



2025:AHC:169713

Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2723 of 1983

Dalpat And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Anurag Sharma, D.N.Wali
Counsel for Respondent(s)	:	A.G.A.

Court No. - 71

HON'BLE RAJ BEER SINGH, J.

1. This criminal appeal has been preferred against judgment and order dated 31.10.1983 passed by learned IIIrd Additional Sessions Judge, Bijnor in S.T. No. 499 of 1980 (State Vs. Dalpat and Others), under Section -147, 323/149 I.P.C., Police Station - Seohara, District – Bijnor, whereby the appellants, namely, Dalpat, Bhagwana and Naubat Singh have been convicted under Section – 323 I.P.C. and sentenced to pay a fine of Rs. 300/-. The appellants were acquitted of the charge under Section - 147 I.P.C. Accused Inder Singh was acquitted of charge under Section – 147, 323 I.P.C.

2. During pendency of appeal appellant no.2 Naubat Singh has passed away and thus, appeal against appellant no.2 Naubat Singh was abated.

3. It appears that as no counsel was appearing on behalf of appellant no.1 Dalpat and appellant no.3 Bhagwana and the appeal was pending since the year 1983, thus Sri Anurag Sharma, Advocate was appointed as Amicus Curiae.

4. Heard Sri Anurag Mishra, learned Amicus Curiae for the appellants, learned A.G.A. for the State and perused the record.

5. According to prosecution version, there was some dispute between

appellants-accused and one Muthri regarding demarcation of land. About some days prior to the incident, Kanungo and Lekhpal have visited the village in that regard. It was alleged that on 13.12.1979 at about 03:30 PM when Om Prakash @ Mithu, Kewal s/o Muthri and their relative Jagatu reached at the disputed plot, they found that accused persons were irrigating the said plot. When objected by the informant's party, accused Dalpat, Bhagwana, Naubat, Ram Swarup and Inder caused injuries to Kewal, Om Prakah and Jagatu. The injured persons have used spade towards Dalpat, Naubat and others in self defence. Hearing noise, several persons have reached there. Om Prakash @ Mithu reported the matter to the police on 13.12.1979 at 08:10 PM at Police Station – Seohara and injured Om Prakash @ Mithu, Kewal and Jagatu were sent for medical examination.

6. During investigation, investigating officer recorded statements of witnesses and prepared site-plan of the spot and after completion of the investigation submitted charge sheet under Section – 147, 323 I.P.C. against the accused Dalpat only.

7. During trial of said accused Dalpat, an application was moved under section - 319 CrPC and thereafter accused Bhagwana, Inder and Naubat Singh were summoned under section 319 Cr.P.C.

8. The accused-appellants were charged for offence under Section – 147, 323/149 I.P.C. and they pleaded not guilty and claimed trial.

9. In order to prove its case, the prosecution has examined five witnesses. P.W.-1 Om Prakash is informant and P.W.-2 Jagatu is injured, P.W.-3 H.C. Dori Lal is a formal witness, P.W.-4 Dr. A.P. Gupta has medically examined the injured persons and P.W.-5 S.I. Ram Pal Singh is the Investigating Officer.

10. After prosecution evidence, accused-appellants were examined under Section - 313 Cr.P.C., wherein they denied the prosecution version and

claimed that they have been falsely implicated.

11. After hearing the parties, appellants were convicted under Section – 323 I.P.C. and sentenced, as referred above. Being aggrieved, the appellants have preferred present appeal.

12. It appears from record that in the same incident accused Dalpat, Bhagwana, Ramsrup, Naubat Singh and one Smt Nathiya have also sustained injuries. A case was also lodged by accused-appellant Bhagwana against informant's party. Later accused Ramsrup has died of injuries sustained in the incident and thus, said case converted in to section 304 IPC.

13. In evidence, informant / P.W.-1 Om Prakash has stated that about three days prior to the incident, Kanungo and Lekhpal have visited the village regarding demarcation of disputed land and they have asked both the parties not to go at the disputed plot. On the day of incident accused-appellants and co-accused persons were irrigating the disputed plot and when P.W.-1 Om Prakash along with his brother Kewal and brother-in-law Jagatu reached at the spot and objected the act of irrigation, accused-appellants and co-accused persons have assaulted them with lathi. Hearing noise many persons of village reached there. The injured persons have used spade in their self defence. P.W.-1 Om Prakash further stated that he has reported the matter to the police by submitting a written report, which has been proved as Ext. Ka-1.

14. PW – 2 Jagtu has also made similar statement. He has stated that on the day of incident he came to know that the accused-appellants and co-accused persons were irrigating the disputed plot. PW -2 along with PW – 1 Om Prakash and others reached there and objected the same but accused-appellants and co-accused persons have assaulted them with 'lathi'. P.W – 2 Jagtu further stated that in their self defence, they have also attacked the accused persons with a lathi and spade and some accused and their family members have also sustained injuries.

15. P.W.-3 H.C. Dori Lal has proved first information report Ext Ka-4 and general diary entry Ext. Ka-5. PW-5 S.I. Ram Pal Singh has stated that during investigation, he has inspected the matter and prepared site-plan Exhibit Ka-6 and after investigation charge-sheet was submitted. P.W.-5 S.I. Ram Pal Singh has further stated that regarding the same incident a charge-sheet was also submitted against Mathuri, Kewal, Om Prakash, Ram Karan and Jagatu for offence under Section – 304 I.P.C.

16. As per statement of P.W.-4 Dr. A.P. Gupta, injured Mithu has sustained following two injuries :-

(i) One lacerated wound of size 5.5 cm x 0.5 cm x scalp deep with irregular margin. Wound is bleeding on middle of both frontal bone of skull. There is traumatic swelling of surrounding area. Hairs are stained with blood and mud.

(ii) One traumatic swelling of size 5 cm x 4 cm on antero lateral aspect of upper third of right thigh.

The injuries were simple in nature and caused by hard and blunt object.

17. Injured Kewal has sustained following four injuries :-

(i) Abraded contusion of size 5 cm x 1.5 cm on medial border of ulna bone in middle third of right fore-arm. Blood is oozing from the wounded area. Contusion of red colour.

(ii) One linear abrasion of size 1 cm x 0.3 cm left medial aspect of right hand of above root of right little finger.

(iii) One abraded contusion of size 4 cm x 1.5 cm left medial border of ulna bone on middle third of left fore arm bone.

(iv) One traumatic swelling size 5 cm x 4 cm on left side of forehead with overlying contused abrasion of size 1 cm x .5 cm.

Injury no.2 was caused by sharp object and injuries were shown simple in nature.

18. Injured Jagatu has sustained following two injuries :-

(i) One traumatic swelling of size 4 cm x 3 cm on superior and outer aspect of right shoulder joint.

(ii) Patient complains of pain all over the body. No other external injury seen.

The injuries were simple in nature and caused by blunt

object.

19. As stated earlier in the alleged incident appellants-accused Dalpat, Bhagwana and co-accused Ram Swarup have also sustained injuries. One Smt. Nathiya and Naubat Singh have also sustained injuries. Injured Ram Swaroop has succumbed to injuries and it appears that a case was registered by accused-appellant Bhgawana under section 304 IPC against Kewal and others regarding death of Ram Swaroop.

20. Accused Dalpat has sustained following injuries:

- (i) One lacerated wound of size 1 cm x 1.5 cm on the frontal bone of skull.
- (ii) One incised wound of size 5 cm x 4 cm x 1 margin clear cut on left fore arm.
- (iii) one abrasion 1 cm x 1 cm on the back on the lower portion of scapula.
- (iv) One traumatic swelling 6 cm x 4 cm on the left thigh.
- (v) Complaint of pain on all over body.

21. Accused Bhagwana has sustained following injuries:

- (i) One incised wound of size 3.5 cm x 1 cm x skin deep on the left side of forehead.
- (ii) One traumatic swelling of size 8 cm x 4 cm as abrasion on the right thigh.
- (iii) One abraded contusion on the back.
- (iv) One traumatic swelling of size 4 cm x 3 cm on the joint of left shoulder.
- (v) Complaint of pain on left lag head and other parts of body.

22. Accused Ramswarup has sustained following injuries:

- (i) One lacerated wound of size 4.5 cm x 1 cm x skin deep. Bone of skull clearly visible. Margin irregular. Blood oozing on joint of parital and frontal bone of skull.
- (ii) Patient unconscious, pulse feeble . Advised X - ray of skull.

23. Accused Naubat has sustained following injuries:

- (i) One incised wound of size 3 cm x 4 cm x skin deep on left partial eminence of the skull. Blood oozing.

(ii) One incised wound of size 4 cm x .7 cm x skin deep. Margins clear cut on the joint of left shoulder.

(iii) multiple contusions on the back and hips.

(iv) One traumatic swelling of size 10 cm x 6 cm on the right fore-arm.

(v) Complaint of pain on all over body.

24. Smt Nathiya has sustained following injuries:

(i) One traumatic swelling of size 5 cm x 3 cm over which there was contusion 5.5 x 5 cm on right thumb and first finger.

(ii) One abrasion of size 1.5 cm x .5 cm on the right fore-arm.

(iii) One contusion of red colour 10 cm x 5 cm on the back.

(iv) One contusion of red colour 6 cm x 3 cm on the back.

(v) Complaint of pain on over body.

25. Thus, it is apparent that in the same incident the above referred accused persons and one Smt Nathiya have sustained several injuries and one of accused namely Ramswarup has died of injuries sustained in the incident. The accused persons have taken defence that when they were irrigating the disputed land, the informant Om Prakash, Ram Karan, Mathuri, Kewal and Jagatu armed with lathi, tabal and barchi and spade came there and they have assaulted them and caused injuries to them and resultantly Ram Swarup died of the injuries sustained in the incident and in that regard a case was registered against informant's party for offence under section 304 IPC. In view of these facts and circumstances it was necessary that both the cases must have been tried together by one and the same court but there is nothing on record show that whether the case registered by accused Bhgawana under section 304 I.P.C. has been decided along with present case and what has been the fate of that case. Thus, it is serious infirmity in this case.

26. It is well settled that generally failure of the prosecution to offer any explanation regarding injuries sustained by accused persons, shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true [See : Mohar Rai and Bharath Rai v. The State

of Bihar, 1968 CriLJ 1479].

27. In **Lakshmi Singh and Ors. v. State of Bihar**; 1976 CriLJ 1736, the Court observed that where the prosecution fails to explain the injuries on the accused, two results follow : (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants. It was further observed that in case it is established that accused sustained injuries in same incident and no explanation has been offered by the prosecution, in such circumstances the Court can draw the following inferences : (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable; (3) that in case there is a defence version which explains the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

28. In the instant case it may be seen that the accused persons have sustained several injuries, which are not superficial or minor and in fact one of the injured has died of injuries. The accused-appellant have inter-alia taken a plea that when they were irrigating the disputed land, the informant Om Prakash, Ram Karan, Mathuri, Kewal and Jagatu armed with 'lathi', 'tabbal' and 'barchi' and spade came there and they have assaulted them and caused injuries to them and resultantly said accused persons sustained injuries and Ram Swarup died of the injuries sustained in the incident. This version of accused persons finds support from the medical examination reports of accused persons and the post-mortem report of deceased Ram Swaroop, which have duly been proved in defence evidence. It may be seen that informant / P.W.-1 Om Prakash is an injured witness and he has made statement that appellants-accused and co-accused persons have assaulted them with lathi and caused injuries to

them but he did not offer any explanation as to how the accused persons have sustained injuries. In that regard PW-2 Jagatu has merely stated a single sentence that they have also attacked the accused persons in self defence and resultantly they have sustained injuries. Mere this assertion is not sufficient to explain the injuries sustained by deceased Ram Swaroop and other accused persons. As stated above it has come in evidence that accused-appellant Bhagwana has lodged a first information report regarding same incident. After death of Ram Swarup, case was converted to one under Section - 304 I.P.C and in that matter after investigation charge sheet was submitted against Mathuri, Kewal, Om Prakash, Ram Karan and Jagatu. The case of appellants is that it was the informant's party, who is aggressor. In the said incident, appellant Dalpat has sustained five injuries, Bhagwana has also sustained five injuries. Ram Swaroop has sustained two injuries, Smt. Nathiya has sustained five injuries and Naubat Singh has also sustained five injuries. It appears that instant matter is the cross version of the accused persons against whom first information report was lodged by the accused Bhagwana against the informant of this case and others for offence under section - 304 I.P.C.. It is the case of prosecution itself that when the informant and injured persons have reached at the spot, the accused-appellants and co-accused persons were already there and they were irrigating the disputed land. After perusing the evidence, it can not be said the accused-appellants were aggressor. In view of attending facts and circumstances, it appears quite plausible version that appellants may have exercised right of self defence. It is well settled that when the accused set up a plea of self-defence, they need not prove their case beyond all reasonable doubt and within the parameters under Section - 103 IPC, if by preponderance of probabilities, the plea taken by them becomes plausible then the same should be accepted or at least, a benefit of doubt arises. The prosecution has failed to explain as to how the accused-appellant Dalpat, Bhagwana, Naubat Singh and deceased Ram Swarup have also sustained injuries. After considering entire evidence on record, it can not be ruled out that

that appellants-accused were attacked by the informant and injured persons on the ground that they were irrigating the disputed land and resultantly the appellants and co-accused Dalpat and Bhagwana have sustained several injuries and that one of the injured, namely, Ram Swarup has died of injuries sustained in the incident. Thus, it appears that prosecution has concealed the genesis of the incident and the statements of injured witnesses are not reliable. In view of these facts and circumstances, it cannot be said that prosecution has been able to prove its case beyond doubt, rather the appellants deserved benefit of doubt. It appears that learned Trial court has not appreciated evidence in correct perspective and committed error by convicting the appellants.

29. In view of aforesaid, the impugned judgment and order of conviction and sentence is set aside. The appellants-accused, namely, Dalpat and Bhagwana are acquitted of the charges levelled against them. The appellants-accused are on bail, they need not surrender. The sureties of appellants-accused are stand discharged.

30. Appeal **allowed**.

31. This Court appreciate the assistance rendered by Sri Anurag Sharma, Advocate, who appears as Amicus Curiae. He shall be paid Rs. 7,000/- (seven thousand) as remuneration by the State through Office of Advocate General.

September 22, 2025
S Rawat

(Raj Beer Singh,J.)