

(2004) 08 AHC CK 0091

Allahabad High Court

Case No: Criminal Appeal No"s. 2266 of 1981 and 824 of 1984

Haridas (in Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 27, 2004**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 304, 323, 34, 342

Citation: (2005) 1 ACR 358**Hon'ble Judges:** M.C. Jain, J; K.K. Misra, J**Bench:** Division Bench**Advocate:** T. Rathore and D.S. Tewari, for the Appellant; K.P. Shukla, A.G.A., for the Respondent

Judgement

M.C. Jain, J.

The two appeals are connected with each other as they relate to the same incident, though the Appellants were tried separately. We propose to decide these two appeals by common judgment.

2. In Criminal Appeal No. 2266 of 1981, the Appellant Haridas was tried in S.T. No. 284 of 1980 before the Sessions Judge, Hamirpur and convicted u/s 302 read with Section 34, I.P.C. with sentence of life imprisonment.

3. In Criminal Appeal No. 824 of 1984, co-accused Padam Singh was tried in S.T. No. 198 of 1982 before the Additional Sessions Judge, Hamirpur. He, too, came to be convicted u/s 302 read with Section 34, I.P.C. and sentenced to life imprisonment.

4. In Criminal Appeal No. 2266 of 1981, Sri D. S. Tewari, learned Counsel for the Appellant made his arguments. In Criminal Appeal No. 824 of 1984, none appeared for the Appellant Padam Singh at the revision of list, though he is represented on record by Sri Sudhir Agrawal, advocate. We propose to decide this appeal, too, in terms of the Supreme Court's ruling in the case of [Bani Singh and others Vs. State of U.P.](#), . In both

the appeals, from the side of the State, arguments of Sri K. P. Shukla, learned A.G.A. have been heard.

5. The facts lie within a short compass. The incident had taken place on 19.7.1980 at about 5.00 p.m. in village Kamalpura, Police Station Kulpahar, district Hamirpur and the F.I.R. was lodged on 19.7.1980 at 8.00 p.m. by an eye-witness Baladin. The distance of the police station from the place of occurrence was six miles. The deceased Behari was the brother of the informant Baladin. The complainant and his brother resided in village Ladhpur, Police Station Kulpahar, district Hamirpur, whereas the accused-Appellant Haridas was resident of village Kamalpura. Padam Singh Appellant of Criminal Appeal No. 824 of 1984 also resided in village Kamalpura and was said to be the colleague of Haridas. Earlier to the incident, exchange of hot words had taken place between the deceased Behari on the one hand and accused Haridas and Padam Singh on the other. On the fateful day and time, Baladin complainant and his deceased brother Behari were grazing their cattle near the chauki. Both the accused-Appellants came there with lathis from the side of Kamalpura and objected to the grazing of the cattle by Behari and instantaneously started assaulting him with lathis. On alarm being raised, Shiv Dayal, Chhuttan and Durga rushed up, but they were threatened by Padam Singh. Beating Behari, the accused-Appellants took him towards Kamalpura and left him at the door of the chaukidar in that village. Baladin went to the police station and lodged the F.I.R. by oral narration. A case under Sections 342/323, I.P.C. was registered. S.O. Ram Singh P.W. 7 in S.T. No. 284 of 1980 and examined as P.W. 4 in S.T. No. 198 of 1982, rushed to the place of occurrence and found the injured Behari. He sent him on the jeep to the hospital, but he succumbed to his injuries on the way. The case was converted u/s 302, I.P.C. The Investigating Officer prepared inquest report, etc. of the dead body of Behari and sent the same for post-mortem. Dr. Ghanshyam Pandey examined as P.W. 1 in S.T. No. 284 of 1980 conducted post-mortem over the dead body of the deceased on 20.7.1980 at 4.30 p.m. He was aged about 35 years and about one day had passed since he died.

6. The following ante-mortem injuries were found on his person:

(1) Contusion 7-1/2 cm. with traumatic swelling all around the wound in left side of skull in temporo-parietal and sphenoid area. There was fracture at temporo-sphenoidal suture with plenty of blood clots seen over membrane. Left upper eye-lid was blue due to this injury.

(2) Abraded contusion 8 cm. x 2 cm. in right upper arm above elbow joint.

(3) Abraded contusion, 4 cm. x 2 cm. in dorsum of wrist joint (right).

(4) Contusion 6 cm. x 2 cm. with traumatic swelling in left upper arm outer aspect with fracture shaft of humerus at middle of left side.

(5) Abrasion 3 cm. x 1 cm. in left elbow joint.

(6) Abrasion 5 cm. x 2-1/2 cm. in dorsum of left wrist joint.

(7) Lacerated wound 6-1/2 cm. x 2 cm. x muscle deep on left leg, at middle and outer aspect.

(8) Multiple abraded contusion in an area of 13 cm. x 7 cm. thorax lumbar region.

(9) Contusion 6 cm. x 1-1/2 cm. in left shoulder blade, oblique direction.

(10) Abraded contusion 7 cm. x 2 cm. in right calf muscle, oblique direction.

7. The cause of death was shock and haemorrhage as a result of head injury.

8. It appears that Padam Singh was challaned as absconder and later on he also came to be tried when arrested.

9. Defence of both the accused-Appellants was of denial.

10. In S.T. No. 284 of 1980, complainant Baladin P.W. 2 brother of the deceased, Shiv Dayal P.W. 3, Durga P.W. 4 and Chhuttan P.W. 5 were examined as eye-witnesses besides the formal witnesses including the doctor. In connected S.T. No. 198 of 1982 relating to Padam Singh, Baladin, Shiv Dayal and Durga were examined as eye-witnesses as P.W. 1 to P.W. 3 respectively. In the trial of Padam Singh the Investigating Officer Ram Singh was examined as P.W. 4. The case was found proved and the two accused-Appellants were convicted and sentenced on separate trials as stated hereinabove.

11. We have carefully examined the testimony of the eye-witnesses. The post-mortem report of the deceased amply proved that a number of blunt weapon injuries had been inflicted on him, out of which head injury (ante-mortem injury No. 1) turned out to be fatal resulting in his death.

12. Baladin (brother of deceased), Shiv Dayal and Durga were eye-witnesses examined in the trial relating to the Appellant Haridas as well as in the trial concerning the other Appellant Padam Singh. Chhuttan who was examined in the trial of Haridas and had turned hostile was not examined in the trial concerning the other accused-Appellant Padam Singh. It is also stated for the sake of clarity here that the genuineness of the post-mortem was accepted, so in the trial relating to the accused-Appellant Padam Singh, the doctor was not examined.

13. It was there in the testimony of Baladin (brother of the deceased) that earlier to this occurrence, some dispute had taken place between accused-Appellants and his deceased brother Behari over the issue of grazing of cattle. The present occurrence also took place about the grazing of the cattle and it is an indicator that in reality there had been some dispute between the two sides earlier, too, over the issue of grazing of cattle.

The evidence of Baladin (brother of deceased) is that he and his brother Behari were grazing cattle at the time of the incident when the two accused-Appellants came with lathis and objected to the grazing of the cattle and both of them started assaulting his brother Behari with lathis. He raised alarm attracting the witnesses Shiv Dayal, Durga and Chhuttan. The accused-Appellants then took away Behari towards village Kamalpura, assaulting him. He further stated that his brother was left at the door of chaukidar in village Kamalpura. The police came and placed injured Behari in jeep but on the way he succumbed to his injuries. Baladin went to lodge F.I.R. when the accused-Appellants took away his brother, beating, towards village Kamalpura. The F.I.R. was lodged by oral narration and is a spontaneous document. The eye-witness Shiv Dayal, whose name finds place in the F.I.R. also, supported the prosecution case in material particulars that he was grazing his cattle nearby the place of occurrence, Behari and Baladin were also grazing their cattle and that the two accused-Appellants came there from the side of village Kamalpura with lathis and took away Behari towards that village, assaulting him with lathis. The third eye-witness Durga, though was declared hostile, but he, too, supported the prosecution story in some measure. He stated that he was returning to his house from village Kamalpura and when the Investigating Officer reached near Railway Gumti, he heard alarm of Baladin. He further stated that he rushed up and found Padam Singh. Padam Singh challenged him and he ran towards his village. He also stated that at the time of running away, he saw both the accused-Appellants carrying Behari towards village Kamalpura and that these accused persons were beating Behari with lathis.

14. In our opinion, the testimony of Baladin, fully supported by Shiv Dayal, was the correct reflection of the happening. As mentioned above, to some extent their testimony is supported by the third eye-witness Durga also. It is also a fact borne out from the testimony of the Investigating Officer S.O. Ram Singh that after the lodging of the F.I.R., he reached the spot and he found Behari lying injured at the door of chaukidar. He was lifted and placed in jeep and was being brought to the hospital but he died on way. So, it is established by satisfactory evidence of the prosecution that the two accused-Appellants assaulted Behari while he was grazing cattle with his brother Baladin. Assaulting him, they forcibly took him to village Kamalpura and left him in injured condition at the door of chaukidar where he was found lying when the Investigating Officer reached there consequent upon the lodging of the F.I.R. It has been clarified by Baladin also that earlier to the lodging of the F.I.R. Chaukidar of Kamalpura had told him that his brother was lying injured at his door. The post-mortem report shows that the victim sustained as many as ten of blunt weapon (like lathi) injuries out of which injury No. 1 which was on the head turned out to be fatal. The other injuries were on right upper arm, dorsum of right joint wrist, left upper arm, left elbow joint, left leg, shoulder, etc. Doubtless, a number of lathi injuries were inflicted by the two accused-Appellants to him.

15. A question naturally arises as to precisely what offence the accused-Appellants did commit within the ambit of law. As has come in the testimony of Baladin (brother of the deceased), there was a dispute between the accused-Appellants and his brother from

before over the issue of grazing of cattle. The present incident also occurred when Behari was grazing his cattle with his brother Baladin. Obviously, there was some background of dispute relating to grazing of cattle between the two sides and the present incident occurred under such history. It is also a fact that all the ante-mortem injuries found on the person of the deceased, excepting injury No. 1 which was on the head, were on non-vital parts. The two accused-Appellants assaulted the victim with lathis, but they mostly targeted his non-vital parts. They assaulted him while he was grazing cattle and then forcibly took him, assaulting with lathis towards village Kamalpura. They left him there at the door of chaukidar in injured condition, so much so that when the Investigating Officer reached there after the lodging of the F.I.R., he even placed him in a jeep and started taking him to the hospital for treatment, but he died on the way. There was singular blow on the head. To say in other words, the blow on head was not repeated. Had they intended to cause his death, they could have easily done so by raining lathi blows on his head. Keeping all the facts in view, it cannot be pronounced that the two accused-Appellants intended to cause the death of the victim-Behari. Nor can the intention of causing bodily injuries sufficient in the ordinary course of nature to cause death be imputed to them. Of course, death did occur as a result of singular head injury caused to him along with other injuries on non-vital parts. But under the circumstances of the case, the accused-Appellants are only to be imputed the knowledge of causing such bodily injuries to him which were likely to cause death or, say, could cause his death. On cumulative consideration of the entire evidence, the previous background, the injuries sustained by the deceased and the weapons used by the accused-Appellants, they only committed the offence punishable under Part II of Section 304, I.P.C.

16. It is not clear from the evidence as to who out of the two accused-Appellants had inflicted the lathi injury on the head of the deceased which proved to be fatal. All the same, he was assaulted by both of them in furtherance of their common intention. As such both of them committed the offence punishable under Part II of Section 304, I.P.C. read with Section 34, I.P.C.

17. We are in judgment that the sentence of five years rigorous imprisonment would meet the ends of justice.

18. In the result, we finally partly allow these two appeals in the following way:

(i) Accused-Appellant Haridas of Criminal Appeal No. 2266 of 1981 and Padam Singh of Criminal Appeal No. 824 of 1984 are found to have committed an offence punishable under Part II of Section 304, I.P.C. read with Section 34, I.P.C. (instead of Section 302, I.P.C. read with Section 34, I.P.C.).

(ii) Both of them are sentenced to undergo rigorous imprisonment for five years.

19. Both of them are on bail. Chief Judicial Magistrate, Hamirpur, shall cause them to be taken into custody and sent to jail to serve out the sentence passed against them.

20. Let a copy of this judgment along with record of the case be immediately sent to court below for compliance under intimation to this Court within two months from the date of its receipt.