



2026:AHJ:80112

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2807 of 1985

Mool Chand

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Sanjeev Kumar, V.P.Srivastava
Counsel for Respondent(s)	:	A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. The instant appeal has been preferred against the Judgment and Orders dated 18.9.1985 passed by the learned III Additional District & Sessions Judge, Moradabad in Sessions Trial No.2 of 1985 (State vs. Mool Chand, under Section 307 of the Indian Penal Code, Police Station Didauli, District Didauli, whereby the appellant has been convicted and sentenced as under:-

i) Under Section 307 I.P.C. - Rigorous Imprisonment for a period of three years to appellant

2. Heard learned counsel for the appellant and Sri Rahul Asthana, learned A.G.A. appearing for the State.

3. According to prosecution

At about 4:00 PM on 18.08.1984 there was a quarrel between the accused Mool Chand and the son of Kewal Singh. When Kewal Singh passed by that way he was also abused by Bhika who struck a lathi blow also on his back. Soon after the accused Mool Chand fired a shot from his gun, which caused injuries on the left side hand and ear of Kewal Singh. The first information report of the incident was lodged by Kewal Singh himself at 5:00 P.M. on the same day at Police Station Didauli. The police registered the case, and thereafter, the injured was medically examined and x-ray was done. The police visited the spot and recovered the tikki of the cartridge. A site map

was also prepared. After completing the investigation the police submitted the charge sheet against the accused on 22.9.1984.

4. In order to prove it's version, the prosecution examined P.W.-1 Kewal Singh; P.W.-2 Doli and P.W.-3 Sukhi Ram.

5. The Defense admitted the genuineness of the Chik report (Ext. ka-2), X-ray report (Ext. ka-3), X-ray plate (Ext. ka-4), Radiologist report (Ext. ka-5), injury report (Ext. ka-6), Recovery memo (Ext. ka-7), sketch map (Ext. ka-8), GD extract (Ext. ka-9) and Charge sheet (Ext. ka-10).

6. As far as the factum of injuries are concerned, the testimony of **P.W.1** has gone unchallenged and he deposed that the accused persons belonged to his own village and that Mool Chand was Bhika's son who fired a gun shot upon him. This occurrence was allegedly seen by Doli, Sukhi Ram and others. He admitted in his cross examination that since before this occurrence, he and the accused had strained relations and they were not on talking terms.

P.W.-2 Doli was examined for the prosecution who denied having seen the occurrence and this witness was declared hostile by the prosecution.

P.W.-3 Sukhi Ram also deposed that he and some others were sitting in the Gher of Pooran Singh and went to the spot near the house of Kewal Singh but he denied any injuries being caused to him in his presence and hence this witness was also declared hostile by the prosecution.

7. The injury report Exhibit-Ka-6 shows that injured Kewal Singh has sustained following injuries on his person:-

- (i). Lacerated wound .2 x .2 cm. on the ala of left ear from the external ear opening; margins inverted and blackend; advised for x-ray; blood clot present around the wound.
- (ii). Contusion 6 x 2 cm. on the right back 16 cm above the iliac bone read in colour.

The Doctor kept the injury no.1 under observation and advised x-ray. In his opinion injury No.2 was caused by some blunt object and the duration of both the injured was fresh. The radiologist report (Ext.-Ka-3) shows radio opaque foreign body shadow in the left ear louble region in both. A.P. and lateral views the x-ray of left ear. On its basis the Doctor gave a supplementary report (Ext.-Ka-5) to the same effect and observed that this injury was caused by firearm.

8. In the statement recorded under section 313 Cr.P.C the accused Bhika admitted signs of Pallet impacts on the walls of Kewal Singh.

9. The Learned trial court after considering the submissions of both the parties and appreciating the evidences adduced concluded that Kewal Singh's testimony that he sustained gun shot wounds on his left ear is corroborated by the said medical evidence. The act of firing by Mool Chand seems to be independent of any plan or intention shared by him with his father Bhika and therefore, Bhika is liable only for lathi blow U/s 323 IPC. On the other hand the co – accused Mool Chand is guilty of an offense U/s 307 IPC for attempting to cause murder of Kewal Singh.

10. The learned trial court after hearing the parties and appreciating the evidence was of the view that prosecution was able to prove the guilt of accused-appellant for the offence under Sections 307 IPC beyond reasonable doubt and convicted and sentenced him for the aforesaid offence. Aggrieved with the aforesaid conviction and sentence imposed vide the impugned judgment and order, the accused appellant has preferred the present appeal.

11. It was submitted by learned counsel for the appellant that from the prosecution evidence offence under Section 307 IPC is not made out in the present matter. Findings of the Trial Court about conviction and sentence against the accused-appellant under Section 307 IPC is illegal. At this juncture, learned counsel for the appellant referred to the entire evidence as

well as the injury report prepared in respect of injured Kewal Singh and argued that injuries said to have been caused by accused-appellant to the injured Kewal Singh is not on vital part. If entire prosecution case is taken into consideration then also at the most accused-appellant could be convicted only for the offence under Section 324 IPC. Since in this matter appellant has served out above one month imprisonment, relying upon the law laid down in **Criminal Appeal No. 3098 of 1982 (Asharaf & others Vs. State of U.P.)** and **Criminal Appeal No. 2842 of 1987 (Munua @ Bharat Narain Singh and others Vs. State of U.P.)**, it is submitted that the appeal may be decided extending leniency on the basis of imprisonment already undergone as no minimum sentence is provided for the offence under Sections 324 IPC. Furthermore, the prosecution witnesses have also not supported its case fully.

12. Per contra, learned A.G.A. argued that accused-appellant opened fire upon the injured Kewal Singh with intention to kill him. All the ingredients to constitute the offence under Section 307 IPC have been proved by the prosecution from its evidence. Medical evidence fully supports the oral version. Findings of the Trial Court recorded in the impugned judgment and order are based on correct appreciation of facts and evidence. Although no minimum sentence has been provided for the offence under Section 307 IPC yet sentence imposed by the Trial Court against the accused-appellant vide impugned judgment and order is adequate and proper and no further leniency is warranted in the matter.

13. I have considered rival submissions made by learned counsel for parties and have gone through entire record including case laws relied upon by the learned counsel for the appellant carefully.

14. In this matter, as is evident from record, since no other argument about involvement of accused-appellant was advanced on behalf of appellant, Court perused the entire record in light of submissions raised by learned counsel for the appellant to ascertain as to whether in the present matter

offence under Section 307 IPC is made out or not. Hence, in light of findings of the Trial Court about date, time and place of occurrence and also about involvement of accused-appellant in commission of present offence, I have analyzed the entire evidence adduced by the parties and find no error. Therefore, findings recorded by the Trial Court in the impugned judgment and order on the aforesaid issues need no interference.

15. Prosecution case is that accused-appellant opened fire upon injured Kewal Singh with intention to cause him grievous hurt/kill him. If injury report prepared in respect of injured Kewal Singh is minutely perused, it emerges that fire arm injury is on non-vital part. No blackening, tattooing or charring were found over the injury. No second fire arm shot was made. It is also evident from the record that although doctor, who examined the injured Kewal Singh advised X-ray and the Doctor gave supplementary report to the same effect. If such is the position then it is not possible to ascertain whether injuries caused to injured Kewal Singh were grievous in nature or not. If the injury report prepared in respect of injured Kewal Singh is taken in light of submission raised by learned counsel for the appellant, injuries were simple in nature. There is no repetition of fire. The attending circumstances emerged from the prosecution evidence itself indicate that fire made upon the injured Kewal Singh was not with intention to kill him. If such is the position, findings of the trial court that offence under Section 307 IPC against accused-appellant has been proved by the prosecution, in my considered opinion, is not based on correct appreciation of facts and evidence. Perusal of the impugned judgment and order also reveals that no discussions at all have been made by the Trial Court in the impugned judgment and order about constitution of offence under Section 307 IPC. Trial court erred in holding guilty to the appellant for committing the offence under Section 307 IPC. On close scrutiny of entire evidence available on record, it emerges that the appellant could only be held guilty for the offence under Section 324 IPC. Thus, on close scrutiny of the entire evidence, the findings recorded by the trial court on this point can be termed to illegal and

perverse and the same are not based on correct appreciation of evidence. Hence, the same require interference by this Court. In my opinion, the appellant is found guilty for the offence under Section 324 IPC and not for the offence under Section 307 IPC. Hence, submission raised by learned counsel for the appellant has some force and to this extent is acceptable and the appeal to this extent is liable to be allowed.

16. So far as the submission regarding sentence is concerned, it is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases.

17. It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of the offence and the manner in which it was executed or committed. It is the obligation of the court to constantly remind itself that the right of the victim, and be it said, on certain occasions the person aggrieved as well as the society at large can be victims, never be marginalized. The measure of punishment should be proportionate to the gravity of the offence. Object of sentencing should be to protect society and to deter the criminal in achieving the avowed object of law. Further, it is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. **[Vide : (Sumer Singh vs. Surajbhan Singh and others, (2014) 7 SCC 323, Sham Sunder vs. Puran, (1990) 4 SCC 731, M.P. v. Saleem, (2005) 5 SCC 554, Ravji v. State of Rajasthan,**

(1996) 2 SCC 175].

18. In view of the above propositions of law, the paramount principle that should be the guiding laser beam is that the punishment should be proportionate to the gravity of the offence.

19. The Apex Court in the case of **G. V. Siddaramesh Versus of State of Karnataka; 2010 (87) AIC 43 (SC)**, while allowing the appeal of the appellant, altered the sentence. Paragraph 31 of the said judgment is reproduced below:

"31. In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under Section 304-B I. P. C. However, his sentence of life imprisonment imposed by the Courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years' rigorous imprisonment would meet the ends of justice. We accordingly, while confirming the conviction of the appellant under Section 304-B, I. P. C., reduce the sentence of imprisonment for life to 10 years' rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed."

20. Applying the principles laid down by the Apex Court in the aforesaid judgments and having regard to the totality of the facts and circumstances of the case particularly the fact that no minimum sentence has been provided in the Indian Penal Code for the offence under Section 324 IPC as also in this case the appellant has served out considerable period of the sentence imposed upon him and this appeal is pending before this Court since 1985 i.e. for about 41 years, the delay deprives the rights of the appellant, I am of the considered view that the ends of justice would meet if the sentence of the appellant is reduced to the period already undergone with some reasonable amount of fine.

21. In the light of foregoing discussions, this appeal is liable to be allowed in part and the conviction of the appellant under Section 307 IPC is modified

and altered to the offence under Section 324 IPC. The impugned judgment and order dated 18.9.1985 is liable to be modified to the extent as discussed above.

22. Accordingly, the appeal is allowed in part. Conviction of the appellant for the offence under Section 307 IPC is altered and modified into the offence under Section 324 IPC but the sentence of imprisonment for the aforesaid offences is awarded to the appellant to the period already undergone imposing fine of Rs.5,000/- for the offence under Section 324 IPC. Fine amount imposed upon accused-appellant for the aforesaid offence shall be deposited by the appellant within three months from today. In case of default in payment of fine amount within the aforesaid period, the appellant shall serve out the entire sentence awarded to him by the Trial Court vide the impugned judgment and order.

23. Let a copy of this judgment along with lower court record be sent to Sessions Judge, Moradabad for compliance. A compliance report be sent to this Court. Copy of this order be also provided to the appellant through the concerned Jail Superintendent.

April 7, 2026
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(Mrs. Vani Ranjan Agrawal,J.)