
(1977) 08 AHC CK 0005
In the Allahabad High Court
Case No : Criminal Rev. No. 1276 of 1973

Kesho Prasad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-08-1977

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 325, 34

Citation : (1977) ACR 393

Hon'ble Judges : M. Murtaza Hussain, J

Bench : Single Bench

Judgement

M. Murtaza Hussain, J.—Kesho Prasad and Harihar Nath Petitioners along with Parasram were put up for trial before a Magistrate of the 1st class at Kanpur under Sections 325 and 323 read with Section 34 IPC. It was alleged that at about 1.30 A.M. on 28-8-1971, in furtherance of their common intention, they beat Badri Narain complainant with lathis and when his wife Smt. Savitri Devi intervened she was also beaten. All the three accused pleaded not guilty to the charges framed against them. Parasram pleaded alibi and examined Chotey Lal DW 1, Krishna Kant Tripathi DW 2 and Chabinath Singh DW 3, who is A.D.O. Co-operative, to prove that at the time of the occurrence Parasram was attending a block meeting at a distance of about 14 miles from the place of occurrence. The trial Court believed those witnesses and acquitted Parasram. The two Petitioners were convicted and each sentenced to under go six months" and three months" RI for the two offences for which they were facing their trial. The learned Sessions Judge dismissed their appeal in its entirety.

2. The medical evidence led by the prosecution undoubtedly proves that Badri Narain and his wife Smt. Savitri Devi were beaten by blunt weapons at the alleged time and they in all received seven injuries out of which one injury of Badri Narain was grievous. The medical evidence will, however, not itself connect the Petitioners with the alleged assault. Three witnesses were examined by the prosecution to prove that the Petitioners and Parasram had beaten the

complainant and his wife. They are the two injured Badri Narain and Smt. Savitri Devi and a cousin brother of Badri Narain namely, Shyam Manohar. All these witnesses are interested persons. They have definitely falsely implicated Parasram as his plea of alibi was accepted by the Courts below. If the two injured and the third witness, who is their close relation, are unscrupulous enough to falsely implicate Parasram inspite of the fact that he did not participate in the occurrence what is the guarantee that they are not likewise implicating the two Petitioners. None of the three witnesses examined by the prosecution can be said to be wholly reliable. Assuming for the sake of argument that they are partly reliable, the part of their testimony relating to the participation of the two Petitioners, when a part of their testimony regarding Parasram's participation in the occurrence is definitely false, cannot be safely relied upon without any independent corroboration. That independent corroboration is definitely lacking in the present case.

3. The motive of the assault attributed to the Petitioners is highly unconvincing. It is said that in the year 1969 there was a marpit amongst the Petitioners and the complainant. Complaint about that marpit was filed by the complainant which was pending at the time of the occurrence of the present case. It does not appeal to reason that about two years after that assault and when that assault was also sub-judice the Petitioners would abruptly take into their head to assault the complainant. It is prosecution's own case that in the morning of the day of occurrence there was a marpit amongst the complainant and Sri Krishna, a brother of Parasram. There is nothing surprising if on account of that immediate motive Sri Krishna and his associates beat the complainant and his wife and the complaint kept Sri Krishna away because on account of the morning incident he could easily plead that he was falsely implicated and falsely implicated the two Petitioners and Parasram. In my opinion it is not at all safe to maintain the conviction of the Petitioners on the basis of highly partisan evidence which is definitely false regarding the alleged participation of Parasram in the occurrence.

4. I, therefore, allow this revision and set aside the conviction and sentence of the Petitioners. They are on bail. They need not surrender. Their bail bonds are discharged.