

**Rohtas Vs. State of U.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/490453](http://sooperkanoon.com/490453)

**Court :** Allahabad

**Decided On :** Jul-29-1999

**Reported in :** 2000CriLJ89

**Judge :** B.K. Sharma, J.

**Acts :** Crimianl Procedure Code - Sections 133; [Indian Penal Code \(IPC\), 1860](#) - Sections 307 and 324

**Appeal No. :** Criminal Appeal No. 522 of 1981

**Appellant :** Rohtas

**Respondent :** State of U.P.

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** Tej Pal, Adv.

**Judgement :**

**B.K. Sharma, J.**

1. This is an appeal against the judgment and order dated 26-2-1981 passed by Sri Ikramul Bari, the then Illrd Addl. Sessions Judge, Bijnor in S.T. No. 317 of 1980, whereby he convicted the accused-appellant Rohtak of the offence 307, I.P.C. and sentenced him to undergo R.I. for a period of 7 years and to pay a fine

of Rs. 200/ - and in default of payment of fine, to suffer R.I. for a period of 3 months.

2. The prosecution story is that Rohtash accused-appellant and his brother Anand had encroached upon the Kharanja of the Gaon Sabha in village Jalalpur Turk P. S. Nahtaur, District Bijnor by constructing a platform and had dismantled a Gram Panchayat platform, that Tara Singh injured P.W. 3 who was the Gram Pradhan had initiated proceedings under Section 133, Cr. P. C, that in consequence the platform was removed and Rohtash accused had to undertake to reconstruct the platform of the Gram Panchayat, that Rohtash had threatened Tara Singh injured with killing for initiating and pursuing the action, that co-accused Chandrapal is uncle of Rohtash, that he (Chandrapal) had ploughed the land reserved for Kuris in the village, that Tara Singh injured had initiated action against him (Chandrapal) in the Tehsil and he was forced to vacate the land, that co-accused Chandra Pal and accused-appellant Rohtash both entertained animosity towards Tara Singh injured, that on 12-12-1979 at about 8.30 a.m. Tara Singh injured was sitting on a cot on the Chabutra in front of his Baithak, and on the same cot his father Shyam Singh, his uncle Girdhari Singh and one Hori Singh of another village were also sitting, that accused-appellant Rohtash and co-accused Chandra Pal who were wrapped in blankets-approached the platform of Tara Singh injured from the southern Rasta, that they took a turn towards West on the North Eastern corner of the platform of Tara Singh injured that on reaching behind Tara Singh injured Rohtash accused-appellant whipped out a single barrel gun and immediately fired at Tara Singh and injured him, that accused-appellant Rohtash and co-accused Chandra Pal thereafter fled towards the jungle. The prosecution claimed that Ganda Singh P.W. 4 saw the occurrence from his door.

3. The F.I.R. of this case was lodged at the police station by Pritam Singh informant P.W. 5, the same day at 9.15 a.m. on the basis of which a case under Section 307, I.P.C. was registered. The medical examination of Tara Singh injured was made by Dr. Vijai Kumar, Emergency Duty Officer, District Hospital, Bijnor on 12-12-1979 at 10.00 a.m. He found the following injuries on his person;

Injuries : 1. One circular gun shot wound 1/2 cm x 1/2 cm x depth could not be ascertained, on the back on Rt. side near midline and margins' irregular and inverted, one pellet lying in the floor of wound. Blackening about 1 cm size around this wound. Wound is 8 cm below the spine of Rt. scapula. Wound of entry.

2. Abrasion 1 cm x 1 cm size with one blister, on Rt. side and 3.5 cm above and to right of injury No. 1.

4. Injuries were kept under observation. X-ray was advised. The duration was fresh.

X-ray of chest revealed five rounded radio opaque shadow of metallic density in medial part of right lower zone by the side of shadow of spine. Boney cage is normal, lung fields and costo phrenic angles are clear.

5. At the trial, ocular testimony was given by Tara Singh injured P.W. 3, and Genda Singh P.W. 4. Pritam Singh, informant P.W. 5 claimed that his house was in immediate vicinity, that he heard the sound of shot and came out from his Dehlij and saw Tara Singh in his injured condition and saw the accused-appellant and co-accused Chandrapal running towards West and that out of them Rohtash accused-appellant was carrying a single barrel gun in his hand and that the witnesses named Rohtash accused-appellant as the assailant who shot the fire on the injured.

6. Apart from the ocular testimony and the medical evidence, the prosecution also relied on a letter Exb. Ka-4 sent by Anand real brother of Rohtash accused-appellant on 21-7-1979 containing certain instructions to him (Rohtash accused-appellant) regarding the Chabootra on the Rasta and regarding the Gram Panchayat Chabootra and exhorting him to deal firmly with Tara Singh injured even by resorting to violence and also giving the assurance to him (Rohtash accused-appellant) that whatever happened, would be handled by him (Anand, sender of the letter).

7. The defence case as coming in the suggestion to Tara Singh injured was that he received injury in night at his tube-well in an effort to apprehend the thief and

that due to enmity, he got, the accused-persons falsely implicated in this case.

8. The learned Additional Sessions Judge accepted the ocular testimony about the occurrence as regards Rohtash accused-appellant and relying upon the ocular testimony and the letter Exb. Ka-4 from Anand aforesaid that Anand and Rohitash were bent upon going to any extent in opposing Tara Singh, that the act by Rohtash clearly amounted to an attempt on his part to eliminate Tara Singh accused appellant. He consequently convicted and sentenced Rohatas accused appellant as aforesaid. He gave benefit of doubt to co-accused Chandrapal and acquitted him. The acquittal of Chandrapal co-accused has not been challenged by the prosecution before this Court.

9. If learned counsel for the accused-appellant initially argued the case on merits but later on stated that he does not challenge the findings of the learned Addl. Sessions Judge that it was the accused-appellant who had fired shot at Tara Singh injured and inflicted the injuries found on his body and confined himself to arguments only on 2 aspects. Firstly, that the facts established did not make out offence under Section 307, I.P.C. but established only the offence under Section 324, I.P.C. in view of the fact that by this shot simple injury was caused on the body of the victim and that if the intention were to commit homicide, he would have fired further shots. Secondly on the point of sentence.

10. The learned A.G. claimed that in this case, the offence under Section 307, I.P.C. itself was made out. In this regard, he has placed reliance on the contents of the aforesaid letter Exb. Ka-4 and the motive which the prosecution has proved in this case.

11. I have considered the arguments from both the sides and the material on record. So far as the letter Exb. Ka-4 is concerned, its authority has been proved. However, a letter sent by Anand who happened to be the real brother of the accused-appellant Rohtash to him exhorting him to eliminate Tara Singh injured could not be read as evidence against Rohtash accused appellant. The evidence of motive is no doubt there but considering that only a single shot was fired and that the fire only resulted in an entry wound with one pellet which fell down from it and five pellets which entered in the body but did not go deep enough to damage

the spinal cord nor injured any other internal organs of the body, as such, it cannot be said that the act was done with an intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of culpable homicide amounting or not amounting to murder. So it cannot be said that the offence under Section 307, I.P.C. or even 308, I.P.C. has been made out. Considering the facts and circumstances, it is held that the accused-appellant is guilty of having committed an offence under Section 324, I.P.C.

12. On the point of sentence, the learned counsel for the accused-appellant has pointed out that the accused-appellant has been in custody as an undertrial for a period of 1 month and 18 days from 20-12-1979 to 8-2-1980 and as a convict for 72 days from 26-2-1981 to 8-5-1981 which comes to a total period of 120 days. He has argued that the matter related to the year 1979 and that to send the accused-appellant to jail now after such a long gap of time since 8-5-1981 when he was bailed out in the present appeal would do more harm than good. He has prayed that the sentence of imprisonment may be reduced to the period of imprisonment already undergone and that the fine amount of Rs. 200/- may be suitably enhanced.

13. In my view, the ends of justice would be met if the sentence of imprisonment is reduced as prayed and the fine of Rs. 200/- is enhanced to Rs. 6000/-.

14. For the reasons aforesaid, the appeal is partly allowed. The conviction of the accused-appellant Rohtash is altered from under Section 307, I.P.C. to Section 324, I.P.C. and the sentence of imprisonment is reduced to the period of imprisonment already undergone by him as an undertrial and as a convict and the fine amount of Rs. 200/- is enhanced to Rs. 6,000/- and in default of payment of fine, the accused-appellant shall suffer simple imprisonment for a period of 2 months. In case the fine amount is realised, a sum of Rs. 4000/- shall be paid out of it to Tara Singh, injured PW 3. The accused-appellant is given one month's time from today to pay or deposit the fine amount of Rs. 6,000/- in the Court of Sessions Judge concerned.

15. Accused-appellant Rohatas is on bail from this Court. His bail bonds shall further remain in force for a period of one month from today.

16. Let a copy of this judgment be sent by the registry at once to the Additional Sessions Judge concerned for compliance. The compliance report shall be submitted to this Court by 15-9-1999. This appeal shall be listed again for orders on 20-9-199 along with the compliance report of the Sessions Judge concerned.

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