
(2008) 02 AHC CK 0114
In the Allahabad High Court

Kalp Nath Singh and Others

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 141, 147, 148, 149, 307

Citation : (2009) 124 TTJ 269

Hon'ble Judges : Alok K. Singh, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Alok K. Singh, J.—This criminal appeal has been preferred against the judgment and order dated 29.03.1985 passed in Sessions Trial No. 266 of 1982 convicting all the 15 appellants u/s 147 I.P.C. and sentencing each of them to undergo Rigorous Imprisonment of one year each and further convicting the appellants Kalp Nath Singh and Ran Vijay Singh u/s 148 I.P.C. and sentencing them to undergo two years Rigorous Imprisonment each and again convicting appellants Kalp Nath Singh and Ran Vijay Singh u/s 307 I.P.C. and sentencing them to undergo an imprisonment of 4 years Rigorous Imprisonment each and further convicting the remaining 13 appellants u/s 307/149 and sentencing them to 4 years Rigorous Imprisonment each.

2. The facts giving rise to this appeal are that on 29.06.1981 at about 8-9 A.M. while PW 1 Satguru Saran Singh, injured was irrigating his cane field where PW 2 Param Dev Singh (Injured) was also present. They saw some persons coming from the side of the Kharhar Tal, therefore, they rushed towards north and when they reached near the minor canal, the appellant Kalp Nath Singh and Ran Vijay Singh fired at them with their guns due to which they received injuries. From the side of the Kharhar Tal appellants Ambika, Rajendra, Ravindra, Bhagauti, Dev Murat, Sarvjeet, Jagdish, Harish Chandra and two-three other persons had also arrived. It is also said that the aforesaid Kalp Nath Singh and Ran Vijay Singh

were hiding themselves in the nearby cane field and appellants Ram Chander, Vijay Pratap, Narsingh, Bahadur Singh, Subedar Singh, Sahab Bux Singh and two-three unknown persons were also present along with them. The F.I.R. regarding this incident was lodged at the police station and both the injured i.e. PW 1 and PW 2 were examined on the same day at the District Hospital Faizabad by Dr. B.K. Gupta (PW 5). The following injuries were found on the body of the Satguru Saran Singh:

- (i) fire arm wound on the neck in the front side. Scar present. No blackening or tattooing seen.
- (ii) Fire arm wound on the front of upper arm. No blackening or tattooing seen.
- (iii) Fire arm wound in the right hand palm on the back side between two fingers.
- (iv) Fire arm wound in front of abdomen.
- (v) Fire arm wound in the right thigh on the front side.

3. X-ray was advised in respect of the injuries which were found of half day old.

4. On the same day Param Dev Singh was examined at about 8:35 P.M. and the following injuries were found:

- (i) Fire arm wound on the left knee on which blackening was present but there was no scorching or tattooing.
- (ii) Fire arm wound in the right leg on the outer side in the middle.

5. These injuries were also advised for X-ray.

6. Both the injury reports have been proved by the doctor as Ext. Ka-2 and Ka-3.

7. The case was registered in the presence of PW 6 Shyam Dev Singh, I.O. who took the investigation into his own hand. He recorded the statement of Satguru Saran Singh and Param Dev Singh at the police station itself and proceeded towards the place of occurrence where he recorded the statements of witness Malhoo and others and inspected the spot and prepared the site plan as Ext. 4. Thereafter, he sent both the injured persons for medical examination on 30.06.1981. He recorded the statement of other witnesses and also arrested appellants Kalp Nath Singh, Narsingh, Dasrath Singh and recorded their statements. On 18.07.1981 he recorded statement of Ram Sahai. On 22.08.1981 all the remaining appellants surrendered before the court and their statements were also recorded. After completion of investigation the Investigating Officer submitted charge sheet (Ext. Ka-6) in the court.

8. After taking cognizance on the charge sheet the appellants were committed to the court of Sessions where charges were framed against them to which they pleaded not guilty and claimed trial.

9. In order to prove its case the prosecution examined both the injured witnesses

Satguru Saran Singh and Param Dev Singh as PW 1 and PW 2; Malhoo and Ram Sahai, both the witnesses of occurrence as PW 3 & PW 4; Dr. B.K. Gupta as PW 5; Investigating Officer Shyam Dev Singh as PW 6 and Head Moharrir as PW 7. In the statement u/s 313 Cr.P.C. the appellants said that injuries have been fabricated and they have been implicated due to enmity. Appellant Kalp Nath Singh also said that in order to protect his sons he had only made a fire in the air. Appellants Triloki Singh and Rajendra Singh etc. also said that they had gone along with Sarvjeet Singh, Jagdish Singh, Harish Chandra Singh for fishing in Kharhar Tal where they saw Tribhuvan Singh, Rudra Datt Singh, Satguru Saran Singh, Anant Bux Singh, Vijay Pal Singh, Ashok Kumar Singh, Sultan Singh, Partap Devri, Param Dev Singh and Nanhoo and 4-6 unknown persons coming. Therefore, they started fleeing towards their village raising their alarms. After crossing minor canal they reached in their Chuck where they were fired upon by Satguru Saran Singh from his gun. The unknown persons also fired from their country made pistols. In defence the appellants proved their cross F.I.R and other papers as Ext. Kha 1 and Kha 11.

10. The learned trial judge took into consideration simultaneously the cross case also (S.T. No. 262 of 1982) and found that in the instant case the presence of both the parties as also time and place of the occurrence are almost admitted to each other. After scrutinizing the evidence on record the learned trial judge reached to the conclusion that the appellants were the aggressor and mainly on that basis he found the charges leveled against them to be proved and convicted them.

11. I have heard the arguments advanced by Sri V.K. Singh, Advocate, learned Counsel for the appellants and Sri V.S. Srivastava learned A.G.A. and perused the lower court record.

12. At the outset it may be mentioned that during the pendency of the appeal appellants Nos. 8 & 9 Sahab Bux Singh and Ran Vijai Singh have died and therefore appeal stands abated in respect of them. Before entering into the discussion it would be relevant to note certain points as under:

(a) The incident is said to have taken place at 8-9 A.M. while the F.I.R. was lodged at about 4:15 P.M. i.e. after about 8 hours. The distance between the place of occurrence and the police station is about four miles. In the F.I.R. guns have been assigned to appellant Kalp Nath Singh who was 60 years of age at the time of incident and now he has attained the age of 82 years and appellant Ran Vijai Singh who has died during the pendency of appeal. No weapon was assigned in the F.I.R. to rest of the appellants. Satguru Saran Singh and Param Dev Singh are said to be two injured persons. The fire is said to have been made from the place D shown in the site plan while both the injured were at place B. The distance between place D and B is 125 paces. The Kharhar Tal has been shown in the site plan towards south. At this place some of the appellants are said to have assembled while remaining appellants are said to be near the place C, the cane field. According to the evidence on record the distance between the cane field

where one group of appellants had assembled and the Kharhar Tal where the remaining appellants were present was about 200 paces.

13. The learned Counsel for the appellants submitted that there was no unlawful assembly having any common object. He pointed out that even according to the prosecution evidence about 8 appellants were at Kharhar Tal, towards south while remaining 7 appellants were near the cane filed towards east. The distance between two places was about 200 paces. In the F.I.R. the role of firing from gun has been assigned to appellants Kalp Nath Singh and Ran Vijai Singh only. No other weapon has been assigned to the remaining appellants. But by making an improvement both the injured witnesses in their substantive statements assigned lathies to the remaining 15 appellants. But they admitted that those lathies were never used. Then one of the two witnesses of fact i.e. PW 3 added one more weapon i.e. danda. But he could not tell as to who were wielding lathies and who were having danda. But he also conceded that all the appellants having lathies and danda did not do anything. PW 4 Ram Sahai added a new story of hearing of abuses also which is not the prosecution case. Similarly, PW 3 named only 11 appellants and according to him all of them were together at one place and not at two places. Similarly, according to PW 4 also all the appellants were at one place towards north. The learned Counsel urged that these discrepancies in their statements in respect of place and number of persons of assemblage tend to suggest that neither of these two was present on the spot. At least a doubt about their presence is created. Both of them also could not tell as to who made how many fires. PW 4 even could not tell as to whether two appellants were having single barrel or two barrel guns. PW 3 also admitted that one of the appellants had initiated a case u/s 307 I.P.C. against him and one of the appellants namely Kalp Nath Singh has deposed against him in a murder case. Therefore, he has every reason to depose falsely against appellants. Thus presence of both the witnesses of fact is doubtful and at least one of them is enmical also. Then coming to the evidence of both the injured it can be said as told by them that all the 15 appellants had assembled in two groups at two places i.e. one at the Kharhar Tal and the other group near the cane filed towards north at the distance of about 200 paces. Whereas according to witnesses PW 3 & PW 4 who are claimed to be eye witnesses all the appellants had assembled at one place. Due to this significant discrepancy the alleged unlawful assembly cannot be said to be proved beyond doubt. Even if we admit the presence of the injured persons on the spot and accept their version then also it appears patently illogical that the appellants would assemble at two places at such a long distance and particularly when there is no evidence to show that the other group in any manner either made any effort to corner the injured persons from other side or did any overt act at all. In view of the cross cases from both the sides as mentioned by the learned trial judge even if it is presumed there was some remonstrance and counter remonstrance from both the sides then also it can not be said that the appellants had premeditated and formed an unlawful assembly with some common object and therefore they cannot be held to be vicariously liable as was

held in the case of Lalji and Others Vs. The State of U.P., cited on behalf of the appellants. In the instant case also the facts and circumstances do not show that the appellants had a common object to do any of the acts mentioned in the relevant clauses of Section 141 of the I.P.C.

14. In the case in hand only two persons are said to have received gun shot injuries as a consequence of firing made by only two appellants namely Kalp Nath Singh and Ran Vijai Singh. There is no mention in the F.I.R. regarding any weapon wielded by the remaining appellants. Though in the substantive evidence lathies have been introduced in the hands of remaining appellants. But admittedly none of them used it or did any overt act. The learned Counsel has also pointed out that according to own admission of PW 1, he had never irrigated that cane fields prior to the incident. Similarly PW 2 had admitted that before the occurrence it had rained also. On the other hand PW 4 Ram Sahai has told that there was no water in the minor canal. Therefore, the alleged genesis of the prosecution story i.e. both the injured going to irrigate their cane field becomes doubtful. If there was no need to irrigate the cane field because of rain or if there was no water in the canal or if the injured did not usually irrigated their cane fields then what was the occasion for the appellants to have assembled unlawfully in the alleged manner with some object against appellants. It is also not believable that some of the appellants had tried to hide themselves in the cane field in which height of canes was hardly one hand. In such circumstances, the theory of unlawful assembly with some common object appears to be patently unbelievable and unnatural. No prosecution witness has proved that other appellants had come on the scene of occurrence with an intention to commit an attempt to murder or any other such thing. None of the other appellants gave any blow to the injured or any other persons of that side with lathies which they were allegedly carrying with them or did any overt act at all. Similarly, there is no material on record showing that other appellants knew that the offence of firing which took place was likely to be committed or they had any other common object. Therefore, in such circumstances their conviction u/s 147 I.P.C. for unlawful assembly particularly when their presence is doubtful cannot be sustained. Similarly, conviction of appellant Kalp Nath Singh and Ran Vijai Singh u/s 148 I.P.C. being member of unlawful assembly (wielding guns) is also not sustainable. Consequently, the conviction of all the appellants except the aforesaid two u/s 307 I.P.C. with the help of Section 149 I.P.C. is also not sustainable.

15. Now we are left with the two appellants namely Kalp Nath Singh and Ran Vijai Singh who have been convicted u/s 307 I.P.C. As mentioned above, appellant Ran Vijai Singh has died during the pendency of appeal, as such, the appeal in respect of him abates. As far as the remaining appellant Kalp Nath Singh is concerned according to prosecution case and the evidence on record itself he is said to have fired from a long distance of about 125 paces. As would be apparent from the perusal of the injuries mentioned in the body of this judgment no dimensions of wounds have been mentioned. Similarly, no X-ray report has

been brought on record or proved to show that any of these injuries were dangerous to life. Presumption has been taken against the prosecution for not producing X-ray reports as suggested from the side of the appellants. The mere fact that fire arm was used to cause injury to the injured will not attract Section 307 I.P.C. and there can be no presumption that the appellants intended to make an attempt on the life of the injured persons merely because they used fire arms to cause hurt. The intention of both the appellants has to be established from either the nature of the act actually committed by them or from other things. The prosecution has to establish the intention or knowledge of the accused as contemplated in Section 307 I.P.C. and the burden of proving is on the prosecution and not on the accused persons. On the other hand it is well settled principal that if the intention or necessary knowledge was there, it is immaterial whether or not any injury has been caused to the victim and in that case, the accused can be held liable for the offences u/s 307 I.P.C. even though no hurt was caused. But in the instant case particularly having regard to the fact that the alleged fire was made from a distance of about 125 paces and because there is absence of any dimension of the injuries of both the injured and there are no X-ray reports on record and no such intention or knowledge could be proved and injuries could neither be proved grievous or dangerous for life, I find that the appellant Kalp Nath Singh can not be convicted u/s 307 I.P.C. The learned Counsel for the appellants though also pointed out that the injuries were fabricated and probably the doctor had no knowledge about the prosecution case due to which he showed one injury having blackening also whereas there is no case of close range firing at all. But merely on this ground the injuries of both the injured persons cannot be thrown aside and ignored. Those injuries have been proved by the ocular evidence as well as the oral evidence. Therefore, appellant Kalp Nath Singh deserves conviction at least u/s 324 I.P.C in stead of Section 307 or 326 I.P.C.

16. Learned Counsel for the appellants submitted in respect of quantum of sentence that having regard to the fact that the incident is of about 26 years old and also keeping in view that the appellant Kalp Nath who at the time of incident itself was 60 years of age has now become 82 years of age and is almost at the fag end of his life and therefore in stead of sentencing him to imprisonment he should only be sentenced to pay fine. Considering all the facts and circumstances I intend to accept the request of the learned Counsel for the appellants.

17. In view of the above, this criminal appeal on behalf of the appellants Ambika Singh, Rajendra Singh, Sarabjeet Singh, Sheo Murat Singh, Jagdish Singh, Ravindra Singh, Sahab Bux Singh, Nar Singh, Subendar Singh, Harish Chandra Singh, Vijai Pratap Singh, Ram Chandra Singh, Triloki Singh stands allowed and their conviction and sentence u/s 147 I.P.C. and u/s 307/149 I.P.C. are hereby set aside and they are acquitted from these charges. Similarly, appeal on behalf of the appellant Kalp Nath Singh, so far as it relates to his conviction u/s 148 I.P.C. is also allowed and his conviction and sentence u/s 148 I.P.C. is also set aside and he is acquitted from this charge. However, the appeal of convict-

appellant Kalp Nath Singh, so far it relates to his conviction u/s 307 I.P.C. is partly allowed to the extent that his conviction u/s 307 I.P.C. is altered to Section 324 I.P.C. and instead of sentencing him to imprisonment u/s 324 I.P.C. he is sentenced to pay Rs. 12,000/- as fine in default to undergo two years R.I. It is further provided that if the amount of fine is deposited, half of the amount shall be paid equally to both the injured persons namely Satguru Saran Singh and Param Dev Singh and rest of the half amount shall be deposited in favour of the State.

18. As all the appellants are on bail their bail bonds except the bail bonds of appellant Kalp Nath Singh are hereby discharged. In respect of appellant Kalp Nath Singh the bail bonds shall stand discharged only after deposition of the fine. In case fine is not deposited within two months from today he shall be taken into custody forthwith to serve out the sentence of imprisonment of two years as aforesaid in default. The appeal in respect of Ran Vijai Singh stands abated on account of his death.