
(2000) 02 AHC CK 0076

Allahabad High Court

Case No: Criminal Revision No. 2006 of 1983

Baikuntha Nath

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Feb. 11, 2000

Acts Referred:

Penal Code, 1860 (IPC) " Section 147, 148, 149, 307, 323

Citation: (2000) 02 AHC CK 0076

Hon'ble Judges: J.C.Mishra, J

Final Decision: Partly Allowed

Judgement

J. C. Mishra, J.

This revision is directed against the judgment and order dated 30983 passed by the Additional Sessions Judge, Gyanpur,

Varanasi upholding the conviction of the revisionists under Sections 323/149, 324/149, 307/149, 147, 148, IPC by reducing the sentence under

Section 323/149, IPC from one year to six months recorded by the Assistant Sessions Judge, Gyanpur, Varanasi.

2. Shorn of necessary details the prosecution case is that the revisionists on 22677 at about 1011 O'clock formed an unlawful assembly at the

door of Mukund Shankar and assaulted Daya Shankar and Vijay Shankar with lathi and Prabha Shankar and Vijay Shankar with Ballam, The

prosecution case is that the informant Mukund Shankar and accused persons are collaterals and they were on litigating, terms for a period of 1617

years. On the eventful day Mukund Shankar and his brother Prabha Shankar, Hriday Shankar and cousin Vijay Shankar were levelling earth on

western Sahan of their Ahata. In the meanwhile the accused persons arrived, Batuk Nath and Ram Krishna had Ballam whereas other accused

had lathi. On the exhortation of Baikunth Nath the accused persons fell upon and caused injuries. Ram Krishna and Baikunth Nath with intention to

commit murder inflicted Ballam injury to Prabha Shankar. Hriday Shankar and Vijay Shankar sustained lathi injuries. Vijay Shankar also sustained

Ballam injuries. It is alleged that Hriday Shankar wielded lathi in defence.

3. After the escape of the assailants Prabha Shankar, Hriday Shankar and Vijay Shankar were carried to Gyanpur hospital while they were

medically examined and admitted as indoor patient. Prabha Shankar who had received two incised wounds and penetrating wound in the abdomen

was referred to Varanasi. Vijay Shankar had suffered an incised wound and an abrasion. Hriday Shankar had received two contusions.

4. After the registration of the case investigation followed. After observing formalities of investigation the Investigating Officer submitted

chargesheet against the accused.

5. The defence case was that on the eventful day the injured Mukund Shankar, Prabha Shankar, Hriday Shankar, Vijay Shankar, Brahmadeo was

placing earth at the door of Batuk Nath and on his protest they armed with lathi and ballam started assaulting Batuk Nath. Shambhu Nath from the

accused side also suffered injuries. They were medically examined. Batuk Nath had received an incised wound whereas Shambhu Nath had

suffered three contusions.

6. The prosecution examined Mukund Shankar (PW1), Prabha Shankar (PW2), Hriday Shankar (PW3), Ram Singar (PW4), Dr. N.D. Burman

(PW5), S.I. Ram Chandar Singh (PW6), S.I. Mohammad Zuha Khan (PW7), Dr. P.K. Tandon (PW8), Constable Moiz Ahmad (PW9). The

accused adduced no evidence.

7. On appraisal of the evidence the learned Assistant Sessions Judge held that the prosecution case was proved to the hilt. He, therefore,

convicted all the accused persons and sentenced to rigorous imprisonment for various periods.

8. Felt aggrieved the accused preferred the appeal which was decided by the Additional Sessions Judge, Gyanpur. The appellate Court found that

the Assistant Sessions Judge has rightly held that the accused committed the crime in the manner and fashion as alleged by the prosecution. He,

however, modified the finding regarding place of occurrence recorded by the Assistant Sessions Judge. He also modified the sentence as

aforesaid. Felt aggrieved the appellants have preferred this revision.

9.1 have heard the learned Counsel for the revisionists and learned Counsel for the complainant and learned AG A,

10. The learned Counsel for the revisionist contended that the incident had taken place at the door of the accused and the appellate Court

committed illegality in modifying the finding recorded by the learned Assistant Sessions Judge. He contended that according to Assistant Sessions

Judge the marpit had taken place in an area of 9200 paces from the door of Batuk Nath to the door of the complainant Mukund Shankar.

11. After having gone through the judgments passed by the trial Court and appellate Court I find that the learned Additional Sessions Judge has

assigned valid reasons for modifying the finding regarding place of occurrence. This finding is based on proper appreciation of the evidence on

record and does not suffer from any error.

12. The learned Counsel then contended that the accused side had also received injuries which could not be explained by the prosecution and,

therefore, there is probability of the defence version being true. This contention is also devoid of force. The injuries caused on the accused side

were explained by the prosecution witnesses and there is no doubt that the accused received the injuries in the manner and fashion as stated by the

eyewitnesses.

13. The learned Counsel then contended that the Court below committed error in convicting the accused under Section 307/149, IPC. A perusal

of the injury reports and evidence of Dr. P.K. Tandon shows that the abdominal injury caused to Prabha Shankar was serious in nature and had

resulted in affecting the intestine. The prosecution has led evidence to show that the said injury was caused by Batuk Nath by spear. The accused

Batuk no doubt committed offence punishable under Section 307, IPC in causing spear injury to Prabha Shankar.

14. The fact remains to be examined whether the common object of the unlawful assembly was to commit murder. It is true that the assailants were

armed with spear and lathi but from the nature and location of the injuries and manner of assault does not show that the common object of the

assembly was to commit murder. It appears that during the marpit one of the assailants namely Baikunth Nath gave a spear blow on the abdomen

of Prabha Shankar. In my opinion, the other accused cannot be convicted under Section 307/149, IPC.

15. The incident had taken place about 23 years before. This revision has remained pending since about 17 years. The Marpit took place for

asserting possession over a small piece of land.

16. On consideration of the entire facts and circumstances and submission of the learned Counsel for the parties I am of the view that sentence of

fine in lieu of sentence of imprisonment would meet the ends of justice.

17. The appeal is partly allowed. The conviction of accused other than Baikunth Nath is altered from 307/149 to 324/149, IPC. The revisionist

Baikunth Nath is convicted under Section 307, IPC. The conviction of the accused under Sections 323/149, 147 and 148, IPC as recorded by the

Courts below is maintained.

18. All the accused are sentenced to imprisonment already undergone and to fine as detailed below:

19. The revisionist Baikunth Nath is sentenced to a fine of Rs. 5,000 for offence punishable under Section 307, IPC. All the revisionist are

sentenced to undergo fine of Rs. 2,000 under Sections 324/149, IPC Rs. 1,000 under Section 323/149, IPC. The revisionist Batuk Nath and

Ram Krishna are sentenced to fine of Rs. 1,500 under Section 148, IPC while other accused are sentenced to fine of Rs. 1,000 under Section

147, IPC. In default of payment of fine the accused Batuk Nath will undergo simple imprisonment for one year under Section 307, IPC and six

months under Section 148, IPC. The accused Ram Krishna will undergo simple imprisonment for six months under Section 148, IPC. All the

revisionists shall undergo six months simple imprisonment under Sections 324/149, IPC and three months under Section 323/149, IPC. The

revisionist other than Batuk Nath and Ram Krishna will undergo simple imprisonment for three months under Section 147, IPC.