(2013) 12 AHC CK 0146

Allahabad High Court

Case No: Criminal Miscellaneous Application (For Leave to Appeal) No. 397 of 2012

Allahnoor	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision: Dec. 13, 2013

Citation: (2014) 1 ACR 205 : (2014) 4 ALJ 145 : (2014) 84 ALLCC 580

Hon'ble Judges: Pankaj Naqvi, J; Dharnidhar Jha, J

Bench: Division Bench

Advocate: N.K. Jafri and N.I. Jafri, for the Appellant;

Final Decision: Dismissed

Judgement

Dharnidhar Jha and Pankaj Naqvi, JJ.

We have heard Sri N.I. Jafri, learned counsel for the appellant on admission of the present appeal, which has been filed u/s 372, Cr.P.C. to challenge the correctness of findings recorded by the learned Addl. Sessions Judge, Court No. 16. Muzaffarnagar in Sessions Trial No. 1003 of 2002, so as to acquitting the respondents of charges under Sections 307, 323, 324, 427 and 506, I.P.C.

2. The allegations were contained in the written report filed by Allahnoor, the appellant, in which it was stated that in spite of the consolidation proceedings having been completed, the possession to the allottees had not been delivered, but in spite of that the respondents who were quarrel-some persons were attempting to take forcible possession of lands belonging to the informant two months prior to the exact date of delivery of possession. In consequence thereto, it so happened on 12.2.2001 at about 1.00 p.m. that the respondents started harvesting the wheat crop grown by the informant, which was objected to by Baledeen, Liyaqat and Smt. Hushna Bano upon which the respondents threatened them of dire consequences and on the remonstration to kill them, respondent-Iliyas is said to have given a tabal (it is farsa, a heavy sharp-cutting weapon) on the head of Baledeen. Murshad is said to have given a blow with the same weapon upon the head of Liyaqat, while Rashid dealt another blow with Balkatti, another heavy sharp-cutting weapon, to both

Liyaqat and Baledeen. The respondent Irfan @ Bhoori dealt blow with his lathi on the three injured, namely, Baledeen, Liyaqat and Smt. Hushna Bano. Witnesses, who were present there, intervened and saved the injured, who retreated from the place of occurrence holding threats to the injured.

3. The informant stated that the condition of the Injured was serious and he remained very much engaged in arranging for their treatment and looking after them. As such, there was some delay in lodging the report.

4. The defence was in the form of a counter version. It was stated that the respondents were themselves assaulted by the informant and persons, who claimed to be injured and a case was duly lodged by respondent-Rashid which was also charge-sheeted and was pending trial.

5. It appears that the doctor, who had examined the three injured, namely. Baledeen, Liyaqat and Smt. Hushna Bano, had died and, as such, P.W. 5. the Chief Pharmacist, who was working with Dr. A.K. Yadav and who was acquainted with his writings and signatures, was produced and he testified to the writings and signatures on the three reports Issued in respect of the injury certificates granted by Dr. A.K. Yadav and those were marked Exh. Ka-8 to Ka-10. It appears that the injuries on the three Injured were as simple as to be superficial as regards the one which had been allegedly caused by as heavy and sharp-cutting a weapon as balkatti or a tabal. We could refer to injury No. 1, which was found on Liyaqat, which was measuring 2.7 c.m. X 0.5 c.m. and the two similar injuries on Baledeen, which were measuring 2 c.m. X 0.5 c.m. and 1 c.m. X 0.5 c.m. We may record that as regards Smt. Hushna Bano, there was no injury, which could be said to be caused either by a sharp-cutting or a sharp-pointed weapon, though she had also been alleged to be assaulted by a weapon as heavy and sharp-cutting as a balkatti or a tabal. In local parlance farsa is described as tabal and the description of injury, which we have just referred to, found on Liyaqat and Baledeen, specially its length, simply negates the allegation that either of the two could have been injured on account of being assaulted with a weapon, which could either be a tabal or a balkatti, because the length of the cut injury on Liyaqat was just above one inch, whereas the length of the two wounds on Baledeen was below one inch, which simply signifies that there was no use either of tabal or balkatti. This is one circumstance, which we find on proper appreciation of the medical evidence independently than that, which was made by the learned trial Judge. Thus, the very basic allegation that the accused persons had used a tabal or a balkatti in giving blows to the Injured appears completely unacceptable and appears to be untrue.

6. As against the above, the learned trial Judge has noted that the accused persons had tendered their evidence of their own injury reports. We find that the injury found on the accused had also been discussed by the learned trial Judge at pages 12, 13, 14 and 15 of the judgment and it appears sufficiently indicating the probability that there was a clash between the parties in respect of either ousting

one out of possession of the land or for taking forcible possession of the land. We further find from the discussion of the documentary evidence as regards the possession that in fact the accused persons were to resume their possession over the chak, which had been allotted after carving out the same, which was also comprised by the land of the informant on the same day, i.e., 12.2.2001 and they had gone to resume the possession of the land and it appears noted by the learned trial Judge that the informant party was not willing to part with the possession of the land and, as such, there was a clash, which resulted in injury on both the sides.

7. In the above background, the Court is called upon to consider as to whether the accused persons, LC, the respondents had the necessary intent or knowledge to commit an offence or could it be case that they were simply repelling the counter attack, which could have been set up against them so as to repelling them from place of occurrence and thus prohibiting them from taking possession of the land. We have already noted that the accused persons were to resume their possession over the chak on that particular day, as appears noted by the learned trial Judge at page 16 of the impugned judgment, as such their entry or coming over the place of occurrence or the land, which had comprising the chak, which had been allotted to them could not be said to be illegal and, as such, they could not be said to be trespassers as regards the respondents'' entry over the land. As soon as their entry appears not Illegal or a trespass, then anything, which is coming in their way as an obstruction in taking possession over the piece of land, which was formed the chak allotted into their favour, then they were fully clothed with the right to private defence to repel that aggression, which was coming in their way of taking possession and in our opinion if they were to face such a situation, then they could not be supposed resort to legal remedies by approaching the public authorities and they could be Justified in using the minimal force in repelling that aggression. We had already perused injuries, which were found on the three injured including the informant and we are of the view that the injuries were so superficial and simple that those could be justifying dealing blows to the prosecution parry in order to repelling the aggression, which was set up against the accused persons in obstructing them from resuming their possession over the disputed land.

8. Then, we have the injuries on the accused persons also and we find that five persons were injured on their side. Intent to commit an act u/s 307, I.P.C. and the knowledge that if the act could have been done with that intention, which is spoken of by Section 307, I.P.C. then only it could be an offence punishable under that provision. For finding out as to whether the accused were having the intention and knowledge to commit the act which could fall within the purview of the provision of Section 307, I.P.C., the courts have always looked to some of the factual data, which appear from the evidence of witnesses. The courts consider the nature of the weapon used, part of the body struck and the force, which was used in giving the blow and the resultant injury and the damages which was really caused on account of giving the blows with such a weapon. Knowledge could also be discerned from

the above facts and circumstances. So far as the terminology ''under the circumstances'' concerned, we are of the opinion that it could have never been confined to the intervening circumstances, that is to say that there was no intervention in the acts of the accused persons, so that the act could not be fully resulting into such injuries, which could be endangering human life, rather, in our opinion, the attending circumstances on the commission of the offence could also be considered for finding out as to whether the intent and knowledge for doing the acts was such that the accused was to commit the murder and were making an attempt in that behalf. To elucidate, if someone is assaulted during the wee-hours of a night at a lonely place after choosing the place so as to evading the gaze of a person, who may be a witness subsequently or with an intent that no one could come to rescue the victim, then these circumstances could also be covered by the terminology ''under the circumstances'', and if, in our opinion, these are the circumstances, which are reinforced by the acts of the accused persons, which could be reflected from the use of weapon, the part of the body hit, as also the resultant injuries, then it could only be a case, which could be falling u/s 307, I.P.C. and that too when the doctor gives an opinion that the injuries could be individually or cumulatively such as to be either dangerous to the life of the victim or might have endangered his life in all probabilities. Else, it could never be a case u/s 307, I.P.C.

9. After scanning the evidence of both the sides, we are of the opinion that the case in hand was never a case u/s 307, I.P.C. and as we have noted earlier, the accused persons were fully justified in exercising their right of private defence in repelling the aggression, which was coming in their way via the informant and injured, when they had gone to resume their possession over the chak.

10. In the result and for the foregoing reasons, we find no good ground to interfere with the judgment of acquittal and as such, we refuse the leave of the Court to appeal and dismiss the appeal also.