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Court : Allahabad

Decided On : Jul-12-1990

Reported in : 1991CriLJ1179

Judge : S.K. Mookerji and ;S.I. Jafri, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307 and 324

Appeal No. : G. A. No. 2958 of 1977

Appellant : The State of U.P.

Respondent : Ram Das

Advocate for Pet/Ap. : A.G.A.

Disposition : Appeal allowed

Judgement :

S.K. Mookerji, J.

1. This is a Government Appeal against the judgment of the IV Additional Sessions Judge, Etah acquitting Ram Dass accused, who was sent for his trial for an offence Under Section 307 IPC According to the prosecution case, Ram Dass accused on 25-6-1975 at about 5-30 a.m. in village Kadarapur, a hamlet of village Kuramai, police station Kasganj, district Etah attempted to commit murder of

Udaivir Singh by shooting at him by means of a country made pistol. Udaivir Singh lodged the First Information Report and is also injured. He is a resident of village Kadarpur, a hamlet of village Kuramai, police station Kashganj, district Etah. Accused Ram Dass is a resident of the said village and said to have been a cousin of Udaivir Singh. Ram Gopal is the uncle, Smt. Ram Kuer is the mother, Smt. Sheela Devi is the sister and Smt. Kusum Devi is the niece of Udaivir Singh. These ladies were also residing with Udaivir Singh at the time of occurrence. Ram Gopal was posted as a constable in the district of Aligarh and had come on leave in the said village at the time of occurrence. Ram Chandra is also a Khandhani uncle of Udaivir Singh and was posted as a constable at Mainpuri. He was also present in the village at the time of the occurrence.

2. It will be relevant to point out that on account of the use of fire arm by Ram Dass accused, Udaivir Singh, Ram Gopal, Smt. Sheela Devi, Smt. Ram Kuer and Smt. Kusum Devi received pellet injuries. According to the prosecution, accused Ram Dass and his brother Deputy Singh were constructing a wall by the side of the house of Udaivir Singh on his vacant land on the date and time of the occurrence. They had dug the alleged foundation adjoining the said house of Udaivir Singh in order to take possession of the said land. Udaivir Singh protested, but the accused did not pay any attention to his protest. This happened at about 5-30 a.m. Accused Ram Dass ran to his house and came with a country made pistol and fired at Udaivir Singh with the intention of murdering him. Smt. Ram Kuer, Smt. Kusum Devi, Smt. Sheela Devi and Ram Gopal, who were family members of Udaivir Singh, came on the spot and also sustained injuries besides Udaivir Singh by the alleged act of firing of the accused. According to the First Information Report, this occurrence was seen by the villagers Soran Singh, Jagdish, Madan Lal and Gajraj Singh. Udaivir Singh got a report of the occurrence scribed by Ram Chandra and came to the police station with the injured persons and Ram Chandra and Shiv Prasad of his village. He lodged the said written report at police station Kasganj at 7-30 a. m. The police registered a case Under Section 307 I.P C. on the basis of the First Information Report lodged by Udaivir Singh.

3. Head constable Kailash Chandra, P.W. 2 scribed the chik Report, Ext. Ka-6 on the basis of the written report of Udaivir Singh. The injured persons were sent to

the Medical Officer, Kasganj for medical examination. Dr. Harish Chandra Yadav examined their injuries on 25-6-1975 and prepared reports Exts. Ka-1 to Ka-5. The case was initially investigated by Sri Vijai Kumar Singh, S. I. (P.W. 8). He went on the spot, made local inspection and took statements of eye witnesses of the case including Jagdish, Madan Lal and Gajraj Singh. Thereafter, he had gone for training. Sri Ramsingh, Sub-Inspector then completed the investigation and submitted the charge-sheet. Accused Ram Dass was charged Under Section 307 I.P.C. He pleaded not guilty and was tried.

4. Accused Ram Dass disputed the entire prosecution version and alleged that he was falsely implicated due to enmity. He admitted that he was cousin of Udaivir Singh and had also litigation regarding the disputed land prior to the occurrence. He further claimed his possession over the said land and said that complainant wanted to take possession over the land. He further stated that the complainant had opened a door to the northern wall of his house prior to the occurrence. He protested hence he was falsely implicated in the case and the occurrence did not take place in the manner as alleged. He also stated that the witnesses of the case were relations and Khandhani of the complainant Udaivir Singh and had also deposed against him because of the enmity.

5. The prosecution examined Dr. Harish Chandra Yadav, P.W. 1, Head Constable Kailash Chandra, P.W. 2, Udaivir Singh P.W. 3, Jagdish P.W. 4, Gajraj Singh P.W. 5, constable Ram Gopal P.W. 6, Sub-Inspector Ram Singh, P.W. 7 and Sub-Inspector Vijai Kumar Singh P.W. 8 in support of its case. The trial court after examining the materials on record and also after taking into consideration the statements of the witnesses acquitted Ram Dass by its judgment dated 26-8-1977, hence this appeal. We have heard the learned counsel for the parties and are not able to agree with all the conclusions arrived at by the trial court.

6. Udaivir Singh, P.W. 3 is the complainant of the case and also injured in the occurrence. He had proved the First Information Report lodged by him. Ram Gopal, P.W. 6, is also an injured person and eye witness of the occurrence. Ram Gopal is uncle of Udaivir Singh and is a police constable. Jagdish, P.W. 4 and Gajraj Singh P.W. 5 are eye-witnesses of the case. Dr. Harish Chandra Yadav,

P.W. 1 examined the injured persons and proved the injury reports mentioned above. Head Constable Kailash Chandra, P.W. 2 was a formal witness. He had scribed the chik First Information Report on the basis of the written report and registered the case against accused in the general diary, Under Section 307 I.P.C. He proved the entry in the general diary. He had also sent the injured persons for medical examination to the Medical Officer, Kasganj. Sub-Inspector Vijai Kumar Singh, P.W. 8, investigated the case, prepared the site-plan and had taken statements of the alleged injured persons and other witnesses of the case. He, thereafter, left the investigation pending because he went on training. He also proved the memo, Ext. Ka-11 scribed by Head Constable Balbir Singh regarding taking into possession the blood stained clothes of Smt. Ram Kuer and Ram Gopal on 25-6-1975 at police station Kasganj, P.W. 7 Ram Singh was Sub-Inspector, who completed the investigation and submitted the charge-sheet. The accused did not produce any defence witness.

7. The trial court entered into the question whether the occurrence took place in the manner as alleged by the prosecution and whether the prosecution succeeded in establishing the guilt of accused Ram Dass for an offence Under Section 307 I.P.C. The trial court held that there was no convincing evidence and also independent and Reliable witness to substantiate the prosecution story and establish the guilt of accused Ram Dass in the present case and the prosecution was not coming with clean hands to the court and further held that there was no substance in the prosecution version. We do not agree with the above findings of the trial court. Merely because the witnesses are Khandani or related is not a sufficient ground for not relying upon them.

8. In case, an eye-witness is related or eye interested witness, it becomes the duty of the court to scrutinize his statement with great caution. One cannot ignore the fact that the relations present at the scene of occurrence are the only natural available witnesses, in case they are actually present on the scene of occurrence, as new un-connected persons often are cool or hesitant to appear as witnesses.

9. We propose to refer the statements of the prosecution witnesses Udaivir Singh, P.W. 3, Jagdish, P.W. 4, Gajraj Singh, P.W. 5 and Ram Gopal, P.W. 6, who are

eye-witnesses. Udaivir Singh, P.W. 3, has stated that Ram Dass accused is his cousin brother. He has clearly supported the prosecution case as stated in the First Information Report. He stated that at about 5-30 a.m. in the morning he found the accused Ram Dass was constructing a wall over his chak. He stated that he asked Ram Dass not to do so whereupon Ram Dass went inside the house and returned back with a country made pistol (Katta) and fired the Katta, as a result of which the pellets hit him, Ram Gopal (his uncle), his sister Smt. Sheela Devi, his mother, Smt. Ram Kuer and Smt. Kusum Devi, his niece. He also stated that the occurrence took place near his house. On hearing the quarrel, the other people of the village had also arrived and had seen the firing. He had also stated that the occurrence was witnessed by Gajram Singh, Jagdish etc. He also stated that he got the First Information Report scribed by Ram Chandra and after hearing the First Information Report, he had also put his signature on it. This written report was submitted by him. He also proved; the First Information Report. We have examined the entire statement of Udaivir Singh including the cross-examination and we are of the opinion that Udaivir Singh gave a very upright statement and had fully proved the prosecution case. His statement is corroborated by the First Information Report, medical reports and other witnesses. No-doubt, he has admitted in a very fair manner that witness Jagdish was his Khandani. To our mind, Udaivir Singh is a truthful witness. He is an injured witness and his presence on the scene of occurrence cannot be doubted. The occurrence took place at 5-30 a.m. when there was enough light and as such, it cannot be doubted that Udaivir Singh has not identified the accused Ram Dass. He has only named Ram Dass and did not make any false implication of others. Normally, an injured witness will not exclude the real assailant and substitute some-body else on account of enmity. In view of the above facts and circumstances, we fully rely on the statement of Udaivir Singh. We are inclined to say that the statement of Udaivir Singh, corroborated by the medical evidence and the First Information Report, is good enough to warrant conviction against the accused Ram Dass. P.W. 4 Jagdish is also an eye-witness of the occurrence. He is no-doubt a Khandani of Udaivir Singh. He stated that he has a Chakki at a distance of ten or twelve paces from the place of occurrence. He was present in his Chakki and, therefore, he had witnessed the entire occurrence. He had fully supported the prosecution case. He

has denied that he had entered into the witness box because he was a relation of Udaivir Singh. After perusing the statement of this witness, we are inclined to rely on him. We also examined the entire evidence of P.W. 5 Gajraj Singh. He stated that his house is situated at a distance of eight or ten paces from the place of occurrence. He supported the entire prosecution case. We have also examined the statement of P.W. 6 constable Ram Gopal. He has stated that he had come to the village on leave and was returning to his house after easing himself and had seen the occurrence. He has supported the prosecution case and also the statement made by Udaivir Singh. After examining the statements of the above named witnesses, we do not, find any material contradiction on important feature of the case and, therefore, we are inclined to accept the prosecution story. The prosecution has proved its case against accused Ram Dass beyond all shadow of doubt. We now proceed to find out under what section of the Indian Penal Code the prosecution has made out its case against the accused. We have perused the injury reports and also examined the statement of the Doctor. It appears that Udaivir Singh has received one fire arm injury $1/2 \times 1/4$ cm x muscle deep on the left side fore-head. 3 cm above the left eye brow. The surrounding skin is normal. The Doctor opined that the injury was simple caused by fire arm fired from a long distance. Smt. Ram Kuer had sustained five fire arm injuries. According to the Doctor, all the injuries were simple caused by fire arm fired from a long distance. Smt. Kusum Devi had received two fire arm injuries, which were found to be simple caused by fire arm fired from a long distance. Smt. Sheela Devi received two fire arm injuries fired from a long distance. The injuries were described as abrasion. Ram Gopal had received simple injury caused by fire arm fired from a distance.

10. A perusal of the injury reports shall make it clear that the injuries are simple in nature and some of the fire arm injuries are on the vital part, but they are superficial and not serious in nature. Moreover, Doctor had clearly opined that the injuries were caused by fire arm fired from a long distance. From the above facts and circumstances it is clear that there was no intention of committing the murder of the injured persons including Udaivir Singh. From a long distance, country made pistol was fired and the stray pellets hit the injured persons on different parts of the body, but the injuries were simple in nature. It may be remembered that merely

because some of the fire arm injuries are on vital parts of the body, it cannot be inferred that such injuries were sufficient for causing the death of the injured persons. The seat of the injury itself is not enough for inferring the intention of the accused. In our opinion, the impact caused by the injuries is one of the relevant circumstances for determining the intention. In the present case the injuries are simple in nature caused from long distance and from the nature of the injuries, it cannot be inferred that the accused Ram Dass had any intention to commit the murder of the injured persons including Udaivir Singh. Admittedly, the firing was from a long distance and, therefore, the intention of the accused person could be that he wanted to scare away Udaivir Singh and others by causing injuries.

11. In view of the above facts and circumstances, we are of the opinion that no case has been made out against the accused Ram Dass, Under Section 307 of the Penal Code. Accused Ram Dass could be, at best, held to be guilty of an offence Under Section: 324 of the Penal Code. We, therefore, set aside the order of acquittal passed by the IV Additional Sessions Judge by his judgment dated 26-8-1977 by which Ram Dass was acquitted of the offence, Under Section 307 of the Penal Code. We held that the prosecution has made out a case against accused Ram Dass, Under Section 324 of the Penal Code.

12. In the result, the appeal is allowed and the order of acquittal of the respondent is set aside. However, the prosecution has failed to prove its case Under Section 307 of the Penal Code, but an offence Under Section 324 of the Penal Code has been clearly established against the accused Ram Das, respondent. ,

13. The complainant after obtaining the permission of this Court has compounded the offence with the respondent, accused Ram Dass, Under Section 324 of the Penal Code. The compromise filed by both the parties has been duly verified. In these circumstances, the respondent, accused Ram Dass, is acquitted of the offence, Under Section 324 of the Penal Code. He is on bail. He need not surrender and his bail bonds are, hereby, discharged.