

(2012) 02 AHC CK 0351

Allahabad High Court

Case No: Crl A. No. 116 of 1981

Ajay Pal and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Feb. 16, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313, 82, 83
- Penal Code, 1860 (IPC) - Section 307, 323, 325, 34

Citation: (2012) CriLJ 2692**Hon'ble Judges:** Vinod Prasad, J**Bench:** Single Bench**Advocate:** S.K. Chaturvedi, Shailendra Kumar, Sarvesh Ram Rawat, Miss Ibha Sinha
Amicus Curiae and Samsid Islam, for the Appellant;**Final Decision:** Allowed

Judgement

Vinod Prasad, J.

This appeal has been filed by appellants Ajai Pal (A-1). Mahesh (A-2) and Suresh (A-3) against the judgment and order dated 19.12.1980 passed by IIIrd Additional Sessions Judge. Agra in S.T. No. 267 of 1980. State v. Ajai Pal and others, by which, learned trial Judge has convicted all the three appellants u/s 307/34, 325/34 and 323/34, I.P.C. and has sentenced them to two years R.I. for the first charge, twenty one months R.I. for the second charge and three months R.I. for the last charge, with further direction that all the sentences of each of the appellants shall run concurrently. A fine of Rs. 50 on each of the appellants was also imposed for offence u/s 325/34. I.P.C. and in case of default in payment thereof they were directed to serve further R.I., for six weeks. Prosecution allegations against the appellants, which was scribed by Hori Lal vide written F.I.R. Ext. Ka-9. at the dictation of informant Het Ram (P.W. 2) were that on 29.11.1979 at 11 a.m. appellants herein had caused injuries to Ram Charan (P.W. -3). informant's brother, his aunt, Smt. Sukh Devi, and witnesses Shiv Charan and Lal Singh by spades and iron rod. Reason

of the assault was that (P.W. 3) had forbade them not to dig soil of his agricultural field and throw it on under constructed chak road, from informant's village Jamal Nagar Bhes to Chamraula Station. This incident was witnessed by the two injured, Shiv Charan "(P.W. 4). Lal Singh (P.W. 5) with Gopali and collected crowd.

2. Informant Het Ram (P.W. 2). had brought injured (P.W. 3) to police station Barhan on a cot. alongwith other injured, where, he had dictated F.I.R. Ext. Ka-1. which was scribed by Hori Lal, and then it was lodged at 1 : 30 p.m. same day. Head Moharrir Ram Prakash Sharma (P.W. 7) registered Ext. Ka-1. as Crime No. 267. u/s 307. I.P.C. by preparing chik F.I.R. Ext. Ka-14. and corresponding G.D. Entry Ext. Ka-15.

3. S.I. V.P. Thapa (P.W. 61, who had received information regarding registration of crime, when he was on a picket duty, from constable Nanhey Swaroop, had investigated the crime, during course of which he had arrested assaulters and had lodged them in police lock up regarding which (P.W. 7) had prepared G.D. Entry Ext. Ka-16. Investigating Officer after his return to the police station had recorded 161 statement of Head Moharrir (P.W. 7) as by that moment injured were already dispatched for their medical examinations through constable Phool Singh. After copying injury reports, which was brought by constable Phool Singh. Investigating Officer penned down informant's statement u/s 161. Cr. P.C. and thereafter came to the incident spot where he sketched incident spot map Ext. Ka-11 and thereafter recorded statements of Gyan Ram and many other witnesses. On the following day. 30.11.1979. Investigating Officer came to the hospital and recorded statement of the injured Ram Charan (P.W. 3). His blood stained apparels were seized by him by preparing seizure memo. Ext. Ka-10. Subsequently the statement of another injured, Smt. Sukh Devi was recorded by the Investigating Officer (P.W. 6). Statements of other witnesses Lal Chand and Phandu were inked on 6.12.1979 and same day appellant Ajai Pal (A-1) was arrested and his statements was recorded. On 21.12.1979. witnesses Shiv Charan, Gopali were interrogated and their statements were recorded. On 26.12.1979. supplementary reports of injured Ram Charan and Shiv Charan were noted by the Investigating Officer, perusal of which indicate that both of them had sustained fractures of their bones. Against two absconding accused (A-2 and A-3), report under Sections 82 and 83. Cr. P.C. for attachment of their properties were forwarded by the Investigating Officer and thereafter statement of Hori Lal was recorded. Concluding investigation. Investigating Officer had charge-sheeted the accused (A-11 vide Ext. Ka-12. (A-2 and A-3). had surrendered in Court on 9.1.1980 and hence they were separately charge-sheet vide Ext. Ka-13 on 23.1.1980.

4. Injured were medically examined on 29.11.1979 by Doctor Govind Prasad (P.W. 1) in State dispensary Barhan. Ram Charan was examined at 2 : 30 p.m. Lal Singh was examined at 2 : 55 p.m. Shiv Charan was examined at 3 : 15 p.m. and Smt. Sukh Devi was examined at 3 : 35 p.m. (P.W. 1) has proved their medical examination reports Exts. Ka-1. Ka-4. Ka-5 and Ka-8. He has also proved their supplementary reports Ext.

Ka.-2 (Supplementary report of Ram Charan) and Ext. Ka-6 (Supplementary report of Shiv Charan). (P.W. 1) had further proved the X-ray reports, prepared by Doctor Rama Shanker Sharma, as Ext. Ka-3 (in respect of Ram Charan) Ext. Ka-7 (in respect of Shiv Charan). These medical examination reports, in order of seriatim, for its relevant contents, are mentioned herein below :

Ex. Ka-1

Examined Ramcharan aged about 35 years s/o Karan Singh Kachhivaya r/o village Jamal Nagar Bhens Post. Chamrola P.S. Barhan Dist. Agra on dated 29/11/79 at 2.30 p.m./at State Dispensary. Barhan (Agra).

B/B : Constable Phul Singh CP 1935 P.S. Barhan

M.I. A healed scar of (irregular in shape) near on right forehead 1.5 cms. above RT. eyebrow.

Injuries.--(1) Lacerated wound :-3 cms. x 0.3 cms. x bone deep on left occipetal region. Bleeding present. (2) Abreded contusion :-3.5 cms. x 1 cms. on right scapular region horizontally. (3) Abrasion :-2.5 cms. x 0.5 cms. on right elbow lateral aspect. (4) Abrasion 2.5 cms. x 0.5 cms. on right foot lateral expect 2.5 cm. x below ankle joint (5) Lacerated wound :-1.2 cms. x 0.2 cms. on right leg lateral aspect 3 cms. above ankle joint.

Note.-- Injury No. (1) kept under observation. Advised X-Ray skull PA and AL view for injury No. (1). Injury No (1) (2) caused by hard and blunt object. Abrasions caused by friction. Injury No (5) caused by blunt edged object. Duration-presh.

Ex. Ka-2

Supplementary Report of Ramcharan s/o Karan Singh r/o Village Jamal Nagar Bhens. P.S. Barhan (Agra).

Injury No. (1) was kept under observation. X-Ray skull AP and AL view was advised for injury No (1) X-Ray done at the X-Ray clinic Agra Laxmi Narain Mandir Marg Daresi No. 1 Agra 282004 on Dated 30 Nov. 1979 at 2.35 p.m. X-Ray findings given by Dr. Ramashankar Sharma M.B.B.S. Regd. No. 7103 U.P.

X-Ray findings.--The Radiograms of skull shows evidence of fracture of the right parietal bone, in its posterior angle. Hence, the injury No. (1) is grievous.

Ex. Ka-3

The X-Ray Clinic. Agra

Laxmi Narain Mandir Marg.

Daresi No. 1. Agra-282004

M.L. Case No. 187/79

Date : 30 Nov. 1979

Name Ram Charan son of Karan Singh

Part Skull. A.P. and Lat. State Disp. Age 35 Yrs.

VIDE REF. Chit P.H.C. Barhan Distt. Agra 29.11.1979 State Disp.

ADDRESS (V) Jawahar Nagar Bhens. (P.S.) Barhan district Agra.

Accompanied By Bagwan Singh Time 2.35 p.m.

X-Ray Findings :

The radiograms of the skull shows evidence of fracture of the right parietal bone, in its posterior angle.

M.I. : A healed scar (irregular shape) of ulnar on right forehead 1.5 cms, above right eye brow.

Ex. Ka-4

Examined Lal Singh aged about 28 years s/o Ram Swarup r/o-village Jamal Nagar Bhens Post Chamrola P.S. Barhan (Agra) on dated 29/11/79 at 2.55 p.m. at State Dispensary Barhan (Agra)

B.B. : Constable Phul Singh C.P. No. 1935 P.S. Barhan.

M.I. : A black mole on right side neck lateral aspect.

Injuries.--(1) Contusion : 7 cms. x 1 cms. on left forearm back side 5 cms. above wrist joint. Colour of skin reddish.

Note.--Injury simple. Caused by blunt object. Duration-Fresh.

Ex. Ka-5

Examined Shivcharan aged about 32 years s/o Tikaram r/o Jamal Nagar Bhens Post Chamrola P.S. Barhan (Agra) on dated 29/ x 1/79 at 3.15 p.m. at State Dispensary. Barhan (Agra)

B.B. : Constable Phul Singh C.P. No. 1935 P.S. Barhan.

M.I. : Bilateral corneal opacity at six O'clock Position.

Injuries.--(1) Contusion (with swelling) :-4 cms. x cms. on left forearm back side at lower 1/3rd. Swelling around wrist present. (2) Abraded contusion : 3 cms. x 2 cms. on left forearm back side 4 cms. below elbow joint. (3) complaining or pain over left elbow.

No external mark of injury visible over left elbow.

Note : Injury No (1) kept under observation. Advised X-Ray left forearm AP and AL view lower 1/3rd including wrist joint. All injuries caused by blunt object. Duration fresh.

Ex. Ka-6

Supplementary Report of Shiv Charan s/o Tikaram r/o village Jamal Nagar Bhens P.S. Barhan.

Injury No. (1) was kept under observation. X-Ray of left forearm AP and AL view lower 1/3rd including wrist joint was advised for injury No. (1).

X-Ray done at the X-Ray done at the X-Ray Clinic. Agra. Laxmi Narayan Mandir Marg Daresi No. 1 Agra 282004 on dated 30.11.1979 at 2.45 p.m. X-Ray findings given by Dr. Rama Shankar Sharma M.B.B.S. Regd. No. 7103 U.P. X-Ray plate No. 189/79.

"The Radiogram shows evidence of fracture of the lower end of ulna bone. No callus formation is seen." Hence, injury No. (1) is grievous.

Ex. Ka-7

The X-Ray Clinic. Agra

Laxmi Narain Mandir Marg,

Daresi No. 1, Agra-282004

M.L. Case No. 189/79

Date : 30 Nov. 1979

Name Shiv Charan son of Teekan Ram

PART Left lower Fore-Arm. A.P. and Lat Age 32 Yrs.

VIDE REF. Chit State Disp. Barhan, Agra. 30.11.79

ADDRESS (V) Jawah Nagar Bhens (P.S.) Barhan district Agra.

Accompanied By Bhagwan Singh. Time 2.45 p.m.

X-Ray Findings :

The radiogram shows evidence of fracture of the lower end of ulna bone. No. callus formation is seen.

Ex. Ka-8

Examined Sukh Devi aged about 50 years w/o Gopati Kachhvaya r/o village Jamal Nagar Bhens. P.S. Barhan (Agra) on dated 29.12.79 at 3.35 p.m. at State Dispensary, Barhan

B.B. : Constable Phul Singh C.P. 1935, P.S. Barhan.

M.I. : Tattooing Mark on Rt. Forearm front aspect Sukhdevi Gitam Singh.

Injuries.--(1) Lacerated wound : 5 cm. x 0.4 cm. x bone deep on top of scalp 10 cm. above and away from left ear.

Bleeding present.

Note.--Injury kept under observation. Advised X-Ray Skull AP and AL view caused by hard and blunt object. Duration-Fresh.

5. Charge-sheeting of the accused resulted in issuance of subpoena by the Magistrate summoning them to face trial for the committed crime. Finding their case triable by Sessions Court, learned Magistrate had committed their case to Sessions Court, where it was registered as S.T. No. 267 of 1980. State v. Ajai Pal and others. The Third Additional Sessions Judge. Agra, on 15.9.1980. charged all the appellants under Sections 307/34, 325/34 and 323/34, I.P.C. which charges were read out and explained to the accused, who abjured them and claimed to be tried and consequently, to establish their guilt and prove committed crime, their trial commenced.

6. In its endeavour to anoint accused's guilt prosecution examined, in all seven witnesses, out of whom, informant Het Ram (P.W. 2), injured Ram Charan (P.W. 3), injured Shiv Charan, (P.W. 4) and injured Lal Singh (P.W. 5) were fact witnesses. Formal witnesses included Dr. Govind Prasad (P.W. 1). Investigating Officer V.P. Thapa (P.W. 6) and Head Moharrir. Ram Prakash Sharma (P.W. 7).

7. In accused's statements u/s 313. Cr. P.C. all the accused pleaded common defence of denial and false implication. (A-1 and A-3) further stated that because they had left doing menial work of the informant and people of their caste (Kachhi) that they were falsely implicated. They took the defence that there was an assault and a brawl between the labourers and the injured Ram Charan in which, both the sides, resorted to brick pelting which had caused injuries and because of harboured animosity they were falsely implicated.

8. Learned trial Judge, after looking into witnesses' testimonies and other documentary evidences, by Impugned Judgment, opined that framed charges against the appellants were established beyond all shadow of doubt and therefore, convicted and sentenced them as has already been mentioned in the opening paragraph of this judgment. Hence, the present appeal.

9. When the appeal was called out for hearing, nobody appeared to argue it for the appellants and therefore. Miss. Ibha Sinha was appointed as amicus curiae to assist the Court. During course of hearing. Sri Sarvesh advocate has also put in appearance and had assisted amicus curiae. Sri Raghuraj Mishra learned A.G.A. appeared on behalf of respondent-State. I have heard both the sides and have perused the evidences both oral and documentary, existing on record.

10. Assailing the impugned judgment, learned amicus curiae submitted that from the prosecution evidences it has not been satisfactorily established that the real genesis of the incident was stated by the informant, which is shrouded in mystery. She submitted that, in fact, there was an assault between the labourers and (P.W. 3). in which prosecution side sustained injuries because of brick batting and throwing of stones and a spurious case was cooked up framing-in the appellants. She further contended that testimonies of fact witnesses are incredible and inconsistent and therefore, cannot be relied upon. F.I.R. does not make any whisper about Lal Singh (P.W. 5) and Shiv Charan (P.W. 4) sustaining injuries during the incident nor it was slated therein that one of the accused had wielded iron rod to assault prosecution side. Amicus curiae submitted that initially, in F.I.R. Ext. Ka.-9, prosecution story was that all three accused had wielded spades while assaulting Ram Charan and Smt. Sukh Devi but during the trial they embellish their version, to make it consistent with medical evidences, by stating that two of them. (A-1 and A-2) had wielded the spades whereas (A-3) had assaulted with iron bar. The submission is that none of the prosecution witnesses are reliable and they have deposed cooked up versions and have changed it from time to time and hence they are wholly unreliable and because of this reason discrepancies in their depositions have cropped up and hence no credibility can be attached to their testimonies. It was further submitted that because of the caste rivalry between Kanchi and Mehtar that a spurious version was fabricated to nail-in the appellants in a total hokum. It was lastly submitted that, in the event, the appellants are not acquitted of the charges levelled against them, they being persons of very young age on the date of the incident ranging between 20 to 22 years, and now are very old and, since they don't have any criminal proclivities, they be dealt with leniency in matters of sentences. Primarily for the aforesaid reasons, it was, concludingly, argued that appellants appeal be allowed and they be acquitted and set at liberty.

11. Conversely, learned A.G.A. argued that the injured witnesses have supported prosecution story on all its material aspects without any damaging inconsistencies and incredibilities and, therefore, there is no scope for this Court to interfere with the impugned judgment and take a contrary view. It is therefore, argued that the appeal be dismissed and conviction and sentence of the appellants be affirmed.

12. I have given a thought to the rival contentions and have pondered over oral and documentary evidences existing on the record. From the summation of facts, it is revealed that the submissions of learned amicus curiae are well merited. Some of the facts are not in dispute and in fact have been admitted and, therefore, on those aspects, there cannot be any divergence of views. These facts are presence of appellants, time, date and place of the incident, participation of injured and sustaining of injuries by them. The real bone of the contention is as to whether prosecution allegation of assault being made by spade and iron bar is the correct narration of the Incident or the defence plea of sustaining injuries in brick and stone pelting between labourers and the injured is the true version. When evidences are

appreciated in the above light, on the touchstone of probability, it becomes evident that none of the prosecution witnesses of fact are wholly reliable. First of all F.I.R. does not record sustaining of injuries by the two injured. Shiv Charan and Lal Singh. When confronted by the defence, informant failed to offer any satisfactory answer to it. Depositions of the informant (P.W. 2) indicate that his presence at the incident scene, during its happening, was extremely doubtful nor he seems to be an eye-witness of it. It is his deposition, vide paragraph-5 of his testimonies, that he had not informed the Investigating Officer that he was also doing agricultural work in his field when the incident occurred. He had admitted in the same paragraph that after the assault, he had arrived at the spot four or five minutes later and by that time, all the injured had already sustained injuries. Medical evidences contradicts his statement of assault being made by the spade from its blade side, as according to the doctor injured had sustained injuries from blunt object. He admitted that in his F.I.R. he had not mentioned that Ajai Pal had wielded spade during the incident. He further admitted that he had not mentioned in his F.I.R. Ext. Ka-9. that Shiv Charan and Lal Singh had also sustained injuries in the incident. His deposition is that "I cannot state the reason why I had not mentioned sustaining of injuries by Shiv Charan and Lal Singh in this incident." Significant omissions and contradictions in his evidences has a serious adverse effect of his credibility and speaks volumes against his presence at the spot. It creates a doubt in the mind of the Court regarding veracity and truthfulness of the prosecution allegations. Witnesses have further admitted that accused and prosecution sides belonged to different castes-Pal and Schedule Caste and after the incident, accused had stopped doing menial work in the houses of the injured and the informant.

13. Turning towards (P.W. 3) another Injured, from his evidence, it is also culled out that he is also not reliable. He is an interested, related and a partisan witness. Albeit his evidences cannot be discarded on that score but then he failed to divulge number of labourers working at the relevant time. He had not disclosed to the Investigating Officer that (A-1 and A-2) had assaulted with spades whereas (A-3) had wielded iron bar. According to his deposition, he too was assaulted by spade from its blade side but, very queerly. Dr. Govind Prasad (P.W. 1) did not find any incised injury on his person. His medical examination report, Ext. Ka-1, indicate that he had sustained only two lacerated wounds on the head and leg and the injuries sustained by him were all caused by blunt object and therefore, version by this injured (P.W. 3) is inconsistent with medical evidences. He too failed to divulge reason of omission of wielding of iron bar during the incident to the Investigating Officer at the time of the investigation. It is his deposition that he does not know from where (A-3) had picked up iron bar, may be it was lying at the spot and such a statement shows that probably (A-3) was empty handed during initial assault. On such evidences, it is difficult to record a finding that he is a wholly truthful witness on whom reliance can be placed.

14. Coming to the evidence of (P.W. 4). Shiv Charan and Lal Singh (P.W. 5), they are not alleged to have sustained injuries during the incident in the F.I.R. It is very surreal that, although, they had accompanied the informants to the police station but very bizarrely they did inform the Investigating Officer regarding injuries sustained by them in the incident. It seems that the defence theory that they had received the injuries in a stone and brick pelting was the correct narration and that is why they eschewed mentioning their Injuries to the Investigating Officer or probably they had not sustained injuries as alleged by the prosecution.

15. The above discussion leads me to conclude that so far as genesis of the incident is concerned, none of the prosecution witnesses inspires any confidence.

16. Turning towards another important aspect of the appeal, regarding offence disclosed against the appellants, I am of the opinion that the conviction of the appellants u/s 307/34. I.P.C. is not sustainable at all. Initially three persons are alleged to have wielded the spade on Ram Charan with an intention to commit murder. However, the same is not culled out from the prosecution evidences. Ram Charan had sustained a single grievous injury and that too from the blunt side of the spade. This does not indicate that at the time of assault, all the three assailants had an intention of causing his death. Slightly digressing at this point, it is noted that for establishing a charge u/s 307. I.P.C. the sine qua non ingredient to be established conclusively is that accused had an intention to commit murder and not actual injury caused. Looking to the genuineness of the prosecution evidences, it is incredible without inspiring any confidence. On this scored learned trial Judge not only faltered but his analysis of evidences also suffers from major defect. In such a view, I am unable to concur with his opinion and therefore, so far as the conviction of the appellants u/s 307/34. I.P.C. is concerned, it is unsustainable.

17. As I have already held that the genesis of the incident, as stated by the prosecution witnesses, is shrouded in mystery and the informant was not an eye-witness and the defence of the appellants is equally probable, therefore. I am of the opinion that the prosecution has failed in proving the charges to the hilt against the appellants. The appeal is allowed. Conviction of all the appellants, on all counts, are hereby quashed and they are acquitted of all the charges and are set at liberty. They are on bail. Their personal and bail bonds are discharged. They need not surrender.

Let the copy of the judgment be transmitted to the trial Judge for its intimation.