2026:AHC:132462

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2541 of 1987

Final AFR

Reserved On 09.04.2026

Delivered On 03.07.2026

Deshraj and Ors

…..Appellant(s)

Versus

State of U P

…..Respondent(s)

Counsel for Appellant(s)	:	Akhilesh Singh, Brij Raj Singh, Shivam Yadav
Counsel for Respondent(s)	:	

Court No. -88

HON'BLE SANJIV KUMAR, J.

1. This appeal has been filed under Section 374 (2) Code of Criminal Procedure 1973, (in short Cr.P.C.), by appellants Desh Raj and Bahadur, against the judgment and order dated 26.10.1987, passed by Mr. Swaroop Lal, V Additional Sessions Judge, Mainpuri, in Sessions Trial No.76 of 1986 (State Vs. Desh Raj and Another), arising out of Case Crime No.172 of 1984, under Section 307 read with 34 Indian Penal Code,1860, (in short I.P.C.), Police Station- Allau, District- Mainpuri.

2. By the impugned judgment and order, dated 26.10.1987, the learned trial court has acquitted co-accused Kali Charan and convicted both the appellants for offence punishable under Section 307 read with 34 IPC and sentenced them to undergo rigorous imprisonment for a

period of 4 years and a fine of Rs. 500/- each in default of payment of fine they were further directed to undergo three months rigorous imprisonment.

3. Brief facts of the prosecution case are that Raghuveer son of Subedar, resident of Village- Summerpur, Police Station- Allau, District- Mainpuri, submitted a written application dated 25.11.1984 (Ext. Ka.1), before Police Station- Kotwali, District- Mainpuri, stating therein that his field is adjacent to Kali Charan's field and there is moonj (wild grass) growing over the intervening boundary of both the fields. Today i.e. on 25.11.1984 at about 01:30 p.m. accused Bahadur and Desh Raj both sons of Kali Charan and Kali Charan son of unknown, resident of Nagla Hariram, Mauja- Veerpur Kala, Police Station- Allau, District- Mainpuri started cutting moonj. The first informant's nephew Kaushal @ Rajesh was in his field where gram was sown and he alongwith Daya Ram and Ram Naresh were weeding the chickpeas crop. Kaushal @ Rajesh objected for cutting moonj thereupon, the accused Desh Raj fired at him with country-made pistol, with the intention to kill, his nephew bent and lied down as a result he escaped unhurt. In the meantime, accused Bahadur struck knife over his back causing him injuries. The first informant was in his field and he himself, Daya Ram and Ram Naresh challenged the accused, whereupon they ran towards the village. He alongwith other villagers has brought his nephew on cot to District Hospital- Mainpuri, where he was admitted in serious condition. Due to the fear from accused he is afraid of going to Police Station- Allau. Upon this information, FIR under Case Crime No. Nil, Section 307 IPC, was lodged at Police Station- Kotwali, District- Mainpuri and the FIR was forwarded to Police Station- Allau, where it was written down under Case Crime No. 172 of 1984, Section 307 IPC. The investigation was carried out by S.I. Manik Chand, who recorded the statements of the first informant, the injured and other witnesses. The injured was medically examined on 25.11.1984 at about 04:50 p.m. in District Hospital- Mainpuri. One incised wound over right side back of chest was found with margins clear cut, everted and fresh bleeding was present. In the

opinion of the doctor the injury was caused by a sharp cutting weapon and the duration was fresh. X-Ray was advised and in X- Ray no fracture was found and the injury was opined as simple in nature.

4. The investigation officer inspected the place of occurrence and prepared its site-plan (Ext. Ka-8), and after concluding the investigation he filed charge-sheet against all the three accused, under Section 307 IPC, before the concerned court.

5. The court concerned took cognizance of the offence and summoned the accused. They appeared before the court and copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C. and thereafter the case was committed to the Court of Sessions for trial.

6. Before the Sessions court, the accused appeared and charge under Section 307 read with 34 IPC was framed against Desh Raj, Bahadur and Kali Charan. The accused pleaded not guilty and claimed to be tried.

7. The prosecution examined nine prosecution witnesses, to wit, P.W.1 Dr. B.P. Bansal; P.W. 2 Raghuveer Chandra; P.W.3 Ram Naresh; P.W.4 Daya Ram; P.W. 5 Lakshmi Chandra; P.W. 6 Narain Singh; P.W.7 Constable Jagdish Chandra Mishra; P.W.8 S.I. Vishwanath and P.W.9 S.I. Manik Chandra, to prove its case.

8. P.W. 1 Dr. B.P. Bansal, is the formal witness who has medically examined injured Rajesh Kumar at District Hospital, Mainpuri on 25.11.1984 at 04:50 p.m. and found following injuries over his body:-

> *(i) An incised wound measuring 3cm x 1 cm x 3cm deep over back side of chest to the right of backbone, 2 cm outer side and 11.5 cm x below right of acromion process vertically placed. The margins were clear cut and everted, fresh bleeding was present. Advised X-Ray.*

In his opinion the injury was caused by any sharp edged weapon and it was fresh. P.W.1 has proved injury report as Ext. Ka.1 and has said that

this injury could have been caused by knife on 25.11.1984 at about 01:00 p.m.

9. In his cross-examination, he has said that this injury is not possible by any nail and if a piece of glass having a shape of knife is struck then this injury is possible.

10. P.W. 2 Raghuveer Chandra, is the first informant, who has supported the prosecution case and has said that injured Kausal @ Rajesh is his nephew. On the date of incident at 04:10 p.m. he himself was working in field and Kaushal was weeding sweet peas alongwith Ram Naresh and Daya Ram in his field. There was moonj growing over the boundary of their fields to which the accused started cutting. When he and Kaushal objected to it, Desh Raj fired at his nephew with a country-made pistol. He lied on the ground, as a result he escaped unhurt. Accused Bahadur struck knife over back of Kaushal. The first informant, Ram Naresh and Daya Ram challenged the accused, thereupon they ran away towards village. They took Kaushal to District Hospital on a cot and he got the application written from Lakshmi Chandra, thereafter he put signature over it. The witness has proved application as Ext. Ka.2 and has said that he lodged the FIR.

11. P.W. 3 Ram Naresh, is the eye-witness of the alleged incident. He has supported the prosecution case and has said that the injured is now not alive. About two years ago at about 01:00 p.m. the injured was weeding his field with him and Daya Ram. Raghuveer Chandra was working in his field. There was moonj growing over the boundary of their fields which the accused started cutting. Kaushal had also reached there, but he did not see any person hitting him. The witness has been declared hostile and has been cross-examined by the prosecution.

12. P.W. 4 Daya Ram, is also one of the public witness of the alleged incident and has also not supported the prosecution case and has said that now the injured is not alive. On the date of incident at about 11 a.m.-12:00 p.m., some quarrel took place but he did not see any person hitting the injured.

13. P.W. 5 Lakshmi Chandra, has said that on the date of incident at about 01:00 p.m. Kaushal was lying in injured condition in Kali Charan's field, there was wound over his back caused by knife. He was taken to District Hospital, Mainpuri by Raghuveer and 6-7 persons and was admitted there. Raghuveer Singh got the application written from him. He wrote down the application upon his dictation, thereafter, the first informant put his signature over it. In the Hospital, Kaushal was conscious and has said that Bahadur has struck him with knife.

14. P.W. 6 Constable Narain Singh, is the formal witness who has scribed chik FIR, upon application of the first informant and entered its gist in G.D. No.54, time 02:30 p.m. The witness has proved chik FIR (Ext. Ka.2) and copy of G.D. (Ext. Ka.3).

15. P.W.7 Constable Jagdish Chandra Mishra, is also a formal witness who has stated that on 01.02.1985 he was posted as Head *Moharir* at Police Station- Allau and on that day, blood-stained clothes and Baniyan (vest) of injured Kaushal @ Rajesh were deposited by Lakshmi Chandra. He took them in possession and prepared its *fard baramadagi.* The witness has proved clothes as Material Exts. 2 and 3, in court.

16. P.W.8 S.I. Vishwanath, is the second Investigating Officer of the case and has said that prior to him, the S.O. Manik Chandra has investigated the case and after his transfer he took over the investigation. He has stated about the investigation carried out by him and has said that the statement of injured was recorded on 15.02.1985 and he collected his injury report. The witness has proved statement of injured recorded under Section 161 Cr.P.C. as Ext. Ka.4. He collected report from the concerned doctor under whom the injured was under treatment and has proved the report as Ext. Ka.5. After investigation, he submitted charge-sheet which he proved as Ext. Ka.6. Till submission of charge-sheet the injured has not died, but he was admitted in hospital. It is not mentioned in the case diary when the injured has died.

17. P.W. 9 S.I. Manik Chandra, is the first Investigating Officer of the case. He has said about the investigation carried out by him and as a

secondary witness of the Head Moharir, who has scribed G.D., proved G.D. as Ext. Ka.7. He has proved the site-plan (Ext. Ka.8) and thereafter he was transferred.

18. After closure of prosecution evidence, the statement of accused were recorded under Section 313 Cr.P.C. in which they admitted that accused Kali Charan is the father of the accused Bahadur and Desh Raj and Kali Charan's field is adjacent to the informant- Raghuveer's field. It is also admitted that on 25.11.1984, moonj was growing over intervening boundary of their respective fields. They have said that the Kaushal has not died due to the injuries and after reaching home from the hospital, he died due to illness after about 13-14 months of the incident.

19. The accused have not produced any evidence in defence.

20. After hearing argument on behalf of learned Counsel for the parties and perusal of evidence on record, the learned trial court came to the conclusion that prosecution has been able to prove its case beyond reasonable doubt, so far as appellants Bahadur and Desh Raj are concerned. It is proved that they attempted to kill injured Kaushal @ Rajesh in furtherance of their common intention. The co-accused Kali Charan was given benefit of doubt and was acquitted and accordingly, both the appellants were found guilty and hence, convicted and sentenced for offence punishable under Section 307 read with 34 IPC, for the term as indicated above.

21. Heard Shri Brij Raj Singh, learned Counsel for the surviving appellants and Shri Akhilesh Kumar Mishra, learned A.G.A on behalf of the State and perused the material on record.

22. It is submitted by learned Counsel for the appellants that the public witnesses have turned hostile and have not supported the prosecution case. The first informant is the relative and interested witness of the injured. The injured has not been examined, as he has died. There is no motive for the appellants to commit this crime. It is also submitted that the clothes were not sent for forensic examination, therefore, in absence of any forensic report the prosecution case is weak

and not reliable. In view of the above, the prosecution has not been able to prove its case beyond reasonable doubt and the learned trial court failed to appreciate the evidence on record correctly, therefore, the impugned judgment and order is liable to be set aside and the appellants deserve to be acquitted.

23. Per contra, learned A.G.A. on behalf of the State has submitted that prosecution has been able to prove its case beyond reasonable doubt. It is a day light incident based on direct evidence. The first informant is the eye-witness and has supported the prosecution case. P.W. 5 Lakshmi Chandra reached at the place of occurrence soon after the incident and he found the injured lying in the injured condition at the place of occurrence. The FIR was lodged promptly. The oral testimony is supported with medical evidence. The lapse on the part of the Investigation Officer for not sending the blood-stained clothes, of the injured, for forensic examination is not fatal to the prosecution case, as it is settled law that if the case is proved otherwise, then defective investigation would have no bearing over the prosecution case.

24. It is settled law that in a criminal case the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, the alleged incident took place on 25.11.1984 at 01:00 p.m. in the field under Village- Summerpur, Police Station- Alau, District- Mainpuri and the FIR was lodged by P.W.2 Raghuveer Chandra, the same day at about 10:30 p.m. at Police Station- Kotwali. The distance from the place of occurrence to police station is sixteen kilometers, as per the chik FIR. Thus, within nine and a half hour the FIR was lodged by the first informant and it is stated by him that after the incident he with the help of villagers brought his nephew, the injured Kaushal @ Rajesh, on cot to the District Hospital- Mainpuri, where he was admitted in serious condition. He has also stated that due to the fear from the accused he was afraid of going to Police Station- Allau to lodge the FIR. He has said that he got the application written from P.W. 5 Lakshmi Chandra who supported the version of the first informant that he wrote it down at the dictation of first informant Rahugveer in Hospital. P.W.6,

Constable Narain Singh, is the scribe of the chik FIR and the gist which he wrote down in concerned G.D.. Therefore, all the above evidence goes to show that the FIR was lodged promptly, without any undue delay and the appellants have also not raised any such issue in this regard.

25. So far as the place of occurrence is concerned, it is the field in Village- Summerpur, Police Station- Alau, District- Mainpuri. P.W.2 Raghuveer Chandra, P.W.5 Lakshmi Chandra, have supported the prosecution case that the incident occurred at the place as alleged by the prosecution. The Investigation Officer has also inspected the place of occurrence and prepared its site-plan which shows the same place of occurrence. Even P.W.3 Ram Naresh, who is the hostile witness has also stated that altercation took place between the injured and accused with regard to cutting moonj over the intervening boundary of their respective fields. It is submitted on behalf of learned Counsel for the appellant that the place of occurrence is not established because no blood was found at the spot. I do not agree with this submission because there is no case and also there is no evidence that the blood had fallen on the ground at the time of incident. Therefore, in absence of any blood at the spot, it cannot be doubted that the incident has not occurred at the place as alleged by the prosecution. The Investigation Officer has stated that when he investigated the place of occurrence, he found *shara moola* (roots of moonj) at the place of occurrence. The defence has also not suggested any other alternative place of occurrence. In view of the above, the place of occurrence is fully established.

26. So far as the ocular evidence is concerned, the prosecution has examined four witnesses to prove the fact. In this regard, P.W.2 Raghuveer Chandra is the uncle of the injured Kaushal @ Rajesh and he has fully supported the prosecution case. There are no material contradictions in his statement. His testimony is consistent and thus reliable and trustworthy. He has said that when accused Bahadur, Desh Raj and Kali Charan started cutting the moonj, his nephew Kaushal objected to it. Then Desh Raj fired at him with country-made pistol to which he escaped unhurt, thereafter, appellant Bahadur struck knife over

the back of his chest and when he challenged the accused they fled away from the spot. This witness has been cross-examined at length, but nothing material has come in his evidence which would discreet his evidence. He has said that he was ploughing his field, at the time of incident. He admitted the injured in hospital, thereafter, he lodged the FIR. All the three accused were cutting moonj with *hasiya* (sickle). The altercation took place and then Bahadur dropped *hasiya* and pulled out a knife from the pocket. He went to the Police Station alone. Therefore, P.W.2 Raghuveer Chandra has fully supported the prosecution case.

27. P.W. 3 Ram Naresh, is the hostile witness, but he has supported the prosecution case to the extent that at the time of incident the injured and other witnesses were present in the filed and there was moonj growing over the intervening boundary of the first informant and accused Kali Charan. The accused came there to cut moonj, to which Kaushal objected. The witness has not supported the other part of the prosecution case and has said that he has not seen who caused injuries. It is settled law that the evidence of a hostile witness would not be rejected outrightly and that part of his testimony, which supports the prosecution case and finds corroboration from other evidence can be relied upon. Therefore, P.W. 3 Ram Naresh, has supported the prosecution case to the extent that at the time of incident the accused were cutting the moonj and the injured had objected to it.

28. P.W. 4 Daya Ram is the hostile witness, he has not supported the prosecution case and has said that the quarrel had taken place but he did not see any person causing injuries.

29. P.W. 5 Lakshmi Chandra is the witness who has said that he reached at the place of occurrence soon after the incident. He saw the injured lying in Kali Charan's field, having wound over his back, caused by a knife. He has said that thereafter, the injured was taken to the hospital and was admitted there. He wrote down the application at the dictation of first informant Raghuveer Singh. He has also said that the Kaushal was conscious at the hospital and said that the Bahadur had

struck him with knife. This witness has also been cross-examined at length but nothing material has come in his testimony to discredit him. His testimony is fully consistent and reliable.

30. In view of the above discussion, the prosecution has been able to prove its case that appellants started cutting moonj, then the injured Kaushal @ Rajesh objected to it then the appellant Bahadur struck a knife over his back causing him injuries.

31. In the present case, the injured Kaushal @ Rajesh has not been examined as before his examination in court, he died. The prosecution has proved his statement recorded under Section 161 Cr.P.C. and prosecution has tried to prove it for the purpose that it be admitted in evidence as his dying declaration under Section 32 of Evidence Act. This statement, which is recorded under Section 161 Cr.p.C. and is proved by the I.O., does not fall in the category of dying declaration because the prosecution has not been able to prove that the deceased has died due to the above injuries. The prosecution has not filed any evidence, when the injured has died or what was the cause of his death. On the other hand, the defence has said that the injured has died after about 13-14 months from the date of incident due to illness and not due to the injuries caused to him in this incident. Therefore, the statement of injured recorded under Section 161 Cr.P.C. does not fall within the category of Section 32 Evidence Act as dying declaration and thus, not reliable.

32. As the injured has died, so he could not be examined by the prosecution and as discussed above from the statement of witnesses of fact the prosecution has been able to prove its case against the appellants, therefore, non-examination of injured Kaushal @ Rajesh have no adverse effect over the prosecution case.

33. So far as the oral and medical evidence is concerned, as per the statement of Dr B.P. Bansal, he medically examined injured Kaushal @ Rajesh and found one incised wound over the back of chest which is caused by any sharp cutting edge. It has come in oral evidence that appellant Bahadur had struck knife over the back of chest of the injured

causing him injuries and it is well known that the knife is a sharp cutting instrument. Therefore, oral testimony is fully supported by medical evidence.

34. It is submitted by learned Counsel for the appellants that there was no motive for the appellants to commit the crime and in absence of any such motive, prosecution case is not reliable. I do not agree with this submission, because in a case based on direct evidence, the motive looses its significance. Beside this, the motive is a state of mind of a person which cannot be judged from outside. As from the direct evidence prosecution has proved its case, therefore, absence of any motive does not have any adverse effect over the prosecution case.

35. In view of the above discussion, I come to the conclusion that the prosecution has been able to prove its case, that on 25.11.1984 at about 01:00 p.m. in village Summerpur, Police Station- Allau, District- Mainpuri, the appellants Bahadur and Desh Raj, in furtherance of their common intention, struck knife over the back of chest of Kaushal @ Rajesh causing him injuries. The I.O. has not found trace of any fire shot from pistol at the place of occurrence. Only evidence is that appellant Bahadur struck knife over the back of chest of Kaushal @ Rajesh and the altercation took place due to cutting of moonj. There is no evidence that the appellants had any previous enmity against the first informant or the injured. There is also no evidence that the appellants have any criminal history. There is no evidence that the attack was premeditated. The injury report of the injured shows that he sustained only one injury of the nature of incised wound over the back of his chest. X-Ray was performed and no fracture was found. In the opinion of the doctor, the injury was simple in nature. There is also no evidence that the appellants tried to attack the injured again. On the other hand, they ran away from the spot upon alarm raised by the witnesses. It goes to show that the appellants had no intention to kill the injured Kaushal @ Rajesh.

36. In view of the above, the learned trial court has reached at the right conclusion of the guilt of the appellants, but, so far as conviction

and sentence under Section 307 read with 34 IPC is concerned, it deserves to be modified, because, the act of the appellants was not of such a nature that they have had any intention to kill the injured and the nature of injury also does not support the prosecution case that the act committed would fall under the category of attempt to murder. In my view, the offence falls under Section 324 IPC and not under Section 307 read with 34 IPC.

37. In view of the above discussion, the appellants Bahadur and Desh Raj are held guilty of offence punishable under Section 324 read with 34 IPC and the conviction of the appellants, by the learned trial court, under Section 307 read with 34 IPC, is modified and the appellants are convicted under Section 324 read with 34 IPC.

38. So far as the sentence part of the appellants is concerned, it is submitted by learned Counsel for the appellants that they have no criminal history and the appeal is pending since last about 39 years. At present, they are very old persons having no money an are suffering with age related ailments, therefore it is pleaded that the appellants be given the benefit of Section 4 of first offender under Probation of Offenders Act,1958.

39. Looking into the facts and circumstances of the case, it is noteworthy to note that the incident had taken place way back in the year 1984, which is more than 42 years ago and this appeal is pending since last about 39 years. There is no criminal antecedents of the appellants. It appears that the incident took place without any pre-mediation of the mind and had started at the spur of moment, therefore, looking into the entire facts and circumstances of the case, the appellants deserve to be given the benefit of Section 4 of Probation of Offenders Act, 1958 and Section 360 Cr.P.C.

40. In view of the above discussion, this appeal is **allowed in part** and the impugned judgment and order is modified to the extent that the appellants Bahadur and Desh Raj are held guilty of Section 324 read with 34 IPC, and instead of sentencing them to imprisonment, they are

given the benefit of Section 4 of Probation of Offenders Act, 1958. Therefore, the appellants, to wit, **Desh Raj** and **Bahadur** are released on probation and it is directed that they would file a personal bond each of Rs.20,000/- and two sureties of the like amount before District Probation Officer, concerned, and also an undertaking to the effect that they will maintain good behavior during the period of one year from the date of release. The said bonds shall be filed by the appellants within two weeks from the date of this judgment. In case of breach of any of the above conditions, the appellants shall be called and heard on quantum of sentence.

41. Let a copy of this judgment alongwith record of the trial court be returned to court concerned for information and necessary compliance.

(Sanjiv Kumar,J.)

July, 03, 2026
AdityaG

Digitally signed by :-
ADITYA GAUTAM
High Court of Judicature at Allahabad