



2026:AHC:74245

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4576 of 2005

Ram Swaroop

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Kuldeep Johri
Counsel for Respondent(s)	: Anand Mohan Pandey, Govt. Advocate, Ram Raj Mishra, Virendra Kumar Singh

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This appeal has been filed against the judgment and order dated 05.10.2005 passed by Additional Sessions Judge, District- Bareilly in Session Trial No.763 of 2003, arising out of Crime No.157 of 2001, convicting the appellant under Section 324 of I.P.C, Police Station- Qularia, District- Bareilly.
2. None appeared on behalf of appellant. However, Sri Ram Raj Mishra, learned counsel for the opposite party is present.
3. The prosecution case, in brief, is that on 14.11.2001, at about 5.30 p.m., on the occasion of Diwali, the complainant's son Tej Bahadur, was lighting lamps outside his home, while the complainant was sitting nearby. The accused persons namely, Ram Swaroop, Lalu, Balak Ram and Ram Chandra, arrived at the gate of complainant. Ram Swaroop was armed with a fire-arm. The accused persons surrounded the complainant's son and assaulted him, Ram Swaroop fired at his leg with intention to cause death, causing grievous injuries.
4. The FIR was lodged on the following day, 15.11.2001 and the investigation was started. The injuries were medically examined and an X-ray was also conducted, followed by submission of a supplementary report. Upon completion of investigation, charge-sheet was filed.
5. The prosecution has examined as many as 5 witnesses. P.W.-1 complainant Ram Chandra, P.W.-2 injured Tej Bahadur, P.W.-3 eye-witness Dhaniram, P.W.-4 Dr. Vinay Kumar Jaiswal and P.W.-5 Sub-Inspector Suraj Singh Chauhan.

6. P.W-1 informant Ram Chandra, supported the prosecution case and attributed the motive to prior enmity. PW.-2 injured witnesses Tej Bahadur and P.W.-3 Dhaniram also supported the occurrence and specifically stated that the accused Ram Swaroop fired at the victim's leg. P.W.-4 Dr. Vinay Kumar Jaiswal proved the medical report regarding entry and exit wound, consistent with a fire-arm injury below the knee. No fracture was detected in X-ray examination.

7. The defence denied the occurrence and suggested that the injuries might have been caused by the fire crackers. However, the trial court rejected this contention, observing that the nature of injury entry and exit wound could not have been caused by fire crackers like Rocket or Charkhi.

8. The trial court, however, held that since the injury was not on the vital part of the body and there is no opinion of the doctor that the injuries are dangerous to life for establishing offence under Section 307 I.P.C. The offence under Section 307 I.P.C. is not made out. Nevertheless, considering that the injury was caused by a dangerous weapon. The accused were convicted for offence under Section 324 I.P.C.

9. Learned counsel for the appellant Ram Swaroop, assailed the conviction on technical grounds, that there is no pellets or cartridges were recovered from the spot, the alleged weapon was not sent for forensic examination and clothes of the injured were not taken into possession.

10. Learned A.G.A. for the State supported the judgment of conviction and sentenced.

11. Having heard, learned counsel for the parties and perused the record. This court finds that ocular testimony of the injured witness duly corroborated by medical evidence clearly establishes the prosecution case.

12. It is well settled that ocular evidence has greater evidentiary value and minor lapses in investigation and absence of certain recoveries do not necessarily demolish the prosecution case. When the ocular evidence is otherwise found trustworthy, it cannot be discarded nearly on account of minor inconsistencies or technical lapses in investigation. It is a settled principle of law that defective investigation right itself is not a ground for acquittal. When there is otherwise reliable evidence is available on record.

13. In the present case, the presence of entry and exit wound as proved by the doctor P.W. – 4 Dr. Vinay Kumar Jaiswal clearly establishes that the

injury was caused by fire-arm. The defence theory of injury caused by fire crackers has rightly been rejected by the trial court.

14. This Court finds no illegality or perversity in findings recorded by the trial court in holding that the appellant guilty under Section 324 I.P.C. The conviction recorded by the trial court deserves to be upheld.

15. However, considering the incident is of the year 2001 the appellant has faced the ordeal of criminal proceedings for a long period and there is nothing on record to indicate any criminal antecedents. No fruitful purpose would be served on sending the appellant again in jail. Considering the facts and circumstances of the case, this court finds it proper to modify the sentence.

16. A perusal of the record transpires that the appellant was in jail since 05.10.2005 to 24.10.2005 i.e. about 20 days after passing of impugned judgment.

17. The conviction of the appellant under Section 324 I.P.C. is confirmed. The sentence awarded by the trial court is modified to the extent that the appellant is sentenced for imprisonment for the period already undergone. In addition, the appellant shall pay a fine of Rs. 4000/- to be deposited before the trial court within a period of two months from the date of receiving the certified copy of this judgment. In default of payment of fine, he shall undergo simple imprisonment for a period of one month.

18. The appeal is partly allowed to the extent of modification of sentence.

19. Let a copy of this judgment along with trial court record be transmitted to the court concerned for compliance.

(Mrs. Vani Ranjan Agrawal,J.)

March 30, 2026

P. Pandey