

Neutral Citation No. - 2025:AHC:142859-DB

Court No. - 44

Case :- CRIMINAL APPEAL No. - 1027 of 1984

Appellant :- Chanda And Others

Respondent :- State of U.P.

Counsel for Appellant :- W.H.Khan

Counsel for Respondent :- A.G.A.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Tej Pratap Tiwari,J.

1. Heard Sri Manoj Kumar Dwivedi, learned Amicus Curiae for the sole surviving appellant Swayamber and Sri L.D.Rajbhar, learned AGA for the State.

2. Present criminal appeal arises from the judgement and order dated 29.03.1984, passed by Sri Tirathraj, IIIrd Additional Sessions Judge, Banda in S.T. No. 221 of 1981, (State Versus Chanda, Khutian, Swayamber and Bhagwati). By that judgement and order, the learned Court below has convicted the present appellants for offence under Section 304(1) IPC read with Section 149 I.P.C. and sentenced them for life. Also, it has convicted them for offence under Section 147 I.P.C, and sentenced them for one year. Third, it has convicted them for offence under Section 323 I.P.C. read with Section 149 I.P.C., and sentenced them for six months together with fine Rs. 500/- and default sentence of three months. During pendency of this appeal, all appellants except Swayamber died. The appeal filed on behalf of those other appellants' has abated. In-so-far as the appellant Swayamber is concerned, in view of earlier orders passed in these proceedings, upon bail granted vide order dated 03.04.1984, passed by a co-ordinate bench of this Court, he remained untraced. The appeal is amongst the oldest pending before this Court. Accordingly, learned

Amicus Curiae was appointed to represent the appellant Swayamber. The appeal has been heard, accordingly.

3. The prosecution story emerged on the strength of the Written Report dated 26.01.1980 submitted by Amarnath (PW-1) at P.S Kotwali, Banda at about 2:55 AM wherein he narrated, on the previous day i.e. 25.01.1980, the accused/appellants alongwith one Mona assaulted the first informant Amarnath (PW-1), his brother Jagannath (PW-2), (an other brother), Lallu - one of the deceased, and his father Ratiram (second deceased), when the victim side were going for work. The nature of work was described to be gathering grit/ stones. The appellant side was also engaged in the same work. First, the appellants tried to stop the victim side from going for work. Since the victims did not stop, they were assaulted with '*lathis*' and stones. The occurrence was witnessed amongst others by Binda (PW-3), Ram Dayal, Ram Bharose and Phulwa (not examined at the trial). The Written Report also narrated, the victim side resisted the assault. In the occurrence, Lallu lost consciousness and Ratiram was injured. Ratiram and Lallu were taken to the hospital. Ratiram died on way, while Lallu was admitted for treatment. The Written Report is Ex.Ka-1 at the trial. It led to the FIR being registered at Kotwali, Banda on the same day. It is Ex.Ka-8 at the trial. After registration of the FIR, the case was transferred to Police Station Girwan - within whose territorial jurisdiction the occurrence took place. Also, on 26.01.1980, two Inquest Reports were prepared with respect to the death of Ratiram and Lallu. Those are Ex.Ka.2 and Ex.Ka-3 at the trial.

4. On that FIR being lodged, the injured Amarnath (PW-1), Jagannath (PW-2) and Lallu (the second deceased) were medically examined on 26.01.1980 by Dr. P.C. Chandel (PW-7) at the trial. The Injury Reports of Amarnath, Jagannath and Lallu are Ex.Ka-15, Ex.Ka-16 and Ex.Ka-17 respectively, at the trial. Briefly, following injuries were

noted by Dr. P.C. Chandel (PW-7), suffered by Amarnath, Jagannath and Lallu:-

Injury report of Amarnath:-

- "1. Abrasion 0.8cm x 0.5cm on left mastoid region (behind ear)".*
- 2. Abrasion 4cm x 1.5 cm on top of left shoulder towards neck;*
- 3. Contusion 4cm x 2cm on lower 1/3rd and posterior medial aspect of right forearm;*
- 4. Abraded contusion 2cm x 1cm on medial aspect of right forearm in middle;*
- 5. Lacerated wound 1.5cm x 0.5 cm x muscle deep on medial aspect of left index finger near tip;*
- 6. Abrasion 0.5cm x 0.5cm over right medial malleolus*

Injury report of Jagannath:-

- "1. Lacerated wound 1.5 cm x 1cm x skull deep on left side of head 7cm above from left ear and 7.5 cm above from left eye brow;*
- 2. Contusion 2cm x 1cm on front and right side of head 6cm above right eye brow;*
- 3. Abrasion 1.5cm x 1cm on back and lateral side of upper part of right forearm;*
- 4. Abrasion 1.5cm x 1cm on front of left thigh 5cm above knee."*

Injury report of Lallu:-

- " 1. Lacerated wound 3cm x 1cm x scalp deep on right side scalp 8cm above right ear;*
- 2. Lacerated wound 6cm x 1cm x scalp deep on top of scalp in midline at centre;*
- 3. Contusion 3cm x 3cm on right side scalp 3cm in front of injury no. 1 "dispensary se call)."*

5. During treatment, Lallu died on 26.01.1980. Thereafter, two autopsy examinations were conducted by Dr. K.L. Agrawal (PW-4), on the dead bodies of the two deceased namely, Ratiram and Lallu. The ante-mortem injuries noted in those reports are as under:

Injuries of Ratiram:-

- "1. Contused swelling 5cm x 3cm left side scalp 2cm above the left ear fracture underneath;*

2. *Abraded contusion 6cm x 5cm on right temporal area of scalp 2.5cm above right eye brow;*
3. *Contused swelling 4cm x 6cm left arm middle part outer side;*
4. *lacerated wound 1cm x 5cm x bone deep right ear front upper 1/3rd."*

Injuries of Lallu:

- "1. Lacerated wound 3cm x 1cm x scalp deep right side of scalp 7cm above right ear fracture underneath;*
- 2. Lacerated wound 5m x 105cm x scalp deep top of scalp in the middle;*
- 3. Contused swellig 3cm x 3cm right side scalp 5cm above right eye brow;*
- 4. Abrasion 2cm x 1cm top of right shoulder."*

Postmortem reports of Ratiram and Lallu are Ex.Ka-4 and Ex.Ka-5 at the trial.

6. Upon completion of investigation, charge-sheet was submitted by the Investigation Officer Ram Swaroop Saraswat (PW-5). Upon the case being committed for trial to the Court of Sessions, following charges came to be framed against the appellants :-

"(i) That you, on 25.1.1986 at about noon in village Pathraha, P.S. Girwan, Distt. Banda were the members of an unlawful assembly and in prosecution of the common object of the said unlawful assembly, that is to commit culpable homicide not amounting to murder of Lallu and to voluntary cause hurts to Amarnath and Jagannath you committed an offence of beating punishable under section 147 IPC within my cognizance.

(ii) That you on the said date, time and place in prosecution of the said common object of the said unlawful assembly causes death o Lallu with the intention of causing such bodily injuries as were likely to cause death and thereby committed an offence punishable u/s 304 Part I/149 I.P.C within my cognizance

(iii) That you on the said date, time and plae in prosecution of the said common object of the said unlawful assembly voluntarily cause injuries to Amarnath and Jagannath and committed an offence u/s 323/149 I.P.C within my cognizance."

7. At the trial, besides relying on the above described documentary evidence, the prosecution relied on oral evidence of 8 witnesses. In

that Amarnath (PW-1), Jagannath (PW-2) and Binda (PW-3) were examined as ocular witnesses. Amarnath and Jagannath are injured witnesses while Binda was examined as an independent witness. In the first place Amarnath (PW-1) proved, Ratiram (the first deceased) had three sons namely Lallu (the second deceased), Amarnath (PW-1) and Jagannath (PW-2). They used to work for a contractor Ganga Prasad Tiwari, involving breaking rocks to prepare grit - they used to work on a mountain/hill described as Jara Pahad, located about 1 Km from their residence/dwelling place. The appellant side was also engaged in the same work, working under another contractor Badri Pandit. Second, he narrated, there was a pre-existing dispute between the parties with respect to land/lease disputes. Third, in such facts, the appellant side used to object to the work of the victim side.

8. On the date of the occurrence, the appellant side objected to the victim side working at that place. They hurled verbal abuses at the victim side. His father i.e. the first deceased Ratiram tried to stop the appellant side. In that circumstance, at around 11:00 AM - 12 noon, on 25.01.1980, the appellant side surrounded and assaulted the victim side with '*lathis*' and stones. Certain other persons including Binda challenged the appellant side, on which the assailants fled. Lallu (the second deceased) lost consciousness. The matter was reported to the Police Station in the name of Lallu. However, by that time the accused party also reached the Police Station. Therefore, the report submitted by Amarnath (PW-1) was not registered. He further proved, Ratiram died on way to the Police Station. Thereafter, the witness lodged the FIR at Police Station Kotwali. The second deceased Lallu died during treatment on 26.01.1980. He also proved, the injured were examined at Banda hospital. As to the delay in lodging the FIR, he further proved that the victim side had been obstructed by the accused, from lodging the FIR. He further proved, both sides were related, being cousin brothers. Last, he proved the Written Report (Ex.Ka-1).

9. Jagannath (PW-2) proved that the occurrence took place on 25.01.1980. Without disclosing his relation with the accused party, he narrated that the parties were known from before. Second, he proved that the occurrence took place when the victim side was going to the hill for work, Chanda, Mona, Swayamber, Bhagwati, Khuttiyan obstructed them from going to work and hurled verbal abuses. On being asked not to do so, (by the victim side), the latter were assaulted with stones and '*lathis*'. Hearing the commotion, Binda (PW-3), Phulwa, Bela, Bharosa (not examined at the trail) intervened and stopped the assault. In that occurrence, Amarnath (PW-1), Jagannath (PW-2), Lallu (the second deceased), Ratiram (the first deceased) were injured with stones and bricks. Lallu and Ratiram died due to injuries suffered by them. He further proved that the FIR was lodged by his brother Amarnath (PW-1) at Police Station Kotwali, since no report was registered by the Inspector at Police Station Girwan. He also stated, in that circumstance Amarnath (PW-1) had made a complaint against the Inspector, P.S Girwan.

10. Thereafter, Binda was examined as PW-3. He proved, both sides were engaged in activity of breaking boulders into grit. Both sides worked for different contractors. He proved, he had seen the occurrence wherein the appellant side assaulted the victim side with bricks and '*lathis*'. The victim side tried to save itself. In that some injuries were suffered by the appellants' side as well. On intervention offered by the witness alongwith others, the assault stopped. He further maintained, unless they had intervened, the appellant side would have killed all on the victims side i.e Ratiram, Lallu, Jagannath and Amarnath. Thereafter, he proved Ratiram died on way to the hospital while Lallu died the next day. As to the cause of the quarrel and the occurrence, he did not prove any fact. However, he maintained, some settlement was reached between the parties.

11. Thereafter, Dr.K.L.Agarwal who conducted the autopsy examination on the dead bodies of Ratiram and Lallu, was examined as PW-4. He proved the ante-mortem injuries noted above, and the cause of death.

12. Ram Swaroop Saraswat, the Investigation Officer, Police Station Girwan was examined as PW-5. He proved the investigation as also the fact that Amarnath (PW-1) had made a complaint against him. Thereafter, Head Muharrir Uma Shankar, Police Station Girwan was examined as PW-6.

13. Next, Dr. P. C. Chandel, was examined as PW-7. He proved the injury received by Amarnath (PW-1), Jagannath (PW-2) and Lallu (the second deceased), as noted above. The Pharmacist Bindeshwari Prasad (PW-8), District Hospital, Banda proved the medico legal report prepared by Dr. R.M. Agarwal, (Exhibit Ka-17).

14. Submission of learned Amicus Curiae in two fold. First, it has been submitted, the occurrence was not caused in the manner disclosed by the prosecution. A quarrel had erupted between both sides who were related through blood. Neither there was any prior animosity between them nor any element of pre-meditation, was established. Second, that quarrel erupted in connection with work of breaking boulders into grit. Both parties were engaged in the same work, under different contractors. In that regard, reference has been made to the evidence led by witness Binda, who maintained - both sides received injuries in the occurrence. Thus, the true nature of the dispute has not been disclosed by the prosecution. Therefore, the order of conviction may not sustain.

15. Alternatively, it has been submitted, in absence of any element of pre-meditation or intention to cause death, in the context of the dispute narrated by the prosecution, the occurrence may not travel beyond the scope of Section 304 Part II. The learned Court below has

completely erred in treating the occurrence covered under Section 304 Part I.

16. Further, alternatively, it has been submitted, in any case the learned Court below has erred in awarding maximum sentence - life sentence. In that, there are no aggravating circumstances. The mitigating circumstance have now arisen, inasmuch as the sole surviving appellant Swayamber is about 69 years of age. Sentencing him for the remainder of his life would be too harsh and will serve no purpose either in the context of any objective of sentence/punishment.

17. On the other hand, learned AGA would submit, there is absolutely no doubt as to the occurrence. Neither the place of occurrence nor the manner of assault are in doubt. Pre-meditation existed for reason of prior animosity between them. Four persons were injured in the occurrence. As narrated by Binda (P.W-3), grievous assault was carried out when that independent witness along with others intervened and saved the lives of at least two, namely, Amarnath (PW-1) and Jagannath (PW-2). Facts speak for themselves. In that nature of grievous assault, the element of pre-meditation or intention is duly proven.

18. On the issue of conviction under Section 304 Part I, it has therefore been submitted, the learned Court below has rightly convicted the appellant under that provision of law. On the issue of sentencing, in the occurrence of this nature maximum sentence has rightly been awarded by the learned Court below.

19. Having heard learned counsel for the parties and having perused the records, In the first place there is absolutely no doubt as to the occurrence. Further, there is no doubt as to the time and place of the occurrence. Though, the F.I.R may have been lodged with some delay, inasmuch as the occurrence is of the afternoon of 25.01.1980, caused within the territorial jurisdiction of Police Station Girwan, the FIR

was first registered at 02:55 AM. At Police Station Kotwali, Banda, on 26.01.1980. However, it was wholly explained by the prosecution, both from the stage of the F.I.R. being lodged wherein it was narrated that the F.I.R. could not be lodged earlier because of the fear created by the assailants. Second, at the trial, Amarnath (PW-1) proved that his report was not registered at Police Station Girwan. Therefore, he went to Police Station Kotwali. No doubt emerged during his cross examination as may lead us to disbelieve the explanation for the delay thus caused. Similarly, his brother Jagannath (PW-2) also maintained during his examination-in-chief that a wrong report was first registered at Police Station Girwan, by the Inspector. That forced the informant side to lodge its F.I.R. at Police Station Kotwali. He also proved, the first informant Amarnath (PW-1) had made a complaint against the Inspector posted at Police Station Girwan. Again no doubt emerged during his cross-examination of that narration. Then, the Investigation Officer Ram Swaroop Saraswat (PW-5) admitted during his examination-in-chief itself that Amarnath (PW-1), had made a complaint against him in connection with the lapses on his part in registering his case. Thus, the delay in lodging the F.I.R. is wholly explained.

20. The other aspect of the matter is, there are two deceased and two injured in the occurrence. All injured were examined in accordance with law. Their injury reports, all dated 26.01.1980, are duly proven at the trial. Of the four injured, one died on way to the hospital while the second injured died during treatment. Their Autopsy Examination reports are also on record. There is no doubt as to those reports and injuries, either. We have seen the reports. All appear to suggest, the deceased and the other injured received injuries in the occurrence on the date and time as narrated. In the above circumstances, we have no reason to doubt the occurrence. As to how the occurrence unfolded, the prosecution may not have been able to establish pre-existing

motive of other disputes. In that, we note, other than a generic narration made that there was some property dispute between the parties, details of the same were never disclosed, either during the examination-in-chief or during cross-examination, of any fact witness. Second, vital to that issue - the occurrence was not caused at the house or the property of the victim side, but at a public place. Third, in that context, it has been disclosed, both sides were performing same manual work of crushing stones/boulders into grit. They worked for different contractors but on the same hill/hillock/area. Next, it has been asserted by the prosecution itself that dispute arose between the parties with respect to the area of the hill/hillock where each side would work. The appellant side is described to have obstructed the presence of the victims on the hill/hillock claimed by them, as their work area.

21. Keeping in mind the above nature of the dispute between two sides, who were closely related being cousin brothers, it is further narrated by the prosecution that first the appellant side had first hurled verbal abuses and tried to stop the victim side from working on the same hillock/area. Paying no heed to caution offered by the deceased Ratiram, the assailant side then started assaulting the victim side with stones and '*laathis*'. In the absence of any prior occurrence of like nature or circumstance, wherein the assailants may have obstructed the victims, it does appear that the occurrence was the first act of assault for the motive or cause cited by the prosecution. In such circumstances, there is no evidence of pre-meditation or intention to cause the murder led by the prosecution.

22. As to what transpired at the time of the occurrence, the sole independent witness Binda first claimed, he did not know the cause. At the same time, he also maintained (during his examination-in-chief) that the appellant side had also received injuries in that occurrence. As to the presence of stones and their involvement in the

assault, those are not lethal weapons *per se*. It is also not the case of the prosecution that the appellant side came armed with stones to cause the occurrence.

23. Yet, the law states, intention may arise even on the spot, immediately before the occurrence. The two deceased suffered crush injuries on vital body parts, including the skull. Ratiram sustained four injuries, two of which were on his head - one lacerated wound and another a contusion on vital part of his body. Similarly, Lallu suffered two lacerated wounds. Besides, there are two other injured, they do not create a reasonable doubt as to lack of intention. Therefore, we find no valid reason to alter the conviction from Section 304 Part I to Section 304 Part II of the I.P.C.

24. As to the sentencing, we find that the presence of aggravating circumstances warrants significant sentence, as two deaths were caused during the occurrence. In the first place, sentence that may be awarded under Section 304 Part I of the I.P.C. is upto ten years which may also extend, for life.

25. By way of a mitigating circumstance, although the appellant was 24 years old at the time of the occurrence, today, he is approximately 70 years old. Also, no specific role has been assigned to the present appellant, in that occurrence. In this case, we are of the view that punishment up to ten years would serve the interest of justice. While that may serve the objective to punish the offender, we find that harsher sentence may not serve any purpose, as society itself is likely to have lost the context of the incident that occurred over 45 years ago. Further, considering the advance age of the sole surviving appellant, no useful purpose would be served by awarding a heavier sentence. We, therefore, find it appropriate to sentence the appellant to a term of ten years imprisonment.

26. Accordingly, the appeal is **partly allowed**.

27. The impugned judgment and order is modified to the extent the sentence awarded to the appellant is modified from life imprisonment to ten years imprisonment. Since, the appellant is absconding, let permanent warrant be issued. Learned Court below is directed to pursue and ensure that the surviving appellant-Swayamber is traced out and lodged in jail to serve out the remaining sentence.

28. Learned Amicus Curiae appearing on behalf of the appellant has rendered his valuable assistance to the Court. He be paid Rs. 25,000/-, towards his fee for the able assistance provided by him in hearing of the present appeal.

29. Copy of this judgment along-with original records of Court below be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court at the earliest. Office is directed to keep the compliance report on record.

Order Date :- 20.8.2025/PS/NSC/Anurag

(Tej Pratap Tiwari,J.) (S.D.Singh, J.)