

**(1989) 07 AHC CK 0124****Allahabad High Court**

**Case No:** Criminal Appeal No. 394 of 1978 connected with Criminal Revision No. 815 of 1978

Hirday Ram and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision:** July 10, 1989

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 324, 325, 34

**Citation:** (1990) 14 ACR 82

**Hon'ble Judges:** M.M. Lal, J; H.C. Mittal, J

**Bench:** Division Bench

**Advocate:** C.S. Saran, Kesho Sahai, N.P. Midha and N.K. Roy, for the Appellant; A.G.A. and Girish Chandra Saxena and S.K. Agarwal, for the Respondent

**Final Decision:** Disposed Of

### **Judgement**

M.M. Lal, J.

This is an appeal against the judgment and order dated 28-1-1978 passed by Sri Radhey Krishna Agarwal, the then IVth Additional District and Sessions Judge, Saharanpur by which he has convicted Hirday Ram under Sections 325/34 and 324 IPC and Kalam Singh, Baljor Singh and Kahal Singh under Sections 325/34 IPC and 324/34 IPC ; and has sentenced Hirday Ram to four years♦ R.I. under Sections 325/34 and two years♦ R.I. under Sections 324 IPC and has sentenced the remaining three Appellants to four years♦ R.I. under Sections 325/34 IPC and two years♦ R.I. under Sections 324/34 IPC respectively.

2. The Appellants had also been charged under Sections 302/34 IPC but the learned trial court has acquitted them of the same. The said acquittal has been challenged in Criminal Revision No. 815 of 1978, which has also been taken for disposal together with this appeal.

3. The parties are residents of the same village i.e. Village Gangdaspur, Police Station Deoband, District Saharanpur. Appellant Hirday Ram is the father of Kalam Singh and Baljor Singh Appellants. Kabal Singh Appellant is said to be their servant. Plot nos. 1160 to 1167 and 1171 belong to Appellant Hirday Ram. Towards south of the said plots there was a ♦Gul♦ i.e. a water channel, and towards further south there were some plots belonging to Shyam Singh deceased. From the said Gul Shyam Singh deceased used to irrigate his field. The Investigating Officer has vividly shown topograph in the site-plan prepared by him.

4. According to the case of the prosecution, on 11-5-1977 at about 7.30 A.M. when deceased Shyam Singh and his brother PW 2 Isam Singh injured were driving a cultivator in their field Hirday Ram, Appellant, armed with a spear, and the remaining three Appellants, armed with lathis, came there and they started demolishing the aforesaid Gul. On the same Shyam Singh deceased and Isam Singh raised an objection. The Appellants instead of paying any heed to the same chased Shyam Singh and Isam Singh, who ran for their lives towards east. The Appellants ultimately surrounded Shyam Singh and Isam Singh in the nearby field of Hukama and attacked them with their arms as a result of which they sustained injuries. Shyam Singh fell down unconscious at the spot.

5. Asa Ram PW 1 father of Shyam Singh, rushed to the spot when he heard about the incident and took his two injured sons to Government Hospital at Deoband on a tractor and got them medically examined It may be noted that Shyam Singh succumbed to the injuries on 20-5-1977 at 4.45 P.M.

6. Asa Ram, informant, lodged the report of the incident at Police Station Deoband, situated at a distance of five miles on the same date at 11.40 A.M.

7. In support of its case the prosecution examined nine witnesses. PW 1 Asa Ram is the informant. PW 2 Isam Singh is injured. PW 4 Dheer Singh and PW 5 Jai Karan Singh are eye-witnesses. PW 9 Masook Ali was ♦Patrol♦ He had brought a map of the village to show that there was a Gul in between the fields of the parties. PW 6 Mohd. Umra was Head Moharrir at P.S. Deoband. He deposed that on 11-5-1977 at 11.40 A.M. Asa Ram had come to the police station and handed over a report of the incident on the basis of which this case was registered. The investigation of this case was made by Sri Pal Sharma, PW 7, the then Station Officer.

8. PW 8 Dr. G.R. Sharma, the then Medical Officer P.H.C. Deoband, was examined to depose that on 19-5-1977 at 9.15 A.M. he had examined Shyam Singh injured and had found the following injuries on his person :

- (i) Lacerated wound 4 1/2 cm x 1/2 cm x scalp deep 8 cms above left ear.
- (ii) Contusion 3 1/2 cms x 2 cms, 3 cms above injury No. 1.
- (iii) Contusion 4 cms x 2 cms, 1 cm above left ear.

(iv) Contusion 4 1/2 cms x 2 cms, 4 cms above lateral 1/3 of left eye brow.

(v) Lacerated wound 6 cms x 3/10 cm x 4/10 cm, 6 cms above root of nose.

(vi) Contusion 6 cms x 4 cms, with abrasion 3 cms x 1 1/2 cms on the mid left upper arm back.

(vii) Abrasion 6 1/2 cms x 1 cm, 7 cms, above left wrist joint lateral side.

(viii) Contusion 9 cms x 1 1/2 cms on right lower region back.

According to the doctor, except injury No. 7, all the aforesaid injuries of Shyam Singh were caused by blunt weapons and that injury No. 7 was caused by friction.

9. The said doctor had also examined Isam Singh, PW 2 on the same date at 9.25 A.M. and had found the following injuries on his person :

1. Contusion 8 cms x 3 cms on back right side 2 cms to right junction angle. Right scapula with abrasion 3 cms x 1/2 cm.

2. Contusion 4 cms x 2 cms on left shoulder joint upper side.

3. Incised wound 1 cm x 3/10 cms x 1/2 cm at the junction of left ear and scalp margins were clean cut. Clotted blood was seen and clear just bleeding was seen.

According to the doctor the aforesaid injuries No. 1 and 2 were caused by a blunt weapon and injury No. 3 was caused by a sharp edged weapon.

10. On 21-5-1977 at 5.30 P.M. Dr. M. Ansari, the then Medical Officer, S.B.D. Hospital, Saharanpur had conducted the post mortem examination of the dead body of Shyam Singh and had found the following ante-mortem injuries on the same . --

(i) Stitched wound 5 cms long after cutting stitches, the wound was lacerated wound 5 cms x 1/2 cm scalp on left side head, 5 cms above left ear with traumatic swelling 5 cms x 4 cms around the wound.

(ii) Abraded contusion 3 cms x 1 cm on the forehead in middle, near hair margins.

(iii) Contusion swelling around left ear.

(iv) Abraded contusion 7 cms x 1 cm on lower outer part of back of left fore-arm.

(v) Abraded contusion 3.5 cms x 1 cm on back middle left arm.

11. On an internal examination the doctor found right outer fossa from anterior to posterior side as fractured. Left outer fossa was also found fractured. According to the doctor the death of Shyam Singh had caused due to coma as a result of the aforesaid head injury.

12. The Appellant in their statements denied the case of the prosecution. Hirday Ram and Kalam Singh, Appellants, further stated that both of them had gone to their field to sow sani but found Asa Ram, Shyam Singh, Isam Singh and Sadhoo

Singh uprooting their sugar-cane crop on which they protested but the said persons attacked and beat them with lathis and gun. They further stated that in their private self defence they had also wielded lathis. The Appellant's did not produce any witness in defence.

13. The learned Sessions Judge believing the case set up and the evidence produced by the prosecution has convicted and sentenced the Appellants as aforesaid. Aggrieved by the same the Appellants have filed this appeal, and one Dila Ram has filed the aforesaid criminal revision.

14. We have heard the Learned Counsel for the Appellants, revisionist and the Assistant Government Advocate and have perused the record carefully.

15. The learned Assistant Government Advocate has referred to us the statements made by Hirday Ram and his son Kalam Singh u/s 313 Code of Criminal Procedure in which they have stated that when they had gone to sow sani in their field they found Asa Ram, Shyam Singh, Isam Singh and Sadhoo Singh uprooting their sugar-cane crop to which they protested but the said persons beat them with lathis and ballams and that in self defence they had also wielded lathis; and on the basis of the same has tried to urge that had four persons on the side of the prosecution, i.e. Asa Ram, Shyam Singh, Isam Singh and Sadhoo Singh, gone prepared to commit aggression, then they would not have suffered one dead and one injured on their side with so many injuries. He has also submitted that on the other hand, the prosecution side would have succeeded to inflict very many injuries to many persons on the side of the defence He has also contended that there is an incise wound suffered by Isam Singh, PW 2, which also indicates that the defence side was armed with sharp edged weapon and had come prepared to commit aggression.

16. The Learned Counsel for the Appellants, on the other hand, has referred to us the eight injuries sustained by Kalam Singh, Appellant, including an injury, which according to the doctor, was a punctured and was caused by a pointed weapon and has urged that had the prosecution side been taken by surprise, as alleged, and had the defence side come prepared to commit aggression then so many injuries, including injuries on vital parts of the body, could not have been suffered by Kalam Singh. The Learned Counsel for the defence has also pointed out certain other short-comings in this case which, according to him, the prosecution has failed to explain.

17. It is a well settled principle of criminal law that an accused can be convicted only when on the evidence produced the court is in a position to come to a definite conclusion beyond the possibility of reasonable doubt that the accused committed the offence with which he stood charged. Neither conviction can be based on mere possibilities nor it is permissible for the court to speculate as to what had really happened. If both the parties come to court with untrue facts and conceal the real truth they have themselves to blame and they cannot expect the court to arrive at

any definite conclusion on the unreliable evidence produced either for or against either of the parties. In such a case the court will certainly attempt to separate the grain from the chaff but only if it is possible to do so. In certain circumstances it may be found to be an impossible task. That is particularly so when the evidence of both the parties is thoroughly unreliable and cannot be accepted even in part with safety. In such a case it is not open to the court to make out a third case, which is different from the case set up by both the parties. In such a case the court can only say that the matter is doubtful in the extreme and it is not possible to arrive at any conclusion one way or the other. The result of such a finding may be that all the persons who stand as accused in the case may have to be given the benefit of doubt, which cannot be helped. The defective investigation and the conduct of the parties themselves are really responsible for that regrettable result. In such a case there can be no question of recording any conviction. This is what happened in this case.

18. No doubt, the defence taken by the accused persons and the cross case set up by them was not true yet the same will not help the prosecution because the prosecution shall have to stand on its own legs.

19. In this case the eye-witness account given by the witnesses is that when at the time of the incident Shyam Singh deceased and his father Asa Ram informant, were peacefully driving the cultivator in their field Hirday Ram Appellant, armed with ballam, and the remaining three Appellants, carrying lathis, came there and started demolishing the Gul (water channel), which was situate in between the fields of the parties and that when they were asked not to do the same, the Appellant started abusing and came running towards them. It was further stated that Shyam Singh and Asa Ram started to run for their lives towards east but the Appellants chased them and surrounded them in a nearby field of Hukama Singh and started beating them with spear and lathis as a result of which Shyam Singh fell down on the spot unconscious and Asa Ram sustained injuries. Although no explanation of the injuries sustained by the defence side was given in the first information report, yet PW Isam Singh tried to depose that at the time of the incident he had a danda, one inch in diameter and only one cubit long, which he had applied in self defence. In our view had this been so, i.e. had Shyam Singh and Asa Ram been working in their field in the normal manner, i.e. without apprehending any danger etc. and had the four Appellants armed with spear and lathis come there to commit aggression then Kalam Singh Appellant Would not have sustained so many injuries and too with a thin and small danda.

20. Dr. G.R. Sharma, PW 8, who had examined the injured persons from the side of the prosecution, had also examined Kalam Singh Appellant on the date of the incident itself, i.e. on 19-5-1977, at 10 A.M. had found the following injuries on his person :

- (i) Lacerated wound 6 cms x 1/2 cm x scalp deep on back left side of hand 7 cms behind left ear.
- (ii) Contusion 6 cms x 3 cms, 5 cms above right ear with lacerated wound 1 cm x 3/10 cm x 1/2 cm.
- (iii) Lacerated wound 2 cms x 1/2 cm x scalp deep, 8 cms above left ear.
- (iv) Contusion 6 cms x 3 cms back of right hand distal end.
- (v) Contusion 8 cms x 1 1/2 cms on left scapula.
- (vi) Contusion 12 cms x 2 cms crossing injury No. 5.
- (vii) Lacerated wound 1 cm x 3/10 cm x 1/2 cm on back left elbow joint.
- (viii) Lacerated wound 3/4 cm x 5/10 cm x 11/2 cms on back of left fore-arm 6 1/2 cms below left elbow joint.
- (ix) Contusion 7 cms x 1 1/2 cms, 3 cms behind injury No. 8. The aforesaid doctor has reported that out of the aforesaid injuries injury No. 8 was punctured one caused by a pointed weapon.

21. The prosecution in this case has also not at all explained as to how when Isam Singh was armed with a small danda Kalam Singh Appellant had sustained one punctured wound which was clearly not caused by a blunt weapon.

22. The learned Assistant Government Advocate has urged before us that when the aforesaid doctor had not stated in his injury report that the aforesaid wound sustained by Kalam Singh was punctured one his evidence to the contrary should not be believed we find the said argument devoid of force because in his report the doctor has clearly stated that the said wound was caused by a pointed weapon.

23. The fact that the prosecution side was also armed with a pointed weapon shows that they were not present in their field in an innocent manner. Their version that they were not armed with any weapon other than a small danda to drive the oxen gets belied from the medical evidence. The Court will not attempt to introduce a third case and make a guess regarding the manner in which Kalam Singh could possibly sustain the aforesaid punctured wound specially when the prosecution made no efforts whatsoever to explain the said injury.

24. The informant and the two eye-witnesses examined in this case have stated in their evidence that when Shyam Singh and Isam Singh were tilling their field the Appellants had come and demolished the aforesaid Gul, that when protest was made, the Appellants came towards Shyam Singh and Isam Singh, who started running for their lives but they were chased and surrounded and beaten in the nearby field of Hukama Singh. In our view, when the Appellants had demolished Gul and had attained their object and aim and when Shyam Singh and Isam Singh had not gone near them, obviously when the Appellants were armed with spear and

lathis, then there was no plausible reason for the Appellants to have come to that place where Shyam Singh and Isam Singh were present and further to chase them when they wanted to run away.

25. The place of occurrence also does not indicate that the Appellants could possibly be aggressors. As may be seen from the site plan, prepared by the Investigating Officer the Gul was situate towards north of plot nos. 1189, 1188, 1186, 1185 etc. Shyam Singh and Isam Singh were working in plot No. 1187 which is situate towards south of the aforesaid plot No. 1188. The Investigating Officer has shown in his site-plan that it was in plot No. 1186 that the Appellants had come to attack Shyam Singh and Isam Singh. It was from said field (plot No. 1187) that Shyam Singh and Isam Singh had started to run for their lives when the Appellants had chased them. In our opinion, had it been the case of the piosecution that on seeing the Appellants demolishing the aforesaid Gul Shyam Singh and Isam Singh had gone there to lodge a protest when they were attacked, then it would have a different matter. In that case the place of occurrence could possibly suggest that the Appellants were aggressors. Here Shyam Singh and Isam Singh constantly remained present in their plot no. 1187, which was quite away from the aforesaid Gul because there were other plots which intervened in between the said Gul and plot No. 1187. The evidence produced by the prosecution does not inspire confidence that when Shyam Singh and Isam Singh had not gone near the aforesaid Gul, the Appellants had any reason to come to them to make an attack specially after they had attained their object by demolishing the aforesaid Gul.

26. The Learned Counsel for the Appellants has urged before us that the case taken up by the prosecution that any Gul was demolished at the time of the incident was also untrue. We find force in the said submission. PW 2 Isam Singh has admitted in his evidence that 10-15 days prior to this incident as well the Appellants had demolished the aforesaid Gul, for which no report had been lodged and subsequently he had restored the said Gul. In this respect he has been belied by his own father Asa Ram PW 1 who has stated that prior to this incident the said Gul had never been disturbed and that it was on the date of the occurrence itself that the said Gul was demolished for the first time. Again PW 2 Isam Singh has deposed that the Appellants had demolished a length of 2-2 1/2 cubits of the said Gul. In this respect as well he has been contradicted by PW 7 Sri Pal Singh, Investigating Officer, who stated that at the time of the inspection he lound the said Gul having been demolished upto the distance of one furlong. It is, therefore, difficult to believe that immediately prior to the occurrence the Appellants had demolished any such Gul specially when the said Gul was also useful to the Appellants for irrigating their fields.

27. The learned Assistant Government Advocate has referred to us the evidence of the Investigating Officer to the effect that he had seen signs of the Gul having been demolished and on the basis of the same has argued that the said local inspection

tends to support the case of the prosecution. The Learned Counsel for the Appellants, on the other hand, has submitted that the investigation was not fair and that in any case the aforesaid observations made by the Investigating Officer did not indicate that the Gul had been demolished just at the time of the incident. He has further urged that the observation of the Investigating Officer that some sugar-cane crop of the field of the Appellants was found uprooted suggests that the incident had taken place not in the manner as suggested by the prosecution but had taken place in some other way. We find force in the said argument advanced by the Learned Counsel for the Appellants.

28. For the discussions made above, and for the reasons stated, we are of the opinion that the prosecution has not placed true facts before the court but, on the other hand, had concealed the real truth and has suppressed the genesis and the origin of the occurrence. The Appellants are thus entitled to get benefit of doubt and are liable to be acquitted.

29. The appeal is allowed and the conviction and sentences of the Appellant Hirday Ram under Sections 325/34 IPC and 324 IPC and of Kalam Singh, Baljor Singh and Kabal Singh Appellants under Sections 325/34 and 324/34 IPC are hereby set aside. The Appellants are not found guilty of the said offences and are acquitted of the same. The Appellants are on bail. They need not surrender to their bonds, which hereby stand discharged.

30. The revision filed by Dila Ram is also dismissed.