
(2003) 03 AHC CK 0002
In the Allahabad High Court
Case No : Criminal Appeal No. 242 of 1981

Brij Lal and Others (in Jail)	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 299, 302

Citation : (2003) 3 ACR 2478

Hon'ble Judges : Vishnu Sahai, J; R.C. Pandey, J

Bench : Division Bench

Advocate : Jitendra Misra and Nagendra Mohan, for the Appellant; Umesh Verma and , Assistant Public Prosecutor, for the Respondent

Judgement

1. Eleven persons, namely, Brij Lal, Ram Khilawan, Chhotey, Ram Saran, Ram Das, Ram Prasad, Shive Ram, Durga Prasad, Chheddu, Sunder Lal and Saheb Deen were tried by the I Ind Additional District and Sessions Judge, Sitapur in Sessions Trial No. 409 of 1980 for offences punishable under Sections 302/149, 323/149 and 324/149, I.P.C. ; in addition, Sunder Lal and Saheb Deen for offence punishable u/s 148, I.P.C. and the remaining for that punishable u/s 147, I.P.C.

The learned Judge vide judgment and order dated 30.3.1981 convicted and sentenced them in the manner stated hereinafter:

- (i) u/s 302/149, I.P.C. to imprisonment for life ;
- (ii) u/s 324/149, I.P.C. to six months R.I. ; and
- (iii) u/s 323/149, I.P.C. to three months R.I.

In addition, he convicted and sentenced Sunder Lal and Saheb Deen to one year R.I. u/s 148, I.P.C. and Brij Lal, Ram Khelawan, Chhotey, Ram Saran, Ram Das, Ram Prasad, Shive Ram, Durga Prasad and Chhiddu to six months R.I. u/s 147, I.P.C.

The aforesaid sentences of the said persons were directed to run concurrently.

Aggrieved by their convictions and sentences, the aforesaid eleven persons have preferred the present appeal.

2. Shortly stated, the prosecution case runs as under:

The informant Nakchhed Prasad P.W. 2 is the son of Ram Autar and the brother of deceased Ram Swaroop and Ram Roop. At the time of the incident, he along with the said persons was residing in village Hetha, hamlet of Hazratpur, within the limits of police station Tambaur in District Sitapur. At that time, some of the Appellants were living in village Hetha and some in village Hazratpur ; both of which were situated within the limits of police section Tambaur, District Sitapur.

There was enmity between the informant and others on one hand and the Appellants on the other:

Sometimes before the incident, Nand Kumar, father of Appellant Durga Prasad was murdered and the informant, the two deceased persons, Lalta Prasad and Ram Kumar were prosecuted for the same. In the said case, Appellant Saheb Deen was an eye-witness.

Four to five years prior to Nand Kumar's murder, the informant along with some others had been prosecuted for an offence punishable u/s 307, I.P.C. The informant in the said case was one Banwari, an associate of the Appellant Shive Ram, who was a prosecution witness in the said case. The said case ended in acquittal.

Before the said incident, the informant had purchased a grove from one Lala Maharaj Bahadur for Rs. 6,000. Appellants Saheb Deen, Brij Lal, Ram Khilawan, Ram Prasad, Ram Das, Ram Saran, Chhotey and Chhiddu were also interested in jointly purchasing the said grove for Rs. 5,000 and their failure to purchase it resulted in their nursing ill-will against the informant Nakchhed P.W. 2 and his family members.

On account of the aforesaid reasons, Appellants bore grudge against Nakched and members of his family.

On 19.10.1977, Ram Roop and Ram Swaroop (brothers of the informant), in the presence of Shakoor Ali P.W. 1, were repairing the mend of their grove by taking the mud from ditches (the said work was going on from 10 to 15 days prior to the incident). At about 3.30 p.m., Shakoor Ali P.W. 1 noticed that the eleven Appellants, namely, Brij Lal, Ram Khilawan, Chhotey, Ram Saran, Ram Das, Ram Prasad, Shive Ram, Durga Prasad, Chheddu, Sunder Lal and Saheb Deen came. Saheb Deen and Sunder Lal were armed with kantas and the remaining with lathis. They started felling down the mend. When Ram Roop and Ram Swaroop protested, Appellant Saheb Deen instigated that they be killed and thereafter the eleven Appellants with lathis and kantas started assaulting them. In the meantime, Shakoor Ali P.W. 1 went and informed the informant Nakchhed P.W. 2,

who along with his father Ram Avtar came to the place of the incident. Natha Ram P.W. 3 and Babu Ram P.W. 4 also came there. Nakched, Ram Avtar, Natha Ram and Babu Ram saw the eleven Appellants assaulting Ram Swaroop and Ram Roop in the manner mentioned above. When Nakched and Ram Avtar tried to save them, the Appellants also assaulted them. Nakched snatched kanta from Appellant Saheb Deen and Ram Avtar a lathi from one of the Appellants, and in exercise of their right of private defence of person assaulted the other side. During the course of incident, blood fell on the ground. After assaulting Ram Swaroop, Ram Roop, Nakched and Ram Avtar, the eleven Appellants went away. Thereafter Nakched took Ram Swaroop and Ram Roop on a bullock-cart to police station Tambaur, district Sitapur, where he lodged his F.I.R.

3. The evidence of C.O. K.L Singh P.W. 8 shows: On 19.10.1977, he was posted as C.O. at police station Tambaur, district Sitapur. On the said date, at 5.15 p.m., the FIR of the incident was lodged by Nakched in his presence. He took over the investigation of the case. Since Ram Swaroop and Ram Roop were unconscious, he did not record their statements and sent them along with Nakched and Ram Avtar for medical examination.

4. The evidence of Dr. H. K. Kulshrestha P.W. 5 shows: On 19.10.1977 he was posted as Medical Officer at PHC Tambaur, district Sitapur. On the said date, at 8.00 p.m., 8.15 p.m., 8.30 p.m. and 8.50 p.m., respectively he medically examined Ram Roop, Ram Swaroop, Ram Avtar and Nakched.

On the person of Ram Roop, Dr. Kulshrestha found three lacerated wounds, one swelling and one injury, which he has described as laceration on upper side of pinna.

In his opinion the lacerated wounds (which were situated on the head) and the swelling which was located on the left fore arm, were grievous in nature.

On the person of Ram Swaroop, Dr. Kulshrestha found two lacerated wounds and one linear bruise with abrasion.

In his opinion, the first lacerated wound, which was situated on the skull (left side) and the linear bruise with abrasion, which was situated on the right side of face below the right ear, were grievous.

On the person of Ram Avtar, Dr. Kulshrestha found one incised wound, one lacerated wound, one diffused swelling and one bruise.

On the person of Nakched, Dr Kulshrestha found two bruises and one abrasion.

In the opinion of Dr. Kulshrestha, excepting the incised wound suffered by Ram Avtar, the remaining injuries suffered by the four victims were caused by a blunt weapon and all the injuries of the victims were one quarter day old.

5. The evidence of Dr. Kulshrestha shows that Ram Roop and Ram Swaroop succumbed to their injuries on the night of 19/20.10.1977 at 1.30 a.m. and 3.15 a.m., respectively.

6. The autopsy on the corpse of Ram Swaroop and Ram Roop was conducted by Dr. Kulshreshtha P.W. 8.

On the person of Ram Swaroop, Dr. Kulshreshtha found two lacerated wounds and one linear bruise with abrasion.

On internal examination, he found fracture of skull on both sides.

In his opinion, the death of the deceased was on account of intra cranial haemorrhage.

On the person of Ram Roop, Dr. Kulshreshtha found three lacerated wounds, one swelling and one injury which, he has described as laceration on upper side of pinna.

On internal examination, he found fracture of skull bones.

In his opinion the deceased died on account of intra cranial haemorrhage due to injury to brain.

7. It is pertinent to mention that a counter-F.I.R. with respect to the same incident was lodged by Appellant Saheb Deen at 5.45 p.m. the same day (19.10.1977) at police station Tambaur, District Sitapur and on the side of the Appellants, six persons, namely, Chhoota Lal, Ram Charan, Ram Prasad, Saheb Deen, Shive Ram and Brij Lal received injuries ; Chhoota Lal a bruise, Ram Prasad an abrasion, Saheb Deen a lacerated wound and an abraded bruise, Shive Ram three lacerated wounds, two incised wounds and one abrasion, Brij Lal an amputation of left thumb at the distal phalanx (it was grievous in nature), one abrasion and one bruise and Ram Charan one bruise.

8. The case was investigated in the usual manner by C.O. K. L. Singh of police station Tambaur, district Sitapur. Since in our view, a reference to the details pertaining to investigation is not necessary for the disposal of this appeal, we are not adverting to them.

On completion of the investigation, Appellants were charge-sheeted.

9. It is pertinent to mention that in the cross case, which was instituted on the basis of the F.I.R. lodged by Appellant Saheb Deen, a charge-sheet was also submitted.

10. The case was committed to the Court of Sessions in the usual manner, where after being charged on a number of counts the Appellants were put up for trial.

During trial, in all, the prosecution examined eight witnesses. Four of them namely, Shakoore Ali P.W. 1, Nakchhed Prasad P.W. 2, Natha Ram P.W. 3 and Babu Ram P.W. 4 were examined as eye-witnesses.

During cross-examination, the suggestion given to the informant Nakchhed Prasad was that he and others had forcibly occupied the field of Appellants Saheb Deen and Brij Lal, in which they were making mend and wanted to include the

said field in their grove and when they Saheb Deen and Brij Lal) protested, the informant and others assaulted them and Saheb Deen and Brij Lal in their self-defence assaulted them. The said suggestion was denied.

In defence no witness was examined by the Appellants.

11. The learned trial Judge believed the evidence adduced by the prosecution and convicted and sentenced the Appellants in the manner stated in paragraph 1.

Hence, this appeal.

12. We have heard learned Counsel for the parties. Mr. Nagendra Mohan, learned Counsel for the Appellants, at the very outset urged that he could not assail the involvement of the Appellants in the incident and their conviction on counts other than Section 302/149, I.P.C. He strenuously urged that the learned Judge was not justified in convicting the Appellants for the offence punishable u/s 302 read with Section 149, I.P.C. In his contention, instead of the offence punishable u/s 302/149, I.P.C. the learned Judge should have convicted them for that punishable u/s 304 Part (ii)/149, I.P.C.

13. We have reflected over the submission canvassed by Mr. Nagendra Mohan and find merit in it for the reasons enumerated hereinafter:

(a) Although two of the Appellants, namely, Sunder Lal and Saheb Deen were armed with kanta (which was a far more lethal weapon as compared to lathi) and according to four eye-witnesses, belaboured the two deceased with kanta, but the autopsy report of the deceased persons does not show that they sustained any kanta injury (incised wound). On the converse, it shows that they only sustained blunt weapon injuries.

In our judgment, since none of the two deceased persons sustained any incised wounds, the eye-witnesses cannot be believed when they say that Appellant Sunder Lal and Saheb Din assaulted the deceased with kanta.

In other words, what emerges is that although the said Appellants were armed with a sharp edged weapon like kanta, they did not assault the deceased persons with the same.

We feel that if the common object of the unlawful assembly, (of which all the Appellants were members) was to commit murders of Ram Roop and Ram Swaroop, then kanta injuries would have been inflicted on their person.

(b) Although nine of the Appellants (Appellants other than Sunder Lal and Saheb Deen) are said to have assaulted the deceased persons with lathis but the post-mortem report of deceased Ram Swaroop shows that he sustained two lacerated wounds and one linear bruise with abrasion and that of Ram Roop shows that he sustained three lacerated wounds, one swelling and laceration in pinna. The post-mortem report of both the deceased persons shows that their death was the result of fracture of skull.

It is significant to mention that apart from the fact that nine Appellants armed with lathis, inflicted only eight lathis injury on the person of the two deceased persons (not even a blow each), prosecution has not been able to specify as to which amongst them were responsible for causing the fracture of skull of both the deceased persons.

(c) A perusal of the F.I.R. shows that the instigation made by Appellant Saheb Deen before the assault was launched by the Appellants on the deceased person was "In saron ka maar lev jaye na paave" (In English, it would read thus: assault these buggers, they should not be allowed to go). There is a world of difference between the expression "In saron ko maar lev" and "In saron ko jaan se maar lev". The latter connotes murder. It is significant to point out that prosecution was conscious of this distinction and, therefore, Shakoor Ali P.W. 1 in his statement in the trial court stated that prior to launching the assault on the deceased persons, Appellant Saheb Deen instigated "Inko salon ko jaan se maar diya jaye" (In English, this would mean these buggers be killed).

It is significant to mention that the other three eye-witnesses, namely, Nakchhed, Natha Ram and Babu Ram do not depose that Appellant Saheb Deen instigated that deceased be killed.

In such a factual matrix, we do not believe this improvement in the statement of Shakoor Ali and prefer to go by the recitals in the F.I.R.

14. But at the same time, we make no bones in observing that when the nine Appellants armed with lathis assaulted the two deceased persons (in company of two Appellants armed with kantas) and caused eight blunt weapon injuries on their person, some of which resulted in fracture of skull bones leading to their death, they committed an act with the knowledge that they were likely to cause their death in terms of clause thirdly of Section 299, I.P.C., the breach of which is punishable u/s 304 Part (ii), I.P.C. Since the Appellants as members of an unlawful assembly committed the said act, they would be guilty for the offence punishable u/s 304 Part (ii) 149, I.P.C.

15. The question which remains, is the quantum of sentence to be awarded to the Appellants. So far as the sentence of the Appellants on counts other than Section 304(ii)/149, I.P.C. is concerned, the same as would become manifest from paragraph 1 (we have mentioned the sentence in it) is not excessive.

As regards the sentence for the offence punishable u/s 304 Part (ii)/149, I.P.C. is concerned, bearing in mind the overall circumstances, particularly the fact that the incident took place nearly twenty-six years ago, a sentence of five years R.I. coupled with a fine of Rs. 10,000 (Rupees Ten Thousand) each and two year's S.I. in default would meet the ends of justice.

16. In the result, this appeal is partly allowed. Although we upheld the convictions and sentences of Appellants Brij Lal, Ram Khilawan, Chhotey, Ram Saran, Ram Das, Ram Prasad, Shiv Ram, Durga Prasad and Chhiddu for offences

punishable under Sections 147, I.P.C., 324/149, I.P.C. and 323/149, I.P.C. but we acquit them for the offence punishable u/s 302/149, I.P.C. and instead find them guilty for that punishable u/s 304 Part (ii)/149, I.P.C. and sentence each of them to undergo five years R.I., and to pay a fine of Rs. 10,000 (Rupees Ten Thousand) and two years S.I. in default.

Although we uphold the convictions and sentences of Appellants Sunder Lal and Saheb Deen for offences punishable under Sections 148, I.P.C., 324/149, I.P.C. and 323/149, I.P.C., but we acquit them for the offence punishable u/s 302/149, I.P.C. and instead find them guilty for that punishable u/s 304Part (ii)/149, I.P.C. and sentence each of them to undergo five years R.I. and to pay a fine of Rs. 10,000 (Rupees Ten Thousand) each in default to undergo two years S.I.

Excepting the sentence in default of payment of fine, the sentences of the Appellants, on all the counts shall run concurrently.

We direct the Appellants to pay the said fine of Rs. 10,000 (Rupees Ten Thousand), within a period of six months from today in the trial court and in case they fail to pay it the defaulting Appellant/Appellants, as the case may be, shall serve the sentence in default of payment of fine.

The total fine realised shall be equally divided between the legal heirs of the deceased Ram Swaroop and Ram Roop and shall be paid to them as compensation by the trial court, at the earliest.

As soon as the Appellants deposit the fine, the trial court shall inform the legal heirs of the deceased persons about the compensation and pay the same to them at the earliest.

The Appellants are on bail and shall be taken into custody forthwith to serve out their sentences.

The trial court shall accept the fine on production of a certified copy of our judgment, which in case an application is made by the learned Counsel for the parties, shall be issued within two weeks from the date on which, it is preferred.