

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2023:AHC-LKO:85012-DB

Judgment Reserved on 05.10.2023

Judgment Delivered on 22.12.2023

Court No. - 9

Case :- CRIMINAL APPEAL No. - 845 of 1983

Appellant :- Bharosey And Others

Respondent :- State of U.P.

Counsel for Appellant :- Km. C. Mani, Awadhesh
Kumar Tiwari

Counsel for Respondent :- Govt. Advocate

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per : Ajai Kumar Srivastava-I, J.)

1. Heard Sri Awadesh Kumar Tiwari, learned counsel for the appellants, Sri Umesh Chandra Verma, learned A.G.A. for the State and perused the entire record.

2. From a perusal of record, it transpires that the accused/ appellant nos.1 and 4, namely, Bharosey and Lal Bahadur have died and the appeal in respect of them has already been abated vide order dated 18.11.2022, therefore, the appeal survives with regard to accused/ appellant nos.2 and 3, namely, Sant Ram and Muneshwar only.

3. Under challenge in this criminal appeal is the impugned judgment and order dated 15.11.1983 passed by the learned Special Additional Sessions Judge, Bahraich in Sessions Trial No.128 of 1983 arising out of Crime No.72 of 1983, under Sections 302, 323/34 of the Indian Penal Code¹, Police Station Motipur, District Bahraich whereby the appellants have been convicted and sentenced to undergo life imprisonment for the offence under Section 302 read with Section 34 I.P.C.. They have also been convicted and sentenced to undergo six months' rigorous imprisonment for the offence under Section 323 read with Section 34 I.P.C.

4. The case of the prosecution, in nutshell, is that a few days prior to the date of incident P.W.1, Tirath & P.W.2, Inderbali, the deceased, Babu Ram and the another deceased Maiku were going to Bansibeli to harvest pulses (Masoor) from the agricultural field of one Tarun Ahir. While returning from agricultural field at about 4:00 P.M. using eastern sidewalk (Pagdandi), the accused sprung from the west side of the agricultural field. The accused/ appellant, Santram was carrying a sickle (gandasi) and two other accused/ appellants were armed with lathi. They started beating Maiku and Babu Ram. P.W.1, Tirath ran away from the spot while P.W.2, Inderbali intervened and begged accused/ appellants not to beat the deceased, Maiku and Babu Ram to death, but the accused/ appellants also started beating P.W.2, Inderbali. On alarm being raised, Budh Ram, Dularey Nai and some other person reached at the place

1 hereinafter referred to as "I.P.C."

of occurrence, due to which, the accused/ appellants fled away. The deceased, Babu Ram died on the spot whereas the another deceased, Maiku died while he was being taken to police station for lodging the case.

5. On the basis of aforesaid written report, submitted by the first informant, Tirath, the first information report, Ext. Ka-1 came to be lodged against the accused/ appellants under Sections 302, 323/34 I.P.C.

6. According to the Post-mortem reports, Ex. Ka-14 and 15, the cause of death of both the deceased, namely, Babu Ram and Maiku is reported to be shock and haemorrhage as a result of ante-mortem injuries.

7. The Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C. He visited the place of occurrence and prepared a site plan thereof Ext. Ka-10.

8. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ex. Ka-13 against the accused/ appellants.

9. Charges for the offence under Sections 302/34 and 323/34 I.P.C. were framed against the accused/ appellants, who denied the charges and claimed to be tried.

10. In order to bring home guilt of the accused/ appellants, the prosecution has examined Tirath,

complainant as P.W.-1, Inderbali as P.W.-2, Dr. R. N. Verma as P.W.-3 and H. C. R. N. Singh as P.W.-4.

11. The accused/ appellants, in their statements recorded under Section 313 Cr.P.C., have stated the prosecution story to be false. They have also stated to have been falsely implicated in this case. They also claimed to be innocent.

12. No evidence in defence was adduced by the accused/ appellants before the learned trial court.

13. The learned trial court, after appreciating the evidence available on record, rendered the impugned judgment and order dated 15.11.1983 whereby the accused/ appellants came to be convicted as aforesaid.

14. Aggrieved by the aforesaid impugned judgment and order dated 15.11.1983, the accused/ appellants has preferred the instant criminal appeal.

15. Learned counsel for the surviving accused/ appellants has submitted that the finding of guilt of the accused/ appellants arrived at by the learned trial court is perverse and contrary to the evidence available on record, therefore, it deserves to be set aside.

16. His further submission is that learned trial Court has erred in placing reliance on the testimonies of P.W.-1, Tirath and P.W.-2, Inderbali for convicting the surviving accused/ appellants.

17. He has also submitted that learned trial Court has wrongly relied on testimonies of alleged witnesses whose testimonies suffer from gross infirmities and are full of contradictions too.

18. He contended that the medical evidence is inconsistent with the witnesses' account, therefore, the prosecution failed to prove its case beyond reasonable doubt.

19. Learned counsel for the surviving accused/ appellants has, thus, prayed to set aside the impugned judgment and order dated 15.11.1983 and to acquit the surviving accused/ appellants accordingly.

20. Per contra, learned A.G.A. for the State has submitted that the accused/ appellants rightly came to be convicted vide impugned judgment and order dated 15.11.1983, which is well discussed and reasoned. The accused/ appellants were named in the first information report. The prosecution has proved its case beyond reasonable doubt on the basis of cogent and reliable testimonies of prosecution witnesses. Therefore, interference by this Court is neither warranted nor justified. He, accordingly, prays for dismissal of the instant criminal appeal.

21. Having heard learned counsel for the surviving accused/ appellants, learned A.G.A. for the State and upon perusal of record, it transpires that according to written report, on the date of incident, the surviving

accused/ appellant no.2, Sant Ram was armed with a sickle (gandasi) whereas the surviving accused/ appellant no.3, Muneshwar was armed with lathi, who along with other co-accused persons assaulted the deceased, namely, Babu Ram and Maiku, who ultimately succumbed to their injuries and they also inflicted injuries on the body of Inderbali, P.W.-2.

22. In order to prove its case, the prosecution has examined four witnesses. However, P.W.-1, Tirath, the first informant and P.W.-2, Inderbali, who is also an injured witness in this incident, have been examined as witnesses of fact. These two witnesses have stated on oath that on 25.03.1983 at about 4:00 P.M. when they were returning from the agricultural field, the surviving accused/ appellants along with two other accused persons sprung from the west side of the agricultural field and they started beating Maiku and Babu Ram. These witnesses, out of fear, ran away and watched the entire incident from a distance of about ten Kashi. When P.W.-2, Inderbali tried to intervene and begged the accused/ appellants not to beat the deceased, namely, Maiku and Babu Ram, he was also beaten by the accused persons. P.W.-1, Tirath is son of the deceased, Maiku and is nephew of the deceased, Babu Ram, therefore, his presence on the date of incident appears to us to be natural.

23. P.W.-2, Inderbali is an injured witness whose injury report has been proved by P.W.-3, Dr. R. N. Verma

as Ext. Ka-2. According to which, there were four contusion of different sizes on his body.

24. Hon'ble the Apex Court in **Bhagwan Jagannath Markad and others vs. State of Maharashtra** reported in **(2016) 10 SCC 537** has held that statement of injured eye-witness cannot be disbelieved lightly.

25. From a perusal of post-mortem reports, Ext. Ka-14 and Ext. Ka-15 respectively of two deceased, namely, Babu Ram and Maiku, we find that out of eight injuries reported on the body of deceased, Babu Ram, in his post-mortem report, Ext. Ka-14, there is only one incised wound 2cm x 1cm x bone deep on back of left forearm, 10 cm below elbow joint whereas other injuries are lacerated wounds, abrasion and contusion. Similarly we find that the post-mortem report, Ext. Ka-15 of the deceased, Maiku reveals 9 wounds of different kind including lacerated wounds, abrasions and contusions. However, no injury which could be caused by sharp edged weapon has been reported on the body of deceased, Maiku. It has come in the testimony of P.W.-1, Tirath that the surviving accused/ appellant no.2, Sant Ram was using sickle (gandasi) to inflict injuries to the deceased. No such discrepancy or contradiction could be elicited during cross-examination of P.W.-1, Tirath and P.W.-2, Inderbali which could adversely affect the truthfulness of P.W.-1, Tirath and P.W.-2, Inderbali regarding date, place and manner of occurrence.

26. We, therefore, find the presence of P.W.-1, Tirath and P.W.-2, Inderbali, who is an injured witness to be natural on the date and time of incident and their testimonies in respect of manner of assault to be consistent. The manner of assault as narrated by these two witnesses stands corroborated by the post-mortem reports, Ext. Ka-14 and Ext. Ka-15 of two deceased, namely, Babu Ram and Maiku and injury report, Ext. Ka-2 of P.W.-2, Inderbali. Therefore, we have no hesitation in holding that on the date of incident the accused persons including the surviving accused/ appellants assaulted the deceased, Babu Ram and Maiku knowing well that such injuries might cause their death.

27. However, we also cannot lose sight of the fact that according to P.W.-1, Tirath, the surviving accused/ appellant no.2, Santram was armed with sickle (gandasi) and the surviving accused/ appellant no.3, Muneshwar was armed with lathi, who along with other accused/ appellants in furtherance of common object of unlawful assembly assaulted deceased, namely, Babu Ram and Maiku. P.W.-2, Inderbali was also assaulted by the accused/ appellants and other co-convicts.

28. It emerges from the testimonies of P.W.-1, Tirath and P.W.-2, Inderbali that all the named accused persons, namely, Bharosey, Santram, Muneshwar and Lal Bahadur assaulted Babu Ram and Maiku, who subsequently succumbed to injuries inflicted on their bodies by the accused/ appellants. P.W.-2, Inderbali was also assaulted by them. However, on a close scrutiny of

post-mortem reports, Ext. Ka-14 and Ext. Ka-15 conducted on the body of deceased persons, Babu Ram and Maiku, we find that there is no incised wound on the body of the deceased, Maiku whereas there is only one incised wound 2cm x 1cm x bone deep on back of left forearm, 10 cm below elbow joint on the body of the deceased, Babu Ram and other injuries reported on the body of deceased, Babu Ram are lacerated wounds, abrasion and contusion. The injury report of P.W.-2, Inderbali does not reveal any injury caused by sharp edged weapon like sickle (gandasi) which was being carried by the surviving accused/ appellant no.2, Sant Ram.

29. It is also pertinent to mention that though, the post-mortem reports of both the deceased, namely, Babu Ram and Maiku have been exhibited as Ext. Ka-14 and 15 respectively, however, Dr. S. N. Verma, who conducted autopsy, has not been examined by the prosecution as prosecution witness. Therefore, there is absence of medical opinion to the effect that only one incised wound on the back of forearm of deceased, Babu Ram caused by the surviving accused/ appellant no.2, namely, Santram and other lacerated wounds on the body of both the deceased, Babu Ram and Maiku caused by hard and blunt object like lathi which was being carried by the other surviving accused/ appellant no.3, namely, Muneshwar were sufficient in ordinary course to cause death of the deceased persons.

30. Therefore, having regard to the fact that all accused persons assaulted the deceased, namely, Babu Ram and Maiku, who died and the accused/ appellants including the surviving accused/ appellants also inflicted injuries to P.W.-2, Inderbali, it can safely be held that though, the surviving accused/ appellants had no intention to cause death of the deceased persons, however, they had knowledge that injuries inflicted by them might cause death of the deceased persons.

31. Hon'ble the Apex Court in **State of Rajasthan vs. Jora Ram** reported in **2005 (10) SCC 591** has held that if there is nothing to establish that injury which ultimately resulted in death of the deceased was intended by anyone and if there is no evidence to prove that injuries inflicted were sufficient in the ordinary course of nature to cause death, in such circumstances, the judgment of High Court holding that offence was made out under Section 304 Part II I.P.C. was found to be proper by Hon'ble the Supreme Court.

32. It is pertinent to mention that Hon'ble the Apex Court in **Afrahim Sheikh and others vs. State of West Bengal** reported in **AIR 1964 SC 1263** has held the conviction of the appellant under Section 304 Part II read with Section 34 I.P.C. to be legally permissible.

33. Therefore, having regard to the aforesaid facts and circumstances of this case and keeping in view the nature of injuries on the body of the deceased, Babu

Ram and Maiku and also having regard to the weapon of assault assigned to the surviving accused/ appellants, we deem it appropriate to convict the surviving accused/ appellants under Section 304 Part II read with Section 34 I.P.C. in place of Section 302 read with Section 34 I.P.C. and sentence them to ten years' rigorous imprisonment in place of life imprisonment. They are also sentenced to a fine of Rs.25,000/- each. In default of payment of fine, the surviving accused/ appellants shall undergo further one year's additional imprisonment. The conviction of surviving accused/ appellants for the offence under Section 323 read with Section 34 I.P.C. and sentence awarded therefor by the trial Court are liable to be affirmed. Their conviction recorded by the trial Court under Section 302 read with Section 34 I.P.C. and sentence to life imprisonment are liable to be set aside.

34. We, accordingly, convict the surviving accused/ appellants for the offence under Section 304 Part II read with Section 34 I.P.C. and sentence the surviving accused/ appellants to ten years' rigorous imprisonment each. They are also sentenced to a fine of Rs.25,000/- each. In default of payment of fine, the surviving accused/ appellants shall undergo further one year's additional imprisonment. The conviction of surviving accused/ appellants for the offence under Section 323 read with Section 34 I.P.C. and sentence awarded therefor by the trial Court are affirmed. Their conviction recorded by the trial Court under Section 302

read with Section 34 I.P.C. and sentence to life imprisonment are set aside. All the sentences shall run concurrently. The surviving accused/ appellants shall also be entitled to the benefit of provisions contained in Section 428 Cr.P.C.

35. The present appeal is, accordingly, **partly allowed.**

36. The surviving accused/ appellants, namely, Sant Ram and Muneshwar are on bail. Their bail bonds are cancelled. Sureties are discharged. The surviving accused/ appellants are directed to surrender before the Court concerned to serve out the remaining sentence within six weeks from today, failing which, learned trial Court concerned shall issue warrant for their arrest for serving out the sentence.

37. Let the lower Court record along with a copy of this judgment be transmitted forthwith to the learned trial Court for information and necessary compliance.

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

Order Date :- 22.12.2023
Mahesh