

Naunidh and Others

Vs

State of Uttar Pradesh

Criminal Appeal No. 4 of 1974

(Syed M. Fazal Ali, Baharul Islam, A. Varadarajan JJ)

24.03.1981

JUDGMENT

1. Seven accused persons were placed on trial before the Sessions Judge who framed charges against them under Sections 147, 148, 302/149, 324/149 and 323/149 of the Indian Penal Code. The Sessions Judge after recording evidence acquitted all the accused. The State thereafter filed appeal in the High Court which accepted the appeal to the extent that acquittal of five accused who are appellants here was reversed and they were convicted under Sections 304/149 as also under Sections 148 and 147 of the Indian Penal Code. Out of the appellants, Naunidh and Mahindra Pal (appellants 1 and 2) were sentenced to eight years' rigorous imprisonment while others were sentenced to six years' under Sections 304/149 of the Indian Penal Code.

2. The facts and circumstances of the case have been detailed in the judgments of the Sessions Judge and the High Court and it is not necessary to repeat the same.

3. It appears that the appellants assaulted the deceased and his brother Pooran with Kantas and spears and caused as many as 25 injuries on the deceased and about eight injuries on PW 1 (Pooran). It may be noticed that while the appeal was pending in this Court, appellant Munna Lal died and thereafter the appeal stands abated so far as he is concerned. The High Court convicted the appellants mainly on the basis of the testimony of PWs 1 and 2. The Sessions Judge appears to have been mainly swayed in acquitting the accused on the testimony of Sri Niwas, one of the sons of the deceased who was examined as court witness 1. In his statement in cross-examination, the court witness stated that the deceased was assaulted by Ram Autar's brother and Munna Lal. From this the Sessions Judge inferred that it is not proved that all the brothers participated in the assault and that circumstance threw considerable doubt on the entire prosecution case. The High Court reversed this finding and, in our opinion, very rightly because the Sessions Judge committed an error of law in treating the statement of CW 1 in proceedings under Section 107 of the Code of Criminal Procedure as substantive evidence and in view of this fact disbelieved the main substantive evidence in the case which consisted of the testimony of PWs 1 and 2. We have gone through the statements of PWs 1 and 2 and do not see any reason to disbelieve them. Even from the statement of CW 1 recorded under Section 107 of the Code of Criminal Procedure, it was clear that he was not an eyewitness or at any rate he reached the place of occurrence after almost the entire assault was over. In fact, PW 1 definitely stated that Sri Niwas had reached the place after the occurrence was over and the accused had left. Thus in a large measure the statement of PW 1 is corroborated by the statement of CW 1 before the magistrate in proceedings under Section 107 of the Code of Criminal Procedure. Moreover, even taking into consideration the statement of CW 1 before the magistrate in proceedings under Section 107 of the Code of Criminal Procedure, he does not exclude the assault by the other brothers because while he has merely said that Ram Autar, another son of appellant

Munna Lal was not there, he has used the word "brother" which in the context would naturally mean that barring Ram Autar, other brothers and Munna Lal assaulted the deceased. That there was some mistake in recording evidence cannot be ruled out. Even so, if the evidence of PWs 1 and 2 is to be believed, the High Court was fully justified in convicting the appellants.

4. For these reasons therefore we see no reason to interfere with the judgment of the High Court as it is not a case where it could be said that the view taken by the Sessions Judge on the evidence was reasonably possible. As we have pointed out, the judgment of the Sessions Judge is vitiated by a clear error of law. The appeal of Munna Lal is dismissed as abated and the appeals of other appellants are accordingly dismissed. The bail bonds of the appellants are cancelled and the Sessions Judge will now issue non-bailable warrants of arrest and take the appellants in custody and send them to jail to serve out the remaining portion of the sentence.

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