

Court No. - 86

Case :- CRIMINAL APPEAL No. - 1686 of 1994

Appellant :- Paley Ram And Others

Respondent :- State

Counsel for Appellant :- Pravendra Singh and Devendra Singh

Counsel for Respondent :- A.G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. The present criminal appeal has been preferred by the accused appellants against the judgment and order dated 28.10.1994 passed by the 8th Additional Sessions Judge, Moradabad in Session Trial No. 817 of 1993, convicting the appellants under Sections 324/34 IPC and sentencing them to undergo two years rigorous imprisonment.

2. At the outset, it is clarified that appeal in respect of appellant no. 4, Raghuvansh has already been abated vide order dated 13.10.2023 and now the Court proceeds to decide this appeal in respect of surviving appellants i.e. appellant no.1 **Paley Ram**, appellant no.2 **Gajendra Singh** and appellant no.3 **Ram Veer Singh**.

3. The prosecution story, in nutshell, is that on 3.6.1992 at about 8.00 a.m. while the informant Chandrapal Singh alongwith his wife Smt. Urmila Devi, nephew Rajvir Singh was going to his tube-well and had reached near the house of Paley Ram, accused Paley Ram and Raghuvansh having gun and accused Ram Veer and Gajendra having country made pistols were standing at two storied house of Paley Ram. On exhortation of accused Raghuvansh, all the four accused persons made fire upon them with intention to kill and the pellets hit the informant, his wife and nephew. The incident was witnessed by Puran Singh and Vasudeo. F.I.R. was lodged on a written complaint of the informant on 3.6.1992 at 10.15 a.m. itself and the injured were medically examined. Investigation of the case started and the

Investigating Officer after completing necessary formalities and collecting sufficient evidence, submitted charge sheet under Section 307 IPC against the accused persons, namely, Paley Ram, Gajendra Singh, Ram Veer Singh and Raghuvarsh.

4. The case being exclusively triable by the Court of Sessions was committed to it by the Magistrate concerned.

5. The accused persons were charged under Section 307 IPC. They denied the charge and claimed for trial.

6. In order to prove its case, the prosecution relied upon the oral evidence of P.W.-1 Chandra Pal, the informant/eye witness/injured, P.W.-2 Puran Singh, eye witness, P.W.-3 Smt. Urmila Devi, eye witness / injured, P.W.-4 Raj Veer Singh, eye witness, P.W.-5 Dr. Ashok Kumar and P.W.-6 S.I. Sita Ram, Investigating Officer.

7. In order to corroborate the oral evidence, the prosecution has also relied upon the documentary evidence and injury reports Ex.Ka-2, Ext. Ka-3, Ext. Ka-4, supplementary reports Ext. Ka-5 and Ext. Ka-6, Chik F.I.R. Ex. Ka-1, site plan Ex. Ka-7 and charge sheet Ex. Ka-8 have been relied upon.

8. After conclusion of the prosecution evidence, statements of the accused persons under Section 313 Cr.P.C. were recorded and the incriminating evidence and circumstances were put to them wherein they asserted that the prosecution evidence is false and fabricated and due to the animosity of village Pradhani they have been falsely implicated in this case. In defence evidence, D.W.1 Kunwar Pal was examined as defence witness to show the innocence of the accused persons in the matter.

9. On the basis of aforesaid oral and documentary evidence, learned trial court recorded the conviction of the appellants and sentenced them, as mentioned herein-above.

10. Heard Shri Pravendra Singh and Shri Devendra Singh, learned counsel for the appellants as well as the learned AGA and perused the entire record.

11. Learned counsel for the appellants, at the outset, submitted that he does not wish to press the appeal on merits and confine his arguments to the sentence part only. The sentence recorded by the learned trial court is too severe and harsh. The appellants were young men at the time of incident and have already spent a period of incarceration for 24 days and must be repenting men. The appeal was filed in the year 1994 and about 30 years have passed. The incident is said to be occurred in the year 1992. It has been further submitted that the appellants have already suffered since long on account of the pendency of the present criminal proceedings going on against them. The Trial Court has passed a sentence of rigorous imprisonment for two years. It has been submitted that the sentence imposed by the trial court vide impugned judgment and order may be modified to the extent of the period already undergone.

12. Learned AGA opposed the prayer.

13. I have considered the rival submissions made by the learned counsel for the parties and gone through the entire record including the impugned judgment.

14. Though the learned counsel for the appellants has not pressed the appeal on merits but after perusing the record including the impugned judgment and the findings recorded by the trial court therein, I am of the view that the findings recorded by the trial court in the impugned judgment and order are in accordance of facts and evidence and no interference is warranted with the same.

15. Albeit PW-1 and PW-2, who were produced to give ocular evidence of the case, have been declared hostile by the prosecution and do not corroborate the prosecution version in

any way, but the evidence rendered by PW-3 and PW-4, the injured witnesses, is sufficient to prove the guilt of the appellants. PW-3 has made specific statement that at the time of the occurrence, fire was made by the accused persons Paley Ram, Raghuvarsh by gun and Ram Veer Singh and Gajendra by country made pistols and she sustained firearm injuries in her chest, thigh and leg. She was medically examined and F.I.R. was lodged by her husband. No inconsistent statement is found in cross-examination of this witness. She, being the injured witness, carries a distinguished place so far as the prosecution case is concerned. No doubt, on the basis of the evidence of injured witness the prosecution has successfully proved its case. Medical evidence in this regard also corroborates the prosecution case and PW-5, the doctor, has found two firearm injuries upon the chest and right thigh of injured Smt. Urmila and radio opac metallic density has also been found in her x-ray. Though the injuries were simple but the same were caused by some firearm, as opined by PW-5, the doctor.

16. In the same manner, PW-4 Rajveer Singh, who is also an injured witness, makes his statement before the Court in the line of PW-3 and naming all the accused persons participating in the commission of the crime, he has stated that the pellet injury was inflicted in the area of his left eye and he was medically examined. PW-5, the doctor, again corroborates the ocular version of PW-4 and states that pellet injury was found over the facial area of the injured Rajveer Singh. This witness has been cross-examined mainly on the point of place of occurrence but his statement is consistent and it is in conformity with the site plan Ext. ka-7.

17. PW-1, the informant, though is a hostile witness, states that the written report of this case, which was given to the police station by him, was dictated by the villagers but, however, he is unable to explain as to how he sustained firearm injuries and in

this connection the evidence of PW-5, the doctor, is very relevant who, in his examination-in-chief affirms this fact that Chandrapal Singh, who was brought by Head Constable Rajesh Singh, was medically examined by him on 3.6.1992 and he found two firearm injuries over the arm and forehead of the said injured and he was referred for x-ray and in the x-ray report a small radio opac shadow of metallic density was found, which was inflicted by some firearm and the nature was simple. The injury reports and x-ray reports have been proved by PW-5.

18. PW-6, who is the Investigating Officer of this case, has proved the proceedings of investigation. From the perusal of cross-examination of this witness, it is found that some omissions and negligence has been made by him during investigation but same is not capable to hit the root of the prosecution case.

19. The learned trial court has opined that from the evidence on record it is inferred that the fire opened by the accused persons upon the injured persons was not made with intention to kill, which is an essential ingredient to record conviction under Section 307 IPC and the learned Trial Judge has further concluded that it is a case where accused persons voluntarily caused hurt by using dangerous weapons to the injured persons of this case and hence this case does not travel beyond the scope of Section 324 IPC and offence under Section 307 IPC is not made out.

20. I also concur with the views expressed and conclusion arrived at by the trial court that the prosecution has succeeded to prove its case beyond reasonable doubt and the accused-appellants were rightly held guilty for committing the offence under Section 324/34 IPC.

21. The submissions made by the learned counsel for the appellants take me to the quantum of sentence.

22. The principle of law is well settled that the principle of proportionality between the punishment and crime cannot be brushed aside and the sentence must be just and proper. No doubt the concept of proportionality permits of discretion to the Court but the same has to be guided by certain principles. Hon'ble Supreme Court in **Raj Bala vs. State of Haryana & Ors (passed in Special Leave Petition (Crl.) Nos.4099-4100 of 2015)** in this context, has observed that neither the personal perception of a Judge nor self adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. There can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. Similarly an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment. A Court while imposing sentence has to keep in view the various complex matters in mind. In respect of certain offences, sentence can be reduced by giving adequate special reasons but the special reasons have to rest on real special circumstances.

23. In the instant case, criminal machinery came into motion about 32 years ago and the present appeal has been pending for a long period of 30 years. At the time of recording of statements under Section 313 Cr.P.C., appellant no.1 Paley Ram was of 50 years, appellant no.2 Gajendra Singh was of 40 years and appellant no.3 Ram Veer was of 30 years age and now they are aged about 80 years, 70 years and 60 years respectively. There is nothing on record to show that the appellants are previous convict or having any criminal antecedents. Also the accused-appellants alone cannot be held responsible for long delay in disposal of this appeal. They are old persons. It has been submitted and also finds support from the record that the

appellants remained in custody for a period of 24 days. Hence, considering all aspects of the matter, in my view, no useful purpose would be served by sending accused-appellants in judicial custody at this stage, rather in the aforesaid special circumstances, it would be in the interest of justice if sentence imposed upon the appellants by the trial court be modified to the extent that the sentence of the period already undergone is imposed.

24. Resultantly, the appeal is partly allowed. The conviction of the appellants Paley Ram, Gajendra Singh and Ram Veer Singh for the offence under Section 324/34 IPC is upheld but the sentence of two years rigorous imprisonment awarded by the trial court vide impugned judgment and order is modified to the period of sentence already undergone by them. Appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties are discharged.

25. A copy of this judgment alongwith trial court record be transmitted to the Sessions Judge, Moradabad for necessary compliance.

Order date : 27.8.2024

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