two other witnesses had stated about the involvement of the appellant in commission of the offence out of whom the witness Indrapal Singh has categorically stated about the involvement of the appellant, suffice it to say that the trial court omitted to notice that after summoning the appellant under Section 319 CrPC and the commencement of trial against him, Indrapal Singh was examined again on 05.09.2013 as PW-2 and in this statement he categorically stated that the appellant was not involved in the incident. The trial Court has acted on the statement of Indrapal Singh recorded earlier, while the appellant had not been summoned to face the trial, but has ignored the statement of this witness recorded after the appellant was summoned, wherein he categorically stated that the appellant was not involved in the incident.

26. It is interesting to note that the witness, Indrapal Singh is the father of the injured witness Pintu Singh and uncle of the deceased Vijay Kumar Singh. Being so closely related to the deceased victim and the injured victim, this witness cannot be said to be a witness who may be interested to wrongly defend the accused persons and there is no reason to discard the testimony of PW-2.

24. There is no other evidence available on record to establish the involvement of the appellant in commission of the alleged offence.

27. In view of the foregoing discussions, we are of the considered view that the prosecution has failed to establish the guilt of the appellant in the commission of the alleged offences. The trial court has convicted the appellant without adverting to the aforesaid aspect of the matter, which vitiates the finding of the trial court and renders its judgment unsustainable in law.

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

29. The judgment and order dated 28.03.2026 passed by the learned Additional Sessions Judge, Court No. 3, Hardoi in Session Trial No. 465/2008, arising out of Case Crime No. 230/2008, under Sections 302/149, 307/149, 506(2) & 148 IPC, Police Station Beniganj, District

Hardoi, convicting and sentencing the appellant for the offences under Sections 302 read with Section 149, Section 307 read with Section 149, 148 and 506(2) IPC is set aside. The appellant is acquitted of all the charges. The appellant is directed to be released from custody forthwith, unless he is wanted in any other case, after complying with the provisions of Section 437-A Cr.P.C. by furnishing a personal bond and two sureties for ensuring his appearance before the Hon'ble Supreme Court, in case any appeal is filed against this order and the Hon'ble Supreme Court issues a notice to the appellant.

30. As the appeal itself has been allowed and the appellant has been acquitted of the charge of all the charges, the bail application has become infructuous and the same is disposed off accordingly.

May 22, 2026
Pradeep/-

(Subhash Vidyarthi,J.) (Rajesh Singh Chauhan,J.)