
(2010) 06 UK CK 0024
In the Uttarakhand High Court

Raju and Another

APPELLANT

Vs

State of U.P. Now State of Uttarakhand

RESPONDENT

Date of Decision : 25-06-2010

Acts Referred:

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

Citation : (2010) 06 UK CK 0024

Hon'ble Judges : Nirmal Yadav, J

Bench : Single Bench

Judgement

Nirmal Yadav, J.—Present appellants stood trial for the offence punishable u/s 307 of the Indian Penal Code (for short "IPC") read with Section 34 IPC along with accused Pappy, who was tried for the offence punishable u/s 307 IPC. Both the appellants have been convicted u/s 307 IPC and sentenced to undergo four year rigorous imprisonment each. Accused Pappy has since died, therefore, the appeal against him stands abated.

2. The criminal law was set in motion on the written complaint (exhibit Ka 1) submitted by Mohan Singh (PW1), brother of injured Mahendra Singh Negi. As per the complainant, he along with his brother Mahendra Singh Negi was going to the market on 24.04.1992 at about 10.00 p.m. and when they reached near M.P. Inter College Tiraha, they found one marriage party from Moradabad going towards Ram Nagar town. Some persons of the marriage party were making noise and creating nuisance on the road. Mahendra Singh Negi advised them not to behave in that manner, thereupon, two persons caught hold of Mahendra Singh Negi and their third companion gave knife injuries in the stomach of Mahendra Singh Negi. On raising alarm, Naval Kishore and Hardev Singh also reached the spot and saved Mahendra Singh Negi along with complainant. Two assailants were apprehended at the spot while third person ran away from the spot. On inquiry, the two persons, who were apprehended at the spot, disclosed their name as Raju, son of Prithvi Singh, resident of Mohalla Diwan ka Bazar, police station Nagphani, Moradabad and Mahendra, son of Shyam Lal, resident of

Mohalla Ojhan, police station Kashipur. The name of the person, who fled from the spot, was disclosed as Pappy, resident of Mohalla Diwan ka Bazar, Moradabad. The injured was removed to Civil Hospital, Ram Nagar. The complainant went to the police station to submit complaint (exhibit Ka 1) along with the accused persons, who were apprehended at the spot. On the basis of complaint, chick First Information Report (exhibit Ka 10) was recorded in police station Ram Nagar on 24.04.1992 at 11.10 p.m. G.D. Entry in this respect is exhibit Ka 11. The injured was medico legally examined by PW3 Dr. Narendra Singh on the same day at about 10.10 p.m. The medico legal report is exhibit Ka 3. The investigation was conducted by PW4 SI Lal Singh, who recorded the statements of witnesses and prepared site plan of place of occurrence exhibit Ka 8 on the pointing out of the witnesses. He took into possession the clothes of injured Mahendra Singh Negi worn by him at the time of occurrence vide memo exhibit Ka 2.

3. Dr. Narendra Singh vide medico legally report exhibit Ka 3 found the following injuries on the person of injured Mahendra Singh Negi:

- i. Incised wound 4 cm X 2 cm over right anterior chest 6 inter-space. Fresh bleeding was present.
- ii. Incised stab wound 3 cm X 3 cm over left 9th space anterior auxiliary line. Overtum seen coming outside wound from abdomen.
- iii. Abrasion over sub mental space obliquely placed 3 cm X .5 cm.
- iv. Abrasion over left face just below medio inferior side of left eye.

4. As per opinion of the doctor, injury Nos. 1 and 2 could be caused by some sharp and pointed weapon at about 10.00 p.m. on 24.04.1992. Both the injury Nos. 1 and 2 could be dangerous to life being caused on vital parts of the body. The injured was admitted on 24.02.1992 at 10.10 p.m. in the hospital and was discharged on 10.05.1992 from the hospital. He was operated on 25.04.1992 at 12.05 p.m. As per opinion of doctor, if injured was not operated for repairing of the effected part of the body i.e. root of liver and stomach, he could have died on account of injuries received by him.

5. On completion of the investigation, chargesheet was submitted against the accused persons. On the basis of material on record, the charge u/s 307 was framed against accused Pappy while present accused/appellants Raju and Mahendra were charged u/s 307 read with Section 34 of IPC. All the accused pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined complainant Mohan Singh as PW1, injured Mahendra Singh Negi as PW2, Dr. Narendra Singh as PW3 and SI Lal Singh as PW4.

7. Accused when examined u/s 313 Cr.P.C. denied the allegations put to them by the prosecution and pleaded false implication on account of enmity. However, the

accused did not produce any evidence in defence.

8. Learned trial court after taking into consideration the evidence on record convicted accused Pappy for the offence punishable u/s 307 IPC holding that he had inflicted knife injuries to Mahendra Singh Negi with such intention or knowledge and under such circumstances that if by that act he had caused death of Mahendra Singh Negi he would have been guilty of murder and that his co-accused Raju and Mahendra shared common intention with accused Pappy to commit murder of Mahendra Singh Negi as they caught hold of injured Mahendra Singh Negi while accused Pappy inflicted knife injuries to him.

9. Since aggrieved, present appellants have challenged the judgment and order of the trial court. I have heard learned Counsel for the accused and learned AGA for the State.

10. Learned Counsel for the appellants submitted that the prosecution has failed to prove its case beyond reasonable doubt. The prosecution case mainly rests on the testimony of injured Mahendra Singh Negi and his brother Mohan Singh (complainant). He argued that both of them are interested witnesses while two independent witnesses Naval Kishore and Hardev Singh, who are alleged to have witnessed the occurrence and apprehended the present appellants Mahendra and Raju at the spot have not been produced. Thus, prosecution case is not supported by any independent evidence. He argued that the only allegation against the present appellants is that they are alleged to have caught hold of Mahendra Singh Negi while Pappy had inflicted fatal injuries. It is argued by the learned Counsel for the appellants that occurrence took place on the road where no source of light has been shown in the site plan while marriage party was in procession, therefore, it was not possible to identify the appellants. He further argued that even presence of Mohan Singh is not proved beyond reasonable doubt. He pointed out that as per injury report, injured was brought to the hospital by Hardev Singh, if Mohan Singh was present at the spot his name should have been mentioned in the injury report.

11. On the other hand, learned AGA argued that both the appellants were apprehended at the spot, while accused Pappy, who inflicted knife injuries had run away from the spot. Both injured Mahendra Singh Negi and the complainant Mohan Singh have categorically stated that accused Raju and Mahendra Singh had caught hold of Mahendra Singh Negi while third person whose name was disclosed as Pappy ran away from the spot. They have also stated that since it was marriage party and there was sufficient light of gas lantern and mercury, therefore, accused could very well be recognized by the complainant and injured. First Information Report was lodged with promptitude. Complainant Mohan Singh first removed the injured to the hospital and thereafter, he went to the police station to lodge the report. The medical evidence fully supports the testimony of both the witnesses.

12. On careful consideration of the rival submissions of learned Counsel for the

parties and scrutinizing the entire evidence on record, I find no ground to interfere with the findings and conclusion arrived at by the trial court. The prosecution case is fully supported by the statement of complainant Mohan Singh, who has reiterated the facts mentioned in the First Information Report. He categorically stated that present appellants were apprehended at the spot. They disclosed their names and addresses and thereafter, they had disclosed the name and address of third person, which found mentioned in the First Information Report (exhibit Ka 1). His statement is fully corroborated by injured Mahendra Singh Negi, who has stated that he was conscious even after receiving injuries and had become unconscious only after he had reached the hospital.

13. The non examination of the independent witnesses does not create any doubt with regard to correctness of the prosecution case. In the present case, complainant and injured had no enmity with the accused persons. Both the witnesses even did not know the accused persons. All the accused were members of the marriage party and when injured objected and advised the accused persons not to create nuisance on the road, they got enraged and caught hold of injured and accused Pappy inflicted knife injuries. In these circumstances, this Court is of the view that failure to examine the independent witnesses does not cause any dent in the prosecution case. Accordingly this Court does not find any ground to disbelieve the statements of the prosecution witnesses.

14. Learned Counsel for the appellants also argued that prosecution has failed to establish the place of occurrence. He referred to the statement of Mohan Singh complainant who has stated that when the occurrence took place they were at a distance of 5 metres from the Tiraha whereas the Investigating Officer PW4 Lal Singh stated that occurrence took place on the Tiraha which is in the middle of the road.

15. This argument of the learned Counsel for the appellants is not at all acceptable. A perusal of the site plan (exhibit Ka 8) shows that point "A" is the place where the accused Raju and Mahendra had caught hold of Mahendra Singh Negi (injured) and was assaulted and this place is not in the middle of the Tiraha, it is little away from the middle of the Tiraha. Moreover, PW1 Mohan Singh has stated that they had reached 5 metres before the Tiraha and altercations took place at that place. He has not stated that this is the place where injuries were caused to the injured by the accused. Thus, the argument of the learned Counsel of the appellants that prosecution has not established the place of occurrence cannot be accepted.

16. From the evidence on record, it is clear that both the appellants had only caught hold of injured Mahendra Singh Negi and their third companion Pappy had caused knife injuries to him. As per opinion of the doctor, injuries caused on the person of injured were dangerous to life. As per the statement of the injured present appellants had gave him push when he told them not to make nuisance and be peaceful. Thereafter, the injured also caught hold of them meanwhile,

accused caught hold of him while Pappy gave knife injuries to him. From the facts on record, there is nothing to show that appellants had shared common intention with their third companion Pappy to cause such injuries which were dangerous to life. It appears that they only wanted to retaliate to the objections raised by the injured.

17. Learned Counsel for the appellants argued that at the time of occurrence accused Raju and Mahendra were of 22 year and 26 year old respectively, now 18 years have elapsed and both the accused have attained the age of 40 year and 44 year. He further argued that accused have no criminal history and they have neither any enmity with the injured nor had any intention to kill him and therefore, lenient view may be taken and sentence may be reduced by taking into consideration the totality of the circumstances and the fact that 18 year has elapsed since the time of occurrence and appellants had actually no intention even to cause serious injuries to the injured.

18. After considering the facts and circumstances of the case, this Court is of the view that since the appellants did not share intention to cause such injuries, on the person of the injured, which fall within the purview Section 307 IPC and they were alleged to have caught hold of the injured, therefore, they cannot be convicted u/s 307 with the aid of Section 34 IPC, however, at the most they can be convicted for an offence of voluntarily causing hurt punishable u/s 324 IPC. Therefore, conviction u/s 307 IPC read with Section 34 IPC cannot be maintained. The appeal is partly allowed. Appellants are convicted u/s 324 IPC and they are sentenced to the period already undergone and to pay fine of Rs. 5000/- each. In case of default of payment of fine, they shall further undergo one year RI each. The fine so deposited by the appellants shall be paid to the injured Mahendra Singh Negi.

19. Appeal of appellant Pappy stands abated.