



2025:AHC:164301

Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 569 of 1984

Ram Bilas And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Kamlesh Kumar Kanojiya, Lalji Sahai Srivastava
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 15.01.1984, passed by learned Second Additional District and Sessions Judge, Deoria in Session Trial No.400 of 1982 (State Vs. Ram Bilas and Others), under Section 307 / 34 IPC, P.S.- Rudrapur, Deoria, whereby appellant Ram Bilas, Lalji, Kapil Deo and Ram Suresh have been convicted under Section 323 / 34 IPC and sentenced to six months rigorous imprisonment.

2. At the outset, it may be mentioned that during pendency of this appeal, appellant no.1 Ram Bilas, appellant no.2 Lalji and appellant no.3 Kapil Deo have passed away and thus their appeal was abated vide order dated 19.09.2016. Now this appeal is confined only in respect of appellant no.4 Ram Suresh.

3. Heard learned counsel for the appellant no.4 and learned AGA for the State.

4. As per prosecution version, on 26.02.1981 at about 02:30 PM while Shamim Ahmad (informant) along with his father Shamsher was going to market at Rudrapur, Deoria and reached near Chowk, accused Kapil Deo

stated that informant has not given him a shop in the fair and exhorted to kill informant and his father. Thereafter, all the four accused persons, namely Ram Bilas, Lalji, Kapil Deo and Ram Suresh assaulted the informant and his father. One Mohan, Sageer and Kailash saved them and thereafter accused persons ran away. Informant has reported the matter to the police on 26.02.1981 by submitting written *tahreeer* Exhibit Ka-1, consequently first information report was registered for offence under Section 308 IPC.

5. Injured Shamsher Ali has sustained following injuries:-

1. Lacerated wound 6 cm x 1/2 cm x scalp deep on the left side of head 8 cm above the mid of left eye brow. Bleeding present.
- 2- Lacerated wound 3 cm x ¼ cm x scalp deep on the left side of head 8 cm above the root of left ear. Bleeding present.
3. Abrasion 2 ½ cm x 1/4 cm on the left side of forehead 4 cm above the left eye brow. Oozing of plasma present.
4. Abrasion 1 cm x ½ cm on the back and mid of right little finger
5. Abrasion on the back of right elbow Joint 2 1/2 cm x 2 cm
6. Traumatic (diffuse) swelling on the back and inner part of left elbow Joint. Adv X-Ray of left elbow joint. Exclude fracture of underlying bones
7. Contusion of 4 cm x 2 cm on the mid of left buttock, Reddish in colour.
8. Contusion 12 cm x 2 cm on the upper part of back horizontally crossing the mid-line 3 cm below the interior angle of right shoulder blade.
9. Contusion 3 cm x 3 cm on the middle of left shoulder blade Adv x-Ray of exclude fracture of scapula

All injuries are caused by blunt object except injury nos.3, 4 and 5, which were caused by friction against some hard surface.

Simple in nature except injuries nos.6 and 9, which were kept under observation.

6. Injured Shamim Ahmad has sustained following injuries:-

1. Lacerated wound 1 cm x ¼ cm skin deep on the left side of scalp 9 cm above the root of left ear. Bleeding present
2. Linear abrasion 1 cm on the left side of root of nose
3. Abrasion 1/2 cm x 1/2 cm on the right side of face 2 cm below the right lower eye
4. Linear abrasion 1½ cm on the outer and upper part of left forearm 5 cm below the elbow joint-
5. Abrasion 1 cm x 1/2 cm on the back and lower part of left forearm 2 cm above the wrist joint.

6. Abrasion 1/4 cm x 1/4 cm on the front and base of right thumb

7. Abrasion of 1/2 cm x 1/2 Cm on the mid of backbone

8. Abrasion 1/4 cm x 1/4 cm on the top of left shoulder.

All the injuries are simple in nature and caused by friction against hard surface except injury no.1 which is caused by blunt object.

7. It appears from record that regarding the same incident, a cross case was also registered from the side of accused persons vide Crime No.41A, which was also tried with this case vide Session Trial No.445 of 1982.

8. After investigation, police have submitted charge-sheet against accused persons for offence under Section 308 IPC. Learned Magistrate took cognizance and case was committed to the court of Session. The trial Court has framed charge under Sections 307 / 34 and 323 /34 IPC.

9. In order to bring home guilt of accused persons, the prosecution has examined seven witnesses. PW 1 is Shamsher Ali is injured witness. PW 2 Shamim Ahmad is informant and PW-3 Dr. Umesh Chand Dwivedi has medically examined injured persons. PW 4 Constable R.N. Yadav has recorded first information report and prepared GD entry. PW-5 Sageer and PW-6 Kailash are eye-witness. PW-7 ASI Satya Narayan Maurya has investigated the case.

10. Accused persons were examined under Section 313 Cr.P.C., wherein they have denied prosecution version and stated that informant and his father and four unknown persons have assaulted accused Kapil Deo and they were falsely implicated in this case. No oral evidence was led in defence but the injury report of accused Kapil Deo was filed in defence evidence as Exhibit Kha-1 and GD entry and first information report of the cross-case, were also filed as Exhibit Kha-2 & Kha-3.

11. After hearing and analysing the evidence, learned trial Court has acquitted the accused persons of charge under Section 307 / 34 IPC however, they were convicted under Section 323 / 34 IPC and sentenced as

stated above.

12. Learned counsel for appellant No. 4 submitted that the finding of conviction recorded by the trial Court is not being disputed and he has confined his argument only regarding sentence. It was stated that three accused appellants have already passed away and that incident took place in the year 1981 and this appeal is pending since the year 1984 and appellants have remained in jail during trial for a few days. In view of these facts and circumstances, no useful purpose would be served by sending the appellant No. 4 to jail at this stage and thus the sentence awarded to the appellant No. 4 may be set aside. It was submitted that maximum sentence has been awarded to the appellant No. 4 for offence under Section 323 IPC.

13. Learned AGA has opposed the appeal and submitted that the impugned judgment is based on evidence. In the alleged incident, the informant and his father have sustained injuries. The prosecution version is supported by the independent witnesses. Referring to facts of the matter, it was submitted that no interference is called in the impugned judgment and order.

14. Though, learned counsel for the appellant No. 4 has not disputed finding of conviction but I have gone through the record. PW 1 Shamsher is an injured witness. In his statement, he has stated that on the issue of not providing a shop in Shivratri festival, appellant No. 4 and co-accused persons have assaulted him with lathi and when his son tried to intervene, he was also assaulted by them. Similarly, PW 2 Shamim Ahmad has also made similar statement. Both these witnesses are injured witness. It is well established that the evidence of an injured witness must be given due weightage as being an injured witness, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he/she has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the

testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. [Vide: Jarnail Singh v. State of Punjab, (2009) 9 SCC 719; Balraje @ Trimbak v. State of Maharashtra, (2010) 6 SCC 673; and Abdul Sayed v. State of Madhya Pradesh, (2010) 10 SCC 259].

15. In the instant case the statements of injured witness PW 1 Shamsher and PW 2 Shamim Ahmad are cogent and credible and their testimony is supported by medical evidence. There is no major contradiction or infirmity in the statements of witnesses. The version of PW 1 & PW 2 is also supported by witness PW 5 Sageer Ahmad and PW 6 Kailash. They are independent witnesses. Thus, it is apparent that there is overwhelming evidence against appellant No. 4 to show that he along with co-accused persons has assaulted the injured persons and resultantly, they have sustained injuries. Learned trial Court has appreciated the evidence in correct perspective and convicted the appellant of charge under Section 323 / 34 IPC. So far conviction of appellant No. 4 is concerned, no material illegality or perversity could be shown in the impugned judgment. Considering material on record, it is apparent that prosecution has been able to prove its case beyond reasonable doubt, thus the conviction of appellant No. 4 Ram Suresh under Section 323 / 34 IPC is upheld.

16. So far sentence is concerned, it appears that the incident took place on 26.02.1981 and this appeal is pending since the year 1984. By impugned judgment he appellant No. 4 namely Ram Suresh has been sentenced to six months rigorous imprisonment under section 323/ 34 IPC. It appears from record that at the time of incident said appellant was aged about 21 years and thus now he would be about 64 years old. It is well settled principle that

sentence must be just and simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the court but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value based social mainstream may be the guiding factors.

17. It has been observed by the Hon'ble Apex Court that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. 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 and other concomitant factors which have been indicated herein before and also have been stated in a number of pronouncements by Apex Court. On such touchstone, the sentences are to be imposed. 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. [vide Raj Bala vs. State of Haryana &

Ors passed in Special Leave Petition (Crl.) Nos. 4099-4100 of 2015]

18. In the instant case alleged incident took place about 44 years back and three of the accused / appellants have already passed away. There is nothing to show that appellant No. 4 (Ram Suresh) is a previous convict and that he alone cannot be held responsible for long delay in disposal of this appeal. Appellant is aged about 64 years. It was stated that he remained in custody for few days during trial. Considering all aspects of the matter, no useful purpose would be served by sending appellant No. 4 to jail at this stage, rather it appears that ends of justice would be met if sentence of six months imprisonment, awarded by the trial court, is set aside and appellant No. 4 be sentenced to the period already undergone by him along with fine of Rs. 1,000/-.

19. Accordingly, the conviction of accused-appellant Ram Suresh under Section 323 / 34 IPC is upheld but sentence of six months rigorous imprisonment, awarded by the trial court, is set aside and appellant is sentenced to the period already undergone by him along with fine of Rs. 1,000/- (one thousand only). The impugned order stands altered to this extent. The appellant No. 4 Ram Suresh is directed to deposit fine of Rs. 1,000/- within two months. In default of payment of fine, appellant No. 4 Ram Suresh shall undergo two months imprisonment.

20. The appeal partly **allowed** in above terms.

September 16, 2025
'SP'/-

(Raj Beer Singh,J.)