



2026:AHC:191685

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 278 of 1988

Shiv Narain and others

.....Appellant(s)

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State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Govind Saran Hajela, K.s. Tiwari
Counsel for Respondent(s)	: A.G.A.

Court No. - 76

HON'BLE SAMIT GOPAL, J.

1. This appeal has been preferred by the appellants Shiv Narayan, Ram Roop, Dev Prasad, Ram Milan, Gorey Lal and Jaikaran alias Jai Narayan under Section 374(2) Cr.P.C. against the judgment and order dated 03.02.1988 passed by IInd Additional Sessions Judge, Banda in Sessions Trial No.270 of 1986 (State of U.P. vs. Shiv Narayan and 6 others) whereby the accused/appellants Gorey Lal, Ram Milan, Dev Prasad and Jaikaran have been convicted and sentenced under Section 147 IPC to six months' rigorous imprisonment; accused Shiv Narayan and Ram Roop have been convicted and sentenced for offence under Section 148 IPC to one year's rigorous imprisonment, accused Gorey Lal, Ram

Milan, Dev Prasad, Jaikaran, Shiv Narayan and Ram Roop have been convicted and sentenced under Section 307 read with 149 IPC to four years' rigorous imprisonment and a fine of Rs.500/-. In default of payment of fine, they have been ordered to further suffer six months' rigorous imprisonment. They are further convicted and sentenced under Section 323 read with 149 IPC to one year's rigorous imprisonment. The sentences have been ordered to run concurrently.

2. By the same judgment and order, accused Shiv Das, who was also tried with them, has been acquitted of the charges levelled against him for offence under Sections 147, 148, 307/149, 323/149 IPC.

3. The facts of the case are that a tehrir dated 28.03.1986 was given by Kunjalwa to S.H.O., Police Station Marka, District Banda of which Satya Narayan is a scribe alleging therein that on 28.03.1986 at about 10:00 A.M., he was going to his house from the house of Village Pradhan and when he reached the house of Shiv Narayan, accused Shiv Narayan armed with a gun, Ram Roop armed with a gun; Gorey Lal, Ram Milan, Dev Prasad and their brother-in-law Jai Karan and Shiv Das Kumhar armed with guns and lathies came. They surrounded him and caught hold of him and assaulted him with lathies. After it Shiv Narayan and Ram Roop fired on him to kill him which went above his head and he got saved. When the accused picked their gun to fire again, he snatched their gun from them which is numbered as Gun No.11149-82 after which again they assaulted him with lathies. On his shout and shriek, Ram Roop Yadav, Kedar Yadav, Shiv Pujan Yadav, Deshraj Yadav, Bhola Yadav, Pattu Yadav, Nathu Chamar, Debiya

Pasi, Sundar Pasi, Maiyadeen Pasi and Ram Kripal Pasi came there and saved him. He has come along with the said gun which he is submitting. An incident like this had previously occurred in January 1986 in which also these accused were involved. A report be lodged and action be taken. The said tehrir is marked as Exb. Ka-1 to the records.

4. On the basis of the said tehrir, the first information report was lodged on 28.03.1986 at 16:00 P.M. as Case Crime No.19 of 1986, under Sections 147, 148, 149, 307, 323 IPC, Police Station Marka, District Banda. The Chik FIR is Exb. Ka-4 to the records.

5. The SBBL Gun No.11149/82 was taken into possession by the Investigating Officer and its memo was prepared on 28.03.1986. The same is Exb.- Ka-6 to the records.

6. The accused Kunjalwa was medically examined on 28.03.1986 at 05:30 P.M. by the Medical Officer, PHC, Baberu. The doctor found the following injuries on the body of the injured:

1. Contusion 14 Cms. X 2 Cms. on the back of right chest placed obliquely 10 Cms. below angle of scapula.
2. Contusion 11 Cms. X 2.5 Cms. on the outer side back of right side of chest 8 Cms. above injury no.1.
3. Contusion 8 Cms. X 5.5 Cms. on the back of right forearm 2 Cms. above wrist joint.
4. Contused swelling 9 Cms. X 7.5 Cms. on the back of left hand.
5. Lacerated wound 2 Cms. X 0.2 Cm. X 0-5 Cm. on the web between little and ring finger left hand.
6. Contusion 10 Cms. X 2.5 Cms. on the inner side of right thigh 7 Cms. above knee joint.

7. Contused swelling 16 Cms. X 13 Cms. on the inner side and front of right knee joint.

8. Contused swelling 18 Cms. X 11 Cms. on the front of left leg from 18 Cms. above ankle joint.

9. Contusion 12 Cms. X 10 Cms. on the front and inner side of right knee joint.

10. Contusion 9 Cms. X 8 Cms. on the dorsum of left foot.

11. Abraded contusion 2.5 Cms. X 1.5 Cms. on the back of right elbow joint.

12. Contusion 9 Cms. X 8 Cms. on the right hip.

13. Incised wound 1.5 Cms. X 0.2 Cm. X superficial skin deep spindle shaped, margin sharp, clear cut.

6.1 The opinion of the doctor was that Injury Nos. 1 to 11 were caused by blunt object while injury No. 12 was caused by sharp weapon. The duration of injuries was half day old. The injuries were simple in nature except Injury Nos. 2, 4, 7 & 8.

6.2 X-ray chest for injury No. 2, X-ray left hand for injury No. 4, X-ray right knee joint for injury No. 7 and X-ray left leg for injury No. 8 were advised for which he was referred to District Hospital, Banda. The said injury report is Exb.-Ka-3 to the records.

7. The investigation concluded and chargesheet No.11 of 1986 dated 23.04.1986 under Sections 148, 149, 307, 324 IPC was filed against all the accused. The chargesheet against Gorey Lal and Jaikaran was filed as absconder. The chargesheet is Exb.-Ka-8 to the records.

7.1 Subsequently, a Chargesheet No. 11-A dated 20.06.1986 under Sections 148, 149, 307, 324 IPC was

filed against Gorey Lal and Jaikaran. The same is Exb.-Ka-2 to the records.

8. The Court of Special Judge, (DAA), Banda vide order dated 25.09.1986 framed charges against Gorey Lal, Ram Milan, Deo Prasad, Jai Karan and Sheo Das under Sections 147 IPC, 307/149 IPC and 323/149 IPC.

8.1 The charge was framed by the same Court vide order dated 25.09.1986 against Shiv Narayan and Ram Roop under Sections 148 IPC, 307 IPC and 323/149 IPC. All the accused were read over the charges which was explained to them to which they pleaded 'not guilty' and claimed to be tried.

9. The prosecution in order to prove its case produced and examined Kunjalwa, the first informant and the injured as PW-1, Desh Raj as PW-2 and Pattu as PW-3 who were the alleged eyewitnesses of the incident. Sub Inspector Chintamani (PW-4) is the second Investigating Officer of the matter who took over the investigation from Sub Inspector Asfaq Ahmad (PW-6) and concluded it and filed chargesheet Exb.Ka-2 against the said two accused. Dr. R.S. Gupta (PW-5) medically examined the injured Kunjalawa. Sub Inspector Asfaq Ahmad (PW-6) is the Investigating Officer of the matter who has formally proved the chik FIR, its corresponding GD prepared by Head Constable Raja Ram Yadav who recorded the statements of the witnesses and prepared site plan Exb. Ka-7. He then filed chargesheet against all accused including two as absconder which is Exb. Ka-8 to the records.

10. Samarjeet Singh was examined as DW-1 for deposing in favour of Ram Roop. Babu Lal Singh who was examined as DW-2 who also stated and repeated the same version as that of DW-1 Samarjeet Singh.

11. The accused in their statements under Section 313 Cr.P.C. denied the prosecution version and stated to have been falsely implicated in the present matter due to enmity. Ram Roop stated that he was harvesting his crop wherein at about 8:00 A.M. the Village Pradhan Ram Raj, Kunjalawa, Dibiya, Sundarwa, Shiv Pujan, Shiv Baran, Ram Roop and other persons came there after which Kunjalawa caught hold of his gun. On the alarm raised, his labourers came to the said place and had beaten Kunjalawa. Ram Raj and others started beating him and snatched his gun. He also filed his statement in writing to the said effect. He states that he had gone to lodge a report at the police station but his report was not lodged. In his defence, he examined two witnesses.

12. During pendency of this appeal, appellant No. 2 Ram Roop died and thus his appeal stood abated vide order dated 30.07.2026. Further, Gorey Lal is also reported to have died and thus his appeal also stands abated. The appeal survives only with regards to appellant No. 1, Shiv Narayan, appellant No. 3 Dev Prasad, appellant No. 4 Ram Milan and appellant No. 6 Jaikaran alias Jai Narayan.

13. PW-1 Kunjalwa is the first informant of the matter and also alleged injured in the matter. He narrates the version of the incident as per first information report which was registered on the basis of a tehir given by

him. He states that the accused are resident of his village and he knows them. He states of the injuries received by him and his medical examination. He states of dictating the tehrir and then the same was read out to him and affixed his thumb impression on it. He proves the same. He further states that he was admitted in the hospital for about 10-15 days.

14. PW-2 Deshraj is the alleged eyewitness of the incident. He states that he did not see the accused assaulting Kunjalwa. He states that he did not see any such incident. The witness was declared hostile.

15. Pattu PW-3 is also an alleged eyewitness of the incident. He states that he did not see the accused who are present in court assaulting Kunjalwa. He was also declared hostile.

16. Sub Inspector Chintamani (PW-4) states that he took up the investigation and before it, the matter was being investigated by Sub Inspector Asfaq Ahmad. He filed chargesheet against Gorey Lal and Jai Karan on 20.06.1986. The chargesheet against five other accused was filed by Sub Inspector Asfaq Ahmad on 23.04.1986. He proves the chargesheet filed by him as Exb.Ka-2 to the records.

17. Dr. R.S. Gupta (PW-5) was posted as the Medical Officer, PHC Baberu. He states of conducting the medical examination of the injured Kunjalwa and preparing the injury report. The details of the injury report has already been given above and thus, the same is not reiterated herein. He also states about the opinion given by him in the same.

18. Sub Inspector Asfaq Ahmad (PW-6) is the first Investigating Officer of the matter. He proves the hand writing of Head Constable Raja Ram Yadav, who transcribed the chik FIR and its corresponding GD. He also proves the recovery memo of the gun which was given to him along with one cartridge. He states of recording of the statements of witnesses and then concluding the investigation with regard to five accused and filing a chargesheet against them on 23.04.1986. He proves the said chargesheet as Exb.Ka-8 to the records.

19. Samarjeet Singh (DW-1) states that he knows Kunjalwa who is of his village. He also knows the accused who are also of his village. He states that Ram Roop was harvesting his crops at Sadbhavna Har, where 15-20 labourers were working. He was also harvesting his crop in the adjacent field. Kunjalwa came there and caught hold of Ram Roop. Ram Roop was holding a gun. Kunjalwa snatched his gun and in the meantime, the labourers ran to the place. In the meantime, 7-8 other peoples also reached there. Sundarwa, Dibiya, Maiyadeen and Ram Raj, Village Pradhan, came there who were armed with lathies and they all snatched the gun of Ram Roop. The labourers had assaulted Kunjalwa with lathi and hansiya. Apart from him, Babu Lal also reached there and they intervened to save them. The persons then took away the gun and went away. Babu Lal (DW-2) also reiterated the same version as given by DW-1.

20. Learned counsel for the appellants submits that the appellants have been falsely implicated in the instant case. It is submitted that the prosecution version is not

truthful inasmuch as the incident as stated in the FIR did not occur in the said manner but had occurred in a different manner for which accused Ram Roop has fairly stated in his statement under Section 313 Cr.P.C. and also in his written statement. It is submitted that even he has stated that he went to the police station to lodge his report which was not registered. It is submitted that Ram Roop has produced two witnesses in defence who have also stated of the incident occurring in a different manner and not as per the version of the FIR. It is further submitted that the injured Kunjalwa although was found to have received 13 injuries but except for injuries No. 2, 4, 7 and 8, all the other injuries were opined to be simple in nature whereas the said four injuries were advised for X-ray and he was referred to the District Hospital, Banda for X-ray and further treatment but there is nothing on record to show that any X-ray examination for the said injuries were conducted and any further opinion regarding nature of the said four injuries has come on record and thus a fair conclusion can be drawn that even the said injuries were simple in nature. It is further submitted that insofar as the injury No. 13 is concerned, the same is described as incised wound and the doctor has opined it to have been caused by sharp weapon but as per the prosecution version there is no accused armed with any sharp weapon and thus, even the prosecution is not truthful with regard to the manner of assault and even the weapon of assault. It is submitted that thus the prosecution story in all even after considering the fact that Kunjalwa has received injuries would not be truthful as alleged. It is submitted further that the further aspect of the matter is that two witnesses namely

Desh Raj (PW-2) and Pattu (PW-3) were examined as alleged eyewitnesses who were named as the persons with others who reached the place of occurrence and had saved the injured but the said two witnesses have not supported the prosecution case and have been declared hostile. It is submitted that there is no other independent witness produced and examined by the prosecution in the matter despite the fact that as per the FIR many other persons reached at the place of occurrence and had saved the first informant who is the alleged injured. It is submitted further that although the prosecution version states that Shiv Narayan and Ram Roop fired upon the first informant, Kunjalwa, with their guns but the said fire as per prosecution version did not hit him and he was saved. It is submitted that the said version is only because of the reason that the SBBL gun was taken away by the informant and deposited with the police along with the tehrir and thus just in order to give the colour of use of the gun an ornamental allegation of firing has been stated. It is submitted that that there is nothing on record to show that firing at the said place was done inasmuch as the said gun was never sent for any ballistic opinion and even there is no empty cartridges recovered to show that any firing from the said weapon was done. It is submitted that thus the case of the prosecution simplicitor stands of simple injuries to the first informant/injured and even amongst it one of the injuries being an incised wound which has been opined to be caused by sharp weapon has not been explained by the prosecution as to how it was received by him and thus the prosecution is not truthful. It is submitted that no offence thus under Section 307/149 IPC is made out. The case at the best would be a case

under Sections 323/149 IPC. It is submitted further that the interest of justice would serve if the surviving appellants are directed to be released on the period undergone by them and appropriate compensation is ordered to be paid to the first informant/ injured and/or his legal heirs as the case may be meet the ends of justice looking to the time which has elapsed since the day of occurrence. It is stated by learned counsel for the appellants that any compensation, if awarded, shall not be treated as a fine or enhancement of sentence by the accused. It is submitted that the accused/appellants, now senior citizens and are above 62 years of age and now the incident also has taken place around more than 40 years back.

21. Learned counsel for the State has also been heard at length who submits that the judgment and order in the matter is on merits and trial court has meticulously dealt with the matter and the prosecution has proved its case beyond reasonable doubt. It is submitted that the appeal is devoid of any merit and deserves to be dismissed.

22. After having heard the learned counsel for the parties and perused the record, it is evident in the present matter that seven accused were tried and out of them, one accused namely Shiv Das was acquitted of the charges levelled against him. Six persons were convicted and sentenced who have preferred an appeal before this Court. Out of the six appellants two have died during pendency of the appeal and their appeals stand abated and as of now only four appellants remain before this Court. The injuries received by the first informant/injured Kunjalwa are 13 in number. Four

injuries were opined for X-ray and he was referred for X-ray examination and further treatment. The doctor opined the other injuries to be simple in nature. There is nothing on record to show that any x-ray examination was conducted and any further medical report regarding the said four injuries was produced. Out of the said 13 injuries, one injury was incised wound which was opined to have been caused by sharp weapon as per the doctor conducting his medical examination. The prosecution version is of use of the gun and lathies only. Insofar as the incised wound is concerned, the same was opined to have been caused by sharp weapon but there is no allegation of use of any sharp weapon in the present matter. Specific case of the prosecution is that the gunshot did not hit the injured although a SBBL gun was snatched by the first informant and given to the police of which a recovery memo was prepared but there is nothing on record to show that there was use of the said weapon as it was not subjected to any ballistic examination. Even no empty cartridges were found or recovered in the present matter. The accused Ram Roop in his defence states that the first informant and his associates came to his field and where they had apprehended him after which on shout and shriek, his labourers came there and first informant was assaulted by them. He has even stated of the same in his written statement before the court. The defence witnesses have been examined for the said purposes. Two eyewitnesses were produced by the prosecution being Desh Raj (PW-2) and Pattu (PW-3) who have been cited in the FIR as eyewitnesses along with many other persons. The said two eyewitnesses have not supported the prosecution case and have been declared hostile. There is no other

independent person who has been produced by the prosecution to prove its case. The injuries sustained by the informant/injured Kunjalwa, in the absence of any supplementary medical report, can safely be termed as simple in nature. The accused are convicted and sentenced under Section 323/149 IPC. The ends of justice after more than 40 years in the present matter would suffice if the accused are directed to be released on the period undergone by them in jail. However, compensation of Rs.5000/- each is awarded to all of them which is directed to be paid by them in the court of Chief Judicial Magistrate, Banda within a period of 45 days from today which shall be disbursed to the first informant/injured/Kunjalwa (PW-1) and/or his legal heirs as the case may be after due verification of their identity as per rules.

23. The appeal thus is partly **allowed**.

24. The appellants are on bail. They need not surrender unless wanted in any other case. The bail bonds are cancelled and sureties stands discharged. In the event, compensation as awarded is not deposited by them in the time as provided aforesaid, the conviction and sentence as awarded by the trial court shall operate.

(Samit Gopal,J.)

September 14, 2026

Mukesh Kumar