

Reserved on 07.07.2025

Delivered on 22.07.2025

Court No. - 75

Case :- CRIMINAL APPEAL No. - 1690 of 1983

Appellant :- Amrit Lal

Respondent :- State of U.P.

Counsel for Appellant :- Chandan Singh, Kamlesh Kumar Jaiswal, M.K. Mishra, Manoj Kumar Kushwaha, Pawnesh Tiwari, Sahai Kant Kushwaha

Counsel for Respondent :- A.G.A.

Hon'ble Vikas Budhwar,J.

1. Heard Sri Kamal Krishna, learned Senior Counsel assisted by Sri Manoj Kumar Kushwaha, learned counsel for the appellant and Sri Vikas Sharma, learned State Law Officer for the State.
2. Challenge in this appeal is to the judgment and order dated 23.07.1983 passed by the Third Additional Sessions Judge, Allahabad in Session Trial No. 58 of 1981 convicting and sentencing the appellant for 5 years rigorous imprisonment under Section 307 IPC and further convicting and sentencing under Section 25 of the Arms Act for six months, both the sentences to run concurrently.
3. The prosecution theory, in a nutshell, is that a first information report came to be lodged by Ramji, PW 1 with an allegation that on 27.04.1979 a religious ceremony (pooja) was going on at the place of Khunoo at about 9:30 in the night, on the said day, the first informant Ramji and his nephew Srinath, PW 2 had gone to attend the same. The appellant who happens to be the resident of the same village fired from his countymade pistol at the first informant Ramji, PW 1 but it hit only Srinath, P.W. 2 who is the nephew of the PW 1, Ramji at his right arms and ribs, the appellant thereafter managed to escape from the clutches of the first informant, Ramji who was holding him. Srinath, P.W. 2 sustained serious injuries. The said incident was

witnesses by Kallu, P.W. 3, Ram Prasad, Chandra Prasad, Ram Lakhan and several villagers.

4. On the basis of the written report, chik FIR was prepared on 28.04.1979 at 00:15 a.m. The case was registered by Constable Clerk Sharda Prasad in general diary. The constable took in his possession, the countrymade pistol which the first informant had bought at the police station. In its barrel, one fired cartridge was still lying. The injured, Srinath, P.W. 2 was sent for medical examination at T.B. Sapru Hospital, Allahabad. Dr. G. Sharan, PW 5 medically examined the injured in the same night at 2:50 a.m. wherein the following injuries were found.-

"1. Multiple fire-arm wound in an area of 5.5 x 3 on outer and posterior aspect covering an area around the right elbow joint. No blackening seen.

2. Multiple fire-arm in an area of 4 x 3 on the right side of lateral area of chest 1.5 below the right armpit."

5. P.W. 4 D.C. Srivastava, S.I. was appointed as Investigating Officer, he reached the spot on 01.05.1979 and after inspecting the spot, he prepared the site-plan, made interrogation with witnesses. In order to bring home the charges, the prosecution examined the following witnesses.-

(a) PW 1 Ramji, the first informant, (b) PW 2, Srinath, injured, (c) PW 3, Kallu, (d) PW 4, Sri D.C. Srivastava, SI, (e) PW 5, Dr. G. Sharan, Mediacal Officer.

6. The appellant in his statement under Section 313 Cr.P.C. admitted that he had no licence of any fire arm, however, he denied to make any gun shot fire. He admitted that he was present at the time of incident.

7. The court of Third Additional Session Judge, Allahabad in Session Trial No. 58 of 1981 by virtue of the judgment and order dated 23.07.1983 convicted and sentenced the appellant under Section 307

IPC to undergo 5 years rigorous imprisonment and also sentenced to undergo six months rigorous imprisonment on the charges under Section 25 of the Arms Act and both the charges were directed to run concurrently.

8. Learned counsel for the appellant has argued that the appellant has been falsely implicated in the case, he had at no point of time committed the said offence according to him, though he was present in the place of incident but he did not fire. He submits that by no stretch of imagination looking into nature of injuries which are not on the vital parts conviction could have been done under Section 307 IPC. There was no element of intention to murder rather there is no motive. Submission is that the injuries whatever are they were on right arms and ribs which cannot be said to be on vital parts and further they are simple so at best the offences under Section 323 and 324 can be said to have been committed.

9. Learned counsel for the applicant further submits that the incident pursuant where to it is alleged that the appellant has committed offence is dated 27.04.1979 and when the appeal is being taken up for hearing in the year 2025 more than 45 years have passed, according to him the appellant has no criminal history as there is nothing on record to suggest otherwise and, thus, the conviction and sentence be modified and altered from Section 307 to Section 324 and in place of rigorous imprisonment for five years on the charge of Section 307 IPC and six months under Section 25 Arms Act it be converted to fine.

10. Learned State Law Officer who appeared on behalf of the State while countering the submission of the counsel for the appellant submits that the first information report pin points the presence of the appellant and also the fact that the nephew of the PW 1, Ramji i.e. Srinath, PW 2 sustained injuries. The appellant has not disputed the recovery which was made from him and further the depositions of the witnesses as well as the documents available on record lead to only

one conclusion that it was the appellant who was resorted to gun shot fire pursuant where to PW 2 sustained injuries, however, he submits that in view of the nature of injuries and also coupled with the fact that the incident took place in the year 1979 and more than 45 years have passed and there is nothing on record to suggest that the appellant possesses any criminal history, the conviction and the sentence so passed by the court below in the judgment under challenge be modified and altered to be under Section 324 while imposition of fine.

11. I have heard the submissions so made across the bar and perused the record carefully.

12. As a matter of fact FIR alleges that on 27.04.1979 at 9:30 p.m. when the first informant Ramji P.W. 1 along with his nephew Sri Nath were in a village while attending a pooja, the appellant herein fired with countrymade pistol at the first informant Ramji which hit P.W. 2 nephew, Sri Nath and caused injuries in the right arms and ribs. The countrymade pistol was recovered, the appellant did not dispute the fact that he was present when the said incident took place on the spot in question, however, he denied gun shot fire and extension of injuries to PW 2, the injured was put to medical examination wherein multiple fire-arm injuries were found in the right elbow joint and multiple fire injuries were found on lateral area of chest below the right armpit. The deposition of PW 1 Ramji, P.W. 2, Sri Nath, P.W. 3 Kallu are intact and they support the prosecution theory.

13. However, looking into the nature of injuries as also the fact that the alleged incident is dated 27.04.1979 and more than 45 years have passed from the date of incident and there is nothing on record to suggest that the appellant possesses any criminal history as well as the stand of the counsel for the appellant and the learned State Counsel for the State that conviction under Section 307 IPC to undergo five year rigorous imprisonment and under Section 25 of the Arms Act to

undergo six months rigorous imprisonment be modified and altered to conviction and sentence under Section 324 IPC while imposition of the fine. Thus, a case is made out for modification or alteration of conviction or sentence.

14. Accordingly, the appeal is **allowed in part**, the conviction of the appellant for the offences under Section 307 IPC read with Section 25 of the Arms Act is altered and modified into the offences under Section 324 IPC however, the conviction under Section 25 of the Arms Act is upheld but the sentence of imprisonment for the aforesaid offences is awarded to the appellant to the period already undergone imposing fine of Rs. 10,000/- for the offence under Section 324 IPC and Rs. 2,000/- for the offence under Section 25 of the Arms Act. The fine amount imposed upon the 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 impugned judgment and order.

15. Let a copy of the judgment along with lower courts record be sent to the Sessions Judge, Allahabad/Prayagraj for compliance.

16. A compliance report be sent to this Court.

17. A copy of the order be provided to the counsel for the appellant as well as learned AGA as per rule.

Order Date :- 22.7.2025

Rajesh