



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-1150-SB-2004(O&M)

Reserved on: 22.07.2025

Date of decision: 19.09.2025

Khurshid

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Ram Darshan Yadav, Advocate,
for the appellant.

Mr. Onkar Singh Wahla, Sr. DAG, DAG, Haryana.

VIKRAM AGGARWAL, J.

Appellant - Khurshid is in appeal against the judgment of conviction dated 12.05.2004, passed by the Court of Additional Sessions Judge, Gurgaon, vide which he was convicted under Section 148 & 307 of the Indian Penal Code, 1908 (for short, 'IPC') along with Section 25 of the Arms Act, 1959 (for short, 'Arms Act'). Vide order of sentence dated 13.05.2004, he was sentenced to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 148 IPC and rigorous imprisonment for three years under Section 307 IPC along with a fine of Rs.3,000/-. In default of payment of fine, he was to undergo further rigorous imprisonment for a period of six months. For the offence under Section 25 of the Arms Act, he was sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs.2,000/- was also imposed. In default of payment of fine, he was to undergo further rigorous imprisonment for a



period of six months. All sentences were ordered to run concurrently. The fine was deposited.

2. The case set up by the prosecution was that on a statement (Ex.PC) given by one Pappu son of Ran Chand, FIR No.91, dated 21.04.2000, was registered under Sections, 148, 149, 323, 506 & 307 IPC and Section 25 of the Arms Act, at Police Station Punhana, District Gurgaon.

3. The allegation was that approximately two years prior to the incident, the brother-in-law of complainant Pappu, namely Sahun, had stood surety for one Sehjad in a case registered against him under the Arms Act at Police Station Chhata (U.P.). However, Sehjad failed to appear before the Court during the proceedings, as a result of which a notice was issued to Sahun. When Sahun asked Sehjad to attend the hearing, he got enraged and had a verbal duel with him.

3.1 On 21.04.2000, at about 4:00 pm, when complainant Pappu and his father Ran Chand, were sitting at the vegetable shop of Ishaq, accused Shokat, Hanif, Islam, Asru, Sumerdin, Sehjad, Bashir and Khurshid arrived at the spot. Shokat was armed with a *pharsa* (axe), Khurshid was armed with a gun, and the rest of the accused were armed with sticks (lathis). Sehjad exhorted as to how he could have produced him before the Court. Thereafter, Shokat then gave a *pharsa* blow on the right side of the head of the complainant Pappu, whereas accused Sehjad gave a stick blow on his right leg. Sumerdin gave him a stick blow on his right thigh and Islam gave a stick blow on his back. Asru struck him with a stick blow on his right knee. When Ran Chand tried to rescue him (complainant), Bashir gave stick



blows on his lower portion of his legs. Hanif gave him a lathi blow on his head, as a result of which he fell down. At that point of time, Khurshid fired a shot with the intention to kill the complainant Pappu, but the pellets struck both legs of Ranchand. On hearing their cries, Asu and Jumme Khan reached at the spot and rescued Pappu and Ran Chand from the clutches of the accused. While leaving also, the accused threatened them with dire consequences.

3.2 On recording of the complainant's statement, FIR (Ex.PC) was registered. Investigation commenced. On completion of investigation, final report under Section 173 of the Criminal Code of Procedure, 1973 (for short, 'Cr.P.C.') was submitted. It would be relevant to mention here that record shows that on 24.04.2000, Khurshid escaped from police custody. It has come on record that he was nabbed on 29.10.2000 but it has not come on record as to when he was granted bail. However, in some of the interlocutory orders passed during the course of the trial, it was mentioned that the bail application of Khurshid was fixed before the Court of Sessions Judge, Gurgaon on 06.02.2001. Another interlocutory order dated 23.05.2001 shows that Khurshid was on bail. It, therefore, means that Khurshid did spend some period in jail, though the details are not forthcoming, probably due to the matter being nearly 25 years old.

4. Another fact that needs to be mentioned here is that on 08.10.2000, an application dated 08.09.2000 was moved by the father of Sehjad, and it was found that though Khurshid was armed with a gun at the time of incident, he had probably not fired a shot. Accordingly, the offence under Section 307 IPC was deleted on 09.10.2000, after which Khurshid was



arrested on 29.10.2000. However, a supplementary challan was later presented against accused Khurshid. Whereafter, Khurshid was also chargesheeted under Section 307 IPC apart from other offences.

4.1 The accused were chargesheeted vide order dated 03.07.2001. To prove its case, the prosecution examined 15 witnesses, the details of which are as under:

PW1	Ghanshyam Dass, Reader, DM, Gurgaon
PW2	Dr. S.K. Sharma, Medical Officer, GH Gurgaon (member of the Board which had conducted the re-medical examination of Ran Chand).
PW3	ASI Sabha Ram
PW4	Sarwan Kumar, Draftsman O/o SP, Gurgaon
PW5	SI Satbir Singh
PW6	SI Harinder Kumar
PW7	Constable Surender Singh No.1135
PW8	ASI Mahipal (Investigating Officer)
PW9	Dr. Lal Singh, Medical Officer, CHC, Puhhana (conducted the medico-legal examination of the injured)
PW10	HC Desh Raj No.125
PW11	Ran Chand (complainant's father)
PW12	Pappu (complainant)
PW13	ASI Ram Kishan
PW14	HC Udai Vir Singh
PW15	Puran Singh, Lamberdar of village Behram

4.2 Notably, PWs Bachhu Singh, Dr. B.B. Aggarwal, Dr. Rajesh Sharma and HC Mahender Singh were given up as being unnecessary, whereas PWs Ishak, Asu, Jumme Khan and Shakrula were given up as having been won over by the accused. Evidence of the prosecution was closed on 15.07.2003, after which the statements of the accused were recorded under Section 313 Cr.P.C.



4.3 The accused examined five witnesses in defence, namely, Sahab Singh Nehra, DSP (Headquarters) Jind as DW1, HC Dharampal, Complaint Clerk in SP Office Gurgaon as DW2, HC Satbir Singh, Complaint Clerk in IG Office Gurgaon as DW3, an eye witness of the occurrence Jumme Khan as DW4 and Rehman father of accused Sehjad as DW5.

5. Learned counsel for the parties were heard.

6. It was submitted by learned counsel for the appellant that the trial Court erred in convicting the appellant under Section 307 IPC. It was contended that it was not proved on record that the appellant was armed with a gun or that he had opened fire. Learned counsel referred to the statements of witnesses, including PW2 Dr. S.K. Sharma, PW8 ASI Mahipal, PW9 Dr. Lal Singh, PW11 Ran Chand, PW12 Pappu, DW1 Sahab Singh Nehra, DSP, DW4 Jumme Khan and DW5 Rehman. It was submitted that neither the recovery of the gun was proved nor was it proved that the injuries had been caused by a gun shot. Learned counsel further submitted that as per the statement of PW2 Dr. S.K. Sharma, it also came on record that the injuries could have been self-inflicted.

6.1 Learned counsel also referred to the documentary evidence and submitted that the recovery of the gun was not proved, nor was it proved that any shot had been fired from the said gun. Learned counsel further submits that it is quite strange that no empty cartridge was recovered, nor was any pellet mark found on any wall or elsewhere. It was also pointed out that even the clothes of the injured were not taken into possession. Learned counsel then referred to certain contradictions in the statements of the witnesses and



submitted that the prosecution had not been able to prove its case beyond reasonable doubt.

7. Per contra, learned State counsel submits that the prosecution had proved its case against the accused beyond reasonable doubt and that the trial Court has rightly convicted them.

8. I have considered the submissions made by learned counsel for the parties.

9. The incident is stated to have taken place on 21.04.2000. All accused are stated to have attacked Pappu and Ran Chand while being armed with sticks, an axe and a gun.

10. As per the statement of PW9 Dr. Lal Singh, who had medico-legally examined both Ran Chand and Pappu on 21.04.2000, no blackening was present around the abrasions on the body of Ran Chand. He deposed that he had taken out pellet from injury no.2 and had handed it over to the police. In his cross-examination, he conceded that there was no fracture corresponding to the said injury and that it was a simple injury caused by a blunt weapon. He further stated that injury No.2 was on the upper layer of the skin and admitted that such injuries could be caused by self inserting a pellet. He also stated that the injury was straight, meaning thereby that it had been caused from the front side. He also conceded that there was no sign of smoke or gunpowder on injury no.2 and that the shape of the pellet was round.

10.1. PW2 Dr. S.K. Sharma, who was a member of the Board that had conducted re-medical examination of Ran Chand, stated that there were two healed scars which were hyper pigmented. Both injuries were x-rayed



and no bony injury was found. The Board opined that there was no evidence indicative of a firearm injury.

10.2. Further, PW11 Ran Chand stated in his cross-examination that no pellet caused any hole in his clothes, nor any pellet hit against the wall. He stated that blood had oozed from his injuries but did not fall on the ground. He further stated that though his clothes were smeared with blood, he did not produce his clothes before the police.

10.3 Similarly PW12 Pappu (complainant) stated that Khurshid had in fact fired upon him, and when his father tried to rescue him, the pellets hit his father. This is in contradiction to the statement of Ran Chand, who had deposed in his cross-examination that Khurshid had fired at him. In his cross-examination, Pappu also stated that he had received injuries and his clothes were smeared with blood, but the blood did not fall on the ground. He also conceded that his clothes had not been recovered by the Police, though he had shown the same to them. As regards recovery of the gun, he stated that it had been recovered from the *Baithak* of Khurshid.

11. The report of the FSL is on record as Ex.PE/2. The report nowhere states that the pellet recovered from the body of Ran Chand had been fired from the gun allegedly recovered from Khurshid. It only mentions about two independent examinations, one of the gun and the other of the pellet:

“Result

- 1. The countrymade SBBL gun marked W/1 (chambered for 12 bore cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanisms were found in working order.**



2. The country made gun W/1 has been fired through. However, scientifically, the time of its last firing can not be given.

3. Pellet contained in parcel No.II was found to be fired lead pellet of size (I). Such pellets are usually loaded in shotgun cartridges including 12 bore.”

11.1. DW1, Sahab Ram Nehra, DSP, clearly stated that it had come in his investigation that though Khurshid was armed with a gun, he had not filed from the same.

12. Having analyzed the oral and documentary evidence, this Court is of the considered opinion that it does not stand proved that the appellant Khurshid had opened fire upon Ran Chand. In fact, the recovery of the gun is also doubtful, which shall be discussed in the succeeding paragraphs.

13. As regards injuries having been caused by a gun, it is quite strange that despite a shot allegedly having been fired at Ran Chand, no hole was found in his clothes. In fact, the clothes were not taken into possession. The witnesses stated that clothes had been smeared with blood but these were again not examined. Despite allegedly having been shot, no blood fell on the ground. There were no pellet marks on the wall or nearby place. The injuries suffered also did not conclusively show that they were firearms injuries. From the statements, it has clearly emerged that the Doctors were not able to state with certainty that injury No.2 had been caused by a firearm. Despite a pellet having allegedly struck, there was no bony injury and the pellet was found in the upper layer of the skin. Further, the pellet was round in shape and should normally have been distorted upon impact.



Even if this fact is not considered because distortion normally occurs after encountering a hard surface, the other evidence does create a dent in the case of the prosecution. It has to be borne in mind that it was for the prosecution to prove its case against the accused beyond reasonable doubt, and once a doubt is created, the benefit of the same must always go to the accused.

14. In the opinion of this Court, recovery of the gun also does not stand proved. Ex.PC/8 is the recovery memo, which states that the gun had been recovered from a place (Chhappar) above the door in the house of the accused. The recovery memo was witnessed by ASI Mahipal, Pappu and Const. Bachhu Singh.

15. While appearing in the witness-box, Pappu stated that the gun had been recovered from the *Baithak* of the house of the accused.

16. PW8 Mahipal only stated that pursuant to the disclosure statement, the gun was recovered from the concealed place. No details were given in the statement. PW Bachhu Singh was given up as being unnecessary. No other independent witness was present at the time of alleged recovery of gun. This Court is, therefore, of the firm opinion that even the recovery is doubtful.

17. No doubt, the benefit of defective investigation does not ordinarily go to the accused. However, in the present case, not only has the investigation been found to be defective, even the evidence is also weak as regards firing of a shot at Ran Chand and recovery of the gun. Further, the statements of the injured also do not inspire complete confidence as regards a shot having been fired.



17.1. However, the material facts stand proved that the complainant and his father suffered simple injuries as a result of being attacked by the accused.

18. In view of the above, the conviction under Section 307 IPC and Section 25 of the Arms Act cannot be sustained. Accordingly, these convictions are set aside and the appellant is acquitted qua these offences. However, he is convicted under Section 323 IPC read with Section 149 IPC as he was a member of an unlawful assembly which attacked the complainant and his father.

19. In the preceding paragraphs, this Court has noticed that the appellant has already undergone imprisonment for a few months. The details are not forthcoming on account of the case being very old. Therefore, the sentence under Section 323 read with Section 149 IPC is modified to the period already undergone by the appellant.

20. Consequently, while setting aside the conviction under Section 307 IPC and Section 25 of the Arms Act, and acquitting the appellant qua these offences, he is convicted under Section 323 IPC read with Section 149 IPC and is sentenced in the manner as referred to above.

21. The appeal is accordingly disposed of.

22. Pending application, if any, also stands disposed of.

(Vikram Aggarwal)
Judge

September 19, 2025

Rajan

Whether speaking / reasoned:
Whether Reportable:

Yes/No
Yes/No