

(1993) 03 AHC CK 0064

Allahabad High Court

Case No: Criminal Appeal No. 1238 of 1979 and Criminal Revision No. 814 of 1979

Raj Narain Yadav and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: March 16, 1993

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 147, 148
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 304

Citation: (1993) 17 ACR 468

Hon'ble Judges: Surya Prasad, J; Palok Basu, J

Bench: Division Bench

Advocate: A.D. Giri, G.S. Chaturvedi, for the Appellant;

Final Decision: Dismissed

Judgement

Palok Basu, J.

29 accused were put up for trial before II Addl. Sessions Judge. Ballia in Sessions Trial No. 56 of 1978 and at the conclusion of the trial by the judgment dated 4-4-1979 the learned Trial Judge has convicted 10 Appellants, namely, (1) Raj Narain (2) Deepa (3) Chhangur, (4)(Ram Dayal (5) Raja Ram (6) Jairam (7) Hareram (8) Ramnath (9) Baliram and (10) Jagarnath u/s 302 IPC read with Section 149 IPC and various other sections such as u/s 307 IPC, 323, 324, 452, 436, 147, 148, 149 IPC. It may be mentioned here that so far as Raj Narain is concerned he was convicted u/s 302 IPC simplicities. All the Appellants have the sentence of Life Imprisonment on the major charge and various terms of Rigorous Imprisonment with regard to other charges which shall be mentioned and discussed at the relevant stage in this judgment. The informant Sudama has filed revision against the acquittal of 19 Respondents, namely, Baleshwar Yadav, Dhup Narain Yadav, Vishwanath Yadav, Rajnath Yadav, Shankar Yadav, Chhicheshwar Yadav, Rameshwar Yadav, Parmeshwar Yadav, Bashisht Pandey, Ram Biyas Pandey, Sudarshan Yadav, Bir Bahadur Yadav, Bishu Yadav, Uma Yadav, Shewadhar Yadav, Ram Dahin Vadav, Hare Ram Yadav,

Sheonath Yadav and Surajdin Yadav on the charges framed against them also. Since both the matters arise out of the same case, they are being disposed of together.

2. Sri Gopal Chaturvedi, learned Counsel for the Appellants and Sri S.P. Singh, learned Government Advocate for the respective parties have been heard. The entire record has been examined. It may be noted here that against the acquittal of the aforesaid 19 persons the State of U.P. have not filed any appeal and the finding recorded by the learned Trial Judge with regard to the acquittal of those accused has become final between the State and the accused.

3. The charge against the Appellants was that on 17-9-1977 at about 7.30 A.M. they formed an unlawful assembly and in prosecution of the common object they committed murder of Dharamdeo and caused hurt to Sri Ram, Suit. Phulkeshri, Shanti and Sudama and set fire to a thatched roof which was punishable u/s 147 Code of Criminal Procedure 148 Code of Criminal Procedure 302 IPC, 302/149 IPC, 307 IPC, 307/149 IPC, 323 and 323/149 IPC, 324 and 324/149 IPC, 452 IPC and 436/149 IPC.

4. The prosecution case is that on 16-9-1977 some one had pelted stones and brick-bats in the house of Bali Ram accused at about 9 P.M. for which Rama and Dharamdeo deceased were suspected. Consequently there were exchange of abuses from both sides. Raj Narain and Jai Ram Appellants had threatened that they will see the prosecution side. On 17-9-1977 at about 7.30 A.M. 29 accused came to the door of Sudama and at the instigation of Baleshwar accused, set fire to the Palani and started assaulting prosecution side as a result of which Dharamdeo deceased died, Sri Ram, Smt. Phulkeshri, Shanti and Sudama informant received various injuries. The Appellant Raj Narain, Jai Ram, Rajaram, Hare Ram and Chhangur were said to have been armed with spears (Bhalas) while accused Bali Ram was said to have been armed with Gandasa while other four Appellants, namely, Deepa, Jagarnath, Ramnath and Ram Dayal were said to have been armed with lathis.

5. It may be mentioned here at the out-set that from the evidence produced during the trial specific roles were attributable only to the ten Appellants and, therefore, the learned trial Judge gave benefit of doubt to 19 accused who are Respondents in the revision and recorded conviction as detailed above with regard to the ten Appellants. The further fact to be noted here is that Baleshwar accused who was said to have been present and who instigated all the accused, to use the exact words mentioned in the FIR "MAN SE MAR DO VA PALANI PHUNK DO HAM DEKH LENGE" has been acquitted only the trial Judge on the finding that the evidence against him was weak: in nature and that on the facts and circumstances it was neither necessary nor expedient to expect that the action of the accused would be dependent only on the said instigation of Baleshwar accused. The said acquittal of Baleshwar accused and for that matter, rest of the accused have not been challenged by the State of U.P. in the appeal.

6. PW 1, Sudama is said to have lodged an FIR at the police-station Kotwali naming therein all the 29 accused. PW 6 Satya Narain Rai was the Head-constable who proved the Chile FIR Ext. Ka 2 and registered the case in the General Diary entry No. 14 at 9.15 A.M. vide Copy Ext. Ka 3. It is said that about the death of Dharamdeo a memo was received from the hospital at 9.45 A.M. denoting therein that Dharamdeo had expired in the hospital at 8.20 A.M. G.D. entry No. 40 has been proved So that effect, a true copy of which is Ext. Ka 4. Special report was consequently prepared and bent by the Head-constable to the authorities vide copy of the entry filed as Ext. Ka 5.

7. PW Ram Anjor Chaudhary, Sub-Inspector, was present when the FIR was lodged and took up the investigation at once. He recorded the statement of Sudama then and there and proceeded to the hospital where he prepared the panchayatnama which has been proved as Ext. Ka 11. The other necessary documents regarding the dead-body were also prepared and proved. Then he proceeded to the site and prepared a site plan which has been proved as Ext. Ka 16. He recovered blood-stained and plain earth from the Osara where Dharamdeo fell down and also recovered blood stained Bandh from the cot Ashes of burnt alani was also recovered and memos were prepared which has been proved as Ext. Ka 17, 18 and 19. The postmortem examination was conducted on the dead body of Dharamdeo on 17-9-1977 at 4.30 P.M. by Dr. R.A. Pradhan, PW 10. "The following ante-mortem injuries were noted by the doctor in the report:

Penetrating wound 1" \diamond 1/2" in chest cavity deep on the left side of back joint below the lower angles of left scapula in the mid clavicular plane, the margins were clean cut and clotted blood was present. On opening, the doctor found punctured wounds, piercing muscles of the chest, left pleura lung and fundus of the stomach, the death was due to shock and hemorrhage caused by injury. Dharamdeo was of average built, rigor mortis was present in both the hands and feet.

8. Sri Ram was medically examined on 17-9-1977 at 8.30 A.M. and the following injury report was prepared:

(1) Incised wound 5 cm x 1 cm x bone deep over right side head 10 cm above and at 11 O'clock position from right ear root margins clean cut bleeding present.

(2) Punctured wound 1 1/2 cm \diamond 1 cm \diamond lung cavity deep (Sucking wound chest) on front of chest left side in the 4th intercostals space towards mid line, 8 cm above and at 11 O'clock position from the left nipple margins clean cut, bleeding profusely. Surgical emphysema present around the wound.

Both the injuries are kept under observation. No. 1 caused by sharp edged weapon No. 2 caused by sharp pointed weapon duration fresh. Advised X-ray skull and chest. Patient is admitted in the ward.

9. Smt. Phulkcshwari was medically examined on 17-9-1977 at 8.45 A.M. and the following injury report was prepared:

(1) Incised wound 5 cm ✦ 1 cm ✦ 3/4 cm over back of left forearm in the middle, margins clean cut, bleeding present.

(2) Contusion 3 1/2 cm ✦ 2 cm over front of thigh upper part, red. Both the injuries are simple in nature No. (1) caused by sharp edged weapon No. (2) by short blunt object Duration fresh.

10. Smt. Shanti was medically examined on 17-9-77 at 9 A.M. and the following injury report was prepared:

(1) Incised wound 5 cm ✦ 1 cm ✦ bone deep over back of head left side, 10 cm above and at 10 O" clock position from the left ear root bleeding present margin clean cut.

(2) C/o headache. No other external injury seen. Injury is simple in nature caused by sharp edged weapon, duration fresh.

11. Sudama was medically examined on 17-9-77 at 2 P.M. and the following injury report was prepared:

(1) Contusion 2 cm ✦ 1 cm being abrasion 1/2 cm ✦ 1/4 cm in the centre, red colour, over forehead left side medial aspect.

(2) Abrasion 1 cm ✦ 1/4 cm over left, side face below the left lower eyelid, red. Scab front.

(3) Contusion 4 cm ✦ 2 cm over medial border of right forearm red All the injuries are simple in nature caused by hard & blunt object, abrasion by friction against hard object duration about fresh.

12. After completing the investigation a charge sheet was filed against all the 29 accused and this is how the appeal has come up through ten convicted accused.

13. Sri Gopal Chaturvedi vehemently argued that the prosecution case is false inasmuch as the medical examination of the informant Sudama was highly delayed and should not inspire confidence. It may be noted here that the other injured witness Sri Ram was medically examined at 8.30 A.M. admittedly the informant Sudama had gone to the police station to lodge FIR and thereafter helped the Investigating Officer to go about investigating the matter. The medical report indicates that Sudama was sent to the Medical Officer through the police-constable of the police-station Kotwali. Consequently there is absolutely no delay in the medical examination of Sudama. The other argument in this connection advanced by Sri Chaturvedi was that two ladies, namely, Smt. Phul Keshri and Shanti have not been examined the prosecution case atleast so far as their injuries are concerned, should be discarded. There is no force in this argument. PW 8, Dr. N.B.L. Srivastava,

has proved injuries of all the four injured including two ladies. It may be noted here that during cross-examination of the eyewitnesses it was suggested that the ladies had received injuries in a dacoity which was committed in the house of Dharamdeo Yadav in the preceding night at about 3 or 4 A.M. Consequently, it appears from the record that there was no challenge to the fact of injuries having been sustained by the four persons in the incident. It may be noted here that the trial Judge has rightly described the theory of dacoity as a cock and bull story because there was neither any material nor any suggestion for the said description.

14. It was then vehemently argued by Sri Chaturvedi that once acquittal of Baleshwar has been accepted by the State of U.P. and the exhortation or inciting the theory has been disbelieved by the trial Judge, the applicability of Section 149 IPC with regard to the; charge of Section 302 IPC with the aid of the Section 149 IPC is not permitted under the law. He argued that if the prosecution case as deposed by the witnesses is believed then the individual role attributed to the various accused may alone form the basis for which individual may be guilty and the theory of unlawful assembly should be discarded.

15. Sri S.P. Singh, learned Govt. Advocate argued that once the accused was armed with weapons and had come up to the house of Dharam-deo Yadav the common object to that extent and unlawful passerby or that purpose atleast must be held to have been proved. In this regard the Govt. Advocate emphasised that it is not necessary that this Court should uphold the finding of acquittal of Baleshwar and took this Court to the entire evidence in order to challenge the said finding of fact. It is true that while deciding criminal appeal this Court has power to uphold or set aside findings of fact with regard to those accused who have been acquitted in order to come to a just decision with regard to the convicted accused. But in the instant case, however, on examining the entire evidence on record it appears that the acquittal of Baleshwar and all other accused was directed by the trial Judge on correct appraisal thereof. It may be stated here that even in the FIR there was no mention of individual weapon and, therefore, it is only in the individual weapons were nominated to individual accused. In this regard the trial Judge has recorded the following two findings which are hereby upheld by this Court:

Para--33. The FIR also mentioned that all this was done at the instigation of Baleshwar and that while these crimes were being committed, the rest of the named accused armed with lathis continued instigating these accused. However, I find that evidence against Baleshwar is about exhortation. The allegation of exhortation is of weak (type). Generally it has been that people keep a person amongst the accused a call giver. The specific role of other above named accused in FIR finds full support from the statements of the witnesses.

Para--34. Again all the 29 accused in FIR have been named by every witness in his statement. It is to be noted that among the 29 accused, except the accused Raj Narain and his brothers Jai Ram, Baliram, Raja Ram Hareram and Baleshwar and his

sons Bhup Narain, Deepa, Jagarnath, Vishwanath and Shankar, no other accused had any direct enmity with Rama and his family members and as such the learned State Counsel urged that the complainant Sudama had no reason to involve them falsely. But it may be noted that no role to any other accused except Raja Narain, Deepa, Jagarnath, Jairam, Baliram, Chhangur, Hareram, Ram Dayal, Ramnath has been assigned. If they were with the accused simply standing like spectators they cannot be said to have committed any crime.

A close scrutiny of the entire evidence on record justifies the findings of the trial Judge noted above. Ram Nath and Ram Dayal were having lathis only which is not necessarily used a weapon of assault. There was no prior meeting of minds of all the accused. Weapons of assault, i.e. Bhala and Gandasa was only with four accused. There was no instigation to commit any crime. No offence was committed in furtherance of the common intention of any unlawful assembly. Therefore, on the evidence on record no finding can be recorded that any of the Appellants had formed an unlawful assembly and. acted in furtherance of any common object or intention. Hence the applicability of Sections 147, 148 and 149 IPC is ruled out in this case.

16. The evidence shows that the Appellants had come to the house of Sudama and then suddenly Raj Narain gave one blow to Dharmdeo. Bereft of the instigation, it cannot be said that Dharamdeo caused the said injury with the intention that it should cause the death of Dharamdeo as it hit the back side of the deceased. Consequently, the charge u/s 302 IPC is not proved against Raj Narain but he should be convicted u/s 304, Part I, IPC. As regards the question of sentence, it is notable that the case has grown 16 years old. Considering all the facts and circumstances and taking due note of the enormous delay in deciding this case finally it is thought desirable to impose ten years RI u/s 304, Part-I IPC so far as Raj Narain Appellant is concerned.

17. Jagarnath Appellant is said to have caused lathi injuries" to Dharamdeo deceased as noted above. The post-mortem report does not indicate any lathi injury. No other role is attributed to Jai Ram. Consequently, participation of Jai Ram appears to be doubtful. In this connection it may be noted that another accused Ram Dahin had a similar role of causing lathi injury but he has been acquitted by the trial Judge. The said acquittal has also become final. There is no reason whatsoever to make a distinction between acquitted accused Rum Dahin and that of Jagarnath Appellant. Therefore, Jagarnath Appellant gets benefit of doubt.

18. Coming to the injuries caused on PW 5 Rama, Smt. Phool Keshri, Shanti and Sudama, it may be noticed that Chhangur Appellant who was also armed with a Bhala was said to have assaulted Rama but he missed the target and did not actually caused any injury on Rama. However, Jai Ram and Bali Ram, Appellants armed with Bhala and Gandasa respectively caused one punctured and one incised wound each on Rama. The opinion of the doctor is that these injuries were serious and

dangerous To his life so much so surgical emphysema was found at the medical examination. The result of the aforesaid discussion is that participation of Jai Ram appellate and his assaulting Rama by Bhala and participation of Bali Ram and his assaulting Rama with Gandasa stands fummy proved. Consequently their conviction u/s 307 IPC have to be maintained. The trial Judge had imposed four years RI to them and there is no reason to differ with the sentence imposed. However, Chhangur Appellant gets benefit of doubt because his attempt to cause injuries is said to have missed (he target and one is not sure therefore, that he had really thrown the weapon at the victim Rama or not. The result is that the conviction of Jai Ram and Bali Ram Appellants u/s 307 IPC and their sentences of four years" RI each as awarded by the trial Judge are maintained.

19. The injuries noted above with regard to Smt. Phoolkeshari and Shanti were simple in nature. Bali Ram Appellant caused Gandasa injuries whereas Ram Dayal Appellant caused lathi injuries on these two victims. Hare Ram Appellant is said to have assaulted these ladies with his Ballam but had missed the target. The analogy adopted above with regard to the participation of Chhangur Appellant is applicable to Hare Ram also and one does not know whether Hare Ram really intended or had actually made an attempt to cause injuries on these two ladies. Consequently the participation of Bali Ram and Ram Dayal Appellants with regards to the assault on Smt. Phoolkeshari and Shanti is proved beyond doubt but that of Hare Ram Appellant is doubtful. Consequently Hareram Appellant gets acquittal as the case against him is not proved beyond reasonable doubt. The conviction of Bali Ram Appellant u/s 324 IPC and sentence of 2 1/2 years" R.I. thereunder is maintained. This will run concurrently with the other sentences awarded to Bali Ram Appellant. However, Ram Dayal Appellant's conviction u/s 323 IPC is maintained but his sentence is reduced to the period already undergone. PW 1 Sudama is said to have received lathi injuries at the behest of Ram Nath Appellant alone. Ram Nath has been convicted u/s 323 IPC and has been sentenced to six months" R.I. Ft cannot be doubted that Ram Nath had used lathi and Sudama did receive those injuries, Consequently there is no error in the conviction recorded by the trial Judge as regards Ram Nath Appellant u/s 323 IPC but on the facts and circumstances of the present case his sentence u/s 323 IPC is reduced to the period already undergone.

20. Coming now to the case of Appellant Deepa who is said to have set fire to the thatched roof within which some wood and other articles were kept it may be stated here that the property kept inside was not indicated in terms of money. Moreover, it is not clear from the evidence whether setting fire as done to a place which was commonly used as a dwelling house. Under the circumstances the conviction u/s 436 IPC cannot be said to be definitely proved against the Appellant Deepa but he can be convicted u/s 435 IPC on the evidence produced in the case. In this connection three years" R.I. u/s 436 IPC cannot be maintained. Consequently taking note of the fact that nearly 16 years had already elapsed his sentence u/s 435 IPC is reduced to the period already undergone.

21. In the result the appeal is partly allowed. Appellant Raj Narain is acquitted of the charge u/s 302 IPC. He is convicted and sentenced u/s 304, Part I IPC and sentenced to ten years" R.I. He is acquitted of all other charges framed against him. He is on bail. He shall be taken into custody forthwith to serve out the sentence awarded to him.

22. Appellant Jairam and Appellant Bali Ram are convicted u/s 307 IPC and sentenced to four years "R.I. each. Appellant Bali Ram is also convicted u/s 324 IPC. The Sentence of Jairam Appellant u/s 307 IPC to four years" R.I. and of Bali Ram Appellant u/s 307 IPC to four years R.I and u/s 324 IPC to 2 1/2 years are maintained. Appellant Bali Ram"s sentence will run concurrently. They are acquitted of all other charges. The conviction of Ram Dayal Appellant u/s 323 IPC is maintained but his sentence is reduced to the period already undergone. He is acquitted of all other charges. He need not surrender. His bail bonds are discharged.

23. The conviction of Appellant Ram Nath u/s 323 IPC is maintained but his sentence is reduced to the period already undergone He is acquitted of all other charges. He is on bail. He need not surrender. His bail bonds are discharged.

24. The Appellant Deepa is convicted u/s 435 IPC and sentenced to the period already undergone. He is acquitted of the charge u/s 436 IPC and is acquitted of all other charges. He is on bail. He need not surrender and his bail bonds are discharged.

25. Jagarnath Appellant and Chhangur Appellant as also Appellants Hare Ram and Raja Ram are acquitted of the charges framed against them. They are on bail. They need not surrender. Their bail bonds are discharged.

26. The revision fails and is dismissed.