
(2006) 12 AHC CK 0060
In the Allahabad High Court

Jittan Singh and Others (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (2006) 12 AHC CK 0060

Hon'ble Judges : V.D. Chaturvedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.D. Chaturvedi, J.—This appeal has been filed against the judgment and order dated 4.10.1979 passed by Sri S.D.N. Singh, the then Sessions Judge, Mirzapur in Sessions Trial No. 41 of 1976 whereby he has convicted the appellants Jittan Singh, Harinand Singh, (dead) Krishnanand Singh (dead) and Paras Singh (dead) u/s 148 I.P.C. and appellants Girja and Nirmal u/s 147 I.P.C. He has further convicted all of six appellants for the offences u/s 304(Part I)/149, 323/149 and 324/149 I.P.C. He awarded the sentences of Imprisonment of two years R.I. for offence u/s 148 I.P.C., one (year R.I. for offence u/s 147 I.P.C., five years R.I. for offence u/s 304/149 I.P.C, Nine months R.I. for offence u/s 323/149 I.P.C. and one year R.I for offence u/s 324/149 I.P.C. All the sentences of imprisonment were ordered to run concurrently.

2. The learned Sessions Judge by his "side" judgment and order acquitted the remaining eight accused persons, namely Randhir, Yashwant Singh, Daya Ram, Shamsheer, Barkau, Hansnarain, Ujjal Singh and Gora.

3. The complainant Udai Singh S/o Budhi Ram resident of Sahaspur, P.S. Chunar, district Mirzapur submitted on 2.1.1976 at 9:45 7A.M. a written report (Ext. Ka.7) at P.S.Chunar stating therein that on 1.1976 at about 7 A.M. He along with his brother Abhayr singh was watering his field from tube-well No. 29 under the permission of the Pradhan of the village (Sri Balwant Singh); that accused Jittan

Singh objected it and said that he would carry the water to his field and would see that the crops of the complainant are dried; that thereafter he (Jittan) left the place and came back after half an hour along with the loused Harinand Singh, Yashwant Singh, Krishnanand Singh, Paras alias Lodhi, Girja, Daya Ram, Shamsher, Barkau, Randhir, Hansnarin, Nlrmal, Ujjal Singh and Gora; that all of the accused persons were armed with spades, spears and lathies; that they started saying " kill them all "; that they started causing injures to the complainant and his younger brother Abhay Singh; that on cry being raised the complainant's father (Budhi Ram), Pradhan Balwant Singh, Budhiu, Nanku and many others reached there and started pacifying the matter; that meanwhile Jittan Singh exhorted "BUDHIRAM KO JAN SE MAR DALO YEHA SALA MERA SABSE BARA DUSHMAN HAI"; that Jittan, thereafter, assaulted the complainant's father by spade and the remaining persons started assaulting by lathies, spears and spades; that presuming that the complainant's father had died, the accused persons had fled away; that the complainant's father sustained, spade, spear and Lathi injuries, the complainant suffered spade and lathi Injuries, the complainant's brother sustained lathi and spear injures and Lalmanl sustained lathi injuries; that the complainant reached the Police Station along with his father, brother Abhay Singh and Lalmani to give Information about the incident. Upon submission of the report Ext.Ka.7, the case was registered u/s 147, 148, 323, 324 and 307 I.P.C. at Crime No. 4 of 1976.

4. The investigation was conducted by S.I. Atma Nand Singh (P.W.7).

5. The injured persons were sent to Chunar dispensary for their medical examination and treatment, where Budhi Ram, Udai Singh, Abhay Singh and Lalmani were medically examined by Dr. B.M.P. Srivastava (P.W.4) on 2.1.1975 at 10.15 A.M. and onwards. Their injury reports are Ex.Ka.3, Ka.4, Ka.5 and Ex.Ka.6 respectively.

6. The doctor in his report Ex.Ka.3, found the following injuries on the person of Budhi Ram:

1. One lacerated wound 4 cm x 1 cm bone deep on right side of head 12cm away from right eye brow associated with swelling 11 cm x14 cm (U.O.) and the margin not clean and Irregular and bleeding present.

2. Bleeding from right ear present.

3. One incised would 2 1/2cm x 1 cm x muscle deep on the dorsal surface of root of right index fingers and the margins are clean cut.

4. One incised wound 8 cm x 2 cm x muscle deep on the front of right leg upper part.

5. One incised wound 2 cm x linear in shape 1/2 cm just below injury No. 4.

His pulse was found feeble. His respiration was 40 per minute. Injuries No. 1 and 2 were kept under observation. In the doctor's opinion injuries No. 3, 4 and 5

were caused by sharp edged weapon and injuries 1 and 2 were caused by blunt weapon. The duration of injuries was found fresh.

7. The doctor in his report Ex.Ka.4, found the following injuries on the person of Udai Singh:

1. One incised wound 13 cm x 4 cm x muscle deep on the left leg in upper part posteriorly and bleeding.

In the doctor's opinion the injury was caused by sharp edged weapon. Its Duration was found fresh.

8. The doctor in his report Ex.Ka.5, found the following injuries on the of Abhay Singh:

1. One Swelling 3 cm x 1 cm outer left side of head 12 cm away from left ear.

2. One incised wound 3 cm x 1/2 cm x muscle deep on the right side of face 1/2 cm below the right eye obliquely.

3. One abrasion 2 cm x 1 cm on back part of left shoulder.

9. The doctor opined that injury No. 2 was caused by sharp edged weapon and that injuries No. 1 and 3 could be caused by blunt weapon. Duration was found fresh.

10. The doctor in his report Ex.Ka.6 found the following injuries on the person of Lalmani:

1. One abrasion 1 cm x 1/4 cm on the right side of nose at the root.

In the doctor's opinion the injury was simple and could be caused by blunt weapon. Duration was found fresh.

11. Injured Budhi Ram died in the hospital on 3.1.1976 at 7.30 A.M. The autopsy on his corpse was conducted on 3.1.1976 by Dr. C.S. Tripathi (P.W.12). The doctor found the following ante mortem injuries on his corpse:

1. Lacerated wound 3 cm x 1 cm x bone deep on the right side of the head 10 cm above the right eye brow.

2. Lacerated wound 3 cm x 0.5 cm x skin deep on the back of the right hand at the root of the index finger.

3. Stitched wound 10 cm in the length on the front of the right leg 7 cm below the right knee containing 6 stitches. On removal of stitches, the margins of the wound are clean cut and is 3/4 cm in width and bone deep. The wound is facing down onwards.

12. In the doctor's opinion the death of Budhi Ram was caused due to coma on account of injury No. 1. The post mortem report is Ka.16.

13. After the post mortem report was received at the police station, the case was

converted from Section 307 or 302 I.P.C.

14. After recording the statements of the witnesses and after usual investigation the I.O. submitted charge-sheet, whereupon the learned Magistrate took the cognizance and committed the case to the court of Session. The charges u/s 147, 148, 302/149, 324/149 and 323/149 I.P.C. were framed against the accused persons to which they denied.

15. The prosecution produced P.W. 1 Udai Singh (injured), P.W. 2 Balwant Singh, P.W.3 Udit Narain, P.W.5 Abhay Singh (injured) and P.W.6 Lalmani (injured) as eye witnesses. P.W.4 Dr. B.M.P. Srivastava, P.W.7 S.I. Atma Nand Singh (I.O), P.W.8 S.I. Sarjoo Ram P.W. 9 S.I. Ram Bahal Singh, P.W.10 H/c Ram Daras Singh, P.W.11 Constable Ramji Singh, P.W.12 Dr. C.S.Tripathi and P.W.13 Qamaruddin are, more or less, of formal nature.

16. In statements u/s 313 Cr.P.C., the accused persons denied the circumstances appearing against them and pleaded that they were falsely implicated in the case and that the witnesses were the partisan witnesses.

17. The accused persons examined D.W. 1 Kailash Nath, (clerk, Lift Irrigation Department), D.W. 2 Vansh Narain Pandey, (Tube-Well operator) and D.W.3 Sayad Mohammad, (Mechanic of tube-well machines).

18. C.W. Satya Narain was examined as court witness, who deposed that the machine of tube-well No. 29 was repaired by Sayad Mohammad on 1.1.1977 and prepared a writing over which the witness's signatures were obtained.

19. On the basis of the above evidence the learned Sessions Judge convicted and sentenced the appellants as stated above and acquitted the remaining accused persons.

20. Feeling aggrieved by the judgment of conviction and sentence, the appellants have filed this appeal.

21. The order sheet dated 23.8.1985 and 29.4.2004 show that the appellants Krishnanand Singh, Harinand Singh and Paras alias Lodhi have died during the pendency of the appeal. Hence the appeal on their behalf stands abated.

22. I have heard Sri S.B. Kochar, learned Counsel for the appellants and the learned A.G.A. for the State and have carefully perused the record of the case.

23. P.W. 1 Udai Singh, P.W. 2 Balwant Singh, P.W. 3 Udit Narain, P.W.5 Abhay Singh and P.W.6 Lal mani, have given the eye witness account of the occurrence.

24. P.W. 1 Udai Singh (injured) deposed that on 2.1.1976 at about 7 A.M. he and his brother Abhay Singh were watering their field from tube-well No. 29; that when they were carrying water from side of the field of Mangru, accused Jittan Singh objected the watering from the tube-well and said that he (Jittan Singh) would carry the water to his from the tube-well; that he, after a gap of 25-30 minutes, again reached there along with the accused Jaswant Singh, Harinand

Singh, Krishnanand Singh, Shamsher Singh, Nirmal, Ujjal, Barkau, Randhir, Goprakhnath, Paras alias Lodhi, Hans Narain, Girja and Daya; that Jittan Singh, Harinand and Krishnanand were armed with spades, Lodhi was armed with a spear and rest of them were armed with lathis; that they diverted the flow of water; that meanwhile his (witness's) father Budhi Ram (deceased) and witnesses Balwant Singh, Udit Narain, Nanha alias Balki, Budhiu Singh and Lalmani reached there; that Jittan Singh exhorted accused Nirmal "KYA DEKHTA HAI, PICHHLE SAAL KI FAUJDARI KA BADLA CHUKA LE"; that thereafter Jittan Singh, and Krishnanand by spades and accused Nirmal and Jaswant by lathis started assaulting his father (Budhi Ram); that Harinand assaulted the witness Udai Singh by spear; that other 2-3 co-accused also assaulted him by lathis but they could not hurt him; that Lodhi by spear and Girja and Shamsher and Hans Narain by lathis, assaulted his brother Abhay Singh; that witness's father, sustaining injuries, fell down whereupon the accused persons, presuming him to be dead, decamped; that the accused persons had made damages at the tube-well also; that Budhi Ram, and he (Udai Singh) both were taken away on cots from the place of occurrence; that they reached the Bus station Chunar on a truck wherefrom they were carried on cots to the Police Station, where he Udai Singh) submitted the report; that thereafter all of the Injured persons (Budhi Ram, Udai Singh, Abhay Singh and Lalmani) were sent to Chunar Hospital where they were medically examined; that his father (Budhi Ram) remained unconscious throughout and died in the next (morning on 3.1.1976.

25. Likewise P.W.2 Balwant Singh P.W.3 Udit Narain, P.W.5 Abhay Singh and P.W.6 Lalmani also supported the prosecution version.

26. The learned Counsel for the appellants vehemently argued that the occurrence took place in the darkness of night, hence the assailants could not be Identified by anyone; that the appellants were implicated only due to enmity arising out of the earlier litigation; that the presence of the faecal matter in the large intestine of the deceased supports his contention regarding the time of occurrence in the night.

27. Mere presence of faecal matter in the large intestine of the deceased cannot rebut the eye witness account of injured witnesses regarding the time of occurrence. Budhi Ram died about 24 hours after the occurrence. The functions of the organs of the digesting system are involuntary functions. These functions continues even in the state of unconsciousness. There is no evidence that the deceased did not eat anything in the morning of 2.1.1976. Besides, it cannot be Ignored that many persons of the deceased's age (65 years) suffer from constipation and other gastric disorders. In these circumstances the presence of faecal matter in the large intestine fails to rebut the time of the occurrence deposed by injured witnesses. I, therefore, do not agree With the contention of the learned Counsel for the appellants that the occurrence took place in the darkness of night.

28. The learned Counsel for the appellants argued that the evidence regarding

the damage caused to tube-well was given first time in court; that there was no such mention In the F.I.R. or In the statments given to I.O. The appellants were neither charged for nor were convicted for causing damages to the tube-well. The evidence regarding such damage is therefore an irrelevant improvement. It is liable to be discarded. Such improvements do not adversely affect the prosecution case.

29. The learned Counsel for the appellants vehemently argude that Budhi Ram sustained only one lacerated wound beside the three incised wounds; that his lacerated wound proved fatal; that the role of Inflicting lathies blows upon Budhi Ram was assigned to Jaswant singh and Nirmal both; that no witness stated that the lathi blow inflicted by Nirmal caused lacerated injury at the head of the deceased; that Jaswant Singh was acquitted hence Nirmal was also entitled to be acquitted on the ground of parity.

30. It is true that the role of Inflicting lathi blows upon the deceased Budhi Ram was assigned to two persons (appellant Nirmal and the acquitted accused Jaswant). It is also true that in injury report (Ex.Ka.3) relating to Budhi Ram, only one lacerated wound, 3 incised wound and bleeding from right ear were mentioned. But the postmortem report (Ext.Ka. 16) prepared by Dr. C.S.Tripathi (P.W.12), shows that Injuries No. 1 and 2 of post mortem report (Ext.Ka.16) were lacerated wounds. Injury No. 1 is lacerated wound on the right side of head (which proved fatal) and injury No. 2 is lacerated wound on the back of the right hand at the root of the index finger. Thus the evidence of the eye witnesses that Nirmal and Jaswant inflicted lathi blows upon Budhi Ram finds corroboration from the injuries mentioned in the post mortem report (Ext.Ka.16). The Sessions Judge had ignored this aspect while acquitting co-accused Jaswant. The benefit of doubt given to co-accused Jaswant was unwarranted and improper and was not justified. It is settled principle that one cannot claim parity in an illegality. Hence appellant Nirmal cannot be given parity with that of the co-accused Jaswant. It is also pertinent to mention here that if two accused inflict lathi blows upon a person it is not always necessary that the (injured) person would sustain two or more lathi injuries in all circumstances. It depends upon the manner and the time of inflicting lathies blows that the victim would sustain one lathi injury or two. Hence it was erroneous on the part of the sessions Judge to conclude that only one person inflicted lathi blows upon the deceased.

31. The request of the learned Counsel for the appellant to extend parity to the appellant Nirmal with that of Jaswant has no force, hence rejected.

32. The learned Counsel for the appellants also argued that P.W.2 Balwant Singh and P.W.3 Udit Narain were not the Injured witnesses, therefore, their evidence was not reliable.

33. Mere absence of injuries on the person of a witness cannot be the sole ground for discarding his evidence. Beside these two witnesses, P.W. 1 Udai Singh (injured), P.W.5 Abhay Singh (injured) and P.W.6 Lalmani (Injured) were

also examined by the prosecution. They have also supported the prosecution case which left no room for doubt In the truthfulness of the prosecution case. The argument that P. W. 2 and P.W.3 sustained no injury has no force.

34. The learned Counsel for the appellants also argued that the Govt. tube-well No. 29 was not in working condition on the date of occurrence, there was no occasion either for the complainant or for the appellant Jittan to take water from the said tube-well to carry to their respective fields on the date of occurrence and that the entire story was cooked up. He drew my attention to the defence evidence of D. Ws. 1, 2 and, 3. O.W.I Kailash Nath (Munshi of Lift Irrigation Department) deposed that the said tube-well did not operate from 1st January to 6st January, 1976 due to some fault in it. D.W.2 Bansh Narain Pandey, (tube-well operator) deposed that on 31.12.1975 a fault took place in the starter of the tube-well, therefore the tube-well did not operate from 31.12.1975 to 6.1.1976. D.W.3 Sayad Mohammad (mechanic) deposed that Bansh Narain Pandey sent an information on 31.12.1975 regarding the fault in the tube-well; that he repaired the tube-well No. 29 on 7.1.1976 but made no entry in the "mechanic register", available at the tube-well.

35. The statement of defence witnesses that the tube-well was not in working order on the relevant date cannot rebut positive evidence of murder. The irrigation of the field by tube-well No. 29 was not a "fact in issue". Irrigation from tube-well No. 29 was such a fact which was very remotely relevant to the fact in issue. Hence the defence evidence given on this point cannot be a cause to disbelieve the prosecution evidence regarding the murder of Budhi Ram and causing Injuries to others by the appellants.

36. The evidence given by the injured eye witnesses is much more convincing than the evidence given by the defence witnesses regarding any fault in tube-well No. 29. The arguments of the learned Counsel for the appellant, on this point, are rejected.

37. On the basis of what has been discussed above I see no ground to interfere in the order of conviction and sentence passed by the learned trial court.

38. All the eye witnesses have proved the prosecution case beyond doubt.

39. The learned trial court has already taken the lenient view in awarding the sentences, hence there is no need to interfere on point of quantum of sentences.

40. The appeal is accordingly dismissed. The conviction and the sentences awarded by the learned trial court are hereby upheld.

41. The C.J.M. Mirzapur is directed to get the appellants arrested and lodged in jail to serve out the sentences awarded by the learned trial court as mentioned above.

42. Certify the judgment to the trial court.