
(1998) 01 AHC CK 0001
In the Allahabad High Court
Case No : Criminal Appeal No. 516 of 1980

Nathu and Others (In Jail)

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 19-01-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Penal Code, 1860 (IPC) — Section 302, 304, 323, 325, 34

Citation : (1998) CriLJ 2382

Hon'ble Judges : S.K. Phaujdar, J; N.S. Gupta, J

Bench : Division Bench

Advocate : D.P. Singh, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

S.K. Phaujdar, J.—The three appellants were convicted under Sections 302/34, I.P.C. on 5-2-80 by an order of the IVth Additional Sessions Judge, Jalaun at Orai in S. T. No. 297 of 1978 and each was convicted to undergo life imprisonment. They were also convicted for an offence u/s 323/34, I.P.C. by the same order in the same trial and each was sentenced to R. 1. for three months. The sentences were to run concurrently. Upon presentation of the appeal on 3-3-80 the appellants were granted bail.

2. The F. I. R. that was lodged against these three appellants was drawn up on the statement of one Tulsi Ram. The alleged incident took place on 14-8-77 at about 8.00 a.m. and the report was made on the same day at about 12.30 p.m. The witnesses named in the F. 1. R. were Sukhpal and Devi Deen. It was stated in the report that for a particular land in front of the house of the complainant they have been given a patta. When they were clearing the land the accused appellants objected to it. When the complainant claimed that the land was his, the accused appellants started abusing in filthy language. When objected to by the complainant, the accused-appellants assaulted with lathies. He shouted which attracted Ram Prakash, Gur Dayal and the daughter-in-law of the

complainant. These persons were also assaulted by the accused appellants and they had threatened them with dire consequences, if any report was made to the police station.

3. Upon this report, initially a case under Sections 504 323 and 506, I. P. C. was started but subsequently the injured Ram Prakash succumbed to his injuries and the case was converted to one u/s 304, I. P. C. as well. After necessary investigation, charge sheet was submitted and after commitment of the case to the court of session a charge u/s 323 read with 34, I. P. C. was framed against the appellants for having caused simple hurt to Maya, Tulsi Ram and Gur Dayal in furtherance of their common intention. A further charge u/s 302/34, I. P. C. was framed against them for having caused the death of Ram Prakash by causing him such injury as was likely to cause death in the ordinary course of the nature. This was also attributed to have been caused in furtherance of their common intention. The charges were denied by the appellants.

4. At the trial nine witnesses were examined on behalf of the prosecution. After their examinations u/s 313, Cr. P. C. the defence also examined one witness. It came through the defence witness Paramanand that Smt. Maya Devi wife of Ram Prakash had some illicit relationship with Tulsi Ram and Ram Prakash was beaten to death by Tulsi Ram and Gur Dayal and in that incident Ram Prakash also gave lathi blows to Tulsi Ram and Gur Dayal and he had also assaulted Smt. Maya Devi.

5. The learned trial Court considered the evidence before it and had considered the defence theory also as advanced by the defence witness. He had discarded the defence version and did accept the prosecution evidence as stated by the injured witness and convicted the appellants as indicated above.

6. P. W. 1 was Dr. G. C. Agarwal who proved the injuries of Smt. Maya Devi, Ram Prakash (not dead then), Tulsi Ram and Gur Dayal. The only cross-examination that was made of this witness suggested that the injuries could have been inflicted at about 5 to 6 a.m. on 14-8-77. According to this witness, the injuries of Smt. Maya Devi were near the nose and on the head and on her ring finger which were possible to have been inflicted by lathies at about 8.00 a.m. on 14-8-77. The injuries were examined at 1.15 p.m. on that very date. In relation to the injuries of Ram Prakash, the doctor found five head injuries. All injuries were simple except a bone-deep injury on the frontal bone which was kept under observation and x-ray examination was advised. These injuries were possible by lathies at about 8.00 a.m. on 14-8-77. These injuries were examined at 12.30 p.m. on that date. For Tulsi Ram there was a head injury for which x-ray was advised. This injury was also caused by lathi at about 8.00 a.m. on 14-8-77. For Gur Dayal the doctor found two injuries on the hands and there was complaint of pain on his back. These injuries were also possible by lathies at about the same time when the other persons sustained their injuries. In the absence of any relevant cross-examination the evidence of this doctor is to be accepted in its totality.

7. P. W. 2 was Dr. M. K. Goel who had held postmortem examination on the deadbody of Ram Prakash on 20-8-77 at about 4.00 p.m. According to him, death had occurred in the District Hospital, Orai, on 19-8-77 at about 4.30 p.m. There were three head injuries observed by this doctor and death was caused as a result of shock and haemorrhage out of these three head injuries. He had also proved his postmortem report which was marked as an exhibit. His evidence and the report proved by him indicates that there was a linear fissured fracture of the left parietal bone and his evidence indicates that there was external injuries also in the left parietal bone. There was no other internal injury. Death was not due to concussion of brain or any brain injury although the brain was found congested. Death, according to the doctor, was due to shock and haemorrhage. The doctor opined that these injuries, in the ordinary course, could have caused death. His cross-examination however, suggests that on proper treatment of the injured, he could have survived. The doctor further admitted that effect of shock increased with passage of time if no treatment was given. He had also accepted that if a patient was dealt with negligently, a fracture of the head might aggravate. It is not always necessary, according to this doctor, that the patient would be serious immediately on receipt of the head injuries. There was no necessity of admitting the patient in the hospital on a mere perusal of the injuries.

8. The third witness Harpal Singh had been an S. I. Police, He proved the general diary of Kuthoud police station, Oria, concerning death of Ram Prakash in the hospital. He was deputed to hold inquest of the deadbody and he proved the panchayatnama. He had made the other necessary papers and sent the deadbody for postmortem examination. His one line cross-examination indicates that before sending the deadbody for postmortem examination he did not contact the concerned police station, Kuthoud.

9. The next witness was a constable Sudhar Singh, who carried the deadbody to the mortuary and had brought back the report to the police station. His cross-examination was declined.

10. P. W. 5 Puntu Lal claimed to have seen the quarrel between the parties. While he had gone to fetch milk from the house of Shukh Lal, quarrel was going on amongst Tulsi Ram, Nathu and Gur Dayal only three persons were there when he saw the quarrel and there was none else. But the witness went on to say that in this quarrel Tulsi Ram, Gur Dayal, Ram Prakash and Smt. Maya Devi had suffered injuries and they were assaulted by Mata Prasad, Har Dayal and Nathu. The incident, according to this witness, had taken place in front of the house of Nathu Ram upon a land which Tulsi Ram had received on a patta. Babu Ram and Shukh Lal also had seen the incident and had raised alarm. His cross-examination indicates that when he had reached, the quarrel was already over. He waited two to four minutes and in his presence the injured persons went to the village. He accepted that Smt. Maya Devi was living with Tulsi Ram. That was the only occasion for him to go for fetching milk. He denied that he was telling a lie.

11. P. W. 6 was the complainant Tulsi Ram, he claimed to have received a patta

for a land in front of his house. On the date of the occurrence he was clearing the land which he got on patta when Mata Prasad, Har Dayal and Nathu, who were of his village and were his distant kin, came with lathies and tried to stop the complainant from clearing the land and also abused him. This led to the assault on Tulsi Ram. On his cry, Ram Prakash, Gur Dayal and wife of Ram Prakash came there to save him and they were also assaulted. All of them suffered injuries. Babu Ram, Shukh Lal and Puntu Lal saw the incident and raised the alarm. He started crying and the accused persons fled away. The injured then went to the police station Kuthoud on a bullock-cart. A report was written there and thereafter they were sent to the hospital. Ram Prakash expired in the hospital. This witness was assaulted by Nathu alone. The other did not assault him. He could not say whose lathi had hit him as on the receipt of a blow from Nathu, he lost consciousness. He admitted that Ram Prakash and Smt. Maya had no child at that point of time but 8 or 9 months after the death of Ram Prakash a daughter was born to Smt. Maya. Tulsi's wife also died after some days but he denied that he was living with Smt. Maya and the child of Smt. Maya was his and was aged 6 months only. He could not get the injuries examined under x-ray as he had no money. The doctor did not ask Ram Prakash to be taken to Orail. Ram Prakash did not speak after receiving the injuries the defence suggestion was given to him that it was he along with others who had assaulted Ram Prakash.

12. The injured Smt. Maya Devi was examined as P. W. 7. According to her, Tulsi Ram was clearing the land received in patta when the appellants came there. She came out on hearing abuses and she saw them assaulting Ram Prakash and Gur Dayal with lathies. When she ran to save them she was also assaulted. When the witnesses shouted at them the accused persons fled away. The daughter was born to her in the month of chait. Her cross-examination fixed the time of birth of her daughter in March, 1978, husband died in August, 1977. She had seen the assault of Tulsi Ram also. She denied that, there was any illicit connection between herself and Tulsi Ram. Concerning the incident there was not much of cross-examination to this witness.

13. Sukh Lal was examined as P. W. 8 and he was the person to whom Puntu Lal had come for taking milk. This witness was busy in milching his buffalos when the incident has taken place. He claims to have seen the actual assault. When he had gone out many people had collected and by that time Ram Prakash was lying unconscious and Tulsi Ram, Gur Dayal and Smt. Maya were not there. He could not have seen the actual incident.

14. The last witness is the I. O. Chand Sen Misra. He proved the different papers prepared during the investigation and he had submitted the chargesheet after investigation and he had submitted the chargesheet after investigation. His cross-examination is a short one. He did not see the admission register in the hospital at Kuthod, he had taken the statement of Tulsi Ram, Smt. Maya Devi, Puntu Lal and Shukh Lal on 28-8-1977.

15. It was contended that out of the witnesses named in the F. I. R., Devi Din

was not examined and Shukh Lal would not have seen the incident. Witness Puntu Lal was never named in the F. I. R. and he too could not have seen the incident as the quarrel was already over before his arrival. The injured Gur Dayal was not examined and only Tulsi Ram and Smt. Maya Devi were there to prove the incident. There are also corroborating evidence of the doctors.

16. It was argued that because of absence of examination of Gur Dayal and Devi Din as also of Babu Ram who was stated to be present there as per the statement of Tulsi Ram, the prosecution case becomes doubtful. This argument may not be accepted as the prosecution is not bound to examine all the witnesses on the same point and examination of such witnesses only would be necessary as may be required to unfold the prosecution story. It may also not be proper to discard the statement of Tulsi Ram and Smt. Maya Devi for the simple reason of non-examination of others as these two witnesses themselves were injured in the incident and that fact adds some credibility to their claim. It is true that Puntu Lal has accepted that he had reached the spot when the quarrel was already over. He might have seen the injured persons but he could not have seen the actual assault. Had he been present at the spot his name should have been there as a witness in the F. I. R. He contradicts himself when he says that the quarrel was between Tulsi Ram, Nathu and Gur Dayal only and there was nobody else present at the spot. It was, therefore, impossible for him to claim to be an eye-witness on the point of injuries on Ram Prakash and Smt. Maya Devi and regarding assault by Mata Prasad and Har Dayal. So for Shukh Lal is concerned, his evidence indicates that he was busy in milching his buffaloes and by the time he had reached the place of quarrel, many people had assembled and the quarrel was over by then. Ram Prakash was lying unconscious but Tulsi Ram, Gur Dayal and Smt. Maya Devi were not there. They had already gone to the police station. Reliance may not be, therefore, placed on these two witnesses Puntu Lal and Shukh Lal on the point of actual assault. 17. Tulsi Ram, however, gave a full account of how the quarrel started and how the present appellants had come with lathi, how they had abused and tried to stop clearing of the land by Tulsi Ram and the assault followed thereafter. His evidence indicates that the three appellants are of the same family. He was assaulted by Nathu alone the others did not assault him. He could not say to whose lathies had injured whom. The doctor had advised x-ray examination of Ram Prakash but Tulsi Ram could not arrange for money and could not get x-ray examination done. Ram Prakash lay unconscious for four days and expired as a result of the injuries. Smt. Maya Devi also gave a detailed account of the incident. The quarrel was going on between Nathu, Har Dayal and Mata Prasad on one side and her jeth Tulsi Ram on the other side. She stated about assault of Ram Prakash and Gur Dayal by lathies. She also got lathi blows from these three persons. It was suggested to her that she was living together with Tulsi Ram but she denied this suggestion. It is true that she could not say how many blows were given to whom and who gave them but for herself she could say that she received three or four lathies blows. All the three appellants had given lathi blows on them.

18. The F. I. R. in this case was lodged about four hours after the incident and in view of the fact that a person had died and arrangements were to be made to lead the injured persons to the police station and to the hospital, the delay may not be taken to be fatal. The injured persons were examined by the doctor on the date of the incident itself at about 1.00 p.m. The injuries of Smt. Maya Devi were three, caused by blunt objects, and these were recent injuries. The injury of Tulsi Ram was also a recent one caused by a blunt weapon. It was a lacerated wound on the head. Injuries of Rama Prakash were also recent and caused by blunt weapon. There were injuries on Gur Dayal also but he had not come forward to pledge his oath in court, Ram Prakash died subsequently and his injuries have already been described while discussing the evidence of the concerned doctor. From the statement of Tulsi Ram and Smt. Maya, we find natural corroboration and there is nothing in their statements making the story intrinsically impossible. It must, therefore, be held on the basis of the evidence on record that there had been an incident over certain claim and counter-claim of possession of the land in which the three appellants had used their lathies and injured several persons and one of them succumbed to his injuries subsequently. The real question that arises for consideration is whether by their act the accused persons would be liable for an offence under Sections 302/34, I. P. C. The F. I. R. and the statement of Tulsi Ram normally suggest that a land was claimed by Tulsi Ram on the basis of a patta and he was engaged in clearing it. The accused persons took objection to it and a quarrel started. The land is in front of houses of both Tulsi Ram and the accused persons. No paper concerning ownership of the land or no patta in favour of Tulsi Ram was brought on record. Only over this quarrel three persons hurled their weapons (lathies, which are normally carried by villagers) and the injuries were caused. For the death of Ram Prakash the medical report suggests three head injuries but only one could be connected with an internal injury which, too, was a linear fissured fracture. Death was due to shock and haemorrhage but the evidence of Tulsi Ram and that of P. W. 1 suggest that x-ray was advised but it was not done. The doctor holding postmortem examination had admitted that upon proper treatment of injury No. 2 the injured could have been saved. He further stated that the effect of shock would aggravate, if no treatment is given and negligent handling of a case of fracture would also aggravate its effect. Although the doctor had stated that the injuries were sufficient and were such as would ordinarily cause death, the other statements of the doctor suggest that negligent handling and lack of timely treatment accelerated deterioration and that had resulted in the death of Ram Prakash.

19. Looking to the genesis of the trouble, and immediate quarrel over the land and use of lathies only one of which had caused the internal injuries and looking to the fact that the witnesses could not locate as to who gave the fatal blows, it is not proper to infer that the accused persons had the intention to cause death or had the requisite knowledge that in all probability their actions would cause death. The incident must have occurred at the spur of the moment and it could

be only inferred from the circumstances of the case that the accused persons had shared a common intention of causing only grievous hurt by lathies so for Ram Prakash was concerned. The conviction of the appellants on the charge under Sections 302/34, I. P. C. should thus be converted to one u/s 325/34, I. P. C. The other charges against them are for causing hurt to Smt. Maya and Tulsi Ram and they were convicted under Sections 323/34, I. P. C. also. From the evidence on record, there is no reason to interfere with this conviction or the sentence awarded thereunder. For the conviction u/s 325/34, I. P. C. it may be noted that the incident is of 1980 and for the last 17 years they are facing the prosecution at the investigation, trial or appellate stage. Under these circumstances, it is thought proper that a sentence of R. I. for two years and fine would meet the ends of justice.

20. Accordingly, the appeal stands dismissed with modification as indicated above. The conviction and the sentence of the three appellants u/s 323/34, I. P. C. is maintained. Their convictions u/s 302/34, I. P. C. is converted to one u/s 325/34, I. P. C. and each is sentenced to R. I. for two years. In addition to this sentence each of the three appellants is to pay a fine of Rs. 2000/- in default to undergo further rigorous imprisonment for six months. The substantive sentences are to run concurrently. Fine is to be deposited within two months from today. The appellants who are on bail are to surrender before the G. J. M., Jalaun at Orai within 15 days from today to serve out the imprisonment subject to adjustment u/s 428, Cr. P. C.