

(1991) 08 AHC CK 0088**Allahabad High Court****Case No:** Criminal Miscellaneous Bail Application No. 7561 of 1991

| | |
|-------|------------|
| Anand | APPELLANT |
| Vs | |
| State | RESPONDENT |

Date of Decision: Aug. 29, 1991**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302

Citation: (1991) 15 ACR 719**Hon'ble Judges:** B.P. Singh, J**Bench:** Single Bench**Advocate:** Yaduvansh Kumar Shukla, for the Appellant;**Final Decision:** Disposed Of**Judgement**

B.P. Singh, J.

Heard parties Counsel.

2. Applicant Anand is being prosecuted for committing the offence u/s 302 IPC P.S. Niwari district Ghaziabad.

3. According to the recital in the FIR three persons viz., applicant Anand, Satish and Ugar had come to the house of the first informant in the night of 8/9th April, 1991 and when her sister-in-law Smt. Sita had come out of the room, she caught hold Satish whereupon Anand had fired upon her. Not only this co-accused Ugar had given a spear blow to Smt Sita as a result of which she fell down and died instantaneously.

4. On a perusal of the copy of the post mortem report, it would appear that Smt. Sita had sustained one ante mortem injury a gun shot wound of entry 2 cm x 2 cm upon the right ear and there was a corresponding wound of exit upon the left side of the head. There was another post mortem wound 6 cm x 6 cm muscle deep on the chest.

5. It is also not disputed that Smt. Prabha had lodged the FIR in which co-accused Satish was named as the first accused, but in the site plan prepared by the Investigating officer, the crime in question has been referred to as State v. Anand. Reliance has been placed upon a decision of the Supreme Court in Bandi Mallaiah v. State of Andhra Pradesh 1980 SCC 672. The Supreme Court has observed in the above cited case as under:

In each one of these requisitions, the sub-inspector had mentioned that the several injured persons were beaten by Golla Gopaiah and others with sticks. Now, if there was already a first information report in existence in which Bandi Mallaiah (A-1) had been named as the first accused and as the person who led the attack, surely the assailants would have been mentioned in the requisitions as Bandi Mallaiah and others and not Golla Gopaiah and others. This circumstance throws doubt upon the case of prosecution that the first information report Ex. P 1 was given at 10 p.m.

6. Where the injuries are found upon the body of the deceased at the time of post mortem examination and one of them is found to be post mortem injury although the case of the first informant was that both the injuries were caused simultaneously and the deceased had fallen down after sustaining both the injuries and had died; and where the reference of the crime in the site plan is by the name of an accused, who was not named as first accused in the FIR a case for bail is made out. These assertions shall have no bearing upon the learned Sessions Judge who will decide the case finally.

7. Let applicant Anand involved in Crime No. 56 of 1991 u/s 302 IPC. P.S. Niwari district Ghaziabad be released on bail provided he furnishes a personal bond and two sureties to the satisfaction of C.J.M. Ghaziabad.