

(2009) 12 AHC CK 0354

Allahabad High Court

Case No: Criminal Appeal No. 1632 of 1981

Basant Gaderi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Dec. 9, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304, 325, 34

Hon'ble Judges: Poonam Srivastav, J

Bench: Single Bench

Judgement

Poonam Srivastav, J.

Connected criminal appeal No. 1645 of 1981 Jageshwar and two others, was decided by this Court on 9.11.2006. Sentence was reduced to the period already undergone. Fine of Rs. 5,000/-was imposed upon appellant Misri Lal since appellants Jageshwar and Nageshwar were reported to be dead during tendency of appeal.

2. The instant appeal arises from the same incident and is directed against judgment and order dated 22.7.1981 passed by I Ind Additional Sessions Judge, Gorakhpur, in Session Trial No. 183 of 1980, whereby appellant, Basant has been convicted and sentenced to undergo three years R.I. u/s 325/34 I.P.C. and fine of Rs. 200/-, and five years R.I. u/s 304 Part-II I.P.C.

3. Appellant has already served almost one year in jail, therefore, sentence awarded u/s 325/34 I.P.C. stands served. Therefore, so far appeal relates to conviction u/s 325/34 I.P.C. stands dismissed.

4. The counsel for appellant has advanced arguments on behalf of appellant u/s 304 Part-II I.P.C. only. Appellant was taken into custody on 20.7.2009. Since no counsel appeared on behalf of appellant, this Court appointed Sri Vindhyachal Singh, Advocate as amicus curiae, for appellant, on 30.10.2009.

5. Prosecution case as given out in the first information report lodged by Gajraj Gaderi PW-1, on 14.5.1979 at 8:35 p.m., who was also injured witness is that on 13.5.1979 at about 9:00 a.m., goat of complainant was grazing in his Khutahar (field from which crop had been reaped). Dinesh son of accused Basant, was indulging in the act of breaking leg of goat. In the meantime, Vidyadhar son of complainant reached and rescued the goat. This incident caused displeasure to accused Basant. At about 12 O'clock in the noon on the same day, accused Basant along with accused Jageshwar, Nageshwar and Misri came at the door of complainant and began to abuse. Complainant objected whereupon accused Nageshwar (as stated by complainant) exhorted. Thereupon, all four accused began to beat complainant. In the meantime, complainant's wife Smt. Janki Devi reached to save him. Accused Basant wielded a blow on head of his wife by a bamboo "Ipawa". His wife fell down at once and became unconscious. Many persons of village, namely Chulhai, Bisesar, Nakchhed etc. arrived and intervened then the accused ran away to their houses. Complainant taking his wife in an injured state on a dunlop cart went to Government dispensary at Brahmapur. His wife succumbed to injuries in the hospital.

6. Dr. Mohd. Iqbal, who was posted at Brahmapur P.H.C. medically examined Smt. Janki on 13.5.1979 at about 1:20 p.m. and prepared injury report. True copy of which is Ex. Ka-6. Only one injury was found, which was a contused swelling 6.5 cm x 4.8 cm. over the left side of forehead and scalp, 3.1 cm above mid part of left eyebrow and 9.2 cm away from right of left ear. No evidence of fracture of skull bone was found. Patient was unconscious as reported. Her pulse was 98 per minute. Breathing was 32 per minute. Blood pressure was 86 systolic, pupils were dilated, and fixed on both sides. Bleeding from both nostrils was present. Prompt medicines were given including injections. Medical Officer referred the patient to District Hospital. But as stated by Medical Officer, patient did not survive and succumbed to injury at P.H.C. In the opinion of Medical Officer, injury was grievous and fresh, caused by a blunt object.

7. Gajraj, first informant as well as injured witness was examined as PW-1. His injuries were proved by the doctor. Injury report is Ext. Ka-7. Rajendra Prasad Srivastava, is the first Investigating Officer, who was examined as PW-2. Brij Kishore PW-3 is eyewitness, who tried to support prosecution story as given out by his father, Gajraj. Two independent witnesses namely Visheshwar PW-9 and Chulhai PW-10 have been declared hostile. Remaining witnesses are all formal witnesses.

8. The counsel for appellant has placed statement of all witnesses and apprised the Court about certain contradiction and also the fact that statement of Brij Kishore PW-3 does not inspire confidence. In fact, he was not present at the place of occurrence.

9. Sri Vindhyachal Singh, counsel appearing for appellant, submits that since independent witnesses have been declared hostile and Radiologist Dr. S.C. Tiwari,

PW-8 has admitted in his cross examination that fracture of Gajraj PW-1 could have been caused within two weeks from the date of occurrence, it is not substantiated that fracture was caused during the aforesaid incident. Injuries also do not substantiate fracture, therefore, prosecution story stands completely belied.

10. Learned A.G.A. has disputed each and every arguments advanced on behalf of appellants and tried to support judgment of the Sessions Judge.

11. After hearing the counsels for respective parties and going through the record, I am of the considered view that incident did take place and injuries were caused by all the accused in furtherance of their common intention, therefore, conviction recorded by learned Sessions Judge is fully justified.

12. However, it is also true that appellant has served more than one year in jail. Initially, he was in jail after occurrence and he was granted bail by this Court vide order dated 10.8.1979 during pendency of the appeal. He was taken into custody after bail was cancelled on 12.4.2004. He was granted bail by this Court on 12.7.2004. Thereafter, appellant is in jail since 20.7.2009.

13. Appellant has been in jail approximately one year. I am of the considered view that period already undergone u/s 304 Part-II I.P.C. is sufficient. Sentence of five years R.I. u/s 304 Part-II I.P.C. is reduced to the period already undergone. However, he is liable to pay fine of Rs. 5,000/-. Fine of Rs. 5,000/- will be deposited by appellant within a period of two months from the date of his release. He shall be released forthwith. In the event of default in payment of fine, he shall serve three months further imprisonment.

14. In view of what has been stated above, the instant appeal is partly allowed.