



NEUTRAL CITATION NO. 2025:MPHC-IND:8298

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SANJEEV S. KALGAONKAR
ON THE 27TH OF MARCH, 2025
Criminal Appeal No. 13197 of 2024
SHERU ALIAS LULLA
Versus
*STATE OF M.P.***

Appearance:

*Shri Virendra Sharma Sr. Advocate with Shri Jitendra Sharma
advocate for the appellant.*

Shri Apoorva Joshi – Govt. Advocate for the respondent/State.

JUDGMENT

This criminal appeal u/S 415 of Bhartiya Nagarik Surkasha Sanhita, 2023 (for short 'BNSS,2023', hereinafter) is filed assailing the judgment of conviction and order of sentence dated 13.11.2024 passed by learned Additional Sessions Judge, Jawra, Distt. Ratlam in S.T. No. 07/2023 whereby the appellant – Sheru alias Lulla was convicted for the offence punishable u/S 324 of IPC and sentenced to undergo rigorous imprisonment for 06 months and fine of Rs. 500/- with default stipulation for rigorous imprisonment of 01 month on non-payment of fine. Sheru was also convicted for offence punishable u/S 25(1-B)(a) of the Arms Act,1959 and sentenced to undergo rigorous imprisonment for 03 Years with fine of Rs. 5,000/- with default stipulation for rigorous imprisonment



NEUTRAL CITATION NO. 2025:MPHC-IND:8298

of 06 months. Sheru was further convicted for offence punishable u/S 27 of Arms Act,1959 and sentenced to undergo rigorous imprisonment of 05 years with fine of Rs. 5,000/- with default stipulation for rigorous imprisonment of 06 months. All the sentences were directed to run concurrently. For the sake of convenience appellant – Sheru alias Lulla shall be referred to as "accused" hereinafter.

2. The exposition of facts giving rise to present appeal are as under:

Fareed S/o Aslam had an altercation with Sheru alias Lulla over fetching of water from the Government Water Tap. Sheru had assaulted Farid, therefore matter was reported to P.S. Jawra. Sheru was pressurizing for compromise in the matter. On 29.11.2022, around 7:30 in the evening, Sheru fired on Aslam by his pistol. Aslam sustained bullet injury on his right foot. Aslam was taken to Civil Hospital, Jawra. P.S. Jawra registered FIR at Crime No. 398/2022. The medico legal examination of Aslam was conducted. On completion of investigation final report was submitted before the Judicial Magistrate First Class, Jawra. Learned Judicial Magistrate First Class committed the case for trial to the Court of Sessions *vide* order dated 15.02.2023.

3. Learned JMFC, Jawra framed charges for offence punishable u/S 307 of IPC and Section 25(1-B)(a) of Arms Act and Section 27 of Arms Act, 1959 against accused Sheru alias Lulla and the offence punishable u/S 307 r/W 34 of IPC and Section 25(1-B)(c) of Arms Act against Bhura alias Ameen. On completion of trial, after hearing both the parties,



NEUTRAL CITATION NO. 2025:MPHC-IND:8298

learned trial Court acquitted the co-accused Bhura alias Ameen from charges of offence punishable u/S 307 r/W 34 of IPC and Section 25(1-B) (c) of the Arms Act. Learned trial Court acquitted co-accused Bhura alias Ameen from charges of offence punishable u/S 307 r/W 34 of IPC and Section 25(1-B)(c) of the Arms Act. Learned trial Court acquitted the accused – Sheru alias Lulla from the charges punishable u/S 307 of IPC. However, convicted him for Section 34 of IPC and Section 25(1-B)(a) and 27 of the Arms Act and sentenced him for Rigorous imprisonment and fine as stated in para 1 of the judgment.

4. Feeling aggrieved by the judgment of conviction and order of sentence present appeal is filed on the following grounds:

1. The gun allegedly recovered at the instance of appellant/accused was recovered from an open place. There was no finger print on it. Proper sealing and custody of the article was not proved.
2. The evidence of witnesses is self-contradictory. Learned trial Court committed error in relying on their statements.
3. The Investigation was tainted and partial.

On these grounds, it is prayed that the impugned judgment of conviction and order of sentence be set aside and appellant be acquitted.

5. Learned counsel for the appellant at the outset submits that the appellant does not wish to assail the conviction and the sentence for



NEUTRAL CITATION NO. 2025:MPHC-IND:8298

offence punishable u/S 324 of IPC. However, the conviction and sentence for offences punishable under the Arms Act deserves to be set aside.

6. Learned counsel for appellant contends that the recovery of the fire-arm at the instance of appellant was not proved beyond doubt. The fire-arm was recovered from an open place. There was no independent witness of the recovery proceeding. The recovery proceeding is tainted and doubtful. Learned counsel further referring to the statement of Ruchika(PW-21), the Arms Clerk contends that the fire-arm was not produced before the District Magistrate. Therefore, the sanction for prosecution vide memo Ex. P-24 is illegal. The conviction for offence punishable u/Ss. 25(1-B)(a) and 27 of Arms Act stands vitiated for want of valid sanction for prosecution.

7. *Per contra*, learned counsel for the State opposes the appeal and submits that the learned trial Court did not commit any error in convicting the appellant and imposing appropriate sentence. Learned counsel contends that the sanction for prosecution was duly proved by the prosecution. The appeal is meritless and deserves to be dismissed.

8. Heard, both the parties and perused the record.

9. The points for determination in present appeal are as under:-

A/ Whether the learned trial Court committed error in convicting the appellant for offence punishable under Section 324 of IPC for voluntarily causing hurt to Aslam?



NEUTRAL CITATION NO. 2025:MPHC-IND:8298

B/ Whether the learned trial Court committed error in convicting the appellant for offence punishable under Section 25 and 27 of Arms Act, 1959 or illegal possession and use of firearm pistol?

POINTS FOR DETERMINATION:- REASONS AND CONCLUSION

10. Aslam (PW-1) deposed that accused Sheru had an altercation with his son Fareed over fetching of drinking water. Fareed had lodged a report against Sheru. Sheru was pressurizing for settlement in the matter. On the date of incident, around 8:00 in the night, he was chatting with his friends – Waseem and Gora in front of house of Abdul Qureshi. Sheru came on a motorcycle and fired gun-shot by a pistol. The bullet hit a stone and pierced his footwear (*chappal*). Sheru fired again at him and fled away on his motorcycle. He lodged report (Ex. P-1) at Civil Hospital, Jaora. He presented the footwear (*chappal*) to police which was seized *vide* seizure memo(Ex. P-2). In cross-examination, Aslam admitted the suggestion that Sheru had fired at him to pressurize for compromise in earlier matter. He did not intend to kill him. Rather, he intended to frighten him. The testimony of Aslam (PW-1) remained unrebutted in cross-examination. No material inconsistency or improbability is available in his evidence. Fareed (PW-3) S/o Aslam corroborated testimony of Aslam and deposed that he had an altercation with Sheru alias Lulla over fetching of water from Government Tap. He reported the incident at police station. Sheru was threatening for settlement in the matter. Sheru fired at his father. Bullet pierced footwear of his father. His father Aslam sustained injury.



NEUTRAL CITATION NO. 2025:MPHC-IND:8298

11. Waseem Khan(PW-2), Sarfaraz(PW-4), Rehman(PW-6) and Mujeeb(PW-9) did not support the prosecution. Their testimony is inconsistent with their previous statements u/S 161 of Cr.P.C. Therefore, it is not trustworthy.

12. Dr. Ghanshyam Patidar(PW-17) deposed that he had examined Aslam on 25.11.2022. Aslam had a bruise on right foot caused within 24 hours of the examination. Sub-Inspector B.D. Joshi(PW-19) proved the Dehati Nalishi(Ex.P-1) at the instance of injured Aslam at Civil Hospital, Jaora. There is no inconsistency in the evidence of Aslam and the FIR registered as Dehati Nalish(Ex.P-1). The First information to police officer corroborates testimony of Aslam (PW-1) u/S. 137 of the Evidence Act. S.I. Hari Singh (PW-23) seized one footwear(*chappal*) on presentation of Aslam. He also seized one empty cartridge from the spot of incident *vide* seizure memo (Ex. P-5). He further seized a bullet recovered from footwear of Aslam *vide* seizure memo (Ex. P-13). The seized material was forwarded to the Ballistic Expert for opinion. The Ballistic Expert report(Ex.P-28) substantiates that the bullet recovered from the footwear of Aslam was fired by pistol seized at the instance of accused – Sheru.

13. Learned trial Court considering all these unrebutted evidence committed no error in concluding that the prosecution has proved beyond doubt that the accused – Sheru has voluntarily fired with pistol at Aslam. Aslam had sustained simple injury on his right foot. Learned trial Court committed no error in convicting the appellant Sheru alias Lulla for



NEUTRAL CITATION NO. 2025:MPHC-IND:8298

offence punishable u/S 324 of IPC and sentencing him to for R.I. for 06 months and fine of Rs. 500/- with default stipulation. The sentence is commensurate with the act and conduct of accused Sheru alias Lulla, proved by the evidence on record. Therefore, no interference is called for in this regard.

14. S.I. Hari Singh (PW-23) deposed that he had seized a bullet ‘Article 2’ from the footwear(*chappal*) of Aslam *vide* seizure memo (Ex. P-13), which was sealed by CHC, Jaora. He further seized one empty cartridge ‘Article 3’ from the spot of incident *vide* seizure memo (Ex. P-5) and sealed it. He arrested the accused Sheru alias Lulla *vide* arrest memo (Ex. P-25). Sheru informed that he had concealed the pistol in bushes on Nagda-Ujjain road near signboard of Ramlal Mali. He recorded the statement *vide* memo(Ex. P-9) and (Ex. P-15). In furtherance of the information, he recovered a pistol ‘Article 4’ from Nagda-Ujjain road near signboard of Ramlal at the instance of accused Sheru. He had forwarded the seized articles for examination to the FSL, Sagar *vide* memo (Ex. P-27). The articles were deposited at FSL *vide* acknowledgement receipt (Ex. P-23). It is pertinent to note that the articles were produced before the trial Court which were duly identified by the Investigation Officer Hari Singh Bader(PW-23) and the articles were found properly sealed with seizure slip signed by the Investigation officer. The chain of custody of the Articles is proved. There is no inconsistency for doubt in the evidence on record in this regard.



NEUTRAL CITATION NO. 2025:MPHC-IND:8298

15. The Ballistic Expert report (Ex.P-28) substantiates that the bullet recovered from the footwear (*chappal*) of Aslam was fired from the pistol recovered at the instance of accused Sheru and the footwear (*chappal*) of Aslam had gun shot dent caused by copper jacketed bullet.

16. Learned counsel for the appellant contends that the fire-arm was recovered from a public accessible open place. Therefore, the seizure of fire-arm at the instance of appellant is doubtful.

17. The Supreme Court in the case of **State of H.P.v. Jeet Singh (1999) 4 SCC 370** held that -

“26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is ‘open or accessible to others’. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others.”

18. In case of **Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 SCC 1**, it was reiterated that-

“In view of the above, merely because the contraband was recovered from a public place i.e. a place accessible to the public at large, the same does not mean that the recovery is to be discarded. In case, the articles had been hidden by digging up the earth, covering the same up with garbage or other material, the public may not have taken note of it. The same remained in the specific knowledge of the accused i.e. where and also the manner in which the said articles were hidden. Moreover, the recovery



NEUTRAL CITATION NO. 2025:MPHC-IND:8298

cannot be discarded for want of signature of the accused on the recovery memo.”

19. Learned trial Court considering all the inconsistencies pointed out by the defence and the contentions raised in this regard concluded that prosecution has proved beyond doubt that accused Sheru alias Lulla has kept in possession a fire-arm – pistol without any valid license and fired a gun-shot by such pistol at Aslam. The conclusion of trial Court is based on proper appreciation of the evidence and material on record. Therefore, no interference is called for.

20. Ruchika Bhati, Clerk in the office of District Magistrate Ratlam (PW-21) proved order of sanction for prosecution (Ex. P-24) prepared by her on the direction of District Magistrate, Ratlam whereby the District Magistrate has granted sanction for prosecution against accused Sheru alias Lulla for offence punishable u/S 25 and 27 of Arms Act. The order granting sanction Ex.P-24 demonstrates that the District Magistrate on consideration of detailed report dated 27.12.2022 (Ex.P-23 and the Annexures enclosed) granted the sanction for prosecution against the appellant.

21. Learned counsel for the appellant contended that Ruchika Bhati (PW-21) in para 3 of the evidence admitted that the fire-arm was not produced for inspection of the District Magistrate. The sanction was granted without inspection of the fire-arm. Therefore, the sanction is vitiated.



NEUTRAL CITATION NO. 2025:MPHC-IND:8298

22. A division bench of this Court in case of **Gurudev Singh Vs. State of M.P. ILR 2011 MP 2053**, held that physical production of firearm before sanctioning authority is not necessary. The authority was not required to look the firearm for grant of sanction under Section 39 of the Arms Act. Hence, the contention of appellant in this regard is meritless.

23. The accused Sheru @ Lulla failed to explain possession and use of firearm pistol. The prosecution succeeded in proving beyond doubt that the appellant Sheru @ Lulla has possessed and used firearm a country made pistol without valid license. Consequently, the learned trial Court committed no error in convicting the appellant for offence punishable under Section 25 (1-B)(a) and Section 27 of the Arms Act. The judgment of conviction is affirmed and the appeal in that regard is dismissed.

24. The propriety of sentence is considered. The learned trial court has sentenced accused Sheru @ Lulla for offence punishable u/S 25(1-B)(a) of Arms Act, 1959 and sentenced to undergo rigorous imprisonment for 03 Years with fine of Rs. 5,000/- with default stipulation for rigorous imprisonment of 06 months. Sheru was further sentenced for offence punishable u/S 27 of Arms Act, 1959 and directed to undergo rigorous imprisonment of 05 years with fine of Rs. 5,000/- with default stipulation for rigorous imprisonment of 06 months. Both the sentences were directed to run concurrently. Considering the act and conduct of the appellant, the sentence of rigorous imprisonment for 05 years for the offence punishable under Section 27 of the Arms Act appears to be onerous and inappropriate. Therefore, the present appeal is allowed only



NEUTRAL CITATION NO. 2025:MPHC-IND:8298

on the point of propriety of sentence and the sentence for offence punishable under Section 27 of the Arms Act is reduced to rigorous imprisonment for 03 years and fine of Rs. 500/- with default stipulation of rigorous imprisonment for 03 months in case the fine amount is not paid. Rest of the order of sentence is affirmed. The appeal is disposed off accordingly. All the sentence of imprisonment shall run concurrently.

25. Appellant Sheru @ Lulla was in judicial custody from 29.11.2022 to 13.11.2024 (715 days). He is undergoing sentence of imprisonment from the date of passing of impugned judgment dated 13.11.2024 till date. The period of custody be set off against the sentence of imprisonment. The order regarding disposal of property is affirmed.

26. The Registry is directed to remit record of the trial Court forthwith alongwith the copy of this judgment.

(SANJEEV S KALGAONKAR)
JUDGE