



2025:AHC:173278

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Reserved on 02.07.2025

Delivered on 25.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2505 of 1982

Ashok Kumar Alias Lagad And Another

.....Appellants

Versus

State of U.P.

.....Respondent

Counsel for Appellant(s)	: Akhilesh.Srivastava, Anil Kumar Srivastava (Senior Adv.), Anil Srivastava, B.P. Srivastava, Lav.Srivastava, Prem Narayan Singh
Counsel for Respondent(s)	: A.G.A., C.P. Misra

Court No. - 84

HON'BLE SUBHASH CHANDRA SHARMA, J.

1. Heard Sri V.P. Srivastava, learned Senior Advocate, Sri Anil Kumar Srivastava, learned Senior Advocate on behalf of appellants as well as learned A.G.A.

2. This criminal appeal has been preferred against the judgment and order dated 23.09.1982 passed by IXth Additional Sessions Judge, Allahabad in Session Trial No. 38 of 1982 under Section 307 I.P.C. arising out of Crime No. 158 of 1981, Police Station Cannington/Civil Lines, District Allahabad/Prayagraj by which the appellants were held guilty and sentenced under Section 307 I.P.C. for a period of five years rigorous imprisonment.

3. During the pendency of appeal appellant no. 2, Lallu Kesarwani was died and appeal against him stood abated.

4. Facts in brief are that on 31.05.1981 an F.I.R. was lodged on the basis of written *tehreer* of Aadarsh Kumar Jaiswal in which he narrated that he is resident of 208, Badsahai Mandi, Allahabad. On the previous occasion of Holi, Tapan Kumar was murdered in which he was implicated. The appellant Ashok Kumar alias Lagad resident of Loco colony and Lallu Kesarwani resident of Uncha Mandi were intending to kill him on account of enmity of murder of Tapan. On 31.05.1981 at about 9 am he visited the house of his friend Vinod Kumar Singh and at about 5 'o' clock in the evening he was going to his house via overbridge chauraha and he was standing near the Pan shop of Amarnath. In the mean time, the appellant no. 1, Ashok Kumar alias Lagad and appellant no. 2, Lallu Kesarwani and one unknown person came there. Appellant Ashok Kumar alias Lagad caught him and exhorted his companions to kill him at which appellant Lallu Kesarwani made fire but he did not sustain injury. Anyhow he ran away by making him free but the appellants chased him and Lallu Kesarwani struck him with *tamancha* which hit on his head and Ashok Kumar alias Lagad made fire with *tamancha* causing firearm injuries on his neck. He also exploded a bomb causing injuries to him, as a result he fell on the ground and the accused-appellants fled away.

5. The injured/informant was medically examined on 31.05.1981 at 6:30 p.m. and injury report was prepared by the doctor.

6. The investigation of the case was handed over to S.S.I. Gorakhnath Singh who visited the place of occurrence and took in possession the cycle and chappals of the informant, blood stained and plain soil and also prepared *fard*. After recording the statements of witnesses he also prepared site plan.

7. After investigation of the case charge sheet was filed against the appellants Ashok Kumar alias Lagad and Lallu Kesarwani under Sections 307 I.P.C. and Section 5 of Indian Explosives Act.

8. The learned court concerned, took cognizance of the offences and after complying with the provisions of Section 207 Cr.P.C, committed the case to the Court of Sessions for trial.

9. The learned trial court framed the charge under Section 307 I.P.C. and Section 5 of Indian Explosive Act against appellants on the basis of material on record which was read-over and explained to them. They did not plead guilty but claimed for trial.

10. In support of its case, prosecution examined, P.W. 1, Ram Mani Mudiayain; P.W. 2, Amar Nath; P.W. 3, Aadarsh Kumar Jaiswal, the informant; P.W. 4, Dr. L.K. Kapoor; P.W. 5, Vinod Kumar Singh; P.W. 6, Alok Shankar Mishra; P.W. 7, Pankaj Pandey; P.W. 8, Constable Abhiharan Singh; P.W. 9, S.S.I. Gorakhnath Singh, (Investigating Officer); P.W. 10, Dr. Rajesh Kumar Singh who examined the injured Aadarsh Kumar Jaiswal.

11. After conclusion of prosecution evidence, statement of appellants under Section 313 Cr.P.C. were recorded in which they stated the incident to be false and said to be implicated due to enmity. In defence no evidence was adduced by the appellants.

12. After hearing the arguments for accused/appellants as well as the State, learned trial court passed the impugned judgment dated 23.09.1982 by which the appellants were convicted and sentenced under Section 307 I.P.C. with rigorous imprisonment for a period of five years.

13. Being aggrieved with the conviction and sentence, this criminal appeal has been preferred by the appellants.

14. Learned counsel for the appellant without going into the merits of the case argued only on the point of sentence. He argued that the incident is said to have taken place on 31.05.1981 and till now 44 years have elapsed. The appellant no. 1, Ashok Kumar alias Lagad was aged about 24 years old at that time and now he is more than 68 years old and suffering from old age infirmities. In view of injuries on the person of the injured the case does not come within the purview of Section 307 I.P.C. but it may be to the extent of Section 324 I.P.C. After passing of

such period from the date of incident till now and the age of the appellant it will serve no purpose to send him to jail for serving the remaining part of the sentence whereas he has already served the sentenced for 18 months in jail during trial, therefore, the sentence awarded by the learned trial court against the appellant be reduced to the period already undergone and fine may be imposed to be paid as compensation either to the injured or his survivors.

15. He relied his argument on the basis of cases decided by the *Hon'ble Supreme Court in Nasir Versus State of U.P. (2010) 13 SCC 251, Labh Singh & Others Versus State of Haryana & Another, 2012 LawSuit (SC 255)* and cases decided by this Court in Criminal Appeal No. 2842 of 1987 (*Munua @ Bharat Narain Singh and Others Versus State of U.P.) dated 28.11.2014, Criminal Appeal No. 3548 of 2011 (Rajpoot Alias Poota Versus State of U.P.) dated 20.02.2019* and *Criminal Appeal No. 3098 of 1982 (Asharaf & Others Vs. State) dated 02.02.2018*.

16. Learned A.G.A. vehemently opposed the prayer as aforesaid and contended that the nature of injuries caused by the appellant bring the case within the purview of Section 307 I.P.C. and it cannot be said that the case fall within the ambit of Section 324 I.P.C. though he could not dispute the fact that the appellant has served in jail for a period of eighteen months during trial and the incident took place in the year 1981 and till now 44 years have elapsed and also the appellant has become more than 68 years old and suffering from old age infirmities and the observation made by the Hon'ble Supreme Court in the aforesaid cases.

17. Since the conviction of the appellant by the learned trial court is not being disputed by the learned counsel for the appellant but he emphasizes only on the point of sentence, therefore, there is no need of appreciation of evidence on record by this Court but only to consider the sentence as awarded by the learned trial court in view of the period the appellant remained in jail, the lapse of 44 years from the date of incident till now and the age of the appellant.

18. In the case of *Nasir Versus State of U.P. (2010) 13 SCC 251*, where the appellant was sentenced for a period of five years imprisonment under Section 399/402 I.P.C. 29 years ago and appellant remained in custody for more than six months, the Hon'ble Supreme Court has reduced the sentence already undergone.

19. In the case of *Labh Singh & Others Versus State of Haryana & Another, 2012 LawSuit (SC 255)* the incident took place in the year 1985 and the appellant was aged about 82 years and second and third appellants were aged about 72 and 62 years. They have already undergone part of the sentence. After lapse of 27 years of incident, sentencing them to jail was not found to be justified, as a result sentence was reduced to the period already undergone and appellants were directed to pay compensation to injured persons.

20. Likewise in the case of *Neelam Bahal & another v. State of Uttarakhand 2010 (2) SCC 229* where conviction and sentence of appellant u/s 307 IPC was converted into S.326 IPC simpliciter. Incident took place in the year 1987 and appellant was about 25 years old. Considering the facts and circumstances of the case, Hon'ble the Apex Court reduced the sentence to the period undergone by him. Likewise, in the case of *Hussainbhai Asgarali Lokhandwala v. State of Gujarat* dated 14 August 2024 in *Criminal Appeal No. 1691 of 2023 Hon'ble Apex Court* modified to the period of incarceration already undergone by him while maintaining the conviction where the entire incident had occurred in the heat of moment on 07.11.2000.

21. In the present case incident took place on 31.05.1981 and till now 44 years have elapsed, the appellant was aged about 24 years and now he is more than 68 years old and is suffering from old age infirmities and also the nature of injuries is simple and he has already served in jail for a period of 18 months during trial.

22. In considered opinion of this Court, keeping in view the aforesaid circumstances of the case, the observation made by the Hon'ble Supreme Court in the aforesaid cases, the time gap, the age of appellant and the

nature of offence, it will serve no purpose to send the appellant to jail for serving out the remaining period of sentence but it will be just and proper and will serve the purpose of justice to reduce the sentence undergone by him and to impose fine to be paid as compensation to the injured or his survivors.

23. Accordingly, this appeal is *partly allowed* and the sentence awarded against the appellant Ashok Kumar alias Lagad is reduced to the period of sentence already undergone by him and he is to deposit Rs. 20,000/- as fine within a period of 30 days from today before the concerned court which shall be paid either to the injured or his survivors. In case he fails to deposit the fine he will undergo six months rigorous imprisonment.

24. Copy of this judgment along-with original trial court record be transmitted to the Court concerned for necessary compliance. A compliance report be sent to this Court within two months. Office is directed to keep the compliance report on record.

(Subhash Chandra Sharma,J.)

September 25, 2025

Suraj Srivastava