

Reserved on 15.05.2025

Delivered on 21.05.2025

Neutral Citation No. - 2025:AHC:85092-DB

**Court No. - 43:-**

**Case :- CRIMINAL APPEAL No. - 2771 of 2001**

**Appellant :- Raj Kumar**

**Respondent :- State of U.P.**

**Counsel for Appellant :- Miss Sunita Sharma**

**Counsel for Respondent :- Govt. Advocate**

**Hon'ble Vivek Kumar Birla,J.**

**Hon'ble Jitendra Kumar Sinha,J.**

**(Per: Hon'ble Jitendra Kumar Sinha,J.)**

**1. On 05.05.2025, following order was passed :-**

*" 1. Heard Ms. Sunita Sharma, learned counsel for the appellant and learned AGA appearing for the State respondents.*

*2. Ms. Sunita Sharam, learned counsel for the appellant submits that the appellant is in her touch and she would argue the appeal on merits finally. She, however, sought to file recall application for recalling the order dated 19.3.2025 and 18.4.2025.*

*3. In the interest of justice, the recall application is taken on record.*

*4. Office is directed to give regular number to this application.*

*5. Learned counsel for the appellant may obtain paper book as per rules from the office.*

*6. On her request, list this appeal on 15.5.2025 for final hearing with a clear understanding that the case shall be argued on merits finally on the next date, otherwise this Court may proceed to issue non-bailable warrant against the appellant or may proceed to consider the appeal on merits with the help of learned AGA.*

*7. We have gone through the recall application and the affidavit filed in its support. In the affidavit, the address given is Village Kurdi, P.S. Chapprauli, District Meerut whereas on perusal of the photocopy of the Aadhar Card, the address given is Hardas, Kurdi, Koori, Baghpat, Uttar Pradesh. As such, it is reflected that two different districts are being reflected although it is known that District Baghpat was carved out subsequently from District Meerut.*

*8. We have also seen the report of Chief Judicial Magistrate, Baghpat dated 1.12.2021, according to which the appellant had*

*sold of his all movable and immovable property and has left the village and is not living in the village for the last ten years. In support of the same, statement of the Village Pradhan has been recorded and he has also certified the copy of the same vide order dated 16.11.2021. The report of Chief Judicial Magistrate, Baghpat dated 4.3.2025 also reflects the same fact. On the basis of the reports, statements of Omveer Singh s/o Sukhveer Singh, Deepak s/o Brahmpal Singh (cousin of the appellant), Balbeer Singh s/o Sumera Singh (cousin of the appellant) are also on record.*

*9. On 19.3.2025 following order was passed:*

*"1. Perused the office report dated 06.07.2020 which reflects that the sole appellant Raj Kumar have gone somewhere else after selling his immovable and movable property. As per the latest report dated 17.03.2025 same position is continued.*

*2. In such view of the matter, the office is directed to send the details of sureties with photocopy of the bail bonds indicating the details of the sureties of the appellant to the concerned Chief Judicial Magistrate forthwith so that appropriate action be taken against the sureties under Section 446 Cr.P.C.*

*3. The Chief Judicial Magistrate concerned is directed to proceed in accordance with Section 446 Cr.P.C. against the sureties and submit a report in this regard to this Court within four weeks.*

*4. List on 18.04.2025."*

*10. On the basis of the aforesaid report, it was recorded in the aforesaid order that sole appellant Raj Kumar has gone somewhere else after selling his movable and immovable property, therefore, it was directed that details of sureties with photocopy of the bail bonds be forwarded for necessary action.*

*11. Paragraph 4 of the affidavit filed in support of recall application is quoted as under:*

*" That the office report is incorrect since the appellant is living in the same village and address and he has not been sold any property and no notice was served to him from the registrar listing of the Hon'ble High Court and as such office report is not true and same is false."*

*12. In the above quoted paragraph, it has been categorically stated by the appellant that he is living on the same address and has not sold the property and no notice was served on him.*

*13. This clearly reflects that the police authorities concerned have not performed their duties in accordance with law and on the contrary they have misconducted.*

*14. Sri Rahul Asthana, learned AGA is directed to send a letter along with copy of this order as well as letters and documents as mentioned above to the Commissioner of Police, Meerut and Senior Superintendent of Police, Baghpat for conducting the enquiry and necessary action against the officials who have misconducted and they shall submit a report in this regard within ten days by the next date fixed in this case.*

*15. Office is also directed to send a copy of this order to the Chief Judicial Magistrate concerned forthwith by electronic mode with all the documents with copy of the letter to the District Magistrate, Meerut as well as District Judge, Baghpat for follow up action and submit his report on the next date fixed.*

*16. The report of the Commissioner of Police, Meerut and Senior Superintendent of Police, Baghpat shall be submitted under their signatures by the learned AGA and office is directed to supply a copy of this order along with relevant documents to the learned AGA within 24 hours."*

**2.** Pursuant to the aforesaid order, the Additional Superintendent of Police, Baghpat has submitted its report dated 14.05.2025 to Superintendent of Police, Baghpat, wherein it was found that the accused Raj Kumar was living in Delhi and had come to the village about 3-4 days back and about 5-7 days back he got installed an electric meter at his residence in the village. The statement of various persons were recorded. We have gone through the same.

**3.** The ultimate finding recorded is to the effect that the earlier report submitted before this Court through C.J.M. were filed in a cursory manner and for which, Sub Inspector Shri Naipal Singh and Sub Inspector Navneet

Kumar was prima facie found guilty of misconduct. The copy of the order dated 14.05.2025 passed by the Superintendent of Police, Baghpat has also been placed is to the effect that the departmental proceedings against the aforesaid two officers have been initiated under Rule 14(2) of the Rules and preliminary report has to be submitted by 14.05.2025. The aforesaid instructions and letter are taken on record.

4. A copy of the communication letter dated 14.05.2025 written by the District Magistrate, Meerut to learned A.G.A. further reflects that the proceedings under Section 446 Cr.P.C. have been given effect to and the same is also taken on record.

5. We therefore, proceed to consider the appeal on merits.

6. Heard Sri V.C. Srivastava along with Ms. Sunita Sharma, learned counsel for the appellant and Shri Rahul Asthana, learned AGA for the State.

7. This criminal appeal has been preferred assailing the judgement and order dated dated 30.07.2001 passed by Additional Sessions Judge/ Fast Track Court No.3, Meerut. The appellant has been convicted under Section 307 and 332 IPC and he has been sentenced to undergo rigorous imprisonment for life under Section 307 of IPC and has also been sentenced to undergo two years rigorous imprisonment under Sections 332 of IPC.

8. The prosecution story in brief is that the informant Krishna Murari Mishra (S.O.), Police Station Chhaprauli

gave an information stating therein that on 08.08.1991 he along with S.I. Diwakar, Constable Veer Singh, SGPS-Rajendra Singh, Sewa Ram, Sohanveer, Ompal Singh and Saddik and Rashid and all the police personnel had gone to village Kurdo to investigate Case Crime No.72 of 1991, under Section 395 IPC searching for accused Raj Kumar, who was wanted in connection with case of that crime number. When the informant along with other police personnel raided the house of Raj Kumar at 00.25 a.m. the father of the accused was found sleeping on the terrace of his house and when the informant asked his father after making him to rise, about the accused Raj Kumar, then he told the informant that Raj Kumar had gone out. On this, Raj Kumar armed with 'Tabal' came out from his house and hit HGPS Rajendra Singh on his head and fled away towards south. The informant and other police personnel chased him but failed to arrest him. The injured Rajendra Singh was taken to the Government Hospital Chaprauli, where he was medically examined.

9. On the basis of above oral information, the first information report came to be registered under Section 332/307 of IPC against accused appellant Raj Kumar. The investigation of the case was conducted by the investigating officer and S.I.Hemraj Singh. The investigating officer after conclusion of the investigation submitted charge sheet in the Court.

**10.** The learned Magistrate took cognizance on the charge sheet submitted to the Court of Session for trial. The trial ultimately stood transferred to learned Sessions Judge/ Fast Track Court No.3, Meerut.

**11.** The learned trial Court framed charge against the appellant accused under Sections 332 and 307 IPC. The appellant accused pleaded not guilty and claimed for trial.

**12.** The prosecution has examined four witnesses before trial Court, namely, PW-1 Krishna Murari Mishra, informant, PW-2 Head Constable Rajendra Singh, PW-3 Dr. Jitendra Verma, Medical Officer, PHC Badagaon, Baghpat, PW-4 Hemraj Singh – Investigating Officer. The prosecution has proved FIR as Ext. Ka1, Medical Injury report of PW-2 Rajendra Singh as Ext. Ka2, Site plan with index as Ext. Ka3, Charge sheet as Ext. Ka4 as documentary evidence.

**13.** After closure of prosecution case the statement of appellant-accused was recorded under Section 313 Cr.P.C., in which the accused denied his involvement in the case. The appellant accused also stated in his statement under Section 313 Cr.P.C. that he was roped in this case due to enmity.

**14.** PW-1 Krishna Murari Mishra, Police Station Incharge, Parikshpt Garh, Meerut has stated under oath that on 08.08.1991, he was posted as Police Station Incharge at Chhaprauli. On that day, he along with SO and accompanying force, raided the house of accused

Rajkumar, son of Hardas, of village Kurudi, police station where he was wanted in Case No. 72/91, section 395 for arrest. The father of accused Rajkumar was found sleeping outside his house. When he was woken up and asked about the accused, he told that Rajkumar had gone out. Meanwhile, accused Rajkumar came out from the room with a drum (Tabal) in his hand and attacked them with the intention of killing, due to which Rajendra Singh, Home Guard P.C., who had gone with him for arrest, was injured. The accused had fled from the spot and could not be caught. The cap on the head and the shoe on the left foot of the injured Rajendra were left on the spot, which the family members of the accused picked up and fled. The Chowkidar Rashid who had taken injured along with him from the village had left him in the same village. This incident took place at 00.25 AM. The person who had taken injured along by bus was taken to the Government Hospital Chhaprauli and his treatment was done. After that, he reached the police station and got an FIR registered by telling him verbally. They went to the village of the accused by bus. The roads did not stop anywhere, they had gone only to arrest the accused, the father of the accused was found lying outside the house, who was lying on a cot about two steps away from his door, they did not make any noise at the time of incident 1, the father of the accused did not go inside the house at the spot, there was no conversation with anyone except the father of the

accused, he does not know whether the accused was acquitted in the case in which he was wanted or not, it is wrong to say that the FIR of this case is false and wrongly written, it is wrong to say that Rajkumar did not attack anyone with any weapon with the intention to kill, it is also wrong to say that I did not go to the spot of incident, it is wrong to say that a false story of this case was fabricated.

**15.** PW-2 Head Constable Rajendra Singh was on duty at Chhaprauli Police Station. On that day he along with K.M. Mishra, Diwakar, two constables, Veersingh and Sevaram, three home guards, Sohanvir and Ompal Singh, two chowkidars Sadvik and Rashid went to the house of accused Rajkumar in a government jeep for raid and arrest. When they went to his village Kudi, Chhaprauli Police Station, they found the accused's father outside the house. They questioned him. He told them that Rajkumar had gone out. Then Rajkumar came out from behind and was holding a drum (Tabal) in his hand. He struck the witness on the head with the intention of killing him. The witness got hurt and fell down. The accused ran away. The accused was chased but could not be caught. The witness identified Rajkumar in the court. The witness recognized and saw the accused clearly in the light of electricity and battery.

**16.** PW-3, Dr. Jitendra Verma, Medical Officer, Primary Health Center, Bada Gaon, Baghpat, was posted as Medical Officer at Primary Health Center, Chhaprauli.

On that day, at 12.50 in the night, he conducted a medical examination of Rajendra Khokhar, S/o Mauji Ram, age 30 years, resident of Chhaprauli, whose identification mark is mentioned in the measurement diary. During the examination, the following injuries were found on the person of the injured:-

*1. A cut wound 6' X 1/2' X deep in the middle of the head up to the flesh bone, the size of which is shown on medical measurement. Fresh blood was present. The right part of the injury was 12 cm above the right ear. The injury was ordinary and it was possible that it was caused by a sharp weapon. The period of injury was fresh. The medical examination is in front of me, in my handwriting and signed. On which Ex.2 was put. These injuries can also be caused by sharp weapons like drums etc. It is possible that the above injuries were caused by sharp weapons like Tabal, Gandasa, knife. Fresh blood was flowing from the injuries. It is possible that the injury occurred within 6 hours. The blood was flowing from the time of injury.*

**17.** PW-4, Hemraj Singh Rtd SI has stated that he was posted as SI at Police Station Chhaprauli on 11.08.91. On that day he was given the investigation of case crime number 83/91 under section 332/307 IPC. On that day he took the statement of informant K.M. Mishra SHO, P.R. Diwakar SI II, C/C Sevaram, constable Bir Singh, home guard Sohanveer Singh, home guard Rajendra Singh, Ompal Singh Sadvik Chowkidar and prepared the map of the incident site which has been prepared by him. During the investigation he took statements and submitted the charge sheet against the accused which is in his handwriting and signature, EXT Ka 4 was appended on it. He recorded the statements of the informant and SI Diwakar and constable Sevaram,

constable Bir Singh and home guard Rajendra Singh at the police station on 11.8.1991. He had recorded the statements of home guard Ompal Singh, chowkidar Saddiq on 13.8.1991 and of Rasheed chowkidar on 15.8.1991. He had recorded the statements of these two witnesses separately. It is wrong to say that he had done the paperwork related to the investigation sitting at the police station without going to the place of occurrence. It is also wrong to say that no such incident took place.

**18.** This Court is tasked with the duty to re-appreciate the evidence available on the record of the learned trial Court and come to the conclusion whether the prosecution has been able to bring home the charge against the appellant/ accused beyond the shadow of reasonable doubt and also whether the learned trial Court has appreciated the evidence of the case in the right perspective ?

**19.** It has been specifically stated by the appellant in his statement under Section 313 Cr.P.C. that PW-2 Head Constable Rajendra Singh was his neighbour and he was trying to usurp the property of his Aunt (Bua) and on account of this enmity, he has been implicated in this case.

**20.** The learned trial Court after hearing the arguments of prosecution and the defence and on perusal of the records passed the judgment of conviction and order of sentenced impugned.

**21.** Learned counsel for the appellant submits that the appellant has been roped in this case due to enmity. There are material contradictions in the statement of PW-1 and PW-2.

**22.** Learned counsel for the appellant further submits that the prosecution has not produced any search warrant on the basis of which the informant had gone to village Chapraruli in search of the appellant/ accused in connection with some other criminal case under Section 395 IPC.

**23.** Learned counsel for the appellant further submits that the injuries sustained by PW-2 are simple in nature and there is no public witness of the incident. Further the weapon of offence has also not been recovered either from the possession of the accused appellant or at his instance.

**24.** Learned counsel for the appellant further submits that no blood has been found either at the place of occurrence or on the injured person PW-2.

**25.** Learned counsel further submits that there is no description of source of light and it is highly improbable that no one would raise alarm when the incident was taking place.

**26.** On the other hand learned A.G.A. for the State submits that PW-1 and PW-2 are eye witnesses of the occurrence and PW-2 is injured eye witness. The first information report was lodged promptly which lends additional credence to the prosecution case.

**27.** In case of **Thulia Kali Vs. State of Tamil Nadu, (1972) 3 Supreme Court Cases 393**, paragraph no.12 reads as under:-

*“12.....First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of the spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.”*

**28.** Learned A.G.A. submits that PW-3 Dr.Jitendra Verma in his cross-examination has categorically stated that the injury suffered by PW-2 could have been caused by ‘Tabal’.

**29.** Learned AGA further submits that the conduct of the appellant is also material and he went absconding after the incident. It is further submitted that it is quite natural that some minor discrepancies can occur in the testimonies of eye witnesses, in view of the fact that they were examined in the Court after a gap of eight years.

**30.** Learned AGA further submits that the discrepancies in the testimony of PW-1 and PW-2 do not have material bearing on the reliability of their testimony.

**31.** Learned AGA further submits that the appeal lacks merit and deserves to be dismissed.

**32.** The genesis of the occurrence is that the informant PW-1, the S.H.O. of P.S. Chhaprauli had gone to search for the appellant / accused in connection with an earlier Case Crime No.72/1991, under Section 395 of IPC as the appellant was wanted in connection with that offence. On reaching the house of the appellant, the police personnel were attacked by the appellant and in the said attack PW-2 Rajendra Singh sustained injuries. After hitting PW-2, the appellant fled away and went on absconding.

**33.** PW-1 in his oral testimony before the learned trial Court has categorically supported the prosecution case and PW-2 is the injured eye witness, who has also supported the prosecution case.

**34.** In his cross-examination, PW-3 has stated that the injuries sustained by PW-2 could have been caused by 'Tabal'. However, PW-3 Dr. Jitendera Verma has opined that the injuries sustained by PW-2 are simple in nature. PW-4 is Investigating Officer of this case, who has conducted investigation of the case and has submitted the charge sheet.

**35.** The argument of learned counsel for the appellant is that the prosecution has not produced any search

warrant on the basis of which, the informant PW-1 along with PW-2 and another police personnel had gone for search of appellant Raj Kumar. In our opinion, the said argument does not have force as the search warrant, if any, could have been in the records of Case Crime No.72 of 1991 under Section 395 IPC.

**36.** Moreover, the defence has not cross-examined and even no suggestion has been given by the defence to the PW-1 on this point.

**37.** Argument of learned counsel for the appellant is that there is no material contradiction regarding the conveyance by which, police personnel reached the house of appellant. PW-1 has stated in his cross-examination that all the police personnel reached the house of appellant by bus whereas PW-2 has stated that all the police personnel reached the house of the appellant by Jeep.

**38.** In our view, the above discrepancies are minor in nature in the backdrop of the fact that the incident took place in the year 1991 whereas, the evidence has been recorded in the year 1998-99 i.e. after considerable lapse of time.

**39.** Learned counsel for the appellant could not dispute and explain as to how the injuries of PW-2 could have been sustained.

**40.** From the evidence available on record, the first information report is prompt. PW-2 is an injured eye witness.

**41.** It is well settled that the testimony of injured witness is on a higher footing in comparison to the testimony of other witnesses.

**42.** In case of **Baljinder Singh Vs. State of Punjab**, passed in **Criminal Appeal No.1389 of 2012**, paragraph nos.12, 13 & 29 whereof reads as under:-

*“12. Also, it is worth indicating that P.W.3, P.W.4, and P.W.5 are “injured witnesses” or “injured eye-witnesses” in this case. The sworn testimonies provided by injured witnesses generally carry significant evidentiary weight. Such testimonies cannot be dismissed as unreliable unless there are pellucid and substantial discrepancies or contradictions that undermine their credibility. If there is any exaggeration in the deposition that is immaterial to the case, such exaggeration should be disregarded; however, it does not warrant the rejection of the entire evidence. Therefore, the suspicion raised by the appellants regarding the genesis of the case is rendered unfounded.*

*13. The abovementioned conclusion stands fortified with reference to paragraph 26 of the decision of this Court in Balu Sudam Khalde and another Vs. State of Maharashtra. The relevant passage is reproduced as under:*

*“26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:*

*(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*

*(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*

*(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*

*(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*

*(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.*

*(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”*

**(emphasis supplied)**

29. It is also settled law that examination of independent witness is not an indispensable requisite if the testimonies of other witnesses are deemed trustworthy and reliable. Non-examination of any independent witness by the prosecution will not go to the root of the matter affecting the decision of the court, unless other witnesses’ testimonies and evidences are scant to establish the guilt of the accused. Reference is made to paragraph 24 of the (2004) 5 SCC 334 (2009) 6 SCC 372 14 of 16 decision of this court in **Guru Dutt Pathak Vs. State of U.P.**, where it was ruled as follows:

*“24. One another ground given by the learned trial court while acquitting the accused was that no independent witness has been examined. The High Court has rightly observed that where there is clinching evidence of eyewitnesses, mere non- examination of some of the witnesses/independent witnesses and/or in absence of examination of any independent witnesses would not be fatal to the case of the prosecution.*

*24.1. In **Manjit Singh Vs. State of Punjab**, it is observed and held by this Court that reliable evidence of injured eyewitnesses cannot be discarded merely for reason that no independent witness was examined.*

*24.2. In the recent decision in **Surinder Kumar Vs. State of Punjab**, it is observed and held by this Court that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that the accused was falsely implicated.*

*24.3. In **Rizwan Khan Vs. State of Chhattisgarh**, after referring to the decision of this Court in **State of H.P. Vs. Pardeep Kumar**, it is observed and held by this Court that the examination of the independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case.”*

**(emphasis supplied)**

**43.** There is no material contradiction in the statements of PW-1 and PW-2. The evidence of PW-3 corroborates the prosecution story and the testimonies of PW-1 and 2.

**44.** The question before us is as to whether the offence committed by the appellant falls under Section 307 IPC or not. PW-3 Dr. Jitendra Verma, who medically examined PW-2 and found one incised wound 6 inch x half inch depth up to bone on head. In the opinion of PW-3 the injuries are simple in nature.

**45.** From the nature of the injuries and from the statement of PW-1 and PW-2, it is clear that the appellant / accused gave one single blow of 'Tabal' to the injured PW-2.

**46.** From the above, it is clear that the appellant did not intend to cause the death of PW-2, hence offence under section 307 IPC is not made out against the appellant as the injury is simple in nature, at best, the offence under Section 324 IPC is made out against the appellant. So far as the charge under Section 332 of IPC is concerned, the prosecution has been able to prove the same, beyond reasonable doubt.

**47.** In view of the above, we find that the prosecution has been able to prove the charge under section 324 IPC against the appellant.

**48.** In view of the aforesaid, the appeal deserves to be partly allowed. The conviction and sentence of the appellant passed by the learned trial Court under Section

307 IPC is set aside and the appellant is acquitted of the charge under Section 307 IPC. However, the conviction under Section 332 of IPC is upheld. The appellant is convicted under Section 324 IPC.

**49.** In view of the above, the appeal deserves to be partly allowed. The conviction and sentence of the appellant passed by the learned trial Court under Section 307 IPC is set aside. He is acquitted of the charge under Section 307 of IPC. However, the conviction of the appellant under Section 332 of IPC is upheld. The appellant is convicted under Section 324 of IPC. The appellant has already undergone incarceration of one year four months and one day in the instant case.

**50.** Keeping in view, the facts and circumstances of the case, long lapse of time after commission of offence, we are of the view that the appellant be sentenced to undergo the period of sentence already undergone by him concurrently under Section 324 IPC as well as under Section 332 IPC.

**51.** Thus, with the above modification, the appeal is **allowed in part.**

**Order Date :- 21.05.2025**

**RKM**