

Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No. 1525 of 2017
(Arising out of S.L.P.(Crl.)No. 5004 of 2015)

Ahsan

.....Appellant(s)

VERSUS

State of U.P.

.....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

- 1) Leave granted.
- 2) This appeal is filed by one out of three accused against the final judgment and order dated 21.04.2015 passed by the High Court of Judicature

at Allahabad in Criminal Appeal No.615 of 2008 whereby the High Court dismissed the appeal filed by the accused-appellant herein and affirmed the judgment 11.12.2007 of the Additional Sessions Judge, Muzaffar Nagar in Sessions Trial No.746 of 2005 by which the appellant was convicted for the offences punishable under Sections 452, 307/34, 316/34 and 504 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and sentenced to seven years' rigorous imprisonment with fine of Rs.5000/- under Section 452 IPC, in default of payment of fine, to further undergo three months' simple imprisonment, imprisonment for life with fine of Rs.10,000/- under Section 307/34 IPC, in default of payment of fine, to further undergo six months' simple imprisonment, rigorous imprisonment of ten years with fine of Rs.5000/-

under Section 316/34, in default of payment of fine, to further undergo simple imprisonment for three months and two years rigorous imprisonment with fine of Rs.1000/- under Section 504 IPC, in default, to further undergo simple imprisonment for one month. All the sentences would run concurrently.

3) **Brief facts:**

The case of the prosecution is that on 08.10.2004 at about 7.30 p.m., when Iliyas-the Complainant, after having meal, reached near the house of Naseem-his paternal uncle, he heard noise coming out from that house. When Illiyas entered the house, he saw Manshad, Kamil and Ahsan(the appellant), all from the same locality, armed with country made pistols in their hands, abusing his cousin Istekhar @ Dholoo, Shahzad (son-in-law) and Rukhsana, his niece with filthy language and they

made fires from their respective pistols with the intention of killing them. The bullet fired by Manshad injured Istekhar, the bullet fired by Kamil caused injury to Rukhsana on her abdomen, who was pregnant and the bullet fired by Ahsan(appellant) injured Shahzad in his head. All of them were in critical state. The incidence was witnessed by Khurshid, Shamshad, Ikram etc. Illiyas had given the 'written report' at Police Station, Shamli after getting it written by Bhupendra Singh.

4) On the basis of the written report submitted by Illiyas on 08.10.2004 at 20.45 hrs., F.I.R. case Crime No. 313 of 2004 was registered under Sections 452, 307 and 504 IPC at Police Station Shamli, District Muzaffar Nagar. On the same day, the investigation was conducted by sub-Inspector

Vijendra Singh. The site plan was prepared and the statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”). The charge-sheet was filed against Manshad and Ahsan for the offences punishable under Sections 452, 307, 316 and 504 IPC. The case was committed to the Court of Sessions for trial on 18.05.2005.

5) The trial was proceeded as S.T. No. 746 of 2005 in the Court of Additional Sessions Judge, Mazaffar Nagar. During the pendency of the investigation, Kamil died and Manshad was declared as ‘juvenile’ to be tried separately. Ahsan (appellant herein) was charged for the offences under Sections 452, 307/34, 504 and 316/34 of IPC.

6) By judgment dated 11.12.2007, the Trial Court convicted the appellant for the offences punishable under Sections 452, 307/34, 316/34 and 504 IPC and sentenced him seven years' rigorous imprisonment with fine of Rs.5000/- under Section 452 IPC, in default of payment of fine, to further undergo three months' simple imprisonment, imprisonment for life with fine of Rs.10,000/- under Section 307/34 IPC, in default of payment of fine, to further undergo six months' simple imprisonment, ten years' rigorous imprisonment with fine of Rs.5000/- under Section 316/34 IPC, in default of payment of fine, to further undergo simple imprisonment for three months and two years' rigorous imprisonment with fine of Rs.1000/- under Section 504 IPC, in default of payment of fine, to

further undergo simple imprisonment for one month. All the sentences would run concurrently.

7) Aggrieved by the judgment of the Trial Court, the accused filed an appeal being Criminal Appeal No.615 of 2008 before the High Court.

8) By judgment dated 21.04.2015, the High Court dismissed the appeal filed by the accused and upheld the judgment of conviction and sentence passed by the Trial Court.

9) Against the said judgment, the accused has filed this appeal by way of special leave before this Court.

10) This Court, on 09.07.2005, issued limited notice on the SLP as well as on the prayer for bail with respect to quantum of sentence.

11) In the light of limited notice issued, the only question which is involved in this appeal is whether any case for interference in the quantum of sentence awarded to the appellant is made out. So far as the merits of the case is concerned, it is not necessary for us to examine because the conviction of the appellant in relation to all the offences detailed in para 2 are already affirmed by this Court's order dated 09.07.2005.

12) Heard Mr. Ajit Singh Pundir, learned counsel for the appellant (accused) and Mr. Ashutosh Kumar Sharma, learned counsel for the respondent-State.

13) Learned Counsel for the appellant (accused), while confining his submission to the legality and correctness of the quantum of sentence contended that both the Courts below erred in awarding "life

imprisonment" to the appellant insofar as it relates to an offence punishable under Section 307 of IPC.

14) It was his submission that the fact that victim-Shahjad, to whom the appellant caused the injury by gunshot having survived, the Courts below should have taken into account this fact and awarded the sentence in the first part of Section 307 IPC, which could extend only up to 10 years and fine.

15) It was also urged that the appellant has already undergone custody around 10 to 12 years till date and hence it would be just and proper and in the interest of justice to reduce the appellant's sentence already undergone and he be set at liberty by upholding his conviction.

16) In reply, learned counsel for the respondent supported the impugned order and contended that it does not call for any interference.

17) Having heard the learned counsel for the parties and on perusal of the record of the case and the written submissions filed by the learned counsel for the appellant, we are inclined to dismiss the appeal finding no merit therein.

18) Section 307 IPC with which we are concerned in this matter 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.”

19) Section 307 provides three punishments for three classes of nature of the cases. One class of cases, which falls in first part of the Section, prescribes a term “which may extend to ten years and fine”, second class of cases, which falls in the second part of the Section, prescribes either “imprisonment for life" or "such punishment, which is prescribed in first part" and the third class of cases is when any person offending under Section 307 IPC is under sentence of imprisonment for life, causes hurt, be punished with “death”.

20) So far as the punishment prescribed in first part of the Section is concerned, it applies to the cases where a person does any act with an intention or knowledge and under any circumstances, caused death.

21) So far as the punishment prescribed in second part is concerned, it applies to the cases where the person while committing the act falling in first part, causes "hurt" to any person.

22) Here, we are concerned with class of cases falling under part one and two.

23) In our view, the two Courts below did not commit any error in exercising their judicial discretion in the light of facts found proved while awarding life imprisonment to the appellant.

24) It is for the reasons that firstly, the facts of the case squarely fall in the second part of Section 307 IPC; secondly, gunshot injury caused by the appellant to the victim-Shahjad was grievous in nature, thirdly, the bullet injury was caused in the head which was the most delicate and vital part of

the body; fourthly, the facts of the case satisfied the ingredients of the first part of Section 307 IPC, namely, all the three accused which included the appellant had gone to the house of victim-Shahjad with a common intention to kill the members of family and in order to accomplish the intention, each accused targeted one member of the family present in the room which resulted in death of a stillborn child of Rukhsana, who was hit by gunshot in her abdomen and other two members suffered serious gunshot injuries though both survived.

25) In our opinion, while sentencing the accused, the Court is required to take into account several factors arising in the case, such as the nature of offence committed, the manner in which it was committed, its gravity, the motive behind the commission of the offence, nature of injuries

sustained by the victim, whether the injuries sustained were simple or grievous in nature, weapons used for commission of offence and any other extenuating circumstances if any. Once these factors are considered while imposing the sentence, there remains little scope to interfere in quantum of punishment. Such is the case here.

26) Learned counsel for the appellant placed reliance on the decision of this Court in **Sanjay vs. State of Uttar Pradesh**, 2016(3) SCC 62. On going through the same, we find it distinguishable on the facts. In that case on appreciating the findings, this Court altered the conviction from Section 302 IPC to 304 Part I IPC. Such is not the case here.

27) We thus find no good ground to alter the punishment awarded by the Sessions Court, which

on the facts found proved, was rightly affirmed by the High Court.

28) In the light of foregoing discussion, we find no merit in the appeal which thus fails and is accordingly dismissed.

.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi,
August 29, 2017