SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Mashooq and ors. Vs. State of U.P.

Mashooq and ors. Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/478262

Court : Allahabad

Decided On : Aug-06-1986

Reported in : 1987CriLJ462

Judge : R.K. Shukla and; O.P. Mehrotra, JJ.

Appellant : Mashooq and ors.

Respondent : State of U.P.

Judgement :
ORDER

O.P. Mehrotra, J.

1. This appeal has been filed by Mashooq alias Baurey, Musaheb Ali alias Tunda, Imtiaz AH and Faiz Mohammad alias Lallu, all residents of Mohalla Babu Zai of Town Shahjahanpur against.the order dated 30-8-1977 passed by III Additional Sessions Judge, Shahjahanpur convicting all of them Under Sections 302/34 I.P.C., 307/34 1.P.C. and 324/34 1.P.C. for committing murder of Mohammad Shafi, for attempting to commit murder of Kallu and for causing knife and Gupti injuries to Niyaz Ali on 3-7-76 at 9.30 p.m. near the wood-stall on the road in Mohalla Babn Zai of town Shahjahanpur. For the offence Under Section 302/34 I.P.C. they were sentenced to undergo life imprisonment, while for the offences Under Sections 307/34 and 324/34 I.P.C. each of them was sentenced to undergo rigorous imprisonment for five years and two years respectively. All the sentences

were to run concurrently.

2. Appellant Musaheb Ali is the brother-in-law (Sala) of appellant Faiz Mohammad alias Lallu, while appellant Imtiaz Ali is the uncle qf appellant Musaheb Ali. Appellant Mashooq Ali alias BauFcy resides in the house of appellant Imtiaz Ali. All these appellants are residents of Mohalla Babu Zai of Shahajahanpur town. On the other hand, the deceased, both the injured persons, and the informant are all residents of Beesalpur, district Pilibhit. They had come to Shahjahanpur to attend the marriage of Nisar Ali, who was nephew of informant Imam Ali (PW1). Deceased Mohammad Shafi was cousin brother of the informant, while Niyaz Ali (PW-4) was own brother of the informant. Injured Kallu (PW-3) was one of the Baraties. Barat had stayed at the house of Sardar Ahmad in Mohalla Babu Zai in Shahjahanpur.A little before 9.30 p.m. the Barat started with full decoration for the house of the bride through the road leading to Mission School. When the Barat had gone about 100 paces and had reached near the wood-stall and the Neem tree, all the four accused persons also joined the marriage party and started moving with the procession. The Barat had hardly proceeded 30-40 paces from the wood-stall when the accused persons suddenly surrounded Kallu. Accused Faiz Mohammad alias Lallu had a Gupti while the remaining three accused had knives. The accused attacked Kallu and started causing injuries to him. Imam Ali, Niyaz Ali, Mohammad Shafi and some other persons rushed to save Kallu. The accused then threatened these persons saying that if anyone ventured to come near, he would be killed, and started assaulting Mohammad Shafi and Niyaz AH who also received injuries. Mohammad Shafi fell down as a result of his injuries. At the time of the occurrence there was petromax light in the marriage procession and there was also electric light on the road. All the accused persons were known to the witnesses fronv before and were identified by them in the electric and petromax light. After causing the injuries the accused ran away.

3. The condition of Mohammad Shafi was serious and he was taken to the hospital by some of the Baraties. Imam Ali arranged a Rikshaw, took injured Kallu and Niyaz Ali to police station Kotwali, Shahjahanpur where he lodged first information report (Ex. Ka-1) at 10.20 p.m. Mohd. Shafi succumbed to his injuries soon after reaching the hospital, slightly before 10.45 p.m. From the police station Kallu and

Niyaz AH were sent to the hospital where they were medically examined by Dr. M. Sharif (P. W. 2) at 10.45 and 11 p.m. on that night. Kallu was found to have received the following injuries:

1. Incised wound 4 cms. X 2 cms. X 1.6 cm on outer side of the right arm, 10 cms below right shoulder joint, bleeding present.

2. Incised wound 3 cms. X 1.5 cms. X (depth could not be measured in the interest of the patient) on outer side of the chest, left side on the posterior axillary line in the middle bleeding present.

Injury No. 1 was simple and injury No. 2 was kept under observation. They were fresh and were caused by sharp edged weapon.

Niyaz Ali was found to have received the following injury:

1. Incised wound 4 cms. X 1 cms. X skirt deep on front and outer side of the right wrist bleeding present.

Injury was simple and was caused by sharp edged weapon.

4. The post-mortem examination of the dead body of Mohammad Shafi was performed by Dr. K. A. Abbas (PW 5) on 5-7-76 at 9.15 a.m. He was found to have received the following ante-mortem injuries:

1. Incised wound 4 cms. X 1 cm. X 1 cm. lung substance deep on the front of the right shoulder joint, direction obliquely inward, margins are clean out.

2. Incised wound 2.5 cm. X 1 cm. X muscle deep on the back of the left scapular region, transverse in direction and margins were clean cut.

On internal examination semi-clotted blood was found present in thoracic cavity on the right side. Right pleura was punctured underneath the wound. There was incised wound 1.5 cm. X 1 cm. X substance deep on the right upper lobe of the right lung. Death was due to shock and haemorrhage due to ante-mortem injury No. 1.

5. The investigation of this case was conducted by Sub-Inspector Labh Chand Sharma (PW-9) who was Station Officer, Kotwali. He interrogated Imam Ali and reached the spot at 11.30 p.m. He recovered blood at the spot in an area of 20 steps. He searched for the accused persons but they could not be found. They subsequently surrendered themselves in court. After completing investigation, he submitted charge-sheet on 7-8-76.

6. In support of its case, the prosecution examined three, eyewitnesses, Imam Ali (PW-1) is informant of this case while Kallu (PW-3) and Niyaz Ali (PW-4) had received injuries in this occurrence.

7. All the accused pleaded not guilty to the charges and stated that they had been falsely implicated. Accused Mashooq Ali alias Baurey stated that he had been falsely implicated as he was living in the house of Imtiaz Ali. Accused Faiz Mohammad alias Lallu stated that Kallu and Nasir Ahmad had falsely implicated him due to enmity. Imtiaz Ali stated that he had been falsely implicated by his neighbours from whom his father had borrowed money. Accused Musahab Ali alias Tunda denied his participation and stated that there was a quarrel between Kallu, Shafi and Niyaz.

8. The accused examined two witnesses viz. Khuda Baksh (PW-1) and Ashiq Ali (PW-2), who stated that the accused persons were not present at the spot and did not participate in the occurrence. According to them, there was a Marpit amongst the Baraties in which one person died and two persons sustained injuries.

9. The learned Sessions Judge believed the prosecution witnesses and held that all the accused persons had participated in this occurrence and that the occurrence took place in the manner alleged by the prosecution. Accordingly he held all of them guilty for the offences Under Sections 302, 307 and 324 read with Section 34 1.P.O. and sentenced them as mentioned above.

10. We have heard learned Counsel for both the sides and have carefully gone through the entire record. Certain facts have not been disputed before us and have aUo been established beyond reasonable doubt. It is not disputed that an occurrence did take place on that night while the marriage procession of Nisar Ali

was proceeding towards Mission School. There is also no dispute regarding time and place of the occurrence. The fact that there was sufficient light of electric poles and petromaxes at the spot has also not been disputed. It is also not denied that Mohd. Shafi had died as a result of the injuries received in this Marpit while Kallu (P.W. 3) and Niyaz Ali (P.W. 4) had received injuries. There can also be no doubt regarding the presence of informant Imam Ali (PW-1), who was the uncle of Nisar Ali bridegroom and who had rushed to the police station along with injured Kallu and Niyaz Ali and had lodged the first information report at 10.20 p.m. The first information report was prompt as the same had been lodged within 50 minutes of this occurrence. It has also not been disputed on behalf of the appellants that they were known to the prosecution witnesses from before. The above facts have been fully established from the evidence on the record, and as they have not been disputed before us, it is not necessary to discuss the evidence in that regard.

11. Only two questions arise for consideration before us. In the first place we have to consider whether the appellants were present at the spot and had participated in this occurrence. In the second place, we shall have to consider as to what was the common intention of the appellants and.what offence can be said to have been committed by each appellant.

12. We do not find any substance in the first contention that the appellants were not present at the spot or that they had not participated in this occurrence. There is sufficient eye-witness testimony of PW-1, Imam Ali, PW-3 Kallu and PW-4, Niyaz Ali which fully supports the prosecution case that the appellants joined the marriage procession and soon thereafter they surrounded Kallu and started assaulting him with gupti and knives and when Mohd. Shafi (deceased) and Niyaz Ali (PW-4) came forward to intervene and stop them from assaulting Kallu, they assaulted them as well, as a result of which Mohd. Shafi died and Niyaz Ali received injuries. It is correct that Kallu had strained relations with appellant Musaheb Ali alias Tunda. The first information report also recites that about two years back there was a quarrel between Tunda and Kallu and since then the appellants were on inimical terms with Kallu. The recital in the first information report shows that the appellants bore grievance against Kallu and they had come

prepared to assault Kallu and it was Kallu whom they had surrounded and had started causing injuries to him. Kallu and Niyaz Ali had received injuries in this occurrence and their presence at the spot cannot be denied. Kallu may be a partisan witness but he was present at the spot and had received injuries. Due weight has, therefore, to be attached to his testimony, although the same has to be scrutinised. The remaining two witnesses viz. Imam Ali (PW-1) and Niyaz Ali (PW-4) were entirely independent witnesses. They had no cause for grievance against the appellants and there was no reason why they would have unnecessarily implicated them in this manner. Niyaz Ali had also received injury and his presence at the spot cannot be doubted. We have also no reason to doubt the presence of Imam Ali, who was uncle of the bridge-groom and who had rushed to the police station immediately after this occurrence along with .injured Kallu and Niyaz Ali to lodge the first information report. It is also note-worthy that the occurrence took place on a road in the town where there was sufficient light in which the witnesses could have easily identified the assailants. It does not stand to reason that informant Imam Ali and the injured persons would have allowed the real assailants to go unpunished and would have unnecessarily implicated the appellants, especially when Imam Ali had no enmity or cause for grievance against them. The learned Sessions Judge has discussed their evidence and has given reasons for believing the prosecution witnesses and we find no good reason to take a different view. On the other hand, the testimony of DW-1 Khuda Baksh and DW-2, Ashiq Ali does not inspire confidence and was rightly discredited by the learned Sessions Judge. Even these witnesses admitted that the occurrence took place in the marriage procession where there was sufficient light of petromaxes. If there was a quarrel among the Baraties, there was no reason why the report would not have been lodged against person or persons who actually caused injuries, and why the appellants would have been falsely im ilicated without any rhyme or reason. D.W. 1, Khuda Baksh does not dispute that the Sub-Inspector had arrived at the spot, I- at he says that he did not make any statement before the Sub-Inspector nor trie accused persons produced him before the Sub-Inspector. As regards DW-2 Ashiq Ali, he admitted in his cross examination that at the time when the quarrel took place, he was not present at the spot. In these circumstances, we entirely agree with the findings of the learned Sessions Judge

that the occurrence had taken place in the manner alleged by the prosecution and that all the four appellants were present at the spot and had participated in the occurrence and that appellant Faiz Mohammad alias Kallu had a gupti while the remaining three appellants had knives in their hands.

13. The main contentions raised by the learned Counsel for the appellants before us were twofold. In the first place, it was contended that the prosecution evidence shows that the appellants had no personal grudge against Mohd. Shafi and that their common intention was merely to cause injuries to Kallu, who received only minor injuries. In the second place, it was contended that it was difficult to believe that when Faiz Mohammad alias Kallu, Niyaz AH and others came to the rescue of Kallu all the appellants should have shouted as if in a chorus to assault them as well. He, therefore, contended that the appellants had no common intention to commit murder of Mohammad Shafi and as such they could not be convicted Under Section 302/34 I.P.C, and that only the person who actually caused the fatal injury to 'Mohammad Shafi could be convicted Under Section 302 I.P.C. (simpliciter), but there was neither any charge to this effect nor there was any evidence to show as to which of the appellants caused injury No. 1 of Mohammad Shafi which according to Dr. Abbas (PW-6) resulted in his death. It was also contended that the injuries received by Kallu were simple and it cannot be said that the appellants intended to commit his murder, so that the appellants could at best be convicted for an offence Under Section 324/34 I.P.C. and nothing more than that.

14. Having given our careful consideration to the above contentions, we are unable to agree with the learned Counsel for the appellants. It is correct that initially the appellants had no intention to commit murder of Mohd. Shafi and that their common' intention was merely to commit murder of Kallu against whom alone they had cause for grievance and whom they had surrounded when they started the assault. The manner in which they came prepared armed with gupti and knives and the manner in which they started the assault on Kallu, does not leave the least doubt that they had come prepared to commit his murder. It is correct that Kallu had received only two incised wounds. Injury No. 1 was on the right shoulder while injury No. 2 was on the chest region. The injury report shows that the depth of

incised wound No. 2 could not be measured in the interest pf the patient. Dr. Sharif (PW-2) further stated that he could not say as to whether injury No. 2 was grievous and could be fatal, because the X-ray report was not before him. His statement shows that injury No. 2 was on the chest which was a ital part of the body. If four persons come armed with sharp-edged weapons and surround a person and start assaulting him and cause incised wound on his chest, it can be easily inferred that they intended to commit his murder. As such so far as injured Kallu was concerned, there can be no doubt that all the appellants would be guilty for the offence of attempting to commit his murder punishable Under Section 307 read with Section 34 I.P.C.

15. As regards Mohd. Shafi, it is correct that initially the appellants had no common intention of committing his murder. However, the manner in which the occurrence took place does not leave any doubt that they intended to commit murder of Kallu and also to commit murder of any one who came to his rescue. We are not inclined to discredit the prosecution version that when Mohd. Shafi, Niyaz AH and others came forward to the rescue of Kallu, the appellants shouted and threatened them saying that whosoever would come forward, would also be killed. All the three eye witnesses have deposed to this effect and this fact has also been specifically mentioned in the first information report which was lodged soon after this occurrence. The prosecution witnesses were cross-examined at length but the learned Counsel for the appellants could not point out to any material contradiction or discrepancy in their statements which might go to show that they were not present at the spot or that they were not reliable and truthful. Consequently, there was no good ground to discredit their testimony and the learned Sessions Judge was perfectly justified in believing them.

16. learned Counsel for the appellants referred to the observations made by the Hon'ble Supreme Court in the case of Pandurang v. State of Hyderabad : 1955 CriLJ572 wherein Hon'ble Bose J. observed thus:

People do not ordinarily act in unison like a Greek chorus and, quite apart from dishonesty, this is a favourite devise with witnesses who are either not mentally alert or are mentally lezy and are given to loose thinking. They are often apt to say

'all' even when they only saw 'some' because they are too lazy mentally to differentiate. Unless, therefore, a witness particularises when there are a number of accused, it is ordinarily unsafe to accept omnibus inclusions like this at their . face value. We are unable to deduce any pfior arrangement to murder from these facts.

17. There can be no doubt regarding the above observations and we respectfully agree with the same. However every criminal case has to be decided on the basis of its particular facts and circumstances. In the case before the Hon'ble Supreme Court there was nothing in the first information report from which it could be deduced that {here was prior arrangement among the assailants to commit murder or that they shared the common intention to commit murder. One of the witnesses, namely, Rasika Bai, however, stated that the accused raised their axes and sticks and threatened her when she called out to them. It was in that context that the Hon'ble Supreme Court made the above observations. In the present case, however, it was specifically mentioned in the first information report itself, which had been lodged soon after this occurrence, that when Mohd. Shafi, Niyaz Ali and Imam AH rushed to save Kallu, the accused persons threatened them saying that if any one ventured to come near, he would also be killed and then they started assaulting Mohd. Shafi and Niyaz Ali also. Besides this, all the prosecution witnesses have deposed to that effect. It is also to be remembered that the appellants shared the common intention of committing murder of Kallu and that they had come prepared armed with sharp-edged weapons to kill him and to kill any one who came to his rescue. It was, in these circumstances, that when the witnesses rushed to the rescue of Kallu, the appellants threatened them saying that if any one ventured to come near, he would also be killed. This was nothing unusual. It is common experience that when assailants go to commit murder of a particular person, and witnesses arrive to his rescue, they generally threaten them in this manner. The fact that afte challenging the witnesses in this manner the assailants actually started assaulting Mohd. Shafi and Niyaz Ali and caused injuries to them further confirms this inference. Consequently, we are clearly of the opinion that the appellants had come prepared armed with weapons to commit murder of Kallu and also to commit murder of any one who came to his rescue. They might not even be knowing Mohd. Shafi from before, but they certainly

shared the common intention of committing his murder as he came forward to the rescue of Kallu. The evidence on the record and the circumstances of the case do not leave the least doubt that though the appellants had no prior arrangement to murder Mohd. Shafi, yet they shared the common intention of committing murder of any one who came to the rescue of Kallu. Thus, even if the appellants did not have prior intention to commit murder, this common intention to commit his murder developed at the spot. This was the necessary inference deducible from the the evidence and the circumstances of the case. As such all the appellants would also be guilty of the offence of murdering Mohd. Shafi in furtherance of their common intention and would be guilty of the offence Under Section 302/34 I.P.C. So far as injured Niyaz Ali was concerned, all the appellants were evidently guilty for the offence Under Section 324/34 I.P.C.

18. In view of the above, we find no merit in this appeal, All the appellants were rightly convicted for the offences Under Sections 302/34, 307/34 and 324/34 I.P.C. The sentences inflicted upon them cannot be said to be too severe to justify interference by us.

19. In the result, the appeal of all the appellants fails and is hereby dismissed. The conviction of the appellants for the various offences and the sentences awarded to them are maintained. They are on bail. They shall be taken into custody and sent to jail to serve out their sentences Appeal dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com