
(2009) 03 AHC CK 0130
In the Allahabad High Court

Ram Pati and Rekha Ram

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

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

Citation : (2009) 03 AHC CK 0130

Hon'ble Judges : Alok K. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok K. Singh, J.—Under challenge in this appeal is the judgment and order dated 28.01.2006 rendered by Sri Ram Raj, the then Additional Sessions Judge/ Fast Track Court Court No. 5, Gonda convicting the appellants Ram Pati and Rekha Ram u/s 307 read with Section 34 I.P.C. and sentencing both of them to undergo Rigorous Imprisonment for 7 years each and to pay a fine of Rs. 2000/- each, in default to undergo six months" each additional R.I.

All the sentences were directed to run concurrently.

2. Briefly stated the facts are that on 05.10.1994 at about 4.00 p.m. complainant Brij Lal was doing some work in his field. It is said that appellant Ram Pati had ploughed his adjoining field by encroaching upon the field of the complainant upto 3 feet which was being rectified by the complainant. At that very time both the appellants came and started abusing them. The father of the complainant forbade them from doing so whereupon the appellant Rekha Ram having Ghandasa in his hand and Ram Pati having lathi in his hand started beating the complainant causing him as many as four injuries including three incised wounds and one abrasion. The report of the case was lodged and the complainant-injured was medically examined. After completion of the investigation charge-sheet was submitted against both the appellants.

After taking a cognizance the learned Magistrate committed the case to the court of sessions where charge u/s 307 read with 34 I.P.C. was framed. The appellants denied the charges and claimed trial.

3. In support of its case prosecution examined the following witnesses:

PW-1 Brij Lal, the injured.

PW-2 Ram Roop, an eye witness.

PW-3 Keshav Ram, an eye witness.

PW-4 Krishna Kumar Singh, an eye witness.

PW-5, Dr. R. P. Singh who examined the injuries.

PW-6 Constable Hari Karan Yadav.

The rest of the witnesses were discharged.

4. In their statements u/s 313 Cr.P.C. the appellants said that they have been falsely implicated on account of enmity. In their defence they examined one Ram Pati as DW-1 and also proved three documents which were exhibited as Kha-1, Kha-2 and 3.

5. After considering the evidence on record learned court below reached to the conclusion that the prosecution has fully proved the aforesaid charge and therefore convicted the appellants and sentenced them as mentioned hereinabove.

6. I have heard Sri Janardan Singh, Advocate on behalf of the appellants and Sri B. K. Nigam, learned Additional Government Advocate and perused the lower court record.

7. Learned Counsel for the appellants confines his arguments to the point of quantum of sentence only and, therefore, this Court is not advertent to the other grounds mentioned in the memo of appeal.

In respect of quantum of sentence the learned Counsel for the appellants makes the following submissions:

(a) All the four injuries of the complainant have been found to be simple in nature as opined by the doctor, PW-5, Sri R.P. Singh.

(b) There was no pre-meditation and the incident took place at the spur of the moment on account of petty matter of ploughing a small area of about 3 feet.

(c) Both the appellants are poor marginal farmers who earn their livelihood with great difficulty.

(d) The age of the appellant Ram Pati is mentioned in his statement u/s 313 Cr.P.C. is 65 years. The other appellant Rekha Ram, his son is a young person of 28 years. Both of them have their families.

(e) This was their first offence and after committing this crime they have not repeated it till date.

(f) The incident itself is about 14 years old and since then both the factions are living peacefully.

(g) The appellants are willing to compensate the injured persons by depositing appropriate amount of fine if so directed.

8. The learned A.G.A. has nothing to say substantial against the aforesaid submissions.

9. Keeping in view the aforesaid submissions, while conviction of the appellants u/s 307 read with 34 IPC is upheld, their sentences are modified as under:

(i) The sentence of imprisonment u/s 307/34 I.P.C. is reduced to the period already undergone (from 28.01.2006 to 03.06.2006) i.e. four months. But the amount of fine of Rs. 2000/- is enhanced to four times i.e. Rs. 8000/- each. The amount of fine may be deposited by each. of the appellants within three months from today. Out of the entire amount of fine of Rs. 16,000/- if so realized/ deposited a sum of Rs. 14,000/- (fourteen thousand only) shall be paid to the injured Brij Lal/heirs as compensation at the earliest. The remaining amount i.e. Rs. 2000/- shall go to the State exchequer. In case of default both the appellants will have to undergo six months" R.I.

13. Barring the aforesaid modifications the appeal stands dismissed.

14. The appellants are on bail. Their bail bonds and sureties shall stand discharged after deposition realization of the amount of fine as aforesaid.

15. The lower court record along with a copy of this judgment be remitted to the court concerned at once through Registrar of this Court, for compliance.