
Babu Ram Vs State of U.P.

Criminal Appeal No.-1734 of 1982

Court: Allahabad High Court

Date of Decision: Oct. 17, 2014

Acts Referred:

Arms Act, 1959 " Section 25(1)(a)#Criminal Procedure Code, 1973 (CrPC) " Section 313, 378#Penal Code, 1860 (IPC) " Section 147, 148, 149, 307, 308

Citation: (2014) 87 ALLCC 821

Hon'ble Judges: Anil Kumar Sharma, J

Bench: Single Bench

Advocate: Radhey Shyam Shukla, Advocate for the Appellant; A.K. Saxena, AGA, Advocate for the Respondent

Judgement

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Anil Kumar Sharma, J.

Challenge in this appeal is to the judgment and order dated 8.7.1982 passed by Sri V.N. Singh, the then 6th Addl.

Sessions Judge, Shahjahanpur in S.T. no. 616 of 1980 whereby each appellant had been acquitted for the offence punishable u/s. 307 IPC,

however, accused appellants no. 2 to 4 have been convicted u/s. 324 IPC and sentenced to undergo R.I. for one year while appellant no. 1 had

been found guilty for the offence punishable u/s. 324/ 34 IPC and had been sentenced to pay fine of Rs. 500/- with default stipulation.

2. During pendency of appeal Parashu Ram appellant no. 3 has died, so his appeal stood abated vide order dated 10.2.2014.

3. Shorn of details, the facts of the case for deciding the appeal are that the complainant and the accused-appellants belong to the same family and

there was old partition dispute of the property between them. In the morning of 6.9.1979 Babu Ram proclaimed that they would keep their

agricultural produce in the whole field, but complainant insisted him to use only half of the field, whereupon Ram Nath and Parashu Ram armed

which bhala, and Ram Rais armed with kanta arrived there and on their exhortation Ram Nath wielded bhala in his stomach. His brother Seva Ram

came to his rescue but in order to kill he was also assaulted with bhala by Parashu Ram and Ram Nath causing bhala injuries to him. After

sustaining injuries Seva Ram fell down and when Ram Chander ran to save him Ram Rais assaulted him with kanta and whereas Babu Ram

wielded lathi on all of them. Hearing noise witnesses Ram Pal, Rameshwar and Banwari arrived at the spot and on their challenge the accused

persons made their escape good towards south. Complainant Ram Sharan lodged written report of the incident in police station Parore the same

day at 10.15 a.m. and on its basis case u/s. 307, 323 IPC was registered against the four accused-appellants name in the FIR. The injured were

sent for medical examination to PHC, Usawan (Budaun), where they were examined by Dr. G.D. Bhaskar from 4.45 PM onwards. He found

injuries on the person of the injured, as under:

Sewa Ram-at 4.45 P.M.

1. Punctured wound size 1 cm x 0.5 cm. x 1.5 cm on inner upper quadrant of right hip.
2. Punctured wound size 1.0 cm x 0.5 cm x ? (Probing not advisable because of abdominal injury) on right iliac fossa of abdomen about in centre of fossa.

The doctor kept the injuries under observation and found that they were caused by sharp pointed weapon and were fresh in duration.

Ram Saran-5.00 P.M.

1. Punctured wound size 1.5 cm x 0.5 cm x ? (Probing not done because of abdominal injury) on right side o abdomen 7 cm from umbilicus towards right iliac fossa.

Injury was kept under observation, caused by sharp pointed weapon and was fresh.

Ram Chandra-5.15 P.M.

1. Incised wound size 4 cm x 1.0 cm x bone deep on left side of scalp 6 cm from left ear.
2. Punctured wound size 0.2 x 0.3 cm on flexi aspect of left lower forearm 2 cm from left wrist joint.

In the opinion of the doctor, both the injuries were simple in nature. Injury no. 1 was caused by sharp edged weapon and (2) was caused by sharp

pointed weapon. The investigation ended in charge-sheet against the four accused-appellants.

4. In the Court of Session charge for the offence punishable u/s. 307 read with 34 IPC was framed against all the accused-appellants, who abjured

their guilt and claimed trial.

5. In support of the charge, the prosecution had examined Ram Saran PW-1, Ram Chander PW-2, Ram Pal PW-3, SI Janardan Rai PW-4 and

Dr. G.D. Bhaskar PW-5.

6. The accused persons in their separate statements u/s. 313 Cr. P.C. have again denied the entire prosecution story. Accused Babu Ram has

stated that Ram Lal, Sewa Ram, Ram Chander and Gur Dayal have thrown cow-dung in his khaliyan and on his protest he was beaten with lathi

and in defence he also wielded lathi, which might have caused injuries to them. In defence, the accused persons have examined Dr. A.P. Mishra

DW-1, who has proved the injury report of accused Babu Lal, who was examined by him in District Jail, Shahjahanpur on 8.9.1979.

7. The learned trial Court after hearing the parties' counsel has convicted and sentenced the accused-appellants as mentioned in para-1 of the

judgment above.

8. On October 9, 2014 at the time of hearing of appeal, learned counsel for the appellants has not assailed the conviction of the appellants for the

offence punishable u/s. 324/ 34 IPC and has simply challenged the quantum of sentence on the premise that the incident had taken place more than

35-years ago and appellants no. 1, 2 and 4 are of advanced age, so it would not be expedient in the interest of justice to send appellants no. 2 and

4 to jail for serving out the sentence. He has further submitted that it was a cross-case and accused-appellant no. 1 had also sustained injuries in

the incident, who had been sentenced to pay fine of Rs. 500/- only for the offence punishable u/s. 324/ 34 IPC, so lenient view in the matter of

quantum of sentence with regard to appellant no. 2 and 4 would be expedient in the interest of justice, who had been in jail for about 17 days

during trial and their remaining sentence may be converted into fine, which would not amount to enhancing the sentence.

9. In support of his arguments learned counsel for the appellants has placed reliance on the following cases:

1. George Pon Paul Vs. Kanagalet and Others, -in this case, the appellant was found guilty for the offence punishable u/s. 326 and 452 IPC. He

was sentenced to confinement till rising of the Court and fine with default stipulation. The High Court on revision by the victims enhanced the

sentence, however, the Apex Court did not interfere in the sentence awarded by the trial Court due to long passage of time.

2. Nasir Vs. State of Uttar Pradesh, -The appellant was found guilty for the offence punishable u/s. 399/ 402 IPC and 25(1)(a) Arms Act and was

sentenced to five years' imprisonment u/s. 399/ 402. The occurrence had taken place about 29-years ago and the appellant remained in custody

for more than six months, therefore, the sentence awarded to the appellant was reduced to the period already undergone by him.

3. State of U.P. Vs. Siyaram and another (2013) 2 SCC (Cri) 137-in this case appellant Jiya Lal was found guilty for the offence punishable u/s.

307/ 34 IPC, however considering the fact that the incident had taken place in the year 1988, appellant has now become an aged person and there

is nothing on record to show that he is either habitual offender or previous convict, his sentence was reduced to already undergone but fine was

increased to Rs. 10,000/-. In State appeal, the Apex Court did not approve the reduction of sentence, however refused to interfere because the

prosecution had been initiated in the year 1988, but fine was enhanced to Rs. 25,000/-.

4. Labh Singh and Others Vs. State of Haryana and Another, -in this case the appellants were found guilty for the offences punishable u/s. 326/

324/ 323 r/w Section 34 IPC. The appellants were very old i.e. 82, 72 and 62 years respectively, incident was 27-years old and they had

undergone part of the sentence, therefore, the Apex Court directed each appellant to pay Rs. One lakh compensation to the complainant/injured

persons and their sentence was reduced to period already undergone by each of them.

5. Jagpal Singh & others Vs. State of U.P. 2004 (5) ACC 310-this Court vide judgment dated 26.6.2004 found that the incident had taken on

1.9.1977, the appellants were convicted on 23.4.1981 u/s. 325/ 34 and 324 IPC and so each was sentenced to pay fine of Rs. 2,000/- u/s. 324

IPC and Rs. 4,000/- u/s. 325/ 34 IPC.

6. Raghuveera & Ors Vs. State of U.P. 1991 (28) ACC 498, -the trial Court and the appellate Court have convicted the five revisionists for the

offences punishable u/s. 147 and 307/ 149 and were sentenced to R.I. for one year u/s. 147 and five years" R.I. u/s. 307/ 149 IPC. In revision

this court converted the conviction into sections 147, 323/ 149, 324/ 149 and 325/ 149 IPC and observed that all the offences were committed in

the same transaction, so separate sentences need not be recorded. The revisionists were sentenced to period of imprisonment already undergone

by each of them with fine of Rs. 500/- each. It was further observed that the incident took place about 8-years ago and injured can be

compensated with fine. It was held that short term sentences now are not likely to serve any useful purpose.

7. Satsen Vs. State of U.P., , -in this case the appellant was convicted for the offence punishable u/s. 307 IPC, but considering the fact that the

incident is 33 years" old, appeal came up for hearing after 32-years and the appellant is also ill, the sentence of three years" R.I. awarded by the

trial Court was converted into fine of Rs. 30,000/-, out of which Rs. 25,000/- was to be paid to the injured, if he is alive or his legal heirs.

8. Santosh Kumar Shukla Vs. State of U.P., , in this case only single stab injury was found on the person of the injured which was not grievous

one. Accused was neither previous convict nor has any criminal history and had served eleven months" sentence, so his conviction u/s. 326 IPC

and sentence of 10-years" rigorous imprisonment and fine of Rs. 50,000/- was altered to section 324 IPC and sentenced to period of

imprisonment already undergone by him and fine of Rs. 10,000/- with default stipulation. After realization of fine Rs. 7,500/- were directed to be

paid to the injured.

9. Sarnam Singh Vs. State of U.P., , in this case the accused was convicted by the trial Court for the offence punishable u/s. 148 and 307/ 149

IPC and sentenced to two years R.I. and fine of Rs. 1000/- u/s. 148 IPC and 10-years" RI u/s. 307/ 149 IPC. In appeal this Court converted

conviction into section 308 IPC and as the incident was about 37-years old and appeal came up for hearing after 33-years, his sentence was

converted into payment of Rs. 50,000/- and of other three appellants into Rs. 10,000/-. Out of the fine realized Rs. 70,000/- was directed to be

paid to eight injured persons.

10. Mewa Vs. State of U.P. 2013 (80) 227 (Lucknow Bench), in this case appellant was tried for the offence punishable u/s. 307 and 324 IPC

but was convicted u/s. 324 IPC and sentenced to two years" rigorous imprisonment. In appeal this Court found that the incident dates back to the

year 2002, so ends of justice would be successfully met if the accused-appellant is awarded punishment already undergone by him with fine of Rs.

10,000/-, which was to be paid to complainant as compensation.

10. Here it would be useful to refer to the cases of State of U.P. Vs. Nathu & others 2014 (1) JIC 744 (All) and Ram Kumar & others versus

State of U.P. 2012(2) JIC 294 (All). In the former case in an appeal u/s. 378 Cr. P.C. against acquittal of the respondents for the offence

punishable u/s. 307 IPC, almost with the consent of the counsel for the accused-respondents, the impugned judgment acquitting the respondents

was set aside and the accused were convicted u/s. 324 IPC and sentenced to period of imprisonment already undergone and fine of Rs. 20,000/-

each. The Court considered the fact that the incident had taken place about 32 years ago so no useful purpose would be served by sending the

respondents to jail. In the later case, the accused were found guilty for the offence punishable u/s. 395/ 412 IPC and were sentenced to seven

years RI u/s. 395 IPC and 3-years" RI u/s. 412 IPC. One of the appellant was found to be about 90-years" old and considering the fact that the

incident took place more than thirty three years ago, the sentence of the accused persons was reduced to already undergone.

11. A Bench of 3-Hon"ble Judges of the Apex Court in the case of Hazara Singh Vs. Raj Kumar and Others, has highlighted the "sentencing

policy" after taking note of its earlier decisions. Relevant para-13 of the report, reads as under:

17) We reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The

facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission

of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter

into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to

undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the

offence and the manner in which it was executed or committed. The Court must not only keep in view the rights of the victim of the crime but also

the society at large while considering the imposition of appropriate punishment.

12. Almost same principles on sentencing were propounded by the Apex Court in the case of State of M.P. Vs. Babulal and Others, , in the

following terms :

19. In view of the above, the law on the issue can be summarised to the effect that one of the prime objectives of criminal law is the imposition of

adequate, just, proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is

committed. The most relevant determinative factor of sentencing is proportionality between crime and punishment keeping in mind the social

interest and consciousness of the society. It is a mockery of the criminal justice system to take a lenient view showing mis-placed sympathy to the

accused on any consideration whatsoever including the delay in conclusion of criminal proceedings. The Punishment should not be so lenient that it

shocks the conscience of the society being abhorrent to the basic principles of sentencing.

13. After taking into consideration the case-law referred above and striking a balance between the nature of the crime and that of the surviving

appellants no. 2 and 4 have already suffered the pangs and agony of protracted trial and appeal for the last about 35 years; there is no history of

their previous involvement in any other criminal case; there was cross-version of the incident, in which accused-appellant Babu Ram also sustained

injuries which have been proved by DW-1 and the parties are related to each other. In the facts and circumstances of the case, in my opinion since

both the appellants namely no. 2 and 4 have used deadly weapons in the crime, but the injuries caused to the three injured are simple in nature,

therefore, the sentence awarded to them is reduced to already undergone and fine of Rs. 20,000/- each. The trial Court has already taken a very

lenient view in respect of appellant no. 1, therefore, his appeal is dismissed in toto.

14. The appeal of appellants no. 2 and 4 is partly allowed. Their conviction u/s. 324/ 34 IPC is maintained however, their sentence is reduced to

already undergone with fine of Rs. 20,000/- each which should be deposited in the Court concerned within one month from today. In default of

payment of fine, each appellant would serve simple imprisonment of 9-months. Out of the amount of fine so realized, each injured would be paid

Rs. 10,000/-. In case any injured is not alive, then the amount would be paid to his legal heirs.

15. Let copy of the order be sent to the Court concerned immediately for ensuring compliance, which should be reported to the Court within 8-

weeks.