

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Judgment Reserved on 18.7.2025

Judgment Delivered on 4.8.2025

Court No. - 78

Case :- CRIMINAL APPEAL No. - 1524 of 1985

Appellant :- Harpal Singh

Respondent :- State of U.P.

Counsel for Appellant :- Mahendra Kumar Sharma, Mahendra Pratap Singh

Counsel for Respondent :- A.G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Mahendra Pratap Singh, learned Amicus Curiae for the appellant and Sri S.K.Ojha, learned AGA for the State.
2. The instant criminal appeal has been filed by the appellant- Harpal Singh against the judgment and order dated 25.05.1985 passed by the IV Additional Sessions Judge, Mirzapur in Session Trial No. 306 of 1983 and 306.A. of 1983 whereby the appellant herein was convicted for the offence under Section 307 IPC read with Section 34 IPC and was sentenced to undergo three years rigorous imprisonment.
3. The prosecution story, in brief, is that the informant/injured submitted a written report at Dudhi Police Station on 06.07.1981 at about 09:15 A.M. stating therein that he is the resident of Village Baniya-Chhappar P.S. Kuchap Kot, District Gopalganj, Bihar. He is working in Hindalco as Electrician. He has married Smt. Surji daughter of Jagdish resident of village Devari, P.S. Dudhi, District Mirzapur. His wife Smt. Surji was living in Devari. On 05.07.1981, he had gone to Devari as he had married to Smt. Surji, at around 8:00 P.M. on 05.07.1981, the appellant herein who was working as a Railway Gateman of Tera and having enmity with the informant reached there along with his three friends and fired at the informant with gun causing various firearm injuries in his left hand. The

informant wanted to flee away from the spot but the appellant herein had fired with gun with intention to kill him. He was hit on his back. On the hue and cry of the complainant Prakash, Jhagaru and his father-in-law Jagdish and brother-in-law Ram Das, mother-in-law Smt. Budhani along with his wife Smt. Surji came out to rescue him. The other associates of Harpal the appellant herein hit them by Ballam and Lathi. Thereafter one of the accused persons entered the house stole away the house hold belongings. The villagers reached there and after that the accused persons ran away flashing their torches. The accused persons were identified and recognised by the informant and others in the torch light and earthen lamp.

4. On the basis of the aforesaid written report submitted by the informant, the first information report was registered against the appellant herein along with three other unknown persons for the offence under Section 307, 3380 IPC. The matter was investigated and the victim / informant was got examined medically. The following injuries were found on the body of the informant/injured Krishna Yadav:

“ 1. Fire-arm wound of entry on dorsal aspect of Rt. Hand 0.5 cm x 0.2 cm. x bone deep on dorsal aspect Rt. hand 4 cm. below process of Rt. ulna margins inverted No tatt oing, charring, blackening seen. Adv. x-ray.

2. Fire-arm wound of entry- 0.5 cm x 0.5 cm. x skin deep on back of the left chest 3 cm. below and Rt. One pallet like foreign-body is visible in the want. It is also Advise-x-ray.

3. Fire-arm wound of entry- 0.5 cm x 0.5 cm. on Rt. side back of head 8 cm. above and medial to root of Rt. ear.

4. Fire arm wound of exit- 1 cm. x 0.7 cm. on Rt. side scalp .2 in outer to injury no.3-injury no.3 communicate with injury no.4. U.O. Adv. x-ray.

5. Abrasion- 4 cm. x 0.3 cm. on Rt. shoulder top.

6. Abrasion- 0.5 cm. x 0.7 cm. on anterior side Rt. firearm 4 cm. below elbow.....

7. Abrasion- 1 cm. x 0.3 cm....”

4. After completing the investigation and conducting the Test Identification Parade (TIP), the charge sheet was filed against the

appellant Harpal Singh as well as three other co-accused persons namely Safiullah, Chiragan and one Shabbir. The accused Shabbir was discharged as the only one witness could identify him during the TIP. Therefore, the trial for remaining three accused persons including the appellant was conducted. In support of the prosecution case, the prosecution examined total six witnesses. Thereafter the statements under Sections 313 IPC of all the accused persons were recorded and thereupon the trial court after hearing the counsel for the parties, concluded the trial and convicted the appellant herein for the offence under Sections 307 read with Section 34 IPC and sentenced him to undergo three years rigorous imprisonment. The appellant was acquitted for the offence under Section 380 IPC. The other accused persons namely Safiullah and Chiragan have been acquitted for the offence the under Section 307 and 380 IPC.

5. P.W.1 is the informant who has supported the basis of the prosecution as narrated in the FIR. In addition it is stated in his statement that while running away, the accused persons had left their shoes, lungi, iron rod and chappals, which were recovered by the police. The P.W.1 further stated in his cross examination that he had married Smt. Surji 4/5 years ago. However, since the appellant Harpal wanted to marry her and therefore, he was having enmity with him.

6. The P.W. 2 is the doctor namely K.M. Srivastava, Radiologist, who has conducted x-ray of the injured Krishna Yadav, and found radio opaque metallic in the neck and back of Krishna Yadav.. He also found radio opaque metallic in the arm of the complainant. He has thus proved the x-ray report and x-ray plate. He had also examined the injuries of the victim and and proved the injury report and affirmed the injuries as aforesaid found on the body of the victim.

7. The P.W. 3, Ram Das is the brother-in-law of the informant. He stated that the appellant Harpal Singh was posted as Railway Gateman of Tera. He came to his house and assaulted with gun on Harpal along with three friends who were armed with lathis and Ballam. He has supported the prosecution story and its entirety. He deposed that the accused persons were recognized and identified in the torch lights and earthen lamp light, which were carried by the accused persons. Thus he has corroborated the prosecution case. P.W. 3 also stated in the examination-in-chief that the accused Harpal wanted to marry her sister Surji. When the complainant married her, Harpal became angry and therefore, he caused the injury to the informant to take revenge.

8. P.W. 4 Sri Ram Naresh Singh, the Investigating Officer, who affirmed the FIR registered in his presence at the police station. Thereafter he proceeded to place of occurrence and inspected the spot and the spot memo as well as site plan was prepared at the instance of informant and recovered a lungi, shoes, iron rod and a pair of chappal, which were left by accused persons. He recorded the statements of witnesses and the accused were traced out. On 22.07.1981, accused Sabbir was arrested and kept Baparda. On 28.08.1981, a charge sheet was filed against the accused appellan/accused Harpal Singh.

9. The P.W. 6 is the Constable Raj Narain Singh who has further investigated the matter after transfer of previous Investigating Officer, P.W. 5, Balikaran Singh. He had arrested the accused Chiragan and kept him Baparda and recorded the statement of witnesses Jhagaru and Prakash. The accused Safiullah had surrendered before the Court after identification of the accused persons. P.W.5 had filed the charge sheet on 28.08.1981 against Harpal. He also submitted the charge sheet against the three accused persons namely Safiullah, Chiragan and Sabbir. The P.W. 6 was

posted as a constable at Dudhi Police Station and he kept the accused Chiragan Baparda. He was the formal witness of the case. In his 313 statements, the accused Chiragan denied the prosecution case and stated that the witness Ram Das is the resident of Village-Mahuli, therefore, he was previously known to him and has wrongly recognized him and the police has arrested him. Safiullah also submitted the same that the witnesses were previously known to him. Therefore, they have been falsely identified. The appellant Harpal Singh denied the prosecution and it is submitted by him that he was not the Railway Gateman of Tera and he was on duty. After 11 months of the incident he was falsely implicated in the present case. He denied that he knew Smt. Surji.

10. In their depositions, P.W.1 and P.W.3 have categorically stated that though there was a earthen lamp flashing on the door where the appellant had assaulted the informant, however, they identified and recognised the accused in the flash light of torches carried by the accused persons. The accused / appellant Harpal was well known to P.W.3 as he wanted to marry his sister. Since no injury was found on the body of the victim from Ballam and Lathis, which were attributed to the other co-accused persons, they were acquitted of the charges under Section 307 IPC. All the five firearm injuries were attributed to the appellant Harpal. Manner of injury caused are duly supported by the medical examination report of the injured, which has been duly proved by the doctor who conducted the medical examination of the victim. According to P.W.2 the injuries were caused on the vital part of the body of the victim, which could prove to be fatal and dangerous to life.

11. The learned Amicus Curiae has submitted that since P.W.1 and P.W.3 have also implicated the other co-accused persons and they have been acquitted in the instant case, therefore, the depositions of P.W.1 and P.W. 2 could not be relied upon against the appellant as

well. It is further submitted by the Amicus Curiae that no witness with regard to any recovery have been examined by the prosecution nor any recovery of gun has been made from the possession of the appellant herein. Since the weapon attributed to the appellant has not been recovered by the prosecution nor it is proved, therefore, the injuries cannot be attributed to the appellant. It is further submitted by learned Amicus Curiae that since all the other co-accused persons have been acquitted, therefore, the appellant herein could not have been convicted for the offence under Section 307 read with Section 34 IPC. In view thereof, the order of conviction is erroneous in law. Therefore, the learned Amicus Curiae appearing for the appellant seeks acquittal of the appellant.

12. Per contra, learned AGA submits that there are two eye witnesses who have been examined during the trial. Both of them have attributed the firearm injuries to the appellant Harpal Singh and the injuries in the manner in which caused are duly supported by the prosecution witnesses and the medical examination report. Thus, there is no illegality in the conviction of the appellant herein. However, learned AGA admits that only the appellant has been convicted, therefore, the conviction of the appellant ought to have been under Section 307 IPC alone and not read with Section 34 IPC.

13. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case. As noted herein above, the prosecution case is duly supported by the witnesses P.W.1 and P.W.3. The P.W.1 is an injured witness, so his testimony is very reliable and there is no reason that he will falsely implicate a person who has not caused injury to him. The narration of the incident in the manner in which the injuries were caused to the informant are duly supported by the medical examination report, which has been duly proved by P.W. 2 Dr. K.M. Srivastava and all the witnesses have categorically stated how and in

what manner the firearm injury was caused by the appellant Harpal Singh. So far as non-examination of the witnesses and the recovery is concerned, from the perusal of the recovery memo, it is apparent that only a lungi, shoes, Chappals and iron rod was recovered and none of the injuries were attributed to the said weapons. Fatal injuries were caused by the firearm, which was carried by the appellant herein, which is duly proved by the injured witness as well as P.W.3.

14. In view thereof, this Court does not find any illegality in the impugned order with regard to the conviction of the appellant for the offence under Section 307 IPC. However, in the considered opinion of this Court, the conviction of the appellant could not have been for the offence under Section 307 read with Section 34 IPC in view of the fact that the other co-accused persons were already acquitted in the instant case.

15. In view thereof, the appellant herein is convicted for the offence only under Section 307 IPC. So far as the sentence awarded to the appellant is concerned i.e. only three years rigorous imprisonment by the trial court whereas as per the provisions of Section 307 IPC, the injuries are there and the punishment is up to life. Therefore, the trial court has already taken a liberal view in the matter while awarding sentence to the appellant.

16. Accordingly, this Court does not find any good reason to interfere with the sentence awarded to the appellant herein.

17. In view thereof, the instant appeal is **dismissed**.

18. The bail bonds of the appellant are cancelled.

19. The appellant **Harpal Singh** is on bail. C.J.M. Mirzapur is directed to take him into custody in the aforesaid case and send him to jail to serve out the remaining sentence as was awarded by the trial court and is being affirmed by this Court.

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

Order Date :- 4.8.2025

Ashish Pd.

(Anish Kumar Gupta, J.)