2025:AHC-LKO:72751

Final AFR

Reserved On : **November 11, 2025**

Delivered On : **November 14, 2025**

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL APPEAL No. - 1153 of 2001

Vishunath And Another.

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Dharmendra Singh, Gulam Mustafa
Counsel for Respondent(s)	:	Govt.Advocate

Court No. - 29

HON'BLE ABDUL SHAHID, J.

1. This criminal appeal has been filed by the appellants-Vishunath and Arjun Pasi against the judgment and order dated 29.11.2001 passed in Session Trial No.197 of 1999 and 476 of 2000 (State vs. Vishunath and another) by Additional Sessions Judge, Court No.5, Unnao.

2. Heard Sri Gulam Mustafa, learned counsel for the appellants and Sri Vinay Kumar Shahi, learned AGA for the State.

3. Brief facts of the case are that the alleged incident took place on 2.9.1998 around 10:00 in the night when the son of complainant-Kallu, Bachole and Ramraj were catching the fishes outside the village. At that time, Vishunath (appellant No.1),Arjun Pasi (appellant No.2) and one another person came near his son and scolding,Vishunath started beaten with danda. According to complainant, ‘my son Kallu make the noise and ran away then he was catched by another person and Arjun had fired with *Katta* on him’. When complainant and other person tries to catch the accused persons, they ran away.

4. Learned counsel for the appellants has submitted that the injured has suffered only two injuries;

(i) Traumatic swelling 10.8 cm x 8.0 cm around under left arm;

(ii) Firearm wound of entry in an area of 8.0 cm x 6.0 cm and depth present in the part of lower abdomen around pelvis.

As per X-Ray report, fracture of radius multiple red shadow metallic in the part of pelvis.

5. Learned counsel for the appellants has further submitted that the firmarm injury is caused by the appellant No.2-Arjun Pasi whereas the role of appellant No.1-Vishunath is of very lesser nature of beating the injured with Danda. The injury caused by the firmarm is on the abdomen, a vital part. The injury caused by appellant No.1 is on non-vital part, i.e., hand. The injury on the hand is neither serious in nature nor with intention to cause death or sufficient in the ordinary course to cause death. He has submitted that learned trial court had convicted both the appellants for the same period of conviction and sentence; whereas the role of both the appellants are absolutely different. The nature of injuries are also very different. There is no criminal history of both the appellants. They had not committed any offence since 1998, approximately 27 years have passed. Hence, the appeal may kindly be allowed and the impugned judgment and order be set aside.

6. On the other hand, learned AGA for the State has submitted that both the appellants had committed the said offence with the common intention. The injury on vital-part, the abdomen, is serious in nature and it may cause death. The judgment has no illegality or irregularity. The present criminal appeal is liable to be dismissed.

7. It is undisputed that the alleged incident took place on 2.9.1998 at 10:00 p.m. The role of appellant No.1 and appellant No.2 are different. The nature of injury caused by the appellant No.1 (Vishunath) is on the hand, which is not the vital part whereas the injury caused by appellant No.2 (Arjun Pasi) by way of firearm on the injured Kallu is on the vital part (lower abdomen/pelvis).

8. The statement of injured-Kallu has been recorded as PW-1, who has specifically deposed that there was danda in the hand of Vishunath and all the persons started beating to him. ‘Arjun had fired on me’.

9. The injured has already verified this fact and he is the best-witness. The injured has specified the role of appellant No.1 is only of beating with

danda; whereas the appellant No.2 had fired on him. It is specifically clear that no firearm injury was caused to the injured-Kallu by appellant No.1. The injury alleged to be caused by appellant No.1 is on non-vital part, i.e., hand and that too by danda only, which is not a deadly weapon. The firmarm injury caused by appellant No.2 is on the lower abdomen/pelvis, which is vital part.

10. Swami Dayal (PW-2), is the father of the injured-Kallu as well as complainant of the present case. In his examination-in-chief, he had specifically deposed that Vishunath (appellant No.1) had not beaten my son Kallu by danda on the date of incident in front of me. Arjun had not fired on my son Kallu. He specifically deposed that the said incident did not occur before myself. The complainant-father of the injured did not support the prosecution story and become hostile.

11. The eye-witness of the said incident Bachole deposed himself as PW-3. He did not support the prosecution story and deposed that Arjun and Vishunath are brothers. I had not seen whether Vishunath had beaten Kallu by danda and Arjun caused injury by firing. The eye-witness Bachole (PW-3) had also become hostile and did not support the prosecution story.

12. These three witnesses of the fact produced by the prosecution; whereas the complainant/father of the injured-Kallu did not support the prosecution story. The eye-witness Bachole (PW-3) did not support the prosecution story.

13. Dr.Rajeev Khare (PW-4), who medically examined the injured-Kallu, verified the injury caused to the injured and there are only two aforesaid injuries; (i) at the hand and (ii) by way of firearm 8.0 cm x 6.0 cm in the lower abdomen/pelvis.

14. Head Constable Om Praksh Singh deposed as PW-5 and verified the first information report and G.D., Ram Raj (PW-6) did not support the prosecution story and specifically deposed that no incident of such type was occurred before me. Sudama (PW-7) had not supported the prosecution story. Sub Inspector Arjun Prasad Tiwari (PW-8), the Investigating Officer and Dr.Satya Prakash (PW-9) are the formal witnesses.

15. On the perusal of all the evidences, the role of appellant No.1 (Vishunath) is causing injury by way of danda on the non-vital part; wheras the firearm injury caused by appellant No.2 (Arjun Pasi) on the vital part, i.e., lower abdomen/pelvis region is distinguished. The other fact witnesses did not support the prosecution story. The injured has supported the prosecution story and specified the role of each appellants in the said incident. The injured is the best-witness in the matter of injury cases.

16. The learned trial court, after perusing and appreciating all the evidences, had passed the impugned judgment. The learned trial court has specifically held that the injured had suffered firearm injury in his lower abdomen by way of firearm. The trial court had convicted and sentenced both the accused-appellants, under Section 307 IPC for three years rigorous imprisonment each and a fine of Rs.2,000/- each and in default of the payment of the fine, further simple imprisonment of three months each is awarded.

17. The role of appellant No.1 (Vishunath) and appellant No.2 (Arjun Pasi) is different. The act of appellant No.1 is simply causing the injury by way of danda. The injury was also on the non-vital part, i.e., hand of the injured-Kallu. It is proved and verified by the statement of Kallu (injured) himself; whereas the injured had specifically mentioned that appellant No.2 (Arjun Pasi) has used a firearm and causing firearm injury, which was on the lower abdomen/pelvis region. The injury caused by appellant No.2 may be fatal, being on the vital part, whereas the injury caused by appellant No.1 is on the non-vital part; and also not caused by any deadly weapon; it is simply caused by danda.

18. In view of the aforesaid facts, reasons and appreciation of injury and evidences mentioned herein above, the conviction and sentence of appellant No.2 (Arjun Pasi) is upheld and the conviction of appellant No.1 (Vishunath) is also upheld,but the period of sentence has been modified for 8 months' rigorous imprisonment and fine of Rs.2,000/- would remain the same; and in default of the payment of fine, one months simple imprisonment.

19. With these observation, the present criminal appeal is partly allowed.

20. The learned trial court shall comply the same. The original record and

the copy of the judgment shall be sent to the learned trial court for compliance.

(Abdul Shahid,J.)

November 14, 2025
LNTripathi

Digitally signed by :-
LALIT TRIPATHI
High Court of Judicature at Allahabad,
Lucknow Bench