
(1997) 07 AHC CK 0177

Allahabad High Court

Case No: Criminal Appeal No. 2479 of 1979

Pappu

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision: July 3, 1997

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 307, 324, 34

Citation: (1998) CriLJ 122

Hon'ble Judges: P.K. Jain, J

Bench: Single Bench

Advocate: Narendra Kumar, for the Appellant; G.A., for the Respondent

Final Decision: Partly Allowed

Judgement

P.K. Jain, J.

Both these appeals arise out of judgment and order dated 18-9-1979 passed by Sri G. S. Sharma, the then IV Addl. Sessions Judge, Moradabad, convicting the appellants u/s 307, I.P.C. in Sessions Trial No. 78 of 1979 and sentencing Pappu appellant to under go three years" R.I. and appellant, Babbu to five years" R.I.

2. Shortly stated the prosecution case is that on 11 -11 -1978 at about 7.00 p.m. first informant Laiq Ahmad and his brother Jameer Ahmad had gone to the market in Mohalla Tabakiyan, P.S. Mughalpura, district Moradabad for making purchases on the occasion of Id. When they reached in front of the shop of appellant Babbu, Babbu suddenly came out of his shop and collided with Jameer Ahmed. A verbal duel and scuffle ensued. The first informant and scuffle ensued. The first informant and witnesses Abdul Jabbar Khan, Abdul Qayum, and Sardar Husain and others intervened. Babbu thereupon went inside the shop and returned with a pistol and suddenly fired at Jameer Ahmad causing gun-shot injury in the chest of Jameer Ahmad and also to one Shabab Ali. When Jameer Ahmad caught hold of Babbu, appellant Pappu gave a blow with scissor in the head of

Jameer Ahmad. P.A.C. people and police arrived on the scene of occurrence but taking advantage of crowd the miscreants were successful in running away. There was ample light in the market in which the victims and the witnesses recognized the miscreants.

3. Written first information report (Ex. Ka-2) was lodged by Laiq Ahmad (P,W, 1) at police station Mughalpura on 11-11-1978 at 8.30 p.m. A case u/s 307, I.P.C. was registered and after usual investigation both the appellants along with two others, namely, Chhammu alias Afzal Husain and Iqbal Husain, were charge-sheeted by the police to stand their trial u/s 307, I.P.C.

4. Jameer Ahmad and Shabab Ali were medically examined by Dr. A. P. Singh (P.W. 5) at 7.30 p.m. and 7.45 p.m. respectively on 11-11-1978.

5. Following injuries were found on the person of each of them.

Jameer Ahmad.

1. Multiple lacerated wounds on the left side of chest 8 cm. x 5 1/2 cm. Depth could not be ascertained 2 cm. above and inward to the left nipple. Margins were inverted, charring was present. Tatooing was present.

2. Punctured wound 1/2 cm. x 1/2 cm. x 1 cm. on the left side of skull 6 cm. above the left ear.

Both the injuries were fresh. Injury No. 1 could be caused by fire arm and No. 2 by pointed object. Injury No. 1 was kept under observation and injury No. 2 was simple.

Shabab Ali.

1. Multiple lacerated wound of variable sizes 1/2 cm. x 1/2 cm. depth could not be ascertained on the area of 19 cms. x 8 cms. on the front of lower part of left upper arm and upper part of left forearm. Margins were inverted. Blackening and charring around the wound were present.

2. Multiple lacerated wounds of variable sizes 1/2 cm. x 1/2 cm. depth could not be ascertained on the left side of lower of chest and left upper abdomen in the area of 15 cm. x 19 cm., below the left nipple and 4 cm. above the left iliac crest. Margins inverted. Blackening and charring of the skin around the wound were present.

Both the injuries were fresh and could be caused by fire arm.

6. On being committed to the Court of Sessions the appellants were charged u/s 307, I.P.C. and u/s 307 read with Section 34, I.P.C.

7. The appellants denied the charges framed against them. In their statements u/s 313, Cr.P.C. they denied the prosecution allegations. Pappu admitted that there was electricity

light at the time of occurrence and stated that he did not know why he was involved in the present case. Babbu appellant stated that he was involved due to enmity with Mohalla people.

8. The prosecution, in support of its case, examined P.W. 1 Laiq Ahmad, P.W. 2 Jameer Ahmad victim, P.W. 3 Pyare Jaan, an independent witness, P.W. 4 S.I. P.L. Sharma, the Investigating Officer, P.W. 5 Dr. Ajai Pal Singh Sengar.

9. The appellant did not adduce any evidence in their defence.

10. The trial Court, after considering the evidence on record, acquitted accused Iqbal Husain and Chhammu alias Afzal Hussain and convicted and sentenced the appellants as stated above.

11. I have heard Sri S. C. Varma, learned counsel for the appellants and the learned A.G. A. and I have also gone through the judgment of the trial Court as well as the material on record.

12. The appeals are pressed mainly on the ground that from the facts and evidence adduced by the prosecution no case u/s 307, I.P.C. is made out and at best the appellants could have been convicted u/s 324, I.P.C. and further that the sentence awarded by the trial Court is too severe. It is also contended that appellant, Babbu has been in jail for about nine months since after his surrender on 24-11-1978 as he was not granted bail by the trial Court and was released on bail by this Court vide order dated 23-8-1979. Appellant Pappu is also have been in jail for about three months. It is contended that considering that about 18 years have elapsed since after the appellants were convicted by the trial Court, no useful purpose shall be served by sending them to jail and disturbing their peaceful life specially when no untoward incident since after conviction of the appellants in the present case is reported. Learned A.G.A. contends that the nature of the weapon used and the seat of the injury clearly make out a case u/s 307, I.P.C. and the trial Court has rightly convicted the appellants u/s 307, I.P.C.

13. Having heard learned counsel for the parties and having perused the material on record, I am in agreement with the learned counsel for the appellants that the appellants have been wrongly convicted u/s 307, I.P.C. The facts of the case disclose that there was no premeditated plan to cause injuries with intent to commit murder. The incident as disclosed from the first information report as well as by the evidence of the prosecution occurred at the spur of the moment. There was verbal altercation followed by scuffle and exchange of abuses on both the sides. In the heat of the moment after some passers by and the first informant intervened, the appellant Babbu entered into his shop and returned with a pistol and allegedly fired one shot indiscreetly causing gun-shot injury to Jameer Ahmad and Shabab AH. From the nature of the injuries and the manner in which the injuries were caused as also the manner in which the incident occurred, it cannot be said that Babbu appellant had an intention to commit murder or cause such injuries which

were likely to cause death. There is no doubt that the injuries caused by Babbu appellant were on vital parts of the body but the injuries were not shown to be dangerous to the life. P.W. 5 has tried to blow hot and cold. In his examination in chief without any supporting material he stated that death could have also been caused by these injuries but during his cross-examination he stated that actual condition of the injuries disclosed by the X-ray did not show that death was also possible from these injuries. There is no material on record that any internal damage was caused by the gun-shot injuries sustained by the two victims. The injuries caused by appellant Pappu was stated to be simple in nature although it was on the left side of the skull. Since this injury was also caused all of a sudden, it cannot be presumed that such injury was caused with the intention or knowledge that death could also be caused. It is true that while considering as to what offence is made out, the seat of injury and the weapon used in the commission of the crime are helpful in coming to the conclusion as to the nature of the offence but at the same time other attending circumstances have also to be considered. In the instant case it is established beyond doubt that it was a case of sudden quarrel, single shot fired by appellant Babbu and that too indiscreetly without causing any internal damage or grievous hurt to any of the victims. Injury caused by appellant Pappu was also simple in nature. In these circumstances, it is difficult to hold that the offence committed by the appellants is covered by Section 307, I.P.C. In my considered view the prosecution was able to establish only commission of offence u/s 324, I.P.C. by the appellants.

14. Accordingly the appeals deserve to be partly allowed. Conviction of the appellants u/s 307, I.P.C. is set aside and they are convicted u/s 324, I.P.C.

15. So far as the question of sentence is concerned, the undisputed facts are that appellant Babbu was in jail since after he surrendered on 24-11-1978 till he was released on bail by this Court vide order dated 23-8-1979. Appellant Pappu was also in jail for about three months. Admittedly no untoward incident was reported against the appellants during the period of about 18 years since after their conviction in the present case. The record shows that the appellants were young boys at the time of the commission of the crime and after lapse of 18 years no useful purpose shall be served by sending them to jail. The order of sentence, therefore, deserves to be modified and in my view sentence of imprisonment already undergone by both the appellants and fine of Rs. 5000/- in case of Babbu appellant and Rs. 2500/- in case of Pappu appellant would meet the ends of justice.

16. The appeals are hereby partly allowed. Conviction of the appellants u/s 307, I.P.C. is set aside. They are convicted u/s 324, I.P.C. and appellant Babbu is sentenced to imprisonment already undergone and fine of Rs. 5000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of six months. Appellant Pappu is sentenced to imprisonment already undergone and fine of Rs. 2500/- and in case of default of payment of fine to undergo R.I. for three months.

17. The appellants are allowed one month's time to deposit the fine in the trial Court.