
(1983) 05 AHC CK 0059
In the Allahabad High Court
Case No : Criminal Appeal No. 269 of 1981

Niyaz Ahmad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-05-1983

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 308

Uttar Pradesh First Offenders Probation Act, 1938 — Section 4

Citation : (1983) 7 ACR 307

Hon'ble Judges : R.C. Deo Sharma, J

Bench : Single Bench

Advocate : Shanti Prakash and Mridul Prakash, for the Appellant;

Final Decision : Dismissed

Judgement

R.C. Deo Sharma, J.—The Appellant has been convicted for an offence u/s 304, Part II, IPC by the learned II Additional Sessions Judge, Bahraich, by his order dated 2-4-1981 and sentenced to undergo R.I. for a period of two years. He was tried along with two other ladies who have since been acquitted. According to the prosecution version Daulat deceased was the real brother of Munawwar Ali PW 1 who was the informant in this case. Smt. Bismillah is the wife of the deceased Daulat. The wife of the complainant Munawwar Ali, the wife of Daulat deceased and the wife of the Appellant Niaz Ahmad are admittedly real sisters. It was on 10-4-1979 at about sun set that an exchange of abuses was going on between Smt. Saira and Smt. Hajra both since acquitted on the one hand and Smt. Bismillah wife of the deceased Daulat, on the other. The deceased went to mediate into the affair but Smt. Hajra caught hold of his testicles while Smt. Saira caught the deceased by his waist. The deceased cried at which his brother Munawwar Ali besides Sidhari and Akbar Ali witnesses arrived on the spot. Meanwhile Niaz Ahmad the Appellant also came out of his house and struck a Pati blow on the head of the deceased who became unconscious. First information report of the occurrence was lodged at 10.30 A.M. the next morning

as the police station was about 8 miles away and during night no arrangement for bullock-cart or for crossing the river lying in between, could be made. Investigations were taken up by Sub-Inspector Ram Bodh Dubey in whose absence the FIR was lodged. Later Daulat died of his injuries and the case which was originally registered u/s 308 IPC was converted into one u/s 304, IPC. Post-mortem examination was conducted on the dead body and after completing the investigations a charge-sheet was submitted.

2. The evidence adduced by the prosecution consisted of the statements of Munawwar Ali PW 1 and Smt. Bismillah PW 3 as eye-witnesses of the occurrence. Sidhari PW 2 was also examined as an eye-witness but he only supported the prosecution version partly and was rather declared hostile. Other evidence was of a formal nature. The investigating officer and Dr. M. Shamim were also examined.

3. The Appellant denied his participation in the crime and alleged that he had been falsely implicated on account of ranjish over certain land which was allotted in his Chak but was being cultivated by Munawwar Ali and the deceased Daulat. No evidence was adduced in defence.

4. The learned Additional Sessions Judge on a consideration of the evidence found that the two ladies who had been arrayed as accused did not share the common intention of killing the deceased nor had they caused any injuries to him and simply because they grappled with the deceased without intending that the Appellant might cause him hurt, they could not be held guilty and consequently they were acquitted. The Appellant was, however, found guilty under Part II of Section 304 IPC and looking to the circumstances he was sentenced to two years RI only.

5. In this appeal it has been contended that the evidence fell short of establishing the guilt and that no case u/s 304 IPC was made out. Benefit of the Children Act was also claimed. I have heard the learned Counsel for the Appellant as also for the State and have gone through the record.

6. It has not been disputed on behalf of the Appellant that Munawwar Ali and the deceased Daulat were real brothers and the wives of the informant, the deceased and the Appellant are real sisters. It is also admitted on both sides that the houses of the parties are close by and some altercations had taken place on the land lying between the houses close to the door of the Appellant. The eye-witness account has come from Munawwar Ali and Smt. Bismillah which the learned Judge has fully discussed and believed. On going through the evidence on record, there is no valid reason to differ from the findings recorded by the trial court because both these witnesses have consistently supported the prosecution version. Smt. Bismillah's presence cannot be denied because she was one of the participants in the exchange of abuses. Munawwar Ali arrived when he heard the noise and the shout of the deceased. True that Sidhari was declared hostile, but in certain particulars he also supported the prosecution story fixing the time and the place of the occurrence though he stated that the

deceased had already received the blow on his head and that the Appellant had already disappeared from the scene by the time he arrived. On a consideration of the evidence I am satisfied that the Appellant had struck the Pati blow on the head of the deceased immediately after coming out of the house. The parties are closely related and atleast the wives of the Appellant and the deceased and the informant are real sisters. There is no reason why they will falsely implicate Niaz Ahmad so closely related to them. The fight took place at the spur of the moment and as a result of the altercation amongst the ladies, and only looking to this aspect of the matter the learned court below has treated the case as falling under Part II of Section 304 of IPC and has given a lenient sentence of two years" RI which cannot be said to be severe. That being so, the appeal on facts is devoid of merits.

7. It has, however, been contended that the Appellant should have in any case been given the benefit of the U.P. First Offenders" Probation Act. At the time of making his statement u/s 313 CPC he was 20 years of age and should have been about 18 years when the occurrence took place. Technically his case was not covered under the Children Act of which benefit has been claimed in the memo of appeal, but during arguments it was submitted that benefit of the U.P. First Offenders" Probation Act might be extended to him. Looking to the fact that the deceased and the Appellant are closely related and their wives are also real sisters and also the fact that the Appellant was only 18 years of age when the offence was committed, it appears to be a fit case in which benefit of the U.P. First Offenders" Probation Act might be extended. The fight had taken place at the spur of the moment and it was not a pre-meditated assault. The learned trial court also appeared to be of the view that benefit of the said Act might be given to the Appellant but it felt that the offence was punishable with imprisonment for life and therefore, benefit of the Act could not be extended. It may be observed that the Appellant has been found guilty for an offence under the II part of Section 304 IPC for which the maximum punishment that can be awarded is ten years" imprisonment. This was not a case where conviction was recorded under the First Part of Section 304 IPC where of course the punishment provided was imprisonment for life. That being so, benefit of the First Offenders" Probation Act could be extended in the case. It is the offence proved against an accused and not the offence for which he is charged that will determine the applicability or otherwise of the U.P. First Offenders" Probation Act and that being so the benefit of the Act could be extended to a person convicted under Part II of Section 304 IPC. This is therefore, a fit case in which instead of sentencing the Appellant to imprisonment he may be given the benefit of Section 4 of the said Act.

8. In this view of the matter while the appeal is dismissed and the conviction of the Appellant u/s 304, Part II of the IPC is upheld, the sentence of imprisonment awarded is set aside. He shall be released on probation of good conduct on his entering into a bond with sureties to appear and receive sentence when called upon during a period of two years and in the meantime to keep peace and be of good behaviour. The bonds shall be furnished to the satisfaction of the Chief

Judicial Magistrate, Bahraich. On his failure to furnish the bonds as aforesaid within six weeks from this date, the benefit of the U.P. First Offenders' Probation Act shall automatically stand withdrawn and the sentence of imprisonment already awarded by the trial court shall be executed. He is already on bail and shall therefore, remain so for six weeks from this date. The Chief Judicial Magistrate shall send compliance report within two months.