



2025:DHC:9593



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 29.10.2025

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CRL.A. 745/2017

NARESH KUMAR

.....Appellant

Through: Mr. Dinesh Malik (DHCLSC) with
Mr. Puneet Jain and Mr. Akash Saini,
Advocates

versus

STATE

.....Respondent

Through: Ms. Manjeeta Arya, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the appellant seeks setting aside of the judgment of conviction dated 16.12.2016 and order on sentence dated 06.01.2017 passed by the learned ASJ (FTC), E-Court, Shahdara, Karkardooma Courts, Delhi in SC No. 21/2014 arising out of FIR No. 452/2013 registered under Section 307 IPC and Sections 25/27 Arms Act at P.S. M.S. Park.

Vide the impugned order on sentence, the appellant was sentenced to undergo RI for a period of 7 years along with a fine of Rs.5,000/-, in default whereof he would undergo SI for 3 months, for the offence punishable under Section 307 IPC; RI for a period of 3 years alongwith fine of Rs.2,000/-, in default whereof he would undergo SI for 1 month, for the offence punishable under Section 25 Arms Act; and RI for a period of 3 years alongwith fine of Rs.2,000/-, in default whereof he would undergo SI for 1 month, for the offence punishable under Section 27 Arms Act. All sentences



were directed to run concurrently and the benefit under Section 428 Cr.P.C. was also extended to the appellant.

The sentence of the appellant was suspended pending disposal of the present appeal vide order dated 31.07.2017.

2. The prosecution case, briefly stated, is that on 25.12.2013, the appellant visited the house of his sister and fired a single shot from a country-made pistol which struck her on the back of her right shoulder. The injured was removed to GTB Hospital and later referred to AIIMS Trauma Centre. Upon receipt of secret information, the appellant was arrested by police officials, and a country-made pistol with four live and one fired cartridge was recovered from his possession. After completion of investigation, the charge-sheet was filed, and the Trial Court framed charges against the appellant under Section 307 IPC and Sections 25/27 Arms Act, to which he pleaded not guilty and claimed trial.

3. During trial, the prosecution examined a total of 21 witnesses, the key witnesses among them being the complainant/PW-1, the daughter of the injured and an eyewitness to the incident who categorically stated that the appellant fired at her mother with a country-made pistol; the injured/PW-2, who sustained a gunshot wound and attributed the act to her brother, the appellant; PW-9, the mother of both the injured and the appellant, who also witnessed the incident and corroborated the version of the injured and her daughter; PW-4, the husband of the injured, who reached the spot immediately after the firing and removed the injured to the hospital; SI *Rajiv Kumar* (PW-16) and SI *Ram Kishore* (PW-18), the police officials who apprehended the appellant and effected recovery of the country-made pistol along with four live and one fired cartridges; and *Sh. Puneet Puri* (PW-20), Assistant Director (Ballistics), FSL, who examined the recovered weapon



and confirmed that the bullet retrieved from the body of the injured had been fired from the same pistol.

4. PW-1, the daughter of the injured, deposed that on 25.12.2013 at about 6:45 PM, the appellant, who was her maternal uncle, came to their house on a motorcycle, showed a pistol to the family members present, and left. About fifteen minutes later, he returned on foot carrying the same pistol, asked her grandmother to accompany him outside, and, immediately thereafter, fired a shot at her mother, which struck the back of her right shoulder. She raised an alarm, informed the police at 100 number, and her father soon arrived and removed her mother to GTB Hospital, from where she was referred to the AIIMS Trauma Centre. She proved her written complaint (Ex. PW-1/A) and identified the country-made pistol, two live cartridges and three empty shells produced in Court.

5. PW-2, the injured, stated that the appellant, her real brother, had quarrels with her and their mother on account of property. On 25.12.2013 at about 7:00 PM he came to her house, asked their mother to step outside, and fired a single shot from a pistol at her, which struck the back of her right shoulder. She fell and became unconscious, later regaining consciousness in AIIMS on 13.01.2014, whereafter her statement was recorded on 28.01.2014.

6. PW-4, the husband of the injured, deposed that on 25.12.2013 at about 7:00 PM, while returning home after distributing milk in the locality, he heard commotion near his residence and his daughter shouting “*goli mar di mammi ko goli maar di. Mera mama goli mar ke bhag gaya.*” On reaching, he found his wife lying injured and bleeding. His daughter informed him that the appellant had fired a shot at her mother. He, along with some neighbours, immediately removed his wife to GTB Hospital,



from where she was referred to the AIIMS Trauma Centre. He stated that the appellant, being his wife's brother, had been pressing for property documents which his wife had refused to part with, and that this had been the cause of strained relations between them.

7. PW-9, the mother of both the appellant and the injured, deposed that on 25.12.2013 at about 6:00 p.m., while she was sitting in the room along with her daughter and granddaughter, the appellant entered, produced a pistol, and fired a shot at his sister, which struck her on the upper back behind the right shoulder. She stated that she and her granddaughter raised an alarm, upon which her son-in-law and several neighbours arrived and removed the injured to the hospital.

8. SI *Rajiv Kumar* (PW-16) and SI *Ram Kishore* (PW-18) deposed regarding various aspects of the investigation and the arrest of the appellant.

PW-18 stated that on receiving DD No. 24A regarding a firing incident, he reached the spot with a constable but found that the injured had already been taken to GTB Hospital, where the doctor declared her unfit for statement. He thereafter returned to the scene, recorded the statement of PW-1, on the basis of which the FIR was registered, and seized blood-stained articles from the spot. He further deposed that, acting on secret information received subsequently, the appellant was apprehended near the DTC Bus Stop, Trilok Puri.

PW-16 corroborated this version, stating that the appellant was arrested and upon search, a country-made pistol was recovered from the right-side dub of his pant and four live cartridges along with one fired cartridge were recovered from his pocket. He proved the arrest memo (Ex. PW-16/A), personal search memo (Ex. PW-16/B), and seizure memo (Ex. PW-16/E), and identified the recovered pistol and cartridges as the case



property.

9. PW-20, *Sh. Puneet Puri*, Assistant Director (Ballistics), FSL, Rohini, examined the country-made pistol and cartridges recovered in the case. He deposed that two sealed parcels were received in the FSL, one containing a bullet extracted from the injured person's body and the other containing a country-made pistol of .315 inch bore with cartridges. The pistol was found to be in working condition and showed sign of discharge. Test firing was conducted, and on microscopic comparison, the striation and firing marks on the bullet recovered from the injured matched those on the test-fired bullets. He opined that the bullet extracted from the injured had been fired from the recovered pistol and proved his detailed report (Ex. PW-20/A).

10. I have heard the learned counsels for the parties and gone through the record.

11. Upon a perusal of the record, it is evident that the three principal eyewitnesses, PW-1, PW-2 and PW-9, have deposed in a manner that is consistent, cogent and materially unshaken in cross-examination. Each has stated that the appellant arrived at the house in the evening hours, there was an exchange of words, and a single gunshot was fired which struck the back of the right shoulder of the injured. Their versions are mutually corroborative and free from contradictions on material aspects. The presence of these witnesses at the spot is natural and there is no reason to doubt the veracity of their testimonies, particularly when they have withstood the test of cross-examination without any material discrepancies emerging. The testimony of PW-4, who reached immediately after the firing and took the injured to the hospital, further corroborates the time, place and manner of the occurrence.

12. The medical and forensic evidence on record lends strong support to



the ocular version. The MLC reflects a gunshot wound on the back of the right shoulder, and the surgical notes from the JPN Apex Trauma Centre, AIIMS (Ex. PW-7/A) record that the bullet was retrieved from the pericardial cavity. PW-5/Dr. Vivek, opined the injury to be grievous in nature. As stated before, the bullet recovered from the injured was forensically examined and proved to have been fired from the recovered pistol.

13. PW-16/SI *Rajiv Kumar* and PW-18/SI *Ram Kishore* have deposed in clear terms that the appellant was apprehended near the OTC Bus Depot, Trilok Puri, on the basis of secret information. Upon his personal search, one country-made pistol was recovered from the right side of his waistband and four live cartridges along with one fired cartridge from the right pocket of his trouser. The seizure memos, arrest memo, and recovery documents were duly exhibited and proved during trial. Both officers corroborated each other on all material particulars, and nothing material could be elicited in their cross-examination to discredit their version. The chain of custody of the seized articles stood duly established through the evidence of the MHC(M)/PW-8, who proved the *malkhana* entries and the forwarding of the sealed parcels to the FSL under intact seal.

14. PW-20, the ballistic expert, has unequivocally opined that the recovered pistol was in working condition and capable of firing ammunition. He confirmed that the bullet retrieved from the body of the injured bore identical striation marks to those found on the test-fired bullets from the recovered pistol, thereby conclusively linking the firearm to the offence in question.

15. Considering all of the aforesaid, this Court finds no infirmity in the prosecution evidence relating to the recovery of the weapon or in the



forensic opinion establishing its use in the incident. The essential ingredients of the offences punishable under Sections 25 and 27 of the Arms Act stand proved beyond reasonable doubt. The conviction of the appellant for the said offences is accordingly upheld.

16. As for the conviction under Section 307 IPC, it stands established that the appellant fired a single shot from a country-made pistol which caused a grievous firearm injury to his sister.

17. While the evidence on record establishes beyond reasonable doubt that the appellant discharged the recovered country-made pistol and shot at his sister, the question of whether the said act was done with the intention or knowledge required to constitute an offence under Section 307 IPC warrants consideration. In order to sustain a conviction under Section 307 IPC, the prosecution must establish that the act was done with such intention or knowledge that if death had been caused, the offence would amount to murder. The presence of intention or knowledge is *sine qua non*. When assessing whether an offence committed falls under the provision of Section 307 IPC, the intention to commit the offence can be gathered from attending circumstances such as the nature and seat of the injury. As such, it is the intention or knowledge with which the act was committed which is to be considered. The ingredients of the Section are satisfied if the prosecution is able to prove the intent and for its execution, commission of some overt acts¹. The Supreme Court, in the case of Sivamani v. State², discussed the law prevailing around Section 307 IPC in the following manner:-

“9. In State of Madhya Pradesh v. Saleem, (2005) 5 SCC 554, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have

¹ State of Maharashtra Vs. Balram Bama Patil, reported as (1983) 2 SCC 28

² 2023 SCC OnLine SC 1581



been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that ‘...The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.’ The position that because a fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in Jage Ram v. State of Haryana, (2015) 11 SCC 366 and State of Madhya Pradesh v. Kanha, (2019) 3 SCC 605. Yet, in Jage Ram (supra) and Kanha (supra), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, ‘The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.’

18. Applying the above principles to the facts of the present case, it becomes evident that while the appellant used a firearm and caused a grievous injury, the evidence suggests an impulsive act arising from loss of temper rather than one guided by the design or preparation characteristic of attempted murder.

19. This Court is of the considered view that the evidence does not demonstrate that the appellant possessed the requisite intention to cause the death of the injured. The firing occurred in the backdrop of a heated quarrel between family members over a property dispute, and the injury was not inflicted on a vital part of the body. While PW-1 deposed that the appellant had first arrived at their house on a motorcycle, displayed a pistol to the family members, and left before returning about fifteen minutes later on foot to commit the offence, this sequence of events does not find corroboration from any of the other prosecution witnesses. It is also relevant that the appellant fired only a single shot. The act appears to be rash and impulsive rather than premeditated. In such circumstances, the conviction under Section 307 IPC cannot be sustained. In the peculiar facts of the present



case, his conviction is, therefore, modified from Section 307 to Section 308 IPC.

20. Learned counsel for the appellant submits that the appellant is about 50 years of age and has to support his wife and 3 children. He further submits that the appellant and the injured are siblings, and prays that a lenient view be taken in the matter. Having regard to the totality of the circumstances, the period already undergone by the appellant, and the modification of his conviction from Section 307 to Section 308 IPC, this Court is of the view that, in the peculiar facts of this case, the ends of justice would be met if the substantive sentence of the appellant is reduced to 3 years.

21. The order dated 31.07.2017 reflects that the appellant has already undergone incarceration for a period of over 3 ½ years. In view thereof, the appellant has also undergone the sentence in default for non-payment of fine.

22. The present appeal is partly allowed in the above terms.

23. The personal bond furnished by the appellant stands cancelled and his surety is discharged.

24. A copy of this judgment be communicated to the Trial Court as well as the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 29, 2025

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