



2025:AHC:165403

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1849 of 1984

Gulab Singh

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s) : Abhinava Krishna Srivastava, Apul Misra, Devvrat Misra, S.N. Singh P.N.Misra

Counsel for Respondent(s) : A.G.A.

Court No. - 84

HON'BLE SUBHASH CHANDRA SHARMA, J.

1. Heard Sri Rajrshri Gupta along with Sri Giresh Chandra Sharma, learned counsel for the appellants and learned A.G.A. for the State.

2. This criminal appeal has been preferred against the judgment and order dated 06.07.1984 passed by IVth Additional Sessions Judge, Kanpur Dehat in Session Trial No. 62 of 1984, arising out of Case Crime No. 127 of 1981, under Sections 323, 324, 304 I.P.C. read with Section 149 I.P.C. I.P.C, Police Station Bhognipur, District Kanpur Dehat by which appellants were convicted and sentenced under Section 323/149 I.P.C. for three months R.I, under Section 324/149 I.P.C. for six months R.I. and under Section 304/149 I.P.C. for four years R.I.

3. During pendency of this appeal, appellant no.3 Roop Kishore Singh, appellant no.4 Lal Man and appellant no.5 Jagdeo have died, therefore, appeal on their part stood abated.

4. The appellant no.1 Gulab Singh and appellant no. 2 Dayaloo are alive.

5. Facts in brief are that on 22.03.1981 at about 8.00 A.M. there was a dispute between the appellants and informant Soney Lal, in which the appellants assaulted the informant's wife Suraj Mukhi, daughter Dropati, brother Adi Narain and informant Sone Lal causing injuries to them with Lathi and Bana, as a result, Suraj Mukhi wife of Soney Lal was admitted to the hospital where she succumbed to injuries on the next day. On the basis of Tahrir written by Soney Lal, first information report was lodged as Case Crime No. 127 of 1981, under Sections 323/147, 324/147 and 304/149 I.P.C.

6. The postmortem of Suraj Mukhi was conducted on 25.03.1981 at 5.45 P.M. in U.H.M. Hospital, Kanpur and cause of death was found due to perforation of intestine and peritonitis

Lacerated wound 2.1/2 cm.x1 cm. bone deep on the middle of scalp was also found in internal examination.

7. On 22.03.1981, injured, Sone Lal, Smt. Dropati and Adi Narain were also examined and injuries were found simple in nature.

8. The investigation of the case was handed-over to PW-6 Sub-Inspector Harihar Singh, who after completing the investigation, submitted charge sheet against the appellants under Sections 147, 148, 323, 324 and 304 I.P.C.

9. The learned court concerned, took cognizance of the offence and after complying with the provisions of Section 207 Cr.P.C, committed the case to the Court of Sessions for trial.

10. The learned trial court framed the charges against them on the basis of material on record which was read-over and explained to the appellants. They did not plead guilty but claimed for trial.

11. In support of its case, prosecution examined, P.W.1 Adi Narain, PW-2 Soney Lal, PW-3 Dropati, PW-4 Dr. P.P. Gupta, PW-5 Constable Krishna Kant, PW-6 Sub Inspector Hari Har Singh Investigating Officer, PW-7 Dr. A.K. Awasthi, who conducted the postmortem on the dead body of the deceased, PW-8 A.M. Siddiqui, P.W.9 Dr. R.K. Kashyap and PW-10 Dr. D.N. Nigam.

12. After conclusion of prosecution evidence, statement of appellants under Section 313 Cr.P.C. were recorded in which they denied the allegations and testimony of the prosecution witnesses and also stated that Jagdish was beaten by the informant Soney Lal, Sipahi Ram and Tularam and they went there to rescue them but also beaten by the informant's side, regarding which there is cross case.

13. In support of its case, defence examined Nathu Ram as DW-1.

14. After hearing the arguments made by the prosecution as well defence, learned trial court passed the impugned judgment dated 06.07.1984 convicting and sentencing the appellants as aforesaid.

15. Being aggrieved with the conviction and sentence, this criminal

appeal has been preferred by the appellants.

16. Learned counsel for appellants without going into merit of the case, limited his argument to the sentence and argued that the incident took place in the year 1981 and till now 44 years have elapsed and appellant nos.1 Gulab Singh and appellant no.2 Dayaloo have become aged about more than 67 and 66 years respectively and suffering from old age ailments, they remain in jail during the pendency of the trial for a period of more than one month and for some days after conviction, therefore, no purpose will be served by sending them to jail to serve the sentence, but they be released on the period already undergone and some fine may be imposed as compensation to be paid to the injured and surviving heirs of the deceased. He also argued that the appellants never intended to cause injury to the deceased Suraj Mukhi or to cause her death.

17. In the postmortem, only single injury was found on the head but cause of death was due to perforation of the intestine, whereas during the course of medical examination, no any external injury was found on her abdomen, in this way, it cannot be said that the appellants caused injury to her. The injuries sustained by other injured persons were simple in nature and caused with Lathi and Bana. The punctured wounds were at the wrist of the injured Soney Lal, but simple in nature. The present appellants were equipped with Bana, but no any injury was caused to the deceased with Bana, in this way also, it cannot be said that they caused injuries to the deceased either with intention or knowledge to cause her death.

18. It is also argued by the learned counsel for the appellants that there was a dispute between both the parties. DW-1 was also examined as defense witness who stated that the informant Soney Lal and other persons of his side beat the appellants in which they made assault in defence and in this regard, they also lodged cross case, which also shows that the appellants never intended to cause injury either to Suraj Mukhi with intention to cause death or to other injured persons. In this way, the offence does not come within the purview of Section 304 Part-I of I.P.C., but it may come within the purview of Section 304 Part-2 of I.P.C., in which the punishment is either for imprisonment or with fine.

19. Learned A.G.A. vehemently opposed the contentions made by learned counsel for the appellants and submitted that in this case, the appellants caused injuries to the deceased Suraj Mukhi in furtherance of common intention, therefore, it cannot be said that there was no intention to kill

and injuries said to be caused by the present appellants to Suraj Mukhi. Though he could not dispute the fact that 44 years have elapsed from the date of incident till now and appellants have also become extremely old and also the fact that no injury with Bana was found on the dead body of Suraj Mukhi during postmortem and cause of death was perforation of intestine and not the injury on her head.

20. On examination of testimony as deposed by the PW-1 Adi Narain, PW-2 Soney Lal and PW-3 Dropati who are injured witnesses and residents of the same village where appellants also live, it is undoubtedly established that incident took place as narrated in which they were beaten by the appellants with other co-accused persons those have died during the pendency of the appeal and sustained injuries. The deceased Suraj Mukhi also sustained injuries on her body but the incident was the outcome of dispute between the parties relating to a letter written by Gulab Singh making false allegations, therefore, the incident was caused in sudden heat of passion in which three persons were injured and one died due to injuries on her abdomen though there was no any external injury. In this way it cannot be said that the appellants intended to cause death of the deceased or such bodily injury as was likely to cause death but it may be only to cause injury about which the appellant may have knowledge to result in death. In such situation of facts I am of the considered opinion that the offence said to be committed by the appellants does not come within the purview of Section 304 Part-I I.P.C. but under Section 304 Part-II I.P.C. In this regard the finding recorded by the learned trial court requires interference and is accordingly modified.

21. So far as the sentence is concerned, the learned trial court has awarded rigorous imprisonment for a period of 4 years under Section 304/149 I.P.C. It is noteworthy that incident took place on 22.03.1981 when there was altercation between the appellants and informant and till now more than 44 years have elapsed and the appellants have become more than 67 and 66 years old and are suffering from old age ailments. During the trial they remained in jail, thereafter they were released on bail and now they are on bail.

22. In the case of ***Neelam Bahal & another v. State of Uttarakhand*** 2010 (2) SCC 229 where conviction and sentence of appellant u/s 307 IPC was converted into S.326 IPC simpliciter. Incident took place in the year 1987 and appellant was about 25 years old. Considering the facts and circumstances of the case, Hon'ble the Apex Court reduced the sentence to the period undergone by him. Likewise, in the case of ***Hussainbhai***

Asgarali Lokhandwala v. State of Gujarat dated 14 August 2024 in Criminal Appeal No. 1691 of 2023 Hon'ble Apex Court modified to the period of incarceration already undergone by him while maintaining the conviction where the entire incident had occurred in the heat of moment on 07.11.2000.

23. In considered opinion of this Court, in view of altercation between the parties, simple nature of injuries, the time gap & the age of appellants it will serve no purpose to send appellants to jail for serving out the remaining period of sentence, but it will be just and proper and will serve the purpose of justice to impose fine to be paid as compensation to the complainant/injured or his survivors.

24. Consequently, the appellant no.1 Gulab Singh and appellant no.2 Dayaloo are directed to make payment of Rs. 20,000/-) for each (total Rs. 40,000/-) as fine within a period of 45 days from today, that will be paid to the complainant/injured or his survivors as compensation. In case of default, the the appellant no.1 Gulab Singh and appellant no.2 Dayaloo will serve the sentence for a period of one year rigorous imprisonment.

25. Accordingly, this criminal appeal is ***partly allowed***.

26. Copy of this judgment along-with original trial court record be transmitted to the Court concerned for necessary compliance. A compliance report be sent to this Court within two months. Office is directed to keep the compliance report on record.

(Subhash Chandra Sharma,J.)

September 16, 2025

T.S.