
(2016) 09 AHC CK 0197
In the Allahabad High Court
Case No : Criminal Appeal No. 526 of 1996.

Satyendra Age 35 Yrs and Others - Appellant @HASH The State of U.P.

Date of Decision : 29-09-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, Section 325, Section 34

Citation : (2016) 97 ACrC 274 : (2016) 10 ADJ 671 : (2016) 168 AIC 876

Hon'ble Judges : Mrs. Ranjana Pandya, J.

Bench : Single Bench

Advocate : K.N. Misra, Dharmendra Kumar Singh, Manjusha Kapil and Rajeev Verma, Advocates, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Mrs. Ranjana Pandya, J. - Challenge in this appeal is to the judgment and order dated 30.11.1996 passed by First Additional Sessions Judge, Hardoi in ST No. 242 of 1993 (State v. Sunder Lal and others) arising out of Crime No. 189 of 1992 under Sections 307/34, 324/34, 325/34 IPC, Police Station Kasimpur, District Hardoi whereby accused were found guilty and sentenced to six months' rigorous imprisonment under Section 323/34 IPC and fine of Rs. 500/- each with default stipulation. Accused persons, however, were acquitted under Section 307/34 IPC.

2. Prosecution case in brief is that a written report was lodged by the informant Jaswant on 03.10.1992 stating that his mother had got a sale deed executed in her favour due to this a case was pending under Section 145 Cr.P.C., which was finally decided in favour of the mother of informant. It has been further alleged that the informant had sown crops in the fields. When the crops were ripe, the informant, his brother Laljeet and his nephew Siyaram were harvesting the crops. Due to previous enmity accused persons namely Sunder Lal armed with lathi, Satyendra armed with country-made rifle, Jitendra armed with gun and Guddu armed with Lathi came on spot at 8:30 AM. Satyendra asked his companions to kill the informant, at which Satyendra fired at the informant with intention to kill him. The informant fell down on the spot at which the accused

persons came to the injured and started beating them with Lathis. Shailendra and many villagers came to the spot who saved the informant, after which the first information report was lodged.

3. On the basis of the aforesaid report chik report was prepared and proved by PW-5, Head Constable Ram Nath Yadav as Ext. Ka-8. This witness further scribed the details of the case in the G.D., copy of which was proved by him as Ext. Ka-9. PW-4 Dr. Bindeshwari Prasad examined injured Siya Ram and found the following injuries on his body:-

(a) Swelling and pain 3 cms x 3.5 cms on base of middle finger on dorsum of left hand.

(b) Abrasion 1 cms x 1 cms on outer aspect of left thigh 10 cms above the left knee joint.

4. He proved the injury report as Ext. Ka-7. This witness also examined the injuries on the person of Jaswant and proved the injury report as Ext. Ka- 3. The following injuries were found on his person:-

(a) Lacerated wound 3.5 cms. x 0.5 cms x skin deep on top of head 9 cms above and away to left ear's Anna.

(b) Abrasion 2.5 cms. x 1 cms on right of head, 3 cms. above and away to right ear's Anna.

(c) Lacerated wound 2 cms. x 1 cm x muscle deep on post aspect of left upper arm, 4 cms above to the left elbow joint.

(d) Swelling and pain on dorsum of right hand of right arm.

(e) A single firearm pellet injury size 0.3 cms x 0.3 cms on post aspect of left forearm 10 cms below to the left elbow joint. No debug done. No blackening and tattooing.

(f) Complaining of pain all over to both shoulders and back.

5. Lal Jeet was also examined medically by this witness and the injury report was proved by this witness as Ext. Ka-5. On the person of Lal Jeet the following injuries were found:-

(a) Contusion 8 cms x 4 cms on left shoulder, injury is contusion and abrasion minimal.

(b) Contusion 29 cms x 4 cms on middle back (left side) 12 cms. below to contusion injury No. 1.

(c) Lacerated wound 1.5 cm x 0.5 cm x muscle deep, post aspect left forearm, 12.5 cms below to left elbow joint.

(d) Swelling 13 cms x 7 cms on whole dorsum of left hand.

(e) Lacerated wound 2 cms. X 0.5 cms x skin deep on post aspect of right forearm, 9 cms below to the right elbow joint.

(f) Complaining of pain all over left shoulder and left arm.

6. Supplementary reports of injured Jaswant and Laljeet were prepared by this witness which were proved by this witness as Ext. Ka-4 and Ka-6. The prosecution proceeded to examine injured Jaswant, PW-1 who is also an eye-witness. PW-2, Laljeet who is also an injured eye-witness. PW-3 is Shailendra who is also an eye witness.

7. Investigation was entrusted to Narendra Singh Yadav, SI, PW-6 on 3.10.1992. He copied the chik report and GD coupled with injury report of the injured persons in the Case Diary. He recorded the statement of injured Jaswant at Police Station and proceeded to the place of incident. He prepared the site-plan as pointed by the informant which was proved by this witness as Ext. Ka-10. After that he recorded the statement of Sunil Kumar and Jai Singh. On 04.10.1992 he recorded the statement of Anil Kumar and Shailendra. He took the clothes of informant in possession and prepared the recovery memo which was proved by him as Ext. Ka-2.

8. On 13.10.1992 Investigating Officer took into possession the copy of sale deed executed in favour of the mother of informant and received supplementary reports of the injured which were noted in the Case Diary, on the basis of which addition of Section 325 IPC was made. Investigation by this witness ended into a charge sheet which was proved by him as Ext. Ka-11.

9. After close of the prosecution evidence, statements of accused appellants were recorded under Section 313 Cr.P.C., who denied the occurrence and stated that they had been falsely implicated due to rivalry of election of village Pradhan and two documents were produced by the defence.

10. The learned Trial Court after having heard the arguments of the learned counsel for the parties has proceeded to convict the accused appellants as narrated in para - 1 of the judgment.

11. Being aggrieved with the impugned judgment and order passed by the learned Trial Court, the appellants have come up in appeal before this Court.

12. I have heard the learned counsel for accused appellants, learned AGA appearing for the State and perused the record.

13. The learned counsel for the accused appellants has submitted that the impugned judgment and order under appeal has been passed by the learned Trial Court and without appreciating the evidence on record in its correct perspective.

14. Per contra, the learned AGA has submitted that the impugned judgment and order of conviction and sentence is sustainable in the eyes of law and the appeal lacks merit and is liable to be dismissed.

15. During the course of hearing the learned counsel for appellants has stated that she does not want to press the appeal as regards the conviction of the appellants under Sections 323/34, 325/34 IPC is concerned, but she wants to make submissions before the Court only on the quantum of sentence. She has vehemently submitted that sentence of six months" rigorous imprisonment under Sections 323/34 and three years" rigorous imprisonment and fine of Rs.500/- each under Section 325/34 IPC is very harsh and excessive. It has further been submitted that the occurrence took place about 24 years back. The age of accused persons is advancing, hence a lenient view may be taken in the matter.

16. Not pressing the criminal appeal after the conviction of the accused by the court below is like the confession of the offence by the accused. The Courts generally take lenient view in the matter of awarding sentence to an accused in criminal trial, where he voluntarily confesses his guilt, unless the facts of the case warrants severe sentence.

17. In the case of *Sevaka Perumal etc. v. State of Tamil Nadu*, AIR 1991 SC 1463, the Hon"ble Apex Court in the matter of awarding proper sentence to the accused in a criminal trial has cautioned the Courts as under:

"Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."

18. In the case of *Dhananjay Chatterjee v. State of W. B.*, (1994) 2 SCC 220, the Hon"ble Supreme Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

19. Similar view has also been expressed in *Ravji v. State of Rajasthan*, (1996) 2 SCC 175. It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for

justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance.

20. This position was reiterated by a three-Judge Bench of the Hon'ble Apex Court in Ahmed Hussein Vali Mohammed Saiyed and Anr. v. State of Gujarat, (2009) 7 SCC 254, wherein it was observed as follows:-

"99.....The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence, which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.

The court must not only keep in view the rights of the victim of the crime but the society at large also while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong."

21. In Jameel v. State of Uttar Pradesh (2010) 12 SCC 532, this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus: -

"15. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

16. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

22. Learned counsel for the appellants has also submitted that appellant No. 1,

Satyendra, was detained in jail from 19.10.1992 to 10.12.1992. Appellant No. 2, Jitendra, was detained in jail from 19.10.1992 to 11.12.1992 and appellant No. 3, Guddu, was detained in jail from 29.10.1992 to 10.12.1992. The period of detention of accused appellants has not been disputed by the learned AGA. Thus, in the facts and circumstances of the case, I think the end of justice would be met if the custodial sentence of each accused under Section 323 read with Section 34 IPC is reduced to 15 days simple imprisonment and the custodial sentence of each accused under Section 325/34 IPC is reduced to the period already undergone i.e. 40 days simple imprisonment each coupled with a fine of Rs.5000/- each. In case of default in payment of fine each accused shall undergo simple imprisonment for one month.

23. In view of the above, the appeal is partly allowed. Conviction of the appellants under Section 323/34, 325/34 IPC is confirmed. But the sentence of six months" rigorous imprisonment under Section 323/34 each and three years" rigorous imprisonment and Rs.500/- fine each under Section 325/34 IPC is reduced to one month"s simple imprisonment under Section 323/34 IPC and 40 days" simple imprisonment and Rs.5,000/- each under Section 325 read with Section 34 IPC. In event, the fine stipulated above if not paid, each accused shall further undergo imprisonment for one month.

24. The appellants have already undergone the custodial sentence. They shall deposit the fine aforesaid within two months from the date of release. Time for deposit of fine shall not be extended on any ground whatsoever.

25. Let a copy of this judgment be sent to the Court concerned for immediate compliance.