

(1990) 04 AHC CK 0052
In the Allahabad High Court
Case No : Cr.A. No. 1997 of 1986

Dunna Lal and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 25-04-1990

Acts Referred:

Uttar Pradesh First Offenders Probation Act, 1938 — Section 3, 4

Citation : (1992) 1 LLJ 647

Hon'ble Judges : S.I. Jafri, J

Bench : Single Bench

Advocate : H.N. Sharma, H.K. Sharma and Amar Saran, for the Appellant;
A.G.A., for the Respondent

Final Decision : Partly Allowed

Judgement

S.I. Jafri, J.—Dunna Lal appellant has filed this appeal against his conviction u/s 304 Part II read with Section 34 I.P.C, u/s 452 I.P.C., u/s 323/34 and u/s 323 I.P.C. and sentence of 2 years R.I., one years R.I., six months R.O. and a fine of Rs. 500.00 respectively under the aforesaid sections of the Penal Code recorded by Sri D.L. Soni, District and Sessions Judge, Pauri Garhwal, in S.T. No. 6 of 1986. Narendra Lal, Sahukar Lal and K. Makhan Lal appellants were also convicted by the trial court u/s 304 Part II read with Section 34 I.P.C., 452 and 323/34 I.P.C 323 I.P.C., but instead of giving them jail sentence, the trial court had extended them the benefit of the Probation of First Offenders Act, on their furnishing two sureties of Rs. 2,000 each and a personal bond in the like amount for remaining on good conduct for a period of two years to the satisfaction of the trial court. Along with the appellants, Smt. Shankari Devi the mother of the appellants Dunna Lal, Narendra Lal and Sahukar Lal was also prosecuted, but she was acquitted.

2. Dunna Lal appellant is the son of Makhan Lal and brother of appellants Narendra Lal and Sahukar Lal. Smt Shankari Devi is the mother of Dunna Lal. In this way all the five accused in this case belong to one family.

3. The case of the prosecution is that on November 14, 1985 at about 4 p.m. Dunna Lal had beaten Guthyar Singh in his house in village Bisald. That day Guthyar Singh went to the house of his brother Anand Singh in village Teri in the evening for night stay. The aforesaid five persons entered the house of Anand Singh at about 8 p.m. and had assaulted Guthyar Singh and Anand Singh with lathis. Bahadur Singh, the third brother of victim, came on the spot and tried to save them but he was also assaulted by Dunna Lal on the head by lathi. Bahadur Singh and his brother drove away the assailants from the house of Anand Singh. The accused left the house of Anand Singh giving threat to kill them. Guthyar Singh, Bahadur Singh and Anand Singh had received injuries on their person. Guthyar Singh developed pain in his stomach and was unable to stand.

The injuries of Bahadur Singh and Anand Singh were examined at Government Dispensary Pabau on November 25, 1985 by the Medical Officer between 11 a.m. and 11.18 a.m.

Injuries of Bahadur Singh

Lacerated wound 5 cm x 1/4 cm scalp deep about 10 cm from left ear.

Injuries of Anand Singh

(i) Clotted blood present around the right ear and external ear opening with contusion 2cm x 2cm in front of right ear.

(ii) Black eye on the left line

(iii) Contusion 2 cm x 2 cm on the left temporal region

(iv) Abraded contusion 10 cm x 8 cm at right shoulder region

(v) Abraded contusion 10 cm x 8 cm at right thigh about 20 cm below iliac crest.

4. A report of the occurrence was lodged by Bahadur Singh with the Patwari of the village on November 25, 1985 at 3.30 p.m.

5. Patti Patwari Ram (P.W.5) took the investigation in his own hands. He prepared the Chick report on the basis of the written report delivered by Bahadur Singh and also registered a case under Sections 452/ 307/ 323/ 506 I.P.C. in the General Diary of the Police Station against the accused persons. The Investigating Officer reached the village Teri and he found Guthyar Singh unconscious. He got him treated by a Private Medical Practitioner. During the night, the condition of Guthyar Singh started deteriorating. Anand Singh went to the Investigating . Officer at 10.30 p.m. and informed him about the serious condition of Guthyar Singh whereupon he brought the Medical Officer of Government Dispensary, Pabau, to the village of occurrence and got Guthyar Singh examined by him. The doctor advised the family members of Guthyar Singh to shift him to Pauri for treatment. The Medical Officer again visited the residence of Guthyar Singh at about 7 p.m. on November 25, 1985, but by this time Guthyar Singh had succumbed to his injuries. Thereafter, the aforesaid case

u/s 307 I.P.C. was converted to one u/s 302 I.P.C. The Investigating Officer prepared the inquest report and sent dead body of Guthyar Singh in a sealed cover to the mortuary at District Hospital Pauri for post- mortem examination. The doctor found the following ante-mortem injuries on the person of the deceased;

(i) Clotted blood present and the right ear and external ear opening contusion 2 cm x 2 cm in front of right ear.

(ii) Black eye on the left eye.

(iii) Contusion 2 cm x 2 cm on the left region.

(iv) Abraded contusion 10 cm x 8 cm at right shoulder region.

(v) Abraded contusion 10 cm x 8 cm at right thigh above 20 cm below iliac.

6. According to the opinion of the doctor the cause of death was coma as a result of head injury.

7. The Investigating Officer after completing the investigation submitted the charge-sheet against the accused.

8. The accused pleaded not guilty to the charge and stated that they were falsely implicated on account of enmity. However, no one was examined in defence.

9. On the consideration of the entire evidence on the record, the trial court convicted the appellants Dunna Lal, Narendra Lal, Sahukar Lal and Makhan Lal under the aforesaid sections of the Penal Code. Dunna Lal was sentenced to imprisonment and fine as stated above, whereas Narendra La, Sahukar Lal and Makhan Lal were given benefit of Probation of First Offenders Act. Smt. Shankari Devi, the mother of Dunna Lal, was acquitted.

10. In order to prove its case, the prosecution has examined in all six witnesses and out of them Bahadur Singh (P.W.I), Anand Singh (P.W.2) and Matbar Singh (P.W.4) were examined as eye-witnesses of the occurrence.

11. Bahadur Singh has narrated the prosecution case in detail. He has deposed that Guthyar Singh was his younger brother and all the accused belong to his village. He stated that on November 24, 1985 at about 2 or 2.30 p.m. while he was going from the side of village Bisald to his village Teri, the accused Dunna Lal met him near the school and he enquired about the whereabouts of his brother Guthyar Singh and on his enquiry he replied that he had some particular business with Guthyar Singh. He told him that Guthyar Singh was at his house whereupon the accused Dunna Lal proceeded towards the village Bisald. He further deposed that the same day at about 8 p.m. while he was at his house in village Teri he heard an alarm coming out from the side of Anand Singh's house whereupon he went there and found that all the five accused, namely Dunna Lal, Makhan Lal, Narendra Lal, Sahulkar Lal and Smt. Shankari Devi were assaulting Anand Singh and Guthyar Singh. All of them had dandas in their hands and when

he tried to intervene, Dunna Lal had given a danda blow on his head. Matbar Singh and Baljati had reached there and they had also tried to save us. The accused, thereafter, went away from the place of occurrence. He further deposed that when he went to the house of Anand Singh next morning he found the condition of Guthyar Singh very serious. He went to the Bazar and brought pain killer tablets and administered to Anand Singh. He, then, went to the Government Dispensary for taking medicine for him along with Anand Singh. He further deposed that Dr. Prem Singh had examined Guthyar Singh and he advised that Guthyar Singh be taken to Pauri for medical examination and treatment on account of his serious condition. He further deposed that thereafter he went to Pauri Chowki and handed over his written report to the Patwari regarding the occurrence. It was further stated by him that Guthyar Singh was to be taken to the District Hospital next day, but he succumbed to his injuries next morning at about 17 a.m.

12. Bahadur Singh is the brother of the deceased Guthyar Singh but his evidence cannot be brushed aside merely on his blood relationship with Guthyar Singh deceased. Bahadur Singh had lodged the report of the occurrence with some delay on the next day of the occurrence at 3.30 p.m. but the explanation given by him has fully explained the delay in lodging the F.I.R. In the F.I.R. all the accused were named and no specific part was assigned to any one. It was mentioned in the report that all the accused had participated in the maraud.

13. I have very carefully gone through the evidence of Bahadur Singh and I do not find any infirmity in the evidence to discredit his testimony. His evidence is quite trustworthy and convincing. I, therefore, hold him a reliable witness. The evidence of Bahadur Singh is fully corroborated by his brother Anand Singh (P.W.2) and Matbar Singh (P.W.4). Both these witnesses have given a truthful account of the incident and the defence has failed to point out glaring circumstances to discredit their evidence. Matbar Singh is an independent witness and he is a wholly reliable witness.

14. Considering the evidence on the record, I am satisfied that the prosecution has fully succeeded in bringing home the guilt to the accused Dunna Lal, Narendra Lal, Sahukar Lal, Makhan Lal. Under the circumstances as discussed above, the order of conviction recorded by the trial court deserves to be affirmed.

15. Sri Amar Saran, Learned counsel for the appellant, has tried his best to persuade me to acquit the appellant but, in view of unimpeachable evidence produced by the prosecution, I am of the view that the appellants were rightly convicted by the trial court.

16. Learned counsel for the appellant submitted that the accused Narendra Lal, Sahukar Lal and Makhan Lal were given the benefit of Probation of First Offenders Act by the trial court, but the same benefit was not extended to the appellant Dunna Lal against whom the case is quite identical with the remaining appellants. He submitted that as all the accused were assigned the role of

causing injuries to the deceased, Bahadur Singh and Anand Singh, and as such there was no justification for the trial court to have not extended the benefit of Probation of First Offenders Act to the appellant Dunna Lal. It was further submitted by him that the appellant Dunna Lal is not a previous convict. Dunna Lal was serving as Lance Naik in Border Security Force prior to the occurrence and his services were terminated by the authorities concerned on account of his conviction in this case with effect from December 6, 1986 i.e., during the pendency of this appeal which was admitted in this Court on July 29, 1986.

17. I have given my utmost consideration to the submissions made by the learned counsel for the appellant and I feel that the appellant Dunna Lal also deserves the benefit of Section 3/4 of the U.P. Probation of First Offenders Act. I, therefore, affirm his conviction as recorded by the court below and extend him the benefit of Section 3/4 of the U.P. Probation of First Offenders Act and place him on probation for good conduct for a period of two years from the day of his furnishing two surety bonds of Rs.2,000 each and a personal bond in the like amount to the satisfaction of the C.J.M., Pauri Garhwal. I set aside the sentence of imprisonment and the fine recorded by the trial court.

18. The learned counsel further submitted that great injustice has been done by the authorities concerned in dismissing Dunna Lal appellant from service by virtue of his conviction during the pendency of his appeal in the High Court. The learned counsel further submitted that as the appellant has been extended the benefit of U.P. First Offenders Act by the Court, he now becomes entitled to be reinstated.

19. Reliance has been placed on Raghbir Singh v. State of Haryana (AIR) 1985 SC 1297 where the accused, a Government servant, was convicted and placed on probation for good conduct under the Probation of First Offenders Act. It was held by the Supreme Court that the conviction of the accused shall not affect his service.

20. Reliance was also placed on Chandra Rao v. State of Andhra Pradesh SCC page 17, 1 wherein the accused was convicted u/s 304 Part I but was released on probation of good conduct. The Supreme Court held that the service career of the appellant shall not be affected on account of his conviction. :

21. The learned counsel also placed reliance on Kripa Dayal v. State of U.P. 1988 LCR 148 wherein the conviction of the accused was upheld by the court but he was placed on probation for good conduct for two years. The court held that by virtue of conviction of the accused u/s 324 I.P.C. the authorities concerned shall not draw departmental proceedings against him for terminating his service.

22. It was further submitted by the learned counsel for the appellant that the probation of first offenders is reformatory in nature. The object and purpose of the Probation of First Offenders Act is to provide opportunity to the convict to reform himself to become a worthy citizen of India and if a convict who is placed on probation for good conduct is deprived of his livelihood by terminating his

service by virtue of his conviction, he shall never be able to reform himself and thus the very object and purpose of the Probation of First Offenders Act shall be defeated.

23. I, have considered the submission made by the learned counsel for the appellant and have also taken into account the directions given by the Supreme Court and the High Court in the cases mentioned above. I have come to the conclusion that once a convict is placed on probation for good conduct under the provisions of the Probation of First Offenders Act, the employer shall not terminate the service by virtue of his conviction. If the service of the convict has been terminated by the authorities concerned like in the present case, during the pendency of his appeal in the High Court, a duty is cast on the authorities concerned to review the order of termination, if any review application or appeal against the termination order is filed by the convict.

24. I, therefore, direct the authorities concerned to review the order dated December 6, 1986, terminating the service of the appellant Dunna Lal as Lance Naik in Border Security Force, if any review application or appeal is filed by the appellant. I feel that the aforesaid rulings passed by the Supreme Court and the High Court as detailed above were not placed before the authorities concerned when the authority concerned had passed the order dated December 6, 1986 terminating the service of the appellant.

25. In the result, this appeal is partly allowed. The conviction of all the appellants u/s 304 Part II read with Section 34 I.P.C u/s 452, I.P.C. and u/s 323, I.P.C are affirmed as recorded by the court below. However, the sentences recorded by the court below under the aforementioned sections of the Penal Code as against Dunna Lal appellant are set aside and instead the appellant Dunna Lal is placed on probation for good conduct for a period of two years u/s 3/4 of the U.P. Probation of First Offenders Act on his furnishing two sureties of Rs. 2,000 each and a personal bond in the like amount to the satisfaction of the C.J.M., Pauri Garhwal. The appellant is allowed a month's time for filing surety bonds in the court of C.J.M., Pauri Garhwal from today. The period of probation shall commence from the day on which the surety bonds shall be filed in the court. Dunna Lal appellant is on bail. He need not surrender. His bail bonds are discharged.