

(1989) 03 AHC CK 0040

Allahabad High Court

Case No: Criminal Appeal No"s. 1115 and 1116 of 1979

Munshi Lal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: March 10, 1989**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 304, 307, 323, 325, 34

Citation: (1990) 14 ACR 147**Hon'ble Judges:** A.N. Dikshita, J**Bench:** Single Bench**Advocate:** A.N. Srivastava, for the Appellant;**Final Decision:** Allowed

Judgement

A.N. Dikshita, J.

These two appeals have been preferred by Munshi Lal and Chunnu Lal alias Chunnu against the judgment and order dated 28-3-1979 passed by Sri Ikramul Bari, 8th Additional Sessions Judge, Kanpur, in Sessions Trial No. 452 of 1975. Munshi Lal has been convicted under Sections 304 and 323/34 IPC and has been sentenced to 7 years ♦ R.I. and a fine of Rs. 500/- or in default of payment of fine to six months ♦ further rigorous imprisonment as also to three months ♦ R.I. respectively under the two counts. The other Appellant Chunnu Lal has been convicted under Sections 325/34 and 323 IPC. He has been sentenced to four years ♦ R.I. and a fine of Rs. 500/- or in default of payment of fine to further six months ♦ R.I. and to three months ♦ R.I. under the two counts. The sentences have been directed to run concurrently.

2. The prosecution story is as follows : Suraj Pal PW 4, and Shantanu Kumar were residents of village Amauli, P.S. Sajeti, Kanpur, and had been students of Gandhi Vidyapith College at Ghatampur. The two Appellants and accused Ram Shanker and

Rampal were also studying in that college. The Appellants and the other two accused were residents of village Bhadran. In their student days there, was strained relationship between Suraj Pal, PW 4, and his friends on the one side and Munshi Lal Appellant and his friends on the other. During the Karik fair Munshi Lal Appellant had a Marpit wjth one Babu Singh of village Amauli. On 12-4-1973 Suraj Pal, PW 4, and Shantanu Kumar were standing on the left of the college building near the house of one Ram Sajiwan Pande who has been described in the prosecution story as Pandeji. They were waiting for one Nathu Singh who belonged to their village. At about 9.15 A.M. the two Appellants and their companion Ram Shanker and Rampal arrived there. They had lathis in their hands. On the exhortation of Ram Shanker and Rampal the Appellants started assaulting Suraj Pal, PW 4, and Shantanu Kumar with lathis. Shantanu Kumar received an injury on his head and fell down. Suraj Pal, PW 4. also received injuries. The incident was said to have been witnessed by Shiv Baran Singh, Parasram Singh, Khagol Singh and many others. After the incident first aid was given to Shantanu Kumar at Primary Health Centre, Ghatampur, but ultimately he was shifted to Hellet Hospital, Kanpur, where he died at about 6.30 or 6.45 P.M.

3. A written first information report of the incident was lodged by Suraj Pal, PW 4, at P.S. Ghatampur on 13-4-1973 at 2.00 A.M. (night).

4. On the basis of the above first information report the usual investigation followed and ultimately a chargesheet was submitted against the two Appellants and accused Ram Shanker and Rampal.

5. The injuries of Shantanu Knmar were medically examined on 12-4-1973 and the following injury was found on his person :

Lacerated wound 1 1/4" x 1/4" on the perital region of scalp in the mediam plane vertically directed 6" above the root of nose. Advised X-ray.

Suraj Pal, PW 4, was medically examined on 12-4-1973, at 5.55 P.M. and the following injuries were fonnd on his person :

1. Lacerated wound and status 1/2" x 1/2" x bone deep (left scapular). Margins contusion present, bluish, red size horizontally.

2. Tracheas 1" below elbow joint aspect.

Shantanu Kumar having died at 7.25 P.M. on 12-4-1973 at L.L.R. Hospital, Kanpur, his post mortem examination was conducted by Dr. R.B. Ravi at 3-20 P.M. on 13-4-1973 and the following ante mortem injuries were found on his body :

1. Lacerated wound 3/4" x 1 1/2" scalp deep over the head with nipple 5 1/2" above right ear.

2. Traumatic swelling 3" x 2" on the left side of head just above left ear.

In the opinion of the doctor the death was caused due to shock and haemorrhage as a result of the head injury.

6. It might be mentioned here that in regard to the above incident another first information report giving a counter version was lodged at P.S. Ghatampur by the aforementioned Ram Sajiwan Pande, DW 1, on 12-4-1973 at 10.35 A.M. In this report the informant stated that at about 9.45 A.M. on 12-4-1973, Munshi Lal Appellant was chased by 3-4 students of Gandhi Vidyapith College, Ghatampur. they were assaulting Munshi Lal Appellant with lathis. Amongst those boys was one Babu Singh of village Amauli who was carrying a country-made pistol. Munshi Lal came running in the Varandah of the complainant where he was fired at by Babu Singh. Munshi Lal immediately lay on the ground and was not hit. The fire, however, hit the complainant's younger brother's wife Smt. Munni Devi who was sweeping the floor nearby. Smt. Munni Devi received a pellet injury near her right eye. The complainant Ram Sajiwan Pande, Jageshwar Awasthi, Fazil Behna and others who were present there then challenged Babu Singh and his companion whereupon they ran away towards the west. Munshi Lal Appellant also thereafter went away towards north. Babu Singh was clearly identified by the complainant and others who were present there. They also identified the other companions of Babu Singh. It was also mentioned in the report that 3 wads of used cartridges and 39 pellets were recovered at the spot.

7. Munshi Lal Appellant was medically examined at 5.45 P.M. on 12-4-1973 and the following injuries were found on his person :

1. Lacerated wound 1" x 1/4" x 1/4" on the frontal region of the scalp in the medial plane obliquely placed 7" above the tragus of right ear.
2. Contusion 2" x 1 1/2" in the posterior lateral aspect of left forearm obliquely placed 2" above the lower end of radius. Advised X-ray.
3. Contusion 6" x 1/2" on the back of right shoulder transversely placed.
4. Contusion 5 1/2" x 1/2" on the upper 1/3rd of right half of back obliquely placed.
5. Contusion 4 1/2" x 1/2" on the right half of back transversely placed in middle 1/3rd.
6. Contusion 7" x 1/2" on the back of left shoulder obliquely placed.
7. Contusion 6" x 1/2" on the upper 1/3rd of left shoulder obliquely placed 1" below injury No. 6.
8. Contusion 5" x 1/2" on the upper 1/3rd of left half of back transversely placed.
9. Contusion 4" x 1/2" on the posterior lateral aspect of left arm transversely placed in upper 1/2.
10. Contusion 2" x 1/2" on the medial aspect of right knee joint obliquely placed.

According to the doctor the above injuries except injury No. 2 were simple caused by some blunt weapon. The nature of injury No. 2 could not be ascertained without X-ray and X-ray was advised about the same.

8. Smt. Munni Devi who was hit by the fire arm of Babu Singh was medically examined at 1.15 P.M. on 12-4-1973 and she was found to have received the following injury :

Abrasion 1/8" x 1/8" on the right cheek 1" away from the right along nose and 1/2" below from the outer angle of right eye. There is swelling 1" x 1" encircling the injury. Swelling is pinkish with bluish tinge. Abrasion is circular in shape.

The injury was found to be simple and fresh and could be caused by friction.

9. On the basis of the report lodged by Suraj Pal, PW 4, the case proceeded against the Appellants and co-accused Ram Shanker and Ram Pal. All the accused pleaded not guilty. The trial court convicted and sentenced Munshi Lal and Chhunnu Lal Appellants as already stated above but acquitted the other co-accused Ram Shanker and Ram Pal.

10. The prosecution produced Suraj Pal, PW 4, as an eye-witness. He had also lodged the first information report. He has corroborated the version as given out in the report. He has stated that the accused persons used to surround Nathu Singh PW 6 in the College ; that Nathu Singh, PW 6, was his cousin (Mama's son), that on the day of the incident Nathu Singh, PW 6, had told him that he was going for his History paper to the College ; that as the accused persons used to surround Nathu Singh, PW 6, in the College hence he had requested this witness to come there and bring him from the back side of the College ; that at about 9.30 A.M. the witness along with Shantanu Kumar reached at the back of the College which was the front of the house of Pandeji ; that the Appellants having lathis in their hands also came there and enquired from the witness the purpose of his visit ; that in the meantime Ram Shanker and Ram Pal, co-accused, also arrived there empty handed ; that Ram Shanker and Ram Pal exhorted the Appellants to beat the witness and Shantanu Kumar ; that Munshi Lal Appellant assaulted Shantanu Kumar with lathi while Chhunnu Lal Appellant started assaulting the witness with lathi ; that the witness and Shantanu Kumar had small Dandas in their hands and they tried to defend themselves; that Shantanu Kumar received an injury on his head and he fell down ; that the witness had also received injuries on his head and hand and that on the intervention of some persons present there the accused ran away. After the incident the witness proceeded towards the house of one Kallu Singh which was close to the place of incident. While the witness was proceeding he heard the firearm shot of Munshi Lal and others. This witness admitted that he heard only one shot. After ten minutes the witness returned to the place of occurrence to see Shantanu Kumar. Khagol Singh and Sheo Baran were found to be present there. Shantanu Kumar had an injury on his head and back of the ear and was lying unconscious. This witness

took Shantanu Kumar first to the Primary Health Centre and then to Hallet Hospital, Kanpur, where he died at about 6.30 or 6.45 P.M. This witness has admitted that he and Nathu Singh, PW 6, had strained relations with the accused persons for the last one year. He has also admitted that the entire incident occurred in front of the house of Pandeyji (who has been examined as DW 1 and who lodged the counter report). He has also admitted that the entire incident of Marpit took half a minute ; that no abuses were exchanged between the parties and instead the Marpit ensued ; that the baton which were in his and Shantanu Kumar's hands were wooden Dandas which they had picked up from the place of incident ; that the said batons were around 1-1/2 feet long and 1 inch thick and that he could not give any blow to the accused persons nor he saw any injury on the person of Munshi Lal Appellant. The witness denied having any relationship with Babu Singh. He also did not see Babu Singh at the time of the incident. This witness denied having given a statement to the investigating officer that a day earlier to the incident Babu Singh had come to him and had taken him and Santan Singh and Jairam Singh stating that in case Munshi Lal and his companions surrounded Nathu Singh, PW 6, at the College they would take revenge. According to the witness the investigating officer had wrongly recorded this statement and might have accepted some money for this. He has also stated that at the time of the incident the examination was in progress which was to end at 10.00 A.M. It is significant that when the Marpit was going on Nathu Singh, PW 6, had emerged from the College. He admits that he never gave a statement to the investigating officer to the effect that in defence this witness along with his friends used lathis. The investigating officer has falsely written this fact in his statement u/s 161 Code of Criminal Procedure as he was won over. He has also denied that he ever gave a statement to the investigating officer that Babu Singh fired at Munshi Lal Appellant with a pistol. He stated that he did not see any lady of the house of Panditji receiving any injuries. He denied to have given a statement to the investigating officer that on account of the firing by Babu Singh the ladies of the house of Pandeyji were injured. This witness has stated that he did not take Shantanu Kumar to the house of Kallu in injured condition but had sent for the parents of Shantanu Kumar to the house of Kallu Singh though with the same breath he admitted that he gave such a statement that he brought the injured to the house of Kallu Singh. He again denies having stated before the investigating officer that after reaching the house of Kallu Singh he had sent for the parents of Shantanu Kumar. He has admitted that Sheo Baran, Paras Ram, Khagol Singh and Nathu Singh are of his village which is at a distance of four miles from the place of incident while the house of Kallu Singh is only half a furlong from there. He has admitted that no blood fell on the ground from the injuries of Shantanu Kumar. He has denied that he knew that any ladies of the house of Pandeyji received any injuries till his statement in court but he then admits that he came to know of such injuries having been received by the ladies of the house of Pandeyji after two days. Babu Singh was apprehended by the police and a case u/s 307 IPC was registered against him in which this witness, Babu Singh and Jairam Singh remained in jail. He has then

admitted that very little blood fell on the shirt of Shantanu Kumar. Though this witness received injuries but he did not get them examined and instead got them examined at Hallet Hospital, Kanpur. He admits that Police Station Ghatampur is at a distance of half a mile from the place of occurrence but no report was lodged instantly. Implicit reliance cannot be placed on the statement of this witness as his testimony lacks incredibility and he is concealing fact as regards the firing by Babu Mngh which caused injuries to Appellant Munshi Lal and Smt. Munni Devi, sister-in-law of Pandeji. The injuries caused to Munshi Lal Appellant and Smt Munni Devi remain unexplained. The testimony of this witness thus deserves to be discarded and is of no avail to the prosecution.

11. Khagol Singh, PW 5, was earlier a peon in Gandhi Vidyapith College, Ghatampur, but was dismissed three months prior to the incident. Around 9.30 A.M. or 9.45 A.M. he was standing near the canteen of the College. He heard noise in front of the door of the College and the house of Pandeji. He saw the Appellants assaulting Shantanu Kumar and Suraj Pal, PW 4, who were known to him from before. Ram Shanker and Ram Pal, co-accused, were exhorting for such assault. The Appellants were assaulting with lathis. Very many persons including Nathu Singh had arrived there. Suraj Pal and Shantanu Kumar were defending themselves with Dandas. On the arrival of this witness and others the accused ran away and during this running away some-one fired though he did not see the person who fired. In his cross-examination he has admitted that Shantanu Kumar had received an injury on his head. Blood was oozing out of the injury. Shantanu Kumar had received one injury on the back of his ear. He, however, admits that his shirt did not get blood stained. This part of his statement is wholly unbelievable when he himself admits that blood was coming out of the injury which was received on the head of Shantanu Kumar. He has admitted that he saw the injury on the head which had caused some blood spots on the shirt but with the same breath he admits that he did not see from which injury blood was coming out. He denied that he ever gave the statement to the investigating officer that around 10.15 AM. someone told him that few boys of his village are having some quarrel. He further admits that he did not see that all the four accused were assaulting Babu Singh and Jai Ram Singh. He has admitted that he did not give the statement to the investigating officer to the effect that all the four accused were assaulting Suraj Pal and Shantanu Kumar with lathis nor did he state to the investigating officer that Shantanu Kumar and Suraj Pal were defending themselves with lathis. He further admits that only Pitai was being done but there was no assault. He only saw one or two lathi blows. It is very difficult to find any truthfulness in his statement. It appears that he has not seen the incident and is a partisan witness having been produced only to corroborate the prosecution version. He admits that he did not have any talk at the place of occurrence with anyone. It is very significant that though he was present there but he did not see any injury having been caused to Smt. Munni Devi nor saw Munshi Lal being assaulted who received multiple injuries. His testimony lacks incredibility and

no reliance can be placed on it.

12. In support of the prosecution version Nathu Singh, PW 6, has been produced. He has corroborated the version of the first information report and has supported the statement of Suraj Pal, PW 4. He has admitted that he had a quarrel with the Appellants and their men. He had appeared on 12-4-1973 in the history paper of High School examination but had deposited his copy 20 minutes earlier. As he came out of the College he saw some quarrel in front of the house of Pande ji. He has stated that he saw the Appellants assaulting Shantanu Kumar and Suraj Pal with lathis. Ram Shanker and Ram Pal accused were having Dandas and were exhorting to assault. He and the other witnesses rushed towards the scene of occurrence and challenged the accused whereupon some one from the accused persons fired a pistol shot. He admits that he did not see as to who had fired the shot. After the assault the accused ran away. He has admitted that none of the accused was his class-mate. He admits that there was enmity between him and the accused persons because they used to exert influence on him. He admits that there was no marpit prior to this incident. In his cross-examination he has stated that on receiving the news of the quarrel he raised an alarm only once on which Sagar Singh and Khagol Singh had arrived. He admits that he did not see any pistol or gun in the hands of any of the assailants. He has tried to show that Shantanu Kumar and Suraj Pal were defending themselves with lathis. He has admitted that he did not see Shantanu Kumar and Suraj Pal picking up Dandas. He did not see any blood except some spots here and there. He admits that he did not talk to Shantanu Kumar and Suraj Pal. After the incident he did not wait at the place of occurrence but went straight to his village which is highly unnatural as these persons had gone to protect him from the assault by the accused persons. He further admits that he did not report to the police about the incident nor informed the Principal or any teacher of the College. Surprisingly he did not even inform the family members of Shantanu Kumar and Suraj Pal. He has admitted that he only knows Babu Singh and his friendship is confined only to talking terms. He denied having made any statement to the investigating officer to the effect that he told Babu Singh to come to his village. He has no doubt admitted that Babu Singh is of his family. He further denies having given a statement to the investigating officer to the effect that around 10-15 A.M. he came out of the College after his paper. His testimony also deserves to be discarded as he is not deposing truthfully and is deliberately concealing about the injuries received by Munshi Lal Appellant and Smt Munni Devi. Much reliance cannot be placed on the testimony of this witness.

13. It is very intriguing that the injuries received by Munshi Lal Appellant which were 10 in number and those of Smt. Munni Devi have not been explained by the prosecution. Apparently the prosecution has failed to reveal the truth.

14. The above discussion of the evidence led on behalf of the prosecution leads to the conclusion that the prosecution has failed to bring home the guilt to the

Appellants and their appeals deserve to be allowed.

15. In the result both the appeals are allowed and the conviction and sentences of the Appellants are set aside and they are acquitted. They are on bail and they need not surrender. Their bail bonds are discharged.