



HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 2247 of 1984

Final AFR

Reserved

Roshanlal and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent

Counsel for Appellant(s)	: Bhola Nath, Gajendra Pratap Singh, R.N.Srivastava
Counsel for Respondent(s)	: A.G.A.

Court No. - 88

HON'BLE SANJIV KUMAR, J.

1. This criminal appeal has been filed, under Section 374 (2) Code of Criminal Procedure, 1973 (in short Cr.P.C.), by appellants Roshan Lal and Chote Lal, against the judgment and order, dated 09.08.1984, passed by Shri Shiv Shankar, Additional Sessions Judge-IV, Pilibhit, in Sessions Trial No.47 of 1983 (State Vs. Roshan Lal and Others), arising out of Case Crime No. 218 of 1982, under Section 308, 324 and 323 Indian Penal Code (in short I.P.C.), Police Station- Bilsanda, District- Pilibhit.

2. By the impugned judgment and order, dated 09.08.1984, the learned trial court has acquitted co-accused Lala Ram, giving them the benefit of doubt and has convicted the appellants for offence punishable under Section 324/34 of IPC and sentenced to undergo rigorous

imprisonment for a period of three years, they were further convicted under Section 323/34 IPC and sentenced to undergo rigorous imprisonment for a period of six months and a fine of Rs. 500 /- each. In default of payment of fine, they were further directed to undergo 15 days rigorous imprisonment. It was further directed that all the sentences shall run concurrently.

3. During the pendency of this appeal, the appellant No.1 Roshal Lal has died and the appeal on his behalf stands abated *vide* order dated 15.11.2017. Now this appeal survives only on behalf of appellant no.2 Chhotey Lal only.

4. Brief facts of the prosecution case are that informant Bikarudeen Khan son of Gayasuddin Khan, resident of Village- Paharganj, Police Station- Bilsanda, District- Pilibhit, submitted a written application dated 30.10.1982, before the incharge Police Station- Bilsanda, stating that he has a 30 *bigha chak* (agricultural land) to the south of his village. Adjacent to this field, there is Roshan Lal's land. Today at about 09:00 a.m. the first informant and his father reached at the field and saw that Roshan Lal's cattle were grazing his *laahi* (mustard crop). The first informant and his father asked Roshan Lal why he is causing damage to their crop thereupon, Roshan Lal, Lala Ram and Chhotey Lal carrying *lathi*, *ballam* and spade (*fawda*), started hurling abuses and said that they would do so. Upon resistance, Chhotely Lal with spear, Roshal Lal with *lathi* and Lala Ram with spade attacked them. His father fell on the ground and upon alarm the persons working in the field namely, Ayub Khan, Shahzade and others came and save them. Upon this information FIR under Case Crime No. 218 of 1982, under Sections- 308, 324 and 323 I.P.C., was lodged at the Police Station on 30.10.1982 at 13:45. The investigation was entrusted to S.I. Bhisham Lal, who recorded the statements of injured and other witnesses, reached at the place of occurrence and prepared its site-plan (Ext.Ka.7). The injured were medically examined and the injury reports were collected. The I.O. collected spade, *banyan* (vest) and blood-stained *agoncha* (piece of

cloth) and prepared its fard baramadagi(recovery memo), Ext.Ka.6, Ext.Ka.3 and Ext.Ka.2, respectively. The charge-sheet (Ext. Ka-8) was filed under Sections 308 and 324 IPC before the concerned court.

5. The court concerned took cognizance of the offence and summoned the accused, they appeared and copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C. and thereafter the case was committed to the Court of Sessions for trial.

6. The accused appeared before the learned trial court, where charge under section 307 read with 34 IPC was framed against them to which they pleaded not guilty and claimed to be tried.

7. The prosecution has examined five witnesses, to wit, P.W.1 Gaysuddin Khan; P.W. 2 Viqaruddin @ Acchu; P.W.3 Ayub Khan; P.W.4 S.I. Bhisham Lal (I.O.) and P.W. 5 Dr. G.M. Mohnor, to prove its case.

8. P.W. 1 Gaysuddin, is the father of the first informant and also one of the injured who sustained injuries during the incident. P.W. 2 Viqaruddin @ Acchoo, is the first informant and is also one of the injured of the case. P.W.3 Ayub Khan, is one of the eye-witness of the incident. P.W.4 S.I. Bhisham Lal, is the investigating officer and he has stated about the investigation carried out by him and has proved as secondary witness, the *chick* FIR (Ext. Ka.-4) and copy of G.D. (Ext.Ka.-5). He has also proved the site-plan as (Ext.Ka.-7) and the charge-sheet as (Ext.Ka.-8).

9. P.W. 2 Viqaruddin @ Acchoo, is the first informant and is also one of the injured of the case.

10. P.W.3 Ayyub Khan, is one of the eye witness of the incident.

11. P.W.4 S.I. Bhisham Lal, is the investigating officer and has stated about the investigation carried out by him and has proved as secondary

witness, the chick FIR Ext.Ka. 4 and copy of G.D. Ext.Ka. 5. He has also proved the site plan as Ext.Ka.7 and the charge-sheet as Ext.Ka.8.

12. P.W. 5 Dr. G.M. Mohnor, is the formal witness who prepared the injury reports of injured Gayasuddin and Viqaruddin @ Acchu, on 30.10.1982 while being posted as Medical Officer, Incharge Bilsanda P.H.C., District- Pilibhit. He has said that he examined injured Gayasuddin and found following injuries:-

(i) Incised wound of the size of 7.5 cm x 2 cm x bone deep, at the front of scalp, 12 cm above left ear.

(ii) Abrasion over the part of right forearm of the size of 1 cm x 0.5 cm x 3 cm above the right wrist joint.

In the opinion of the doctor the injury no.1 was caused by any sharp edged weapon and was kept under observation and advised for X- ray. Injury no.2 was caused by any hard and blunt object. Injuries were simple in nature. He has also said that the same day, he examined Viqaruddin and found following injuries:

(i) Incised wound 5 cm x 1.5 cm x 1 cm to the back of skull, 5 cm away from the back.

(ii) Incised wound 0.5 cm x 0.5 cm x skin deep to the left of forehead, 2.5 cm above the left eyebrow.

(iii) Abraded contusion 3 cm x 2 cm to the front of right forearm, 7 cm above the wrist joint.

(iv) Incised wound 1/5 cm x 0.5 cm x muscle deep near left hip.

In the opinion of the doctor, the injuries were simple in nature, except injury no.1, which was kept under observation and advised X-ray. Injury no. 1 and 4 was caused by sharp edged weapon and injury no.3 was caused by blunt object. The witness has proved both the injury reports as Ext.-Ka.9 and 10, respectively. He has also said that both the injured

could have sustained these injuries on 30.10.1982 at about 09:00 a.m. and injury no.1 of Gayasuddin could have been caused by a spade. Injury no.1, 2 and 4 of Viqaruddin could have been caused by sharp edged weapon such as spear.

13. After closure of prosecution evidence, the statement of accused were recorded under Section 313 Cr.P.C., in which they have denied the prosecution case. Further, it is stated that the appellant Chhotey Lal had made a complaint against Gayasuddin regarding which the case was lodged and Gayasuddin and his father were directed to pay fine. As a result, the appellants have been falsely implicated in this case, due to enmity.

14. The accused have not filed any evidence in defence.

15. The learned trial court after perusing the evidence on record, found that the prosecution has been able to prove its case beyond reasonable doubt, so far as the appellants Roshan Lal and Chhotely Lal are concerned and they were, accordingly, convicted for offence punishable under Sections 323/34 and 324/ 34 IPC and sentenced to the term as indicated as above. The learned Trial Court did not found any sufficient evidence against co-accused Lala Ram and he was given benefit of doubt and acquitted of the offences charged with.

16. Heard Shri R.N. Srivastava, learned Counsel for the surviving appellant Chote Lal and Shri Akhilesh Kumar Mishra, learned A.G.A on behalf of the State and perused the material on record.

17. It is submitted by learned Counsel for the appellant that there are material contradictions in the statement of prosecution witnesses which raises serious doubt over the prosecution case. It is further submitted that co-accused Lala Ram who has been assigned of causing assault by *farsa* has been acquitted. The doctor has given contradictory opinion. The vest and another articles were not sent for chemical examination. It is also submitted that the appellant is currently 92 years old person.

18. Learned A.G.A. has submitted that prosecution has proved its case beyond reasonable doubt. The injured and public witnesses have supported the prosecution case. The ocular evidence is supported by medical evidence. If there is any defect on the part of the I.O., by not sending articles for chemical examination then it would have no bearing over the prosecution case because from other evidence, the case is proved beyond reasonable doubt. In view of the above, the appellant has been rightly convicted and this appeal has no force and is liable to be dismissed.

19. In view of submissions of both the parties and the evidence on record let us see whether the prosecution has been able to prove its case beyond reasonable doubt. As we know, in a criminal case the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, the prosecution case is that the appellant alongwith other co-appellant and co-accused, in furtherance of their common intention, committed *maarpeet* by deadly weapons, causing injuries to the first informant and his father. To prove it, the prosecution has examined P.W. 1 Gayasuddin, the injured and father of the first informant. He has supported the prosecution case and has said that at the time of incident, he alongwith his son Viqaruddin Khan had gone to his field to irrigate. He had taken a pump set and engine with him on a buffalo cart. In the meantime, Roshan Lal and Chhotely Lal's buffaloes entered his field and started grazing the *laahi* (mustard) crop, when his son pushed them outside the field, then all the three accused reached. Chhotey Lal was having spear in his hand, Roshan Lal was having *lathi* and Lala Ram was carrying a spade and when his son asked them why they are causing damage to their crop then, they got agitated and attacked them. He has said that Chhotey Lal had beaten him and he fell on the ground and become unconscious. He sustained an injury from spear. The witness has been declared hostile and has been cross-examined by the prosecution. He has supported the prosecution case to the extent that all the three accused committed *maarpeet* with him and

his son, causing them injuries. No material contradiction has come in his testimony to raise any suspicion over his evidence.

20. P.W. 2 Viqaruddin @ Acchoo, is the first informant and also one of the injured of this case. He has also supported the prosecution case and has said that the accused attacked him and his father carrying weapons in their hands, causing injuries to both of them. He has said that he and his father were medically examined at Bilsanda Hospital and after about 7 days from the date of incident, he handed over blood-stained vest and *angocha* to the I.O. regarding which *fard baramadagi* was prepared which he proved as Ext.Ka.2 and 3. This witness has been cross-examined at length and nothing material has come in his testimony to raise any suspicion over his evidence.

21. P.W.3 Ayub Khan, is the eye-witness. He has also supported the prosecution case and has said that the accused assaulted the first informant and his father as a result, they sustained injuries. This witness has also been cross-examined at length, but no material contradiction has come in his testimony to raise any suspicion.

22. Therefore, from the evidence of P.W.1, P.W.2 and P.W.3, the prosecution has proved its case that surviving appellant, along with other accused, assaulted the first informant and his father.

23. So far as the ocular and medical evidence is concerned, medical evidence corroborates with the oral evidence. The doctor has said that the injuries could be caused by hard and blunt object, like *lathi* and sharp cutting weapon, like spear. The witnesses have stated about the use of these weapons by the appellant and co-accused, in the incident.

24. As it was a sudden fight, without any previous enmity or pre-meditation and there was no intention on the part of the appellant to cause death of the injured. The injuries were caused by hard and blunt object as well as sharp edged weapon, therefore, the act of the appellant falls under Sections 323/34 and 324/34 IPC, because all the accused

jointly attacked the first informant and his father which goes to show that they shared pre-arranged plan and acted in furtherance of their common intention.

25. Therefore, from the evidence on record, it is proved that on 30.10.1982 at about 09:00 a.m., the appellant, in furtherance of their common intention with co-appellant and co-accused, caused simple hurt to the first informant and his father, thus the appellant is guilty of the offence punishable under Sections 323 read with 34 IPC and 324 read with 34 IPC. Thus, the learned trial court has rightly convicted the appellant for offence punishable under Sections 323 read with 34 IPC and 324 read with 34 IPC.

26. So far as the sentence awarded to the appellant is concerned, it is submitted by learned Counsel for the appellant that the appellant is currently 92 years old, ill and infirm person and also the appeal is pending since more than 42 years. Therefore, no purpose would be served to send the appellant in jail. In view of the above submission of learned Counsel for the appellant and from perusal of record, it is clear that the incident is of the year 1982 and the appellant was convicted in the year 1984. Since then 42 years have passed. The appellant is currently 92 years old, infirm person and the offence is minor in nature. The appellant has already served about one month in jail, therefore, it would meet the ends of justice if he is sentenced to the term already undergone and served by him in prison.

27. Therefore, this appeal is **allowed** in **part**, and the conviction of the appellant under Sections 323 read with 34 IPC and 324 read with 34 IPC is **confirmed**, but the sentence awarded to him is **modified** and he is **sentenced** for the period he had **already undergone** in jail. He need not surrender. His bail bonds and personal bond are cancelled the sureties are discharged of their obligations.

28. Office is directed to transmit the trial court record alongwith a copy of this judgment to the learned trial court for information and necessary compliance.

(Sanjiv Kumar,J.)

July 20, 2026
AdityaG