

(1996) 01 AHC CK 0114**Allahabad High Court****Case No:** Criminal Appeal No. 2859 of 1979

Mahadeo Kurmi and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Jan. 19, 1996**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 148, 323, 324

Citation: (1996) 20 ACR 268**Hon'ble Judges:** N.S. Gupta, J**Bench:** Single Bench**Advocate:** Jagdish Misra, P.N. Misra, Sabhapati Tewari and Apul Misra, for the Appellant;
A.G.A., for the Respondent**Final Decision:** Disposed Of**Judgement**

N.S. Gupta, J.

Accused Appellant Mahadeo who is reported to have since died in October, 1983 and accused Appellants Ram Saran, Basdeo, Maya Ram, Ram Sewak, Sheshmani and Sant Ram were convicted by Sri Kamal Kishore, the then IVth Addl. Sessions Judge, Basti under Sections 148/324, I.P.C. and 147/323, I.P.C. respectively vide his judgment and order dated 5.10.79 had come up in appeal before this Court. During the pendency of the appeal, the accused Appellant Mahadeo had died, the fact of his death has been verified by the report of the C.J.M., Basti Sri J.P. Narayan dated 15.11.94. The appeal as against Mahadeo has, therefore, abated and had proceeded only against the other accused Appellants.

2. The prosecution case was that on 10.6.77 at about 8.30 p.m. in village Viloria, P.S. Domariyaganj, district Basti, the accused Appellants had formed an unlawful assembly. The accused Appellant Mahadeo was armed with country-made pistol and the rest of the accused Appellants were armed with lathis. They, in furtherance of the common object of the said unlawful assembly, had assaulted Sheo Prasad,

Sumiran, Manthara and Basdeo and had caused injuries to them. After needful trial, the accused Appellants were convicted as aforesaid.

3. I have heard Sri P. N. Misra, learned Counsel for the accused Appellants and Sri K.C. Saxena, learned Additional Government Advocate for the State, considered their contentions and have gone through the facts and circumstances of the case.

4. It was argued by the learned Counsel for the accused Appellants that the main assailant Mahadeo who was armed with country-made pistol and was responsible for causing major injuries to the injured persons by means of country-made pistol has since died and according to the prosecution itself, the Injuries caused to Sheo Prasad, Sumiran, Manthara and Basdeo by the other accused Appellants were simple and petty injuries. It was argued that a period of about 18 years has elapsed since the date of occurrence of this case and the accused Appellants have suffered a lot of mental agony. They may be, therefore, let off by imposing fine only. The offer made by the learned Counsel for the accused Appellants appears to be a quite reasonable one.

5. I find that the injuries caused by means of blunt weapons on the person of Sheo Prasad were plain on right wrist joint and plain on back side, injuries to Sumiran caused by blunt weapons consisted of a contusion measuring 8x2 cm. on the right shoulder, contusion 6 x 2 cm. on the back of the right upper thigh and contusion 20 x 3 cm. on the middle of the back, injuries of Manthara was abrasion measuring 1/2 x 1/4 cm. on right hand and Injuries of Basdeo was a diffuse swelling on left knee joint measuring 2.5 cm.

6. Thus keeping in view the number and nature of these injuries, I am of the opinion that a fine of Rs. 500 on each accused Appellant will meet the ends of justice. It is directed that the accused Appellants shall deposit the fine in the court of the Chief Judicial Magistrate, Basti within a period of two months from the date of this order, failing which they shall undergo simple imprisonment for a period of one month's each. It is further directed that after the fine is realised, 1/4th of the said amount shall be paid to Sheo Prasad injured and 1/4th shall be paid to Sumiran. With these observations, the conviction of the accused Appellants is sustained and sentence is modified. The appeal is accordingly disposed of. Let the record of the case be sent to the Chief Judicial Magistrate, Basti for needful compliance.