

(2009) 04 AHC CK 0812

Allahabad High Court

Case No: Criminal A. No. 16 of 2009

Deena and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: April 21, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 319
- Penal Code, 1860 (IPC) - Section 302, 308, 34, 376

Citation: (2009) 3 ACR 2673

Hon'ble Judges: D.R. Azad, J; Amar Saran, J

Bench: Division Bench

Advocate: S.V. Goswami, for the Appellant; Rajul Bhargava and A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Amar Saran and D.R. Azad, JJ.

A prayer for bail to the Appellant-applicants has been made in this criminal appeal, which arises out of their conviction by order of the Additional District and Session Judge, Fast Track (Court No. 5), Mathura, dated 20.12.2008, and sentencing them u/s 302 read with Section 34, I.P.C. with life imprisonment and Rs. 25,000 as fine u/s 302 in S. T. No. 54 of 2005, State v. Ram Prakash and others.

2. We have heard Sri S. V. Goswami, learned Counsel for the Appellants, Sri Rajul Bhargava for the complainant and the learned A.G.A. on the prayer for bail to them, and perused the record, written objection filed by the State.

3. The incident in question is said to have taken place on the way in village Palson at about 3.30 p.m. on 21.10.2004 in which the two applicants and two other co-accused, whose appeal is connected, are said to have assaulted the deceased Keshav Dev with phaurahas and rod attached to the tractor. The report of this incident was lodged at 4.10 p.m. at P.S. Gowardhan by the informant, Gauri, P.W. 1,

who was the brother of the deceased.

4. It was argued by the learned Counsel for the Appellant-applicants that the two Appellants--Deena and Nand Kishore were not charge-sheeted by the police and their names were excluded and they have only been implicated on an application u/s 319, Cr. P.C. at a later stage. The F.I.R. was ante-timed because in reply to a question put in" his cross-examination P.W. 1, the informant, stated that he could not dictate the F.I.R. at that stage. When the deceased who had been brought in an injured condition to the police station after the incident, was examined by P.W. 3, Dr. Devendra Agarwal of the P.H.C. Gowardhan. It was noted in the majrubi chitthi that the time of the medical examination at the P.H.C. Gowardhan was 4 p.m. The crime number was not mentioned in the majrubi chitthi and the arms carried by different accused were not mentioned in the inquest. It was further argued that actually the deceased had died as a result of an accident with the tractor which was found lying nearby and the prosecution has set up a false case because of enmity. It was further stated that the complainant's side were being prosecuted in two cases under Sections 302 and 308, I.P.C. in which they had been convicted and their appeals are pending in the High Court and in one case u/s 376, I.P.C. they had been acquitted. As there was equal or greater enmity with the informant, there was no chance of his having been spared if he was present at the time of the incident. No independent witness of the locality was examined and only chance, inimical and tainted witnesses have been examined. The tractor, which was found lying on the spot and on which the accused are said to have arrived at the spot and committed the crime, has not been claimed by the accused and its owner had not as yet been identified.

5. On the other hand, the submission of the learned Counsel for the complainant and the learned A.G.A. was that as the applicants had been named in the F.I.R. and, again, they were named in the evidence, hence they were implicated in the case in exercise of powers u/s 319, Cr. P.C. and it was not material if the police for some extraneous considerations excluded their names when it filed the charge-sheet. From the mere circumstance that in his cross-examination P.W. 1 Gauri, the informant, stated that he could not dictate the F.I.R. at that stage, was not material because the evidence of this witness was recorded 21/2 years after the lodging of the F.I.R. It was further submitted that as the P.H.C. Gowardhan was at a close distance to the police station Gowardhan, it was not at all material if the doctor noted that the deceased (who was then the injured, Keshav Deo) had been brought to him at 4 p.m. and, as such, a minor difference in the time of the lodging of the F.I.R. and time of the arrival of the injured at the P.H.C. cannot lead to the only inference that the F.I.R. was ante-timed. The mere absence of the crime number in the majrubi chitthi and non-mention of the arms carried by the accused cannot lead to an inference that the F.I.R. was not in existence till then or that it was ante-timed. It was further argued by the learned Counsel for the complainant that the suggestion that the injury to the deceased was the result of an accident with the tractor is purely a speculative suggestion and there is no scientific examination of

the tractor nor were there any traces of blood found on the tractor which could have constituted any basis for setting up the imaginary case by the accused. It was further submitted that the allegations of repeated crimes by the complainant's side could have provided the motive for the crime and would not be only suggestive of false implication of the accused as motive is a double-edged weapon. The non-examination of the witness of the locality is not fatal as outsiders are reluctant to give evidence in crimes as they do not want to be drawn into the enmities between the parties. Simply because the tractor owner has not been identified cannot lead to an inference that the accused had not arrived at the spot on the tractor.

6. Having considered the rival submissions of the parties, without expressing any opinion on the merits, we are of the opinion that the Appellant-applicants -- Deena and Nand Kishore have not been able to make out any ground for grant of bail to them.

7. In the result, the prayer of bail to the Appellant-applicants--Deena and Nand Kishore is rejected.