



2026:AHC:65289

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1008 of 1988

Shiv Pal Singh And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Adil Jamal, Birendra Singh, Rakesh Kumar Singh, S.S.Bhadauria, S.Shekhar
Counsel for Respondent(s)	:	A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard Sri Rakesh Kumar Singh, learned counsel for the appellants and Sri Rahul Asthana, learned A.G.A. for the State

2. This appeal has been preferred against the judgment and order dated 25.04.1988 passed by Additional Sessions Judge, Jalaun at Orai in Sessions Trial No.177 of 1985, State Vs. Shiv Pal Singh and others, under sections 307/34 I.P.C., whereby the appellants Shiv Pal Singh, Bhoore Singh and Babu Singh were convicted and sentenced under Sections 307/34 I.P.C. for three years R.I. along with a fine of Rs.300/- each, and the appellant Ram Bahadur Singh was convicted under Section 307/34 I.P.C. for one year R.I. along with a fine of Rs.200/-.

3. During pendency of appeal, it has been brought on record that appellant No.2 Ram Bahadur Singh, appellant No.3 Bhoore Singh and appellant No.4 Babu Singh have expired. Considering the report dated 17.01.2017 submitted by the Chief Judicial Magistrate, Jalaun at Orai, the appeal in respect of appellant Nos.2, 3 and 4 had abated vide order dated 13.02.2017. The present appeal survives only with regard to the appellant No.1 Shiv Pal Singh.

4. The prosecution case, in brief, is that on 12.03.1985 at about 2.30 p.m., the complainant - Bishambher Singh was allegedly assaulted by the accused persons. It is alleged that the appellant Bhoore and co-accused Shiv Pal Singh fired at the complainant as a result of which he fell from his bicycle,

and thereafter co-accuse Babu Singh assaulted him with a Karauli.

5. The conviction is primarily based on the testimony of the injured witness P.W.-3 Bishambhar Singh and supporting statements of other eye-witnesses Kishan Swaroop and P.W.-2 Bhadu along with medical evidence, injury report Ext. Ka-4 and statement of P.W.-6 Dr. D.K. Pateria.

6. On the basis of written report Ext. Ka-1 regarding the incident, FIR Ext. Ka-2 was registered and G.D. Entry Ext. Ka-3 was drawn. The injured was medically examined by the police. Injury report Ext. Ka-4 is available on record. During investigation of the case, site plan of place of occurrence has been prepared that has been proved as Ext. Ka-5 by the Investigating Officer after investigation of the case, charge-sheet Ext. Ka-6 was submitted.

7. Charge under Section 307 I.P.C. read with Section 34 I.P.C. has been framed and read over to the accused. The accused denied the charges levelled against him and claimed trial. The prosecution has examined as many as 7 witnesses. P.W.-1 Kishan Swaroop, P.W.-2 Bhadu, P.W.-3 Bishambhar Singh, P.W.-4 Raghuveer Singh, P.W.-5 Sudhir Kumar, P.W.-6 Dr. D.K. Pateria and P.W.-7 S.I. Bardan Singh.

8. The accused denied all the charges levelled against him in his statement recorded under Section 313 Cr.P.C. The defence evidence have not been adduced.

9. Learned trial court, after hearing the arguments and considering the oral and documentary evidence on record, returned a finding of conviction and convicted the accused persons for offence under Section 307 I.P.C. and sentenced to undergo 3 years of rigorous imprisonment along with a fine to the tune of Rs.300/- each.

10. Learned counsel for the appellant has contended that even if the prosecution case is taken at its highest, the essential ingredients of Section 307 I.P.C. are not made out. It is submitted that the injury sustained by the injured was not shown to be dangerous to life and likely to cause death. The injured was not hospitalized even for a single day for the treatment of injuries sustained in the incident. The injuries were not on vital parts of the body and, therefore, at best, an offence under Section 324 I.P.C. is made out.

11. Per contra, learned A.G.A. for the State has supported the judgment of conviction.

12. Having considered the submissions and perused the record, this Court finds that the core question is whether the offence under Section 307 I.P.C. is made out against the appellant.

13. It is well settled that to attract Section 307 I.P.C., the prosecution must establish the intention or knowledge to cause death coupled with an overt act. The nature of injuries, the part of the body where injuries are caused are also relevant factors to infer such intention.

14. In the present case, the medical evidence indicates that the injured sustained as many as 11 injuries, out of which only two were opined to be possibly caused by fire-arm. However, there is no categorical medical opinion that the said injuries were likely to cause death or that they were dangerous to life. It is also noteworthy that the injured was not admitted to hospital even for a single day for the treatment of injuries sustained in the incident and no material has been brought on record to indicate that his life was in danger at any point of time. The injuries are not shown to have been inflicted on vital parts of the body in a manner suggested on intention to cause to death.

15. In such circumstances, ingredients required to sustain conviction under Section 307 I.P.C. are not satisfactorily established. However, the prosecution evidence clearly establishes that the appellant caused injuries to the complainant by use of fire-arm which is a dangerous weapon, therefore, the offence falls within the ambit of Section 324 I.P.C. 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."

16. Considering the facts and circumstances including the nature of injuries, this Court is of the considered opinion that offence under Section 307 I.P.C. is not made out, therefore, the conviction and sentence recorded under Section 307 I.P.C. is hereby set aside and the appellant is convicted for the offence under Section 324 I.P.C.

17. So far as the question of extending benefit of Section 4 of Probation of Offenders Act to the appellant is concerned, it is essential to discuss the legal position and law pronounced. In this regard, Section 4 of the Probation of the Offenders Act, 1958 is extracted hereinunder :-

"4. Power of court to release certain offenders on probation of good conduct.-(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond. "

18. A similar provision finds place in the Code of Criminal Procedure, there, Section 360 provides :-

Section 360- Order to release on probation of good conduct or after admonition :-

When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years, or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour;

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by Sub-Section (2).

19. After considering the fact that the appellant has no criminal antecedents, the occurrence is of the year 1985. The appellant has faced the ordeal of trial and appeal for a long period. No adverse material has been produced regarding misconduct during the pendency of trial and appeal. In these circumstances, this Court finds appropriate to invoke the provisions of

Section 4 of Probation of Offenders Act, 1958 instead of sending the appellant to imprisonment.

20. The appellant Shiv Pal Singh is directed to be released on probation on good conduct for a period of one year on his furnishing personal bond of Rs. 10000/- and one surety in the like sum before District Probation Officer concerned and also an undertaking to the effect that he shall maintain peace and good behaviour during the period of one year from today.

21. The said bonds are to be filed by the appellant within a period of three months from the date of receipt of certified copy of this judgment.

22. In case of breach of any of the conditions, the appellant shall be taken into custody and shall have to undergo sentence awarded to him.

23. With the above modification, the instant criminal appeal is partly allowed.

24. A certified copy of the order be also sent to the concerned Court for compliance. Trial Court record shall also be sent back to the District Court concerned.

(Mrs. Vani Ranjan Agrawal,J.)

February 19, 2026

P. Pandey