
(2010) 10 AHC CK 0032
In the Allahabad High Court
Case No : Criminal Revision No. 3474 of 2010

Ramjeet alias Shobhnath and Others	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 308, 323, 324, 325

Citation : (2011) 1 ACR 867

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Judgement

S.C. Agarwal, J.—Heard learned Counsel for the revisionists and learned A.G.A. for the State.

2. This revision is directed against the order dated 31.7.2010, passed by the Addl. Sessions Judge/F.T. Court No. 5, Jaunpur in S.T. No. 376 of 2008, State v. Ramjeet alias Sobhnath and Ors. whereby application 15-kha filed by the revisionists accused for discharge was rejected and the trial court decided to frame charge under Sections 323/34, 324/34, 325/34, 308/34, 504, 506 and 427, I.P.C. against revisionists and co-accused.

3. Heard Sri B. N. Singh, learned Counsel for the revisionists, learned A.G.A. for the State and perused the material available on record.

4. No notice is issued to private opposite party in view of the order proposed to be passed today, however, liberty is reserved for private opposite party to apply for variation or modification of this order if he feels so aggrieved.

5. The revisionists Ramjeet alias Sobhnath, Nanhku alias Nanhey Yadav, Smt. Rajkumari and one Shiv Raj Yadav are the accused in the aforesaid Sessions Trial.

6. Learned Counsel for the revisionists submitted that no intention on the part of the accused to kill the injured was alleged in the F.I.R., nor this fact was mentioned by the witnesses in their statements. Therefore, no motive to kill can

be inferred and from the perusal of the F.I.R., it is clear that the incident took place out of a sudden quarrel. The contention is that injuries found on the persons of the injured were not dangerous to life. There is a cross case also. It appears to be a case of free fight and charge u/s 308, I.P.C. was not made out.

7. Learned A.G.A. supported the impugned order and submitted that the revisionists were armed with lathi, danda and axe and caused injuries to Dal Singar Yadav, Suresh Yadav. Rajesh, Prema Devi and Virendra. Frontal bone of Suresh Yadav was fractured and hand of Prema Devi was also fractured. Therefore, offence u/s 308, I.P.C. was made out.

8. As per the F.I.R. lodged by opposite party No. 2, on 7.7.2007 at about 4 p.m. Ramjeet alias Sobhnath and his son Laxmi Shanker and Nanhku alias Nanhey started demolishing the naad (bowl shaped structure constructed for the purpose of feeding the cattle). When Prema Devi mother of the complainant stopped them, all the accused persons started beating Prema Devi. Virendra, Rajesh, Dal Singar and Suresh reached there to save Prema Devi. In the meantime, wife and brother-in-law of Ramjeet alias Sobhnath also started wielding lathis. Laxmi Shanker gave an axe blow to Virendra. Two teeth of Virendra were also fractured. Injured were taken to hospital.

Prema Devi sustained two lacerated wounds on head, a contused swelling on right hand and complaint of pain in left shoulder.

Virendra Kumar sustained one incised wound on right side of head, contusions on left fore arm, left shoulder Joint, just below left side back and mid of right arm. His two teeth were also missing from upper jaw associated with bleeding.

Rajesh sustained incised wound on left side of forehead and contusions on left side forehead, left side face and left side back.

Dal Singar sustained traumatic swelling on left fore arm and Suresh Yadav sustained two lacerated wounds on head and complaint of pain in right hand.

On X-ray, there was fractured of radius ulna of Dal Singar and frontal bone of Suresh Yadav was also fractured. There was a skin massive soft swelling alongwith hematoma in the x-ray report of Virendra Kumar. Prema Devi also sustained fracture on 5th metacarpal bone.

9. From the injuries of the victim on the prosecution side, it is apparent that Prema Devi, Virendra Kumar, Rajesh Kumar and Suresh Yadav sustained head injuries, which were caused by lathi and axe. Though there may not be intention to kill on the part of accused but causing injuries by a dangerous weapon like axe on the head may indicate that the accused persons at least knew that such injuries could cause death. If intention to kill was there, the proper charge would have been framed u/s 307, I.P.C. Since intention to kill was not found by the trial court, charge u/s 308, I.P.C. was decided to be framed.

10. Considering all the facts and circumstances of the case, version of the F.I.R.

and the injury reports of the victims, there was no ground to discharge the revisionists and the co-accused and the learned trial court rightly decided to frame charge under Sections 323/34, 324/34, 325/34, 308/34, 504, 506 and 427, I.P.C.

11. Learned Magistrate did not commit any error of illegality in rejecting the application for discharge and the impugned order does not suffer from any illegality and does not require any interference by this Court.

The revision is devoid of merit and is accordingly dismissed.