
(1997) 12 AHC CK 0061
In the Allahabad High Court
Case No : Criminal Appeal No. 2601 of 1980

Vishwa Nath

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-12-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 149

Citation : (1997) 12 AHC CK 0061

Hon'ble Judges : Kundan Singh, J

Final Decision : Dismissed

Judgement

Kundan Singh, J.—This appeal has been preferred against the judgment and order dated 29th October, 1980, passed by Sri S. N. Misra, the then II Additional Sessions Judge, Jaunpur, in S.T. No 97 of 1978, whereby all the appellants have been convicted under Section 436 read with Section 149 of the Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for one year.

2. The prosecution case, in brief, is that Jokhai Pal has agricultural plot No. 3235 and another plot No. 3230, in which he had house. He was in possession over the aforesaid plots. In that connection a litigation was going on between him and Abdul Majid, During the pendency of the litigation Abdul Majid had sold the land to Abhiraj and Maggoo and executed a saledeed in their favour At about 9.00 a.m. on 23rd October, 1975 Kishore, Nihore, Jharihaq sons of Mahgi came with tractor to plough the same. When he objected, he was assaulted with lathis by them. Ram Lakhan Pal and Gonal, residents of Basdev Patti and other various persons attracted to the scene of occurrence on the alarm raised by him. Mahgi set his madahe on fire. They also cultivated the said plots.

3. The matter was reported at the police station by Jokhai Pal at 9.45 a.m. and the injuries of Jokhai were examined by Dr. R.P. Rastogi, PW4. He found three lacerated wounds, one abrasion, one traumatic swelling and one abraded contusion on his body. The injuries, in the opinion of the doctor, were found to be simple in nature and caused by blunt object. Duration was found fresh and injury

No. 4 was caused by friction.

4. The Investigating Officer, after completing all the formalities, submitted chargesheet against the accused persons.

5. The prosecution examined in all four witnesses to prove its case. Out of them, Jokhai, PW1, Gonal, PW2 and Ram Lakhan, PW3, are the witnesses of factum of incident; while Dr. R.P. Rastogi, PW4, was examined to prove the injuries of the injured.

6. The accused appellants pleaded not guilty and denied the prosecution version, Nihore stated in his statement recorded under Section 313, Cr.P.C. that Jokhai and Nankoo assaulted him with lathi. Baba Phool Chand and Sabboo were also present at that time.

7. The trial Court, after going through the evidence on record, found the appellants guilty of the offences charged with and convicted and sentenced them as stated above.

8. Heard S/Sri R.R. Singh and G.P. Gupta, learned Counsel for the appellants and Sudhir Mehrotra and Manphool Singh for the State and perused the relevant papers.

9. Learned counsel for the appellants submitted that the appellants have already been acquitted of the charges levelled against them under Sections 147 and 323 read with Section 149, IPC on the ground that the trial Court could not come to the conclusion as to which of the parties was owner and had title of the land in dispute and it is not known which of the parties made aggression during the incident. Mahgi is said to have set the Madahe of the complainant on fire. At the most he could be responsible for the act of setting the madahe on fire. The other accused persons had no knowledge or his act could not be inferred in furtherance of common object of the assembly. Others could not have knowledge that one of them would set the hut of the complainant on fire.

10. I have gone through the evidence of Jokhai, PW1; who deposed that Nihore, Kishore, Jharihag, Vishwanath, Majid, Iftikhar Ahmad and Abhiraj reached at the house of the complainant at about 9.00 a.m. on the date of occurrence. They started ploughing the field with the tractor. They were also saying that they had purchased the land. They will cultivate the same. They also exhorted to assault him. Nihore and Kishore assaulted him with lathi. Others had not actually assaulted, but they were exhorting others to beat him. On the alarm raised by him, Vyapari, Gonal, Ram Lakhan reached at the place of occurrence and saved him. Then Mahgi set the madahe on fire from the western side and that madahe was being used for keeping cattle fodder and bamboos for sale. He had also agricultural and cattle articles in that madahe, which was reduced to ashes. A report was lodged.

11. Conal, PW2, supported the case of the complainant as stated by him while Ram Lakhan, PW3, did not support the prosecution and, therefore, he was

declared hostile by the prosecution.

12. From the evidence on record it appears that some marpit took place regarding possession over the land in dispute and the complainant has assigned the role of assault with lathi by Nihore and Kishore. Even he has not assigned the role of assault to any other accused except Nihore and Kishore. From the version made in the first information report as well as the statement of the complainant it appears that Mahgi set the complainant's madahe on fire just after the marpit was over and they were going from the place of occurrence. The other accused had no common object to set the madahe of the complainant on fire. I find the statements of Jokhai, PW1 and Gonal, PW2, reliable and worthy of credence in respect of the incident of setting the madahe on fire by Mahgi. The other accused/appellants had no common object. Hence, they could not be held liable for the individual act of Mahgi. Mahgi alone is responsible for his individual act. The other accused persons, namely, Vishwa Nath, Kishore, Nihore, Jharihag are entitled to benefit of doubt. As the State has not filed any appeal against the acquittal of the accused persons in respect of the offence under Sections 147 and 323 read with Section 149, IPC, I am unable to consider the material on record regarding the offence under these sections.

13. So far the quantum of sentence awarded by the Court below to appellant Maghi is concerned, learned Counsel for the appellant has not said anything. No extenuating circumstances have been shown by learned Counsel for the appellants to reduce the sentence awarded by the trial Court to Maghi under Section 436, IPC. As such, his conviction and sentence are liable to be maintained.

14. Accordingly, the appeal of Vishwanath, Kishore, Nihore and Jharihag succeeds and is allowed. Their conviction and sentence under Section 436 read with Section 149, IPC are set aside. They are on bail and need not surrender. Their bail bonds are discharged.

15. The appeal of Mahgi is dismissed. His conviction and sentence under Section 436, IPC awarded by the Court below are maintained. He is on bail and shall be taken into custody forthwith to serve out the sentence.