

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPEAL NO. 1196 of 2018
WITH
INTERIM APPLICATION NO. 1057 OF 2026

Jeevan Devram Shirsath

Aged 32 years

(At Kalyan District Prison, Kalyan)

R/o Om Tower, 6th Floor, Flat No. 606,

Ashok Nagar, Valdhuni, Kalyan (West)

District:Thane.

.....APPELLANT

V/S.

1. The State of Maharashtra

(Through Mahatma Phule Chowk Police Station, Thane)

2. Sarfaraj Akbar Ali Sayyed

(Through Mahatma Phule Chowk Police Station, Thane)RESPONDENTS

Mr. Aniket Vagal a/w. Mr. Savvy Kolhekar, Ms. Juhi Kadu, for Appellant.

Ms. Sharmila Kaushik, APP for the Respondent No. 1-State.

Ms. Ashwini Jadhav, for Respondent No. 2- Complainant.

**CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ**

RESERVED ON : 6th AUGUST, 2026
PRONOUNCED ON : 8th SEPTEMBER, 2026

JUDGMENT : (Per Shreeram Shirsat J.)

1. The present Appeal has been filed by the Appellant, the original Accused No.1, challenging the impugned judgment and order of conviction

dated 04.08.2018 passed by the Additional Sessions Judge-2, Kalyan, District- Thane in Sessions Case No. 320/2015, whereby the Appellant has been convicted for the offence punishable under Sections 307 of the Indian Penal Code and to pay fine of Rs 1,00,000/- and in default to suffer rigorous imprisonment for six months, for offence punishable under section 3 r/w section 25 of Arms Act to suffer rigorous imprisonment for three years and to pay a fine of Rs 5,000/- and in default to suffer rigorous imprisonment for one month, for offence punishable under Section 7 r/w section 27 of Arms Act to undergo suffer rigorous Imprisonment for three years and to pay a fine of Rs 5,000/-and in default to suffer rigorous imprisonment for one month. All sentences were directed to run concurrently. The Appellant was acquitted under Section 120(B) of the IPC and under Section 37(1) & 135 of the Maharashtra Police Act.

2. The other co-accused No. 2, 3, 4, 6 and 7 were acquitted of all the offences. Accused No. 5 had absconded and hence his trial was separated.

3. **Brief facts of the prosecution case are as under:**

a] It is the case of the prosecution that one Sarfaraj Akbarali Sayyed, the Complainant herein, was proceeding by his Ertiga on 07.06.2015 at around 3.45 p.m. It is further the case that the Appellant herein

had called the Complainant and asked him to come to Vallipeer Chowk near S.Kumar Jewellers, Kalyan. Accordingly, the Complainant went to Vallipeer Chowk and waited for the Appellant.

b] It is further the case of the prosecution that the Appellant and his two associates alighted from a white coloured Hyundai Accent Car and the Appellant fired a gun shot on the head of the Complainant, as a result of which there was an injury to the upper side of the Complainant's right eye/eyebrow. It is further the case that the associates of the Appellant who were present during the incident were asking him to kill the Complainant. In the meanwhile, the Complainant fell down on the ground, shouted for help and the Appellant as well as his associates ran away.

c] It is further the case of the prosecution that the Complainant was taken to Fortis Hospital by his friends, namely, Mosin, Jilan, Danish, Saud and others, where the doctor operated upon him. It is also the case of the prosecution that the Complainant was involved in a money dispute with the Appellant and in order to take revenge, the Appellant had caused the firearm injury.

d] It is further the case of the prosecution that, based on this information, the Complainant lodged an FIR and Crime No. I-

556/2015 came to be registered under Section 307 r/w Section 34, 120(B) of the IPC, Sections 3, 25(1)(A) of The Arms Act and Sections 37(1), 135 of the Maharashtra Police Act against the Appellant and the other co-accused persons.

4. Upon completion of the investigation, chargesheet came to be filed and the case was committed to the Court of Sessions, vide order dated 06.05.2017, being exclusively triable by Court of Sessions. The Sessions Case was numbered as Sessions Case No. 320/2015 The charges came to be framed against the Appellant and 6 others under Sections 307, 120(B) of the IPC and Sections 3 r/w 25, 4 r/w 25, 7 r/w 27 of The Arms Act and Sections 37(1), 135 of the Maharashtra Police Act, to which the Appellant pleaded not guilty and claimed to be tried.

5. To bring home the guilt of the Accused-Appellant, the prosecution examined 9 witnesses (P.W. 1 to P.W. 9):

P.W	NAME	ROLE
1.	Sarfaraj Akbarali Sayyed	Victim and Complainant
2.	Javed Abdul Shahid Ansari	Witness who deposed about sale of Hyundai vehicle (MH02-MA-4777) to the Appellant
3.	Mahesh Shankar Kadam	Assistant Chemical Analyzer, Ballistic Division.
4.	Jagdish Chhaburao Bhambal	API attached to Mahatma Phule Chowk Police Station and;

		Seizure panchnama dated 07.06.2015 of vehicle i.e. Hyundai Accent car (MH -02-MA-4777)
5.	Arun Rakhmaji Bhor	Crime P.I. attached to Mahatma Phule Chowk Police Station; Spot panchnama dated 07.06.2015 relating to the recovery of empty cartridges
6.	Lalabaig Ahmadbaig Mirza	Panch Witness Disclosure panchnama and Seizure panchnama dated 11.06.2015 relating to the weapon i.e. ' <i>banduk</i> '
7.	Dr. Satyanarayanan Shenoy	Medical Officer (Neuro Surgeon) at Fortis Hospital who performed operation on the victim
8.	Dattatray Narayan Pandhare	Investigating Officer (I.O.)
9.	Pratap Ramchandra Dighavkar	ACP, Sanctioning authority under Arms Act

6. After recording of the prosecution evidence, the statement of the Appellant under Section 313 Cr.P.C. was recorded, wherein the plea of the Appellant was that of complete denial.

7. Upon completion of the trial, the Additional Sessions Judge- 2, Kalyan by judgment and order dated 04.08.2018 convicted the Appellant for offences punishable under Section 307 of the IPC and sentenced to suffer Imprisonment for Life and to pay fine of Rs. 1,00,000/- and in default, to suffer R.I. for 6 months; under Section 3 r/w Section 25 of Arms

Act and sentenced to suffer R.I. for three years and pay a fine of Rs. 5,000/- and in default, to undergo R.I. for 1 month and under Section 7 r/w Section 27 of the Arms Act sentenced to suffer R.I. for three years and pay a fine of Rs. 5,000/- and in default, to undergo R.I. for 1 month, all sentences to run concurrently. However, the Appellant was acquitted under Section 120(B) of the IPC and under Section 37(1), 135 of Maharashtra Police Act.

8. Being aggrieved by the judgment and order of conviction passed by the Additional Sessions Judge- 2, Kalyan, the Appellant has approached this Court by way of the present Appeal.

9. This Court vide order dated 24.09.2021 directed the Appellant to add the Original Complainant as a party to this Appeal and notice was issued to the original complainant. The Complainant was served in the due course and he has caused his appearance through advocate.

10. Heard the Ld. Counsel Adv. Aniket Vagal a/w Adv. Savvy Kolhekar and Adv. Juhi Kadu for the Appellant, Ld. APP. Ms. Kaushik for the Respondent No.1-State and Ld. Counsel Adv. Ashwini Bhikan Jadhav for Respondent No. 2- The Original Complainant.

11. The Learned Counsel for the Appellant confined his arguments primarily on the quantum of sentence awarded by the Additional Sessions Judge- 2, Kalyan to the Appellant. It was vehemently argued that Section

307 of the IPC does not prescribe any mandatory minimum sentence and therefore, the quantum of sentence was required to be determined, taking into consideration the facts and circumstances of each individual case. It was further contended by the Ld. Counsel for the Appellant that the nature and extent of injury caused to the victim is a relevant circumstance, which ought to be taken into consideration. It was brought to the notice of this Court that the injury sustained by the victim, although a firearm injury caused to the brain of the Complainant, was not a fatal injury and did not result in any permanent or life-threatening complication. It was submitted that the Complainant has been living a healthy life since the occurrence of the incident that was 11 years ago and even appeared before this Court to validate the same. It was also argued by the Ld. Counsel for the Appellant that the manner of occurrence of the incident does not demonstrate any sustained or calculated attempts to cause death of the Appellant. There were no continued or repeated attacks upon the victim to establish the intention. Further, it was also pleaded by the Ld. Counsel for the Appellant that the long period of incarceration be taken into consideration which is about 11 years and 10 months. The Ld. Counsel for the Appellant lastly pointed out that the Appellant is a first-time offender having no criminal antecedents and that the Appellant is married and has a 3-year old child,

thereby showing potential for societal rehabilitation and the same may be considered as mitigating circumstances and the sentence may be reduced to whatever undergone by the Appellant.

12. The following judgments have been relied upon by the Ld. Counsel for the Appellant, which categorically deal with the reduction of the quantum of the sentence under Section 307 of the IPC.

*(i) Amit Rana @ Koka & Anr. vs. State of Haryana*¹

*(ii) Ganesan vs. The State of Tamil Nadu Rep. by Inspector of Police*²

13. *Per Contra*, the Ld. APP for the Respondent-State vehemently opposed the arguments posed by the Ld. Counsel for the Appellant, by stating that the Appellant had caused the said injury to the Complainant intentionally and the same is clearly discernible from the conduct of the Appellant and the sequence of events. It was argued by the Ld. APP that the procurement of the weapon i.e. the country made pistol, itself points to the deliberate involvement of the Appellant in the offence. Further, it was also argued that it is a matter of common knowledge that a firearm injury inflicted upon the head, being a vital part of the body, is likely to result in death. The Ld. APP also submitted that the Appellant, while causing the said firearm injury, aimed at the head of the Complainant and was fully

¹ 2024 INSC 543

² 2025 INSC 158

conscious and aware that the natural consequences of his actions are likely to cause death of the Complainant. Additionally, it was also contended by Ld. APP that the Appellant firing the bullet from a close distance itself is a suggestive and compelling circumstance which demonstrates the intention of the Appellant to cause an injury that would result in the death of the Complainant. Thus, it was lastly submitted that the quantum of sentence being Imprisonment for Life was rightly awarded by the Additional Sessions Judge- 2, Kalyan and warrants no interference.

14. The Ld. Counsel for the Respondent No. 2 adopted and supported the arguments advanced by the Ld. APP.

15. The Ld. Counsel for the Appellant, at the outset, submitted that he did not wish to argue the present Appeal on merits, but urged the following before this Court. Firstly, to consider his legal submissions based on the judgments of the Hon'ble Supreme Court in the case of ***Amit Rana@Koka & Anr. v. State of Haryana*** (supra) and ***Ganesan v. The State of Tamil Nadu Rep. by Inspector of Police*** (supra). Secondly, to reduce the sentence in the light of the mitigating circumstances arising from the facts of the case. It was contended that the Appellant did not harbor any intention to cause death of the Complainant, as is evident from the fact that, there was no repeated firing of gun shots despite instigation from the co-accused. It was

submitted that the long period of incarceration and the fact that the appellant is married and has a three-year-old child may be taken into consideration in the overall assessment of the case.

16. As the Ld. Counsel for the Appellant has not chosen to advance his arguments on the merits of the Appeal and has sought to place reliance on two judgments referred above, as the bedrock of his submissions, we are only confining ourselves to ascertain, whether in the facts and circumstances of the present case and the principles of law laid down by the Hon'ble Supreme Court, the sentence awarded to the Appellant can be reduced under Section 307 of the IPC.

17. Before advertng to the legal submissions, at this stage it will be pertinent to mention that in the present case, the trial court, in para 63 of the impugned judgment has given specific reasons as to why the Court deemed it fit to impose sentence under the second part instead of the first part of Section 307 IPC. The para reads as under:

“63] On thoughtful consideration of above submissions as well as considering the nature of alleged offence, I find that in day time the accused No. 1 had opened firing on the complainant which resulted in head injury. At the backdrop of factual aspects it is also one of the issue that the complainant had received said bullet and which is still remained in his brain, the Doctor could not withdraw that bullet as it was dangerous to his life. An attempt to kill the complainant was made by accused No. 1 and it was in public place. The offence itself is serious and therefore no leniency can be awarded in favour of accused No. 1 Jeevan Shirsath.”

18. The trial Court, in order to arrive at the above findings, has taken into consideration several factors and thereafter deemed it fit to impose Imprisonment for Life. For instance, the trial court primarily took into consideration the gunshot injury caused by the Appellant to the victim from a close range and was aimed directly at the head of the Complainant. The trial court also took into consideration the deposition of P.W. 7- the Doctor, who deposed that this injury was grievous in nature and fatal to life as the bullet injury was caused in the brain and that the bullet lodged in the brain could not be removed without risking the life of the Appellant. Further the trial court also considered that the procurement of the “*banduk*” (gun) in itself, was a clear display of intent on the part of the Appellant.

19. At this stage, the Ld. Counsel for the Appellant contended that the Complainant is presently doing well, leads a normal and healthy life since the incident, and had in fact appeared before this Court, and that in the absence of any grievous injury or permanent impairment, the quantum of sentence deserved to be reduced.

20. At this juncture, a profitable reference can be made to the judgment of the Hon’ble Apex Court in the case of ***State of M.P. vs. Saleem Alias Chamaru and Another***³, wherein it was held as under:

“12. To justify a conviction under this section, it is not essential

³ (2005) 5 SCC 554

that bodily injury capable of causing death should have been identified. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt."

21. A similar principle was reiterated by the Hon'ble Supreme Court in the case of ***State of M.P. vs. Kashiram & Ors.***⁴

"13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

4 (2009) 4 SCC 26.

.....

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury."

22. A perusal of the above judgments, makes it abundantly clear that the conviction under Section 307 of the IPC, specifically the second part thereof, is concerned only with the causing of hurt, and not with the consequence that follows therefrom. It is the act of causing hurt and it being caused, pursuant to an act done with the intention or knowledge, that attracts the second part and determines the punishment thereunder. Further, what subsequently happens i.e. whether the victim recovers fully, partially, or otherwise leads a normal life thereafter is a matter that does not enter into this reckoning. The submission that the Complainant is presently keeping well and has resumed a normal life, however true, pertains to the consequence and not to the hurt itself, and cannot, therefore, be countenanced as a ground for reducing the sentence otherwise warranted in law. We accordingly find no substance in the argument urged by the Ld. Counsel for the Appellant.

23. The Ld. Counsel for the Appellant relied upon **Amit Rana** (supra) to buttress his arguments that, the facts in that case were also very grave, as

the victim therein had received bullet injury on the spine because of which the victim was paralyzed. The trial court while convicting the accused had imposed a rigorous sentence of 14 years which was confirmed by the High Court and finally the Hon'ble Apex Court, commuted the sentence from 14 years to 10 years despite the gravity of the facts. The Ld. Counsel for the Appellant invited the attention of this Court to the following paragraphs:

“6. Section 307, IPC, makes it clear that to attract the said offence the victim need not suffer any kind of bodily injury. The offence to commit murder punishable under Section 307, IPC is constituted by the concurrence of mens rea followed by actus reus, to commit an attempt to murder though its accomplishment or sufferance of any kind of bodily injury to the victim is not a ‘sine qua non’. In other words, if a man commits an act with such intention or knowledge and under such circumstances that if death had been caused, the offence would have amounted to murder or the act itself is of such a nature as would have caused death in the usual course of an event, but something beyond his control prevented that result, his act would constitute the offence punishable as an attempt to murder under Section 307, IPC.

7. Thus, it can be seen that the attempt to murder the complainant caused the injury and resultantly he became paralysed. When that be the consequence of the attempt to murder, the case would definitely be fallen under the second part of Section 307, IPC. On scanning the provisions under Section 307, IPC, we have already found that in case the victim suffered hurt in terms of the second part of Section 307, IPC, the convict can be sentenced to undergo imprisonment for life. In the event the court did not consider that imprisonment for life is not to be imposed the other option, going by the provision, is only to impose such punishment as is mentioned in the first part of Section 307, IPC. The first part, as noticed hereinbefore, prescribes punishment with imprisonment of either description for a term which may extend to 10 years and also to pay fine. A bare perusal of the second part of Section 307, IPC, would undoubtedly show that it did not prescribe for imposition of punishment more than what is prescribed under the first part thereof. We have already noted that the maximum imprisonment permissible under the first part of Section 307, IPC, is “imprisonment of either description for a term which may not extent to 10 years and also

fine". When in unambiguous terms the legislature prescribed the maximum corporeal sentence imposable for the conviction under Section 307, IPC, under the first part and when the court concerned upon convicting the accused concerned thought it fit not to impose imprisonment for life, the punishment to be handed down to the convict concerned in any circumstance cannot exceed the punishment prescribed under the first part of Section 307, IPC. When this be the mandate under Section 307, IPC, the trial Court in view of its decision not to award the punishment of imprisonment for life could not have granted punishment to a term exceeding 10 years. It is to be noted that the respondent-State has not filed any appeal contending that the punishment imposed on the appellants is liable to be enhanced to imprisonment for life thus, we do not deem it necessary to go into the question whether the punishment is to be enhanced. Thus, the question is whether the sentence of rigorous imprisonment for 14 years is permissible in law and if not, what should be the comeuppance. The discussion as above with reference to Section 307, IPC, would thus go to show that imposition of rigorous imprisonment for a term of 14 years for a conviction under Section 307, IPC, is impermissible in law and it is liable to be interfered with. Since the High Court had not gone into the question as to how imprisonment for a term of 14 years or the conviction under Section 307, IPC would be maintained and in view of our conclusion as above, the judgment of the High Court confirming the judgment of the trial Court awarding rigorous imprisonment for 14 years calls for interference.

8. Since the conviction of the appellants under Section 307, IPC, is declined to be interfered with by us, necessarily the punishment for the said offence taking note of the gravity of the crime has to be imposed. Since we are not proposing to enhance the sentence to imprisonment for life and the only option is to bring down the term of imprisonment from 14 years, there is absolutely no reason to hear the appellants in-person.

9. We have taken note of the fact that as a consequence of the attempt to do away with the life of the complainant, he had suffered spine injury and became paralysed in terms of the second part of the Section 307, IPC, the appellants are to be given the maximum corporeal sentence imposable under the first part of Section 307, IPC. Accordingly, the imposition of rigorous imprisonment for 14 years each to the appellants is converted to rigorous imprisonment for a period of 10 years. The order of sentence with respect to fine is kept intact. The appeal is thus allowed in part and the impugned judgment of the High Court and the judgment of the trial Court in S.T. No.281/2016 qua the appellants stands modified as above."

24. The Ld. Counsel for the Appellant also relied upon the decision of the Hon'ble Apex Court in the case of **Ganesan** (supra) and invited the attention of this Court to the following paragraphs:

"7. This Court also in Amit Rana @ Koka Vs. State of Haryana² held that a bare perusal of the second part of Section 307 of I.P.C. would undoubtedly show that it did not prescribe for imposition of punishment more than what is prescribed under the first part thereof. The maximum imprisonment permissible under the first part of Section 307 is 10 years and fine. When the court thinks it fit, not to impose imprisonment for life, the punishment in no circumstance can exceed the punishment prescribed under first part of Sec.307 I.P.C.

8. On the above reasoning, the sentence of 12 years R.I. granted by the Appellate Court cannot be sustained; since the maximum sentence under Section 307, I.P.C., if life is avoided, can only be a maximum of 10 years. Considering the entire circumstances, the relationship between the parties and injuries caused, we are of the opinion that a sentence of 7 years R.I. would suffice under Section 307, IPC. Accordingly, we modify sentence in the Appellate judgment under Section 307, as above. The sentence handed over, under the other penal provisions of the I.P.C. stands confirmed which sentences shall run concurrently as directed by the Appellate Court. The Criminal Appeal stands partly allowed."

25. There can be no doubt to this proposition of law laid by the Hon'ble Supreme Court and we respectfully agree with the same. However, these judgments will not come to the rescue of the present Appellant in the peculiar facts and circumstances of the present case. The core question in the **Amit Rana** (supra) was whether the sentence of RI for 14 years is permissible in law and if not what should be the comeuppance. The Apex Court was also of the opinion that the High Court had not gone into the question as to how imprisonment for a term of 14 years or the conviction

under section 307 would be maintained and therefore sought to interfere in the awarding of sentence of 14 years . It needs to be appreciated that the decision of the Hon'ble Supreme Court in the case of ***Amit Rana*** (supra) was rendered in a specific factual and sentencing context where the appellant was awarded rigorous imprisonment for a term of 14 years by the trial court, which was upheld by the High Court. It was in this backdrop that the Hon'ble Supreme Court held that, it is only when the court thinks it appropriate not to impose imprisonment for life, that the punishment in no circumstances can exceed the punishment prescribed under the first part of Section 307 of the IPC and hence, reduced the sentence to 10 years.

26. The same principle is enunciated in the case of ***Ganesan*** (supra) where the court observes that when the court thinks it fit, not to impose imprisonment for life, the punishment in no circumstance can exceed the punishment prescribed under first part of Sec.307 I.P.C. In both the cases referred above the trial court while convicting under the second part of 307 IPC had not imposed imprisonment for life but had imposed 14 years in ***Amit Rana*** (supra) and 12 years in ***Ganeshan*** (supra). The core postulate is therefore the opinion of the court in imposing imprisonment for life or otherwise. If the trial court or for that matter the appellate court feels that in the facts and circumstances of the case punishment for life is not

warranted even if hurt is caused, then under the second part of section 307 IPC, the punishment which can be imposed cannot exceed more than the punishment prescribed under the first part thereof.

27. Therefore, said judgments cannot be read in isolation from the facts and circumstances in which the said principle was enunciated and the ratio of the above decisions needs to be understood in the context in which it was rendered. Another rationale behind the observation made by the Apex Court seems to be that there should not be any ambiguity or arbitrariness in sentencing. The punishment should be in conformity with what the statute prescribes and in that context the Hon'ble Apex Court has laid down the principle that if the court concerned upon convicting the accused thinks it fit not to impose imprisonment for life, the punishment to be handed down to the convict in any circumstances cannot exceed the punishment prescribed under the first part of section 307 IPC.

28. A useful reference can be made to the judgment of the Hon'ble Apex Court in the case of ***Ahsan vs. State of U.P.***⁵. The facts of the case of ***Ahsan (supra)*** are similar to the case in hand.

"Brief facts:

2) The case of the prosecution is that on 08.10.2004 at about 7.30 p.m., when Iliyas-the Complainant, after having meal, reached near the house of Naseem-his paternal uncle, he heard noise coming out from that house. When Illiyas entered the

5 (2018) 13 SCC 420

house, he saw Manshad, Kamil and Ahsan(the appellant), all from the same locality, armed with country made pistols in their hands, abusing his cousin Istekhar @ Dholoo, Shahzad (son-in-law) and Rukhsana, his niece with filthy language and they made fires from their respective pistols with the intention of killing them. The bullet fired by Manshad injured Istekhar, the bullet fired by Kamil caused injury to Rukhsana on her abdomen, who was pregnant and the bullet fired by Ahsan(appellant) injured Shahzad in his head. All of them were in critical state. The incidence was witnessed by Khurshid, Shamshad, Ikram etc. Illiyas had given the 'written report' at Police Station, Shamli after getting it written by Bhupendra Singh.

.....

10) In the light of limited notice issued, the only question which is involved in this appeal is whether any case for interference in the quantum of sentence awarded to the appellant is made out. So far as the merits of the case is concerned, it is not necessary for us to examine because the conviction of the appellant in relation to all the offences detailed in para 2 are already affirmed by this Court's order dated 09.07.2005.

.....

13) It was his submission that the fact that victim Shahjad, to whom the appellant caused the injury by gunshot having survived, the Courts below should have taken into account this fact and awarded the sentence in the first part of Section 307 IPC, which could extend only up to 10 years and fine.

14) It was also urged that appellant has already undergone custody around 10 to 12 years till date and hence it would be just and proper and in the interest of justice to reduce the appellant's sentence already undergone and he be set at liberty by upholding his conviction.

.....

18) Section 307 provides three punishments for three classes of nature of the cases. One class of cases, which falls in first part of the Section, prescribes a term "which may extend to ten years and fine", second class of cases, which falls in the second part of the Section, prescribes either "imprisonment for life" or "such punishment, which is prescribed in first part" and the third class of cases is when any person offending under Section 307 IPC is under sentence of imprisonment for life, causes hurt, be punished with "death".

19) So far as the punishment prescribed in first part of the Section is concerned, it applies to the cases where a person does any act with an intention or knowledge and under any circumstances, caused death.

20) So far as the punishment prescribed in second part is

concerned, it applies to the cases where the person while committing the act falling in first part, causes "hurt" to any person.

21) Here, we are concerned with class of cases falling under part one and two.

22) In our view, the two Courts below did not commit any error in exercising their judicial discretion in the light of facts found proved while awarding life imprisonment to the appellant.

23) It is for the reasons that firstly, the facts of the case squarely fall in the second part of Section 307 IPC; secondly, gunshot injury caused by the appellant to the victim-Shahjad was grievous in nature, thirdly, the bullet injury was caused in the head which was the most delicate and vital part of the body; fourthly, the facts of the case satisfied the ingredients of the first part of Section 307 IPC, namely, all the three accused which included the appellant had gone to the house of victim-Shahjad with a common intention to kill the members of family and in order to accomplish the intention, each accused targeted one member of the family present in the room which resulted in death of a stillborn child of Rukhsana, who was hit by gunshot in her abdomen and other two members suffered serious gunshot injuries though both survived.

24) In our opinion, while sentencing the accused, the Court is required to take into account several factors arising in the case, such as the nature of offence committed, the manner in which it was committed, its gravity, the motive behind the commission of the offence, nature of injuries sustained by the victim, whether the injuries sustained were simple or grievous in nature, weapons used for commission of offence and any other extenuating circumstances if any. Once these factors are considered while imposing the sentence, there remains little scope to interfere in quantum of punishment. Such is the case here."

29. Upon consideration of the above, we find that the Hon'ble Apex Court in ***Ahsan (supra)*** has categorically laid down that the nature of the injury, its gravity, and the manner in which the offence was committed, etc. are the factors that need to be taken into consideration while deciding the quantum of sentence. In continuation to this, it was iterated by the Hon'ble Apex Court that once the courts below duly consider these factors, little

scope remains for interference with the quantum of sentence awarded. Applying the said principle to the facts of the present case, we find that the Trial Court has rightly weighed the aforementioned factors while awarding the punishment of Imprisonment for Life. These factors seemed to have weighed with the trial court while awarding imprisonment for life to the Appellant. We, therefore, find that no case for interference with the sentence awarded by the Trial Court is made out.

30. At this stage, we find it relevant to refer to the recent pronouncement of the Hon'ble Apex Court, wherein the question of sentencing has also engaged its attention and the guiding principles for exercise of sentencing discretion by courts have been comprehensively laid down.

31. The Hon'ble Apex Court in the latest judgment of ***Parameshwari vs. The State of Tamil Nadu***⁶, has been pleased to observe that *“The Supreme objective of law is the protection of society and creating a deterrence against crime by imposing adequate punishment”*. Further the Hon'ble Apex Court has observed as under:

“21..... The objective of punishment is not to seek vengeance for the crime, rather, it is an attempt to reconstruct the damaged social fabric of society in order to pull back its wheel on the track.

22. The objective of punishment is to create an effective deterrence so that the same crime/actions are prevented and mitigated in future. The consideration to be kept in mind while awarding punishment is to ensure that the punishment should

not be too harsh, but at the same time, it should also not be too lenient so as to undermine its deterrent effect.

.....

25. This Court in the judgment of *State of M.P. vs. Saleem Alias Chamaru and Another* reported in (2005) 5 SCC 554 was dealing with the validity of the judgment of the High Court wherein the High Court had reduced the sentence awarded to the accused (in conviction under Sections 307 and 330 of the IPC) from 5 years to the period already undergone, i.e., six months and 23 days. This Court, therein, while setting aside the judgment of the High Court, held that undue sympathy shown towards the accused while imposing an inadequate sentence would do more harm to society and erode the trust of the public in the justice system. The Court therein held as follows:

9. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.

10. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should “respond to the society's cry for justice against the criminal”.

.....

28. At this juncture, it is also imperative for us to mention that retribution is not the ultimate aim of our criminal justice system, rather it hinges on principles of reformation and restitution. The criminal justice system aims to achieve the twin objectives of creating a deterrence against crime and also providing an

opportunity for reformation to the offender. Due consideration has also been provided by our legal system to the rights of the victim, who essentially are the first sufferers of the crime.

.....

34.We have observed a trend amongst various High Courts wherein the sentences awarded to the accused persons by the Trial Court are reduced capriciously and mechanically, without any visible application of judicial mind. Considering the gravity of the situation as thus, we have culled out certain basic factors, which are to be kept in mind by the courts while dealing with imposition of sentence, in line with the view taken by this Court in the aforementioned cases. The said factors are enunciated as below:

*A. **Proportionality:** Adherence to the principle of “just deserts” ought to be the primary duty of the courts. There should be proportionality between the crime committed and the punishment awarded, keeping in consideration the gravity of the offence.*

*B. **Consideration to Facts and Circumstances:** Due consideration must be given to the facts and circumstances of the case, including the allegations, evidence and the findings of the trial court.*

*C. **Impact on Society:** While imposing sentences, the courts shall bear in mind that crimes essentially impair the social fabric of the society (of which the victim(s) is/are an indispensable part) and erodes public trust. The sentence should be adequate to maintain the public trust in law and administration, however, caution should also be taken, and the Court shall not be swayed by the outrage or emotions of the public and must decide the question independently.*

*D. **Aggravating and Mitigating Factors:** The courts, while deciding the sentence or modifying the sentence, must weigh the circumstances in which the crime was committed, and while doing so, the court must strike a fair balance between the aggravating and the mitigating factors.”*

32. Upon consideration of the above, we find that the Hon'ble Apex Court has cautioned against reduction of sentences in a mechanical manner by the Appellate Courts. Applying the principles laid down in the above-mentioned case, we have carefully considered the submission of the

Appellant regarding reduction in the quantum of sentence. We have given our thoughtful consideration to the case in hand. We have also examined the evidence on record and carefully perused the impugned judgment to satisfy ourselves regarding the correctness of the same, even though the Ld. Counsel for the Appellant chose not to delve into it. We are of the opinion that in the facts of the case the trial court has rightly come to a conclusion that the offence itself is serious and therefore no leniency can be awarded. We are also not persuaded to take a different view after taking into consideration the intention and knowledge on the part of the Appellant and the law laid down by the Hon'ble Apex Court in *State of M.P. vs. Saleem Alias Chamaru and Another*, *State of M.P. vs. Kashiram & Ors*, *Ahsan vs. State of U.P and Parameshwari vs. The State of Tamil Nadu supra* and therefore the question of reducing the sentence to the first part of section 307 IPC in the facts of the case is not warranted.

33. Taking into account the overall conspectus of the matter, we are not inclined to interfere in the quantum of punishment or to hold that the Appellant is entitled for any lesser punishment.

34. Accordingly, we dismiss the appeal.

Hence, the following order.

ORDER

- 1] The appeal stands dismissed.
- 2] Pending application(s), if any, stand(s) disposed of.

(SHREERAM V. SHIRSAT, J)

(MANISH PITALE, J.)