

Ram Shanker @ Kaptan vs State Of U.P. on 30 April, 2025

Author: Rajnish Kumar

Bench: Rajnish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:24643

Court No. - 1

Case :- CRIMINAL APPEAL No. - 651 of 2001

Appellant :- Ram Shanker @ Kaptan

Respondent :- State of U.P.

Counsel for Appellant :- Poonam Singh

Counsel for Respondent :- Govt.Advocate

Hon'ble Rajnish Kumar,J.

1. Heard, Shri Shailendra Singh, Advocate holding brief of Ms.Poonam Singh, learned counsel for the appellant and Shri Arun Kumar Pandey, learned A.G.A.

2. This Criminal Appeal under Section 374(2) of Criminal Procedure Code (here-in-after referred as Cr.P.C.) has been filed against the judgment and order dated 31.07.2001 passed in Sessions Trial No.640 of 2000; State Versus Ram Shanker @ Kaptan, arising out of Case Crime No.120 of 2000, under Section 307 of the Indian Penal Code (here-in-after referred as IPC), Police Station-Hasanganj, District-Unnao convicting and sentencing the appellant to undergo 5 years rigorous imprisonment and fine of Rs.1,000/- under Section 307 IPC and in default of payment of fine to undergo two months further rigorous imprisonment.

3. On a written report given by the complainant Ramma son of Ram Chandra at Police Station Hasanganj, District-Unnao the First Information Report was lodged on 12.08.2000 at 8 in the morning. The report was lodged stating therein that while the complainant was coming back after latrine and reached near the house of Arjun his real nephew Ram Shanker fired from Katta (country made pistol) on him with the intention to kill him, therefore, he cried. Then Arjun son of Matru, Ram Khilawan son of Cheda of the village came there, therefore, Ram Shanker ran away. Ram Shanker had fired with the intention that if the complainant dies he will get his land.

4. On the basis of the complaint of the complainant Ramma the First Information Report was lodged under Section 307 IPC. The complainant was medically examined in District Hospital, Unnao and after investigation the charge sheet was filed under Section 307 IPC. After committal of case to the Sessions, the charge was framed against the appellant, who denied the charge. Thereafter the oral evidence was adduced, in which Ramma appeared as P.W.-1, Ram Khilawan as P.W.-2, Head Constable Kamlesh as P.W.-3, Sub Inspector of Police Amar Pal Singh as P.W.-4 and Dr.D.Kumar as P.W.-5. In the statement after evidence under Section 313 Cr.P.C. the accused/appellant stated that the prosecution story is false. He stated that the complainant Ramma is his real uncle, but rest of the facts are wrong and the false report has been lodged. He also stated that the investigation has been done in a fraudulent manner and he has been implicated on account of enmity and party-bandi and accordingly the evidence has been adduced. No evidence was adduced by the accused-appellant.

5. Learned counsel for the appellant submitted that the accused-appellant has falsely been implicated in the case. The incident is of darkness in night and somebody else would have fired on the complainant, but on account of enmity he has been falsely implicated in the case lodging a concocted story. He also submitted that as per First Information Report only one fire was shot, but in the evidence two fires have been shown and the Doctor has also stated that the alleged two wounds could have come from one shot and no blood was found on the spot. He also submitted that there is no independent witness and no motive of the offence could be shown. There is discrepancy in the evidence of prosecution. Learned trial court, without considering the above and recording illegal and perverse findings, has convicted the appellant and sentenced him. He also submitted that the appellant is aged about 52 years and he is the sole bread earner of his family. He has two sons and three daughters and most of them are unmarried. He has already served the sentence of about 4 years and 4 months, therefore, in case this court comes to the conclusion that the appellant has rightly been convicted in accordance with law, then looking to the age of the appellant and his family condition the lessor punishment may be awarded. He relies on Judgment and order dated 24.04.2020 passed by this court in Criminal Appeal No.1150 of 2001; Thakur Prasad Misra and another Versus State of U.P., Judgment and order dated 29.05.2019 passed by this court in Criminal Appeal No.326 of 1991; Babu Ram Yadav Versus State of U.P., Judgment and order dated 07.01.2022 passed by this court in Criminal Appeal No.455 of 2003; Anil Asthana Versus State of U.P., Judgment and order dated April 7, 2021 passed by this court in Criminal Appeal No.221 of 1999; Swami Dayal And (3) others Versus the State of U.P. and Judgment and order dated 09.07.2021 passed by this court in Criminal Appeal No.899 of 2001; Milap Singh Versus State of U.P.

6. Per contra, learned A.G.A. submits that after lodging the First Information Report by the complainant the investigation was done and the charge sheet was submitted in accordance with law under Section 307 IPC. He further submitted that there were two injuries in the back of the complainant in separate direction, therefore, it cannot be said that there was one fire and two cartridges were also found from the spot. He further submitted that the First Information Report does not contain each and every minute description of the incident and the charge has been proved by the witnesses and the motive of the incident has also been proved. The gun shot injuries were from the short distance and tattooing and blackening was found in the injuries, therefore, it cannot be said that the fire was not made with the intention of murder. The learned Trial court has rightly and in accordance with law after considering the evidence and material on record has convicted the appellant and awarded the sentence, which does not require any interference by this court.

7. Having considered the submissions of learned counsels for the parties, I have perused the records.

8. The F.I.R. was lodged by the complainant Ramma i.e. the injured himself in regard to incident on 12.08.2000 at 6.30 in the morning at 8.00 in the morning on the same date under Section 307 I.P.C. Charge sheet was filed after investigation against the accused/appellant, who is nephew of the complainant. On the basis of above the trial was held.

9. Ramma, the complainant appeared as P.W.-1 in the trial, who is also the injured. He stated that when he was coming back after latrine at 6.30 in the morning on 12.08.2000 and reached near the house of Arjun, the accused Ram Shanker @ Kaptan fired on him from the back side, therefore, he ran and while he reached near the other Kaccha house of Arjun, the accused shot another fire. After hearing the noise of the fire Tulsi, Arjun, Ram Khilawan etc. came on the spot, therefore, the accused ran away. Ram Shanker is his real nephew and he had fired on him so that after his death he may get his land because the complainant has no wife and children. The report was written by Ram Khilawan as orally told by him and thereafter it was lodged in the Police Station. P.W.-2 Ram Khilawan stated in his evidence that on the date of incident he had seen that the accused was running behind the complainant Ramma with a Katta and when he reached near the house of Arjun he fired on him from the back side and it was 6.30 in the morning. After hit by the first shot, he ran and when he reached near the other Kaccha house of Arjun, the accused fired another shot, on account of which he fell down. Thus, there is no contradiction in the evidence of the P.W.-1 and P.W.-2 in regard to the incident and they have proved the incident.

10. P.W.-5 Dr. D.Kumar has proved the two injuries suffered by the complainant, which are fire arm injuries. The first injury was multiple injury and the size of wound was .5 cm. x .5 cm cavity deep (area 20 cm. x 12 cm.) on back right side of capular region, blackening and tattooing was present. The second fire arm multiple injury and the size of wound was .3 cm. x .3 cm. into cavity deep (area 14 cm. x 10 cm.) on top left back side, blackening and tattooing present and the finding was that the injuries No.1 and 2 are fresh by fire arm. He also told in cross examination that the gun shot was made from a distance of 2-3 feet. He also stated that both the injuries have come from one fire by a fire arm on the back side of the complainant. However he had not explained as to how two injuries have come on the two sides of the back side by one fire arm, whereas as per the prosecution case there were two fires and two cartridges were found from the spot. In any case there were two

injuries on the back side of the complainant, which were on account of fire from a distance of 2-3 fit.

11. A plea has been taken that since the incident was of darkness in the night, therefore, it must have been done by some other person, but the appellant has been falsely implicated, but from the evidence adduced before the trial court it is apparent that the incident is of 6.30 in the morning, therefore, it cannot be said that the incident was of the darkness of night. It has also been proved that the injuries were of fire arm injuries, which were examined by the Doctor and the same have been proved. The motive of the incident has also been proved by the injured and it cannot be denied that because the complainant was not married and he has no children, therefore, for the land of the complainant the accused-appellant fired on him, so that after his death he may get his land. Nothing could be extracted from the witnesses which may create any doubt about the incident or their veracity, therefore, the other contentions are misconceived and not tenable.

12. The learned trial court, after considering the evidence and material on record, has recorded the finding that the accused-appellant fired on the complainant with an ill intention for murdering him on account of which he suffered the injuries on account of which his death was probable, therefore, the accused-appellant is guilty of the offence under Section 307 IPC.

13. In view of above, the conviction of the accused-appellant has rightly been made in accordance with law, which does not require any interference by this court and the conviction is upheld. However looking to the fact that the incident is of the year 2000 and about 25 years have passed since then and the age and family conditions as argued by learned counsel for the accused-appellant and nothing adverse has been pointed out by learned A.G.A. against above and that there were no criminal antecedents of the accused-appellant except this and nothing after this and that the accused-appellant has served as under trial for a period of 11 months and 7 days and after conviction for a period of 1 month and 29 days and 2 years 4 months 25 days as on 24.02.2025 i.e. total sentence including remission 4 years 1 month 17 days as per the custody certificate dated 12.02.2025 issued by the Superintendent, District Jail, Unnao and thereafter also he is in custody up till now, therefore, his total period of incarceration must have been about 4 years 4 months, out of which he is in jail in pursuance of non-bailable warrant issued by this court since 30.09.2022 and the aforesaid orders relied by learned counsel for the appellant, the punishment is modified to the period undergone and the fine of Rs.25,000/-, which shall be deposited by the accused-appellant within a period of 30 days from today, failing which he will have to undergo six months rigorous imprisonment in lieu thereof.

14. The appeal is, accordingly, disposed of with the aforesaid modification in the punishment with a direction to release the appellant immediately after receipt of this order by the Superintendent of Jail concerned.

15. Out of the aforesaid fine deposited by the accused-appellant, Rs.20,000/- shall be paid to the complainant within a period of six weeks from the date of deposit, if he is alive and if he is not alive then the same shall be transmitted to the Government Children Home or Government Nari Niketan of the district concerned within the aforesaid period because as discussed above the complainant had no wife and children.

16. Let a copy of this judgment as well as the lower court record be transmitted to the concerned Trial Court forthwith and in any case within a period of one week from today for necessary compliance.

(Rajnish Kumar,J.) Order Date :30.04.2025 Banswar