

(2003) 04 AHC CK 0256

Allahabad High Court (Lucknow Bench)

Case No: Criminal Revision No. 109 of 1991

Jag Prasad and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

---

**Date of Decision:** April 22, 2003**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401
- Penal Code, 1860 (IPC) - Section 300, 308, 323, 325, 34

**Citation:** (2003) 3 ACR 2950**Hon'ble Judges:** N.K. Mehrotra, J**Bench:** Single Bench**Advocate:** I.B. Singh, for the Appellant; G.A., for the Respondent

---

**Judgement**

N.K. Mehrotra, J.

This is a revision u/s 397/401 of Code of Criminal Procedure against the judgment and order dated 19.4.1991 passed in Criminal Appeal No. 30/90: Jag Prasad v. State, by Sessions Judge, Gonda confirming the judgment and order dated 20.9.1990 passed by the Assistant Sessions Judge, Gonda in Sessions Trial No. 326/86 convicting the revisionists under Sections 308/34 and 323/34 and sentencing all the revisionists to an imprisonment of three years R.I. and six months R.I. each with a sentence of fine of Rs. 200 each u/s 308/34 and in default of fine, one month's R.I. each.

2. The appellate court in the impugned order has modified the sentence passed by the learned trial court of one month's R.I. to sentence of one month's simple imprisonment in default of payment of fine.

3. I have heard the learned Counsel for the revisionists and the learned Additional Government Advocate. According to the prosecution story, Kaushal Singh accompanied by Krishna Pal Singh was coming from Tarabganj by a rickshaw at 6.00 p.m. on 4.3.1986. They reached near village Baisan Purwa. They were on road.

Suddenly Jag Prasad, Ram Dularey, Sugriv and Sunder armed with kaanta and lathis arrived there and started committing assault on the informant and his companion Krishna Pal Singh. On hearing the cry, Narsingh Bahadur Singh, Nirmal Kumar Singh and Avadh Raj Singh reached on the spot and then assailants ran away. Krishna Pal Singh's condition was serious. The injured were taken to police station, Paraspur and a written report was lodged there. At the time of medical examination, there were six lacerated wounds, eight contusions and three abrasions on the body of Krishna Pal Singh. At the same time, Medical Officer noted one lacerated, two abrasions and one contusion on the body of Kaushal Kishore Singh. It is clear from the F.I.R. that according to the prosecution case, accused Jag Prasad was having kaanta and accused Ram Dularey, Sugriv and Sunder were having lathis in their hands. A perusal of the statement of Dr. P. C. Shukla, P.W. 5 also goes to show that there was fracture of the nasal bone of Krishna Pal Singh. This was grievous injury. A perusal of the injuries of the injured persons also goes to show that there was no incised or cut wound caused by kaanta.

4. Learned Counsel for the revisionists has argued that for holding the accused guilty u/s 308, I.P.C., the prosecution has to prove that accused has intention or knowledge that if death is caused by his act, he would be guilty of culpable homicide not amounting to murder and in this case, there is no such evidence by which the intention of the accused to commit culpable homicide not amounting to murder can be gathered.

5. After hearing the parties and perusal of the evidence on record, I find that the incident took place at the road and the incident had taken place at spur of moment. The fact that kaanta from the sharp edged side was not used, is evident from the medical evidence. Therefore, the injuries on the person of an injured person are such that no intention can be attributed to the accused for committing the offence of culpable homicide. Section 308 of the Indian Penal Code as follows:

308. Attempt to commit culpable homicide.-Whoever, does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

6. The word "such intention" referred to the intention referred to in Section 300 of Indian Penal Code, i.e., namely: (i) Intention to cause death, or (ii) intention of causing such fatal injury as the offender knows to be likely to cause death of a person to whom the harm is caused, or (iii) intention of causing bodily injury to any person, where the bodily injury intended to be inflicted, is sufficient in the ordinary course of nature to cause death.

7. Here in the instant case, the accused being armed with kaanta has not used the kaanta from the sharp edged side and it shows that the accused had no intention to cause either murder or culpable homicide not amounting to murder and since the incident had taken place at the spur of moment, accused cannot be held guilty u/s 308, I.P.C.

8. Learned Additional Government Advocate has argued that this is a revision and the scope of the revision is very limited and since two courts below have recorded a finding of fact, the impugned order should not be interfered into. But in the instant case, both the courts below have committed a glaring mistake in holding the accused guilty u/s 308, I.P.C. without looking to the fact that accused had no intention to commit culpable homicide not amounting to murder and the incident had taken place at the spur of the moment and, therefore, the order holding the accused guilty u/s 308, I.P.C. is incorrect and improper. Therefore, the order of conviction and sentence is to be modified and accused Jag Prasad, Ram Dularey, Sugriv and Sunder should be held guilty under Sections 325/34 and 323/34 and the order of conviction and sentence u/s 308/34 is to be set aside and instead the accused persons are to be convicted under Sections 325/34 and 323/34.

9. The accused persons have already undergone three months" R.I. and the incident relates to the year 1986 and a period of seventeen years have already lapsed and parties to the quarrel must be living peacefully during this span of seventeen years. Therefore, even after finding the accused guilty under Sections 325/34 and 323/34, I.P.C. I am of the opinion that instead of sentencing the accused to jail for rest of the imprisonment, it will be in the interest of justice that the rest of the order of sentence should be converted into the fine.

10. In result, the revision is partly allowed. The impugned order is modified to the extent that the accused shall be convicted under Sections 325/34 and 323/34, I.P.C. and sentenced to R.I. already undergone and to pay a fine of Rs. 2,000 each u/s 325/34 and sentence already undergone and a fine of Rs. 500 each u/s 323/34.

Let a copy of this judgment be sent to the Sessions Judge, Gonda for compliance within a period of two weeks from the date of receiving the record and the record be sent back to the learned Sessions Judge within ten days.