

[2010] 11 S.C.R. 433

RAM NARESH
v.
STATE OF U.P.
(Criminal Appeal No. 231 of 2004)

SEPTEMBER 9, 2010

**[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]**

Penal Code, 1860:

s.307 – Attempt to murder – Accused shot at the victim – Conviction and sentence of five years RI – Pleas of delay in lodging the FIR and related witnesses – Rejected – HELD: There is no substantial delay in lodging the FIR – Incident happened late in the evening in a village about 9 km away from the police station and it would have been difficult for the complainant living in a backward area to rush to the police station immediately – There is also no reason to disregard the evidence of PWs – It must also be borne in mind that the incident happened in the year 1978 and the evidence was recorded in the year 1986 – Some discrepancies are, therefore, bound to appear in the ocular evidence as memory fades with the passage of time – Though the doctor has deposed that from a look at the injury it could not be said with certainty that it was a fire arm injury, in the light of ocular evidence, however, the opinion of the doctor cannot stand in the way of the prosecution – However, keeping in view the fact that the incident had happened 32 years ago, the sentence is reduced from five years to three years – Delay in lodging FIR – Evidence – Variance in medical evidence and oral testimony – Sentence/Sentencing.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 231 of 2004.

A From the Judgment & Order dated 19.11.2002 of the High
Cour of Allahabad, Lucknow Bench Lucknow in Criminal
Appeal No. 529 of 1989.

B Anurag Kishore, Somna Dhowan and Vishwajit Singh for
the Appellant.

Sandeep Singh. G.V. Rao, Irshad Ahmad, Abhishek
Choudhury and Manoj Kumar Dwivedi for the Respondent.

The following Order of the Court was delivered

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O R D E R

1. This appeal is directed against the judgment and order
of the High Court of Judicature at Allahabad whereby the
appellant stands convicted for an offence punishable under
D Section 307 of the Indian Penal Code and sentenced to
rigorous imprisonment for five years.

2. The facts of the case are as under:

E 2.1 On 11th August, 1978, as Ram Vilas PW 1, and his
brother Shiv Vilas were returning home after visiting the temple
about half a kilometre away from the village, they were waylaid
by the appellant Ram Naresh and his father Jagannath (since
expired). Jagannath was carrying a country made revolver
whereas the appellant was armed with a single barrel shot gun.
F Jaganath exhorted the appellant that as Shiv Vilas was always
coming in their way he should be killed. The appellant
thereupon fired one shot at Ram Vilas which hit him on the
head. The firing also attracted P.Ws2 and 3 to the spot. The
next morning Ram Vilas along with the injured Shiv Vilas went
G to Police Station, Makhi and a First Information Report was
lodged for an offence punishable under Sections 307/34 IPC.
On the completion of the investigation the accused were
charged for the above offences. The trial court and the High
Court have relied on the evidence of Ram Vilas P.W. 1 and

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Lalu P.W. 3 as eye witnesses of the occurrence, Shiv Vilas, in the meanwhile, having been murdered in some other incident.

3. Before the trial court as well the High Court, the primary argument made on behalf of the accused was that there was an inordinate and unexplained delay in the lodging of the FIR, that the evidence of the eye witnesses who were closely related to the injured was discrepant in material particulars, and that the medical evidence did not support the ocular evidence. These submissions have been rejected by both the courts below. Before us, today, Mr. Anurag Kishore, the learned counsel for the appellant has reiterated the same arguments. We find from a reading of the evidence that there is no substantial delay in the lodging of the FIR. The incident happened in a village about 9 kms. away from the police station late in the evening and it would have been difficult for the complainant living in rustic and backward area to rush to the police station immediately. We also find no reason to disregard the evidence of Ram Vilas and Lalu, PWs. Admittedly, Ram Vilas was a brother of Shiv Vilas, the injured and Lalu was a close relative and also a party man. It must also be borne in mind that the incident happened in the year 1978 and the evidence was recorded in the year 1986. Some discrepancies are therefore bound to appear in the ocular evidence as memory fades with the passage of time.

4. We have also gone through the evidence of Dr. J.N. Bajpai, P.W. 5. He deposed that from a look at the injury caused to Shiv Vilas it could not be said with certainty that it was a fire arm injury. In the light of the ocular evidence, however, we find that the opinion of the doctor can in no way stand in the way of the prosecution. Mr. Kishore has also attempted to argue that as the shot had been fired at Shiv Vilas from a distance of four feet the entry wound would have blackening and charring thereon. It is true that had the shot gun been fired from that distance, blackening and charring would have been visible but the four steps (kadams) that have been referred to by Mr.

A Kishore is not four feet but about 20 feet as a kadam CRL.A. No. 231 of 2004 5 REPORTABLE would be about four to five feet. In this view of the matter, the fact that there was no blackening or charring around the wound does not in any manner help the defence.

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5. It has been finally submitted by Mr. Kishore that as the incident had happened in the year 1978 and as 32 years had passed on some reduction in the sentence may be considered. We find merit in this plea. We, accordingly, reduce the sentence of the appellant from five to three years.

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6. With this modification in the sentence, the appeal is dismissed.

7. Appellant be taken into custody forthwith to serve out the remaining period of his sentence.

R.P.

Appeal dismissed.