
(2011) 11 AHC CK 0428
In the Allahabad High Court
Case No : Criminal Appeal No. 678 of 1981

Nand Lal and others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 34, 427, 436

Citation : (2011) 11 AHC CK 0428

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—Five of the appellants Nand Lal, his father Bhola Nath Verma, two sibling brothers Ganga Ram and Suraj Prasad Verma and Devi Prasad Verma son of Ganga Ram, were tried by Vth Additional Sessions, Varanasi in Sessions Trial No. 303 of 1980, State v. Nand Lal and others, and finding their guilt established beyond any shadow of doubt, trial Judge convicted them for offences under Sections 147, 452 and 436/149, I.P.C. and imposed sentences of one year R.I. to each, of the accused for each of the offences under Sections 147 and 452, I.P.C. and two years R.I. to each one of them under Sections 436/149, I.P.C. vide impugned judgment and order dated 13th March, 1981, which conviction and sentence has now been challenged in the instant appeal. Stated in bird eye view, prosecution charges against these appellants were that on 25.2.1979 at 11.00 a.m. they by forming an unlawful assembly raided the shop of Garibullah and at the instigation of appellant Ganga Ram appellant Bhola Halwai sprinkled kerosene oil inside Garibullah's shop which thereafter was torched by appellants Ganga Ram and Nand Lal. Incident attracted witnesses Moti Pasi, Mohd. Arman, Ramashanker Singh, Karimullah, Dr. Bhagauti Prasad, Munni Lal Harijan and Kailash Nath, who all doused the fire by throwing water. As a result of ablazing the shop, in which Garibullah was carrying plastic shoe business, complainant suffered a loss of Rs. 1,000.

2. F.I.R. of the incident was got scribed from Asfaq by informant P.W. 1 Mohd. Ishaque, son of Garibullah, who thereafter lodged it at police station Suriyawan Ghyampur, district Varanasi (now district Bhadoi/Sant Ravidas Nagar) the same day at 11.45 a.m. covering a distance of about one furlong.

3. Investigation into the crime was referred to C.B.C.I.D., who had submitted final report and therefore, Mohd. Ishaque P.W. 1 filed Complaint Case No. 292 of 1979, Mohd. Inshaque v. Nand Lal and others, before C.J.M., Varanasi against the malefactors.

4. Following the procedure of complaint case, the accused persons were summoned and finding their guilt triable by Court of Session's their case was committed for trial to the Session's Court where it was registered as Session's Trial No. 303 of 1980, State v. Nand Lal and others.

5. Vth Additional Sessions Judge, Varanasi charged the appellants for offences under Sections 147, 452, 436, 427 and 504, which charges were denied by the accused, who all claimed to be tried.

6. To establish guilt of the accused, eight prosecution witnesses were tendered during the trial, which included fact witnesses Mohd. Ishaque P.W. 1, Arman Ali P.W. 2, Moti Lal P.W. 3, Dr. Bhagaoti Prasad P.W. 4, Rama Shanker Singh P.W. 5 and formal witnesses Kamla Kant Upadhyay P.W. 6, Kishori Lal P.W. 7 and Vans Narain Singh P.W. 8.

7. Vth Additional Sessions Judge, Varanasi found the case of the prosecution established to the hilt against appellants only for offences under Sections 147, 452 and 436/149, I.P.C. and therefore, convicted and sentenced them as has already been mentioned hereinabove. Hence, this appeal.

8. I have heard Sri S.P. Srivastava, Learned Counsel for the appellants and Sri Patanjali Mishra, learned A.G.A. in opposition.

9. Appellant's counsel castigated the impugned judgment by contending that the conviction of the appellants is bad in law and is not supported by evidences on record. He further submitted that since there was enmity and the parties wanted the shop in question to be vacated, per chance the shop was gutted in fire and taking its advantage a false case was cooked up against the appellants nailing them for the aforesaid offences. It was further submitted that the conviction of the appellants cannot be sustained as none of fact witnesses are reliable. Lastly, it was contended that the incident is alleged to have occurred on 25.2.1979 and more than 32 years have gone by and therefore, appellants should not be sent to jail to serve out remaining part of their sentence after such an enormous period. He further submitted that on the date of the incident most of the appellants were in their youth and now they have settled in their lives without any further criminal proclivity or subsequent involvement in any crime and since they belong to one family, their sentence be reduced suitably.

10. Learned A.G.A. on the other hand supported the judgment of conviction and

sentences and refuted the arguments raised by the appellants.

11. After going through the evidence on record, I also do not find any reason to take contrary view than what has been taken by learned Vth Additional Session's Judge in convicting the appellants for the aforesaid offences. All the fact witnesses corroborated each other. The shop of informant Mohd. Ishaque P.W. 1, who is the son of Garibullah was right across the road when the incident occurred. In such a view Mohd. Ishaque P.W. 1 was the most natural witness and his presence at the spot cannot be doubted. There was no reason for him to spare the real miscreants, who had torched the shop of his father exonerating real assailants. His testimony has been well supported by rest of fact witnesses Arman Ali P.W. 2, Moti Lal P.W. 3, Dr. Bhagaoti Prasad P.W. 4 and Rama Shanker Singh P.W. 5. Since prosecution has lead credible evidences regarding happening of the incident, conviction of the appellants cannot be set aside and has to be affirmed. In such a view, I concur with the opinion of the trial Judge in upholding the conviction of all other appellants except appellant Devi Prasad Verma against whom, there is no reliable evidence that he participated in the crime. He cannot be said to be a member of unlawful assembly as against him nothing has surfaced through the testimonies of fact witnesses about his involvement in the incident. He is, therefore, entitled to the benefit of doubt.

12. Turning towards the sentence, it is noted that two of the appellants Ganga Ram and Suraj Prasad Verma had died. Appeal of Suraj Prasad Verma had already abated by order dated 11.7.2007. In respect of death of appellant Ganga Ram, a report was called for but the same has not been received as yet. It was stated during the course of the arguments that he had expired on 23rd May, 2009. Be that as it may, the report about his demise is still awaited.

13. In such a view, the appeal succeeds and allowed in part. The appeal of appellants Devi Prasad Verma is allowed in full. He is acquitted of all the charges. He is on bail. He need not surrender his surety bonds and personal bonds are discharged. Appeal of Nand Lal, Ganga Ram and Bhola Halwai is partly allowed on merits and their convictions u/s 147, I.P.C. is set aside. However instead of Section 147, I.P.C. Section 34, I.P.C. is applied and hence they are convicted under Sections 452 and 436/34, I.P.C. but their sentences for all these offences are altered to the period of imprisonment already undergone by them with fine of Rs. 10,000 imposed on each of them. Appellants are allowed one month time to deposit entire amount of fine from today. In the event, they fail to deposit the fine, it is directed to be realised from the appellants as arrears of land revenue by C.J.M. Bhadoi/Sant Ravidas Nagar within a period of one month thereafter. After realising the fine from the aforesaid three appellants Nand Lal, Ganga Ram and Bhola Halwai, C.J.M. Bhadoi/Sant Ravidas Nagar will notice Mohd. Ishaque P.W. 1 and will hand over him the compensation of Rs. 10,000 for the loss caused to him by the appellants. These appellants are on bail, they need not surrender their personal and surety bonds are discharged.

In the event, a report brought before the C.J.M. Bhadoi/Sant Ravidas Nagar that

appellant Ganga Ram had expired, no realization of fine shall be made from him.