

(2005) 12 AHC CK 0174
In the Allahabad High Court
Case No : Criminal Appeal No. 1909 of 1981

Radhey Shyam (In Jail)

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 307, 320, 324, 326, 34

Citation : (2005) 12 AHC CK 0174

Hon'ble Judges : Mukteshwar Prasad, J

Bench : Single Bench

Advocate : Neeraj Agarwal, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Mukteshwar Prasad, J.—Accused Radhey Shyam has come up in appeal to this Court u/s 374(2) Cr.P.C. against the judgment and order-dated 24.8.1981 passed by the then Additional Sessions Judge, Kanpur Nagar in ST. No. 359 of 1980 whereby he convicted the accused u/s 326 of the Penal Code and sentenced to undergo rigorous imprisonment for a period of four years.

2. In brief, the facts of the prosecution case were as under:

3. Accused Radhey Shyam is son of Ganga Prasad, who was landlord of House No. 20 Lal Kurti Bazar, P.S. Cantt, Kanpur. The landlord and his family resided on the ground floor and second floor of the house. P.W.2 Badlu Ram, the informant and victim of the incident lived in one room on the first floor as a tenant along with his wife and son P.W.3 (Shiv Shankar). Ganga Prasad had filed a civil suit for eviction of Badlu Ram from his house but civil suit was decided in favour of the tenant.

4. Badlu Ram and his wife Smt. Manki were sleeping on two cots in the aforesaid room in the night intervening 31st October and 1st November, 1978. The informant's son Shiv Shankar was sleeping on a cot on the Balcony (Chhajja). At

about 3-00 A.M., Badlu Ram suddenly felt irritation in the body. He woke up and saw his landlord Ganga Prasad and his son Radhey Shyam inside his room. Radhey Shyam was having a bottle in his hand. Badlu Ram raised alarm. Both father and son went out of the room and ran downwards through staircase. The informants wife, his son and neighbour arrived there and all saw father, and son going downwards. Both father and son were seen and identified in the light of electric bulb (Jhalar). One Sundar Lal, who resided as a tenant on the ground floor also, arrived there. Ganga Prasad and Radhey Shyam took shelter in their house and closed the room from inside. They did not come out. Badlu Ram was taken to hospital by members of the family and neighbour.

5. P.W.6 Dr. N. Hasan, Medical Officer of U.H.M. Hospital, Kanpur examined the injuries of Badlu Ram, son of Prayagoo on 1.11.1978 at 3-45 A.M. and found the following injuries:

1. Corrosive burn left side neck just below left ear, left side chest, left arm and forearm.

2. Corrosive burn left thigh front and inner side.

3. Corrosive burn 4 cm. x 3 cm. on right side chest.

4. Corrosive burn in mid line (neck to lower end vertebral Column left scapula and upper half of back eye side and multiple spot all over the back.

6. The injured was admitted in the hospital and was discharged on 13.12.1978 and was kept under observation. All the injuries were found to be fresh.

7. Badlu Ram dictated a report to Roop Chand on the same day and signed the report. An F.I.R. was lodged at P.S. Cantt. Shiv Shankar and Roop Chand reached the Police Station and handed over a report. The police registered a case at crime No. 1053 on 1.11.78 at 1-30 P.M. u/s 324 I.P.C.

8. P.W.5 S.I. Ram Bali Singh was entrusted investigation of the case. He interrogated the injured in the hospital and after inspection of the scene of incident, prepared a site-plan. He interrogated Smt. Manki and her son Shiv Shankar also. He collected clothes, dari, pillow, etc. of the injured and prepared a Fard. After completing investigation, the I.O. submitted charge sheet against father and son u/s 324/307 I.P.C.

9. After committal of the case to the Court of Session, both Ganga Prasad and Radhey Shyam were charged u/s 307 read with Section 34 I.P.C. on 23.10.80. They pleaded not guilty and claimed to be tried.

10. During the trial, the prosecution examined P.W.1 H.C. Babu Lal, who prepared chik report and made entry in the G.D., P.W.2 Babu Ram, the informant and art injured, P.W.3 Shiv Shankar, who is said to be an eyewitness, P.W.4 Sunder Lal, who is also said to be an eyewitness, P.W.5 S.I. Ram Bali Singh I.O. of the case and P.W.6 Dr. N. Hasan who had examined the injuries of Badlu Ram.

11. Besides, the prosecution filed certified copy of the judgment of civil suit dated 24.1.78 and. chemical examiner's report dated 5.12.79 also.

12. The appellant in his statement given u/s 313 Cr.P.C. admitted that his father was landlord of House No. 20 Lal Kurti Bazar, Kanpur and they lived on the ground floor. He further admitted that Badlu Ram alongwith his wife and son resided as a tenant on the first floor. He pleaded his ignorance about the result of civil litigation. He totally denied all accusations levelled against him and pleaded his false implication on account of enmity. The appellant's father admitted that he lost the civil suit. The appellant's father also admitted that it was the Deepawali night and electric bulb (Jhalar) was hanging in front of his room but there was no light inside the room of Badlu Ram. Accused examined one Phool Chand, a rickshaw driver, in his defence.

13. After considering the entire evidence on record led by the parties and arguments advanced on their behalf, learned trial Judge found Radhey Shyam guilty for committing an offence punishable u/s 326 I.P.C. and convicted and sentenced him as noted above. Ganga Prasad was not found guilty and was given benefit of doubt.

14. I have heard learned Counsel for the appellant, learned A.G.A. and perused the entire record carefully.

15. In the instant case, it is undisputed that Ganga Prasad was owner and landlord of a three-storied building No. 20 in Mohalla Lal Kurti Bazar, Kanpur and he and his family was occupying ground floor and second floor. Badlu Ram, his wife Smt. Manki and his son Shiv Shankar lived in one room as a tenant in the same building on the first floor. It is admitted that the landlord had filed a civil suit for eviction of the tenant which was decided in favour of Badlu Ram and this defeat in the litigation caused annoyance. The landlord and his son were not happy with the result of litigation. It is also admitted that Badlu Ram sustained burn injuries on different parts of the body in the fateful night at about 3 O'clock and was taken to U.H.M. Hospital, Kanpur for examination of the injuries and treatment. D.W.1 Phool Chand stated that it was he who carried Badlu Ram to hospital on his rickshaw. Thus, it is crystal clear that Badlu Ram sustained burn injuries on chest, left thigh, neck and back at about 3-00 A.M. on 1.11.78. Admittedly, it was Deepawali's night and electric bulb "(Jhalar) was burning outside the building. It has also come in the evidence that there was an electric bulb on the road. Thus, there was sufficient light in which the known persons could be recognized easily.

16. There is reliable evidence of Badlu Ram, his son Shiv Shankar and P.W.5 S.I. Ram Bali Singh, I.O. that Badlu Ram was sleeping in his room on the first floor in the night in question. P.W.3 Shiv Shankar, who was sleeping on the Balcony corroborated his father and gave out that his father and mother were sleeping inside the room. The I.O. also found and recovered burnt Baniyan, Underwear, Chadar, Dari, Pillow, Charpai Band and the Cement and sealed the articles. Thus,

I find overwhelming evidence on record to the effect that incident in question took place inside the room where Badlu Ram and his wife were sleeping.

17. I find from the aforesaid discussion and scrutiny of the evidence on record that the prosecution proved by cogent and convincing evidence that on 1.11.78 at about 3-00 A.M. Badlu Ram sustained burn injuries on different parts of the body inside his room and was taken to hospital for examination of the injuries and treatment; P.W.6 Dr. N. Hasan gave out in clear words that injuries in question could be caused by acid or alkali.

18. Now the relevant question is as to who perpetrated the crime. As mentioned above, the parties were having strained relations on account of litigation and the landlord wanted to evict Badlu Ram from his house. P.W.2 Badlu Ram testified in clear words that there was sufficient light of electric bulbs (Jhalar) from top to bottom of the building. On the road, tube light was also burning and there was sufficient light inside the room. When he felt irritation in the left part of the body, he woke up and saw the appellant standing there near his cot. He was having a bottle in his hand. The appellant's father was standing there near the cot of his wife. It was added by the injured that on his alarm, both father and son went out of the room. In the meantime, his wife and son woke up and arrived there. One Gobardhan also reached there. Both father and son were chased by them but they took shelter inside their room. They knocked the room of the appellant but they did not open. The injured was cross-examined at length but I find nothing in his cross-examination to disbelieve his testimony. Admittedly, Badlu Ram is a washer man and was employed in Army. According to him, he did washing work of Army employees and was supplied material from the store. He had not kept/stored acid in his room.

19. P.W.3 Shiv Shankar was a student of High School and disclosed that he saw Ganga Prasad and his son (Radhey Shyam) coming out of the room of his father. Radhey Shyam was having a bottle. In his cross-examination, he asserted that he did not see the appellant inside the room but saw him and his father coming out of the room.

20. In view of the aforesaid discussion and analysis of the oral evidence on record, It is crystal clear that it was the appellant carrying a bottle filled with acid in his hand reached the room of Badlu Ram and poured acid on different parts of the body with a view to cause serious injuries. The presence of injured son (Shiv Shankar) appears to be quite natural and he must have seen the appellant coming out from the room and going downwards through the staircase. Even if the testimony of Shiv Shankar is excluded from consideration, there is reliable and convincing evidence of the injured himself who corroborated the prosecution version on all material points. I find no ground or reason to falsely implicate the appellant. It is well settled that an injured would be the last person to spare the real assailants and falsely implicate innocent persons.

21. So far as the defence evidence is concerned, the rickshaw puller could not

help the appellant. It was submitted that F.I.R. was lodged promptly. In view of the serious burn injuries on various parts of the body, it was quite natural for the members of the family to take the injured to hospital first to provide him medical aid. This was done in this case. Therefore, the delay, if any, has been fully explained by the circumstances of the case. Besides, I find that the appellant had a motive also for committing the offence.

22. There is reliable evidence of the doctor that Badlu Ram remained hospitalized from 1.11.78 to 13.12.78. It means, he remained in hospital for about 1 1/2 months.

23. Section 320 I.P.C. defines grievous hurt.

Clause Eighthly provides that any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

24. In the instant case, the injured remained in hospital and suffered serious bodily pain for about 1 1/2 months. In this view of the matter, I hold that the trial Judge rightly convicted the appellant u/s 326 I.P.C. So far as the sentence is concerned, I am of the opinion that the same is not excessive. Consequently, I hold that this appeal lacks merit and is liable to be dismissed.

25. The appeal fails and is hereby dismissed. The conviction and sentence recorded against the appellant are upheld. He is on bail. His bail is cancelled. He shall be taken into custody and sent to Jail to serve out the sentence.

26. A copy of this judgment alongwith lower court record shall be sent to the court concerned/C.M.M. Kanpur for necessary compliance of the order with an intimation to this Court within six weeks from the date of receipt of the record.