
(2014) 01 AHC CK 0277
In the Allahabad High Court
Case No : Criminal Appeal No. 1919 of 2004

Kunwar Pal and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 323, 324, 34, 452

Citation : (2014) 1 ACR 722 : (2014) 85 ALLCC 32

Hon'ble Judges : Anil Kumar Sharma, J

Bench : Single Bench

Advocate : Onkar Singh, Advocate for the Appellant; Shahabuddin and Raja Hasnain, Advocate for the Respondent

Judgement

Anil Kumar Sharma, J.—Challenge in this appeal is to the judgment and order dated 29.1.2004 passed by Sri B.D. Mishra, the then Addl. Sessions Judge, Fast Track Court No. 1, Muzaffarnagar in S.T. No. 1358 of 1999 whereby the appellants have been convicted for the offences punishable under sections 324 and 323 IPC read with section 34 IPC and each of them had been given benefit of Probation of Offenders' Act. Brief facts germane to the appeal are that on 18.3.1998 at about 4.00 p.m. complainant Omvir Singh R/o. village Khedi Ranghdhan P.S. Khatauli District Muzaffarnagar submitted a written report at P.S. Khatauli alleging that their field is adjacent to the field of Kunwar Pal and they used to dismantle their mendh. Today at about 8 a.m. his brother Mahavir had gone to the field and found Kunwar Pal and Lakhan dismantling their mendh. He protested whereupon both of them assaulted him with lathi and spade. He was seriously injured. His shrieks attracted the complainant, Ram Kumar s/o. Prahlad Singh Radhey s/o. Shri Pal and others. When they saved Mahavir, the accused persons also threatened them. On the basis of this report case at crime No. 112-A/98 u/s 324, 323, 506 IPC was registered, investigation whereof was entrusted to S.I. Smt. Raj Bala Vishnoi. Ere that injured Mahavir Singh was medically examined by Dr. M.S. Faujdar at PHC, Khatauli the same day at 9.30 a.m. He

found following injuries on his person:

1. Lacerated wound 2.2 c.m. x 0.5 c.m. x 0.4 c.m. deep over right side of scalp 7.0 c.m. above from mid of right eyebrow. Fresh bleeding present.
2. Incised wound 1.3 c.m. x 0.3 c.m. x 0.3 c.m. deep over right side of forehead just above from mid of right eyebrow.
3. Contusion 2.0 c.m. x 1.5 c.m. over back of right shoulder. Red in colour.
4. Contusion 2.0 c.m. x 1.0 c.m. over outer aspect of upper 1/3rd of left upper arm. Red.
5. Abraded contusion 4.0 c.m. x 2.0 over left lateral aspect of lower 1/3rd of chest associated with pain on breathing. Kept under observation.
6. Unscabbed abrasion 1.5 c.m. x 0.3 c.m. over back of middle 1/3rd of left side index finger.

In the opinion of the doctor all injuries were simple except injury No. 5 and were fresh in duration. Injuries No. 1, 3, 4 and 5 were caused by some hard and blunt object while injury No. 2 by sharp edged weapon. Injury No. 6 could be caused by friction against rough surface. Injury No. 5 was referred to District Hospital, Muzaffarnagar. The investigating officer interrogated the witnesses, prepared site plan of the spot and after completing the investigation submitted charge sheet against the accused-appellants.

2. After committal of the case to the Court of Session charges for the offence punishable u/s 324/34, 323/34 and 506 IPC were framed against both the accused-appellants, who abjured their guilt and claimed trial.

3. In order to prove its case, the prosecution had examined Omvir Singh P.W.-1, injured Mahavir Singh P.W.-2, Ram Kumar P.W.-3, Dr. M.S. Faujdar P.W.-4, S.I. Smt. Raja Bala Vishnoi P.W.-5 and Constable Tejvir Singh P.W.-6.

4. In their separate statements u/s 313 Cr.P.C. both the accused have denied the entire prosecution story and have stated that false case had been concocted by the complainant in order to save themselves from their case. In defence the accused-appellants have filed certified copies of F.I.R. of case crime No. 112/98, charge-sheet, site plan, medical examination reports of Kunwar Pal Singh and Lakhan Singh. They have also examined Nanak Singh as D.W.-1.

5. The learned Trial Court after hearing the parties' Counsel has found both the appellants guilty for offences punishable u/s 324 and 323 IPC read with section 34 IPC and instead of sentencing them at once had given benefit of Probation of Offenders' Act. Aggrieved, they have come up in appeal.

6. I have heard learned Counsel for the parties at length and perused the record of the lower Court carefully.

7. Learned Counsel for the appellants has vehemently argued that the learned

Trial Court has not appreciated the evidence on record in correct perspective; that the oral and documentary evidence adduced by the accused-appellants has not been considered at all, which clearly proved that the complainant side was the aggressor as accused Kunwar Pal Singh and Lakhan Singh were badly assaulted by Mahavir and three others. Kunwar Pal has sustained numerous serious injuries inside the gher at the hands of Mahavir, Omi, Peetu and Rishpal for which a report was lodged by Kunwar Pal Singh at Crime No. 112/98 u/s 307, 452, 504 IPC and after investigation police had submitted charge-sheet against them; that even Mahavir has admitted in his cross-examination that he had seen injuries on Kunwar Pal Singh. It has been further submitted that in the impugned judgment the learned Trial Court has not discussed the evidence of Nanak D.W.-1 as also the documentary evidence filed on their behalf, which had led to miscarriage of justice. Lastly it has been contended that the prosecution has not explained the injuries of the accused-persons, so the prosecution story is highly doubtful and the genesis of the occurrence had been suppressed. Per contra learned A.G.A. has supported the impugned judgment and order.

8. On perusal of the record it is found that a report of commission of offences punishable u/s 307, 452 and 506 IPC was lodged by accused-appellant Kunwar Pal Singh on 18.3.1998 at 3.30 p.m. in P.S. Khatauli against Natru @ Mahavir (injured), Omi (P.W.-1), Peetu and Rishi Pal wherein inter alia it was alleged that on 18.3.1998 at about 8 a.m. all the named accused armed with tabal, phawra and lathi were dismantling the mendh of Kunwar Pal Singh, when he tried to stop them, he was abused and they attacked him. In order to save himself he ran and entered into his gher, where the accused persons also came and in order to kill him badly assaulted. His father Lakhan came to save him, but he was also beaten. They had suffered serious injuries. The accused-appellants have filed certified copies of their injury reports, which show that appellant Kunwar Pal had suffered as many as 21-injuries which include 3-incised wounds, 3-lacerated wounds, 11-unscabbed abraded contusions and 4-contusions on different part of his body. The doctor found injuries of one contusion and complain of pain on left thumb of Lakhan Singh. The injured were examined at PHC, Khatauli on 18.3.1998 at 9.50 a.m. onwards. The injuries sustained by Kunwar Pal are not superficial or self-suffered injuries. Although the defence has not made any attempt to prove the injury reports of the accused-appellants, but Dr. M.S. Faujdar P.W.-4 has admitted in his cross-examination that the same day after medical examination of Mahavir, he had examined the injuries of Kunwar Pal and Lakhan. All the prosecution witnesses of fact namely P.W.-1 to P.W.-3 including the injured have admitted in their cross-examination that blood was oozing out from the head of accused Kunwar Pal. Injured Mahavir P.W.-2 has admitted that cross-case pertaining to this incident is pending against him. In cross-examination he has given a very funny explanation about the injuries sustained by accused Kunwar Pal. He has stated that accused Kunwar Pal had caught him from left hand, and he assaulted him with spade. To quote his own words:

The injury report of Kunwar Pal shows that he has sustained 3-lacerated wounds

and 2-incised wounds on his scalp, a vital part of the human body, which cannot be said to be superficial or self-inflicted at all. In any eventuality these injuries cannot be sustained by him in the manner as described by Mahavir P.W.-2 above. This clearly reveals that the injured witness and other eye witness Ram Kumar P.W.-3 are not stating the truth about the manner of incident and are suppressing the real and true facts.

9. The defence had examined Nanak Singh D.W.-1, who has corroborated the report of accused Lakhan Singh lodged prior to the instant F.I.R. of Omvir Singh stating that on 18.3.1998 at about 8 a.m. on hearing commotion he reached at the gher of Kunwar Pal, where Mahavir and Rishi armed with Tabal, Omi with Phawra and Peetu having lathi were assaulting Kunwar Pal and Lakhan. Kunwar Pal was bleeding from head and on seeing him, Madan and Lal Chand, they made their escape good after hurling abuses and giving life threat to them. He along with other villagers took Kunwar Pal and Lakhan to police station Khatauli. In his cross-examination he has stated that he has already deposed in the cross-case before the Court. This witness had been cross-examined at length by the prosecution but his testimony could not be shaken in the cross-examination. Thus, there is no reason to disbelieve the testimony of defence witness. The learned Trial Court has not at all considered or appreciated the oral and documentary evidence filed by the accused-appellants.

10. It is well settled that the onus of proof on the accused as to exercise of right of private defence is not as heavy as on the prosecution to prove guilt of the accused and it is sufficient for him to prove the defence on the touchstone of preponderance of probabilities, [vide Sat Narain Vs. State of Haryana through Ministry of Home,]

11. In V. Subramani and Another Vs. State of Tamil Nadu, , the Apex Court examined the nature of right of private defence. It was held that whether a person legitimately acted in exercise of his right of private defence is a question of fact to be determined on the facts and circumstances of each case. In a given case it is open to the Court to consider such a plea even if the accused has not taken it, but the surrounding circumstances establish that it was available to him. The burden is on the accused to establish his plea. The burden is discharged by showing preponderance of probabilities in favour of that plea. The injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and whether the accused had time to have recourse to public authorities are all relevant factors to be considered.

12. In Bhanwar Singh and Others Vs. State of M.P., , the Hon"ble Supreme Court has held as under:--

51. To put it pithily, the right of private defence is a defence right. It is neither a right of aggression or of reprisal. There is no right of private defence where there is no apprehension of danger. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger

not of self creation. Necessity must be present, real or apparent.

52. The basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the state machinery is not readily available, that individual is entitled to protect himself and his property. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. We may, however, hasten to add that the means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon host of factors like the prevailing circumstances at the spot, his feelings at the relevant time; the confusion and the excitement depending on the nature of assault on him etc. Nonetheless, the exercise of the right of private defence can never be vindictive or malicious. It would be repugnant to the very concept of private defence. (See *Dharam and Others Vs. State of Haryana*,)

13. In *Raj Pal and Another Vs. State of Haryana*, , the Hon"ble Apex Court after noticing *Bishna @ Bhiswadeb Mahato and Others Vs. State of West Bengal*, , opined:--

20. While there is no absolute rule that merely because the prosecution has failed to explain the injuries on the accused ipso facto the prosecution case should be thrown out, the non-explanation of the injuries on the accused is certainly an important circumstance which has to be taken into consideration by the Court in deciding whether the benefit of doubt should go to the accused. In *Bishna's* case (supra) the entire law on the point has been discussed in great detail, and hence it is unnecessary to repeat it here.

21. The injuries on the accused include an injury on the head, which is a vital part of the body. Ordinarily self-inflicted injuries are on non-vital parts. The injury on the head of the accused *Jai Pal* required stitches. It is difficult to believe that this was self-inflicted. Moreover, in the present case, as noticed above, there are very important discrepancies in the prosecution version. It is true that minor discrepancies will not necessarily lead to the rejection of the prosecution case, but when there are major discrepancies and unexplained injuries on the accused it is an important factor to be taken into account.

14. If we examine the evidence adduced by the parties in the case in view of the above legal principles, it is found that the incident has not taken place in the manner as alleged by the prosecution. The motive for the crime is the dispute over *mendh* between the fields of the parties. Injured *Mahavir* and his three associates were charge-sheeted for the offence punishable u/s 307, 452, 506

IPC. Considering the entire evidence on record in the light of above-noted legal position, in my opinion, the learned trial Court has grossly erred in convicting the accused-appellants and they deserve benefit of doubt.

15. In view of what has been said and done above, the appeal succeeds and is accordingly allowed. The impugned judgment and order of the Trial Court are set aside. The accused-appellants are acquitted for the offences punishable u/s 324/34 and 323/34 IPC. They have been extended benefit of Probation of Offenders' Act by the Trial Court through impugned judgment, therefore, if the bonds have been filed, they are cancelled and sureties are discharged. Let copy of the judgment be sent immediately to the Court concerned for information and compliance.