



2026:AHC:102366

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2119 of 1985

Onkar Singh And Another

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Anupama Parashar, P.R.Paul, Satendra Kumar Upadhyay, V.P.Sharma
Counsel for Respondent(s)	:	D.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This appeal has been filed against the judgment and order dated 13.08.1985 passed by learned Additional District & Sessions Judge, Farrukhabad in Session Trial No.149 of 1983 convicting and sentencing the appellants under Section 307 read with Section 34 I.P.C., whereby the appellants are convicted for four years rigorous imprisonment.
2. Heard Sri Satyendra Kumar Upadhyay, learned counsel for the appellants and Sri Rahul Asthana, learned A.G.A. for the State.
3. The informant, Lala Ram, submitted a written report at the police station stating that the accused persons were his cousins and the residents of same village. He owned an agricultural field situated to the north of village where he had sown a crop of sugarcane. On 10.05.1982 at about 5.00 p.m., the accused persons who were four in number, came to the field and began grazing their cattle there. When the informant objected and drove the cattle away, the accused persons became enraged. It is alleged that two of them namely, Babu Ji and Ashok assaulted him with lathis. Upon hearing the alarm, Nirmal Singh and Shish Ram reached the spot and challenged the accused persons. At that point, accused Onkar Singh fired at Nirmal Singh with a country-made gun, while the remaining accused persons fired at Shish Ram with country-made firearms. The shots were allegedly fired with the intention to kill, resulting in injuries to the victims. Thereafter, the accused persons fled from the scene.
4. On the basis of the written report, a first information report was registered at the police station and G.D. entries were made. Investigation

was initiated. The Investigating Officer visited the place of occurrence, prepared a site plan and recorded the statements of witnesses. The injured persons were medically examined through the police. Gunshot injuries were found on their bodies. Upon completion of investigation, finding sufficient evidence, charge-sheet was submitted for offence under Section 307 read with Section 34 I.P.C.

5. Charges were framed and read over to the accused persons. They pleaded not guilty and claimed trial.

6. In support of the prosecution case, P.W.-1 Lala Ram , P.W.-2 Nirmal Singh, P.W.-3 Sub Inspector Bhulai Ram, and P.W.-4 Dr. A.B. Dubey has been examined. Documentary evidences along with injury report are available on record.

7. P.W.-1 Lala Ram, the informant, deposed that he sustained three injuries caused by lathi on his hands and legs and one injury on his back. In his cross-examination, he admitted prior enmity, a litigation with accused persons.

8. P.W.-2 Nirmal Singh supported the prosecution version in his examination-in-chief and stated that the dispute arose when the accused were grazing cattle in the field. Upon objection, the accused assaulted Lala Ram with lathis. On hearing the alarm, he reached the spot whereupon accused Onkar Singh fired at him and the shot hit the back side of his head. It is noteworthy that witnesses stated that although Lala Ram received lathi blows, he did not fell down, however, Nimral Singh fell after sustaining firearm injury and remained lying about 10 minutes before assisted by the villagers. It was further stated that although bleeding occurred, no blood fell on the ground. The witnesses consistently stated that only two shots were fired at the spot.

9. P.W.-3 the Investigating Officer, Sub-Inspector Bhulai Ram, proved the site plan and charge-sheet. He categorically stated that upon inspection of the place of occurrence, no bloodstains were found at the spot.

10. P.W.-4 Dr. A.B. Dubey, examined the injured persons and proved their injury reports, which are reproduced hereinafter :-

Injury report of Lalaram-

A Contusion 6.5 cm x 4 cm over back of the left palm median side, planed obliquely reddish in color.

Injury report of Shish Ram-

One gunshot wound of entry on front and right side of neck middle part 5 cm away from the mid line towards right. Margins inverted. Blood serum deposited on the wound. No blackening and no tattooing

Injury report of Nirmal Singh-

1. A wound of gunshot injury 1/3 cm x 1/4 cm muscle deep on the right side of the back of head 6 cm towards the right of the midline with inverted margins without blackening or tattooing. Serum deposited on the wound.

2. Gun shot wound of entry 1/4 cm x 1/4 cm muscle deep on the back of the right palm median side with inverted margins and presence of serum deposited.

3. A gun shot wound of entry 1/4 cm x 1/4 cm muscle deep on the back of the right palm 3 cm away from the index finger, with inverted margins but without blackening and tattooing . Blood serum was present.

4. Gun shot wound of entry 1/4 cm x 1/4 cm muscle deep on the right side of back 7 cm away from the midline with inverted margins and blood serum but without tattooing and blackening.

5. A gunshot wound of entry 1/4 cm x 1/4 cm muscle deep on the left lower part of the left thigh with inverted margins and blood serum on the wound but without blackening and tattooing.

11. PW.-4 stated that all injured persons were conscious at the time of medical examination. Significantly, doctor did not opine that any of the injuries were dangerous to life. There is also no evidence that any of the injured persons required hospitalization or medical treatment.

12. The accused persons in their statements recorded under Section 313 Cr.P.C. denied the charges levelled against them and stated that they had been falsely implicated in the crime due to previous enmity.

13. The learned trial court after considering the entire evidence and material on record, convicted accused Onkar Singh and Baran Singh for offence under Section 307 read with Section 34 I.P.C. and sentenced to undergo four years of rigorous imprisonment. However, Ashok Kumar was acquitted of the charges under Section 307/34 I.P.C. He was convicted for offence under Section 323 read with Section 34 I.P.C. and was extended the benefit of probation under Section 4 of Probation of Offenders Act. Accused Babu Ji was convicted for offence under Section 323 I.P.C. and sentenced with fine of Rs.500/-.

14. Aggrieved with the judgment of conviction and sentence, this appeal has been filed on behalf of appellants Onkar Singh and Baran Singh on

the ground that the conviction and sentence passed by the learned trial court are against the weight of evidence on record and contrary to law. The sentence imposed upon them are too severe.

15. During the pendency of the appeal, the appellant No.2 Baran Singh had died and the appeal was abated in respect of appellant no.2 Baran Singh and is surviving in respect of appellant No.1 Onkar Singh.

16. Learned A.G.A. for the State supported the judgment of conviction and sentence.

17. The facts that firing by dangerous weapon took place in the incident is supported by the testimonies of prosecution witnesses. It has come on record that accused Onkar Singh used a country made pistol and accused Baran Singh also used a country made firearm. The prosecution case is that the shots were aimed at the vital parts of the injured persons. A perusal of injury report transpires that Shish Ram has sustained only one gunshot injury.

18. The injured Shish Ram sustained a firearm injury on the right of his neck while injured Nirmal Singh received an injury on the right side of his hand. Taking note of these injuries the trial court concluded that the accused persons had the intention to cause death and accordingly, convicted them.

19. The appeal has remained pending for more than 40 years. At this stage, it is necessary to examine whether the offence would fall within the ambit of Section 307 I.P.C., which provides for sentence for attempt to murder.

20. From the medical evidence, it emerges that the injured Shish Ram sustained only one injury on the right side of his neck with sole blackening and tattooing. The injured Nirmal Singh sustained multiple firearm injuries, however, all the injuries were of similar dimensions, approximately, 1.4 cm. x 1.4 cm. and were found to muscle deep in nature. The injuries appeared to have been caused by pellets.

21. The medical examination reports do not indicate that any of the injuries were dangerous to life. Furthermore, there is no evidence on record to show that the injured persons were ever hospitalized for treatment of such injuries.

22. It is also relevant that as per prosecution case, only one shot was fired

by each of the accused and all the injuries were caused by pellets resulting from such firing. Thus, although firearm injuries were sustained, the nature extend and medical opinion regarding the injuries do not conclusively establish that the injuries were grievous in nature or dangerous to life.

23. In order to sustain a conviction under Section 307 I.P.C., the prosecution must establish :-

- (i) Intention of knowledge to cause death;
- (ii) An overt act done towards the commission of murder.

24. It is well settled that the nature of injury, the weapon used, the part of body targeted and the surrounding circumstances are relevant factors in determining such intention.

25. The Hon'ble Supreme Court in **State of M.P. Vs. Saleem @ Chamaru and Anr, (2005) 5 SCC 554**, held that for attracting section 307 I.P.C., it is not essential that injury capable of causing death should have been inflicted but the intention or knowledge must be clearly establish from the circumstances.

26. Similarly in **Sarju Prasad Vs. State of Bihar, AIR 1965 SC 843**, it was held that mere fact of injury is not sufficient unless the intention to kill is proved beyond reasonable doubt.

27. In the present case although firearm injuries have been proved. The following circumstances are material :-

- (a) Only one shot each was allegedly fired.
- (b) Injuries sustained were pellets injuries and mostly muscle deep.
- (c) No injury has been opined by the doctor else dangerous to life.
- (d) No evidence of hospitalization or life threatening condition.
- (e) Absence of blood at the place of occurrence.

28. The cumulative effect of these circumstances creates doubt regarding existence of intention or knowledge to cause death, therefore, the essential ingredients of Section 307 I.P.C. are not satisfactorily established.

29. However, the evidence clearly establishes the appellant caused injuries by means of dangerous weapon which attracts section 324 I.P.C. and the lathi injuries fall within the ambit of Section 323/34 I.P.C. The conviction of the appellant under Section 307 I.P.C. is not sustainable in law and liable to be set aside and, therefore, is hereby set aside.

30. Instead the appellant is convicted under Section 324 and 323/34 of the I.P.C.

31. So far as the question of sentence is concerned, considering that the incident is more than 4 decades old. The parties belonged to the same village. The injuries sustained by the injured persons were not life threatening, the appellant has already faced prolonged litigation. The ends of justice would be served by modifying the sentence.

32. A perusal of record transpires that the appellant was sent to jail after conviction on 03.08.1985 and he was enlarged on bail on 14.08.1985. Moreover, during trial he was in jail for a few days, therefore, the appellant is sentenced to the period already undergone.

33. Accordingly, the appeal is partly allowed with modification that the sentence of imprisonment awarded by learned trial court is reduced to the period already undergone.

34. The appellant is on bail. His bail bonds are cancelled and sureties are discharged.

35. Let a copy of this order be transmitted to learned trial court for necessary compliance.

(Mrs. Vani Ranjan Agrawal,J.)

April 15, 2026

P. Pandey