



2026:AHC:68088

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 2588 of 1985

Krishna Pal Singh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: A.K. Singh Solanki, P.N.Mishra, Pashali Solanki
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard Pashali Solanki, learned counsel for the appellant and Sri Rahul Asthan, learned A.G.A. for the State.

2. This appeal has been filed against the judgment and order dated 12.09.1985 passed by Additional Sessions Judge, Bareilly, in S.T. No.47 of 1981, State Vs. Kishan Pal Singh and others, convicting the appellants under Section 326/34 and 323/34 I.P.C. and sentencing each of them to 5 years R.I. and 6 months R.I respectively.

3. During pendency of the appeal, two of the accused persons Krishna Pal Singh and Babu Lal have died. Accordingly, the appeal, insofar as it relates to them stands abated. The present appeal survives only in respect of present appellant Rajendra alias Tuttal.

4. The prosecution case, in brief, is that there existed a prior enmity between accused Krishna Pal Sing and injured Mahavir Singh. On the date of occurrence i.e. on 25.07.1982 at about 2.30 p.m., when the informant Jagpal Singh was sitting with Mahavir Singh and his father-in-law Ram Chandra Singh in the verandah of goods agency office, the accused Krishna Pal Singh arrived armed with a fire-arm, while other accused persons Babu Singh and Rajendra @ Tuttal were armed with lathis. It is alleged that Krishna Pal Singh fire a shot at Mahavir Singh, causing him to fall down, and thereafter the other co-accused persons including the present appellant Rajendra @ Tuttal assaulted him with lathis, causing grievous injuries. Father-in-law of Mahavir Singh also sustained injuries in the incident.

5. An F.I.R. was lodged, by informant Jagpal Singh and injured were medically examined on the same day at about 3.40 p.m. onwards by Dr. Ravi Mehra. Mahavir Singh has sustained as many as 7 injuries which are as follows :-

"1. Lacerated wound 0.5 cm x 0.2 cm x scalp deep, left side 7 cm above

left ear.

2. Lacerated wound 2 cm x 0.2 cm x scalp deep, right side 13 cm above right ear.

3. Lacerated wound 2 cm x 1 cm on dorsum and inner aspect of right hand (kept U.O).

4. Gun shot wound of entry 4 cm x 3 cm on medial aspect of left thigh 11 cm above knee joint lying left. (Kept U.O).; blackening present.

5. Gun shot wound of entry 0.4 cm x 0.3 cm interior to injury no. 4 blackening present and kept U.O.

6. Gun shot wound of entry) 0.3 cm x 0.2 cm x 0.2 cm posterior to injury no.4, blackening present(kept U.O).

7. Gunshot wound of exit 6 cm x 4 cm on outer aspect of left thigh, 10 cm above knee joint lying left (kept U.O).

8. Smell of alcohol per breath, pupil dilated reacting to light sluggishly. Injuries nos 3,4,5,6 and 7 were kept U.O and rest were simple; injury 4,5,6 and 7 caused by fire and rest by blunt object, duration fresh."

6. Ram Chander Singh, father-in-law of Mahavir Singh has sustained as many as 4 injuries. Injury report Ext. Ka-3 is on record duly proved in evidence by P.W. -5 Dr. Ravi Mehra. The following injuries were present on Ram Chander Singh as Ext. k-3:

"1. Lacerated wound 10 cm x 3 cm x scalp deep on tip of head U shaped, tip of U is posteriorly 10 cm above the left ear.

2. Contusion 3 cm x 2 cm on dorsum of right II index finger and joint.

3. Contusion 10 cm x 2 cm on left scapular region kept U.O

4. Contusion 2 cm x 2 cm on left back on the tip of left iliac crest.

7. Some of the injuries were kept under observation and advised for X-ray. X-ray was done by X-ray technician in supervision of Dr.K.S. Tiwari. X-ray report and X-ray plates are available on record. Documentary evidence are also available on record.

8. Investigation was carried out and after investigation of the case, a charge-sheet was submitted.

9. After hearing the arguments of both the parties and considering the evidences on record, the trial court convicted the accused persons for offence under Sections 326/34 and 323/34 I.P.C. and sentenced accordingly.

10. Learned counsel for the appellant submitted that the incident is about more than 40 years old and prolonged litigation has caused immense hardship to the present appellant. The main role of firing has been attributed to co-accused Krishna Pal Singh who is now deceased. The

present appellant is alleged only to have caused injuries by lathi. Considering the passes of time and the nature of injuries the conviction and sentence deserves to be concluded into Section 323 and 325 I.P.C.

11. Learned A.G.A. for the State supported the conviction and sentence imposed by the trial court.

12. After hearing the arguments advanced by both the parties, perused the record, it is not in dispute that fire-arm injury, which has been considered by the learned trial court to constitute the offence under Section 326 I.P.C., has been attributed to co-accused Krishna Pal Singh who has since died. The role assigned to the present appellant is that of assaulting the injured person with lathi after the fire-arm injury has already been caused. While the injuries suffered by injured Mahavir Singh are undoubtedly grievous in nature, the specific overt act of causing fire-arm injury is not attributed to the present appellant.

13. Section 326 I.P.C. reads as under :-

"Section 326 IPC as defined under the Code reads as, "Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

14. A perusal of medical report and X-ray report reveals that injured Ram Chander Singh has sustained only simple injuries while Mahavir Singh has sustained a fire-arm injury on his left thigh with an underlying fracture of femur bone. Presence of a radio-opaque shadow of metallic density in the X-ray report, indicating embedded pellets. A fracture of the metacarpal bone of right hand is also noticed. In the present case, the fracture in femur bone of the injured Mahavir Singh was caused due to fire-arm injury on his left thigh. The role of causing fire-arm injury has been attributed to co-accused- Krishna Pal Singh, who had died during pendency of this appeal.

15. Having regard to the nature of weapon attributed to the present appellant and the absence of any evidence suggesting that he shared a common intention to cause grievous injury with danger weapon, it would not be safe to uphold his conviction under Section 326 I.P.C.

16. However, the evidence on record clearly establishes that the appellant participated in the incident, played an active role and caused injuries, which include fracture of the metacarpal bone of right hand, which falls within the ambit Section 325 I.P.C.

17. Accordingly, conviction under Section 326/34 I.P.C. and sentenced imposed by learned trial court is hereby set aside. The appellant **Rajendra alias Tuttal**, is sentenced for offence under Sections 323 and 325 I.P.C. for voluntarily causing hurt and grievous hurt.

18. A perusal of order-sheet transpires that the appellant is in jail since 03.09.2025 in execution of non-bailable warrant against him.

19. Considering the fact that incident is about 44 years old and the appellant has faced a prolonged trial and appeal, the sentence is reduced to the period already undergone along with a fine to the tune of Rs.1000/-.

20. The appellant is directed to deposit the amount of fine within 30 days from receiving a certified copy of this judgment. In default, he shall undergo imprisonment for a period of one month.

21. Appellant Rajendra @ Puttal be released from jail forthwith, if not wanted any other case.

22. Accordingly, the appeal is partly allowed.

23. Let a copy of this judgment be transmitted to the trial court for necessary compliance.

March 17, 2026

P. Pandey

(Mrs. Vani Ranjan Agrawal,J.)