

STATE OF U.P.

v.

SIYA RAM & ANR.

(Criminal appeal No. 792 of 2003)

AUGUST 5, 2010

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

Penal Code, 1860:

s.307/34 – Conviction by trial court of two out of three accused – High Court acquitting one of the appellants before it and reducing the sentence of the other to the period already undergone and imposing a fine of Rs.10,000/- – Appeal by State against acquittal as also against reduction of the sentence – HELD: The Court is not inclined to interfere with the acquittal order, keeping in view the propensity to false implications – However, reduction in the sentence of the convict is not approved, though keeping in view the fact that prosecution had been initiated in 1988, the term of imprisonment is not interfered with – But, in the facts and circumstances of the case, the fine is increased to Rs.25,000/ - – Appeal against acquittal.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 792 of 2003.

From the Judgment & Order dated 26.09.2002 of the High Court of Judicature at Allahabad bench at Lucknow in Criminal Appeal No. 320 of 1990.

Ratnakar Dash, Manoj Dwivedi, Gunnam Venkateswara Rao for the Appellant.

S.R. Singh, H. Tyagi, Avnish Singh, Abhish Kumar for the Respondents.

A The following order of the Court was delivered

O R D E R

B Three persons were sent for trial for an offence punishable under Section 307 read with Sec. 34 of the IPC. Net Ram was acquitted by the Trial Court and on an appeal taken by the other two accused Siyaram and Jiya Lal, the conviction of Jiya Lal was maintained whereas Siyaram was acquitted on the ground that no injury had been caused by the shot allegedly fired by him. While dealing with Jiya Lal's case the High Court further observed:

D "However, appeal by the appellant Jiya Lal is dismissed. The conviction order against him is also maintained. Looking however to the facts and circumstances that the occurrence had taken place as back as in the year 1988 and the appellant Jiya Lal has now become an aged person and there is nothing on record to show that he is either habitual offender or previous convict, he also deserves lenient view.

E Considering all facts and circumstances of the case as well as age, character and other antecedents of the appellant Jiya Lal, I find that it will meet the ends of justice if the sentence awarded to the appellant Jiya Lal is modified and reduced."

F The High Court accordingly reduced the sentence to that already undergone but imposed a fine of Rs.10,000/- and in default of payment of fine R.I. for a period of 2 years.

G This appeal has been filed at the instance of the State of Uttar Pradesh. It has been contended by Mr. Ratnakar Das, the learned senior counsel for the State that the finding of the High Court acquitting Siyaram was not justified as he had been tried for the offence under Sec.307/34 and merely because the shot fired by him had not hit the intended victim, was not a valid ground for acquittal. In so far as Jiya Lal is concerned Mr. Das has submitted that the sentence had been drastically reduced which was not justified in the circumstances.

We have heard the learned counsel for the parties and have gone through the record. We are not inclined to interfere in the acquittal of Siya Ram for the reasons recorded by the High Court, as the propensity to implicate falsely is not uncommon in India. We however do agree with Mr. Das that the reduction in the sentence in case of Jiya Lal to already undergone was somewhat inadequate but as prosecution had been initiated in the year 1988, we are not inclined to interfere on the term of imprisonment. We, however, direct that the fine be increased to Rs.25,000/- in all and in default of payment of fine the appellant Jiya Lal shall undergo 2 years R.I. The fine will be paid within three months from now to Banshi Lal, the injured and if Banshi Lal is not available, to his legal representatives.

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The appeal is accordingly partly allowed in the above terms.

R.P.

Appeal partly allowed.