



2026:AHJ:94705

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 430 of 2020

Prashant @ Pinta Yadav

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Ram Ashish Pandey
Counsel for Respondent(s)	:	G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This appeal has been filed by the appellant against the judgment and order dated 11.12.2019 passed by learned Additional Session Judge, Court No.8, Etawah, in Session Trial No.137 of 2012, arising out of Case Crime No.324 of 2010, under Sections 307, 504, 506(2) I.P.C. and in Session Trial No. 138 of 2012, arising out of Case Crime No.325 of 2010, under Section 25 of Arms Act, Police Station- Basrehar, District- Etawah.
2. Heard Sri Ram Ashish Pandey, learned counsel for the appellant and Sri Rahul Asthana, learned A.G.A. for the State.
3. The prosecution case, as per the first information report lodged by the complainant, Ram Khiladi, is that on 12.12.2010 at about 8.00 p.m., while he was sitting with other villagers namely, Pradeep Kumar, Kitab Singh and Vinod Kumar near his house, the accused along with his other companion came there and started abusing. Upon objection, he allegedly fired at the informant with intention to kill him but no one sustained any injury of firearm. It is further alleged that the informant and others apprehended the accused Prashant and snatched his pistol. Thereafter co-accused Ankesh allegedly threatened them to release Prashant, failing which they would be killed and also fired another shot, creating panic. Taking advantage of the situation, the accused escaped. The informant took the snatched country-made pistol to the police station and lodged an FIR.
4. After investigation of the case, charge-sheet was submitted for offences under Section 307 read with Section 34, 504, 506 (2) I.P.C. and Section 25 of Arms Act.
5. Charges were framed against the accused. He pleaded not guilty and claimed trial.
6. In order to prove its case beyond reasonable doubt, the prosecution has

examined, P.W.-1 the complainant Ram Khiladi, P.W.-2 Pradeep, P.W.-3 Vinod Kumar, P.W.-4 Kitab Singh and P.W.-5 Constable Kaushal Kumar.

7. Documentary evidences written report Ext. Ka-1, recovery memo Ext. Ka-2, FIR Ext. Ka-3, Carbon Copy G.D. Ext. Ka-4, Site Plan Ext. Ka-5, Charge-sheet for offence under Section 307, 504, 506 Ext. Ka-6, charge-sheet under Section 25 Arms Act Ext. Ka-7, Certified copy of FIR Ext. Ka-8, Certified copy of G.D. entries Ext. Ka-9 and prosecution sanction Ext. Ka-10 are on record.

8. The complainant P.W.-1 Ram Khiladi in his examination-in-chief, supported the prosecution version, however, during cross-examination, he turned hostile and stated that the accused present in Court were not the persons who fired on the spot and he could not identify the miscreants due to darkness.

9. P.W.-2 Pradeep stated that he did not witness the incident because he was locked inside the room by his aunt. P.W.-3 Vinod Kumar stated that he was not present at the time of occurrence. He came to know about the incident only on next day.

10. P.W.-4 Kitab Singh also not supported the prosecution version and stated that no such incident of firing was known to him. No injury was caused to everyone. He was unaware whether any firing actually took place.

11. The P.W.-5 constable Kaushal Kumar had proved the chik report and copy of G.D. entry but admitted that the weapon was produced by the informant himself. It was not recovered from the possession of the accused. The Investigating Officer could not be examined due to his death. Documents such as the site plan and charge-sheet were formally proved but their contents remained unproved.

12. The learned trial court, after considering the oral and documentary evidence, returned the finding of guilt and convicted the appellant for offence under Section 307, 504, 506 I.P.C. and section 25 Arms Act and sentenced accordingly.

13. Aggrieved with the judgment of conviction and sentence, this appeal has been preferred.

14. It is submitted that the judgment and order dated 11.12.2019 passed by the trial court is arbitrary, perverse and bad in the eyes of law. The learned court below has committed manifest error in appreciation of law and facts. The order of conviction passed by the learned trial court is absolutely illegal, unjust, improper and arbitrary in nature and totally against the weight of evidence on record. Therefore, it is prayed that appeal may be allowed and the impugned judgment and order dated

11.12.2019 be set aside.

15. Learned A.G.A. supports the judgment of conviction and sentence.

16. It is highly significant that no pellets, empty cartridges or marks of firing were recovered from the spot. No person sustained any injury despite alleged close range firing. No independent witness has corroborated the factum of firing even prosecution witnesses. P.W.-2 to P.W.-4 had not supported the prosecution version regarding firing on the spot. The allegation of firing rests solely on the unreliable and hostile testimony of P.W.-1 Ram Khiladi. The alleged weapon was not connected with the incident.

17. A crucial lapse in the prosecution case is that the alleged weapon was not sent for forensic examination. No ballistic report has been brought on record. No expert report has been adduced to establish whether the weapon was in working condition, whether it had been recently fired, or whether any cartridges allegedly found was connected to the weapon. In cases involving use of firearm, ballistic examination assumes great significance, particularly when no injury is caused. No pellets, cartridges or marks of firing are recovered from the spot. The absence of forensic evidence creates serious doubt as to whether the alleged weapon was capable of firing at all and whether any firing actually took place and whether the weapon produced before the Court was connected with the alleged accused.

18. It is also to be considered whether the essential ingredients of Section 307 I.P.C. namely the intention or knowledge to cause death coupled with an overt act towards its commission, stand prove beyond reasonable doubt.

19. It is well settled that for attracting Section 307 I.P.C., the prosecution must establish specific intention or knowledge to cause death and an overt act done towards commission of murder. The act must be of such a nature that if death has ensued, the offence would have amounted to murder.

20. 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.

21. In present case, no person had sustained any injury whosoever the alleged firing did not result even in a superficial hurt. There is no other and reliable evidence to establish intention to kill.

22. From the overall evidence, it emerges that the alleged act even if accepted at face value does not disclose a clear intention to commit murder. At best, it may indicate a general act of threat or intimidation but not an attempt to murder. The *mens rea* required under Section 307 I.P.C. remains unestablished. The evidence on record does not inspire confidence to sustain conviction under Section 307 I.P.C. The conviction recorded by the trial court is unsustainable in law.

23. So far as the conviction for offence under Section 504 I.P.C. is concerned, the informant alleged that the accused abused him by using filthy language and thereby committed an offence under Section 504 I.P.C., however, it is noteworthy that none of the witness disclosed the exact words allegedly used as an abusive language. The evidence remains general and omnibus in nature without specifying the nature of insult.

24. Section 504 reads as under :-

"Intentional insult with intent to provoke breach of the peace

Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

25. To sustain a conviction under Section 504 I.P.C. the prosecution must establish :-

- (i) The insult must be intentional and of such a nature as to provoke a person; and
- (ii) The accused must intended or knew that such provocation could cause the person to break the public peace or commit an offence.

26. The Hon'ble Apex Court consistently held that mere vague allegation of abuse is insufficient. The prosecution must prove specific words used and the intent to provoke breach of peace.

27. In the present case, the prosecution has made general allegation of abuse. No witness specified the actual words allegedly uttered by the accused. There is no evidence to show that the alleged abuse was of such a nature as to provoke breach of peace. The prosecution has failed to establish the essential ingredient of Section 504 I.P.C., the conviction recorded by the trial court is based on vague and insufficient evidence which is not sustainable in law.

28. Section 506 I.P.C. reads as under :-

" Punishment for criminal intimidation

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc – and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

29. According to the prosecution the accused Prashant already fired a shot and when he was apprehended on the spot by the informant and others co-accused Ankesh allegedly extended a threat stating that the accused be released or else they would be killed. It is further alleged that due to such threat the accused persons managed to escape from the spot. Most of the prosecution witnesses did not support the said version. They were declared hostile. The witnesses examined by the prosecution did not corroborate the allegations of criminal intimidation. There is no consistent or reliable evidence proving the alleged threat. Moreover the role extending threat has been attributed to co-accused Ankesh.

30. To constitute an offence under Section 506 I.P.C., there must be a threat of causing injury to person, reputation or property. The threat must be given with intent to cause alarm to the victim and must be of such as to compel the victim to do an illegal act or omit to do an act which he is legally entitled to do.

31. Mere expression of words without intention to cause a harm does not constitute an offence under Section 506 I.P.C. The prosecution must prove that the threat was real, specific and intended to cause alarm.

32. Upon careful scrutiny of the evidence this Court finds the allegation of threat is supportive only by the informant Ram Khiladi in his examination in chief and not corroborated with other witnesses. The alleged words of threat are not specifically proved nor consistently narrated.

33. In criminal jurisprudence conviction cannot be sustained on uncorroborated and unreliable testimony, particularly when material witnesses have not supported the prosecution case.

34. The evidence on record fails to establish the nature of threat, the intention to cause alarm, the impact of such threat, the essential ingredient of Section 506 I.P.C. remains unproved. The conviction recorded by the

trial court for offence under Section 506 I.P.C. is unsustainable in law.

35. To sustain a conviction for offence under Section 25 Arms Act, 1959, the prosecution must establish conscious and exclusive possession of the firearm by the accused. Recovery of weapon from possession of accused in lawful manner, proper seizure, sealing and chain of custody, compliance with procedural safeguards and credible evidence connecting the weapon with the accused.

36. It is well settled that mere production of a weapon is not sufficient unless the prosecution proves that it was recovered from the possession of the accused and that such possession was conscious and exclusive. In the present case, the prosecution story itself discloses that the alleged countrymade pistol was not recovered by the police from the possession of the accused. It was allegedly snatched by the informant at the place of occurrence. The same was thereafter taken by the informant to the police station and handed over.

37. The formal witnesses P.W.-5 constable Kaushal Kumar has clearly admitted that the weapon was produced by the complainant. He is unaware whether the weapon was actually snatched from the accused or brought independently.

38. The most crucial requirement for offence under Section 25 of Arms Act, recovery from the accused is completely missing. No independent witness supports the alleged snatching. No independent witness has deposed that the weapon was recovered from the accused. The alleged recovery is thus doubtful and untrustworthy. The prosecution has failed to establish when and how the weapon was sealed, whether it remained intact, till production in Court, whether the weapon was sent for forensic examination. The absence of credible chain of custody creates serious doubt about the identity and integrity of the weapon.

39. An unbroken chain of custody established that the same weapon was produced before the Court in the present case, the prosecution version itself indicates that the recovery was not properly put to the informant during trial. The informant was not specifically asked to identify the weapon as the same which was allegedly snatched from the accused. It is a settled principle of criminal jurisprudence that a material object allegedly recovered must be proved through proper identification by the witnesses who had recovered or handed over.

40. In the present case, the informant has not confirmed the identification of the weapon in the Court rather his cross-examination indicates uncertainty and lack of recognition. Thus the very foundation of the recovery becomes doubtful as the material exhibit, the country made

pistol remains unconnected with the alleged accused. In the light of the above discussion the court finds that it would be unsafe to sustain conviction under Section 25 Arms Act. Accordingly, the conviction under Section 25 Arms Act is not sustainable in law and liable to be set aside.

41. Accordingly, the appeal is **allowed**. The order of conviction and sentence dated 11.12.2019 is set aside.

42. The appellant is acquitted for all the charges for offence under Section 307, 504, 506(2) I.P.C. and Section 25 of Arms Act.

43. The appellant is in jail. He shall be released forthwith, if not required in any other case.

44. A copy of this order be transmitted to learned trial court, Etawah as well as Jail Superintendent, Etawah for immediate compliance.

April 21, 2026

P. Pandey

(Mrs. Vani Ranjan Agrawal,J.)