
(2010) 07 AHC CK 0383
In the Allahabad High Court

Dildar Husain and Hasan Mehdi @ Anwar and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2010) 07 AHC CK 0383

Hon'ble Judges : Yogendra Kumar Sangal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Yogendra Kumar Sangal, J.—Both these appeals were filed by the appellants-accused of S.T. No. 407/89 State v. Dildar Hussain and Ors. relating to crime case No. 28/86 under Sections 147, 148, 149, 307, 323, 452, 427 IPC, P.S. Kotwali Nagar, District Sultanpur against the judgment and order dated 20.01.1995 passed by IVth Additional Session Judge, Sultanpur. By the impugned judgment and order, learned Session Judge hold guilty to all the accused-appellants in both the appeals under Sections 147, 148, 323/149, 452, 427 read with Section 149 IPC. Accused were sentenced to undergo R.I. u/s 323/149 IPC for 1 year R.I.; u/s 452 IPC for another 1 year and u/s 427 IPC for 1 month. Accused Hasan Mehdi alias Anwar was also convicted u/s 148 IPC for 1 year R.I. and rest were also sentenced for 1 year R.I. u/s 147 IPC. Orders were also passed that the sentences shall run concurrently. Two separate appeals were filed by the accused-appellants. Appeal No. 103/1995 was filed by Hasan Mehdi alias Anwar, Bashir Abbas, Afzal Hussain and Wahid Hussain. Appeal No. 41/1995 was filed by accused Dildar Hussain, Tejdar Hussain and Abrar Hussain.

2. As per prosecution case on 06.01.1986 at about 6"0 clock in the morning informant Kali Prasad and his father Sri Ram were sleeping at the door of at their house. Accused having lathi and country made pistol came there and made attack on them. Shot was also fired by country made pistol and blow of lathi

were given. Both of them entered into their house to save themselves but accused persons have also entered into the house with an intention to inflict injuries to them and also beaten them inside the house. On their hue and cry and noise of shot of firearm, their family members came there and raised alarm. Neighbours and villagers were assembled there. Accused persons succeeded in escaping from there giving threat to kill them in future. They have also demolished the "maid" of well and the wall of the house. Ram Kumar, Rati Pal, Shyamlal, Parasnath etc., witnesses reached on the spot and they saw the occurrence. Report was lodged in the matter. Case was registered. Police of P.S. concerned started investigation in the matter. Site plan of place of occurrence was prepared. Statement of witnesses were recorded. Injuries of injured were got medically examined. These were also X-rayed by the doctor. After completing the investigation, charge-sheet was submitted against all the accused named in the FIR for their trial. As case u/s 307 IPC was exclusively triable by the Court of Session so after taking cognizance in the matter, learned Magistrate committed the case to the Court of Session.

3. In trial before the Court of Session accused persons were charged to face the trial for the offences under Sections 147, 307/149, 323/149, 452 and 427/149 IPC. Hasan Mahandi was not charged for the offence u/s 147 IPC, but he was charged for the offence u/s 148 IPC. They all pleaded not guilty and claimed their trial.

4. On behalf of the prosecution 9 witnesses were examined. PW-1 informant of the case Kali Prasad; PW-2 Sri Ram have given the details of FIR in their statement and tried to support the case of FIR; PW-3 Rati Pal said to be an independent witness of the occurrence but he has partly supported the case of the prosecution; PW-4 Smt. Kaushaliya another injured witness tried to support the case of the prosecution; PW-5 Ram Kumar another independent witness tried to support the case of the prosecution; PW-6 Doctor Subhash Chandra who had examined the injuries of the injured and he had given details of injuries on the body of injured and proved the injury report Exhibit-Ka-3, Exhibit-Ka-4 and Exhibit-Ka-4 respectively; PW-7 another Doctor K.K. Malhotra stated that he got X-rayed the injuries of Kali Prasad in the leg and proved the report Exhibit-Ka-6 and also X-ray plat Exhibit-Ka-1; PW-8 Constable 740 C.P. Safeek Ahmed stated that on the written report submitted by Kali Prasad, he prepared chik report and entered the case in G.D.; PW-9 is the investigating officer of the case who had given details of the investigation and also proved the document prepared during the course of investigation.

5. In their statement u/s 313 CrPC all the accused had denied the correctness of the prosecution case and also evidence of the prosecution and stated that they have falsely implicated in this case due to enmity. One of the accused Abrar Hussain claimed that he is practicing advocate and falsely involved in this case so that he may not do the parvi of the case on behalf of the accused. Accused Dildar Hussain said that at the time of occurrence he was in Batharia Bazar of District

Barabanki. No evidence in defence was adduced on their behalf.

6. After going through the evidence and perusing the record and hearing the arguments of parties counsel, learned trial court held guilty to all the accused for the offences they were charged and sentenced them as above. Aggrieved by this judgment and order, these two separate appeals were filed.

7. Heard learned Counsel for the appellants, learned AGA for the State and perused the record.

8. As per prosecution case on 06.01.1986 at about 6"0 clock, all the accused joined the unlawful assemble. One Hasan Mehdi alias Anwar was having country made pistol and rest were armed with the lathi at that time and when to the house of informant. They have beaten to Kali Prasad and his father Sri Ram when they were sleeping at the outside of their door house. They entered into the house to save themselves, accused persons followed them and they have also entered in their house and also beaten them there. Sister of Kali Prasad came there for their rescue, but she was also beaten. Injuries were inflicted to all the three victims. Hasan Mehdi has also used firearm and inflicted injury. On their hue and cry, an alarm raised, witnesses assembled there. Accused persons succeeded in escaping from there with a threat to them that they will kill them in future. To support its case on behalf of the prosecution, three witnesses i.e. PW-1 Kali Prasad; PW-2 Sri Ram and PW-4 Smt. Kaushaliya were examined. They have tried to support the case of the FIR in their oath statements. They were cross-examined at length on behalf of the accused, but nothing substantial came out in their cross-examination so that their oath testimony can be disbelieved or doubted. Two independent witnesses namely Rati Pal PW-3 and Ram Kumar PW-5 were also examined on behalf of the prosecution. PW-5 had also supported the case of the prosecution without any material contradiction in his cross-examination with the statements of other witnesses. Another witness PW-3 Rati Pal had not supported the case of the prosecution in toto. He simply said that after hearing the hue and cry, he saw from his house door that some of the accused-persons were there having lathi in their hand and they were throwing the brickbat towards the house of the informant. He had not seen that anyone received injury on the spot. This shows that he had partly corroborated the case of the prosecution that some occurrence has taken place on the spot at the date and time as stated by the prosecution. Two injured persons were examined by the doctor and what injuries he found on the body of the victims he had detailed them in his report. He was also examined on behalf of the prosecution and he had proved his report submitted in the matter.

9. Learned Counsel for the accused-persons argued that as per medical report, no grievous and serious injuries were found on the body of any victim. No vital part of the body of any victim was found involved by the doctor in injuries. Injuries are less in number in proportionate to the number of accused persons, as it is said that all the accused have used their respective arms in inflicting injuries to the victims. It was argued that doctor has not supported the case of

the prosecution that firearm was used by the accused in inflicting injuries to the victim. He further argued that motive to commit the offence to the accused is also not established. What vehicle was used by the informant etc. in reaching the police station and at what time they reached at the police station to lodge the FIR there are material contradiction on the point in the statement of witnesses. About time of the occurrence also there is contradiction in the statement of the witnesses. Appellants were acquitted for the charge u/s 307 and 307/149 IPC by the trial court which shows that partly story of the prosecution was disbelieved by the trial court which also create doubt on the correctness of the prosecution story and accused persons are entitled at least for the benefit of doubt in the matter.

10. Statements of five witnesses of the fact were considered by the learned trial court at length in the judgment with panicle eyes and held that they are truthful witnesses. Almost each and every arguments raised on behalf of the accused was considered by the learned trial court in detail. Involvement of all the accused in the occurrence was found by the learned trial court. Occurrence is of day time. Accused persons resides in the same village. There can be any doubt on their identification on the spot, it is not believable in the facts and circumstances of the case. It was argued by learned AGA that almost all the witnesses have corroborated the fact that firstly the occurrence took place outside the house of the informant and later on when they entered in their house to save them from the attack of the accused persons, accused persons have followed them and entered into the house and inflicted injuries there. PW-5 independent witness in his oath statement had also corroborated the case of the prosecution. Injury report available on the record proved by the doctor also supports the case of the prosecution that injuries were inflicted to the victims on the date and time stated on behalf of the prosecution. Accused came there having lathi and deadly weapon in their hands which shows their intention and also common object.

12. Learned Counsel for the accused-appellants argued that independent locality witnesses were not examined on behalf of the prosecution to support its case. My attention was also drawn on certain discrepancies and contradictions in the statements of the prosecution witnesses and it was argued that story given by the witnesses in their statements is not believable. There may be several witnesses of the locality at the time of the occurrence but the case of the prosecution cannot be thrown out or doubted on this ground alone. Civilized people are generally insensitive when a crime is committed even in their presence, they keep themselves away from the Court, unless it is inevitable. They think that crime like a civil dispute is between the two independent and parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate but is there everywhere whether in village life, town or cities. Nowadays, witness go on adding embellishments to their version perhaps for the fear that their testimony is being rejected by the Court. However, it will not be proper on the part of Court to disbelieve the evidence of such witnesses altogether if they are found otherwise trustworthy. Contradictions

in evidence of a victim of assault cannot be said any ground to reject his entire testimony. This occurrence took place on 06.01.1986. Statement of witnesses were recorded in the year 1992. Due to lapse of such a long time contradictions and exaggeration in the statement of witnesses are natural. If these are not found in the statements, they could be said tutored witnesses. In the facts and circumstances all these contradictions, embellishments and exaggeration, etc. cannot be held sufficient to acquit the accused for the charges leveled against them. It is a case of direct evidence against the accused persons. It is established law that in a case of direct evidence if motive is not established it has no importance.

13. Giving detailed and sufficient reasons and relying on the statements of the witnesses examined on behalf of the prosecution and also discussing the law cited on behalf of the parties, learned trial court acquitted the accused for the offence u/s 307 and 307/149 IPC and convicted them for the rest charges leveled against them. I do not find any illegality, invalidity and impropriety in the findings recorded by the trial court for convicting the accused persons and no interference is required by the appellate court in the matter on the findings of conviction recorded by the trial court.

14. Learned Counsel for the appellants prayed for taking lenient view in awarding punishment in the matter. He had stated that accused Dildar Hussan, Abrar Hussain and Afzal Hussain are old aged persons. He stated the age of Afzal Hussain as 80 years and age of Dildar Hussain and Abrar Hussain about 65 and 62 years respectively. It was further argued that two other accused Bashir Abbas and Tejdar Hussain are also of advance age more than 50 years. One of the accused Wahid Hussain had died during the pendency of the appeal. His appeal has already been abated. No previous conviction any of accused-appellants stated on behalf of the prosecution. No serious and grievous injuries were found on the body of any of the victims. Accused were already acquitted by the learned trial court for the offence under Sections 307 and 307/149 IPC. Occurrence taken place in the year 1986, more than 24 years have been lapsed and this appeal is also pending from last 15 years. Accused have already suffered lot in the matter. It was prayed to release them giving benefit to them of first offender. No serious objection was raised by the learned AGA if the prayer is granted to the accused.

15. Seeing the overall facts and circumstances of the case and taking into consideration of the injuries of the victims and pendency of the matter since 1986 and also taking into consideration of old age of some of the accused persons, I am of the view that they are entitled for the benefit of the fact that they are first offender.

16. Both Appeal No. 41 of 1995 and Appeal No. 103 of 1995 are partly allowed. Findings of the conviction of the accused-appellants given by the trial court are hereby confirmed. Sentences awarded to them is postponed and they shall be released on furnishing personal bond and one surety of the like amount to the satisfaction of the court concerned on probation on 1 year. They shall not indulge

themselves in unlawful activities during this 1 year and will keep peace in the area. Informant and police of the area will be free if they found the accused-persons involving themselves in unlawful activities to move this Court to deal them according to the provisions of law.

17. Accused-appellants will appear before the trial court for furnishing the personal bond and surety bonds as required within 15 days. Copy of the judgment and order along with lower court record be sent to the trial court for compliance of the directions of the court. As the accused persons are not present in the Court today, it will be proper on the part of the Court that after receipt of the record and copy of the judgment and order, a notice will be issued to the accused persons to comply the order of Court. If they failed to comply the directions of Court within 15 days from the date of personal service of the notice issued by the trial court, their appeal shall stand dismissed and they shall be get arrested by the trial court to serve out sentence awarded to them by the trial court.