



**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 3037 of 1982**

Gajendra

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Bhupendra Kuamr Tripathi, D.n.wali, Gaurav Kakkar, Ramesh Chandra Yadav
Counsel for Respondent(s)	: A.G.A.

Court No. – 93

**AFR
Reserved On 14.5.2026
Delivered On 16.7.2026**

HON'BLE SANTOSH RAI, J.

1. Heard Sri Gaurav Kakkar, learned counsel for the appellant; Sri Shyam Narain Rai, learned AGA for State and perused the material on record.
2. This criminal appeal is preferred under Section 374(2) of Cr.P.C., by the accused appellant Gajendra to set aside the judgment and order dated 27.11.1982, passed by the IV Additional Sessions Judge, Bijnor in Sessions Trial No.203 of 1982 (State of U.P. Vs. Gajendra), arising out of Case Crime No.231 of 1982, under Sections 452, 324, 325, 307 IPC, Police Station–Kotwali City, District–Bijnor, whereby the appellant has been sentenced to five years

rigorous imprisonment under Section 307 IPC, sentenced to two years rigorous imprisonment under Section 452 IPC. All the sentences are directed to run concurrently.

3. Briefly stated, the prosecution case is that on 19.5.1982 at about 9.30 a.m., the victim, Km. Rekha, was alone in her house in village Bharera, within the circle of P.S. Kotwali City, District Bijnor, cleaning and washing pulses (dal) at the handpump in the courtyard, the main door of the house being open at the time. It is alleged that the appellant, armed with a knife, entered the house, caught hold of the victim from behind and inflicted as many as ten incised wounds on different parts of her body with the intention of causing her death. On her raising an alarm, Mahender Singh and Moola Singh, residents of the locality, arrived at the spot and reprimanded the appellant, whereupon he fled. The victim's parents, who had gone to the fields, returned on being informed and took her to the District Hospital, Bijnor, where Dr. V.K. Goel (P.W.4) examined her injuries at 11.20 a.m. the same day and found ten incised wounds on her lip, chest, both forearms, left hand, left palm, left index finger, right thigh, left thigh and left leg, all noted as clean-cut, bleeding and clotted, and opined that the injuries were caused by a sharp-edged weapon such as a knife, that they were consistent with having been inflicted at about 9.30 a.m. on 19.5.1982, and that the cumulative effect of the said injuries was sufficient, in the ordinary course, to cause death. After medical examination, the victim lodged a written report at the police station on the basis of which a case was registered as Crime No.231 under Sections 452/324 IPC.

4. On completion of investigation, the Investigating Officer, having recorded the statements of witnesses, prepared the site-plan and collected blood-stained and plain earth from the spot, formed the opinion that the case fell under Section 307 IPC, and the offence was accordingly amended. A charge-sheet was submitted on 6.7.1982, and the case was committed to the Court of Sessions. The trial court framed charges against the appellant under Sections 452, 307, 324 IPC. The appellant pleaded not guilty and claimed trial, denying the occurrence in its entirety.

5. In support of its case, the prosecution examined five witnesses: P.W.1 Km. Rekha, the injured complainant; P.W.2 Mahender Singh and P.W.3 Moola Singh, witnesses of the occurrence, both of whom were declared hostile; P.W.4 Dr. V.K. Goel, who medically examined the injured; and P.W.5 Banwari Lal, the Investigating Officer. P.W.2 and P.W.3, though declared hostile, admitted in cross-examination by the learned defence counsel that the victim had, in fact, sustained knife injuries on the date and at the time alleged, and P.W.3 further admitted to having seen the appellant standing outside the complainant's house.

6. The prosecution has produced Ex.Ka.1 Tehrir, Ex.Ka.2 recovery memo of blood stained Parchajat, Ex.Ka.3 injury report, Ex.Ka.4 Site Plan, Ex.Ka.5 recovery memo of blood stained & plain soil, Ex.Ka.6 Chik report, Ex.Ka.7 Duplicate Report No.30, Ex.Ka.8 True statement of Mahendra, Ex.Ka.9 True statement of Mool Singh, Ex.Ka.10 Charge-sheet, Ex.Ka.11 True copy of GD, as documentary evidence in support of its case.

7. In brief the grounds of appeal are that the conviction of the appellant is against the weight of evidence on record and the conviction of the appellant is bad in law. The sentence is too severe.

8. The trial court, on a consideration of the evidence on record, found that although the motive set up by the prosecution namely, a long-standing dispute over a right of way between the families was not established to be of a serious or continuing character, non-proof of motive did not, by itself, demolish the prosecution case where the occurrence stood otherwise proved by credible evidence. The trial court further held that the sole testimony of the injured witness, P.W.1, was wholly reliable and trustworthy, being that of a natural witness who was present in her own house, was consistent with the medical evidence in every material particular, and stood corroborated, to the extent of the appellant's presence at the spot, by the admission of the hostile witness P.W.3. On this basis, the trial court convicted the appellant under Sections 452 and 307 IPC and sentenced him as stated above. Aggrieved thereby, the appellant has preferred the present appeal.

9. Learned counsel for the appellant has assailed the impugned judgment on the following grounds: (i) that the conviction rests on the solitary, uncorroborated testimony of P.W.1, the two independent witnesses of the occurrence having been declared hostile; (ii) that the motive set up by the prosecution stood disproved on the prosecution's own showing, the alleged dispute being two years old, minor and never the subject of any complaint or report; (iii) that P.W.1 admitted in cross-examination that although the

Investigating Officer visited the house on the very day of occurrence and enquired into the matter, she did not reduce her version to writing at that stage, which renders her subsequent version unsafe to act upon; and (iv) that the nature and spread of the injuries on the hands, fingers, legs and chest are consistent with a struggle of a different origin altogether, and it has not been ruled out that some person other than the appellant was the real assailant. And the conviction resting on the testimony of a solitary witness must satisfy a standard of unimpeachable reliability, and that a witness whose evidence appears to have been moulded to suit a chosen prosecution theory ought not to be treated as a reliable witness.

10. Learned AGA, per contra, has supported the impugned judgment and submitted that P.W.1 is not merely a witness but the injured victim herself, whose presence at the place of occurrence is beyond question and whose testimony carries an inherent guarantee of truthfulness, her version is fully corroborated by the medical evidence of P.W.4 as to the number, nature, location and timing of the injuries, and by the admission of the hostile witness P.W.3 that he had seen the appellant standing outside the complainant's house. The alleged omission to reduce her statement to writing before the Investigating Officer on the day of occurrence is a wholly peripheral matter that does not touch the core of her testimony; and the nature of the injuries ten incised wounds inflicted with a knife on a lone, defenceless girl, including wounds on the face, chest and both thighs, coupled with defensive wounds on the fingers and palms unerringly point to an intention on the part of the appellant

to cause her death, thereby satisfying the ingredients of Section 307 IPC.

11. On the rival submissions, the following points arise for determination, whether the trial court correctly appreciated the evidence of P.W.1 and rightly held it to be reliable and trustworthy despite the absence of independent corroboration in the strict sense, whether the ingredients of Section 307 IPC, namely the requisite intention or knowledge, stand established on the evidence on record, whether the conviction under Section 452 IPC is sustainable; and whether the sentence awarded by the trial court calls for any interference, including on the question of the fine not having been imposed.

12. Reliability of the testimony of P.W.1. It is well settled that the law does not insist on plurality of witnesses, and a conviction can be founded on the testimony of a single witness if it is found to be wholly reliable. The witnesses have been classified into three categories wholly reliable, wholly unreliable, and neither wholly reliable nor wholly unreliable and that in the case of a wholly reliable witness, a court can and should, act on the testimony of a single witness. Where, in addition, the witness is the injured victim herself, her testimony carries a built-in guarantee of truthfulness and, ordinarily, requires no further corroboration, unless there exist strong and cogent grounds to doubt it. On a careful perusal of the deposition of P.W.1, this Court finds nothing in her testimony, or in the cross-examination directed at her, which detracts from its inherent probability. She has given a consistent account of the manner in which the appellant entered the house when she was alone, caught her from behind, and inflicted

injuries upon her; her account is corroborated in material particulars by the medical evidence of P.W.4 as to the number, location, nature and approximate time of infliction of the injuries. It is further corroborated, to the extent of the appellant's presence at the spot at the relevant time, by the admission extracted from the hostile witness P.W.3 in cross-examination. The evidence of a witness declared hostile is not to be rejected in its entirety; that part of it which finds support from other reliable material may be relied upon. The omission of P.W.1 to reduce her account to writing when first questioned by the Investigating Officer on the date of occurrence is, at best, a discrepancy touching a wholly collateral matter and does not go to the root of the prosecution case. Trivial variations of this kind, particularly in the testimony of rustic or unlettered witnesses recalling a traumatic event, do not warrant rejection of otherwise trustworthy evidence.

13. As regards motive, the trial court concluded that the dispute over the right of way, though spoken to by P.W.1, was not shown to have been serious or of recent origin, no report having been lodged in that regard for nearly two years preceding the occurrence. This Court is in agreement with the trial court that the motive, as pleaded, does not appear to have been made out with the degree of gravity attributed to it by the prosecution. However, it is settled law that failure to prove motive is not, by itself, fatal to the prosecution case where the occurrence is otherwise established by cogent direct evidence; motive assumes significance principally in cases resting on circumstantial evidence, and its absence or non-proof cannot outweigh

clear, direct and corroborated testimony of the kind available in the present case.

14. Section 307 IPC does not require that the injury actually inflicted be sufficient, in the ordinary course of nature, to cause death; what is essential is that the act be done with such intention or knowledge, and under such circumstances, that if death had resulted, the offence would have amounted to murder. The intention or knowledge of the accused is to be gathered from the nature of the weapon used, the manner and severity of the assault, the part of the body targeted, and the surrounding circumstances, including the number of blows inflicted. In the present case, the appellant, armed with a knife, entered the house of the victim after satisfying himself that she was alone, and *inflicted as many as ten incised wounds on her body*, including wounds on the face, close to the mouth, and on the chest region, in addition to wounds on both thighs and the leg. The wounds on the palms and fingers of the victim are consistent with defensive injuries sustained while warding off the blows, indicative of a sustained and determined assault rather than a solitary or impulsive act. The medical evidence establishes that the cumulative effect of the injuries was sufficient to cause death. The premeditated manner of entry timed to when the victim was alone the choice of weapon, the number and location of the wounds, and the fact that a life-threatening injury on the chest was inflicted, taken cumulatively, admit of no inference other than that the appellant acted with the intention of causing the death of the victim. The trial court's finding that

the ingredients of Section 307 IPC stand fully established is, therefore, affirmed.

15. The evidence establishes that the appellant entered the dwelling house of the victim without lawful authority, at a time when she was alone, for the purpose of committing an offence upon her person, and in the course of such trespass he inflicted the injuries referred to above. The ingredients of house-trespass having been committed after preparation for causing hurt, within the meaning of Section 452 IPC, are, accordingly, made out, and the conviction of the appellant thereunder is upheld.

16. Learned counsel for the appellant has made a faint submission that, having regard to the appellant's age and the absence of any prior conviction, the sentence be reduced, or that the benefit of probation under the Probation of Offenders Act, 1958 be extended to him. This Court is unable to accede to the submission. The offence involved the brutal and repeated stabbing of a lone, defenceless young girl in her own home, resulting in as many as ten incised wounds spread across virtually every part of her body, inflicted with a degree of determination and violence sufficient, on the medical evidence, to have caused her death. The nature and multiplicity of the injuries, the vulnerability of the victim, and the calculated manner in which the appellant awaited an opportunity to find her alone before entering the house, are all circumstances of aggravation. Having regard to the gravity, brutality and premeditated character of the offence, this is manifestly not a case in which it would be appropriate, or in the interest of society, to extend to the appellant the benefit of release on probation in lieu of

sentence. The sentence of five years' rigorous imprisonment under Section 307 IPC and two years' rigorous imprisonment under Section 452 IPC, directed to run concurrently, cannot be said to be excessive or disproportionate to the gravity of the offence, and calls for no interference.

17. One aspect requires notice. It has been pointed out that the trial court, while sentencing the appellant, did not impose any sentence of fine. Section 307 IPC renders an offender "liable to fine" in addition to imprisonment; the imposition of fine under this provision is a mandatory concomitant of the sentence of imprisonment. Where the IPC provision prescribes punishment in the form: *"...shall be punished with imprisonment ... and shall also be liable to fine"*, or *"...with imprisonment and fine"*, the trial court is expected to impose fine also. Failure to impose fine amounts to an error in sentencing. The absence of fine, under section 307 IPC therefore, by itself constitute an infirmity in the sentence as recorded. It may further be noted that neither the State nor the complainant has preferred any appeal or revision under Section 377 Cr.P.C. seeking enhancement of the sentence by imposition of a fine. In an appeal preferred solely by the convict under Section 374 Cr.P.C., this Court, exercising jurisdiction under Section 386 Cr.P.C., cannot enhance the sentence to the appellant's prejudice in the absence of a cross- appeal or notice for enhancement. No order is, therefore, called for on this count, and the sentence as awarded by the trial court is maintained in its entirety.

18. For the reasons stated above, this Court finds no infirmity, legal or factual, in the judgment and order dated

27.11.1982 passed by the IV Additional Sessions Judge, Bijnor in Sessions Trial No.203 of 1982 (State of U.P. Vs. Gajendra), arising out of Case Crime No.231 of 1982, under Sections 452, 324, 325, 307 IPC, Police Station–Kotwali City, District–Bijnor. The findings of the trial court on the reliability of the testimony of the injured witness, the corroborative value of the medical evidence, the establishment of the ingredients of Section 307 IPC, are affirmed.

19. The appeal is, accordingly, **dismissed**. The conviction and sentence recorded by the trial court are upheld in their entirety.

20. The bail bonds of the accused-appellant stand canceled with intimidate effect. If the appellant is currently on bail, he is directed to surrender before the trial court concerned within a period of **two weeks from today** to serve out the remainder of substantive sentence.

21. If the appellant fails to surrender within stipulated period as above, learned trial court is directed to take immediate legal steps adopting coercive measures including issuance of non bailable warrant to take the appellant into custody for execution of sentence in accordance with law.

22. The appellant shall be entitled to benefit set up under Section 428 Cr.P.C.

23. Let trial court record along with copy of this judgment be transmitted 'forthwith' to the court concerned for information and necessary compliance.

24. The trial court is directed to submit its compliance report within two months from the date of receipt of this

order. Further more, the registry is also directed to place the compliance report on record.

25. The Registrar (Compliance) is also directed to serve a copy of this order within one week by FAX/e-mail to the concerned court through District & Sessions Judge, Bijnor for compliance.

(Santosh Rai,J.)

July 16, 2026
RA