Laxman (in Jail) Vs State of U.P.

Criminal Appeal No''s. 777 of 1987 and 884 of 1989

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: April 30, 2003

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 215, 313, 464(1)#Penal Code, 1860 (IPC) â€" Section 302, 307, 323, 326, 34

Citation: (2003) 3 ACR 2893

Hon'ble Judges: Vishnu Sahai, J; A. Mateen, J

Bench: Division Bench

Advocate: M.L. Syal and Vinod Kumar Sahi, for the Appellant; Janardan Singh, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

Vishnu Sahai, J.
These appeals have been preferred by Appellant Laxman (Criminal Appeal No. 777/1987 through counsel and Criminal

Appeal No. 884/1989 from jail) against the judgment and order dated 7.12.1987 passed by the Special Additional District and Sessions Judge,

Hardoi in Sessions'' Trial No. 326A of 1981, whereby he has been convicted and sentenced in the manner stated hereinafter:

(i) u/s 302/34, I.P.C. to suffer imprisonment for life ; and

(ii) u/s 323, I.P.C. to suffer six months'' R.I.

The substantive sentences of the Appellant have been directed to run concurrently.

2. Shortly stated, the prosecution case runs as under:

The informant Basantu, P.W. 1 is the real brother of the deceased Umrai and the cousin brother of Ram Prasad P.W. 3. At the time of the

incident, the informant, the deceased, the injured-victim Ram Prasad and Ram Avtar, P.W. 2 were living in village Nardhira, within the limits of

police station Pihani, district Hardoi. There was enmity between victim Ram Prasad and deceased Umrai on one hand and Appellant Laxman and

co-accused Srikrishna on the other. In 1977, Umrai had lodged an F.I.R. of theft against Laxman and Srikrishna.

2.1. On 17.9.1980, at about 4.00 p.m., the victim Ram Prasad and the deceased Umrai were proceeding to Kila Pandarwa market. When they

reached near the sugarcane field of Ram Sahai, Appellant Laxman and co-accused Srikrishna emerged therefrom. Laxman was armed with lathi

and Srikrishna with ballam. They instigated ""mar dalo"" (kill them). Thereafter Laxman with lathi and Srikrishna with lathi portion of the ballam

assaulted them. On their cries, Ram Autar P.W. 2, Mahadev Prasad P.W. 7, Jagannath and Salik Ram rushed to the place of the incident.

Thereafter Appellant Laxman took out the knife from his pocket and served the nose of Umrai with the same. Then Appellant Laxman and co-

accused Srikrishna ran away.

2.2. Thereafter Ram Prasad and Mahadev Prasad narrated the entire incident to Basantu, who got the F.I.R. scribed by one Jagannath Prasad and

proceeded to police station Pihani along with cut nose of Umrai. At the said police station, Basantu lodged his F.I.R. and deposited the cut nose.

3. The evidence of Sub-Inspector Islam-ul-Haq P.W. 5 shows that on 17.9.1980, he was posted as Head Moharrir at police station Pihani and on

the said date, informant Basantu lodged his F.I.R. at 6.45 p.m., on the basis of which he prepared the chik F.I.R. Ext. Ka-8. It is significant to

mention that it was registered for offences under Sections 307/326, I.P.C. Subsequently, on the death of Umrai, a case under Sections 302/307,

I.P.C. was registered. It is pertinent to mention that a perusal of chik F.I.R. shows that distance between the place of the incident and police

station was four miles.

It is significant to mention that thereafter Ram Prasad and Umrai were sent to Pihani Hospital. However, on the way Umrai succumbed to his

injuries. Since no doctor was available at Pihani Hospital, Ram Prasad was sent for medical examination to the District Hospital, Hardoi.

4. The injuries of Ram Prasad, P.W. 3 were medically examined on 18.9.1980 at 11.30 a.m. by Dr. Rajendra Shukla P.W. 8, Medical Officer,

District Hospital, Hardoi, who found, on his person, the following injuries:

(i) Contusion 3 cm. x 1 cm. on the back of right elbow with diffused swelling and deformity around the elbow red coloured ;

(ii) Contusion 1.5 cm. x 1.5 cm. on the dorsum of left hand near the base of the thumb red coloured ;

(iii) Lacerated wound 1 cm. x 3 cm. x muscle deep on the web of left little finger. Margins oedematous, oozing of blood on probe present ;

(iv) Abraded contusion 3 cm. x 1.5 cm. on the front and outer part of left knee obliquely placed red coloured.

In the opinion of Dr. Shukla, excepting Injury No. 1, which was kept under observation and in respect of which X-ray of right elbow was advised,

all the injuries were simple in nature.

In his deposition in the trial court Dr. Shukla stated that said injuries could have been caused on 17.9.1980 at about 3-4 p.m.

5. The autopsy on the corpse of the deceased Umrai was conducted on 18.9.1980 at 4.00 p.m. by Dr. S. K. Loothra P.W. 9, who found on it the

following ante-mortem injuries:

(i) Lacerated wound over head towards left side 3 cm. x 1.5 cm. x scalp deep 8 cm. above the left eyebrow ;

(ii) Lacerated wound 6 cm. x 2 cm. x bone deep over right parietal area, 10 cm. above the right ear ;

(iii) Lacerated wound 4 cm. x 1.5 cm. x scalp deep over occipital area, 7 cm. below the Injury No. 2 ;

(iv) Nose cut through and through 2.5 cm. below the root of nose. Margins clear cut. Nose bone exposed and cut ;

(v) Contusion in an area of 7 cm. x 5 cm. over right arm lateral aspect, 5 cm. above the right elbow joint. In this contused area two lacerated

wound each measuring 3 cm. x 1.5 cm. and 2.5 cm. x 1 cm. x bone deep. Bone protruding out through 2nd lacerated wound, margins irregular on

opening the lower part of shaft of Humerus right found fractured into multiple pieces ;

(vi) Lacerated wound 5 cm. x 1.5 cm. x bone deep over right leg 6 cm. below the right knee joint, the opening both bone, i.e., right tibia and fibula

upper part found fractured ;

(vii) Lacerated wound 6 cm. x 2 cm. x bone deep over left leg 8 cm. below the left knee joint ;

(viii) Lacerated wound 2.5 cm. .5 cm. x muscle deep over dorsal aspect of left middle finger over middle phalnyx ;

(ix) Lacerated wound 3 cm. x .5 cm. x muscle deep over palmer aspect of left little finger ;

(x) Lacerated wound 1 cm. x .25 cm. x muscle deep palmer aspect of left little finger.

On internal examination, Dr. Loothra found clotted blood present under Injury Nos. 1, 2 and 3 with a fracture of right parietal bone under Injury

No. 2 ; membranes lacerated under Injury No. 2 ; extra dural haemorrhage present under Injury No. 2 ; and brain lacerated under Injury No. 2.

In his statement, in the trial court, Dr. Loothra stated that the deceased died on account of shock and haemorrhage, as a result of ante-mortem

injuries suffered by him and Injury No. 4 could be caused by a sharp edged weapon, like knife.

6. Going backwards, the inquest on the corpse of the deceased was conducted on 18.9.1980 at 6.00 p.m. by Sri P. P. Pathak P.W. 4. After

completing the same, he sent the corpse for the autopsy.

7. Once again going backwards, the case was investigated in the usual manner by Station Officer, Vinod Kumar Sharma, P.W. 11. His evidence

shows: On 17.9.1980 F.I.R. was lodged in his presence. After the conversion of the case from one u/s 307/326, I.P.C. to Section 302/307,

I.P.C. he took over the investigation, on 18.9.1980. He proceeded to the place of the incident, where he recorded the statement of the informant

and Ram Autar. On the pointing out of the witnesses, he prepared the site plan. He recovered plain and bloodstained earth from the place of the

incident in separate containers, vide recovery memos. On 26.9.1980, he arrested Appellant Laxman. He was thereafter transferred.

8. It is significant to mention that Inspector, K. P. Singh, P.W. 10 took over the investigation from Station Officer Vinod Kumar Sharma on

18.11.1980. On 30.11.1980, he submitted the charge-sheet against the Appellant.

9. The case was committed to the Court of Sessions, in the usual manner. After the committal proceedings, Appellant Laxman absconded. Later

on when he was apprehended the learned trial Judge framed a charge against him on a dual count, namely, u/s 302/34, I.P.C. and 323, I.P.C. He

pleaded not guilty to the charges and claimed to be tried. His defence was of denial.

During trial, in all, the prosecution examined eleven witnesses. Three of them, namely, the informant Ram Prasad, P.W. 3, Ram Autar P.W. 2 and

Mahadev Prasad P.W. 7 were examined as eye-witnesses. The learned trial Judge believed their evidence and convicted and sentenced the

Appellant in the manner stated in paragraph 1.

Hence this appeal.

10. We have heard Mr. Vinod Kumar Sahi, learned Counsel for the Appellant and Mr. Janardan Singh, learned Additional Public Prosecutor for

the Respondent and gone through the entire record. In our view, this appeal is devoid of substance. We, however, feel that instead of an offence

punishable u/s 302/34, I.P.C. the learned trial Judge should have convicted him for one u/s 302, I.P.C.

11. A perusal of the impugned judgment shows that the learned trial Judge has based the conviction of Appellant on the ocular testimony furnished

by Ram Prasad, P.W. 3, Ram Autar P.W. 2 and Mahadev Prasad P.W. 7.

In our judgment, the evidence of Ram Prasad alone is sufficient to sustain the conviction and sentence of the Appellant on both the counts and in

the instant case, prosecution has the luxury of ocular account in the form of evidence of Ram Autar P.W. 2 and Mahadev Prasad P.W. 7.

12. We now propose examining the evidence of three eye-witnesses.

We begin with the ocular account furnished by Ram Prasad P.W. 3, the injured witness of the incident. Since in paragraph 2, we have set out the

prosecution story, on the basis of recitals contained in his examination-in-chief, we do not want to burden our judgment by reiterating the details. In

short, his evidence shows: On the date of the incident (17.9.1980) at 4.00 p.m., he along with his deceased brother Umrai was proceeding to

Pandarwa market. When they reached near the sugarcane field of Ram Sahai, Appellant Laxman armed with lathi and co-accused Srikrishna

armed with ballam, emerged from the said field. They instigated that they be killed and thereafter Laxman with lathi and Srikrishna with lathi portion

of the ballam belaboured them. On their cries, Ram Autar P.W. 2, Mahadev Prasad P.W. 7 and some Ors. came and saw the incident.

Thereafter, Laxman took out the knife from his pocket and severed the nose of Umrai with the same. Then Laxman and Srikrishna ran away.

Thereafter, he and Mahadev Prasad went and informed Basantu about the incident, who along with him and Umrai, who was precariously injured,

proceeded to police station Pihani and lodged his F.I.R. He (Ram Prasad) was medically examined the next day at 11.30 a.m. at District Hospital,

Hardoi, where Dr. Rajendra Shukla found blunt weapon injuries on his person.

13. We have gone through the evidence of Ram Prasad and find it reliable vis-a-vis Appellant Laxman for the following reasons:

Firstly, he has explained his presence on the place of the incident. He has stated that while he and deceased Umrai were proceeding to Padarwa

market, the incident took place.

Secondly, the manner of assault furnished by him is corroborated by medical evidence vis-a-vis Appellant Laxman. He stated that Appellant

Laxman assaulted Umrai and him with lathi and co-accused Srikrishna assaulted them with lathi portion of ballam and we have seen that out of the

ten ante-mortem injuries, suffered by the deceased, nine were attributable to a blunt weapon. We have also seen that he (Ram Prasad) suffered

four blunt weapon injuries. He further stated that Appellant Laxman took out a knife from his pocket and severed the nose of Umrai. It is pertinent

to mention that post-mortem report shows that Injury No. 4 was nose cut through and through. In the statement in the trial court, the autopsy

surgeon stated that the said injury was attributable to a knife.

It is equally pertinent to mention that when informant Basantu proceeded to lodge the F.I.R. he took the cut nose with him, which he deposited in

the police station, which was seized under a recovery memo ;

Thirdly, assurance to his testimony is lent by that of his brother Basantu. Informant Basantu stated that on information furnished by him, he lodged

his F.I.R. ;

It is significant to mention that although Ram Prasad was extensively cross-examined but nothing could be extracted therefrom, which could erode

his credibility.

14. It should be borne in mind that Ram Prasad is an injured witness and his injuries lend a seal of assurance to his presence. In our judgment, the

solitary evidence of Ram Prasad, which is corroborated by medical evidence, is sufficient to sustain the conviction of the Appellant Laxman for the

offence punishable under Sections 302 and 323, I.P.C.

15. It is pertinent to mention that assurance to the evidence of Ram Prasad is also forthcoming from that of Mahadev Prasad P.W. 7 and Ram

Autar, P.W. 2. Both these witnesses have deposed about the presence of Ram Prasad.

We now would like to take up the evidence of witness Mahadev Prasad P.W. 7. his evidence shows: He is a resident of village Nardhira. On the

date and time of the incident he was proceeding to Pandarwa market and when he reached near the place of the incident, he found that Appellant

Laxman and co-accused Srikrishna emerged from a sugarcane field. Both of them were armed with lathi and belaboured Ram Prasad and Umrai,

who were also proceeding to the market. During the incident, Umrai''s nose was also cut.

16. Even if we accept the submission of the learned Counsel for the Appellant that this witness is not reliable inasmuch as he stated that co-

accused Srikrishna belaboured the deceased with lathi (according to Ram Prasad, Ram Autar and the F.I.R., he was armed with a ballam), there is

no impediment in our view, in accepting his testimony against Appellant Laxman. His evidence is that Laxman assaulted both, the deceased and

Ram Prasad, with lathi. As we have seen this is corroborated by medical evidence. He has also furnished reasons for his presence on the place of

the incident.

17. For the said reason, in our view, his evidence inspires confidence.

18. We now come to the evidence of Ram Autar. His evidence shows: On the date and time of the incident, he was returning from Pandarwa

market and when he had reached near the place of the incident, he saw Appellant Laxman armed with a lathi and co-accused Srikrishna armed

with ballam and Laxman with lathi and Srikrishna with the lathi portion of the ballam were assaulting Umrai and Ram Prasad. Thereafter, the

Appellant with a knife severed the nose of Umrai.

19. We have gone through the evidence of Ram Autar and in our view, it inspires confidence against the Appellant Laxman. Like Ram Prasad and

Mahadev Prasad, he has explained his presence on the place of the incident and like them his evidence is corroborated by medical evidence.

In our view, learned trial Judge acted correctly in accepting his testimony vis-a-vis Appellant Laxman. It is another matter it may not be credible

against Srikrishna.

20. The circumstances that the F.I.R. was lodged within 2 hours 45 minutes of the incident taking place (the incident took place on 17.9.1980 at

4.00 p.m. and the F.I.R. was lodged the same day at 6.45 p.m. at police station Pihani, which is situated at the distance of four miles) and in the

said F.I.R., the essential features of prosecution case, including:

(a) the names of three eye-witnesses, i.e., Ram Prasad, Mahadev Prasad and Ram Autar ;

(b) the time and place of the incident ;

(c) the name of victims, i.e., Umrai and Ram Prasad ;

(d) the motive for the incident ;

(e) the names of Appellant Laxman and co-accused Srikrishna ;

(f) the weapons in the hands of Laxman and Srikrishna ; and (g) the manner of assault.

have all been mentioned, lend a seal of assurance not only to the presence of three eye-witnesses on the place of the incident, but also to the

participation of the Appellant in the crime.

21. For the said reasons, learned trial Judge acted correctly in finding the involvement of the Appellant Laxman established in the incident.

22. In our judgment, the learned trial Judge acted correctly in convicting the Appellant for the offence u/s 323, I.P.C. because he inflicted simple

blunt weapon injuries on the person of Ram Prasad. We, however, feel that he erred in convicting him for the offence punishable under Sections

302/34,. I.P.C. because we have acquitted co-accued Srikrishna vide our judgment passed today in Criminal Appeal No. 462 of 1984. The fall

out of Srikrishna''s acquittal would be that only the Appellant would remain (in all two persons are said to have participated in the crime ; the

Appellant and Srikrishna). In this view of the matter, there is no question of Appellant sharing common intention with Srikrishna and application of

Section 34, I.P.C. However, in our view, it would be perfectly permissible for us to convert his conviction from one u/s 302/34, I.P.C. to that u/s

302, I.P.C. It is pertinent to mention that Appellant Laxman is said to have assaulted the deceased with lathi and as we have earlier seen, the

deceased sustained nine blunt weapon injuries, beneath one of which (Injury No. 2) the doctor found fracture of right parietal bone. In our view, a

perusal of the blunt weapon injuries suffered by the deceased makes it manifest that the Appellant has committed the offence punishable u/s 302,

I.P.C. It is true that the Appellant has not been charged for the said offence, but in our view, since the evidence of the eye-witnesses shows that he

caused lathi injuries on the person of the deceased, which were fatal and the said evidence has been put to him in his statement u/s 313, Cr. P.C.,

no prejudice would be caused to him by the omission to frame a charge u/s 302, I.P.C. against him.

In this connection, we feel it apposite to refer to Sections 215 and 464(1), Cr. P.C., which provide that an error or omission to frame a charge

only would be material if prejudice is caused to the accused. In our view, no prejudice would result to Appellant Laxman if we convert his

conviction from one under Sections 302/34, I.P.C. to that u/s 302, I.P.C.

23. It is true that the autopsy surgeon Dr. S. K. Loothra, P.W. 9, has not stated that the injuries suffered by the deceased were sufficient in

ordinary course of nature to cause death, but in our view, a bare perusal of ante-mortem injuries shows that they were sufficient in the ordinary

course of nature to cause death. In the oft quoted case of Brij Bhukhan and Others Vs. The State of Uttar Pradesh, in para 6, the Apex Court has

held that if a bare perusal of the injuries shows that they are sufficient in the ordinary course of nature to cause death the absence of medical

evidence to the said effect would be no impediment in recording a conviction for the offence punishable u/s 302, I.P.C.

24. For the said reasons, we confirm the conviction of Appellant Laxman for the offence punishable u/s 323, I.P.C. and his sentence of six

months'' R.I. thereunder. We, however, alter his conviction from one under Sections 302/34, I.P.C. to that u/s 302, I.P.C. but maintain his

sentence of imprisonment for life. In the said manner both these appeals are dismissed. Appellant Laxman is in jail and shall serve out his sentences.