

**(2006) 03 AHC CK 0152**

**Allahabad High Court**

**Case No:** Criminal Appeal No. 595 of 1982

Tersoo Yadav and Sita Ram @  
Satai Yadav (In Jail)

APPELLANT

Vs

The State of Uttar Pradesh

RESPONDENT

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**Date of Decision:** March 1, 2006

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 307, 34

**Hon'ble Judges:** V.D. Chaturvedi, J; M.C. Jain, J

**Bench:** Division Bench

**Advocate:** S.N.S. Yadav, P.N. Misra and Prem Prakash, for the Appellant; R.K. Singh and A.G.A., for the Respondent

**Final Decision:** Allowed

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### **Judgement**

M.C. Jain, J.

Tarsu Yadav and his father- Sita Ram alias Satai Yadav were tried before IV Additional Sessions Judge, Ghazipur in S.T. No. 235 of 1981. By the judgement dated 1.3.1982, the trial judge convicted Tarsu Yadav with sentence of life imprisonment on two counts for committing murder of Dwarika and Smt. Kumariya u/s 302 I.P.C. and u/s 307 I.P.C. for attempting the murder of Rajmatiya. Sita Ram was convicted (for sharing the common intention for the murder of Smt. Kumaria and attempting the murder of Rajmatiya) u/s 302 read with Section 34 I.P.C. with life imprisonment and u/s 307 read with Section 34 I.P.C. with sentence of life imprisonment.

2. Tarsu Yadav died during the pendency of the appeal and same abated under our order dated 23.5.2003. The Court is now concerned only with Sita Ram alias Satai Yadav. The incident occurred on 28.6.1981 in village Husainpur Madhukar, Police Station Sadat, District Ghazipur. The F.I.R. was lodged at 7.30 A.M. the same day by Rama Yadav PW 1. In this incident, Dwarika and Smt. Kumaria-mother of Dwarika were murdered. Dwarika had died at the spot and Smt. Kumaria had died in hospital

on 29.6.1981 at 7.40 A.M. One Smt. Rajmatia alias Rajmania suffered injuries in this incident who after some time died of natural death.

3. From before this incident, Rama Yadav PW 1 had strained relations with accused Sita Ram alias Satai Yadav. In the morning of 28.6.1981 Rama Yadav had gone to the south-west of his house to answer the call of nature. When at about 5 A.M. he was returning back, he collided with his brother accused Sita Ram who was going in opposite direction to case. Consequent upon the collision between the two an altercation followed. The wife of accused Sita Ram was also present nearby at that time as she had gone there to throw cow-dung. On hearing the altercation between her husband and Rama Yadav PW 1, she rushed back to her house and sent her son Tarsu to that place. Tarsu armed with his licensed gun rushed to the spot. When he reached the tri-junction to the south of Bhita, he met Dwarika son of Rama Yadav who was standing in his Sahan. On seeing Dwarika, the accused turned towards north and after settling 3-4 steps, opened fire on Dwarika which hit him on his abdomen. On receiving injuries, he fell down and died instantaneously. On hearing the sound of fire, the accused Sita Ram and Rama Yadav PW 1 rushed towards scene of the incident. Smt. Kumaria-mother of the deceased Dwarika and Rajmatia (his aunt), Nanhakoo and Ram Adhar-the two other relations of Rama Yadav were present at the time of the incident. Adalat Pw 2 and other witnesses rushed to the scene where Dwarika deceased had fallen in a pool of blood. Smt. Kumaria and Smt. Rajmatia surrounded the deceased Dwarika and started raising his dead body. The witnesses who had arrived there tried to over power Tarsu Yadav who alongwith his father ran inside his house, reaching the roof of his second storey. Therefrom, on exhortation of his father Sita Ram, Tarsu Yadav fired 2-3 shots from his gun which hit Smt. Kumaria and Smt. Rajmatia.

4. Consequent upon the lodging of the F.I.R. at police station by Rama Yadav, a case was registered and investigation followed as usual.

5. At the trial, the prosecution examined ten witnesses. Out of them, Rama Yadav PW 1, Adalat PW 2 and Mewa Singh PW 3 were examined as eye witnesses. Rest of the evidence was more or less of formal nature.

6. The defence was of denial.

7. We have heard Sri P.N. Misra, learned Senior Advocate for the surviving accused-appellant Sita Ram alias Satai Yadav and Sri R.K. Singh, learned A.G.A. from the side of the State.

8. The two deceased and the one injured had received gunshot injuries as is clear from post mortem reports and injury report.

9. As we mentioned earlier, the main assailant was accused-appellant Tarsu Yadav who died during the pendency of the appeal. Only the role of exhortation was assigned to the surviving accused-appellant Sita Ram alias Satai Yadav (father of

Tarsu Yadav). Rama PW 1, Adalat PW 2 (cousin of the deceased Dwarika) and Mewa Singh PW 3 were examined as eyewitnesses of the incident as we indicated a little above. Mewa Singh was not named as such in the F.I.R. Any way, all of them testified that shots had been fired by the deceased accused Tarsu Yadav. However, they assigned the role of exhortation to the surviving accused-respondent Sita Ram alias Satai Yadav with regard to the shots opened by the deceased accused Tarsu Yadav from the roof of their house which hit Kumaria-mother of Dwarika and Rajmania alias Rajmatia.

10. Broadly speaking exhortation is a weak type of evidence. Further, an assailant armed with deadly weapon like firearm with blood in his eyes, who had just committed the murder of a person (Dwarika), hardly needed any exhortation to act. There is yet another most disturbing feature in the present case that the dying declaration of the deceased Kumaria wife of Rama (the mother of other deceased Dwarika) had been recorded by Sri Ram Chandra Ram S.D.M. PW 9 on 28.6.1981 in District Hospital Ghazipur at 5.30 P.M., She did not say anything about the surviving accused-appellant having played any role in commission of this crime. It would be recalled that as per the prosecution case and the evidence, Dwarika had been first shot dead by the deceased accused-appellant Tarsu Yadav. It was thereafter that he and his father-surviving accused-appellant Sita Ram alias Satai Yadav had allegedly gone over the roof of their house. From the roof, Tarsu Yadav had allegedly opened further shots on the exhortation of the surviving accused-appellant Sita Ram alias Satai Yadav. The declarant-Kumaria deceased was one of the victims of such shots opened from the roof by the deceased accused-appellant Tarsu Yadav. She became unconscious only on receiving shot opened from the roof by Tarsu Yadav. She would have spoken about exhortation part of the accused-appellant Sita Ram alias Satai Yadav in her dying declaration if it Were a fact. But, as we said, her dying declaration is silent about any such exhortation part of the surviving accused-appellant Sita Ram alias Satai Yadav. It was, therefore, unsafe to convict the surviving accused-appellant Sita Ram alias Satai Yadav on such fluid state of evidence and the conflict surfacing between the ocular testimony and dying declaration of the deceased Kumaria as to the exhortation part of the accused-appellant Sita Ram alias Satai Yadav.

11. In view of above discussion, we are inclined to allow the appeal which has subsisted only on behalf of the accused-appellant Sita Ram alias Satai Yadav (main assailant-accused-appellant Tarsu Yadav having died during the pendency of the appeal).

12. The appeal is allowed. The conviction and sentences passed against accused-appellant Sita Ram alias Satai Yadav are set aside. He is on bail. His bail bonds are cancelled and the sureties discharged. The other accused-appellant Tarsu Yadav having died during the pendency of appeal, the appeal has abated on his behalf.

13. Certify the judgement to the court below for making necessary entry in the relevant register, reporting compliance to this Court within two months.