



2026:AHC:205451

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 1787 of 2013

Ajay Shahi And 3 Others

.....Revisionist(s)

Versus

State Of U.P. And Anr.

.....Opposite
Party(s)

Counsel for Revisionist(s)	: Kamlesh Kumar Dwivedi, S.K. Dwivedi, Santoosh Kumar Dwivedi, Satyendra Narayan Singh
Counsel for Opposite Party(s)	: Bhupesh Kumar Singh, Govt. Advocate, Umesh Vats

Court No. - 85

HON'BLE JAI KRISHNA UPADHYAY, J.

1. This criminal revision has been preferred by the accused revisionists against the judgment and order dated 5/6.6.2013 passed by the Additional Sessions Judge (Ex-Cadre), Court No.26, Deoria in Criminal Appeal No. 45 of 2012 (Ravindra Kushwaha vs. State of U.P. and others) arising out of case crime no. 65 of 2006 convicting and sentencing the appellants for the offence punishable under Sections 323, 452 , 504, 506 of IPC.

2. The factual matrix of the case, as unfolded by the informant Ravindra Kushwaha in the First Information Report (in short 'FIR'), is that on 2.3.2006 at around 11.00 p.m. while he was sleeping in his house after having dinner, Ajay Shahi, Jalaluddin, Munna Kushwaha and Rajendra Rai came and started getting the door of his house opened and ultimately they forcibly entered the house by slamming the door and started abusing, pushed him and throwing him on the ground started hitting him with kicks, punches and hockey sticks. When the informant protested, they told that he had opposed in the elections, they will not leave him alive. On making noise, informant's uncle Baburam Kushwaha, brother Hareram and other people coming, the accused persons ran away giving threats. Since it was quite late in the night due to which next day somehow got his medical examination done at Deoria.

3. On 4.3.2006, at 6.30 p.m., FIR was lodged and G.D. entry was also made. Investigation started. The Investigating Officer visited the place of occurrence, prepared a site plan and other papers. After completing the necessary formalities, the Investigating Officer submitted charge sheet in the matter.

4. The accused persons appeared and they were charged under Sections 323/34, 452, 504, 506 of IPC. They denied the charges, pleading not guilty and claimed to be tried.

5. The trial proceeded and in order to prove its case the prosecution examined six witnesses, namely, P.W.1 Ravindra Kushwaha, P.W.2 Baburam, P.W.3 Hareram, P.W.4 S.I. Mrityunjay Pathak, P.W.5 H.C. Shyammohan and P.W.6 Dr. Rahmat Ali.

6. In defence, no evidence has been produced.

7. As for documentary evidence, documents / papers as exhibited have been proved.

8. **P.W.1** - Ravindra Kushwaha, informant of the case, has stated that the incident happened on 2.3.2006, at 11.00 p.m. While he was going to sleep after eating food, Ajay Shahi, Jalaluddin Khan, Munna Kushwaha and Rajendra Rai came to his door by vehicle and pushing the gate of his house, they entered the house. Pulling from the bed, all four persons made him fall down and hit with a hockey (stick) and kicks and punches. On the noise, brother Hareram and uncle Baburam Kushwaha came and intervened. The accused ran away hearing the noise. Next day morning he went to Deoria hospital and got his injuries examined and thereafter went to the police station and lodged the FIR. In cross-examination he has stated that during the B.D.C. election, the accused had never beaten him and on the night of the incident they suddenly came to beat. Neither he was a representative nor a campaigner for any candidate for the Block Pramukh. Ram Iqbal Yadav and Ajay Shahi were candidates for the Block Pramukh. He also stated that prior to this incident, he had no enmity with the accused. Being a matter of night, out of fear people did not come. He also stated that there were four assailants and all of them had a hockey (stick) in their hands and they started beating him with hockey (stick) together. The hockey (stick) injury was inflicted on the arm and leg. On the day of getting the medical examination done, he went to Police Station Baghauchghat via home to get the report lodged on the same day.

9. **P.W.2** - Baburam, who is the uncle of the informant, has stated that the incident is of the night of 2nd March 2006 at about 11.00 p.m., He had a timber shop towards the west of Ravindra's house. On the day of the incident he slept at the timber shop. From inside Ravindra's house children started crying and there was a noise then he and Hareram reached there. He further stated that when he reached there, he saw that Ajay Shahi, Jalaluddin,

Munna and Raghavendra were beating Ravindra with kicks, punches and hockey (stick). He also stated that when we reached, the accused went away in their vehicle. In cross-examination he has stated that at the time of the incident, the night was dark, apart from him and Hareram, no one else from nearby reached the spot of the incident. He further states that they were beating with kicks, punches and hockey (stick) and all four accused had a hockey (stick) in their hands. At the time of the incident, there was no electricity line.

10. P.W. 3 - Hareram Kushwaha, who is said to be an eyewitness witness, has stated that it has been a little over a year since the incident happened, it was 11.00 p.m., Ravindra Kushwaha, when Ravindra started screaming at night, then running he and his uncle Baburam reached the place of occurrence and saw that Ajay Shahi, Jalaluddin Khan, Munna and Rajendra Rai were beating Ravindra with a hockey (stick). The electricity was on and in that same light he saw and recognized the accused persons. In cross-examination, this witness has stated that the accused Ajay had a hockey (stick) in his hand, the rest of the accused were holding a stick (danda). When Ravindra was getting beaten, his wife was screaming. Blood was falling from Ravindra's head and mouth. Ravindra was wearing a vest (baniyan) and lungi at that time.

11. P.W.04 - Mrityunjay Pandey Sub-Inspector has stated that on date 4.3.2006 he received the investigation of the matter. He further stated that in the statement of Section 161 Cr.P.C. the witnesses have stated that the accused themselves had come in a Jeep or Qualis vehicle but in the site inspection he did not find any track of a vehicle coming and going on the spot. He also stated that all four accused were holding a hockey (stick), such a statement was not given by the complainant or the witnesses in the statement under Section 161 CrPC. No witness had told me about the source of electricity.

12. P.W. 5 - Head Constable Shyam Mohan Tripathi proved the lodging of FIR and preparation of G.D.

13 P.W.6 - Dr. Rahmat Ali stated that that he had physically examined Ravindra Kushwaha and found the five injuries on his body in the form of contusion, abrasion and complaint of pain. In his opinion all the injuries were simple.

14. After the closure of prosecution evidence, statements of accused revisionists under Section 313 CrPC were recorded in which they denied the prosecution case and stated that they have been falsely implicated due to political rivalry.

15. The Trial court found that prosecution had not fully succeeded in bringing home the charges against the accused revisionists beyond reasonable doubt, therefore, it acquitted them from the charges but the appellate Court vide its judgment and order dated 5/6.6.2013 in Criminal Appeal No. 45 of 2012 (Ravindra Kushwaha vs. State of U.P. and others) arising out of case crime no. 65 of 2006 convicted and sentenced the accused revisionists, as mentioned above. Hence this criminal revision.

21. At the outset, it is submitted by the learned counsel for the revisionist that revisionist no. 2 - Jalal Uddin has expired and in this regard a death certificate dated 23.7.2021 has been brought on record. Hence, revision against him stands abated. Now the surviving revisionists are Ajay Shahi - revisionist no.1, Munna Kushwaha - revisionist no.3 and Rajendra Rai - revisionist no.4.

22. I have heard Shri K.K. Dwivedi, learned Counsel for revisionists and Shri Sunil Kumar, learned A.G.A appearing for the State at length. None is present for the informant even in the revised call.

23. Learned counsel appearing for the surviving revisionists submitted that :

- i). Prosecution case is false and fabricated. FIR was lodged belatedly without any plausible explanation regarding the delay.
- ii) There are material contradictions in the statements of prosecution witnesses.
- iii). There was no source of light at the place of occurrence in which the witnesses have identified / recognized the miscreants.
- iv). Injuries received by the injured are simple in nature.
- v) Motive taken by the prosecution has not been proved.
- vi) All the witnesses of the fact are interested witnesses.
- vii) The appellate court has committed illegality in convicting and sentencing the revisionists. The findings recorded by the appellate court in the impugned judgment suffer from infirmity, illegality and perversity warranting interference by this Court.

21. On the other hand, supporting the impugned judgment, it has been submitted by the learned A.G.A. for the State that there is sufficient evidence on record that the revisionists have actively participated in the

crime. There was strong motive to commit the crime. It was also submitted that there was no reason to falsely implicate the accused persons in this case by the prosecution witnesses. There is no major contradiction or infirmity in the statements of witnesses. The conviction is based on evidence and there are no reasons to interfere with the same.

22. We have considered the arguments of the learned counsel for the parties. We have also carefully examined the trial court records, the statements of the prosecution witnesses and the documents filed in this case.

23. So far as the submission that the First Information Report was lodged belatedly without any plausible explanation regarding the delay is concerned, in the written complaint the incident is shown to be of dated 2.3.2006 at 11.00 p.m and and the FIR was lodged on 4.3.2006 at time 6.30 p.m. The distance of the police station from the place of the incident is shown to be merely four kilometers in the Chik FIR. PW-1 informant has stated that next day morning he went to Deoria hospital and got his injuries examined and thereafter went to the police station and lodged the FIR. In this way regarding the delay, there is force in the argument of the learned counsel for the revisionist. An unexplained delay in lodging a FIR weakens the prosecution's case and raises serious suspicion of fabrication or afterthought. In the matter of *Nallabothu Ramulu alias Seetharamaiah and others vs. State of Andhra Pradesh* with *Chalmala Veeraiah vs. State of Andhra Pradesh, 2014 Cri. L. J. 2487 (Supreme Court)* where alongwith other infirmities circumstances regarding the F.I.R. were found suspicious, the Hon'ble Apex Court held that the whole prosecution story was doubtful.

24. The next argument of the learned counsel for the revisionists is that the prosecution has failed to prove the motive. PW-1-informant in his cross-examination has stated that prior to this incident, he had no enmity with the accused. Similarly, P.W.-3 has also said in his evidence that to this day he does not know why this incident occurred. In this way, no motive for the incident could be proved by the prosecution.

25. As regards the submission that no independent witness has been produced by the prosecution and all the witnesses of fact are interested witnesses and they are the brother and uncle of the informant, in the evidence of P.W.-2 Baburam, it has come that he is the uncle of the complainant of the case and in the evidence of P.W. 3 Hareram, it has come that he is the brother of the complainant of the case Ravindra, apart from these two witnesses, no other witness of fact has been produced and

examined by the prosecution whereas in the evidence it has come that at the time of the incident, the wife of the informant of the case was present on the spot and she also intervened and on her screaming voice, people from the neighborhood came and a crowd gathered and seeing the said crowd only, the accused fled away from there. The wife of the informant, the most important witness of this matter, has not been examined and no reason for not getting her examined has been mentioned either, not getting any independent witness examined in relation to the incident also puts an adverse effect on the prosecution case.

26. Moreover, the statements given by the witnesses of fact are self-contradictory. In the evidence of P.W.-3 it has come that on the scene of crime at the time of the incident electricity was on, contrary to this in the evidence of P.W. -2 it has come that at the time of the incident the night was dark and there was no electricity line. He further stated that he had heard the voice of the accused whereas further in the evidence of this same witness it has come that "at the time of the incident electricity was on and in that same light saw and recognized the accused persons." Thus there is mutual contradiction on this point in the evidence of both the above important witnesses of fact. P.W.-2 has stated in his evidence that at the time of the incident Ravindra was wearing pajama and shirt whereas by P.W. 3 in his cross-examination has said that Ravindra was wearing vest (baniyan) and lungi at that time, thus there is difference in the above statements of the main witnesses of fact i.e. P.W. 2 and P.W.3 and these contradictions make their presence at the incident itself doubtful.

27. As far as the question of injuries sustained by injured Ravindra Kushwaha is concerned, in the First Information Report it has been stated about four persons have assaulted him continuously with hockey (stick) and stick (danda) whereas in the injury report a total of five injuries have been shown on the body of the injured and all the said injuries are of simple nature.

28. Hence, from the above analysis it is clear that the FIR was lodged with an excessive delay, why and under what circumstances this delay occurred there is no clear explanation for this, regarding the light / illumination at the place of incident too the situation is doubtful and in such a situation the identification of the accused persons is also doubtful, there is contradiction in the statements of the witnesses regarding the clothes on the body of the injured at the time of the incident, no other such evidence is available on the file which would support the prosecution case. Therefore, keeping in view the above facts, after analyzing the evidence available record, this court is of

the opinion that the prosecution has miserably failed to prove the charges under Section 323/34, 504, 506, 452 I.P.C. framed against the accused persons beyond reasonable doubt. The impugned judgment and order suffers from infirmity, illegality and perversity. Thus, this Court is of the view that the prosecution has not been able to establish the guilt of the surviving accused revisionists beyond reasonable doubt. Therefore, the Court is inclined to grant benefit of doubt to the surviving accused revisionists on the ground of rule of caution.

29. In view of the above discussions, we are of the opinion that the prosecution has failed to establish the guilt of the surviving accused revisionists for the offences punishable under under Section 323/34, 504, 506, 452 I.P.C. beyond reasonable doubt and to the satisfaction of the judicial conscience of the Court. So, the impugned judgment and order of conviction and sentence dated 5/6/2013, which has been sought to be assailed, call for and deserves, interference. The criminal revision is liable to be allowed.

30. Accordingly, criminal revision is **allowed** and the conviction and sentence imposed upon the surviving accused revisionists Ajay Shahi, Munna Kushwaha and Rajendra Rai for the offence punishable under under Section 323/34, 504, 506, 452 I.P.C. is set-aside as the accused revisionists found not guilty for the aforesaid offences. They are acquitted of all the charges framed against them. They are on bail, they need not surrender, and their bail bonds are cancelled and sureties are discharged.

31. Copy of this judgment alongwith trial court record be sent forthwith to the trial court for compliance.

September 30, 2026

safi

(Jai Krishna Upadhyay,J.)