
(2007) 02 AHC CK 0030
In the Allahabad High Court
Case No : Criminal M.B.A. No. 495 of 2007

Vijayee alias Vijai Shanker Kushwaha	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 07-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 302, 307, 323

Citation : (2007) 2 ACR 1954

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : R.C. Yadav and S.K.S. Kushwaha, for the Appellant; M.A. Haseen and A.G.A., for the Respondent

Judgement

Ravindra Singh, J.—This application has been filed by the applicant Vijayee alias Vijai Shanker Kushwaha with a prayer that he may be released on bail in Case Crime No. 662 of 2006 under Sections 323, 307 and 302, I.P.C. P.S. Nonahra district Ghazipur.

2. The prosecution story in brief is that the F.I.R. of this case has been lodged by Moti Kushwaha on 17.8.2006 at 6.30 a.m. in respect of the incident which had occurred on 17.8.2006 at about 5.30 a.m., the distance of the police station was about four and half km. from the alleged place of occurrence. The applicant and four other accused are named in the F.I.R. It is alleged that on 17.8.2006 at about 5.30 a.m. injured Ram Kirt was beaten by lathi and danda, on his shouting the deceased Jai Prakash, deceased Rajdeo Singh Kushwaha, deceased Hari Om and injured reached in the field where marpeet was done with Ram Kirt. In the meantime, the co-accused Santosh Kushwaha, armed with gun, applicant armed with rifle, co-accused Tara Chand Kushwaha alias Chandul armed with country made pistol, discharged shots, consequently Jai Prakash, Raj Deo, Hari Om, Sonu and Ram Kirt sustained injuries. All the injured persons were taken to the district hospital Ghazipur where Rajdeo Singh Kushwaha, Jai Prakash Singh Kushwaha

and Hari Om succumbed to their injuries.

3. According to the post mortem examination report the deceased Rajdeo Kushwaha had received one firearm wound of entry, having its exit wound, the deceased Jai Prakash Singh Kushwaha sustained two gun shot wound of entry and one firearm wound of exit and one abrasion. The deceased Hari Om also received 8 ante mortem injuries caused by firearm. The medical examination report of Ram Kirt shows that he had sustained two contusions. The injuries were caused by hard and blunt object and it was kept under observation. Injured Avinash Kumar alias Sonu has sustained one firearm wound of entry, having its exit wound.

4. Heard Sri R. C. Yadav, and Sri S.K. Kushwaha, learned Counsel for the applicant, learned A.G.A. for the State of U.P., Sri Zafar Abbas and Sri M. A. Haseen, learned Counsel for the complainant.

5. It is contended by the learned Counsel for the applicant that there is a cross version of the alleged incident. From the applicant side, an application u/s 156(3), Cr. P.C. was filed in the court of learned Magistrate, the same was rejected vide order dated 5.10.2006. However, the order dated 5.10.2006 was set aside by the learned revisional court and the S.O. P.S. Nonahra was directed to register a case and to investigate the same vide order dated 15.11.2006. Both sides have received injuries. From the side of the prosecution three persons have lost their live, and two persons sustained injuries and from the side of the applicant five persons sustained injuries, which have not been explained. The prosecution has not come with clean hands. It has been specifically alleged in the cross report, i.e., application moved u/s 156(3), Cr. P.C. that the alleged occurrence has taken place at the house of the accused persons and the injuries were caused to the deceased and other injured in exercise of the right of self defence. It is further contended that the co-accused Amar Nath Kushwaha has been released on bail by this Court on 4.12.2006 in Criminal Misc. Bail Application No. 24846 of 2006 and at this stage it cannot be decided that which of the party was the aggressor. Therefore, the applicant may be released on bail.

6. In reply to the above contention it is submitted by the learned A.G.A. and the learned Counsel for the complainant that in the present case the alleged occurrence has taken place in a field where the blood and empty cartridges were found. The alleged occurrence has not taken place at the house of the applicant and other co-accused persons because at their house no blood etc. was found which show that the injuries were caused to the deceased and others in right of self defence as alleged in the application moved u/s 156(3), Cr. P.C. The house of the applicant and other co-accused was at a distance of 500 paces from the alleged place of occurrence. The injury reports of the accused side are not reliable at all because the case of the applicant, co-accused Santosh Kushwaha and Tara Chand Kushwaha alias Chandul is distinguishable with the case of other co-accused Amar Nath Kushwaha because Amar Nath Kushwaha had caused injury by using lathi and danda blows on the person of the injured Ram Kirt. He

had not caused any injury to the deceased whereas the role of causing firearm injury is assigned to the applicant and two other co-accused. The deceased persons have received firearm injuries. The deceased and the injured Avinash Kushwaha had received firearm injuries. In this case three persons have lost their lives and two persons sustained serious injuries. In any case the right of self-defence was not available to the applicant and other co-accused persons. The applicant is not entitled to get any benefit of parity of the co-accused Amar Nath Kushwaha. In the present case the trial of the applicant is in progress, examination in chief of P.W. 1, P.W. 2 and P.W. 3 have been recorded in the trial court, The medical examination report filed in support of the cross case shows that all the injuries were caused by hard and blunt object. In case, the applicant is released on bail, he shall tamper with the evidence.

7. Considering the fact, circumstances of the case, submissions made by the learned Counsel for the applicant and the learned A.G.A. and the learned Counsel for the complainant, in which three persons have lost their lives and two persons sustained injuries, active role of causing firearm injury is assigned to the applicant and without expressing any opinion on the merits of the case, the applicant is not entitled for bail. Therefore, the payer for bail is refused.

Accordingly this application is rejected.