



2026:AHC:7778-DB

Reserved On :- 06.01.2026

Delivered On :- 13.01.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1237 of 2001

Yogendra Pandey Alias Shadhu

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Ramesh Rai, Sangam Lal Kesharwani
Counsel for Respondent(s)	: Govt. Advocate

In Chamber

HON'BLE SIDDHARTH, J.

HON'BLE SANJIV KUMAR, J.

(Delivered By Hon'ble Siddharth, J.)

1. Heard Sri Sangam Lal Kesharwani, learned counsel for the appellant; Sri Prem Shankar Prasad, learned A.G.A for State-respondents and perused the trial court record.
2. This criminal appeal has been preferred against the judgment and order of conviction and sentence passed by Sessions Judge, Ghazipur dated 10.04.2001 in Sessions Trial No. 271 of 1996 "State vs. Yogendra Pandey alias Shahdhu" under Section 302 IPC, P.S.- Saidpur, District-Ghazipur, convicting and sentencing the appellant to undergo imprisonment for life under Section 302 IPC.
3. The case of the prosecution is that at about 7 in the evening Dhanwanti Devi aged about 60 years, had gone to the shop of accused, Yogendra Pandey alias Sadhu, for purchasing spices (*masala*). The said accused used to keep shop in village- Khajurahat. Some quarrel ensued between Dhanwanti Devi and said shop keeper / accused regarding price / rate of the spices and the shop keeper / accused got so much infuriated that he fired at Dhanwanti Devi aforesaid with a country made pistol resulting very severe injury to her. Her son Sita Ram Rajbhar, who was coming after finishing his day's work as a common labourer, happened

to be near the scene of occurrence. He saw his mother and the accused engaged in quarrel and also saw the accused resorting to fire on her. Others also happened to be there and saw the occurrence. Sita Ram Rajbhar put his mother into a jeep and took her to hospital where she was declared dead. He himself wrote a F.I.R and lodged the same at P.S.- Saidpur, District- Ghazipur. A case was registered against the accused and police entered into investigation. The inquest report was prepared and the dead body of Dhanwanti Devi was sent for post-mortem. In the meantime, the accused was arrested by the police and he was found in possession of a country made pistol and two live cartridges concealed by him at a place and he was having no justification for possessing the same. After the investigation into both the matters was completed and after the necessary sanction was obtained, charge sheets, as aforesaid were submitted.

4. Prosecution to prove its case, examined the informant, Sita Ram Rajbhar as P.W.-1. He affirmed his F.I.R and gave an eye-account version of the incident claiming himself to be an eye-witness. According to him one, Sukhram of the village also had appeared there and he too had seen the occurrence. The prosecution produced the said Sukhram also as an eye-witness and he is P.W.-2. He too stated that he was at the shop of the accused for purchasing '*sauda*' (commodity / provisions) and happened to see the entire incident with his own eyes. He attempted to provide due corroboration to the testimony of P.W.-1.
5. Dr. Bharat Singh, who had conducted post-mortem examination on the dead body of the deceased, Dhanwanti Devi, was produced as P.W.-3. He proved the post-mortem report prepared by him. He found that her death was caused by a single shot resulting into an entry wound and an exit wound in the abdominal part of the body. According to him death was due to shock and haemorrhage caused due to the said fire arm wounds.
6. Rana Pratap Singh, Dy. S.P., C.B C.I.D., was produced as P.W.-4. He was S.H.O of the P.S. concerned when the F.I.R was lodged there. He proved the check F.I.R and the relevant entries made into the G.D. by Constable moharrir Gulab Singh. The investigation was taken up by him. He visited the spot and prepared site plan etc. He also had taken empty cartridges and blood stained as well as plain soil from the place of occurrence and had prepared necessary fards regarding the same. During investigation, he arrested the accused on 13.06.1996 from

railway station near the village and on his pointing out, recovered a country made pistol and two cartridges. He got the said recovered articles sealed and prepared a site plan of the place of recovery also. Thus he gave evidence under Section 27 of the Indian Evidence Act as against accused Yogendra Pandey. He had also completed investigation, which culminated into submission of charge sheet in the said murder case and he proved the said charge sheet (Ex. Ka-8). Recovered country made pistol and the empty found on the spot were sent for expert's examination and the report was received.

7. Nagesh Mishra was produced as P.W.-5. He was S.S.I at the P.S. concerned when the F.I.R was lodged there. After the deceased was declared dead at the hospital, he went there on 12.06.1996 at 7 in the morning and prepared inquest report regarding her dead body. He proved the same. He then prepared challan naash, chitthi R.I., chitthi C.M.O., Naksha Naash etc., and sent the dead body in sealed condition for the purpose of post-mortem.
8. Yadunath Shukla yet another Sub-Inspector of Police, who was posted at the P.S. concerned at the relevant time, was produced as P.W.-6. The case under section 25 of Arms Act was registered at the P.S. concerned in his presence and he was given investigation of the same. After completion of the investigation, he has submitted charge sheet. He proved the charge sheet as well as site plan prepared by him. He had also taken sanction from the District Magistrate concerned for prosecuting the accused, and proved the same as Ex. Ka-18. His total testimony is related only with the case under Section 25 of Arms Act as against the accused. The accused denied the allegations and contented to have been falsely implicated due to enmity. He however, examined none in his defence.
9. The appellant was examined under Section 313 Cr.P.C wherein he denied the prosecution case and alleged false implication in this case on account of enmity.
10. After hearing the rival submissions, we find from the material on record that the deceased had gone to the shop of appellant for purchasing spices (*masala*). It appears that on account of the rate / price of the spices, some dispute took place between the deceased, Dhanwanti and the appellant and he caused fire arm injury to the deceased. It is a case of single shot in the abdomen. Only one gun shot

entry wound and corresponding exit wound was found on the body of deceased by the doctor, P.W.-3. From the statement of P.W.-1, the eye-witness of the incident and statement of P.W.-2 as well there does not appears to be any motive assigned to the appellant for committing the alleged offence. We find that the incident in dispute was caused by the appellant due to sudden provocation and under the heat of the moment. The incident took place all of sudden. The solitary injury was caused to the deceased in the heat of passion which cause her death. Therefore, it is a case of culpable homicide not amounting to murder falling within the second part of Section 304 IPC. The case clearly falls under exception 4 of Section 300 IPC. From the material on record it does not appears that the offender has taken any advantage or acted with cruelty or in unusual manner in causing the alleged offence against the deceased.

11. Therefore, we hereby modify the judgment and order of trial court and instead of convicting and sentencing the appellant for life under Section 302 IPC direct that he shall be convicted instead for a period of 5 years with fine of Rs. 50,000/- payable to the legal heirs of deceased, as per Section 304 Part II IPC, because the act was committed by the appellant with the knowledge that it is likely to cause death, but without any such intention, since the dispute took place all of sudden on a trivial issue of price of spices (*masala*).
12. The appellant is on bail since 1982 and is aged about 75 years now. His bail bonds are hereby cancelled and the sureties stand discharged. He is directed to surrender forthwith and undergo the remaining part of the sentence. Period of custody already undergone in jail by the appellant shall be adjusted.
13. The appeal is partly allowed to the extent stated above.
14. Let the trial court record be returned along with copy of judgment to the trial court.

January 13, 2026

Rohit

(Sanjiv Kumar,J.) (Siddharth,J.)