

HIGH COURT OF JUDICATURE AT ALLAHABAD

RESERVED

Criminal Appeal No. 2754 of 1981
Babu Singh and seven others Vs. State of U.P.

Hon'ble Mukteshwar Prasad J.

This criminal appeal by the accused has been filed against the judgment and order-dated 20.11.1981 passed by Sri J.V.N. Jaiswal, the then Additional Sessions Judge, Etawah in S.T. No. 159 of 1980 whereby he convicted Babu Singh, Surendra Singh and Jagannath under Section 148 I.P.C. and each of them was sentenced to undergo one year rigorous imprisonment. The remaining five accused were convicted under Section 147 I.P.C. and each of them was sentenced to sufferer rigorous imprisonment for a period of six months. All the accused, except Jagannath, were found guilty under Section 452 I.P.C. and were sentenced to suffer rigorous imprisonment for a period of two years. Accused Babu Singh and Jagannath were further found guilty under Section 324 I.P.C. and each of them was directed to undergo rigorous imprisonment for a period of two years. The remaining six accused were convicted under Section 324 read with Section 149 I.P.C. and each of them was sentenced to undergo rigorous imprisonment for a period of two years.

All the sentences of each accused were directed to run concurrently.

During pendency of this appeal, appellant no. 1 Babu Singh expired and as such, the appeal filed by him abated vide order of this Court dated 3.10.2005.

In brief, the facts of the prosecution case were as under:-

Accused Babu Singh, son of Lallu Singh, was real brother of Surendra Singh and Virendra Singh and Mahendra Singh is son of late Babu Singh. Accused Jagannath and Rameshwar, sons of Nati Singh, are maternal uncles of Surendra Singh. Accused Chhunna and Munim @ Mahesh Chandra are members of the group in the village led by Babu Singh.

There was a piece of land towards south of the house of the accused, which was purchased by Babu Singh from its owner Ram Swaroop. Accused Babu Singh and other had an impression that informant Kailash Babu, son of Chheda Lal, had encroached on the said piece of land to the extent of about two feet. On several occasions, altercation took place and a Panchayat was held but the dispute could not be resolved. Babu Singh and others insisted for removal of the alleged encroachment.

On 17.12.1979, Babu Singh, Surendra Singh and Virendra Singh assaulted the informant and this incident was reported to the local police. This is said to be the motive for committing the alleged crime.

On 8.3.1980 at about 7-30 P.M., Kailash Babu, his brother Trijugi Narain, his parents and children were all present inside the house. An earthen lamp was burning at the door of the informant and burning lantern was hanging inside the house. Moreover, a lantern was burning under the Chhappar owned by Jagdish. Accused Babu Singh armed with a Tamancha, Jagannath and Surendra Singh armed with guns and the remaining accused having lathies in their hands, arrived at the door of Kailash Babu and they all committed house trespass. Accused Babu Singh exhorted his associates to kill Kailash Babu and others. He himself fired with his Tamancha which hit Trigugi Narain. On hue and cry raised by inmates of the house, Jagannath also fired causing injuries on the chest of Babloo, a child aged about 6-7 years, who was sitting in the adjoining house. On hearing the alarm, co-villagers Shyam Swaroop, Rajendra Kumar, Udai Narain, Babu Ram and others arrived there. Again Babu Singh fired and caused injuries to Shyam Swaroop. After arrival of a large number of villagers, the assailants took to their heels.

A report of the incident was prepared by Kailash Babu, which was handed over at P.S. Bakewar on the same night. The local police registered a case at crime no. 71 at 8-45 P.M. All the three injured were sent to District Hospital, Etawah for medical examination of their injuries.

Dr. M. Ali, E.M.O., examined the injuries of Babloo, aged about seven years at 9-45 P.M. on the same night and found one abrasion on the left side of chest, two gun shot wounds of entry on the left side of neck and one wound of exit.

Dr. M. Ali further examined Trigugi Narain at 10-15 P.M. on the same night and found one lacerated wound on medial side of right leg and one punctured wound on the lateral side of right leg 11 cm. below the right knee joint.

The injuries of Shyam Swaroop were examined by the same doctor at 10-30 P.M. on the same night and three lacerated wounds of different dimension were found on the right side of pelvis, muscle deep on the anterior surface of right thigh and back of the right thigh 8 cm. above knee joint.

In the opinion of Dr. M. Ali, all the injuries of all the three injured were simple in nature and were fresh at the time of examination. All the injuries were caused by firearm. He advised X-ray. Injury no.2 of Babloo was kept under observation.

The case was investigated by S.I. Shiv Veer Singh, who interrogated the witnesses and after inspection of the scene of incident prepared a site-plan on 9.3.80. He collected blood stained earth and blood stained clothes of the injured and prepared Fard Supurdginama, collected one wad from the courtyard of the informant. He completed investigation and submitted charge sheet against all the assailants named in the F.I.R.

After committal of the case, Jagannath and Surendra Singh were charged under Sections 148, 452 and 307 read with Section 149 I.P.C. The remaining accused were charged under Sections 147, 452 and 307 read with Section 149 of the Penal Code. Accused pleaded not guilty to the charges and claimed to be tried.

At the trial, the prosecution examined four witnesses in all. They are P.W.1 Kailash Babu, who is complainant and one of the eyewitnesses, P.W.2 Trigugi Narain, who is brother of the informant and an injured, P.W.3 Udai Narain and P.W.4 Rajendra Kumar are said to be eyewitnesses of the incident and they are named as eyewitnesses in the written report (Ex.ka-1) also.

Learned counsel for the accused admitted genuineness of the F.I.R., injury reports and other documents.

Accused in their statements given under Section 313 Cr.P.C. pleaded their false implication in the case on account of enmity. They adduced no evidence in their defence.

After close analysis and scrutiny of the evidence on record and considering arguments advanced on behalf of the parties, learned trial Judge found all the eight accused guilty and convicted and sentenced them as indicated above.

I have heard learned counsel for the appellants and learned A.G.A. and have perused the record carefully.

Learned counsel for the appellants submitted that main accused Babu Singh expired during pendency of this appeal and there was no intention on the part of the appellants to kill the informant or members of his family. In support of his contention, he further submitted that as per prosecution version five appellants were having lathies but none of them used his lathi and no lathi injury was caused to any one out of three injured. He led stress on the point that complicity of the five appellants, who were allegedly armed with lathies, has not been proved beyond all reasonable doubt and they are entitled to be acquitted. It was also urged that Surendra Singh was also armed with a gun but he did not fire and as such, his participation too appears to be doubtful. Lastly, it was submitted that the prosecution did not examine the I.O. and the Medical Officer and as such, all the appellants deserve acquittal.

On the other hand, learned A.G.A. has supported the impugned judgment and submitted that

court below rightly found that there was no intention on the part of the appellants to kill the informant or members of his family and as such, the learned trial Judge rightly convicted them under Section 324 of the Penal Code. The appeal has no merits and is liable to be dismissed.

I have given my anxious consideration to the entire submissions made by the learned counsel for the parties. I have also scrutinized the entire oral and documentary evidence on record carefully. After this exercise, I have arrived at the conclusion that the learned Judge committed no illegality in appraisal of the evidence on record and rightly found all the seven accused guilty of the offences committed by them.

First of all, it may be mentioned that all the appellants are co-villagers of the complainant and the injured. Moreover, two lanterns, one inside the courtyard of Kailash and the other in the Chhapper of Jagdish were burning. An earthen lamp was burning at the door of Kailash and thus, there was sufficient light in which the appellants could be identified easily by the informant and others. In this view of the matter, there was no question of committing any mistake in recognizing the real assailants. Besides, there is sufficient and reliable evidence on record to the effect that out of eight appellants, three were having firearms. The appellant Babu Singh, who expired during pendency of appeal, fired twice at Trijugi Narain (P.W.2) and Shyam Swaroop by his Tamancha and caused injuries to them. P.W.2 Trijugi Narain testified in very clear words that Babu Singh had fired at him with his Tamancha and after sustaining injuries in his legs, he sat down. Kailash Babu (P.W.1) corroborated the testimony of his brother Trijugi Narain on this point and he was also present in the courtyard. There is reliable evidence of Kailash Babu and Trijugi Narain to the effect that Jagannath fired at Babloo and caused injuries to him. He was sitting in his Chhappar.

P.W.3 Udai Narain and P.W.4 Rajendra Kumar who are co-villagers and eyewitnesses of the incident, fully supported the prosecution version and corroborated the testimony of Kailash Babu and Trijugi Narain on all material points. Both witnesses were warming themselves and were sitting near the Alav at the relevant time and saw the appellants going towards the house of Kailash Babu. After hearing the sound of firing, they proceeded towards the house of complainant and saw the incident. They were cross-examined at length but I find nothing in their cross-examination to discard their testimony. Thus, I find that there is evidence on record to the effect that two shots were fired by late Babu Singh and one shot was fired at Babloo by Jagannath.

It is true that the appellants having lathies did not use their weapons and caused no lathies injuries to anyone in the course of incident. However, there is reliable evidence on record that they were also members of unlawful assembly. It is correct that they did not take active part in the incident but they being members of unlawful assembly were rightly convicted with the aid of Section 149 I.P.C.

This contention of the appellants' learned counsel is correct that the investigating officer and the doctor were not examined in the court below by the prosecution. In the instant case, non-examination of the I.O. and the Medical Officer is not at all fatal. The simple reason is that the learned counsel for the accused admitted genuineness of all injury reports and other documents relied upon by the prosecution. Therefore, there was no sense in examining them. Further it is well settled now that non-examination of the I.O. is not always fatal. Learned counsel for the appellants has failed to show as to what prejudice was caused to the accused by non-examination of the I.O. and Medical Officer.

It was also contended that three persons are said to have sustained injuries in the course of incident. However, only one injured Trijugi Narain was examined and two others were not produced in the witness box. In my opinion, this contention too has no legs to stand. There is reliable oral and documentary evidence that Babloo was a boy, aged about 6-7 years. It is also well settled that examination of all the prosecution witnesses, including all the injured is not essential.

I further find that incident in question took place at about 7-30 P.M. and incident was reported to the police in writing on the same night at 8-45 P.M. at Police Station situate at a distance of three miles. Thus, it is clear that no delay took place in reporting the matter to the police and F.I.R. was lodged promptly. I further find that the injuries of all the three injured were also examined on the same night between 9-45 P.M. to 10-30 P.M. Moreover, in view of number of the injured, nature and seat of injuries and the weapons used in causing them it cannot be said that the injuries were manufactured or self-suffered with a view to falsely implicate the appellants.

All the appellants in their statements given under Section 313 Cr.P.C. disclosed that they were falsely implicated on account of enmity. Contrary to this, learned counsel for the accused suggested to P.W.1 Kailash Babu and P.W.2 Trijugi Narain that a dacoity was committed in the village in which dacoits resorted to indiscriminate firing and caused injuries. In view of the aforesaid scrutiny of the evidence on record, I hold that the learned trial Judge was wholly justified in holding the accused guilty and rightly convicted and sentenced them. I find no ground to interfere with the judgment under appeal. In my opinion, the sentence passed against the appellants is also just and proper and not excessive. The appeal lacks merits and is liable to be dismissed.

In the result, the appeal fails and is hereby dismissed. The conviction and sentence recorded against all the appellants (except Babu Singh) are hereby upheld. The appellants are on bail. Their bail is cancelled. They shall be taken into custody and sent to jail to serve out the sentences. All the sentences of each accused are directed to run concurrently.

A copy of this judgment shall be sent to the court concerned/Chief Judicial Magistrate within a week, who will ensure compliance of the aforesaid order and make necessary entries in the relevant register with an intimation to this Court within a period of six weeks.

Date: 24th November, 2005