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**Reserved On : 10.12.2025**  
**Delivered On : 7.5.2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL APPEAL No. - 748 of 1988**

Braham Prakash And Others

.....Appellant(s)

Versus

State

.....Respondent(s)

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|---------------------------|---|-------------------------------|
| Counsel for Appellant(s)  | : | Archana Singh , Pradeep Kumar |
| Counsel for Respondent(s) | : | A.G.A.                        |

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**Court No. - 89**

**HON'BLE ANIL KUMAR-X, J.**

1. Heard Smt. Archana Singh, learned Amicus Curiae for appellant and Sri Sushil Kumar Mishra, learned State Law Officer for State.
2. This appeal has been preferred against the judgment and order dated 25.03.1988 passed by the Additional Sessions Judge, Meerut in Sessions Trial No. 526 of 1986 (State vs. Brahma Prakash) and in Sessions Trial No. 589 of 1986 (State vs. Ganga Saran), convicting and sentencing appellant no. 1, Brahma Prakash, under Section 307 IPC to undergo seven years rigorous imprisonment and under Section 25 Arms Act to undergo one year rigorous imprisonment, and convicting and sentencing appellant no. 2, Ganga Saran, under Section 307 IPC read with Section 34 IPC to undergo seven years rigorous imprisonment.
3. The prosecution case is that the complainant, Nand Kishore, lives in R.K. Puram (Prem Vihar), opposite Mohalla Nai Mandi in Meerut city, along with his wife, Smt. Sukhpali. The accused, Ganga Sharan, was earlier a tenant in the complainant's house. He was evicted by the complainant because of his bad conduct. After eviction, Ganga Sharan started living in Indra Nagar, Meerut, and runs a cycle repair shop. On 23 April 1986 at about 2:45 PM, Ganga Sharan came to the complainant's house along with another person. He told his companion to kill the complainant and his wife because they had removed him from the house. Following this, his companion fired a shot from a country-made pistol, which hit the ear of the complainant's wife.
4. Hearing the gunshot and noise, Madan Lal Sharma and Chater Sain (a

Home Guard), along with a constable from Chowki Newla, reached the spot. With their help, the complainant managed to catch both accused persons outside the house. They were found with a country-made pistol and cartridges. The companion disclosed his name as Brahm Prakash. Both accused were then taken to the police station by the complainant and the witnesses.

5. A written complaint (Ext. Ka-1) was filed by P.W.-2 Nandlal at the Police Station Lisari Gate District Meerut. The accused persons, along with the country-made pistol and cartridges recovered from them, were handed over to the police. A case was registered against them in case crime no. 79/86 under Section 307 IPC and Section 25 of the Arms Act. After completing the investigation and obtaining permission from the District Magistrate for prosecution under the Arms Act, charge sheets (Ext. Ka-9 and Ka-10) were filed in the court of the Chief Judicial Magistrate (CJM), Meerut. This case was committed to the Sessions Court on charges were framed. Brahm Prakash was charged under Section 307 IPC and Section 25 Arms Act. Ganga Sharan was charged under Section 307 read with Section 34 IPC (common intention). Both accused denied the charges and chose to face trial.

6. The prosecution examined a total of seven witnesses. The prosecution has examined Smt. Sukhpali as P.W.1, Nand Kishore as P.M.2, Chater Sain as P.W.3, Dr.R.K. Jain as P..4, constable no.424 Jaipal Singh as P.W.5, Constable no. 1602 Jagdish Prasad as P.W.6 and Sub Inspector Surender Singh Chaudhry as P.W.7. Smt. Sukhpali Pail is P.W.2 ist he an injured of the alleged occurrence. complainant, eye-witness and husband of Smt. Sukhpali P.l.1. Chater Sain, Home Guard P.W.3 and Constable no. 1602 Jagdish Prasad P.W.6 are the independent eye witnesses according to the prosecution. P.4.4 is a doctor who has examined Smt. Sukhpali and has given his injury report (Ext. Ka-3). P.M.5 is the scribe of F.I.R. (Chik report) and he has also taken case property in custody vide recovery memo (Ext. Ka-2). P.W.7 Sub-Inspector Surender Singh is the Investigation Officer of the case.

7. P.W.-1 Sukhpali has supported the prosecution case. She stated that accused Ganga Saran was earlier a tenant in their house and was evicted about two months before the incident. She further stated that on the date of occurrence, she was lying on a cot in her house when accused Ganga Saran came there with his associate. Ganga Saran told his associate to kill her, upon which Brahm Prakash fired at her with a country-made pistol. The bullet hit her ear. On hearing the gunshot, she raised an alarm. The accused persons ran outside the house, where they were caught by her husband, a

Home Guard, and other persons of the locality. She further stated that she went to the police station along with her husband, where the report was lodged, and she was sent for medical examination. The accused were also taken to the police station, where on search, a country-made pistol and two cartridges were recovered from the possession of accused Brahm Prakash.

8. P.W.-2 Nand Kishore is the complainant and an eye witness. He has supported the prosecution case. He stated on oath that accused Ganga Sharan was his tenant about two months before the incident and was evicted from the house. At the time of leaving, Ganga Sharan had threatened to kill them and not allow them to live there. He proved the written complaint (Ext. Ka-1) and narrated the incident in the same manner as stated by P.W.-1. He further stated that at the time of the incident, he and his wife were sitting on a cot, while their children were sitting on another cot. The accused persons came and fired from the door of the house. After the shot was fired, they started running away. On hearing the alarm, he chased them. He stated that he, along with Chater Sain, Madan Pal, and the sister-in-law of Chater Sain, caught both the accused persons. He also proved the recovered articles (Ext. 1 to Ext. 3). He stated that Ext. 1 and Ext. 3 (pistol and cartridges) were recovered from accused Brahm Prakash, and the bullet (Ext. 2) was recovered from inside the house wall where it had struck after being fired. He further proved the recovery memo (Ext. Ka-2).

9. P.W.-3 Chater Sain stated in his examination-in-chief that his house is situated near the house of P.W.-2 Nand Kishore. On the date of incident, he heard the sound of a gunshot and the voice of Nand Kishore. On hearing this, he came out of his house and saw two persons coming out of the house of Nand Kishore. He further stated that he, along with Nand Kishore, Madan Pal, and one constable, chased and apprehended both the accused persons in a vacant plot situated in front of the house of Nand Kishore. However, in his cross-examination, he resiled from his earlier statement and stated that he reached the spot after the accused persons had already been arrested.

10. P.W.- Dr. R.K. Jain stated that he medically examined injured Smt. Sukhpali on 23-06-1986 at about 4:30 PM. He proved the injury report (Ext. Ka-3). He found a lacerated wound measuring 3 cm × 3 cm on the upper part of the left ear, which was through and through. He also found multiple abrasions measuring 3 cm × 3 cm on the left side of the head just behind the ear.

11. He stated that blackening and tattooing were absent, and the injuries were fresh. He further observed that the upper part of the ear was blown off. From the appearance of the injuries, it appeared that pellets had struck the ear. According to him, the injuries were caused by a firearm.

12. P.W.-5 Constable Jairam stated that he received the written report (Ext. Ka-1) from P.W.-2 Nand Kishore, on the basis of which he prepared the chik FIR No. 79 (Ext. Ka-4). He further stated that Nand Kishore, along with other persons, came to the police station and produced the arrested accused persons. He prepared the relevant memo (Ext. Ka-2) regarding the same. P.W.-6 Constable Jagdish Prasad stated that on 23-04-1986, while posted at Newla Police Outpost, he was going towards the outpost at about 2:30–2:40 PM and, upon reaching Delhi Road near Prem Vihar Colony, heard a gunshot. He ran towards the spot and saw commotion at the house of Nand Kishore, where Smt. Sukhpali was found weeping with a bleeding ear. He then saw two persons coming out of the house, one holding a country-made pistol, later identified as Brahm Prakash, and the other as Ganga Sharan. They tried to flee but were chased and apprehended in a vacant plot in front of the house; he apprehended Brahm Prakash while others caught Ganga Sharan. On search, pistol and cartridges (Ext. 1 and 3) were recovered from Brahm Prakash and a bullet (Ext. 2) was recovered from inside the house. He took the accused, injured, and witnesses to Police Station T.P. Nagar, where the articles were handed over and memo (Ext. Ka-2) was prepared, bearing his signature. He also took Smt. Sukhpali to P.L. Sharma Hospital for medical examination.

13. P.W.-7 S.I. Surendra Singh Chaudhary, to whom the investigation of the case was entrusted, stated that he carried out the investigation and recorded the statements of the witnesses. He proved the copy of the General Diary (Ext. Ka-1), the site plan/spot map (Ext. Ka-7), and the prosecution sanction for offence under Section 25 of the Arms Act. He further stated that after completing the investigation, he submitted the charge sheets (Ext. Ka-8, Ext. Ka-9 and Ext. Ka-10) before the court.

14. Statements of accused persons were recorded under Section 313 Cr.P.C. Accused Brahm Prakash has stated in his statement u/s 313 Cr. P.C. that he does not know about the alleged occurrence. He does not know the Ganga Sharan, co-accused. He was falsely implicated by the police. He filed his state-ment in writing and. e in which hen has filed Written Statement (36-Kha), and has stated that he was arrested in connectedd Gase with crime no.105/86 u/s 380/411 IPC Police Station T.P. Nager and is falsely implicated in this case. The accused Ganga Sharan in his statement u/s 313 Cr. P.C. has stated that he is falsely implicated by the police. He has admitted that complainant Nand Kishore's house is situated in R.K. Puram, Meerut, but he does not know whether Smt. Sukhpali resides with him or not. He has admitted that he was tenant in the house of Nand Kishore and he had vacated it two months before the alleged occurrence. The defence has produced D.W.-1 Dinesh Kumar Sharma, Record Keeper, Police Office,

Meerut, as D.W.1 and have filed copy of charge dated 20-9-86 framed by Sri N.A. Zaidi, Judicial Magistrate, against the accused Brahm Prakash and another (Ext. Kha-1), the copy of statement of Brahm Prakash, recorded by the Chief Judicial Saida Magistrate, (Ext. Kha-2), the copy of judgment in criminal case No. 5036/86 u/s 411 (Ext. Kha-3) and copy of order in relation to bail (Ext.K-4).

15. The Trial Court recorded a finding that the First Information Report was lodged promptly, inasmuch as the occurrence took place on 23-04-1986 at about 2:45 PM and the FIR came to be registered at about 3:30 PM, i.e., within a short span of approximately 45 minutes, leaving no scope for deliberation or false implication. It was further held that the statements of P.W.-1 Smt. Sukhpali and P.W.-2 Nand Kishore stand duly corroborated by the medical evidence of P.W.-4 Dr. R.K. Jain, who has clearly opined that the injuries were caused by a firearm and has ruled out the possibility of the same being caused by any hard and blunt object or sharp weapon. The Trial Court also recorded that the fact that P.W.-1 Smt. Sukhpali, P.W.-2 Nand Kishore and P.W.-6 Constable Jagdish Prasad reached the police station along with the apprehended accused persons lends further assurance to the prosecution case and rules out any doubt regarding the reliability and truthfulness of the prosecution version.

16. Learned counsel for the appellant has argued that P.W.-1 Smt. Sukhpali, in her cross-examination, has admitted that she became unconscious after the incident and regained consciousness after about two hours. In such circumstances, her statement that she went to the police station along with her husband immediately after the incident, as stated in her examination-in-chief, appears doubtful and unreliable. It is further argued that her version of the incident itself creates doubt. She has stated that the accused fired at her while standing at the door and that the distance between the door and the cot on which she was sitting was very small. If this statement is accepted as true, it is difficult to believe that a person intending to kill her would miss his aim or hit only her ear instead of causing a fatal injury. It has also been contended that the prosecution has failed to produce the Home Guard who allegedly helped in apprehending the accused persons along with the husband of the injured. P.W.-1 herself has stated that the said Home Guard was not a regular visitor to her house. Therefore, he was an independent and material witness, and non-examination of such a witness creates doubt in the prosecution case. Learned counsel has further argued that the alleged motive for the incident, namely eviction of accused Ganga Saran from the house, is not convincing. P.W.-2 Nand Kishore himself has admitted that the accused had vacated the house peacefully, which weakens the prosecution story regarding motive. Lastly, it is argued that no

blackening or tattooing was found on the injuries of Smt. Sukhpali, which casts doubt on the prosecution version of a close-range gunshot and makes the alleged manner of occurrence doubtful.

17. Learned A.G.A. has argued that the FIR in the present case was lodged promptly within a short time of the incident, which clearly supports the prosecution case and rules out any possibility of false implication. It is further submitted that the statements of P.W.-1 Smt. Sukhpali (injured witness) and P.W.-2 Nand Kishore are consistent and trustworthy, and stand corroborated by the medical evidence of P.W.-4 Dr. R.K. Jain, who has clearly opined that the injuries were caused by a firearm. It is also argued that the presence of P.W.-6 Constable Jagdish Prasad at the spot and the fact that the accused persons were apprehended on the spot along with the weapon further strengthens the prosecution case. The learned A.G.A. has contended that minor contradictions or omissions do not affect the core of the prosecution case, and the testimony of an injured witness carries great evidentiary value and cannot be discarded lightly. It is lastly submitted that the prosecution has successfully proved its case beyond reasonable doubt and the conviction recorded by the Trial Court calls for no interference.

18. Upon consideration of the record, this Court finds that the FIR in the present case was lodged promptly within about 45 minutes of the occurrence, which lends strong assurance to the prosecution version and leaves no scope for deliberation or false implication. The Court further finds that the accused persons were apprehended on the spot immediately after the incident. This fact stands corroborated not only by the statements of P.W.-1 Smt. Sukhpali and P.W.-2 Nand Kishore, but also by the testimony of P.W.-6 Constable Jagdish Prasad, who is an independent witness. His testimony is further strengthened by P.W.-5 Constable Jairam, who has stated that P.W.-1 and P.W.-2 reached the police station along with the accused persons. This chain of circumstances clearly supports the prosecution case regarding the spot arrest.

19. So far as motive is concerned, it is true that there is no strong evidence of any existing enmity on account of eviction. However, this circumstance also goes against the accused. In the absence of any enmity, there appears to be no reason for P.W.-2 to falsely implicate accused Ganga Saran. Even if such false implication is assumed, it raises further questions as to why the complainant would falsely implicate him after two months of his leaving the house, and further, why another accused Brahm Prakash, who was not previously known to the complainant or his wife, would also be implicated without any reason.

20. The Court also finds that not only was the FIR lodged promptly, but

the injured Smt. Sukhpali was medically examined within about one and a half hours of the incident. The injury report shows that her ear was blown off. The doctor has clearly opined that the injuries were caused by a firearm and has ruled out the possibility of their being caused by any other weapon or means. This medical evidence fully corroborates the ocular testimony. In view of the above, this Court finds no reason to disbelieve the prosecution case.

21. In view of the aforesaid discussion, the appeal lacks merit and is hereby **dismissed**. The judgment and order passed by the Trial Court are affirmed. It is noted that the appellant–accused Ganga Saran remained untraceable during the course of hearing of the appeal, on account of which an Amicus Curiae was appointed to represent him and argue the matter on his behalf.

22. Let the lower court record be transmitted to the Trial Court forthwith. The Trial Court shall take all necessary coercive measures to secure the arrest of the accused for execution of the sentence without any laxity. In case, despite best efforts, the accused remains untraceable, the Trial Court shall proceed to issue permanent warrant against him and ensure that necessary entry thereof is made in the General Diary of the concerned police station. The concerned court shall also send a compliance report to this Court, which shall be placed on record.

23. The State Legal Services Authority is hereby directed to remit the requisite fees as per Rules to Smt. Archana Singh, learned Amicus Curiae, in consideration of his valuable assistance rendered to this court.

**May 7, 2026**  
Mukesh

**(Anil Kumar-X,J.)**