



2026:AHJ:15154

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 606 of 2003

Rizwan And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Neeraj Singh, Pankaj Kumar Tyagi, V. Singh, Vinay Singh
Counsel for Respondent(s)	: Govt. Advocate

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. The present criminal appeal has been preferred against the judgment and order dated 18.01.2003 passed by the Additional Sessions Judge, Court No. 10, Muzaffarnagar, in Session Trial No. 407 of 2001 (State vs. Rizwan and another), whereby the appellants were convicted under Section 25 of the Arms Act and sentenced to undergo two years' rigorous imprisonment along with a fine of Rs. 5,000/- each. They were also convicted under Section 307 I.P.C. Further, appellant no. 1 (Rizwan) was sentenced to one year's rigorous imprisonment along with a fine of Rs. 2,000/- under Section 25 of the Arms Act. In default of payment of fine, Rizwan (appellant no. 1) was to undergo three months' rigorous imprisonment and Esha (appellant no. 2) one month's rigorous imprisonment. All sentences awarded to appellant no. 1 were directed to run concurrently.

2. During the pendency of this appeal, the present appeal stands abated qua appellant no.2 namely Isha @ China and now the present appeal only survives with respect to the appellant no.1 namely Rizwan.

3. The prosecution case, in brief, is that on 21.01.1999, S.H.O. K.K. Gautam, along with S.I. B.L. Shah, Constable Sunil Kumar, and Constable Naahar Singh, was on patrolling duty in Government Jeep No. UHQ 8188, driven by Karan Singh, in search of a wanted criminal. In the early morning of 22.01.1999, when they reached near the canal between the villages Saidpur and Alawalpur, two persons were seen standing there. On suspicion, the police party stopped the vehicle and challenged them. One of the miscreants exhorted the other to kill the police party, whereupon one of them fired a

shot with the intention to kill. However, the police personnel managed to escape unhurt.

4. Thereafter, one of the accused, namely Rizwan, was apprehended at a distance of about 15 to 20 steps from the place of occurrence, while the other accused managed to flee, taking advantage of the darkness. From the possession of Rizwan, a country-made pistol (.315 bore) with one empty cartridge stuck in the barrel and one live cartridge of .315 bore from his pocket were recovered.

5. The recovered weapon was seized and sealed on the spot, and a recovery memo was prepared. The accused and the recovered articles were then taken to the concerned police station.

6. A case was registered at the police station, and after investigation, prosecution sanction was obtained from the District Magistrate, Muzaffarnagar. A charge-sheet under Section 307 I.P.C. was submitted against the accused persons, and under Section 25 of the Arms Act against accused Rizwan. During the course of investigation, accused Esha @ Vincha was also arrested under Section 307 read with Section 34 I.P.C.

7. Charges were framed against the accused persons, which were read over to them. They pleaded not guilty and claimed trial.

8. The prosecution examined four witnesses in support of its case, namely P.W.-1 Constable Naahar Singh, P.W.-2 S.I. K.K. Gautam, P.W.-3 Head Constable Jagat Singh, and P.W.-4 Ram Jeet Singh. The documentary evidence on record includes Rawanagi G.D. (Ext. Ka-2), Chick FIR (Ext. Ka-3), site plan (Ext. Ka-4), charge-sheet under Section 307 I.P.C. (Ext. Ka-5), prosecution sanction (Ext. Ka-6), and charge-sheet under Section 25 of the Arms Act (Ext. Ka-7). The material exhibits include the recovered country-made pistol (Material Ext. 1), empty cartridge (Material Ext. 2), live cartridge (Material Ext. 3), and sealed cover (Material Ext. 4), all of which were duly proved by P.W.-1 Naahar Singh and P.W.-2 S.I. K.K. Gautam, who also proved the recovery memo (Ext. Ka-1).

9. The trial court, on the basis of the oral and documentary evidence on record, convicted the accused persons under Section 307 I.P.C. and accused Rizwan under Section 25 of the Arms Act, and sentenced them accordingly.

10. Learned counsel for the appellant no.1 submitted that the prosecution has

failed to prove its case beyond reasonable doubt against the appellants; therefore, the conviction and sentence awarded to them are illegal and liable to be set aside. It is contended that there is no independent witness to support the prosecution case, and the conviction of the appellants is based solely on the testimony of police personnel. It is further submitted that there was neither any actual encounter nor did any person from either side sustain any injury. There is no expert opinion to establish that the empty cartridge was fired from the recovered country-made pistol. Moreover, the alleged recovered pistol was not in working condition, as admitted by P.W.-1 in his cross-examination before the Court. The prosecution sanction has also not been duly proved.

12. It is further argued that there are material contradictions in the statements of witnesses on crucial aspects such as recovery and the place of occurrence; hence, the conviction of the appellants is illegal and contrary to the evidence on record.

13. Learned A.G.A., on the other hand, supported the judgment of conviction and sentence.

14. The principal question before this Court is whether the prosecution has been able to prove its case beyond reasonable doubt, namely, that the accused persons fired upon the police party with the intention to cause death, and whether the recovery of the alleged weapon from accused Rizwan is reliable and duly proved.

15. Upon careful scrutiny of the entire evidence on record, this Court finds serious infirmities in the prosecution case.

16. The very genesis of the prosecution case, namely the alleged firing upon the police party, appears highly doubtful for the following reasons:

- (a) No injury was caused to any member of the police party;
- (b) No damage was caused either to the government jeep or to any surrounding object;
- (c) No material evidence, such as pellet marks or any other signs of firing at the spot, has been brought on record.

17. In a case alleging firing from close range with the intention to kill, the

absence of any injury or damage creates serious doubt in the prosecution story. The Hon'ble Supreme Court has consistently held that where the basic prosecution version becomes doubtful, the benefit must go to the accused.

18. It is admitted that the accused Rizwan was apprehended from a distance of about 15 to 20 steps while fleeing. In such a situation, if the accused had in fact already fired and was in possession of a firearm, there was sufficient opportunity for him to fire again while escaping. However, no such attempt was made. It is also significant that the police party, consisting of four to five armed personnel, did not fire even a single shot in self-defence. This unnatural conduct renders the prosecution version doubtful.

19. There is no material on record to indicate any reason why the accused persons, who were merely standing on the road, would suddenly attempt to commit the murder of police personnel without any provocation. The absence of motive, though not always fatal, assumes importance when the prosecution case is otherwise doubtful.

20. P.W.-1 Naahar Singh, in his cross-examination, stated that the weapon produced before the Court was not in working condition. It is further admitted that the weapon was not sent to the forensic laboratory for ballistic examination. There are material contradictions between the statements of P.W.-1 Naahar Singh and P.W.-2 S.I. K.K. Gautam regarding the working condition of the recovered firearm.

21. It is a settled principle of criminal jurisprudence that if two views are possible, the one favourable to the accused must be adopted. The trial court, in the present case, has failed to properly appreciate the evidence and has recorded findings which are not sustainable in the eyes of law.

22. Accordingly, the prosecution has failed to prove its case beyond reasonable doubt against the appellants. The conviction recorded by the trial court and the sentence imposed upon the appellants are liable to be set aside.

23 The appeal is **allowed**.

24. The impugned judgment and order dated 18.01.2003 is set aside.

25. The appellant no.1 are acquitted of the charges.

26. Since the appellant no.1 is on bail, his bail bonds are cancelled and

sureties are discharged.

27. A copy of this judgment along with the trial court record, if received, be sent back forthwith to the court concerned for necessary compliance.

February 12, 2026
Pravesh Mishra

(Mrs. Vani Ranjan Agrawal,J.)