



2026:AHC:92057

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2443 of 1985

Ram Kumar And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	G.P.Dixit, Rashmi Srivastava
Counsel for Respondent(s)	:	A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1.This appeal has been filed by the appellants against the judgment and order dated 10.09.1985 passed by the Additional Sessions Judge, Kanpur, in Sessions Trial No. 475 of 1983, Police Station Fazalganj, District Kanpur, whereby the appellants were convicted and sentenced to three years of rigorous imprisonment under Section 307 I.P.C.

2. Heard Ms. Rashmi Srivastava, learned Amicus Curiae appearing on behalf of appellants and Sri Rahul Asthana, learned A.G.A. for the State.

3. The prosecution case, in brief, is that the informant, Jagdish Narayan was the landlord of house No.119/148 situated at Om Nagar, Police Station- Fazalganj, Kanpur Nagar and the accused persons, Ram Kumar and Puchchi were the tenants. Due to a dispute regarding rent, enmity developed between them. On 24.12.1982 at about 10.45 p.m., when Jagdish Narayan was inside his house, the accused persons came and fired upon him with intention to cause his death.

4. It is alleged that upon firing by appellant Ram Kumar, the complainant Jagdish Narayan immediately fell down and escaped injury. Thereafter, appellant Puchchi fired at him and the complainant sustained firearm injuries.

5. The injured was taken to the police station and thereafter to Halet Hospital, where his medical examination was conducted the next morning.

6. FIR was registered on the basis of written report. The matter was investigated by Sub Inspector Adil Rashid Khan. After completion of investigation, charge-sheet was submitted under Section 307 I.P.C.

7. Charges were framed and read over to the accused persons. They denied the charges and claimed trial.

8. The prosecution has examined as many as five witnesses namely, P.W.-1 the complainant Jagdish Narayan Tripathi, P.W.-2 Ashok Kumar Vajpayee

and P.W.-3 Jagat Narayan, eyewitnesses, P.W.-4 Dr. N.C. Yadav and P.W.-5 Sub Inspector Adil Rashid Khan.

9. The documentary evidences, written report, the FIR, carbon copy of G.D., medical report, Site Plan and charge-sheet, Ext. Ka-1 to Ka-5 respectively are available on record.

10. The learned trial court after hearing the arguments advanced by the both the parties and considering oral and documentary evidence on record, returned the finding of guilt and convicted the accused persons for offence under Section 307 I.P.C. and sentenced them to undergo rigorous imprisonment for three years.

11. Aggrieved with the order of conviction and sentence, the present appeal has been preferred on the grounds that conviction of the appellants is against the weight of evidence on record and bad in law. The sentence imposed by the learned trial court is too severe. Therefore, it is prayed that the appeal be allowed and the impugned judgment of conviction and sentence being set aside. The appellants be acquitted of all the charges.

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

13. A perusal of record transpires that the prosecution witness P.W.-1 Jagdish Narayan Tripathi has supported the prosecution case in his testimony. P.W.-2 Ashok Kumar who reached the spot after hearing the noise but did not witness the firing. P.W.-3 Jagat Narayan who saw the incident and stated against accused Puchchi. P.W.-4 Dr. N.C. Yadav has proved the medical report and injuries sustained by the complainant. P.W.-5 Sub Inspector Adil Rashid Khan is the Investigating Officer. He described the proceedings and the evidences collected during investigation.

14. After considering the evidence on record this Court finds that the presence of the injured at the place of the occurrence is established. The testimony of complainant P.W.-1 (the injured witness) is corroborated by the evidence of eye-witnesses. P.W.-2 Ashok Kumar and P.W.-3 Chheda Lal. The medical evidence also supports the ocular version to the extent that firearm related injuries were sustained by the injured. Therefore, the occurrence itself and the participation of the appellant in the offence stands proved.

15. The crucial aspect, however, relates to the nature of injuries. As per the testimony of P.W.-4 Dr. N.C. Yadav, the injured sustained only two injuries in the nature of abrasions and the injuries were superficial in nature. There was no fracture on the body of the injured. The injuries sustained by the injured were not opined by the doctor to be grievous or life threatening.

16. For conviction under Section 307 I.P.C. the prosecution must prove :-

(i) Intention or knowledge to cause death;

- (ii) An act done in furtherance of such intention;
- (iii) Nature of injury and surrounding circumstances reflecting such intention.

17. The Hon'ble Apex Court in **Sarju Prasad Vs. State of Bihar, AIR 1965 SC 843** has held that mere act of firing does not automatically attract Section 307 I.P.C. unless the intention to cause death is clearly established. Similarly, in **State of M.P. Vs. Saleem @ Chamaru and Anr, (2005) 5 SCC 554**, it was observed that the nature of injury, the weapon used and the surrounding circumstances are crucial in determining the intention.

18. In the present case, the injuries sustained by the complainant are simple and superficial in nature. No vital organ was targeted or damaged. The injuries do not reflect an intention to cause death. Thus, although firing is proved, the essential ingredients of intention to commit murder who attract section 307 I.P.C. are not established.

19. It was also argued on behalf of the appellants that even if the prosecution case is accepted in toto, the offence under Section 307 I.P.C. is not made out. At the highest, the case may fall within the ambit of Section 324 I.P.C., considering the nature of injuries.

20. Section 324 I.P.C. reads as under :-

"Voluntarily causing hurt by dangerous weapons or means.-

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

21. Section 324 I.P.C. provides for sentences for voluntarily causing hurt by dangerous weapon including firearms. Since the injuries were caused by firearm is proved but the nature of injury is simple and superficial, the act falls short of attempt to murder. The offence squarely falls within the ambit of Section 324 I.P.C. This Court holds that conviction under Section 307 I.P.C. is unjust, however, the appellants are liable to be convicted for offence under Section 324 I.P.C.

22. A perusal of record transpires that the appellants were sent to jail for a few months during trial and after their conviction considering that the incident is of the year 1982 and the appeal is pending for about 4 decades,

this Court finds it appropriate to modify the sentence.

23. Accordingly, the appeal is **partly allowed**. The conviction under Section 307 I.P.C. is hereby set aside. Instead, the appellants are convicted for offence under section 324 I.P.C. The sentence awarded by learned trial court is also set aside and the appellants are sentenced to the period already undergone.

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

25. All coercive measures, including notice to the sureties of the appellants vide order dated 20.01.2026, are cancelled/recalled.

26. A copy of this order be transmitted along with trial court record, if available, to concerned trial court for necessary compliance.

27. This court appreciates the assistance provided by Ms. Rashmi Srivastava, learned Amicus Curiae, who has assisted the Court and for the service rendered by him, an honorarium of Rs. 10,000/- shall be paid to him as per rules.

April 24, 2026
P. Pandey

(Mrs. Vani Ranjan Agrawal,J.)