

(2007) 02 AHC CK 0263**Allahabad High Court****Case No:** Criminal M.B.A. No. 14793 of 2006

Ram Shabd Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Feb. 7, 2007**Acts Referred:**

- Criminal Law (Amendment) Act, 1932 - Section 7
- Penal Code, 1860 (IPC) - Section 302, 506

Citation: (2007) 3 ACR 2941**Hon'ble Judges:** Shiv Shanker, J**Bench:** Single Bench**Advocate:** V.P. Srivastava, Shriram Rawat, R.C. Yadav and Santosh Kumar Singh, for the Appellant; S.K. Srivastava, A.K. Srivastava and A.G.A., for the Respondent**Judgement**

Shiv Shanker, J.

This is the first bail application moved on behalf of the applicant Ram Shabd Yadav in Case Crime No. 277 of 2006, under Sections 302 and 506, I.P.C. and 7, Criminal Law Amendment Act, P.S. Sidhri, district Azamgarh.

2. Briefly the prosecution case, according to the first information report, is that Ram Ratan Yadav lodged the report on 3.4.2006 at 11.10 a.m. against accused Faujdar Yadav, Ram Shabd Yadav and Lalmayan Yadav stating that he alongwith his elder brother Ram Bhajan Yadav were going through cycle to attend the Court of Additional Sessions Judge/Fast Track Court No. 1, Azamgarh on 3.4.2006. Shashi Kant Yadav and his sister-in-law Smt. Malti Yadav were going to Azamgarh for medicine. When he and his brother reached near the culvert situated 1-1/2 kilometers away of village Chhatwara from behind Hero Honda motorcycle of black colour had come, upon which all the three accused persons were sitting, accused Faujdar was sitting in the middle of the motorcycle, upon his extortion Lalmayan accused opened fire upon his brother but shot was not hit. Thereafter, his brother

had run away towards east after throwing his cycle. Same time Ram Shabd Yadav and Lalmayan had stopped the motorcycle and they had run behind him after covering 150 meter. He was surrounded at the Chak-road and he was caught hold by one Lalmayan and Ram Shabd Yadav with the accused shot fire on his back. Consequently, he sustained firearm injury. Thereafter, accused persons fled away from the place of occurrence by extending threats. In injured condition he was taken to the hospital, where he was declared dead. Due to litigation of the cases, he has been murdered by them.

3. Heard learned Counsel for the applicant and learned A.G. A.

4. It is contended by learned Counsel for the applicant that place of incident in the site plan has been shown as place X while the eye witnesses are said to have been seen incident from place EFG. There is distance of 158 steps between two places. There are crops of wheat and mustered (rai) between two places. It is not possible that two eye-witnesses had seen the actual place of occurrence from the place of EFG.

5. It is further contended that post mortem report also reveals that firearm was caused from upper to down and it could not be caused as alleged by the prosecution. It is further contended that it appears that he was killed in the forest in lonely place and as there was no abadi and he has been implicated due to previous enmity.

6. Learned A.G.A. has opposed the bail application.

7. This incident is said to have occurred on 3.4.2006 at 9.30 a.m. and F.I.R. was lodged on the same day after three hours of the alleged occurrence after covering distance of 4-1/2 kilometers. Therefore, there is no inordinate delay in lodging the F.I.R. It has been specifically stated in the F.I.R. as well as the statement of prosecution witnesses including first informant that first informant alongwith his brother (deceased) were going to attend the Court with the cycle. They reached at the place of occurrence at about 9.30 a.m. Motorcycle of the accused persons had come from his behind and stopped cyclist, upon which, deceased ran away after leaving cycle. However, he was surrounded after 150 meters at the Chakroad by all the three accused persons and on the extortion of Faujdar Yadav, he caught hold by Lalmayan and Ram Shabd (present applicant) made firing. Consequently, he sustained injury and he was taken to hospital, where he was declared dead. In this case, first informant and others have been shown that they were surrounding at the distance of 158 steps from the place of EFG. No doubt, in between the place of occurrence and place of seeing the incident, there is field of laha and wheat but the site plan and spot inspection did not reveal that any crop was standing at the same field. It has been mentioned in the F.I.R. that cutting of crops were going on. It is also worthwhile to mention here that crops of wheat was not so long that the persons could not be identified from the above distance. This is the case of broad

day light murder and he is the main assailant, who committed the murder. This is also supported with the post mortem report of the deceased as the firearm injury was caused at a very close range. It could be caused by one person when he was caught hold by another person. Similar allegation is in the F.I.R. against the applicant. Motive of this case is that litigation was pending between both parties. Due to this reason, he was murdered by the accused.

8. After considering the facts and circumstances of the case, there is no force in the argument of learned Counsel for the applicant, his bail application is not liable to be allowed.

9. Consequently, the bail application of Ram Shabd Yadav is hereby rejected.