

Court No. - 75

Case :- CRIMINAL APPEAL No. - 150 of 1985

Appellant :- Ashok

Respondent :- State

Counsel for Appellant :- Pankaj Bharti,Ravindra Singh

Counsel for Respondent :- A.G.A.

Hon'ble Vikas Budhwar,J.

1. Heard Sri Pankaj Bharti, learned counsel for the appellant and Sri S.K. Singh, learned AGA for the State.
2. Challenge to the appeal under Section 374(2) of the Cr.P.C is the judgment and order dated 15.12.1984 passed by Special Additional Sessions Judge, Muzaffarnagar, in Sessions Trial No.80 of 1984, under Section 307 IPC read with Section 25 Arms Act whereby, the appellant herein Ashok has been convicted under Section 307 IPC read with Section 25 of the Arms Act while sentencing him 3 years rigorous imprisonment under Section 307 IPC and one year rigorous imprisonment for the offence punishable under Section 25 of the Arms Act, which are to run concurrently.
3. The case of the prosecution in brief is that the S.I. V.S. Tomar (PW8), S.I. S.K. Mishra and other police personnels of P.S. Shamli had proceeded for undertaking their routine duties and when they were discharging their duties on 18.06.1983, they came near a well, then they were informed by the informer that four miscreants were standing on the turning for committing robbery and they were in possession of illegal arms and weapons. On the said information, the police officers (personnel) proceeded towards the said turning and when they reached, they saw four persons standing a little ahead on the Balwa road. The said four persons (accused) having seen the police jeep, started running away, and

S.I. V.S.Tomar challenged them and two of the miscreants proceeded to resort to fire shots in order to kill the police personnel, however, they were not injured and they were able to arrest the two of the miscreants, one of them is the appellant herein Ashok along with Akhtar. The other two miscreants fled away. On the personal search of the appellant Ashok and the co-accused Akhtar, pistol ext.-1 with cartridge empty, ext.- 5 in the barrel and three live cartridges ext.-2 to 4 were recovered from the co-accused Akhtar while pistol ext.-6 with live cartridges ext.-7 to 9 was recovered from the possession of the appellant herein (Ashok) and they were taken to the police station Shamli and on the aforesaid day, a case was registered at 2:45 pm on the basis of the memo ext.ka-2 prepared by S.I. V.S. Tomar on the spot. It is alleged that the incident had taken place at 12:30 pm that day.

4. The case was investigated by S.I. Sultan Singh (P.W.3) partially and rest by Inspector Jay Pal Singh (PW6). The name of the co-accused Yusuf was disclosed by the arrested accused including the appellant herein, he was put up for test identification after he was arrested in connection with murder case and was identified by S.I. V.S. Tomar and Constable Brij Pal Singh. Necessary sanction for the prosecution of the appellant for the offence punishable under Section 25 of the Arms Act was obtained from the District Magistrate and charge sheet came to be submitted against the appellant and the other co-accused.

5. The prosecution in order to bring on the charges produced the following prosecution witnesses namely, a) Behari Lal (PW1), b) S.I. Krishna Mishra (PW2), c) S.I. Sultan Singh (PW3), d) Constable Roshan Lal (PW4), e) Constable Brij Pal Singh (PW5), f) Inspector Jai Pal Singh (PW6), g) Head Constable Shiv Raj

Singh (PW7), h) SI Vijendra Singh Tomar (PW8) and Head Constable Charan Singh (PW10). The charges were framed and the appellant herein pleaded non-guilty and claimed to be tried.

6. Post conduction of the hearing Special Additional Sessions Judge, Muzaffar Nagar proceeded to pass an order dated 15.12.1984 in Sessions Trial No.80 of 1984 (State vs. Akhtar and others) convicting the appellant herein under Section 307 IPC and Section 20 IPC read with Section 25 of the Arms Act and while sentencing imprisonment of three years under Section 307 IPC and one year under Section 25 of the Arms Act.

7. Learned counsel for the appellant Ashok has sought to argue that the appellant has been falsely implicated in the case as he has not committed the said offence. Submission is that the appellant was not present at the time, when the recovery is alleged to have been made particularly when the recovery itself is nothing but a classic example of manipulations. Contention is that there are no independent witnesses who could have proved that actually the recovery was made. According to him, there was no motive, which could have attributed commission of the said offences. It is also contended that it is a no injury case as according to the own saying of the prosecution, none of the police officials sustained any injury. Less to say about invocation of the provisions of Section 307 of the IPC particularly, when there is no mens rea involved herein. It is also contended that the appellant was not present on the spot and on papers just in order to falsely implicate the appellant and to rope the name of the appellant was shown and recovery was made. Learned counsel for the appellant further submitted that the incident is dated 18.06.1983 and more than 42 years have passed and the present case is a no injury case, and the appellant does not

possesses any criminal history, thus, the conviction under Section 307 IPC read with Section 25 of the Arms Act be altered and modified to be under Section 323 IPC and instead of sentence of rigorous imprisonment of three years under Section 307 IPC and one year under Section 25 of the Arms Act, the same may be altered and modified to fine.

8. Sri SK Singh, learned AGA on the other hand submits that from the perusal of the allegations contained in the first information report as well as the testimony of the prosecution witnesses and there recovery, which is being sought to be shown to have been made, it is explicitly clear that the appellant was present on the spot and recovery was made from him as apparent from the recovery memo and thus, it cannot be said that the appellant has not committed the offence. According to him, since, the appellant Ashok does not possesses criminal history and more than 42 years have passed thus, looking into the fact that it is a no injury case, the conviction and the sentence under Section 307 IPC read with Section 25 of the Arms Act be modified and altered to be under Section 323 IPC read with Section 25 of the Arms Act by imposing the fine instead of imprisonment for three years under Section 307 IPC and one year under Section 25 of the Arms Act.

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

10. Apparently, with respect to an incident dated 18.06.1983, an FIR came to be lodged against the appellant herein and two other accused with an allegation that on a tip being received by the police personnel, they proceeded towards a place where the appellant and other co-accused were stationed and seeing the police jeep, the appellant herein along with other co- accused

resorted to gun shot fire. Though, it is alleged that gun shot fire came to be put to motion but the police personnels did not receive any injury. The testimony of the prosecution witnesses are in conformity and consonance with the allegations contained in the first information report as well as materials available on record, in particular, the recovery memo itself shows that the appellant herein was present on the spot and recovery was being made from him. Merely, because there was no independent witness according to the appellant to have seen the recovery would not be a factor so as to thoroughly overrule the prosecution theory as there are evidences which suggest criminality upon the appellant.

11. However, looking into the fact that the incident is of the year 1983 (18.06.1983) and more than 42 years have passed as the appeal should be preferred in the year 1985 and the appeal is being heard in the year 2025 and bearing in mind the fact that it is a no injury case and also nothing has been brought on record to substantiate that the appellant herein possesses any criminal history thus, the conviction and sentence under Section 307 IPC read with Section 25 of the Arms Act while imposing the punishment of imprisonment for three years under Section 307 IPC and one year under Section 25 of the Arms Act necessitates alteration and modification of conviction and sentence under Section 323 IPC read with Section 25 of the Arms Act by imposition of fine.

12. Accordingly, the appeal stands allowed in part.

13. The conviction of the appellant under Section 307 IPC read with Section 25 of the Arms Act is altered and modified to be under Section 323 IPC read with Section 25 of the Arms Act. The sentence for the offences under Section 307 IPC for imprisonment

for a period of 3 years and under Section 25 of the Arms Act for a period of one year is altered and modified to the fine of Rs.4000/- for the offences under Section 323 IPC and Rs.1000/- for the offences 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.

14. Let a copy of the judgment along with trial court record be sent to the Sessions Court, Muzaffarnagar for compliance.

15. A compliance report be sent to this Court.

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

Order Date :- 21.8.2025

Priya