

High Court of Judicature at Allahabad
(Lucknow)

Neutral Citation No. - 2023:AHC-LKO:81343-DB

Reserved on: 20.11.2023

Delivered on: 12.12.2023

Reserved

Case :- GOVERNMENT APPEAL No. - 106 of 1984

Appellant :- State of U.P.

Respondent :- Ram Prasad And Others

Counsel for Appellant :- Govt. Advocate

Counsel for Respondent :- Arshad Siddiqui, Anand Kumar

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per: Rajan Roy, J.)

1) Heard Sri Pawan Kumar Mishra, learned A.G.A. for the State and Sri Arshad Siddiqui, learned counsel for the surviving respondent nos.4 and 5.

2) This is an appeal under Section 378 Cr.P.C. by the State challenging the judgment and order dated 31.01.1983 passed by the court of Special Judge, Addl. District & Sessions Judge, Barabanki in Sessions Trial No.249 of 1981 acquitting the respondents of the charges under Sections-147, 148, 323, 149, 307, 302 and 431 I.P.C.

3) The prosecution case in nutshell is that villages Kuti and Machria are adjoining villages which are separated by a Kaccha road. During rainy seasons, water logging took place on both the

sides. On 21.07.1980 at about 06:00 P.M., the accused who were ten in number reached the spot with the object of cutting the road so as to ensure flow of water so that water logging and flooding may ease. They were carrying lathis and spades. Informant's side also reached the spot and asked the accused not to cut the road at the place where it was being cut by them. They asked the respondents to cut the road towards the east of the village. An altercation followed. Accused-Ram Prasad (appellant no.1), who is no more, aimed his gun and challenged them. He exhorted others to kill the informant and his companions. This resulted in death on one person, namely, Bhagwandin Yadav and injuries to eight others. Cross case was lodged by the accused but the informant side of this case was acquitted on the ground that there was no unlawful assembly in the facts of the said case and evidence on record, it was a free fight resulting in injury on both the sides. Just as in this case, the accused were acquitted, meaning thereby, both the sides were acquitted in the cross cases.

4) It is necessary to mention that out of the ten accused, only respondent nos.4, namely, Santoo s/o Jagan and 5, namely, Santoo s/o Ram Avtar are alive. Rest have died and the appeal has already abated with regard to other respondents. Therefore, we have to consider the appeal of the State against the acquittal of respondent nos.4 and 5.

5) Respondent no.4 is alleged to have been carrying a lathi whereas respondent no.5 is stated to have been carrying a spade (Fawda).

6) The deceased had four injuries, two of which were firearm injuries, one being the wound of entry and the other being wound on exit. The entry wound being on upper medial aspect of right thigh and the exit wound being in back of right hip. The other two injuries were contusions on lateral side of right thigh with multiple fracture of right femur bone. The fourth injury was abrasion on the right lateral border of scrotum skin deep. Injury nos.3 and 4 i.e. the contusion and abrasion could have been caused by use of lathi or in a given case even by use of spade, if it was used from the wooden part. The cause of death is mentioned as firearm wound and blunt injury on right thigh leading to multiple fracture of femur and haemorrhage leading to shock and death. Apparently, death was caused on account of the firearm injury and even otherwise, so far contusion and abrasion are concerned, as already stated, there were ten accused in all and there is no specific statement of any of the witnesses that it is respondent nos.4 and 5 who had caused injury nos.3 and 4. We cannot lose sight of the fact that there were ten accused, out of which, Ram Prasad i.e. respondent no.1 was carrying a gun and rest were alleged to have been carrying lathis & spades and injury nos.3 and 4 could be caused by lathi being wielded by any of them.

7) The doctor who conducted the autopsy has not been examined.

8) There were only four injuries, two of which were firearm wounds which could only have been caused by the shot fired by Ram Prasad, who is no more.

9) As regards other two injuries, there were nine other assailants as alleged by the prosecution and no specific role has been assigned to the respondent nos.4 and 5 herein. Only general allegations have been made. Therefore, it is very difficult to arrive at a conclusion that it is respondent nos.4 and 5 herein who murdered the deceased- Bhagwandin Yadav.

10) The fact that the Kaccha road was flooded with water and the accused side had gone there to cut the road at a particular point so as to facilitate the flow of water and remove water logging, whereas, the informant's side reached the spot and objected to it, it is evident from the facts and evidence on record that things happened on the spur of the moment and there was a free fight as is evident from the prosecution witnesses, as rightly held by the trial court. Trial court has rightly held that there was no unlawful assembly nor any common object to commit the crime. It has rightly acquitted the appellants of the offence under Sections-147, 148, 149, 323, 307, 302 & 431 I.P.C. In the absence of any specific role assigned to respondent nos.4 and 5 so as to establish beyond reasonable doubt the commission of the offence under the aforesaid provisions, the trial court has rightly disbelieved the prosecution case.

11) The trial court has considered the scenario which presented itself on the fateful day consequent to water logging and flooding on both sides and has opined that in view of resistance by the informant side, the accused went well prepared with an intention to cut the road, irrespective of the resistance by the other side. It opined that no doubt the accused were aggressors and had

gone with the intention to use force to cut the road, if necessary, but, their sole object was to cut the road. It found that in the facts and circumstances of the case, the intention of the accused was not to make the road unuseable. There is no evidence that by cutting the road, it would have been unuseable or that they knew that if they cut the road it would be so. Their intention to cut the road was because of the water logging on their side. As such, the trial court has opined that ingredients of Section 431 I.P.C. are not established. The trial court has considered the testimony of P.W.1-Ram Autar that there was no prior enmity between the parties and relations were cordial. It has opined that there was no intention of the residents of Kuti and Basti to cut the road so as to submerge the village-Machria nor any evidence to show that by such cutting, the latter would be submerged. Even otherwise, it has referred to Section 81 I.P.C. in this regard. It has held that there was no criminal intention on the part of the accused or any of them to lead the flood water enter the village-Kuti. They were cutting the road for draining out flood water from their village- Kuti. They were doing so in good faith for the purpose of preventing or avoiding harm to their lives and property. Therefore, it has held that in these circumstances even if knowledge that if the road was cut water would enter the village-Machria is imputed to them their act by virtue of Section 81 I.P.C. would not be unlawful. We do not find any perversity in this finding.

12) It has consequently held that assembly of the accused on the date, time and place mentioned in the charges was not unlawful as such they were not guilty of the offences under

Sections-147, 148 I.P.C. nor provisions of Section-149 I.P.C. are attracted. We do not find any perversity in this finding also.

13) While the accused side wanted to drain out the water by cutting the road so as to prevent the water logging/ flooding in their village, the informant side wanted to stop them from doing so under the apprehension that water would enter their village-Machria. Therefore, both the sides went prepared and the incident happened. We have also gone through the evidence on record and we find that the observation of the trial court that except the role assigned to Ram Prasad, the role of all other individual accused is not clear. Only Ram Prasad had been assigned the role of carrying a weapon and firing from it. Ram Prasad-respondent no.1 is already dead. P.W.1-Ram Autar has stated that he could not say what part each of the other accused had taken in the fight. He could also not say which weapon each of the accused was carrying. Testimony of P.W.2 and P.W.3 is also on the same line. Learned trial court has rightly opined that it is not clear as to which specific injury of the injured was caused by which accused. It has accordingly given the benefit of doubt to the accused except Ram Prasad who had been convicted of the offence under Section-326, 323 I.P.C. Rest of the accused who are respondents herein have been acquitted of all the charges.

14) Learned State counsel could not point out any such evidence on record which could persuade us to interfere with judgment of acquittal by the trial court. The view taken by the trial court is a possible view, therefore, we are not inclined to interfere in the matter.

15) The appeal is accordingly **dismissed**.

16) The original records shall be remitted back to the trial court for necessary action, as per rules.

(Ajai Kumar Srivastava-I,J.) (Rajan Roy,J.)

Order Date :- 12.12.2023

Shanu/-