

Reserved on 31.07.2025

Delivered on 08.08.2025

Court No. - 75

Case :- CRIMINAL APPEAL No. - 1151 of 1986

Appellant :- Nepal Singh And Another

Respondent :- State of U.P.

Counsel for Appellant :- S.P. Raghav,Dushyant Singh,Mahesh Chand

Counsel for Respondent :- A.G.A.

Hon'ble Vikas Budhwar,J.

1. Heard Sri Dushyant Singh learned counsel for the appellant and Sri S.K. Singh, learned A.G.A. for the State.

2. Challenge in this appeal filed under Section 374(2) of CrPC is the judgment and order dated 10.03.1986 passed by VIIIth Addl. Sessions Judge, Bulandshahr in Session Trial No.669 of 1984, State Vs. Nepal Singh and others, convicting and sentencing appellant Jai Chand under Section 307/34 IPC for an imprisonment of three years.

3. Though the present appellant had been preferred by first appellant Nepal Singh and second appellant Jai Chand, but the office report dated 30.07.2025 depicts that the first appellant Nepal Singh expired on 23.10.2021. By separate order, appeal against the first appellant Nepal Singh has been abated.

4. The case of the prosecution in brief is that an FIR came to be lodged by PW-4 Baljit Singh son of Sukhpal, R/o village Dhameda, Kiratpur with an allegation that on 09.05.1984 with an allegation that on 09.05.1984 while he was coming to Bulandshahr from his village Dhameda Kiratpur at about 08:30 A.M., when he reached near the field of Sheeshpal Singh son of Arjun Singh, then he saw Yatendra Kumar Sharma (PW-3) (injured), son of Radhey Shyam, R/o village Malagarh in his cycle riding towards the college as soon as Yatendra Kumar Sharma (PW-3) reached near the field of Sheesh Pal, then the two persons who were standing there stopped the injured Yatendra Kumar Sharma (PW-3). They told them that today they would take revenge of the insult of their sister and they would kill him. Saying so, the appellant herein caught Yatendra Kumar Sharma (PW-3) and pulled him down on the ground and the co-accused Nepal Singh fired two or three shots

by his countrymade pistol on Yatendra Kumar Sharma (PW-3), injured. Seeing so from the nearby fields, Sheesh Pal Singh (PW-1), Sripal Singh, Vijay Kumar, Mahipal Singh (PW-2), Chandra Pal Singh and other persons armed with lathi reached at the spot. All of them caught the accused persons and beaten them. After being caught, both the accused persons told their names as Jai Chand and Nepal Singh. Both the accused were left with the villagers on the spot and Baljit Singh (PW-4) (first informant) brought Yatendra Kumar Sharma (PW-3) in injured condition to the hospital and got him admitted there. The FIR was lodged at 10:50 A.M. on 09.05.1984. The investigation was entrusted to Sri Chunni Lal, S.I. During the investigation, he visited the spot and recovered the countrymade pistol and cartridges and prepared Fard. The villagers handed over the accused persons to the investigating officer. He also recorded the statements of the witnesses and prepared the site-plan of the place of incident. On returning to the police station, a case was registered against accused Nepal Singh for the offences under Section 25 of Arms Act at about 06:25 P.M. On the basis of the investigation, charge sheet was submitted against the appellant and other co-accused.

5. The prosecution in order to bring home the charges, examined Sheesh Pal Singh (PW-1), Mahipal Singh (PW-2), Yatendra Kumar Sharma (PW-3) and Baljit (PW-4).

6. Sheesh Pal Singh (PW-1) and Mahipal Singh (PW-2) have proved the Fard Recovery (Exbt. Ka1), Baljit (PW-4) has proved Exbt. Ka2, Sri Chunnilal Chauhan, I.O. (PW-5) has proved Chik FIR (Exbt. Ka3 and Ka4), copy of G.D. (Exbt. Ka5 and Exbt. Ka6), pistol and live cartridges (Exbt. Ka3) and Fard etc.

7. Dr. M.M. Sharma was produced as Radiologist. He proved the X-ray plates. Dr. P.C. Agarwal proved the injuries of Yatendra Kumar Sharma (PW-3), injured.

8. The appellant in his statement under Section 313 CrPC denied the allegations and claimed to be tried. The co-accused Nepal Singh stated that the testimony of the witnesses are false and the same has been made the basis on account of pressure of the police and village party-bandi. As per the accused appellant Nepal Singh (since deceased), his elder brother Suraj Bhan Sharma lodged an FIR against the witnesses Sheeshpal Singh and Mahipal Singh of Maar Peet that became the basis. Jai Chand, accused, appellant herein has also stated that the police arrested him from his house and the case has been fixed against him. There was enmity from Yatendra Kumar Sharma with respect to election of Pradhan.

9. Thereafter the court below by virtue of judgment and order dated 10.03.1986 passed in S.T. No.669 of 1984 proceeded to convict the appellant, Nepal Singh under Section 307/34 of IPC for imprisonment of three years.

10. Learned counsel for the appellant has submitted that the appellant is innocent. He has not committed any offence. Submission is that even from the bare perusal of the FIR and the documents available on record, the only role assigned to the appellant is for catching hold Yatendra Kumar Sharma, pulling him down on the ground and the role assigned to the accused appellant Nepal Singh (since deceased) was of firing 2 or 3 shots by countrymade pistol to injured Yatendra Kumar Sharma. Learned counsel for the applicant further submits that there are vast contradictions and variations in the statements of the prosecution witnesses by way of illustration, the injured Yatendra Kumar Sharma, PW-3, in his statement has not supported the prosecution theory, as he had stated that the incident is of about 1 year 9 months before of about 08:15 A.M.. He was going from Katarpur towards Dhamera by chak road by cycle. Appellant herein along with co-accused Nepal Singh are known to him from earlier. They met him near the field of Sheeshpal Singh. There were also two to three persons standing at that time near the field of Sheesh Pal. Somebody got him stopped by calling him. Then there had been exchange of hot words with 3 or 4 unknown persons and he does not know, who attacked him by danda and he was not pulled down on the ground by the appellant Jai Chand and Nepal Singh did not fire upon him and he immediately after attack by danda, became unconscious. Further submission is that PW-4 Baljit Singh, the first informant, also has not supported the prosecution theory, wherein according to him, he has not seen any incident from his eyes and he as per his statement has stated that he wrote FIR on the dictation of Darogaji.

11. In nutshell, the entire allegations do not constitute any criminality, particularly when there happens to be two crucial witnesses, one PW-4 Baljit, who is the first informant, who had denied the involvement of the appellant and another is PW-3 Yatendra Kumar Sharma, injured, according to whom, the appellant had not pulled him down on the ground.

12. Submission is that there is no allegation of the gun-shot fire being administered by the appellant. Learned counsel for the appellant submits that the incident is of dated 09.05.1984 and about more than 41 years have passed and looking into the facts, the appellant does not possess any criminal history, conviction of

the appellant under Section 307 IPC be altered to Section 324 of IPC and sentence of imprisonment of 3 years be modified and altered to fine.

13. Learned A.G.A. while countering the submissions so made by counsel for the appellant, has sought to argue that merely because PW-3 Yatendra Kumar Sharma injured and PW-4 Baljit, first informant have turned hostile would not in any manner whatsoever be a ground to acquit the appellant, particularly when admittedly Yatendra Kumar Sharma, PW-3 sustained multiple injuries and further the statements of PW-1, Sheeshpal Singh and PW-2 Mahipal Singh are intact. Submission is that there is nothing on record to even suggest that PW-1 Sheesh Pal Singh and PW-2 Mahipal Singh are interested witnesses and they were chance witnesses, who had seen the incident and further the testimony and the medical reports of Dr. P.C. Agarwal and Dr. M.M. Sharma also shows that that injuries were extended to PW-3 Yatendra Kumar Sharma. It is further submitted that the role so assigned to the appellant herein (Jai Chand) is pulling Yatendra Kumar Sharma, injured, (PW-3) down on the ground and not of resorting of gunshot fire. Thus the conviction and the sentence under Section 307 read with Section 34 of IPC be altered to offences under Section 324/34 IPC and the sentence of imprisonment of three years be altered to fine.

14. I have heard the submissions so made across the Bar and perused the record carefully.

15. Apparently, FIR alleged that the applicant Jai Chand had pulled down Yatendra Kumar Sharma, PW-3 on the ground and the co-accused Nepal Singh (since deceased) of firing 2 or 3 gunshots by countrymade pistol. The PW-4 Baljit Singh happens to be the first informant, who had alleged criminality upon the appellant Jai Chand. He has turned hostile and he does not support the prosecution story. He thus submits that the factum of taking to hospital in an injured condition. He further deposed that he wrote down the written report on the dictation of Darogaji. As regards PW-3, injured Yatendra Kumar Sharma, he also does not support the prosecution story. According to him, he had deposed that he was not pulled down on the ground by the appellant Jai Chand. The entire conviction is based upon the testimony of PW-1 Sheesh Pal Singh and PW-2 Mahipal Singh. Though a feeble attempt has been sought to be made by the learned counsel for the appellant that there happens to be enmity with Yatendra Kumar Sharma on account of election of Pradhan and he was arrested by the police from his house, but there is no evidence to substantiate the same.

Nothing has been brought on record except the bald allegation in that regard. However, looking into the fact that the incident is dated 09.05.1984, more than 41 years have passed and bearing in mind the fact that the role assigned to the appellant is for pulling down the injured PW-3 Yatendra Kumar Sharma and not resorting to gunshot fire and the fact that there is nothing on record to suggest that the appellant Jai Chand possesses any criminal history. Thus the over all facts situation necessitates alteration and modification of the conviction of the sentence from Sections 307/34 IPC while imposing the punishment of imprisonment for a period of three years to sentence and conviction under Sections 324/34 IPC while imposing the fine.

16. Accordingly, the appeal is **allowed in part**. The conviction of the appellant under Sections 307/34 IPC is altered and modified to the offences under Section 324/34 IPC. The sentence of imprisonment for a period of three years is altered to imprisonment already undergone and a fine of Rs.7000/-.

17. The fine amount imposed upon accused-appellant for the aforesaid offence shall be deposited by the appellant within three months from today. In case of default in payment of fine amount within the aforesaid period, the appellant shall serve out the entire sentence awarded to him by the Trial Court vide the impugned judgment and order.

18. Let a copy of this judgment along with lower court record be sent to Sessions Judge, Bulandshahr for compliance. A compliance report be sent to this Court. Copy of this judgment/order be also provided to learned counsel for the appellant and learned A.G.A.

Order Date :- 08.08.2025

N.S.Rathour

(Vikas Budhwar, J)