

Neutral Citation No. - 2024:AHC-LKO:67648

Reserved on: 21.09.2024
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Case :- CRIMINAL APPEAL No. - 1387 of 2005

Appellant :- Jang Bahadur Singh

Respondent :- State of U.P.

Counsel for Appellant :- Rajesh Kumar Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Narendra Kumar Johari,J.

1. The present criminal appeal has been filed by the accused-appellant Jang Bahadur Singh against the judgment of conviction and order of sentence dated 18.10.2005, passed by Additional Sessions Judge, Court No.5, Unnao in Sessions Trial No.168 of 2004, arising out of Case Crime No. 12 of 2004 under Sections 307 & 504 IPC, Police Station Bighapur, District Unnao.

2. Learned trial court vide its judgment dated 18.10.2005 has convicted the accused under Section 307 IPC for the punishment of 7 years rigorous imprisonment and fine of Rs.5000/-, in default of payment of fine, six months additional imprisonment has been awarded to the accused-appellant.

3. The fact of the case is that the informant Funni @ Ram Singh is the neighbour of appellant- Jang Bahadur. The informant as well as his family members are using the pathway, which is besides the house of appellant- Jang Bahadur, for their egress and ingress. The appellant always raising his objection for using the said pathway. On 15.01.2004 at about 5.00 pm. when the informant was returning from his field to his residence and was passing through the aforesaid pathway, the accused-appellant, who was standing near his house and pathway, again raised his objection regarding the used of passage and abused to informant. The informant resisted him, consequently, the appellant became angry and opened fire on informant by country made pistol and fled away by abusing the informant. As a consequence of firearm shot, the informant

received pellets injuries on his both legs. After receiving injury, the informant shouted for help then his brother Chandra Prakash, Ravindra Singh and Kailash, who are residents of his village, reached at the place of occurrence. They had also seen the occurrence. Accordingly, the FIR of occurrence was registered in the police station concerned on the same day at about 18.25 pm. under Section 307/504 IPC vide crime No.12 of 2004.

4.The investigation of the offence was entrusted to Investigating Officer Shamsheer Bahadur Singh, who after culmination of investigation submitted charge-sheet against the accused- appellant under Section 307/504 IPC. The case was committed to the sessions court who framed the charges against the accused in the aforesaid sections. The accused-appellant denied the charges and prayed for trial.

5. On behalf of prosecution, PW-1- Funni @ Ram Singh, PW-2- Chandra Prakash as witnesses of fact and PW-3- Dr. Ram Bahadur, PW-4- Constable Rameshwar Prasad, PW-5- S.I. Shamsheer Bahadur Singh and PW-6 Dr. Satya Prakash Singh as formal witnesses produced their evidences.

6. In his statement under Section 313 Cr.P.C. the accused/appellant denied the occurrence and submitted that he has falsely been implicated in the case.

7. Learned trial court has considered the facts, circumstances and evidence of record and after due discussion he has acquitted the accused/appellant from the charges of 504 IPC and convicted him under Section 307 IPC., accordingly, the trial court has awarded the punishment of seven years rigorous imprisonment and fine of Rs.5000/-, in default six months additional imprisonment under Section 307 IPC.

8. At the very outset, learned counsel for the appellant has submitted that appellant is not challenging the finding of learned trial court regarding commission of offence. He further submitted that since the injuries

received by the informant were on non vital part of his body, which is in its ordinary course, cannot cause death of injured person. The intention to cause death has also not been proved hence the provisions of Section 307 IPC is not applicable. Injuries received by the informant may fall to the offence defined under Section 324 IPC, therefore, the appellant is only praying to modify the judgment against conviction and sentencing in accordance with the provisions of Section 324 IPC. In support of his contention learned counsel for the appellant has submitted the judgment of Hon'ble Apex Court in the case of *Anuj Singh @ Ramanuj Singh @ Seth Singh vs. State of Bihar [2022] 4 S.C.R. 1023*.

9. Learned AGA opposed the argument of learned counsel for the appellant and submitted that mere absence of any injury on the vital parts of the body, is not sufficient to exonerate the accused/appellant from the applicability of Section 307 IPC, as the appellant/accused was having intention and knowledge about the consequence of gun shot injury and he used the weapon country made pistol to cause injury on the body of victim. The above circumstances are sufficient to show the intentions of appellant, to cause death of victim/informant.

10. On the above point, we have heard the argument of both the side and perused the record.

11. The witness Dr. Ram Bahadur as PW-3 shows that at the time of medical inspection which has been done by him on 15.01.2004 at 6.45 pm., multiple wounds of 5x5 c.m. (circle in shape) were present on both the lower limbs, bleeding was present from all wounds, margins of all the wounds were invited, there was only entry wounds without any wound of exit. The blackening and tattooing were present on all the wounds. The injured was referred for X-ray examination, keeping in view the wounds under observations, it has also been concluded by the witness that the injuries were caused by the firearm weapon. In the report of X-ray multiple shadows of metallic density were found present in both the thighs and legs.

12. The above statement of witness PW-3 Dr. Ram Bahadur and PW-6 Dr. Satya Narayan shows that although the victim has injuries in his both the legs and thighs which were caused by the firearm, but the same were on the non vital parts of the body.

13. The injured witness PW-1 has stated in his cross examination that the accused has shoot him from the distance of two hand length i.e. from the distance of approximately two meters.

14. The above statement of witnesses corroborated by the medical examination report Exhibit Ka-5 as well as by the statement of PW-3, it has also been proved that accused-appellant used country made pistol to fire on informant/victim. In such a short distance of approx. 5 fit, the accused was sufficiently able to target the vital parts of body like chest, abdomen and head of the victim if he would have intention to kill the informant, hence considering the said injuries it can be inferred that he was not having any intention to cause death of informant/victim. The above facts and circumstances shows that the accused although used the firearm weapon in causing injury, but his target was the legs of victim. Hence the provisions of Section 307 IPC cannot be invoked against the accused-appellant.

15. The provisions of Section 324 IPC is reproduced as under:

"324. Voluntarily causing hurt by dangerous weapons or means.- Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

16. The provisions of Section 320 IPC shows nature of injuries which are grievous in nature. The injuries of victim as mentioned in the evidence Exhibit ka-5 is not of such nature which may come under the

purview of section 320 IPC, therefore, it can be inferred that the victim has received the injuries which were not grievous in nature, therefore, it would be justified to convict the accused-appellant under Section 324 IPC. Accordingly, the conviction order of trial court is liable to be modified and altered from Section 307 IPC to Section 324 IPC.

17. Learned counsel for the appellant has further submitted that there is no criminal history of the appellant and the present case was the first and last offence of appellant. The appellant realized his mistake and he is remorseful for his conduct. He is providing his valuable contribution towards the society. He is the only bread earner of his family. The date of incident has been shown as 15.1.2004, accordingly, more than 20 years have passed. The appellant is an old man. He is facing trauma of criminal case since last more than 20 and half years. At present he is an old and ill person. He is ready to pay some amount as compensation to the informant/victim hence a lenient view be taken in sentencing the accused.

18. Having heard the submissions of learned counsel for the appellant-accused and learned AGA and in the light of facts, circumstances and evidence of the case, the conviction of accused/appellant under Section 307 IPC is altered into Section 324 IPC accordingly, the impugned conviction order of appellant is modified.

19. As far as, the sentencing of accused-appellant is concerned the maximum punishment of the offender under Section 324 IPC may extend to three years imprisonment of either description, or with fine, or with both. It has also been submitted by the learned counsel for the appellant that accused/appellant is an old and infirm person, who is facing trauma of criminal case since last twenty and half years, he has no criminal history in his credit, he has settled in his life and has already passed his five months in jail, therefore, taking into consideration the over all facts and circumstances, it will not be justified to send him jail after a gap of more than twenty and half years from the date of

occurrence, therefore, the accused/appellant is punished with the period already undergone in prison and Rs.25,000/- as fine. Out of which, victim shall be paid Rs.20,000/- as compensation for the injuries suffered by him. Accordingly, the sentence is also modified. The above amount of fine shall be deposited in trial court within two weeks from the date of the judgment and after depositing the said amount, the trial court shall issue notice to informant to move the application to release the above amount Rs. 20,000/-.

It is made clear that if the appellant fails to deposit the fine amount in stipulated period, he shall be liable for imprisonment of one year. In such default, after the said period of two weeks the trial court shall issue non-bailable warrant against the appellant-accused and if appellant is brought before the court, he shall be sent to prison for punishment of aforesaid period.

20. Let the copy of order along with records be sent to trial court concerned.

21. The appeal, is accordingly, **disposed of**.

Order Date:30.9.2024/Reena

(Narendra Kumar Johari,J.)