



2026:AHC:186582

Reserved on 24.08.2026

Delivered on 08.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2482 of 1986

Rakesh Chandra

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: A. Sharma, Arun Kumar Sharma
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

HON'BLE SANTOSH RAI, J.

1. Heard Shri Vinod Singh, Advocate holding brief of Shri Aun Kumar Sharma, Advocate appearing on behalf of the appellant and Shri Purshottam Maurya, learned AGA appearing on behalf of the State.

2. This criminal appeal has been preferred by the appellant Rakesh Chandra assailing the judgment and order dated 22.09.1986 passed by Sri Narendra Singh, learned 3rd Additional Sessions Judge, Etawah, in Sessions Trial No. 373 of 1985 (State vs. Rakesh Chandra), whereby the appellant has been convicted for the offence punishable under Section 307 of the Indian Penal Code and

sentenced to undergo seven years' rigorous imprisonment. No fine was imposed by the learned trial court.

3. Briefly stated, the prosecution case is that the complainant Daya Ram (P.W.1) lodged a written report at Police Station Bakewar on 28.03.1985 at 9.30 p.m. alleging that he, along with his brother Harnath, was guarding their plot (khatan) and pea (matar) crop at about 8.30 p.m. on the night in question when the accused Rakesh Chandra, resident of Kasba Bakewar, along with two companions, was found removing the pea crop with intent to commit theft. On being challenged by Harnath as to their identity, the accused Rakesh abused him and fired a country-made pistol, causing multiple gunshot injuries to Harnath, who fell down crying. The appellant's nephew Raj Kumar was also present at the spot. All of them identified the accused, whereupon the accused and his companions fled from the spot. On the basis of the said written report, Case Crime No. 64 of 1985 under Section 307 I.P.C. was registered at Police Station Bakewar and the injured was sent for medical examination.

4. The injured Harnath was medically examined by Dr. B.L. Sharma, Medical Officer Incharge, Emergency, District Hospital, Etawah, on 29.03.1985 at 1:50 A.M., who found as many as ***fifteen gunshot wounds of entry on the person of the injured***, distributed over the left side of the forehead near the eyebrow, left axilla, left

side of chest, right side of abdomen, left side of abdomen, right upper arm, left forearm (front and back), right thigh, left thigh (front, two places), and right knee. In the opinion of the doctor, all the injuries were caused by a firearm and were simple in nature except injury Nos. 1, 3 and 4, which were kept under observation with advice for X-ray. The injury report was proved as Ex. Ka-3. On the basis of the radiological examination, Dr. R.K. Chaudhary, Radiologist, District Hospital, Etawah, prepared a supplementary report dated 29.03.1985 (Ex. Ka-8), noting multiple foreign body shadows on the chest.

5. During investigation, the Investigating Officer took into possession the blood-stained kurta of the injured Harnath vide memo Ex. Ka-2, recorded the statements of witnesses, prepared the site-plan (Ex. Ka-4) and, on completion of investigation, submitted the charge-sheet (Ex. Ka-5) under Section 307 I.P.C. against the accused-appellant on 06.04.1985.

6. On 19.05.1986, a charge under Section 307 I.P.C. was framed against the accused, which was read over and explained to him in Hindi. He pleaded not guilty and claimed to be tried.

7. In support of its case, the prosecution examined five witnesses, namely, P.W.1 Daya Ram (complainant), P.W.2 Harnath (injured), P.W.3 Dr. B.L. Sharma, P.W.4 S.I. B.L. Mauriya (Investigating Officer) and P.W.5 Dr. R.K. Chaudhary (Radiologist).

The accused, when examined under Section 313 Cr.P.C., denied the prosecution allegations and pleaded false implication on account of enmity. He adduced no evidence in defence.

8. By the impugned judgment dated 22.09.1986, the learned trial court held that the prosecution had proved its case against the appellant beyond reasonable doubt. The trial court rejected the defence contentions regarding (i) alleged contradiction between the testimony of P.W.1 and the site-plan concerning the manner of storage of the pea crop, holding it to be a minor and immaterial discrepancy; (ii) the alleged absence of moonlight at the time of occurrence, holding that the unproved diary produced by the defence counsel was not an authentic document and that the unchallenged testimony of P.W.2 regarding moonlight, coupled with the factor of prior identification by voice, was sufficient to establish the identity of the appellant; and (iii) the medical opinion that the injuries on the arm of the injured were the result of another shot, holding that such circumstance did not create any lacuna in the prosecution case inasmuch as it was explainable by movement of the injured at the time of the occurrence. The trial court accordingly convicted the appellant under Section 307 I.P.C. and, declining the plea for benefit of the Probation of Offenders Act on the ground that the offence was heinous in nature, sentenced him to seven years' rigorous imprisonment.

9. Aggrieved by the said judgment and order of conviction and sentence, the appellant has preferred the present appeal.

10. In brief the grounds of appeal are that the conviction and sentence awarded to the appellant are against the weight of evidence on record and is also bad in law. In any case, the sentence awarded is too severe.

11. Learned counsel for the appellant has reiterated before this Court, more or less, the same submissions as were urged before the trial court. It has been contended that the presence of P.W.1 Daya Ram at the place of occurrence is doubtful in view of the contradiction between his version and the site-plan regarding the manner in which the pea crop was stacked. He further submits that the prosecution failed to establish beyond reasonable doubt the presence of moonlight, a fact necessary for identification, and the trial court erred in discarding the diary produced by the defence. Furthermore, the medical evidence, particularly the opinion of P.W.3 that the injuries on the arm of the injured resulted from a shot fired from close range (six to eight feet), is inconsistent with and creates a doubt regarding the singular version of firing set up by the prosecution. He further submits that no motive or previous enmity between the parties has been established. It is further submitted, in the alternative, that even if the conviction is to be sustained, the sentence of seven years' rigorous imprisonment is excessive, having

regard to the fact that the appellant was a young man at the time of occurrence, had no previous conviction, and was entitled to the benefit of the Probation of Offenders Act, 1958, or, in any event, to a substantial reduction in sentence.

12. Per contra, learned A.G.A. appearing for the State has supported the impugned judgment, submitting that it is based on a correct and careful appreciation of the evidence on record. He submits that the F.I.R. was lodged promptly, within about an hour of the occurrence, at a police station situated about one kilometer from the place of occurrence and that the testimony of the injured eye-witness P.W.2 Harnath stands fully corroborated by the medical evidence. He further submits that the minor variance between the statements of P.W.1 and P.W.2 regarding the manner of stacking of the pea crop is wholly immaterial and does not affect the substratum of the prosecution case. Furthermore, having regard to the fact that the injured sustained as many as fifteen gunshot injuries, the sentence awarded by the trial court cannot be said to be excessive, much less is this a case fit for extension of the benefit of probation.

13. We have heard learned counsel for the parties and have perused the record, including the evidence of the witnesses and the impugned judgment.

14. On a careful re-appreciation of the evidence on record, we find ourselves in agreement with the findings recorded by the

learned trial court on the question of guilt. The F.I.R. (Ex. Ka-1) was lodged with promptitude, and the injured was got medically examined without any unexplained delay, both circumstances lending assurance to the truthfulness of the prosecution version and ruling out the possibility of deliberation or false implication. P.W.1 and P.W.2 are natural witnesses, the complainant and the injured respectively, whose presence at the spot, being their own field, cannot be doubted merely on account of a minor variance in the site-plan concerning the manner in which the pea crop was found stacked. It is well settled that an Investigating Officer preparing a site-plan is not expected to record every peripheral detail with mathematical precision, and such minor variance, not touching the core of the prosecution case, cannot be a ground to discard otherwise trustworthy ocular testimony. So far as the presence of moonlight is concerned, the testimony of the injured P.W.2 on this aspect remained wholly unchallenged in cross-examination, and the private diary relied upon by the defence, being an unproved document of doubtful authenticity, was rightly not acted upon by the trial court. In any event, since the assailant was already known to the witnesses, identification by voice, as deposed to by P.W.1, furnishes an independent and adequate basis for identification even independent of the question of moonlight.

15. As regards the medical evidence, we find no infirmity in the approach of the trial court in declining to treat the opinion of P.W.3, that the injuries on the arm of the injured could be attributable to a separate shot, as fatal to the prosecution case. The opinion of a medical witness, though relevant, is not binding upon the Court trying the case, and where the surrounding circumstances reasonably explain the said injuries as, for instance, injuries occasioned by the movement of the arms of the injured while he attempted to rise and confront the assailant during the course of continuous and rapid firing, the Court is not obliged to mechanically accept the expert's opinion over the direct testimony of the injured eye-witness, which is otherwise cogent, consistent and corroborated. The appellant, for his part, has neither explained the injuries sustained by the complainant party nor placed on record any evidence of prior enmity that would furnish a motive for false implication of an innocent person in so serious a crime.

16. Taking into consideration the cumulative effect of the prompt F.I.R., prompt medical examination, and the corroborative and mutually consistent testimony of P.W.1 and P.W.2, duly supported by the medical evidence on record, we are satisfied that the prosecution has established the guilt of the appellant for the offence under Section 307 I.P.C. beyond reasonable doubt. The finding of conviction recorded by the trial court is accordingly affirmed.

17. That takes us to the question of sentence, which requires more detailed consideration.

18. We note, at the outset, that although the appellant has been convicted under Section 307 I.P.C., which provides that the offender “*shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine*”, the learned trial court, while awarding substantive imprisonment, omitted to impose any sentence of fine. The imposition of fine under Section 307 I.P.C. is not discretionary but obligatory, the expression “shall also be liable to fine” having been consistently construed as making the fine component a mandatory part of the sentence, to be imposed in addition to the substantive term of imprisonment. The omission of the trial court to impose any fine is, therefore, not legally correct and requires to be corrected by this Court in exercise of its appellate powers, more particularly having regard to the fact that the injured has suffered *as many as fifteen gunshot wounds entailing pain, suffering, hospitalisation and consequent loss*, for which he is entitled to be suitably compensated out of the fine, in exercise of the power under Section 357 Cr.P.C.

19. On the question of the quantum of substantive sentence, learned counsel for the appellant has prayed for extension of the benefit of the Probation of Offenders Act, 1958, or, in the alternative, for a substantial reduction of sentence, on the ground

that the appellant was a young man without any previous conviction at the same time further submitted that compensation/fine may be imposed, if necessary in case period of sentence is reduced. We are unable to accede to the prayer for probation. The nature and mode of commission of the offence militate against any such leniency. The injured sustained as many as fifteen gunshot wounds of entry, spread over vital and vulnerable parts of the body, including the region close to the left eye, the chest and the abdomen, apart from injuries on both arms, both forearms and both thighs. Such a large number of injuries, inflicted in a single transaction, is indicative not of a momentary lapse or a single impulsive act but of sustained and reckless firing continued even as the injured cried out in pain, disclosing a rash and depraved disregard for human life.

20. Having regard to the gravity of the offence, the number of injuries and the manner in which the offence was committed, we are of the considered opinion that this is not a case in which the benefit of the Probation of Offenders Act can be extended to the appellant, and the trial court rightly declined the same.

21. At the same time, we notice that none of the fifteen injuries proved fatal, that no vital organ was struck causing life-threatening consequences, that the appellant is stated to be a young man without any previous conviction, and that a period of over three decades has since elapsed since the occurrence. Balancing the gravity of the

offence and the mode of its commission, on the one hand, against the mitigating circumstances noticed above, on the other, we are of the view that the ends of justice would be sufficiently met if the substantive sentence of seven years' rigorous imprisonment awarded by the trial court is reduced to three years' rigorous imprisonment. Simultaneously, and for the reasons recorded herein above, we deem it appropriate to impose a sentence of fine of Rs. 30,000/- (Rupees thirty thousand only) upon the appellant, in default of payment of which he shall undergo simple imprisonment for a further period of six months. Out of the said amount of fine, if realised, a sum of Rs. 25,000/- (Rupees twenty-five thousand only) shall be paid to the injured Harnath as compensation under Section 357 Cr.P.C., and the remaining amount of Rs. 5,000/- (Rupees five thousand only) shall be deposited in the State exchequer. It is clarified that the imposition of the aforesaid fine, particularly when the substantive sentence has been substantially reduced from seven years to three years' rigorous imprisonment, cannot be construed as enhancement of sentence in any substantial or prejudicial manner. The overall sentence imposed by this Court, therefore, remains just, proportionate and commensurate with the gravity of the offence and the circumstances of the case.

22. In the result, the appeal is **partly allowed**. The order of conviction of the appellant Rakesh Chandra under Section 307 I.P.C.,

as recorded by the 3rd Additional Sessions Judge, Etawah, vide judgment and order dated 22.09.1986 in Sessions Trial No. 373 of 1985, is hereby confirmed. The sentence awarded to the appellant is, however, modified as under:

(i) The conviction of the appellant, **Rakesh Chandra** under Section 307 of the Indian Penal Code, 1860, as recorded by the Trial Court in S.T. No. 319 of 1984, is hereby affirmed.

(ii) The sentence of seven years' rigorous imprisonment awarded to the appellant is reduced to three years' rigorous imprisonment and to pay a fine of Rs.30,000/- (Rupees Thirty Thousand) and in default of payment of fine, the appellant shall undergo further period of simple imprisonment for six months.

(iii) Out of the fine amount so realised, a sum of Rs.25,000/- (Rupees Twenty-five Thousand) shall be paid over to the injured, Harnath, or, in the event of his having since died, to his legal heirs, by way of compensation under Section 357 Cr.P.C. The balance amount of Rs.5,000/- (Rupees Five Thousand) to be credited to the State exchequer.

23. The appellant is on bail. The bails bonds are cancelled and the sureties stand discharged, if furnished earlier.

24. Appellant, who is on bail, shall surrender before the court below *within a period of ten days from today*, without any fault, to serve out the remainder of the sentence, failing which the trial court

shall take coercive actions including non-bailable warrant in order to secure his custody in accordance with law.

25. The appellant shall be entitled to set-off, under Section 428 Cr.P.C., for the period, if any, already undergone by him as an undertrial and in pursuance of the sentence awarded by the trial court.

26. The trial court is directed to submit its compliance report within two months from the date of receipt of this order. Furthermore, the registry is also directed to place the compliance report on record.

27. Let a copy of this judgment be transmitted *within a week* to the trial court concerned along with trial court record for compliance.

28. The Registrar (Compliance) is also directed to serve a copy of this order within **48 hours** by FAX/e-mail to the concerned court through District & Sessions Judge, Etawah for compliance.

(Santosh Rai,J.)

September 08, 2026
Ankit.