



2025:AHC:161818

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 118 of 1985

Iluwa And Ohters

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Amar Saran,	Rajendra Prasad,
		S.C.Srivastava	
Counsel for Respondent(s)	:	A.G.A.	

Court No. - 51

A.F.R.

Reserved on 22.8.2025

Delivered on 12.9.2025

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Rajendra Prasad, learned counsel for the appellants and Sri Satyendra Nath Tiwari, learned AGA for the State.

2. Vide order dated 22.08.2025, the instant appeal on behalf of the appellant no.3 Munuwa has already been abated. Therefore, the instant appeal on behalf of the surviving appellants no.1 and 2 namely Illuwa alias Hari Shankar and Bilua alias Umashankar is being heard and decided.

3. The instant appeal has been filed by the appellants being aggrieved by judgment and order dated 16.01.1985 passed by the IInd Additional Sessions Judge, Banda in S.T. No. 343 of 1983 whereby the appellants herein were convicted for the offence under Section 307 read with Section 34 IPC and were sentenced to undergo five years rigorous imprisonment.

4. The brief facts as stated in the prosecution case are that on 28.11.1978 at 5:00 P.M., the informant- Chunni Lal lodged a report at police station Tindwari, alleging therein that he has gone to the agricultural land of Ram Avtar along with a villager Shiv Nandan to cultivate the land, which was taken on sharing. The accused persons namely Illuwa, Bilua and Munuwa armed with firearms came there at around 11:00 A.M. Illuwa came near the informant who was sitting there, Illuwa had fired upon him

with a country made pistol due to which he sustained injury above the right eyebrow. At the same time, Bilua came there and started assaulting with lathi, due to which he sustained injuries on his head and legs. On the basis of the aforesaid allegation, the FIR was registered against the appellants Illuwa, Bilua and Munuwa for the offence under Section 307 IPC. The medical examination of the injured informant, who was conducted by Dr. V.P. Bhargava. During medical examination of the informant Chunni Lal, he found the following injuries :

“(i) Lacerated wound 6.5 c.m. x 1 c.m. x 0.8 c.m. on middle of head 10 c.m. above the rest of nose.

(ii) Gunshot wound of entrance 0.3 c.m. x 0.3 c.m. x 0.2 c.m. on right side of forehead 2 c.m. above the middle of right eye brow.

(iii) Gunshot wound of entrance 0.3 c.m. x 0.3 c.m. x 0.4 c.m. on right side of forehead 0.5 c.m. above two outer side of eye brow.

(iv) Gunshot wound of entrance 0.3 c.m. x 0.3 c.m. x 0.3 c.m. on right side of face 1 c.m. above the upper lip.

(v) Gunshot wound of entrance 0.3 c.m. x 0.3 c.m. x 0.3 c.m. on right side of neck 5 c.m. below Loubule of right ear. Margin of injury to (ii) to (v) are inverted ± abraded collar.

(vi) Sub conjunctival haemorrhage ± Ecchymosis of upper lid of right eye.

(vii) Red contusion 7 c.m. x 2 c.m. on left leg 2 c.m. inner to outer malleolus.”

5. As per the opinion of the Doctor – Injuries no. (i), (vi) and (vii) were simple in nature and caused by blunt object. Injuries no. (ii) to (v) were caused by fire arm and kept under observation X-ray advised.

6. With regard to the same incident, another FIR was lodged by Illuwa

alias Harishankar alleging therein that he was having a previous enmity with Chunni Lal, the informant herein and he along with one Shivnandan came to his tube well and all of sudden started beating him with lathis. When he shouted for help, the witness Bala came there and they were chased. The accused persons ran away due to the assault by the said Chunni Lal and Shivnandan. He had sustained injury on head and left hand. Dr. V.P. Varghava had also medically examined the injuries found on the body of appellant no.1, Illuwa alias Hari Shankar. During medical examination of Illuwa alias Hari Shankar, he found the following injuries:

“(i) Lacerated wound 2 c.m. x 1.5 c.m. x 0.3 c.m. on left side of head 83.5 c.m. above the root of left pinna.

(ii) Lacerated wound 0.5 c.m. x 0.3 c.m. x 0.3 c.m. on right side of forehead 2 c.m. above the outer side of right eye brow.

(iii) Red contusion 5 c.m. x 1.2 c.m. with swelling 7 c.m. x 6 c.m. on back of left forearm 4 c.m. above the wrist joint.

7. As per the report, three injuries were found. Injuries no. (i) and (ii) were simple injuries and injury no. (iii) was kept under observation. X-ray was advised and as per the X ray report, there was a fracture or shaft of ulna in lower one third portion of forearm.

8. In support of the prosecution case, the prosecution examined the informant Chunni Lal as P.W.1. B.D. Katiyar, S.I., P.W.2, Shivnandan Singh, P.W.3 and Dr. V.P. Bhargava, P.W.4.

9. In Section 313 Cr.P.C. statement, the appellants herein had denied the charges and submitted that the case has been lodged due to the enmity. The appellant no.1, Illuwa alias Hari Shankar has stated that Chunni Lal and Shivnandan came to his tube well and assaulted with lathis. He stopped the lathi and in self defence he also assaulted with lathi and also got fracture in his hand. When they were assaulting him, his father has fired from a country made pistol. He has also reported the case and cross case is also going on. The appellant Munuwa has stated that the informant Chunni Lal and Shivnandan had assaulted his son Illuwa alias Hari

Shankar with lathis and to save him, he had fired from country made pistol.

10. Appellant no.2, Bilua alias Umashankar has stated that he was not on the spot. In support of their defence they had examined Rajdev Chaudhary as D.W.1 who was X ray technician.

11. P.W.1 has supported the prosecution case as stated in the FIR and in his statement, he has further categorically stated that the appellant no.1, Illuwa alias Hari Shankar was having a country made pistol, Bilua alias Umashankar was having lathi and a gun, appellant no.3, Munuwa was having a gun. The first fire was made by Illuwa alias Hari Shankar from country made pistol with intention to kill him, due to which, he sustained injuries above the right eye brow. In the meantime, Bilua alias Umashankar also came near him and assaulted him with lathi, due to which he also sustained the injuries on his head and legs. After he sustained the injuries since the blood was oozing out, he banded the same with a safi and went to his village and thereafter along with Shivnandan, Shivadhar and Subba, he came to Police Station- Tindwari. Thereupon, the report was registered and his medical examination was got conducted. His statement was recorded after one and half month of the incident by the Investigating Officer. He has denied that he is not aware that the appellant no.3 Munuwa lodged the report of the incident prior to lodging of report by him. He has also denied that he had assaulted any of the accused persons or any of his associates have assaulted any accused person. Appellant no.2, Bilua alias Umashankar has also stated that there was previous enmity between them. It is further stated by him that where he was assaulted, the said place was 25 lathis away from the tube well of the appellants. He has further denied the suggestions that they have assaulted the accused persons and thereupon in self defence the injuries were caused by the accused persons. P.W.2 is the Investigating Officer, who had conducted the investigation and having found the charges proved against the appellants herein, had submitted the charge sheet.

12. P.W.3, Shivnandan has denied the incident as such he has not witnessed the incident. He was declared hostile. He denied that any statement was recorded by the Investigating Officer.

13. P.W.4 is Dr. V.P.Bhargava who has supported his medical examination report as already noted herein above and proved the same. On his subsequent examination, he has admitted that on the date of incident i.e. 28.11.1978 at around 8:00 P.M. in the night, he had also examined P.W.1, Illuwa alias Hari Shankar and he has also proved the injuries sustained by the appellant no.1 as noted herein above. He submitted the medical examination report of Illuwa alias Hari Shankar, which was exhibited as Kha-2.

14. D.W.1, Rajdev Chaudhary who was the X ray technician, was examined as defence witness. He has proved the X ray report of the appellant no.1 Illuwa alias Hari Shankar. In his cross-examination, he has denied that the wrong X ray report was submitted or X ray report was changed. On the basis of the aforesaid evidence, the trial court has found that the appellants, who were armed with lathi and country made pistol, were the aggressor in the incident and thereby assaulted the informant and caused the injuries to the informant as has been noted.

15. The trial court has found that the offence under Section 307 read with Section 34 IPC is fully proved against all the appellants herein. Accordingly they were convicted under Section 307 read with Section 34 IPC and were sentenced for five years rigorous imprisonment, against which the instant appeal has been filed.

16. Learned counsel for the appellants submits that in the instant case, it is fully established that the appellant no.1, Illuwa alias Hari Shankar has also sustained injuries in the said incident and there was a fracture on his hand. However, there is a total denial on the part of the prosecution and injuries caused to appellant no.1. The injuries of appellant no.1 have been duly proved in the instant case. Therefore, there is no explanation on behalf of the prosecution with regard to the injuries sustained by the appellant no.1. Thus they are entitled for acquittal.

17. So far as the injuries caused to the informant are concerned, the same are categorically admitted by the appellants herein. However, they had properly explained how the injuries were caused and it is the case of the

appellants that they have acted in self defence and thereby caused injuries on the informant. Therefore, any act done in self defence would not amount to any crime. Thus, they are entitled for acquittal.

18. Per contra, learned AGA submits that it is admitted case of the appellants no.1 and 3 that they have caused injuries to the informant Chunni Lal and the informant has categorically stated that it were all three appellant who had caused injuries. The manner of incident has already been explained by the informant. The trial court has categorically recorded the finding that when three persons armed with lathi and country made pistol had assaulted the informant on the vital part and the informant was alone assuming that the informant had caused the injuries upon the appellant no.1 itself, then there was no occasion for appellant no.1 to assault with a country made pistol. Therefore, the appellants herein were the aggressor in the incident and have caused the injury with lathi and also with country made pistol on the vital part of the informant. Therefore, he categorically stated that the offence under Section 307 read with Section 34 IPC proved against all the appellants herein. Thus they were rightly convicted. Learned AGA submits that the instant appeal filed by the appellants deserves to be dismissed.

19. 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 informant as well as the appellant no.1 had sustained injuries on their body. The informant has sustained two firearm injuries and three gun shot injuries. All gun shot injuries are on the vital part of the body. The appellant no.1 has also sustained injuries as has been duly proved in the instant case and due to such injury, there was a fracture on the left forearm of the appellant no.1. There is a total denial on the part of the prosecution with regard to the injuries sustained by the appellant no.1 whereas the defence has categorically stated that it were the appellant no.1 and 2 who had caused the injuries on informant in self defence as the informant has assaulted the appellant no.1 with lathi. However, no explanation with regard to the said injury sustained by appellant no.1 has been given by the prosecution.

20. In **Mohar Rai vs. State of Bihar, (1968) 3 SCR 525**, the Apex Court

has observed as follows:

*"The trial court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W. 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probalised. Under these circumstances **the prosecution had a duty to explain those injuries.***

..... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probalise the plea taken by the appellants."

21. In **State of Gujarat vs. Bai Fatima, (1975) 2 SCC 7**, the Apex Court has observed as under:

"In a situation like this when the prosecution fails to explain the injuries on the person of an accused depending on the facts of each case, any of the three results may follow:

*(1) That **the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self - defence.***

*(2) It makes **the proseution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.***

(3) It dos not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were

protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case."

22. In **Lakshmi Singh and others vs. State of Bihar, (1976) 4 SCC 394**, the following observations have been made by the Apex Court :

" It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the Court to rely on the evidence of PWs. 1 to 4 and 6 more particularly, when some of these witnesses have lied by stating

*that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima Criminal Appeal No. 67 of 1971 decided on March 19, 1975 : Reported in there may be cases where the **non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.***

23. In **Nand Lal and others vs. State of Chhattisgarh, (2023) 10 SCC 470**, the Apex Court has relied upon the above observations made in **Lakshmi Singh and others vs. State of Bihar, (1976) 4 SCC 394**, the Apex Court has further placed reliance in **State of Rajasthan vs. Madho (1991) Supp (2) SCC 396**, **State of M.P. vs. Mishri Lal (2003) 9 SCC 426** and **Nagarathinam vs. State (2006) 9 SCC 57**, while acquitting the accused persons due to non explanation of injuries of accused by the prosecution.

24. Thus from the aforesaid judgments of the Apex Court, it can be safely concluded that non explanation of injuries sustained by the accused person by the prosecution, makes the prosecution story doubtful. That means the prosecution is not coming with clean hands and there is an attempt to suppress the real facts. Therefore, the prosecution witnesses becomes unreliable, and in case, the defence has given the explanation of the entire incident that becomes more reliable. Therefore, the benefit of doubt is to be accorded to the accused persons.

25. In the instant case, prosecution has completely failed to explain the

injury sustained by the appellant no.1 and non-explanation of the injuries sustained by the accused persons by the prosecution creates a doubt about the prosecution story and it gives rise to the suspicion in the minds of the Court that the actual genesis of the incident is being suppressed by the prosecution and the prosecution is not coming forward with the actual story and is trying to suppress the actual incident. Therefore, the accused persons are entitled for benefit of doubt.

26. Accordingly, the instant appeal is **allowed**. The impugned judgment and order dated 16.01.1985 passed by the trial court convicting and sentencing the appellants no.1 and 2 herein is hereby **set aside**. The appellants no.1 and 2 are hereby **acquitted** of the charges.

27. The appellants no.1 and 2 are on bail. They need not surrender. Their bail bonds are cancelled and Sureties are discharged.

28. Office is directed to send a copy of this judgment along with the record to the trial court to be consigned.

(Anish Kumar Gupta,J.)

September 12, 2025

Ashish Pd.