



2026:AHC:173723

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 90 of 1983

Naushad And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Sheikh Obaidullah,	D.N.Pandey,
		R.N.Pandey	
Counsel for Respondent(s)	:	A.G.A.	

Court No. - 92

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

The present criminal appeal has been preferred against the judgment and order dated January 12, 1983, passed by Shri S.B. Verma, VIII Additional Sessions Judge, Azamgarh, in Sessions Trial No. 288 of 1980, whereby appellant Naushad was convicted under Sections 148 and 307 IPC and sentenced to undergo rigorous imprisonment for 18 months under Section 148 IPC and rigorous imprisonment for five years, along with a fine of Rs. 200/-, under Section 307 IPC. In default of payment of the fine, he was directed to undergo rigorous imprisonment for a further period of six months.

The appellants Idris, Khalil Khan, Razi Ahmed and Shamim Ahmed were convicted under Section 147 IPC and Section 307 read with Section 149 IPC and were each sentenced to undergo rigorous imprisonment for one year under Section 147 IPC and rigorous imprisonment for five years under Section 307/149 IPC, in addition to a fine of Rs. 100/- each. In default of payment of the fine, they were directed to undergo rigorous imprisonment for a further period of four months.

According to the prosecution case, the informant, Shamshul Haq, a resident of Village Hamirpur, Police Station Ghosi, District Azamgarh, submitted a written report at the police station on 16.10.1978, stating that, on account of previous enmity, on 16.10.1978 at about 5:00 p.m., the accused persons, namely, Idris, son of Yakoob; Naushad, son of Nurul Hoda; Khalil Khan; Razi Ahmed; and Shamim Ahmed, sons of Mahmood Khan, armed with lathis and firearms, came to the door of the informant. Naushad and Idris

were carrying licensed guns, whereas the remaining accused persons were armed with lathis.

The accused persons started digging the *naad*. When the informant objected to the same, Naushad exhorted the other accused persons and fired his gun at the informant with the intention of causing his death. As a result, the informant sustained firearm injuries. The incident was witnessed by Shamim, Anwarul Haq, Khushban Nisha and others. The informant further stated that he was medically examined at the District Hospital, Azamgarh, and, on account of the injuries sustained by him, was unable to immediately go to the police station. It was also alleged that, during the course of the occurrence, the accused persons sustained injuries.

On the basis of the written report submitted by the informant, a First Information Report was registered and the corresponding General Diary entry was made. After completion of the investigation, a charge-sheet was submitted before the competent court.

Charges under Sections 147 and 307 IPC were framed against Idris, Khalil Khan, Razi Ahmed and Shamim Ahmed, whereas separate charges under Sections 148 and 307 IPC were framed against accused Naushad. The accused persons denied the charges and claimed to be tried.

In order to prove its case, the prosecution examined P.W.-1 Shamshul Haq, P.W.-2 Khushban Nisha, P.W.-3 Muhammad Shamim, P.W.-4 Hawaldar Singh, P.W.-5 S.I. Lal Chand Lal, and P.W.-6 Bajrangi Yadav, X-ray Technician.

The Court also examined C.W.-1, Dr. R.R. Rai, Medical Officer, and C.W.-2, Dr. O.P. Khatri.

In their statements recorded under Section 313 Cr.P.C., the accused persons denied the incriminating circumstances put to them and asserted their innocence. Accused Shamim Ahmed stated that the informant and his companions were putting bamboo poles in their *sahan* and, when he objected to the same, they opened fire upon him and assaulted him with lathis and sticks. He further stated that he had also got his injuries medically examined and that the informant had lodged a false report against the accused persons.

The accused persons were afforded an opportunity to adduce defence evidence. However, they did not adduce any oral or documentary evidence

in their defence.

Upon consideration of the evidence available on record, the learned trial court convicted Idris, Khalil Khan, Razi Ahmed and Shamim Ahmed for the offences punishable under Sections 147 and 307 read with Section 149 IPC, while accused Naushad was convicted under Sections 148 and 307 IPC.

Accused Naushad was sentenced to undergo rigorous imprisonment for 18 months for the offence punishable under Section 148 IPC. He was further sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 200/- under Section 307 IPC. In default of payment of the fine, he was directed to undergo rigorous imprisonment for a further period of six months.

The accused Idris, Khalil Khan, Razi Ahmed and Shamim Ahmed were sentenced to undergo rigorous imprisonment for one year under Section 147 IPC. They were further sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 100/- each under Section 307 read with Section 149 IPC. In default of payment of the fine, they were directed to undergo rigorous imprisonment for a further period of four months.

Aggrieved by the aforesaid judgment of conviction and order of sentence, the accused-appellants preferred the present appeal.

Learned counsel for the appellants submitted that the findings recorded by the learned trial court were contrary to the evidence available on record, perverse, and legally unsustainable. It was contended that the prosecution had failed to establish the guilt of the appellants beyond reasonable doubt and, therefore, the appellants were entitled to acquittal.

Accordingly, learned counsel prayed that the appeal be allowed and the judgment and order of conviction and sentence passed by the learned trial court be set aside.

Learned A.G.A., appearing for the State, supported the judgment of conviction and order of sentence passed by the learned trial court and submitted that the findings recorded by the learned trial court were based upon a proper appreciation of the ocular as well as medical evidence available on record and called for no interference.

During the pendency of the present appeal, appellants Idris and Khalil Khan

expired. Consequently, the appeal, insofar as it related to the said appellants, stood abated, and the proceedings against them were accordingly brought to an end. The present appeal, therefore, survives only in respect of the remaining surviving appellants.

This Court has considered the rival submissions advanced by learned counsel for the parties and has carefully reappraised the entire evidence available on record, as is required of an appellate court dealing with a judgment of conviction.

The prosecution case, in substance, rests upon the testimony of P.W.-1 Shamshul Haq, the injured informant, P.W.-2 Khushban Nisha, and P.W.-3 Muhammad Shamim, besides the documentary and medical evidence on record.

P.W.-1 Shamsul Haq has specifically stated that accused Idris was carrying a licensed gun, accused Naushad was also armed with a gun, and the remaining accused persons were carrying lathis. He supported the prosecution version with regard to the occurrence and stated that, when the accused persons were exhorted, Naushad fired his gun, as a result of which he sustained injuries. He further stated that he was medically examined at the District Hospital, Azamgarh.

The testimony of P.W.-1 finds substantial corroboration from the evidence of P.W.-2 Khushban Nisha, who was an eyewitness to the occurrence. She stated that Shamshul Haq was her brother and that his house was situated to the north of her house. On hearing the sound of the *naad* being broken, she came out of her house and saw Naushad, Shamim, Razi Ahmed, Khalil Khan and Idris breaking the *naad* with lathis. When Shamshul objected and the other accused persons exhorted Naushad, Naushad fired at Shamshul. She further stated that, while Shamshul was running away, he sustained injuries and fell down, whereafter Shamim assaulted him with a lathi.

She also stated that Shagir, in an attempt to save Shamshul, assaulted Shamim with a lathi. P.W.-3 Muhammad Shamim also stated that, on hearing the commotion, he reached the spot and saw the accused persons breaking the *naad*. He further supported the prosecution case that, when Shamshul objected, the other accused persons exhorted Naushad, whereupon Naushad fired at Shamshul.

The evidence of these three witnesses, particularly that of P.W.-1, the injured witness, is substantially consistent on the material aspects of the occurrence. Their presence at the spot is also natural. In the circumstances disclosed by the prosecution, merely because the witnesses are related to the injured or interested in the prosecution case, their evidence cannot be discarded outright.

The testimony of an injured witness carries special evidentiary value; however, as in every criminal case, such testimony has to be scrutinized with due care and tested on the touchstone of probability and medical corroboration.

The formal evidence also lends support to the prosecution version. P.W.-4, S.I. Hawaldar Singh, stated that he conducted the investigation, inspected the place of occurrence, and prepared the site plan. He proved his signatures thereon. He further stated that a cross-case had also been registered on the report of Shamim @ Mahmood on 16.10.1978 and that he had investigated the said case as well.

P.W.-5, S.I. Lal Chand Lal, stated that, after the transfer of S.I. Hawaldar Singh, he conducted the remaining investigation and submitted the charge-sheet. The charge-sheet was duly proved in evidence as Ext. Ka-4.

P.W.-6, Bajrangi Yadav, X-ray Technician, proved the writing and signatures of Dr. R.R. Rai on the injury report, which was exhibited as Ext. Ka-7. He also stated that Dr. O.P. Khatri had worked with him as a Radiologist and proved his writing and signatures on the X-ray report, which was exhibited as Ext. Ka-6.

C.W.-1, Dr. R.R. Rai, examined Shamshul Haq, who had been brought to the hospital by his father, Shagir Ahmed. On medical examination, six firearm/pellet injuries were found on his person. The injuries were fresh at the time of examination and could have been caused on the evening of 16.10.1978. The doctor specifically stated that there was no blackening or tattooing around the injuries. He advised X-ray examination of the left forearm, back and buttock and opined that the presence of pellets could be ascertained through X-ray examination. According to the doctor, except for Injuries Nos. 2, 4 and 6, the remaining injuries could have been caused by firing from behind.

Significantly, however, the doctor categorically stated that none of the injuries was such as would ordinarily cause death.

C.W.-2, Dr. O.P. Khatri, proved the X-ray report and stated that he had conducted the X-ray examination of the relevant parts. The X-ray examination revealed a fracture of the upper part of the tibia of the right leg of Shamim Ahmed. This injury corresponded with Injury No. 1 of accused Shamim Ahmed. Thus, the medical evidence also establishes that a cross-occurrence had taken place, in which accused Shamim Ahmed sustained a fracture injury, and that the said occurrence was separately reported and investigated.

The question that now arises is whether, on the basis of the evidence available on record, the conviction under Section 307 IPC can be sustained. Section 307 IPC reads as under:

""307. Attempt to murder.— Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.— When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

Section 307 IPC requires the prosecution to establish not merely the causing of hurt, but also the requisite intention or knowledge contemplated by Section 300 IPC, coupled with an act towards the commission of murder. The nature of the weapon, the manner in which it was used, the part of the body targeted, the nature and extent of the injuries, the circumstances attending the occurrence, and other surrounding circumstances are relevant for determining the existence of such intention or knowledge.

In the present case, the evidence does establish that accused Naushad fired a shot at the informant, Shamshul Haq, and that the firing resulted in pellet injuries. However, there is no evidence of repeated firing; rather, the prosecution case itself is that only a single shot was fired. The medical

evidence establishes six pellet injuries, but none of them was found to be dangerous to life. There was no blackening or tattooing around the injuries, and the doctor did not opine that any particular injury was sufficient, in the ordinary course of nature, to cause death.

More importantly, the surrounding circumstances disclose that the occurrence arose out of an existing dispute relating to the *naad*. The prosecution has not established any compelling circumstance demonstrating a calculated or determined attempt to cause the death of the injured. The evidence, taken as a whole, indicates that the occurrence arose out of an existing dispute, in the course of which a single firearm shot was fired, resulting in pellet injuries.

This Court is conscious of the settled principle that the mere fact that an injury is not sufficient, in the ordinary course of nature, to cause death does not, by itself, rule out the commission of an offence under Section 307 IPC. Equally, however, the intention or knowledge necessary to constitute an offence under Section 307 IPC cannot be presumed merely from the use of a firearm. Such intention or knowledge has to be gathered from the totality of the circumstances.

Having regard to the fact that there was only one firing, the nature and location of the injuries, the medical opinion that none of the injuries was dangerous to life, and the circumstances in which the occurrence took place, this Court is of the considered opinion that the prosecution has established the commission of an offence involving voluntarily causing hurt by means of a dangerous weapon, but the essential ingredients of Section 307 IPC have not been established beyond reasonable doubt.

Accordingly, the conviction of the appellant under Section 307 IPC cannot be sustained and deserves to be altered. Section 324 IPC reads as under:

"324. 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."

Section 324 IPC, as applicable to the occurrence in question, deals with voluntarily causing hurt by means of an instrument for shooting, stabbing or cutting, or by means of any weapon which, when used as a weapon of offence, is likely to cause death.

The evidence of P.W.-1, P.W.-2 and P.W.-3, coupled with the medical evidence of C.W.-1, establishes that a firearm was used and that the injured, Shamshul Haq, sustained six pellet injuries. The medical evidence, therefore, substantially corroborates the ocular account regarding the firearm injuries.

In these circumstances, the ingredients of Section 324 IPC stand established.

Consequently, while the conviction under Section 307 IPC is set aside, the conviction is altered to one under Section 324 IPC.

So far as the question of sentence is concerned, the incident occurred on 16.10.1978, and the surviving appellants have been facing the consequences of the criminal proceedings for an extraordinarily long period of more than four decades. The passage of such a length of time is not attributable to the appellants alone and cannot be ignored while determining the appropriate sentence.

Another significant circumstance is that the occurrence did not take place in isolation. The evidence on record shows that the accused side also sustained injuries during the same occurrence and, importantly, a cross-case was registered on the report of accused Shamim @ Mahmood. The medical evidence establishes that Shamim Ahmed sustained a fracture of the upper part of the tibia. The existence of the cross-case and the injuries sustained by the accused side lend support to the conclusion that the occurrence arose out of a mutual dispute and was not a one-sided episode completely divorced from any confrontation between the parties.

The Hon'ble Apex Court has repeatedly recognized, in various pronouncements, the reformatory philosophy underlying the Probation of

Offenders Act, 1958. In **Ratan Lal v. State of Punjab, AIR 1965 SC 444**, the Hon'ble Supreme Court described the enactment as a milestone in the modern liberal trend of penology and emphasized that the object of criminal law is not merely punishment but also the reform of individual offenders.

In **Ved Prakash v. State of Haryana, (1981) 1 SCC 447**, the Hon'ble Apex Court emphasized that sentencing is a sensitive exercise of judicial discretion and that the social background and personal circumstances of the offender are relevant considerations. The Court also recognized that a long period of litigation may itself operate as a deterrent and that, where circumstances warrant, a reformatory approach ought to be preferred.

More recently, in **Milind S/o Ashruba Dhanve and Others v. State of Maharashtra, 2026 INSC 355**, decided on 10.04.2026, the Hon'ble Supreme Court, while dealing with convictions under Sections 323 and 324 IPC, comprehensively reiterated the object of the Probation of Offenders Act, 1958. The Court held that the Act is beneficial legislation intended to rehabilitate offenders and reintegrate them into the mainstream of society as reformed citizens. It further held that, while considering relief under Section 4 of the Act, relevant factors include the nature of the offence, the antecedents, character and habits of the offender, his economic condition and occupation, fixed place of abode, family responsibilities, the gravity of the offence, and the origin of the dispute.

The aforesaid judgment is particularly relevant because the Supreme Court itself dealt with offences under Sections 323 and 324 IPC and extended the benefit of Section 4 of the Probation of Offenders Act, 1958. The Court reiterated that Section 4 is available where the offence is not punishable with death or imprisonment for life and the Court forms an opinion, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, that it is expedient to release the offender on probation. The Supreme Court directed the release of the accused on a bond for good behaviour and also contemplated supervision by a Probation Officer.

In **State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659**, the Hon'ble Apex Court granted the benefit of probation in a case involving Sections 324 and 452/34 IPC, taking into consideration, inter alia, the considerable passage of time, the fact that the dispute was between

neighbours over a trivial issue, and the fact that the incident had occurred several years earlier. The Court found that the circumstances did not warrant imprisonment and directed the release of the accused on probation.

The present case, when examined in the light of the aforesaid principles, presents several circumstances favouring a reformatory approach. Firstly, the occurrence is more than four decades old. Secondly, the conviction under Section 307 IPC cannot be sustained and has been altered to one under Section 324 IPC. Thirdly, the medical evidence shows that, although the injured sustained six pellet injuries, none of them was dangerous to life. Fourthly, only a single firearm shot was fired. Fifthly, the occurrence arose out of a pre-existing dispute. Sixthly, the evidence establishes the existence of a cross-case arising out of the same occurrence, in which accused Shamim Ahmed himself sustained a fracture injury. Seventhly, the appellants have remained under the shadow of criminal proceedings for more than four decades.

The circumstances of the present case, therefore, make it expedient to extend the benefit of Section 4(1) of the Probation of Offenders Act, 1958. Accordingly, the conviction of the appellants under Section 307 IPC is set aside and is altered to one under Section 324 IPC. The conviction under Sections 147 and 148 IPC, as recorded by the learned trial court, shall stand, subject to the modification of sentence as indicated hereinbelow.

Having regard to the fact that the appellants, namely, Naushad, Razi Ahmad and Shamim Ahmad, have no criminal antecedents; that the occurrence took place in the year 1978; that the said appellants have faced the ordeal of trial and appeal for an exceptionally long period; and that no adverse material has been brought on record regarding their conduct or misconduct during the pendency of the trial and appeal, this Court finds it appropriate to invoke the provisions of Section 4 of the Probation of Offenders Act, 1958, instead of sending the said appellants to imprisonment.

Accordingly, the appellants Naushad, Razi Ahmad and Shamim Ahmad are directed to be released on probation of good conduct for a period of one year, subject to their furnishing personal bonds in the sum of Rs. 10,000/- each and one surety in the like amount each before the concerned District Probation Officer, along with an undertaking that they shall maintain peace and good behaviour during the said period of one year from the date of

furnishing the bonds.

The said bonds shall be furnished by the appellants within a period of three months from the date of receipt of a certified copy of this judgment.

In the event of breach of any of the conditions of probation, the concerned appellants shall be taken into custody and shall undergo the sentence awarded to them by the learned trial court, subject to the modifications made by this Court.

With the aforesaid modification, the instant criminal appeal is **partly allowed**.

A certified copy of this judgment shall also be sent to the concerned court for compliance. The trial court record shall be transmitted back to the concerned District Court forthwith.

August 12, 2026
Pravesh Mishra

(Mrs. Vani Ranjan Agrawal,J.)