
(2006) 01 AHC CK 0122
In the Allahabad High Court
Case No : Criminal Revision No. 1161 of 1986

Swami Nath and Ram Nath (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 313, 323, 324, 325, 34

Citation : (2006) 01 AHC CK 0122

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : P.K. Kashyap, R.K. Srivastava and S.K. Bahadur, for the Appellant;
A.G.A., for the Respondent

Final Decision : Partly Allowed

Judgement

Ravindra Singh, J.—The present criminal revision is preferred by the revisionists Swami Nath and Ram Nath against the judgment and order dated 15.7.1986, passed by the learned IV Additional. Sessions Judge, Deoria, whereby the appeal was partly allowed and the co-accused Harish Chandra and Yashwant were acquitted for the charges under Sections 323/34, 324/34, 325/34 and 504 I.P.C, the revisionist Swami Nath has also been acquitted for the charges under Sections 323/34 I.P.C. and the order of awarding compensation of Rs. 1000/- to the injured first informant was also set aside but affirmed the conviction and sentence of revisionist Swami Nath u/s 325/34 I.P.C. for three months Simple Imprisonment, u/s 324 I.P.C for six months Simple Imprisonment and u/s 504 I.P.C. for three months" Simple Imprisonment and confirmed the conviction and sentence of revisionist Ram Nath under Sections 323/34 I.P.C. for three months" Simple Imprisonment u/s 324/34 I.P.C. for six months Simple Imprisonment, u/s 325 I.P.C. for one year"s Simple Imprisonment with a fine of Rs. 500/- and u/s 504 I.P.C. only three months" Simple Imprisonment and in default of the payment of above mentioned fine, he shall undergo further imprisonment of three months" Simple Imprisonment. It was ordered that all sentences shall run

concurrently.

2. Heard Sri P.K. Kashyap, learned Counsel for the revisionists and learned A.G.A.
3. Learned counsel for the revisionists does not want to press this revision on its merit but it is being pressed on the quantum of sentence only.
4. To consider the quantum of sentence, it is necessary to consider the nature and gravity of the offence and sentence awarded by the trial court.
5. The prosecution story, in brief is that on 17.10.1983 at about 6.00 A.M., the first informant Kanhaiya Lal rose from his cot and was ready to go to attend the call of nature. Meanwhile he was surrounded by the revisionists and two other co-accused persons, who were armed with Lathi and Pharsa, his father Ram Nagina was also surrounded at the door and they started quarreling over the execution of a sale deed in respect of a field. When the father of the first informant tried to intervene, the accused persons caused injuries by using Lathi blows on the person of Kanhaiya Lal, then Lakhraj, Hans Raj and Ram Kishun came at the place of the occurrence and tried to rescue the injured, the revisionists Swami Nath used Pharsa blow on Lakhraj. The remaining accused persons caused injuries by using Lathi blows consequently Hansraj and Kanhaiya Lal received injuries. The father of Kanhaiya Lal also received some simple injuries. Thereafter the F.I.R. was lodged on 17.10.1983 at 7.30 A.M.
6. The charges under Sections 323/34, 324, 325 and 506 I.P.C. were framed against revisionist Swami Nath and charges under Sections 323/34, 324/34, 325/34 and 504 I.P.C. were framed against the revisionist Ram Nath and co-accused Harish Chandra and Yashwant.
7. In order to prove its case, the prosecution has examined P.W.1 Kanhaiya Lal, P.W.2 Lakhraj, P.W.3 Hansraj, P.W.4 Dr. N. K. Jaiswal, P.W.6 Dr. Subhash Prasad. The statements of the revisionists and other co-accused persons were recorded u/s 313 I.P.C. but no witness was examined by them in the defence.
8. After considering the evidence present on the record, the learned Magistrate convicted the revisionists Swami Nath under Sections 323/34 I.P.C., 324, 504 and 325/34 I.P.C. and convicted the revisionist Ram Nath under Sections 323/34, 324/34, 325 and 504 I.P.C. And convicted co-accused Harish Chandra and Yashwant under Sections 323/34, 324/34, 325/34 I.P.C. and 504 I.P.C. on 31.1.1985. Against that order, all the accused persons filed the Criminal Appeal No. 15 of 1985, the appeal was allowed in part and dismissed in part also. Consequently the co-accused Harish Chandra and Yashwant have been acquitted and the revisionist Swami Nath has also been acquitted for the offence punishable u/s 325/34 I.P.C., the remaining order of the conviction and sentence was affirmed by the appellate court but the appellate court has set aside the order of the trial court in respect of the payment of Rs. 1000/- as compensation to the first informant and other injured witnesses.
9. It is contended by the learned Counsel for the revisionists that in the present

case the revisionists have remained in jail for 15 days. The alleged occurrence had taken place in a sudden quarrel, it was not pre intended, except the injury no. 2 of the injured Lakhraj all injuries were simple in nature and in the same incident the revisionists Swami Nath and Ram Nath have also received injuries, the same were proved. The injuries of Swami Nath was X-rayed by P.W.5 Dr. N. K. Jaiswal, the Radiologist. According to the statement of Dr. N.K. Jaiswal, there was a fracture of the bone of the right hand. The injuries of revisionists Ram Nath and Swami Nath were examined by P.W.6 Dr. Subhash Chandra, who has examined the injured of prosecution side also. He has proved the injury report of the revisionists Ram Nath and Swami Nath. The injuries of revisionists have not been explained. The prosecution has not come with a clean hand and on the same set of the evidence the co-accused Harish Chandra and Yashwant have been acquitted by the appellate court. The alleged occurrence has taken place on 15.10.1983. Now more than 22 years have been passed from the date of the alleged occurrence. After such a long period the circumstances would have been changed and the bitterness of the parties would have come to an end because both the parties have received injuries, therefore it will not be proper to send the revisionists to jail again therefore the sentence may be modified.

10. I agree with the contentions advanced by the learned Counsel for the revisionists because in the present case both the parties have received injuries. The injuries of the revisionists have not been explained and the alleged occurrence had taken place in a sudden quarrel. A period of more than 23 years have been passed, the bitterness would have come to an end and on the same set of the evidence, the co-accused Harish Chandra and Yashwant have been acquitted. Therefore, it will not be proper to send the revisionists to jail again otherwise it will again revive the bitterness between the parties. To meet the ends of justice, it will be proper to modify the sentence by converting the remaining period of unserved sentence into fine but I do not agree with the order of the appellate court by which the order of the compensation awarded to the first informant and other injured witnesses was set aside.

11. In view of the above discussions, the order of the conviction in respect of the revisionist Swami Nath is upheld under Sections 323/34, 324 and 504 I.P.C. And the order of the conviction against revisionist Ram Nath is upheld under Sections 323/34, 324/34, 325 and 504 I.P.C. but their sentence is modified to the extent that the revisionist Swami Nath is sentenced u/s 323/34 I.P.C. for the period already undergone and to pay a fine of Rs. 500/- for the remaining period of unserved sentence, u/s 324 I.P.C. for the period already undergone and to pay a fine of Rs. 10000/- for the period of unserved sentence and u/s 504 I.P.C. for the period already undergone and to pay a fine of Rs. 500/- for the remaining period of unserved sentence. Thus the revisionists Swami Nath shall deposit Rs. 2000/- in the trial court within a period of four months from today. The revisionist Ram Nath is sentenced u/s 323/34 I.P.C. For the period already undergone and to pay a fine of Rs. 500/- for the period of unserved sentence, u/s 324/34 I.P.C. for the period already undergone and to pay a fine of Rs. 1000/- for the period of

unserved sentence, u/s 325 I.P.C. for the period already undergone with a fine of Rs. 1000/- for the period of unserved sentence, in addition to fine of Rs. 500/- as already awarded by the trial court, u/s 504 I.P.C. for the period already undergone and to pay a fine of Rs. 500/-for the remaining period of unserved sentence. Thus the revisionist Ram Nath shall deposit total Rs. 3500/- in the trial court within a period of four months from today. In default of the payment of aforesaid fine, each revisionist will have to serve the sentence as awarded by the appellate court. In case the aforesaid fine is deposited, Rs. 500/-each will be given to all the injured persons as compensation. The revisionists are on bail. Their bail bonds are cancelled, the sureties are discharged.

12. Accordingly, this revision is partly allowed.