
(1987) 09 AHC CK 0016
In the Allahabad High Court
Case No : Criminal Appeal No. 352 of 1978

State of U.P.

APPELLANT

Vs

Lala Iqbal Bahadur and Anr.

RESPONDENT

Date of Decision : 09-09-1987

Acts Referred:

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 324, 34, 394, 397, 4

Citation : (1987) 09 AHC CK 0016

Hon'ble Judges : K.Nath, J and S.I.Jafri, J

Final Decision : Dismissed

Judgement

Kamleshwar Nath, J.—State of U. P. has preferred this appeal against the judgment and order dated 2121977 thereby acquitting the respondents on the charges under Sections 397/324/34, I. P. C. and 394, 324/34, I. P. C. respectively passed by Sri M. C. Agarwal, V Additional Sessions Judge, Sitapur.

2. In this case, the occurrence is alleged to have taken place on 4121973 at 7 a.m. in village Brahman Kalan Police Station, Pisawan, District Sitapur. A written report of the occurrence was lodged at the aforesaid Police Station at 9.30 a.m. On 4121973 by Salammey Khan stating therein that while he was on his way to Sitapur armed with his rifle and a belt of cartridges at about 7 a.m. from his house and as soon as, he reached at the trijunction of his village at a distance of about 40 paces from his house, the respondents accompanied by Tasadduq and Khadim attacked him. Accused Khadim who was armed with Kanta snatched his rifle which was at that time, suspended at his shoulder. At the same time, accused Lala Iqbal Bahadur armed with a gun and Tasadduq with Kamta also emerged from the house of accused Asghar, Iqbal Bahadur felled Salammey Khan on the ground and he and Tasadduq coaccused started snatching the belt of cartridges of Salammey Khan. On the alarm raised by Salammey Khan, his brothers Sadiq, Yunus, his servant Sharif and Wahid Ullah P. W. 3 were attracted to the scene of occurrence. Sadiq noticing the rifle in the hands of Khadim, grappled with him in a bid to retrieving the rifle whereupon Asghar accused

delivered a Lathi blow to Salammey Khan and Khadim gave a Kanta blows to Sadiq. Thereafter, accused persons bolted away from the scene of occurrence taking away rifle and belt of cartridges belonging to Salammey Khan.

3. During the course of occurrence, both Salammey Khan and his brother Sadiq sustained injuries.

4. On the report lodged by Salammey Khan at the Police Station, a case was registered against the respondents and Khadim and Ttisa"iduq accused under Section 394, I. P. C. Salammey Khan and Sadiq injured were sent to Primary Health, Centre at Piswan at about 9.30 a.m. but they could not be examined there as the Doctor at the Primary Health Centre was not available and consequently they were sent to Sitapur District Hospital where their injuries were medically examined.

5. Dr. N. N. Srivastava, P. W. 6 examined the injuries on the person of Sadiq P. W. 3 at 7.45 p.w. on 4121973 and the following injuries were found on his person.

"1. Incised wound 3, 1/4" X 1/3" X scalp deep. Transverse 2" above the hair line in the front part of the scalp.

2. Incised wound 3" X 1/2" X bone in the centre of the scalp oblique and 1" behind injury No. "1.

3. Incised wound 3, 1/2" X 1/3" on the right side of the scalp x3, 1/2" above the right ear.

4. Abrasion 1" X 3/4" on the front and lower part of left knee." Salammey Khan injured was also examined by the same Doctor at 8.45 p.m. and the following injuries were found on his person. "1. Swelling 1" X 1/2" on the outer side of right elbow.

2. Contusion 3" X 1/2" on the outer side of right ankle. Its colour was bluish and red.

3. Contusion 2" x 1/2"on the left buttock. The colour was bluish and red.

6. The investigation in the case was taken up by P. W. 7 Jag Lal Prasad, Station Officer. He recorded the statements of the injured at the police station and after recording their statements, left for the village where he arrived at about 12.45 p. m. and examined some witnesses there too. He also prepared site plan of the place of occurrence (Ex. Ka11). He also made efforts to trace out the accused but they were nowhere found. Next day i.e. on 5121973, respondent Lala Iqbal Bahadur was alleged to have been arrested by the police at about 2 p. m. from his village Bhakuraha and brought to the Police Station Piswan and put behind the lock up at 5.30 p. m.

7. After concluding the investigation, Jag Lal Prasad, Investigating Officer submitted chargesheet in the court against the respondents and Tasadduq and

Khadim accused.

8. Before the trial commenced accused Tasadduq and Khadim met their end. However, trial proceeded against the respondents Lala Iqbal Bahadur and Asghar.

9. In support of the prosecution case, Salammey Khan P. W. 1, Sadiq P. W. 3 and Wahid Ullah Khan P. W. 4 were examined as eye witness of the occurrence.

10. Salammey Khan (P. W. 1) has dwelt upon the prosecution case in detail as stated above. He admitted that Lala Iqbal Bahadur (respondent) (sic) the scribe of Ex. Kha 7, an agreement to sell executed by one Dambhar regarding his land in favour of Tasadduq coaccused on 2021971. It was also admitted by Salammey Khan that the property involved in that transaction was purchased by him from Sri Krishan the brother of the aforesaid Dambhar and in the mutation proceedings. Tasadduq (accused) had filed objections. From the above, it is quite apparent that Salammey Khan had grudge against Lala Iqbal Bahadur from before the occurrence of the present case, the learned counsel for the respondents contended that in view of belated examination of Salammey Khan and Sadiq injured, the First Information Report does not appear to have been lodged by Salammey Khan at 930 a.m. at the Police Station. The explanation furnished by the prosecution with regard to delayed explanation of the injured is that the Doctor at Primary Health Centre, Piswan was not available. The Hospital admitted to be situated at a distance of about 50 yards from the Police Station. It is also admitted that the District Hospital lies a distance of about 40 km. and buses ply from Piswan to Sitapur.

Under the circumstances, the long gap in the examination of Salammey Khan and Sadiq makes for a reasonable doubt about the lodging of the First Information Report at the time as alleged by the prosecution. Moreover, no special report of the occurrence was sent to the authorities concerned after lodging of the First Information Report. This circumstance also goes to show that the report of the occurrence was not lodged at the Police Station at 9.30 a.m.

11. The learned counsel for the respondent further contended that Lala Iqbal Bahadur respondent had no motive prompting him to participate in the crime. There is no evidence whatsoever on record suggesting that Iqbal Bahadur had enmity with the victims which could prompt him to commit the offence. Moreover the prosecution case is that Lala Iqbal Bahadur during the course of occurrence, was armed with a double barrel gun but he is not alleged to have fired or pointed his gun towards the witnesses during the course of occurrence. This alleged conduct of the accused does not appear to be probable. It seems highly unnatural that Lala Iqbal Bahadur would have gone to the place of occurrence armed with a gun and would not have made use of his gun in the face of serious attempt made by the victims and his men for apprehending the accused in the case. It has also been submitted by the learned counsel for the respondents that the arrest of the respondent Lala Iqbal Bahadur as alleged by the prosecution is also not proved by any legal evidence. Neither Jag Lal Prasad P. W. 6 nor the

other SubInspector Pyare Lal P. W. 2 stated that they had arrested the accused on 5121973 from village Bhakuraha. The defence examined Dilli Singh D. W. 2, Pradhan of village Jareli who had stated that Lala Iqbal Bahadur was working in his village as Lekhpal and he also used to reside in the Chaupal of Vijai Bahadur close to his house. He further stated that SubInspector had arrested Lala Iqbal Bahadur from his village Jareli on 5121973 in his presence and on his enquiry, the SubInspector had told him that he was named in some report and as such he was being arrested. Dilli Singh has further deposed that Lala Iqbal Bahadur was throughout present in his village on the previous day of his arrest. The prosecution could not elicit anything material to discredit the statement of Pradhan and under the circumstances, it appears that Lal Iqbal Bahadur was in village Jareli on the day of occurrence and as such, he had not participated in the occurrence as alleged by Salammey Khan and his witnesses.

12. P. W. 3 Sadiq is the brother of Salammey Khan. He has left full corroboration to the statement of Salammey Khan P. W. 1, Wahid Ullah Khan (P. W. 4) who has also supported the prosecution case, does not appear to be an independent witness in view of his brother's association with Salammey Khan P. W.I. He admitted that his brother Mujid Ullah had served as a servant at the flourmill owned by Salammey Khan.

13. In the instant case, Salammey Khan and Sadiq have no doubt sustained injuries but the presence of injuries on the persons of a witness is not suggestive of the fact that he would always speak the truth. In the present case in view of the infirmities of case as pointed above, it will be highly unsafe to place reliance on the statements of the injured witnesses without independent corroboration which is lacking in this case. Under the circumstances it is difficult to hold that Lala Bahadur had participated in the occurrence resulting in injuries to Salammey Khan and his brother Sadiq.

14. Having considered all the facts and circumstances of the instant case, we find that the appeal is not sustainable and deserves to be dismissed.

15. In the result, the appeal preferred by the State of U. P. is dismissed.