
(1982) 09 AHC CK 0072
In the Allahabad High Court
Case No : Criminal Revision No. 574 of 1981

Budh Ram and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-09-1982

Acts Referred:

Penal Code, 1860 (IPC) — Section 324, 34, 342

Citation : (1982) 6 ACR 528

Hon'ble Judges : S.Z. Hasan, J

Bench : Single Bench

Advocate : G.K. Mehrotra and S.K. Singh, for the Appellant; G.A., for the Respondent

Final Decision : Dismissed

Judgement

S.Z. Hasan, J.—This is a revision against the order of Sri Rajeshwar Singh, Sessions Judge, Gonda, convicting and sentencing the revisionists to pay a fine of Rs. 200/- u/s 324/34 IPC and a similar amount for an offence punishable u/s 342 IPC and in default of payment of fine to undergo simple imprisonment for a period of one month under each count. However, the sentence of imprisonment were ordered to run concurrently.

2. Virendra Kumar accused is the elder brother of Arun Kumar and Smt. Kamalawati accused is their mother. Budh Ram accused is their servant. They are residing in mohalla Wazirganj, Gonda city. It is said that on 6-4-1977 at about 1 P. M. Harish Chandra PW 2 aged about 10 years son of Krishna Deo PW 1 complainant was playing outside his house with Arun Kumar son of Smt. Kamalawati accused. After some quarrel between Harish Chandra and Arun Kumar, Harish Chandra caused burn injuries on the back of Arun Kumar with the help of compass. When the matter came to the notice of the mother she sent her servant Budh Ram accused who dragged Harish Chandra inside the house and beat him. Budh Ram caught Harish Chandra and the remaining two accused persons caused burn injuries with the help of heated iron rod. The complainant

Krishna Deo PW 1 was not present in the house. When he returned in the evening he lodged a report at 5.15 P. M. PW 1 Krishna Deo is not an eye witness. He is father of the boy Harish Chandra. PW 5 Ram Milan was declared hostile and the name of PW 4 Sheo Dutt Tewari was not mentioned in the first information report. The learned Sessions Judge discarded the statements of Sheo Dutt P W 4 and Ram Milan P W 5 and convicted the three accused persons on the basis of the testimony of Harish Chandra PW 2. The accused denied the charge. The case of accused Virendra Kumar and his mother Smt. Kamlawati accused is that these people wanted that Smt. Kamlawati should dismiss her servant Budh Ram and on her refusal the mother and her son were falsely implicated. The case of Budh Ram is that he was servant of Smt. Kamlawati accused and when Harish Chandra was causing burn injuries to Arun Kumar with the help of compass he tried to snatch it but Harish Chandra put his hand towards his back with the result that he received burn injuries on his back from that heated compass. The learned Magistrate believed the prosecution case and convicted and sentenced the three accused persons. u/s 324/34 IPC they were sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs. 500/- each. In case of default in payment of fine, each of them was ordered to undergo rigorous imprisonment for a period of three months. For the offence u/s 342 IPC each of them was sentenced to pay a fine of Rs. 500/- and in default of payment of fine to undergo rigorous imprisonment for three months. The mother went up in appeal and the learned Sessions Judge reduced the sentences of the revisionists and ordered them to pay a fine of Rs. 200/- u/s 324/34 IPC and a similar amount for an offence punishable u/s 342 IPC and in default of payment of fine they were further made to undergo simple imprisonment for a period of one month under each count but the sentences of imprisonment in default of payment of fine were ordered to run concurrently. Aggrieved by this order the three accused persons have come up in revision before this Court. The statement of PW 2 Harish Chandra and the doctor clearly show that on the aforesaid date and time Harish Chandra received four burn injuries as detailed in his injury report. Half heartedly Budh Ram accused admitted that when Harish Chandra put his hand behind his back he got burn injuries. This defence is clearly absurd. The injuries received by Harish Chandra are 2.2" X 1/4" each. These four injuries are on left side back, right side in lower part of the back and right fore arm. These injuries could not be caused by heated compass. So, Harish Chandra received these four injuries in broad-day-light. Budh Ram admits that some incident took place during which Harish Chandra tried to cause injuries to Arun Kumar and he himself tried to snatch away the compass, so the occurrence took place in day light and there was no motive for Harish Chandra to leave the real culprits and to make a false substitution. There was absolutely no enmity or motive etc. to concoct such type of story and implicate these three accused persons. The defence version as set up by Budh Ram, servant of Smt. Kamlawati is clearly false as the injuries received by Harish Chandra could not be caused by compass. So, it is established that on the aforesaid date, time and place Harish Chandra caused burn injuries to Arun Kumar, younger son of Kamlawati and when this

matter was brought to the notice of Smt. Kamlawati these people naturally got annoyed and Budh Ram accused brought him inside the house and while he was holding the two accused persons started causing burn injuries with the help of heated rod. It is admitted by both the parties that Harish Chandra caused burn injuries to Arun Kumar with the help of compass. Naturally, it would have annoyed the mother and elder brother of Arun Kumar as well as their "faithful" servant (Budh Ram accused). Arun Kumar was too young to take any revenge. So, naturally his elders etc. did the same. Harish Chandra tried to cause burn injuries with the help of compass so they could lose balance and in retaliation cause injuries with the help of iron rod. So, the prosecution has successfully connected the three accused with the crime.

3. Certain minor discrepancies were brought to my notice. The complainant was crying from the very beginning that correct report was not recorded. It was next argued that the two witnesses mentioned in the first information report were not produced. Sheo Dutt Tewari PW 4 and Ram Milan PW 5 are not mentioned in the first information report. Ram Milan was declared hostile and Sheo Dutt Tewari was disbelieved. We know about the normal tendency to avoid witness box for well known reasons which need not be detailed here. The prosecution case cannot be thrown out on the ground that certain witnesses were not produced, specially under the conditions prevailing at present. We have accordingly to see whether the evidence on record is sufficient to make out a case or not. There appears to be no oblique motive to withhold any witness. On a number of occasions it has been clearly held by courts that we do not expect corroboration specially when such type of incident takes place inside a house. But inspite of so many decisions of courts on this point witnesses are "imported" from outside the house to "impress" that there are "independent" witnesses to corroborate the statement of witness who was residing in the house and whose presence cannot be doubted. The occurrence took place inside the house of the accused and we do not expect witness from inside at that time. The court below has based conviction on the statement of Harish Chandra which is well corroborated by certain circumstances. Corroboration need not be by direct evidence. Even circumstances can corroborate.

4. The main argument of the counsel for the revisionists was that conviction should not be based on the solitary or uncorroborated statement of a child witness.

5. Love, hatred, ambition, hypocrisy, consideration of religion, rank, fortune, caste, creed are as yet unknown to the children. Preconceived notions, nervous irritation or long experience normally do not lead them to form an erroneous impression or to formulate complicated scheme for false implication. These great advantages accompany certain corresponding drawbacks. They use same words as we do but they convey to them a different idea. They perceive things differently. Their conception of magnitude, pace, beauty, distance etc. is not like that of elders. What we ignore they fear or take delight. Their horizon is limited. They cannot perceive many things which we are able to note easily. They are

easily susceptible to tutoring. They may easily borrow from imagination. They may easily believe what they are told. They can be easily taught stories. They live in a world of make believe so that they often become convinced that they have really seen the imaginary incident which they are taught to relate. As such conviction can be based on the statement of a child but the testimony must undergo strict judicial scrutiny-a-cautious approach.

6. From the answers given by this child while in the witness box it appears that he was of sufficiently matured understanding I have gone through the entire statement and there is nothing to indicate that he was tutored. The occurrence took place in day-light. There was no question of mistaken identity or misreading or misjudging anything. While playing Arun Kumar hurt Harish Chandra so he took revenge by causing burn injuries to him with the help of heated compass. When this matter was brought to the notice of the mother and the brother Virendra Kumar, the servant was deputed to bring Harish Chandra inside the house and in retaliation they caused burn injuries with the help of heated iron rod.

7. Harish Chandra received injuries which could be caused by iron rod. It is common case of the parties that Arun Kumar, son of Smt. Kamlawati accused also received burn injuries, when heated compass was used by Harish Chandra. So the motive was there to take the revenge. "Blood for blood and burn for burn." The false statement of Budh Ram accused and false defence set up by remaining two accused also lend support to the prosecution version. So, all these factors and the attending circumstances referred to above clearly corroborate the statement of Harish Chandra which does not suffer from any material infirmity. The discrepancy as to whether 2 or 4 injuries were caused to Harish Chandra can be ignored because that can arise due to lapse of time and memory. Such little infirmities and shadow doubts cannot induce us to reject the statement of the child which is intrinsically reliable and inherently probable. No other point was pressed before me.

8. In view of the above, I hold that the findings of the courts below are not perverse, manifestly incorrect or illegal. There seems to be no good ground to interfere with the order of conviction. Regarding the sentence, the learned Sessions Judge has already taken a lenient view. The revision is dismissed. The fine if not paid be deposited within thirty days from the date of the receipt of the notice from the Magistrate concerned and in case of non payment the default clause as imposed by the learned Sessions Judge shall follow.