Nanhakoo and ors. Vs. State

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SooperKanoon Citation : sooperkanoon.com/487361

Court : Allahabad

Decided On : Sep-18-1997

Reported in : 1998CriLJ2890

Judge : B.K. Sharma, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 300, 304, 304-II and 323; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 1219 of 1980

Appellant : Nanhakoo and ors.

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Manoj Prasad, Adv.

Judgement :

B.K. Sharma, J.

1. This criminal appeal is preferred against the judgment and order dated 24-5-1980, passed by Shri N.S. Shamsheri the then Vlth Addl. Sessions Judge, Varanasi in S.T. No. 233 of 1978, whereby he convicted accused-appellant Pyare of the offence under Section 304 part-II I.P.C. and sentenced him to undergo five

years R.I. and convicted the remaining accused-appellants Nanhkoo, Shankar and Daroga of the offence under Section 323/34 I.P.C. and sentenced each one of them to undergo six months R.I. each.

2. The prosecution story was that on 1-4-77 at 8 a.m. the informant Dasu was grazing his cattle in the field of Chandrama which adjoins the field of Munshi, the deceased, in village Dhanariya Maufi police station Chakia, district Varanasi, that Chandrama, Vishwanath and Lachhman were also grazing their cattle in the same field, that Munshi (deceased) and his mother Smt. Bhagmani were harvesting wheat crop in their field, that a she-buffalo of Nanhkoo accused-appellant trespassed into the. field of Munshi (deceased) and started grazing the crop standing therein and thereby began to cause damage to the same, that at this Munshi (deceased) asked Nanhkoo accused-appellant to take out the cattle (she-buffalo) from the field but Nanhkoo accused-appellant did not agree, that then Munshi (deceased) caught hold of the she buffalo and started towards the cattle pound along with it (the buffalo) to impound her, that upon this Nanhkoo accused-appellant started abusing Munshi (deceased) and exhorted Pyare accused-appellant to beat Munshi (deceased), that on this Pyare accused-appellant gave a Lathi blow to Munshi (deceased), which fell on the top of his head and Munshi fell down on the ground and became unconscious, that on the hue and cry of Smt. Bhagwani (mother of Munshi deceased), Dasu informant rushed to the rescue of Munshi deceased, whereupon accused-appellants Shanker and Daroga attacked him (Dasu informant) and beat him with Lathis and other witnesses Lachman, Markandey, Vishwanath, Suraj and Chandrama ran towards the assailants, whereupon the assailants ran away from the spot. The prosecution story was also that Dasu informant weilded Lathi in self-defence which did not cause any injury to the accused-appellants.

3. Dasu informant and the witnesses carried Munshi (deceased) (still alive) in his injured condition to Saidpur Bazar on way to Chakia on a cot and from Saidpur they boarded a bus for Chakia and after they got down from the bus started putting Munshi deceased (injured) on a rikshaw but Munshi deceased succumbed to his injuries. Dasu informant then got an F.I.R. (Ex. Ka. 1) scribed from Indradeo Pandey and lodged it at police station Chakia. Dasu informant himself was an

injured in the occurrence. He was sent by the police to the Primary Health Centre, Chakia, District Varanasi where he was medically examined by Dr. G.S. Jaiswal (PW 6) the same day at 11.30 a.m.

4. Dr. Jaiswal found the following injuries on the body of Dasu injured informant;

1. Traumatic swelling 2' x 2' on extensor surface of left forearm 3 1/2' above the wrist. Advised X-ray.

2. Contusion 2' x 1/2' on flexor surface of left fore-arm 2' above the wrist. Advised X-ray.

3. Complains of pain in left and right shoulder without any visible injury.

5. In the opinion of Dr. Jaiswal, all the injuries were simple caused by blunt object and whose duration was fresh. Injury No. 1 was kept under observation and X-ray was advised.

6. The same medical officer also examined' the injuries of Daroga accused appellant the same day in the afternoon. He found the following injuries in his body :-

Traumatic Swelling 1 1/4' x 1 1/4' above the right side of forehead 1' above the right eye brow.

In his opinion, injury is simple in nature and caused by blunt object. The injury report was Exb. Kha. 1. The same accused-appellant Daroga was subsequently medically examined by Dr. J. B. Singh in the District Jail, Varanasi on 2-4-1977 at 5.30 p.m. at the time of his admission to the jail, he found the following injuries on his person;

(1) Contusion c swelling redish colour 4' x 2' on the Rt. Side of the forehead lateral to the Rt. eye, caused by hard object, simple.

(2) Abrasion c scab formation 1/2 ' x 1/2' on the Rt. index finger dorsal and middle region, caused by hard object. Simple.

(3) Abrasion c scab formation 2' x V2' on the left index finger on hand dorsal and middle region, caused by hard object. Simple.

(4) Traumatic Swelling c pain 3' x 2' on the Rt. ankle joint lateral side caused by hard object. Simple.

7. In the opinion of the doctor all injuries were simple caused by hard object about 1/2 day back. This medical report was Ex. Kha-2.

8. The investigation of the case was entrusted to S. I. Indrasan Rai, Investigating Officer (PW 5) who made inquest and sent the dead body of Munshi deceased for postmortem. After concluding the investigation, he submitted the charge-sheet against the accused-- appellants (Exb. Ka 2).

9. The post-mortem on the dead-body of deceased Munshi was conducted by Dr. S.S. Das Gupta (CW1), on 1-4-1977 at 4.15 p.m. He found the following antemortem injuries on the body of the deceased (Exb. Ka-10).

(1) Lacerated wound 5 cm x 2' x bone deep longitudinally disposed 15 cm above the root of, left ear.

(2) Haematoma 6 cm x 4 cm underlying injury No. 1 in the scalp on reflexior.

(3) Haematoma 4 cm x 4 cm over the vault of the skull on the back perietal region close to the right side of midline on reflection of the scalp.

(4) Subarachnoid haemorrhage all over the surface of brain which is congested. Both clotted and fluid blood present over the subarachnoid space on the brain surface.

(5) Multiple abrasion 3 cm x 3 cm over the outer aspect of right elbow joint.

(6) Abrasion 1 cm x 1/2 cm on the outer aspect of middle of the left index finger.

(7) Abrasion 1/2 cm x 1/2 cm on the outer aspect of middle of left finger.

10. The internal examination reveals membranes of the brain congested. The larynx, trachea and bronchi were also congested and contained frothing mucous.

Both lungs were also congested and oedematous on both sides. Mouth was open and contained thick white froth. The stomach contained 10 oz. of semi-digested food. Small intestine was empty. Large intestine contained gas and faeces.

11. In the opinion of the Dr. the death was due to comma due to the head injuries caused by blunt force which were sufficient to cause death in the ordinary course of nature.

12. At the trial, the ocular testimony was given by Dasu injured informant (PW 1), Smt. Bhagwani, mother of deceased Munshi (PW 2) and Chandrama Chaubey (PW 3).

13. Daroga and Pyarc accused- appellants both admitted that an occurrence took place at the date and time set up by prosecution in which Munshi received injuries to which he succumbed in the way when being taken to the police station and also admitted their presence but denied the genesis of the occurrence and claimed that it took place to the north of village Dhanaria at the border of village Kalani Baraur. Pyare accused-appellant claimed under Section 313 Cr.P.C. that his brother Daroga was assaulted and injured by Munshi deceased and Dasu informant and that he (Pyare) used Lathi in the defence of his brother Daroga accused-appellant but did not say that he had assaulted and injured Munshi deceased and Dasu informant. Daroga accused-appellant claimed that he was injured by Munshi deceased and Dasu informant and that his brother Pyare accused-appellant had also reached there to defend him but he also did not say under Section 313 Cr.P.C. that any injury was inflicted by Pyare accused-appellant on the body of Munshi deceased.

14. However, at the time of arguments before the learned Sessions Judge the defence conceded that Munshi deceased had received his injuries at the hands of Pyare accused-appellant.

15. The learned Sessions Judge found on consideration of evidence that it stands proved beyond doubt that Munshi deceased received head injuries on the morning of 1 -4-1977, that he succumbed to his injuries at 10 a.m. on the same day in the way while being taken to police station Chakia and that his death was as result of

the said head injuries. Rejecting the defence plea he further found that the prosecution has succeeded in proving beyond doubt that following an altercation over the taking of the she buffalo of accused-appellant Nanhkoo, which was causing damage to the field of Munshi deceased, to the cattle pound, Pyare accused-appellant dealt at least one Lathi blow over the head of Munshi deceased and there was no premeditation in striking this blow and it did not appear that there was any intention on the part of Pyare accused-appellant to kill Munshi deceased but Pyare accused-appellant knew that a blow on the head with force with which he delivered it to Munshi deceased was likely to cause his death. He further found that there was no suggestion on behalf of the prosecution that Daroga and Shanker accused-appellants had incited Pyare accused-appellant and that consequently it cannot be said that this blow was dealt with in furtherance of the common intention of accused-appellants Shanker and Daroga also but it was held proved beyond doubt that Shanker and Daroga attacked Dasu informant when he tried to intervene causing him simple injuries. The Sessions Judge also held that Pyare and Nanhkoo accused-appellants were not a party to that Marpit, nor there was any evidence to show that Shanker and Daroga accused-appellants-attacked Dasu informant in furtherence of the common intention of all accused-appellants.

16. The Sessions Judge, consequently, held that the act of Pyare accused-appellant in delivering a blow on the head of Munshi deceased was not with intention to kill Munshi, but that this accused-appellant certainly knew that it was likely to cause death. The Sessions Judge accordingly held that this would bring his act within the four comers of Section 304, Part II, I.P.C. and not under Section 304, Part 1, I.P.C.

17. The Sessions Judge also held that Nanhkoo accused-appellant never exhorted Pyare accused-appellant to kill Munshi and that this accused-appellant naturally did not know that Pyare would deal a blow with such a severe hand and on the top of head of Munshi deceased which would cause an injury of a nature which was likely to cause death. He consequently found that Nanhkoo accused-appellant cannot be convicted of the offence under Section 304/34, I.P.C. and held that Nanhkoo had committed an offence under Section 323/34,I.P.C. as the injury caused to Munshi deceased was certainly in furtherance of the common intention

of the accused-appellant Nanhkoo also.

18. Consequently, the learned Sessions Judge convicted Pyare accused-appellant of the offence under Section 304, Part II, I.P.C. and convicted the remaining accused-appellants Nanhkoo, Daroga and Shanker of the offence under Section 323/34, I.P.C. each and sentenced them as aforesaid.

19. It has been claimed by learned counsel for the defence that the deceased Munshi was a patient of Tuberculosis meaning thereby that he died due to that disease. The post-mortem report contains nothing to show that the deceased Munshi was a patient of Tuberculosis as claimed. If the larynx, trachea and bronchi were congested and contained frothing mucous and both lungs were congested and oedematous on both sides, it did not mean that he was suffering from Tuberculosis and it cannot be said that his death had taken place on account of having the disease of lungs or any other disease.

20. It is significant to note that no suggestion was made to the autopsy surgeon Dr. S.S. Das Gupta (CW 1) when he was in the witness box that Munshi deceased was suffering from disease of lungs and that he had died on account of the same. All that was suggested to him was that the injuries found on the body of the deceased were not sufficient to cause death in the ordinary course of nature and this suggestion was refuted by the autopsy surgeon who categorically stated that the antemortem injuries found on the body of the deceased was sufficient to cause death in the ordinary course of nature. There is no reason to doubt the testimony of the autopsy surgeon aforesaid.

21. Learned counsel for the accused-appellants pointed out to the circumstance that no blood was found at the scene of the occurrence at the spot as set out by the prosecution and argued that it showed that the scene of occurrence set up by the prosecution was false. The presence of blood at the scene of occurrence in a case, no doubt, goes to corroborate the prosecution story by fixing the place of occurrence, but the absence of blood at the scene of occurrence does not necessarily improbabilise the prosecution story about the occurrence having taken place at the place claimed by it. It will depend on the facts and circumstances of each case. In the present case I am satisfied that the prosecution has succeeded

in establishing that the place of occurrence set out by it was true.

22. The post-mortem report indicates that injuries Nos. 2, 3 and 4 were internal and injuries Nos. 5, 6 and 7 were only abrasions and the only open wound from which bleeding could take place was injury No. 1, a lacerated wound 5 cm x 2 cm x bone deep on the head 15 cm above the root of left ear. The prosecution has explained saying that Munshi deceased had fallen down on his back with a sheet of cloth on the ground near his head and consequently whatever blood came out of this wound was soaked into the sheet of cloth and so no blood fell on the ground. It was also pointed out that the sheet which soaked the blood was recovered by the Investigating Officer. This explanation of the prosecution is acceptable and consequently the absence of blood at the scene of occurrence set out by the prosecution docs not adversely affect the prosecution case.

23. It is also to be noted that though the defence has set up an alternative place of occurrence there is no cross F.I.R. giving the defence version. Then there is absolutely no evidence led by the defence to show that any blood was found at the place where the Marpit took place according to defence version. No witness was produced by the defence to vouch that the Marpit had really taken place at the border of Kalana Baraur village and that blood had fallen there on the ground.

24. There was no understandable reason for the prosecution to change the venu of Marpit if it had actually taken place at the border of Kalani Baraur. It is significant to note that the defence had at no stage set out any alternative genesis of the occurrence, in which Munshi deceased and Dasu informant had received the injuries and in which Munshi deceased had ultimately died while being taken to police station Chakia.

25. It may be that Dasu informant (P.W. 1) and Chandrama Chaubey (P.W. 3) were cousins inter se and Smt. Bhagwani (P.W. 3) was the mother of Munshi deceased. However, it is not the defence1 case that any of these witnesses were inimical with the accused-appellants and with their family. The ocular evidence of all these three witnesses examined by the prosecution was reliable. They were natural witnesses of the occurrence. Smt. Bhagwani (P.W. 2) was working along with his son Munshi deceased in their fields whose crop was damaged by the

cattle of Nanhkoo accused-appellant. Chandrama Chaubey (P.W. 3) was also grazing his cattle in his field, adjoining the said field, at the time of the occurrence so his presence at the scene of occurrence was natural. Dasu informant (P.W. 1) was grazing his cattle in his field on the southern side of the field of Munshi deceased and so his presence at the scene of occurrence was also natural. Moreover, he had received injury in the occurrence which were recorded by Dr. G.S. Jaiswal (P.W. 6). So also his presence at the scene of the occurrence cannot be doubted. No reason has been put forward by the defence even uptil now as to what led to the Marpit. There is absolutely no reason to discard the prosecution evidence about the genesis of occurrence and about the occurrence itself also there was no reason to discard the ocular evidence of the prosecution witnesses at the trial.

26. It has been argued by the learned counsel for the accused-appellants that the head injury of Munshi deceased did not cause any fracture and so offence Under Section 304, Part II was not made out. Antemortem injury No. 1, a lacerated wound, was on a vital part and was bone deep and further there were found haematoma at two places in a wide areas as also subaracnoid haemorrhage all over the surface of brain, which was congested. So it does not lie in the mouth of the accused-appellants to claim that the antemortem injuries of Munshi deceased were not sufficient to cause death of the deceased in the ordinary course of nature.

27. As a matter of fact, the learned Sessions Judge has diluted the offence of Pyare accused-appellant from one falling under Clause thirdly of Section 300, I.P.C. to one under Section 304, Part II, I.P.C., Section 300, I.P.C. runs as follows :-

300. Murder-..., culpable homicide is murder, if the act by which the death is caused is done..., or

Secondly.-..., or

Thirdly.- It is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to

cause death, or

Fourthly.-....

The learned Sessions Judge did not invoke any exception of Section 300, I.P.C.

Section 304, I.P.C. says :-

304. Punishment for culpable homicide not amounting murder. Whoever commits culpable homicide not amounting to murder, shall be punished with..., if the act by which the death is caused is done ... imprisonment of either description for a term which may extend to ten years, or with fine or with both, if the act is (Part II) done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

27A. It cannot be said for a moment that the act of Pyare accused-appellant inflicting Lathi blow on the head of Munshi deceased with such a force that it caused above noted lacerated wound with two haematoma and subarachnoid haemorrhage aforesaid was not even an act with the knowledge that his act of giving Lathi blow aforesaid on the head of the deceased with such a force so as to cause the aforesaid injuries on the head was likely to cause death of Munshi deceased.

28. It has been argued by the learned counsel for the accused-appellants that Pyare and Daroga accused-appellants have pleaded the right of private defence and that they were entitled to claim it. In this regard it was claimed that Daroga accused-appellant had received as many as four injuries on his body in the occurrence and he was medically examined by the doctor at the time of his admission to the District Jail, Varanasi in this case. It has also been argued by the learned counsel for the accused-appellants that the prosecution has not explained these injuries of Daroga accused-appellant at the trial and, consequently, it is a case where neither the prosecution case is wholly true, nor the defence case is wholly true.

29. It is settled law that in a murder case non-explanation of the injuries sustained by the accused side at the time of the occurrence is not always fatal. As observed

in the authority Lakshmi Singh v. State of Bihar AIR 1976 SC 2263 : (1976 Cri LJ 1736) the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation by the prosecution did not affect the prosecution case where the injuries sustained by the defence are minor and superficial or where the evidence of the prosecution witnesses was so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

30. In the authority State of U.P. v. Mukunde Singh, (1994) 2 SCC 191, it was observed that merely on the ground that the prosecution witnesses have not explained injuries on the accused, the High Court ought not to have rejected their evidence out-right.

As noted above, the first medical examina-tion'of this accused-appellant Daroga was made by the Medical Officer Incharge, Chakia (who had also earlier examined on the same day the injuries of Dasu informant) and found only one injury on his (Daroga's) body which was a traumatic swelling 1 1/4' x 1 1/4' above the right forehead 1 'above the right eyebrow' which was found by the doctor to be simple in nature and caused by blunt object and duration of which was about 1/2 day. It is true that apart from this injury as many as three more simple injuries were also recorded on his body by the Medical Officer Incharge of the District Jail, Varanasi on 2-4-77 at 5.30 p.m. at the time of his admission to District Jail but the duration of all the four injuries recorded was given as only half a day. Taken as such it would tend to show that none of the four injuries was caused during the Marpit on the date of occurrence but were caused at some later stage. However, injury No. 1 being also recorded in the medical report of 1-4-77 and the duration given therein having corresponded to the time of occurrence the prosecution witnesses could be expected to explain only the solitary injury of Daroga appellant as recorded on 1-4-77 by the Medical Officer, Primary Health Centre, Chakia, Ex. Kha-1.

31. The fact is that the prosecution witnesses stated in their evidence that Lathi was used by Dasu informant (P.W. 1) in his defence. All that can be said is that they did not specifically state that the wielding of Lathi by Dasu informant resulted

in an injury on the body of Darpga accused-appellant. Against the background of the facts of the case where Munshi deceased had received aforesaid injury on his head and succumbed to his injuries soon after while being taken to the police station, he (Dasu) might have failed to notice if Daroga accused-appellant had actually received injury by his (Dasu's) wielding Lathi in his (Dasu's and Munshi's) defence. We might even take that he tried to minimise his part in the Marpit. Nevertheless, the fact remains that in the F.I.R. itself it was stated by him 'MAINE BACHAO BACHAO KA SHOR KARKE APNE WA MUNSHI KE BACHAO ME LATHI CHALAYA'. He affirmed it at the trial also. In these circumstances it may be said that the prosecution has virtually explained the solitary simple injury received by Daroga accused-appellant in the occurrence. Even if it is contended that strictly speaking there is no explanation of the said injury furnished by the prosecution it cannot be held to be fatal. The injury was single and superficial. It was simple. The presence of the prosecution witnesses at the spot was natural and free from doubt. These witnesses had no motive to falsely implicate the accused-appellants for any offence and their evidence was wholly trustworthy. Moreover, in this case there is no defence worth the name which may be said to compete with the prosecution case.

32. The accused-appellant Nanhkoo was not entitled to graze his she-buffalo in the agricultural field of the deceased and the deceased was entitled to drive the she-buffalo from his field to the cattle pond and the accused-appellants had no right to assault the deceased, if he did so, nor had they any right to assault Dasu informant if he came to the rescue of the deceased in exercise of the right of private defence of person of the deceased which certainly arose.

33. On the facts established in this case no right of private defence of person arose to Pyare or Daroga accused-appellant. There is no defence version worth the name. No circumstance has been established or even probabilised by the defence in this case that may lead to the inference that the right to private defence of person accrued to the accused-appellants or any of them.

34. It has been argued by the learned counsel for the accused-appellants that the three accused-appellants Nanku, Daroga and Shankar had not assaulted at all on

the prosecution case itself. This plea is not factually correct. The prosecution case and the evidence is that Daroga and Shanker accused-appellants both have assaulted Dasu informant with Lathies and inflicted injuries on his body. We have already noted earlier the injuries on the body of Dasu informant, which were in three in numbers, two of which were visible ones being traumatic swelling on the left forearm and another a contusion on the left forearm above the wrist. So the medical examination report of Dasu informant corroborates the ocular testimony led at the trial by the prosecution about Daroga and Shanker both having inflicted Lathi injuries on the body of Dasu informant (P.W. I). It is a matter of regret that against the record it was argued by the learned counsel for the accused-appellants that on the prosecution case neither Nanhkoo, nor Daroga, nor Shanker, accused-appellant, inflicted any injury to any one in the transaction. However, only this much is true that neither Nanhkoo, nor Daroga and nor Shanker accused-appellants were alleged by the prosecution to have assaulted Munshi deceased in the transaction and taking note of it the learned Sessions Judge has already given consequential benefit to Daroga and Shanker accused-appellants in regard to the fatal assault on the body of Munshi deceased. Nanhkoo accused-appellant who had exhorted Pyare accused-appellant to assault Munshi deceased, but had not exhorted him to cause the death of Munshi deceased has also been given the benefit of this circumstance and consequently freed of the charge under Section 304/34, I.P.C. and his liability held only to the extent of an offence under Section 323/34, I.P.C. about the assault on Munshi deceased, from which there was no escape for him.

35. The next argument of the learned counsel for the accused-appellants is that in the case of Pyare accused-appellant, the conviction under Section 304, Part II, I.P.C. should not be sustained. This plea is based on the fact that there was no fracture in the skull of the deceased. We have already touched this aspect. On the evidence on record, in any case, Pyare accused-appellant was guilty of the offence under Section 304, Part II, I.P.C.

36. Then it is argued by the learned counsel that the sentence be reduced to the period of imprisonment already undergone. I am afraid it will be a massacre of justice, if in the name of granting relief to him merely for the fact that his appeal

remained pending from the year 1980 uptil now, his sentence of five years R.I. for the offence under Section 304, Part II, I.P.C. were slashed and brought down to the period of imprisonment already undergone by him (which according to learned counsel for the appellants was 4 1/2 months in jail) as prayed by the learned counsel for him. A precious life has been lost in this case by a deliberate act done by him. Consequently, he (Pyare accused-appellant) has to suffer imprisonment in jail for a substantial period of time if the standard of justice is to be sustained. The sentence imposed on him is commensurate to the gravity of his offence.

37. So far as Nanhkoo, Daroga and Shanker accused-appellant, who have been found guilty only for the offence under Section 323/34, I.P.C. and sentenced to suffer R.I. for a period of six months each, are concerned, they were convicted on 24-5-80 and sent to jail. Then on preferring this appeal they were admitted to bail by this Court on 4-6-80. The amount of surety was fixed by the C.J.M. concerned on 5-6-80 and the bonds were furnished on 7-6-80. That means that during this period all these accused-appellants were in jail custody for as many as 14 days. Further, the record shows that the charge-sheet was submitted against all the accused-appellants on 19-5-77 before the Magistrate when all the accused-appellants were in custody and the bail bonds were furnished for Daroga accused-appellant on 22-6-77, for Shanker accused-appellants on 16-6-77 and for Nanhkoo accused-appellant on 18-7-77 and further that Daroga accused-appellant was in custody from 1-4-77 itself when his medical examination was got done. So in the case of Daroga accused-appellant it would appear that he was in custody for 83 days before being bailed out on 22-6-77. Shanker accused-appellant was in custody for 23 days before being bailed out on 16-6-77 and Nanhkoo accused-appellant was in custody for 61 days before being bailed out on 18-7-77. Consequently the total period of custody on the available record, of Daroga accused-appellant comes to 97 days, of Shanker accused-appellant comes to 37 days and of Nanhkoo accused-appellant comes to 75 days.

38. Considering the lower magnitude of the offence of these three accused and the period of their detention already suffered as under trial and as a convict, the ends of justice would be met if their period of sentence is reduced to the period already undergone by each one of them as under trial and as convict and to that

extent relief may properly be granted to each of these three accused-appellants.

39. For the reasons aforementioned, the appeal is dismissed to the extent of Pyare accused-appellant. His conviction and sentence of R.I. for a period of 5 years for the offence under Section 304, Part II, I.P.C. is maintained. He being on bail from this Court, his bail is cancelled. The Chief Judicial Magistrate concerned is directed to get Pyare accused-appellant arrested and consigned to District Jail, Varanasi to serve out his remaining period of sentence according to law.

40. In the case of Nanhkoo, Daroga and Shanker accused-appellants their conviction for the offence under Section 323/34, I.P.C. is maintained but their period of imprisonment (six months R.I. each) for the said offence is reduced to the period of imprionment already undergone by each one of them as under trial and as convict. They are on bail from this Court. They need not surrender. Their bail bonds are cancelled and sureties are discharged. Their appeal is allowed only to this extent.

41. Let a copy of this judgment be sent forthwith to the Sessions Judge concerned for information and compliance. The compliance report shall be sent to this Court by the Sessions Judge concerned within a months from today.