
(2010) 04 AHC CK 0011

In the Allahabad High Court

Case No : Criminal Appeal No's. 1803 and 1804 of 1981

Taj Mohammad and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 304, 325, 34
Probation of Offenders Act, 1958 — Section 4

Citation : (2011) 6 RCR(Criminal) 1456

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Judgement

Kant Tripathi, J.—These two appeals have been preferred against the common judgment and order dated 22.7.1981 rendered in S.T. No. 10 of 1979 whereby the learned Additional Sessions Judge II, Ghaziabad convicted the Appellants Mohammad Shafi and Abdul Rehman of Criminal Appeal No. 1804 of 1981 and Appellants Taj Mohammad and Chhotey of Criminal Appeal No. 1803 of 1981 under Sections 304, I.P.C. read with Section 34, I.P.C. and Section 325, I.P.C. read with Section 34, I.P.C. and sentenced Appellants Mohammad Shafi and Abdul Rehman (Appeal No. 1804 of 1981) to undergo rigorous imprisonment of two years u/s 304, I.P.C. read with Section 34, I.P.C. and one year rigorous imprisonment u/s 325, I.P.C. read with Section 34, I.P.C. Both sentences were directed to run concurrently. The learned Additional Sessions Judge, instead of sentencing the Appellants Taj Mohammad and Chhotey (Appeal No. 1803 of 1981) released them on probation of good conduct for the period of two years on their each furnishing a personal bond of Rs. 2,000 with two sureties each in the like amount.

2. It may be mentioned that Appellant Mohammad Shafi has died during the pendency of the appeal and as such his appeal stood abated. The Appeal No. 1804 of 1981, therefore, survives only in regard to the Appellant No. 2 Abdul Rehman. The learned amicus curiae submitted that Appellant No. 2 Abdul

Rehman is also entitled to the benefit of the order of probation passed in favour of other co-accused, namely, Taj Mohammad and Chhotey.

3. The prosecution case is that on 25.9.1978 at about 5 p.m., the accused persons, namely, Abdul Rehman, Taj Mohammad, Chhotey and their father Mohammad Shafi assaulted the injured Mazid and Nafisa with lathi. Consequently both of them sustained injuries. The F.I.R. of the case was lodged by the injured Mazid on 25.9.1978 at 19 hours, on which basis the police registered the case and investigated the matter.

4. The injured Mazid and Nafisa were medically examined at Primary Health Centre, Garh on 25.9.1978 at 8.30 p.m. onwards. Injured Mazid was then reported to be unconscious and later on succumbed to the injuries within one or two hours. Thereafter post-mortem examination on the dead body of the deceased was also done.

5. After investigation the police submitted charge-sheet against the aforesaid accused persons.

6. All the accused persons were charged u/s 304, I.P.C. read with Section 34, I.P.C. and Section 325, I.P.C. read with Section 34, I.P.C. They have denied the charges and claimed to be tried.

7. The prosecution examined eye-witnesses P.W. 2 Nafisa, P.W. 3 Hamidan and P.W. 4 Abdul Aziz (injured). All these witnesses supported the prosecution story in the witness box.

8. P.W. 1 Sharif, who is son-in-law of the deceased Mazid, had given the report regarding the death of the deceased.

9. P.W. 5 Dr. S. K. Sharma, who was posted as a Medical Officer Incharge of Primary Health Centre, Garh, has proved the injuries of the deceased. P.W. 5 Dr. S. K. Sharma further stated that the general condition of the deceased Mazid was very poor and his pulse rate and blood pressure were not recordable. Moreover he was unconscious. Dr. S. K. Sharma found the following injuries on the person of the deceased.

1. Lacerated wounds 8 cm. x 0.75 cm. x bone deep on the left parietal bone, 7 cm. above the top of the left ear, with profuse bleeding.

2. Traumatic swelling 7 cm. x 4 cm. on left temporal region.

3. Bruise 3 cm. x 2 cm. below the left eye. Red in colour.

4. Bruise 4 cm. x 3 cm. above left eye. Red in colour.

10. P.W. 5 Dr. S. K. Sharma has also proved the following injuries sustained by the injured Nafisa:

1. Bruise 4 cm. x 2 cm. on the left parietal bone. Red in colour.

2. Bruise 3 cm. x 2 cm. on the right side of forehead. Red in colour.
3. Bruise 5 cm. x 2 cm. on the right side scapula. Red in colour.
4. Abraded bruise 4 cm. x 2 cm. on right forearm. Red in colour.
5. Traumatic swelling 10 cm. x 6 cm. on the lower one-third aspect of the lower forearm. Suspected fracture and X-ray advised.
11. P.W. 8 Dr. G. C. Agrawal had conducted the post-mortem examination on the dead body of the deceased on 26.9.1978 at about 3 p.m. He has proved the ante-mortem injuries sustained by the deceased.
12. P.W. 6 Hukam Chand and P.W. 7 Hari Prakash Sharma had investigated the case.
13. The accused persons were examined u/s 313, Cr. P.C. They stated that they have been falsely implicated due to enmity.
14. The learned Additional Sessions Judge has carefully scrutinized the statements of P.W. 2 Nafisa, P.W. 3 Hamidan and P.W. 4 Abdul Aziz and found their statements trustworthy and believable and had been corroborated from the medical evidence adduced by P.W. 6 Dr. S. K. Sharma and P.W. 8 Dr. G. C. Agrawal and arrived at the conclusion that the charge u/s 304, Part II, I.P.C. read with Section 34, I.P.C. and Section 325, I.P.C. read with Section 34, I.P.C. were proved beyond all reasonable doubts against the Appellants and accordingly convicted and sentenced them as aforesaid.
15. The occurrence in question has been supported by not only an injured witness P.W. 2 Nafisa but also by two other eye-witnesses namely P.W. 3 Hamidan and P.W. 4 Abdul Aziz. These three witnesses have very clearly stated that all the accused assaulted the deceased as well as injured with lathi blows. Their statements find corroboration from the medical evidence of the aforesaid doctors. The eye-witnesses have been cross-examined at length and nothing material can be brought on record to discredit their trustworthy. It is an admitted position that deceased Mazid and Appellant Mohammad Shafi were real brother and as such there was no question of any false implication.
16. The learned amicus curiae submitted that according to the prosecution case all the four accused assaulted the deceased and the injured with lathi but the number and nature of injuries sustained by the injured and deceased do not justify the involvement of all the accused for committing the charged offences. It was further submitted that the prosecution has not been able to prove as to who was the author of the fatal injuries sustained by the deceased, as such the charge u/s 304, I.P.C. read with Section 34, I.P.C. is not proved.
17. According to the medical evidence the deceased had sustained as many as four injuries. The injured Nafisa had sustained five injuries, out of which one injury was grievous. Therefore, both the injured and deceased had sustained as many as nine injuries. The nature and number of injuries sustained by the

deceased and the injured fully support the prosecution case that all the accused were involved in causing injuries to the deceased and injured with lathi and as such the submission of the learned amicus curiae has no substance.

18. It is the consistent case of the prosecution that the Appellants Abdul Rehman, Taj Mohammed and Chhotey are real brothers and deceased- Appellant Mohammad Shafi was their father. They are alleged to have committed the offences u/s 325, I.P.C. read with Section 34, I.P.C. and Section 304, I.P.C. read with Section 34, I.P.C. in furtherance of their common intention. During the trial, adequate evidence was adduced to prove the common intention. When the offences were committed in furtherance of the common intention, it is immaterial as to who was the author of the fatal injuries and if the prosecution could not specify the name of the author of the fatal injury, the accused will not be entitled to get any benefit of that omission and they can be held responsible with the aid of Section 34, I.P.C.

19. The impugned judgment and order holding that the charges u/s 325 read with Section 34, I.P.C. and Section 304 read with Section 34, I.P.C. were proved beyond reasonable doubts against the accused persons (Appellants) is perfectly correct and is based on proper appraisal of the evidence on record. I do not find any reason to take a different view. Therefore, I agree with the finding of guilt recorded by the court below.

20. In regard to the quantum of sentence regarding the Appellants Taj Mohammad and Chhotey of Criminal Appeal No. 1803 of 1981, the learned trial court has already taken a very lenient view and released them on probation of good conduct, therefore, there does not appear to be any justification to interfere with the order of the trial court releasing these two Appellants on probation. Their appeal has no merit and is liable to be dismissed.

21. The Appellant No. 1 Mohammad Shafi of Appeal No. 1804 of 1981 has died during the pendency of this appeal and his appeal abated and, therefore, no order is required to be passed in respect of his appeal.

22. In regard to the Appellant No. 2 Abdul Rehman of Criminal Appeal No. 1804 of 1981, the learned amicus curiae submitted that this Appellant may also be released on probation of good conduct as there is no reason to deny him that benefit. It appears that other accused namely Taj Mohammad and Chhotey were released on probation on the ground that they were of young age on the date of occurrence. The Appellant Abdul Rehman was aged about 26 years on the date of his statement u/s 313, Cr. P.C. and as such he was aged about 23 years on the date of the occurrence. In view of the fact that the occurrence took place as back as in the year 1978 and since then about 32 years have elapsed, it does not appear to be proper to send the Appellant Abdul Rehman again in jail. He was also quite young on the date of the occurrence and had no criminal antecedents. If the trial court gave the benefit of probation to co-accused Taj Mohammad and Chhotey on account of their young age, there was no justification to deny that

benefit to the Appellant Abdul Rehman, who was also of only 23 years on the date of occurrence. In the case of State of Karnataka Vs. Muddappa, the Apex Court upheld the order releasing the accused on probation in regard to the offence u/s 304, Part II, I.P.C. by applying the provisions of Section 4 of the Probation of Offenders Act.

23. For the reasons stated above the Criminal Appeal No. 1803 of 1981 is dismissed. The Criminal Appeal No. 1804 of 1981 is partly allowed. The conviction of the Appellant Abdul Rehman u/s 325 read with Section 34, I.P.C. and Section 304, Part II read with Section 34, I.P.C. is confirmed. But, instead of sentencing him at once to any punishment, he is also released on probation of good conduct and behaviour for the period of two years on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the trial court. The sentence recorded against the Appellant Abdul Rehman is modified accordingly.

24. All the Appellants, namely, Abdul Rehman, Taj Mohammad and Chhotey shall remain under the supervision of the District Probation Officer during the period of probation.

25. The Appeal No. 1804 of 1981 against deceased Mohammad Shafi is abated.

26. A sum of Rs. 7,000 shall be paid to the learned amicus curiae Shri Harish Chandra Tiwari from the State exchequer.

27. Let a copy of this judgment along with the lower court record be transmitted to the learned Additional Sessions Judge II, Ghaziabad for compliance.