
(2005) 07 AHC CK 0240

Allahabad High Court

Case No: Government Appeal No. 683 of 1982

State of U.P.

APPELLANT

Vs

Parasu Ram Yadav and Others

RESPONDENT

Date of Decision: July 29, 2005

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307, 323, 325, 34

Citation: (2005) 3 ACR 3013

Hon'ble Judges: M.C. Jain, J; M. Chaudhary, J

Bench: Division Bench

Advocate: S.K. Verma and Usha Kiran and A.G.A, for the Appellant; Kamal Krishna and Ajay Srivastava, for the Respondent

Judgement

M. Chaudhary, J.

This Government appeal has been filed by the State from the judgment and order dated 15th of December, 1981 passed by Assistant Sessions Judge, Ghazipur in Sessions Trial No. 59 of 1980, State v. Parasu Ram Yadav and Ors. Trial No. 59 of 1980, acquitting the accused of the charge levelled against them under Sections 307 and 323 each read with Section 34, I.P.C.

2. Since accused Respondents Parasu Ram Yadav and Sheo Nath were reported having died, the appeal against them stood abated vide order dated 13th of October, 2003.

3. Brief facts giving rise to this appeal are that at 10.30 a.m. on 10th of May, 1978, Dhruv Narayan Singh lodged an F.I.R. at police station Nandganj, district Ghazipur alleging that at about 9.00 a.m. that very morning his cousin Gantti Singh went to see his mango grove and found Parasu Ram Yadav plucking the raw mangoes with the help of lathi ; that then Gantti Singh asked him not to pluck the mangoes and that in the meanwhile. Parasu Ram along with Poojan, Sheo Nath and Bali Ram started giving him lathi blows. Hearing the shrieks of Gantti Singh his cousin Dhruv

Narayan Singh rushed for his rescue and then Parasu Ram and Poojan also gave him lathi blows. The said occurrence was witnessed by one Chander and Sarvajeet. The police recorded N.C.R. u/s 323, I.P.C.

4. Injured Gantti Singh and Dhruv Narayan Singh were got medically examined by Dr. Omkar Narayan, Medical Officer-in-charge, State Dispensary Nandganj, district Ghazipur between 11.05 a.m. to 11.35 a.m. that very noon.

5. Medical examination of Gantti Singh revealed below noted injuries on his person:

(1) Lacerated wound 8.5 cm. x 1 cm. x bone deep on front of right side scalp situate antero posteriorly 8.5 cm. above the upper border of right ear.

(2) Red contusion on the whole of left ear with lacerated wound 1.3 cm. x 0.1 cm. x skin deep anterior aspect of the middle of left ear.

(3) Lacerated wound 2.7 cm. x 0.2 cm. x skin deep semilunar shaped on posterior aspect of the palm of right hand 3 cm. below the right wrist joint.

(4) Red contusion 12 cm. x 3 cm. on medial aspect of right thigh 13 cm. above the right knee joint situate transversely.

(5) Abrasion 1.5 cm. x 0.5 cm. on the skin of right leg 17.5 cm. below the right knee joint.

(6) Red contusion 6 cm. x 2.5 cm. on posterior aspect of left shoulder joint obliquely situate with abrasion 1.2 cm. x 0.7 cm. over it.

(7) Lacerated wound 2 cm. x 0.2 cm. x skin deep on the middle of left collar bone.

(8) Haematoma 3.5 cm. x 2 cm. on the scalp 2.5 cm. medial to injury No. 1 with linear abrasion 1.4 cm. over it.

(9) Red contusion 5 cm. x 3 cm. on postero lateral aspect of left forearm just below the left elbow joint situate obliquely.

The doctor opined that all the injuries were caused by some hard blunt object excepting injury No. 5 which was caused by friction against some hard object and all within six hours in duration. Injuries No. 1 and 8 were kept in observation. The patient was referred to District Hospital, Ghazipur for X-ray of his skull.

6. Medical examination of Dhruv Narayan Singh by Dr. Omkar Narayan revealed below noted injuries on his person:

(1) Lacerated wound 6 cm. x 0.8 cm. x bone deep on scalp situate obliquely 11.5 cm. above the upper border of right ear.

(2) Lacerated wound 1.2 cm. x 0.3 cm. x bone deep on maxillary prominence of right side face 2.5 cm. below the lateral end of right eyebrow.

(3) Red contusion 5 cm. x 3 cm. on posterior aspect of left forearm situate obliquely 9.5 cm. above the left wrist joint with abrasion 0.5 cm. x 0.5 cm. over it.

(4) Red contusion 4.5 cm. x 3.5 cm. on antero medial aspect of right thigh situate obliquely 15 cm. above the upper border of the patella of right knee joint.

All the injuries were caused by some hard blunt object and all within six hours in duration and simple in nature.

X-ray of the skull of Gantti Singh revealed fracture of parietal bone right side skull. Then the case was altered u/s 325, I.P.C. vide G.D. Entry No. 33 (Ext. Ka-6).

7. After investigating the case the police submitted charge-sheet against the accused accordingly (Ext. Ka-9). It appears the case was committed to the Court of Session u/s 307, I.P.C.

8. After framing of the charge against the accused the prosecution examined Dhruv Narayan Singh (P.W. 2) and Chander (P.W. 4) as eye-witnesses of the occurrence. Testimony of rest of the witnesses is more or less of normal nature. P.W. 1 Omkar Narayan, who medically examined injured Gantti Singh and Dhruv Narayan Singh has proved the injury reports (Ext. Ka-1 and Ka-2). P.W. 3 Ramjit Singh Yadav, who scribed the report at the instance of Dhruv Narayan Singh has proved the written report. P.W. 5 Dr. P. C. Srivastava, Radiologist, who X-rayed the skull of injured Gantti has proved the X-ray report (Ext. Ka-1). P.W. 6 Head Clerk Ram Prasad Singh has proved the N.C.R., recorded on the basis of the written report handed over to him by Dhruv Narayan at the police station and G.D. entry regarding alteration of crime u/s 325, I.P.C. (Ext. Ka-5 and Ka-6).

9. The accused pleaded not guilty denying the alleged occurrence altogether and stating that they were got implicated in the case falsely. The defence version is that the alleged morning Bali Ram, nephew of Parasu Ram taking his married sister Uma Devi in a rickshaw was going to his house and as he reached near his house Dhruv Narayan Singh and Gantti Singh made the rickshaw stop asking that they would not permit to pass the rickshaw through their land and that immediately Dhruv Narayan Singh along with Bhagwan and Kedar Nath Singh reached at the door of the house of Parasu Ram and gave lathi and danda blows to Parasu Ram, Poojan, Sheo Nath and Vikram thereby causing injuries to them.

10. It appears that there was a cross-case of the said incident initiated on the report of the occurrence lodged by Parasu Ram at police station Nandganj that very day at 11.10 a.m. alleging that at about 10.00 a.m. that forenoon, his nephew Bali Ram taking his married sister Uma Devi was going to his house in a rickshaw and as they reached near their house Dhruv Narayan Singh and Gantti Singh made the rickshaw stop asking that they would not permit the rickshaw to pass through their land ; that immediately Uma Devi went inside her house and that in the meanwhile Dhruv Narayan along with Bhagwan and Kedar Nath Singh taking lathi and dandas

reached at the door of their house and gave lathi and danda blow to Parasu Ram, Poojan, Sheo Nath and Vikram causing them injuries and that they also wielded lathi in their self-defence thereby causing injuries to some of the assailants. The accused proved injury reports of Vikram, Sheo Nath, Parasu Ram and Poojan in their defence (Ext. Ka-1 to Ka-4). A perusal of the injury reports of Parasu Ram and Poojan shows that they were got medically examined by Dr. Omkar Narayan, Medical Officer in-charge, State Dispensary Nandganj, Ghazipur that very day at 2.00 p.m. and 2.20 p.m. respectively.

11. Medical examination of injured Poojan by Dr. Omkar Narayan revealed belownoted injuries on his person:

- (1) Lacerated wound 5.5 cm. x 0.8 cm. x bone deep on left side scalp 8 cm. above the upper border of left ear situate antero posteriorly and filled with red blood clot.
- (2) Red contusion 3 cm. x 2 cm. on anterior aspect of right forearm situate transversely 9.5 cm. above the right wrist joint.
- (3) Red contusion 1 cm. x 2.5 cm. on posterior aspect of right shoulder region situate transversely at the top of right shoulder joint.

12. Medical examination of injured Parasu Ram by Dr. Omkar Narayan revealed belownoted injuries on his person:

- (1) Lacerated injury 4 cm. x 0.4 cm. x skin deep on vertex of scalp 14 cm. above the upper border of left ear situated entero posteriorly and filled with blood clot.
- (2) Red contusion 5 cm. x 2.5 cm. on posterior aspect of left forearm obliquely situated just below the left elbow joint.

The doctor opined that the injuries on both the injured Poojan and Parasu Ram were caused by hard blunt object and simple in nature. In the opinion of the doctor all the injuries were of within twelve hours in duration. Injured Vikram and Sheo Nath were got medically examined by Dr. Omkar Narayan of State Dispensary, Nandganj District Ghazipur next day, i.e., 11.5.78 at 8.40 a.m. and 9.15 a.m. respectively.

13. Medical examination of injured Vikram revealed the below noted injuries on his person:

- (1) Lacerated wound 2 cm. x 0.2 cm. x skin deep on upper part of the pinna of left ear. Wound covered with serum and blood clot.
- (2) Swelling of the whole of little and ring fingers and corresponding palm upto 4 cm. above the root of the little and ring fingers of left palm.
- (3) Swelling of the whole of right index finger from the tip to the middle joint with abrasion 1 cm. x 1 cm. on the posterior aspect of the right index finger just below the middle joint, complain of pain on palmer aspect of right thumb and posterior aspect of upper part of left forearm.

The doctor opined that all the injuries were caused by hard blunt object and except injury No. 2 the other injuries were simple in nature and all the injuries were of within half to one day in duration. The doctor advised X-ray of lower half of the palm and little and ring finger of left hand.

Medical examination of Sheo Nath revealed a lacerated wound 6.5 cm. x 0.3 cm. x skin deep on scalp 13.5 cms. above the upper border of the left ear.

The doctor opined that the injury was simple in nature and was caused by some hard and blunt object and the injury was of within half to one day old in duration.

X-ray of left palm and middle and ring fingers of Vikram revealed fracture of first phalanx of little finger.

14. On an appraisal of the parties' evidence the learned trial court disbelieved the prosecution case and evidence with the result that the accused was held not guilty of the charge levelled against them and acquitted.

15. Feeling dissatisfied with the impugned judgment and order the State preferred this Government appeal assailing judgment of acquittal of the accused Respondents.

16. We have heard learned A.G.A. for the State Appellant and learned Counsel for the accused-Respondents Poojan and Bali Ram.

17. Learned A.G.A. for the Appellant vehemently argued that the learned trial court committed error in disbelieving the sworn testimony of P.W. 2 Dhruv Narayan Singh, the injured and the first informant and P.W. 4 Chander. On the other hand learned Counsel for the accused-Respondents contended that on the accused side three accused namely Parasu Ram, Poojan and Sheo Nath received injuries and Vikram, brother of Poojan also received injuries and the prosecution has failed to explain their injuries satisfactorily. Injured Vikram brother of accused Poojan received fracture injury. A perusal of medical reports goes to show that all the three accused namely Poojan, Parasu Ram and Sheo Nath received injuries on their skull and Vikram, brother of Poojan received fracture injury. He further argued that place of occurrence as alleged by the prosecution too is doubtful as no blood was found by the Investigating Officer at the scene of occurrence. A perusal of the site plan map (Ext. Ka-8) goes to show that there is nowhere mentioned that blood was found at the scene of occurrence. A perusal of the injury reports of Gantti Singh and Dhruv Narayan Singh goes to show that both of them received lacerated wounds on their skull. Thus, the injuries sustained by these two injured on the prosecution side must have bled profusely but no blood was found by the Investigating Officer at the scene of occurrence.

18. In view of the above facts and circumstances the defence version that accused Dhruv Narayan Singh and Gantti Singh picked up quarrel with Bali Ram nephew of Parasu Ram over passing of the rickshaw through their field and they along with

Kedar Nath Singh went at door of the house of Parasu Ram and gave lathi blows to Parasu Ram, Poojan and Sheo Nath and Vikram thereby causing them injuries and then they wielded lathis in their self-defence causing injuries to some of the assailants competes in probability with that of the prosecution version. The learned trial Judge rightly observed that in the first half of May crop of mango is of no use even not ready for preparing pickle and therefore the prosecution version that accused Parasu Ram was plucking mangoes in their grove with the help of lathi in order to get mangoes for pickle is not worthy of credence. Learned trial Judge has given cogent and convincing reasons for disbelieving the prosecution case and evidence and we find no good ground to interfere with the findings arrived at by the court below. The appeal has got no substance and is liable to be dismissed.

19. The Government appeal is dismissed.

20. Judgment be certified to the court below.