

(2003) 11 AHC CK 0202
In the Allahabad High Court
Case No : Criminal Appeal No. 1663 of 1983

Jai Singh and Others (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324, 34

Citation : (2004) 1 ACR 326

Hon'ble Judges : Mukteshwar Prasad, J

Bench : Single Bench

Advocate : N.K. Saxena, V.B. Singh, R.N. Upadhyaya, M.A. Mishra, Kamal Krishna and Yogendra Singh, for the Appellant; R.K. Gupta and A.K. Dwivedi, A.G.A., for the Respondent

Final Decision : Partly Allowed

Judgement

Mukteshwar Prasad, J.—This criminal appeal by accused Jai Singh and his two sons, namely, Gaya Prasad and Harish Chandra, is directed against the order dated 16.7.1983, passed by Sri Lakshmi Bihari, the then Additional Sessions Judge, Hamirpur in Sessions Trial No. 220 of 1981, whereby he convicted all the accused u/s 307 and Section 324, both read with Section 34, I.P.C. and sentenced them to suffer rigorous imprisonment for a term of five years and nine months respectively thereunder. Both the sentences were directed to run concurrently.

2. In brief, the prosecution came to the Court with the allegations that P.W. 1, Har Narain, informant was threatened by accused Jai Singh about three months prior to the occurrence in question. Accused Jai Singh levelled false accusation that his buffalo was assaulted by Har Narain. He denied this charge. However, Jai Singh threatened to teach him a lesson.

3. On account of this enmity at about 9 a.m. on 11.7.1981, all the three accused armed with guns arrived at the door of Har Narain. He was standing in front of

his door. Smt. Shanti Devi and her sister Gyan Devi, daughters of Bhagwan Das were also standing there. The assailants exhorted each other to kill the enemy and with an intention to kill Har Narain, they started firing at the informant and two girls, named above. All the three received firearm injuries. The informant fell down in the injured condition and bleeding started from the injuries. The informant and others raised hue and cry. A number of witnesses including informant's brother, Jagmohan and Moolchand, arrived, there challenging the assailants and saw the incident. Thereafter, assailants ran away towards their houses.

4. A written report was prepared by Jagmohan, the brother of the informant on the spot in the village on his dictation. All the three injured accompanied by Jagmohan reached police station Jariya on a bullock cart and on the basis of the written report, the local police registered a case at Crime No. 96 at 10.30 a.m. on the same day. The investigation was entrusted to Sub-Inspector Lachhiram.

5. All the three injured were sent to Male Hospital, Rath (Hamirpur) for medical examination through constable Ram Pratap Singh.

6. P.W. 5 Dr. B. P. Agrawal, examined injuries of Km. Shanti Devi aged about 13 years at 12.30 p.m. on 11.7.1981. He found four abrasions on different parts of her body. He found one gunshot entry wound muscle deep on left side back.

7. Dr. Agrawal further examined injuries of Har Narain at 12.45 p.m. on the same day and found two superficial gunshot wounds on the outer aspect of upper third left arm and multiple gunshot wound of entry (three) on chest and one gun shot wound entry of muscle deep on the right side head. Besides, there were an abrasion and multiple abrasions on left side of chest.

8. The injuries of Km. Gyan Devi were also examined by Dr. Agrawal on the same day at 1 p.m. and two gun shot wounds of entry muscle deep on right leg and left leg were found.

9. All the injuries of the three injured were caused by some firearm weapon and were fresh at the time of examination.

10. The Investigating Officer investigated the case as usual and after completing the investigation submitted charge-sheet against all the assailants named in the F.I.R. u/s 307, I.P.C.

11. The case was committed to the Court of Session on 6.11.1981 and three accused were charged u/s 307 read with Section 34, I.P.C. to which they pleaded not guilty and claimed to be tried.

12. At the trial, the prosecution examined five witnesses in all, including Medical Officer, Dr. B. P. Agrawal, who examined the injuries of three injured and Investigating Officer S.I. Lachhiram.

13. Both Harish Chandra and Gaya Prasad totally denied the accusation levelled by the prosecution and pleaded that he and his brother Gaya Prasad had gone to

the police station Jariya to lodge a report and both were arrested by the police. Harish Chandra disclosed that litigation took place between him on the one hand and Har Narain on the other in consolidation court and he was falsely implicated on account of litigation.

14. No oral evidence was led in defence. They, however, filed a carbon copy of the F.I.R. lodged by Jai Singh against Ram Sanehi and others u/s 380, I.P.C. copy of judgment passed by consolidation court in Chunni Lal v. State of U.P., and copies of two charge-sheets.

15. After scrutinizing the entire oral as well as documentary evidence on record and considering the submissions made by the learned Counsel for the parties, learned Judge found all the three accused guilty for the offence punishable under Sections 307 and 324 both read with Section 34 of Penal Code and convicted and sentenced them, as noted above.

16. Aggrieved by their conviction and sentence, the accused came up in appeal.

17. Accused Jai Singh son of Turaiya, father of the two Appellants, (Gaya Prasad and Harish Chandra) expired during pendency of this appeal in this Court. Hence the appeal filed by him stands abated.

18. I have heard learned Counsel for the Appellants (Gaya Prasad and Harish Chandra) learned A.G.A. and perused the record carefully.

19. First of all, learned Counsel for the Appellants pointed out a typing error in the charge that three persons Har Narain, Smt. Shanti Devi and Gyan Devi were allegedly assaulted in the course of incident but the name of Jag Mohan as one of the injured was mentioned in the charge and this mistake in charge caused prejudice to the accused. He further urged that in fact there was no motive to the accused to commit the crime and motive has not been proved by reliable evidence. P.W. 1 Har Narain is a liar and his testimony is not reliable. The learned Counsel for Appellants further submitted that there are contradictions in the prosecution evidence. Moreover, the Investigating Officer did not collect blood stained earth from scene of incident and thus the place of occurrence has not been fixed. Lastly, it was submitted that presence of two sisters at the place of incident is highly doubtful. Consequently, the appeal is liable to be allowed and both brothers are entitled to be acquitted of all the charges.

20. On the other hand, learned A.G.A. has submitted that the Court below arrived at correct conclusion and contended that two brothers along with their father armed with guns arrived in the morning on the date in question and resorted to firing and caused firearm injuries to Har Narain and two girls. The report was dictated by one of the injured and incident was reported to the local police within one and half hours at the police station situate at a distance of 5 kms. Moreover, the injuries of all the three injured were examined by a Government doctor within four hours of the incident and as such, there was no question of falsely implicating any of the assailants. An independent witness

Nathu Ram fully supported the prosecution version and the appeal is liable to be dismissed.

21. After having given my anxious consideration to the respective contentions of the learned Counsel for the parties and entire material/ evidence, I find that the prosecution succeeded in bring home the guilt of the accused beyond all shadow of doubt. In my opinion, the case of the prosecution is free from doubt. First of all, I find that the incident in question took place at about 9 a.m. in the month of July and local police was informed about the incident in writing at 10.30 a.m. It is, therefore, clear that local police was informed in writing about the incident within one and half hours and no delay took place. It is noteworthy that all the three assailants were named in the F.I.R. Taking into consideration the distance of the police station from the village in question, the incident was reported within no time.

22. I further find that the injuries of all the three injured were examined by a Government doctor between 12.30 p.m. and 1 p.m. on the same day. There is sufficient reliable evidence on record to the effect that the case was registered at the police station and the local police sent the injured to Rath for medical examination. I find no delay at all in the medical examination of the injured, which was done within four hours of the incident at the hospital.

23. I further find that no prejudice was caused on account of mistake/ typing error in the charge. The prosecution has succeeded in proving the complicity of two brothers along with their father by reliable and convincing evidence. To prove the incident and participation of the Appellants in the crime, the prosecution produced two injured, Har Narain and Shanti Devi, and an independent witness Nathu Ram. P.W. 1 Har Narain and P.W. 3 Shanti Devi stated in very clear words that on 11.7.1981 at about 9 a.m. (breakfast time) Har Narain, Shanti Devi and Gyan Devi, were standing in front of the door of Har Narain and in the meantime, three assailants armed with guns arrived there and exhorted each other to kill Har Narain. They further testified that they had an intention to kill Har Narain and all the three started firing and caused firearm injuries on various parts of the body including on vital parts. P.W. 3 Shanti Devi gave out that all the three assailants had fired once. They further disclosed that Nathu Ram, Jagmohan and others were sitting at the platform of Sunder Lal situated at a distance of 18-20 steps towards south and witnesses left the platform and saw the incident from a distance of about 15 steps. P.W. 2 Nathu Ram fully corroborated the testimony of two injured and gave out that the blood stained clothes of Har Narain were taken into custody by the police and sealed in his presence and a fard was also prepared. Thus, I find that there is no contradiction in the statements of three witnesses regarding number of shots, which were fired by the assailants. All the three accused fired once on the victims. The witnesses including Har Narain were cross-examined extensively and effectively on behalf of the accused but I find that nothing material could be elicited in the cross-examination to show that they have not spoken the truth.

Har Narain totally denied suggestion of the defence that he and the girls had gone to attend call of nature in the early hours of the day and they were fired upon by some unknown assailants and he falsely implicated the Appellants. Smt. Shanti Devi has also denied the suggestion of the defence that she was seen in compromising position with her co-villager Santu and this was seen by accused Jai Singh. She further denied that there was enmity between his father and Jai Singh. She also denied that she and others were attacked upon by unknown assailants when they were going to ease in the early hours of the day. It is true that there are minor contradictions in the prosecution evidence as to when it rained on the date in question. It is well-settled that minor contradictions in the evidence on record do not weaken the prosecution case. The Investigating Officer did not collect the blood stained earth. According to him, he did not find blood at the scene of incident, which had been washed away on account of rain. This omission on the part of Investigating Officer does not affect the prosecution case.

24. It is true that the prosecution came to the Court that accused Jai Singh had threatened to teach a lesson to Har Narain and motive has not been proved by reliable evidence. It is well-settled now that motive in a case, which is based on the direct evidence of the eye-witnesses/ injured, has no significance. Motive loses its importance in such cases. Therefore, the contention of the learned Counsel for the Appellants that the motive has not been established by reliable evidence has no legs to stand.

25. Dr. B. P. Agrawal testified in very clear words that in ordinary course of nature, the injuries of Har Narain and Gyan Devi were sufficient to cause death. It is noteworthy that the assailants were armed with guns and they reached informant's door with an intention to teach him a lesson. Therefore, it is clear that the intention of the accused was to kill Har Narain and others who came forward to rescue him and with this end in view they resorted to firing. In my opinion, in such case, the seat of injury is not decisive. The Apex Court in State of Maharashtra Vs. Balram Bama Patil and Others, , has held that to justify a conviction u/s 307, it is not essential that bodily injury capable of causing death should have been inflicted. What the Court has to see is whether the act, irrespective of its result was done with the intention or knowledge and under circumstances mentioned in this section. It is sufficient in law, if there is present an intention coupled with some overt act in execution thereof. Hence, in my view, the learned Sessions Judge was not justified in convicting the Appellants u/s 324 read with Section 34, I.P.C. also.

26. In view of the foregoing discussion of the entire evidence and material on record, and after considering the arguments advanced on behalf of the parties, I hold that learned Judge has rightly held both the accused guilty for the offence punishable u/s 307, read with Section 34, I.P.C. I however, hold that no offence u/s 324/34, I.P.C. was committed and therefore, both the accused-Appellants are entitled to be acquitted.

27. In the result, the appeal partly succeeds and conviction and sentence of

Appellants (Gaya Prasad and Harish Chandra) u/s 324/34 are, hereby set aside. The conviction and sentence of the Appellants u/s 307 read with Section 34, I.P.C. are upheld.

28. The Appellants are on bail. Their bail bonds are cancelled. They shall be taken into custody forthwith by the Court concerned to serve out the sentence awarded to them.

29. Let a copy of this judgment be sent to the Court concerned at Hamirpur for compliance of the order within a period of six weeks. Compliance report be submitted within two months.