

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Judgment Reserved on 16.7.2025

Judgment Delivered on 4.8.2025.

Court No. - 78

Case :- CRIMINAL APPEAL No. - 1185 of 1984

Appellant :- Punni Lal And Anr.

Respondent :- State of U.P.

Counsel for Appellant :- Madan Behari Lal, Neeraj Srivastava, Om Prakash Singh, Pankaj Srivastava

Counsel for Respondent :- A.G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Pankaj Srivastava, learned counsel for the appellants and Sri S.K.Ojha, learned AGA for the State.

2. The instant criminal appeal has been filed by the appellants- Punni Lal and Sarjan Pal Singh against the judgment and order dated 30.03.1984 passed by the VI Additional Sessions Judge, Kanpur in Session Trial No. 435 of 1983 (State vs. Punni Lal and others) under Section 25 Arms Act, P.S. Harbans Mohal, District Kanpur Nagar whereby the appellants herein were convicted for the offence under Section 25 of the Arms Act and were sentenced to undergo six months rigorous imprisonment for the offence under Section 25 of the Arms Act.

3. As per the prosecution story, the brief facts of the case are that on 30.11.1982, the Head Constable Chhokey Lal P.W. 1 along with Constable Vidyasagar who were posted at Outpost Suterkhana of P.S. Harbans Mohal, Kanpur went to serve a notice under Section 3/5 Goonda Act, which was issued from the Court of the A.D.M. City, Kanpur against the accused Punni Lal. They proceeded from the Outpost Suterkhana at 12:05 P.M. on 30.11.1982 and reached at the shop of accused Punni Lal in Mohalla Danakhori, P.S. Harbans Mohal at 12:30 P.M. They called Punni Lal to receive the notice. At this, the accused / appellant Punni Lal abused

the police constables and refused to receive the notice. Thereafter the Head Constable Chhokey Lal tried to convince the accused to accept the notice. In the meantime, Rajjan Lal P.W.4 and the accused Sarjan Pal also reached there with a knife and exhorted Punni Lal to kill the police personnels. Thereafter, Punni Lal took out a country made pistol from his shop and fired a shot towards the police personnel with intention of causing death of them. However, they escaped from their fire. In the meantime, P.W. 2 - S.I. Sri Rajendra Pandey, who was the In-charge of the said Outpost Suterkhana and was on patrolling duty also reached there along with two other constables. Seeing them both the accused persons started running. The police personnel and public witness Rajjan Lal, P.W.4 and other chased and arrested both the accused persons at around 12:50 P.M. at Bhoosatoli crossing.

4. After arrest of the accused, their search was taken and a country made pistol was recovered from the possession of the accused Punni Lal and along with one used cartridge in its barrel and one live cartridge. The accused Sarjan Pal was found in possession of a knife. Recovery memos were prepared on the spot by S.I. Rajendra Pandey, P.W.2 and the recovered articles were sealed in two separate bundles. Thereafter all of them were brought to the police station Harbans Mohal and the FIR was registered against the accused persons. Thereafter Head Constable Chhokey Lal P.W. 1 went back to his Outpost Suterkhana and returned the notice unserved and made an entry in the GD. The investigation was done by the S.I. Sri R.S. Kushwaha and after recording the statement of witnesses and seeking necessary sanctions from the District Magistrate for prosecuting the applicants from the offences under the Arms Act, the charge sheet was filed under Section 25 of the Arms Act. Charges were framed against both the accused persons, they have pleaded not guilty. The trial court after recording the evidence and analysing the same, concluded that all the relevant entries were found with regard

to the issuance of notice by the court of ADM, City, Kanpur to serve the same. Head Constable Chhokey Lal along with one more constable had approached the accused persons. The appellant Punni Lal denied to receive the said notice and thereafter, he has fired at the police personnel. Thereafter they were apprehended by the police team and the FIR was registered against them on the basis of the same, the trial court has convicted both the appellants and sentenced them as aforesaid.

5. During the pendency of the instant appeal, the appellant no.2 namely Sarjan Pal Singh died and the appeal was abated against him vide order dated 04.08.2022. Therefore, the instant appeal is being heard only on behalf of appellant no.1, who was the main accused in the instant case.

6. Learned counsel for the appellant submits that a notice, which was allegedly issued from the court of ADM, City to be served upon the appellant herein has not been produced on record nor the copy thereof has been produced. Therefore, he submits that the entire story is a cooked up story by the police and the reason best known to them. He further submits that P.W.4 Rajjan Lal has been shown as a chance witness of the instant incident was in fact prosecuted in two cases and was having a criminal history and was well known to the police personnel. He has been implanted in the instant case at the behest of the police personnel. Therefore, his evidence cannot be relied upon. It is further submitted that in his deposition, he could not give a description of the shop in question where Head Constable Chhokey Lal and other police personnel had gone to serve the notice and he has also deposed that the accused was not known to him. Therefore, it appears that he has not witnessed the incident and has been implanted by the police in the instant case as witness subsequently. On the basis of the aforesaid submissions, learned counsel for the appellant submits that the conviction of the appellant

is for the offence under Section 25 of the Arms Act is unsustainable. Therefore, he seek acquittal of the appellant Punni Lal. In the alternative, he further submits that even the conviction of the appellant is upheld since the maximum sentence awarded to the appellant is only six months imprisonment that too for an incident dated 30.11.1982. At that time, the appellant was around 25 years of age. Since more than 43 years have passed and there are no subsequent allegations against the appellant and he has not been involved in any criminal incidents subsequent to the instant incident. As the appellant would be around 67/68 years of age, sending him to jail at this belated stage would not serve any purpose and the interest of justice would be served by imposing an appropriate fine, which the appellant would deposit within the period provided by this Court.

7. Per contra, learned AGA submits that so far as the issuance of notice is concerned, in the instant case P.W. 3 Sri Shamshuddin was examined before the Court, who was a reader of the court of ADM, City, who proved on the basis of the record that a notice was issued against Punni Lal on 26.11.1982, which was returnable by 14.12.1982. The prosecution has proved the relevant GD entries with regard to the service of said notice by Head Constable Chhokey Lal P.W. 1 and constable Vidyasagar and also the entries with regard to their proceeding to serve the said notice on the appellant Punni Lal on 30.11.1982. When the appellant fired on the police team by a country made pistol along with co-accused Sarjan Pal and thereafter the unserved notice was returned at Outpost Suterkhana. After that the In-charge of the said Outpost Suterkhana reached on the spot and apprehended the accused immediately after the incident and thereafter, the FIR was registered against the accused/appellant. Therefore, the prosecution case supported by the relevant documents and depositions of P.W.3 and relevant GD entries etc. has proved the case beyond doubt against the appellants.

8. So far as the deposition of P.W.4 Rajjan Lal is concerned, he has stated in his deposition that the accused appellant was not known to him. Therefore, there was no occasion for him to falsely depose against the appellant and his deposition is reliable against the appellants and the trial court has wrongly disbelieved the deposition of P.W.4. Even there is no allegation of any malafide against the appellant on the part of the Head Constable Chhokey Lal P.W. 1 and constable Vidyasagar who had gone to serve the notice to the appellant. Thus, there is no reason for false implication of the accused person at the behest of those police constables. Thus, the conviction of the appellant for the offence under Section 25 of the Arms Act has rightly been done by the trial court, which does not require any interference. So far as the sentence part is concerned, the trial court has taken a very liberal view in the matter by imposing rigorous imprisonment for six months only to the appellant. Therefore, learned AGA submits that the appeal deserves to be dismissed.

9. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case. From the record, it is apparent that the Head Constable Chhokhey Lal had made all the relevant entries in the GD with regard to the receipt of notice issued from the court of A.D.M. City and with regard to his proceeding to the shop of the appellant Punni Lal to serve the said notice. How the prosecution could not produce the copy of the notice that is because after the incident Chhokhey Lal had already returned the said notice to the court concerned on the date of incident itself. So far as the issuance of notice by the court of A.D.M. City Kanpur is concerned, the P.W. 3 Sri Shamshuddin was the Reader of the said court had categorically stated that a case was registered against the appellant under Section 3/5 of the Goonda Act, in which a notice was issued to him by the court on 26.11.1982 returnable by 14.12.1982. Thus the issuance of

notice from the court concerned is duly proved by deposition of P.W.3 and therefore, there is no reason for doubting the statement of P.W.3. Though there are some minor discrepancies with regard to the folds of the notice as stated by P.W.1 Head Constable Chhokhey Lal, P.W.2 S.I. Rajendra Pandey, P.W. 4 Rajjan Lal and I.O. R.S. Kushwaha. Such discrepancy whether it was two folds or 6/7 folds that does not make any difference in the prosecution case. When all the witnesses have supported that there was a notice issued by the court and all the witnesses have seen the said notice issued from the court against the appellant to be served upon him and thus in how many folds the notice was, it does not make any difference in the prosecution case.

10. So far as the deposition of P.W.4 Rajjan Lal is concerned, it is alleged by counsel for the appellant that it has come on record that he was prosecuted in two cases, one for the offence under Section 379IPC and other for the offence under Section 396 IPC. Therefore, the said witness was known to the police personnel and has been implanted by the police.

11. In the considered opinion of this Court, merely because a person was being prosecuted in two other cases, does not make his deposition unreliable because in the said deposition, he stated that he was not known to the accused, therefore, there was no occasion for him to depose falsely against the appellant. Not only this from the descriptions as made in para-15 of the impugned judgment, the trial court recorded various incidents to disbelieve his testimony as he was not able to give the description of the shop in question where the same is situated nor he could identify the accused persons in court when was asked to identify the accused Punni Lal, he picked up the accused Sarjan Pal. Later on he tried to correct his mistake and correctly identified both the accused persons. The description of

shop as given by this witness is not matched with the site plan prepared in the instant case.

12. Therefore, in the considered opinion of this Court, the trial court has rightly disbelieved this witness. So far as the other witnesses who are mainly the police personnel, Head Constable Chhokhey Lal, and Constable Vidyasagar, S.I. Rajendra Pandey and I.O. R.S. Kushwaha, is concerned, their testimony is a reliable testimony as there is no material to allege any malafide against them to falsely implicate the appellant herein. Even the appellant was not known to the Head Constable Chhokhey Lal and they had met first time for service of notice issued by the court. Therefore, there is nothing on record to show any animosity or malafie from the part of the police team against the appellant.

13. In the considered opinion of this Court, the prosecution has succeeded in proving the case against the appellant. So far as the offence under section 25 of the Arms Act is concerned as the appellant was apprehended on the spot while he tried to escape from the place of incident and the country made pistol was recovered from his possession with a used cartridge as well as the live cartridge. Therefore, this Court finds no illegality in the conviction of the appellant for the offence under Section 25 of the Arms Act.

14. So far as the sentence of the appellant is concerned, though the trial court has taken a very liberal view and he was awarded a sentence of rigorous imprisonment of six months only and from the record, it reflects that after conviction and sentence of the appellant, the instant appeal was filed on 23.04.1984 and on the same day the appeal was admitted and bail was granted to the appellant. However, in the process, the appellant had undergone to jail for around 24 days and he ought to have been undergone some sentence during the trial as well. From the record, it is also reflected that the appellant arrested in the instant case on the date of incident on 30.11.1982 and

was released on bail on 30.03.1983. Thus the appellant has suffered the sentence of around four months during the trial and around 24 days after his conviction. Therefore, looking at the facts and circumstances of the case and the age of the appellant, the delay in disposing of the appeal by this Court is around 43 years as well as the sentence already undergone by the appellant is around more than four and half months, in the considered opinion of this Court, it would not be appropriate to send the appellant to serve out the remaining part of the sentence inasmuch as it would have already been sufficiently served.

15. In view of the above, although the appellant is held guilty of the charges but so far as the sentence is concerned, the same is modified to the extent that he is sentenced for the period already undergone by him with fine of Rs. 10,000/-, in lieu of the remaining part of the sentence to be paid by him within a period of four weeks from the date of communication of this order. In default of payment of fine, as directed herein above, the appellant shall undergo the remaining part of the sentence as awarded by the trial court.

18. With the aforesaid observation and modification in the sentence, the instant appeal is **partly allowed**.

19. The appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.

20. Office is directed to send a copy of this order to the court concerned within a week for compliance. The compliance report shall be sent by the court concerned to this court within a further period of fifteen days.

21. The record of the trial court shall be returned forthwith.

Order Date :- 4.8.2025

Ashish Pd.

(Anish Kumar Gupta,J.)