

**Bijendra Singh Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Dec-02-2003

**Reported in :** 2004CriLJ1892

**Judge :** Mukteshwar Prasad, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 324 and 325

**Appeal No. :** Criminal Appeal No. 822 of 1981

**Appellant :** Bijendra Singh

**Respondent :** State of U.P.

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** B.P. Gupta and ;Sudhakar Pandey, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**Mukteshwar Prasad, J.**

1. This criminal appeal by the accused is directed against the judgment and order dated 27-3-1981 passed by Sri A. K. Agarwal, the then Additional Sessions Judge, Ballia whereby he convicted the accused under Sections 324 and 325 of the Penal Code and sentenced him to undergo rigorous imprisonment for a period of one

year and one year respectively thereunder. Both the sentences were directed to run concurrently.

2. Briefly stated the prosecution case is as under.

3. P. W. 1 Gaori Shanker son of Ram Das handed over a written report to the police and lodged an F. I. R. at police station Sahatwar, District Ballia on 2-3-1975 at 1-30 a.m. It was alleged by the informant that he and his brother Vipin Behari were sleeping in their Oshara on two different cots. At about 11.00 p.m. Vipin Behari raised alarm. The informant woke up and flashed his torch. He saw one person attacking upon his brother with a Gandansi. On hearing the alarm, Jagarnath Singh, Deena Nath Singh and Rameshwar Prasad rushed there. When the assailant saw the witnesses and informant, he ran away. He was, however, identified correctly in the light of torches as Vijendra Singh, son of Sarju Singh.

4. P. W. 6 Dr. A. N. Singh, the then Medical Officer, P. H. C. Sahatwar, Ballia, examined the injuries of Vipin Behari on 2-3-1975 at 1-00 a.m. and found two incised wounds on the left side of cheek and on the left side of forehead 3 cm. above to the left eye brow. He found one lacerated wound bone deep on the left side of the head and one contusion also on the left hand along with swelling. He advised X-ray of injury No. 4.

5. P. W.5 Dr. A. Haleem, Radiologist of the District Hospital, Ballia, after X-ray of injury No. 4 found crack of terminal end of terminal phalanx of left thumb.

6. P. W. 1 Gaori Shanker got a report prepared by his co-villager Dina Nath Singh reached police station and handed over his report. A case was registered at crime No. 53 on 2-3-1975 at 1-30 a.m. The case was investigated by S. I. Brij Mohan Pathak, who inspected the torches of the witnesses and prepared Fard. He collected bloodstained earth from the place of occurrence and after completing investigation, he submitted charge-sheet against the accused.

7. After committal of the case to the Court of session, accused Bijendra Singh was charged under Section 307 I. P. C. He pleaded not guilty and claimed to be tried.

8. At the trial, the prosecution examined P. W. 1 Gaori Shanker, the informant and brother of the injured as well an eye witness, P. W. 2 Vipin Behari, the injured P.W. 3 Jagarnath Singh, who is said to be an eye witness and P. W. 4 S. I. B. M. Pathak, I. O. of the case. The prosecution further examined Dr. A. Haleem, Radiologist of the District Hospital. Ballia and P. W. 6 Dr. A. N. Singh, Medical Officer, P. H. C. Sahatwar, Ballia.

9. Accused Bijendra Singh in his statement recorded under Section 313 Cr. P. C. denied the accusation levelled by the prosecution and pleaded that litigation was going on between his father Sarju Singh and Gaori Shanker regarding Sehan land and he was falsely Implicated on account of enmity. No evidence was led in defence.

10. After close scrutiny and analysis of the evidence on record, learned Judge found that offence punishable under Section 307 1. P. C. was not committed. Accused was, however, found guilty for the offences punishable under Sections 324 and 325 of the Penal Code and was convicted and sentenced, as mentioned above.

11. Aggrieved by his conviction and sentence, accused has come up in appeal.

12. I have heard learned counsel for the appellant and learned A. G. A. at length and have gone through the record carefully.

13. Learned counsel for the appellant has assailed the judgment under appeal mainly on the grounds that F. I. R. in the instant case was ante-timed and Vipin Behari was assaulted somewhere by unknown assailant and the appellant was falsely implicated on account of old enmity. It was urged that admittedly a civil suit regarding Sehan land was filed by Gaori Shanker, brother of the injured, against Sarju Singh, father of the appellant and on account of this civil litigation a false case was set-up. It was also urged that none saw the appellant causing injuries in question and the appellant is entitled to be acquitted.

14. On the other hand, learned A. G. A. has supported the judgment and urged that medical examination of the injured took place on the same night at 1-00 a.m.

and incident was reported to the police at 1-30 a.m. at the police station situated at a distance of two miles from the village in question. Therefore, in view of the prompt F.I.R. and medical examination of the injuries, there was no question of falsely implicating the appellant instead of real assailant and the learned Judge rightly convicted the appellant under Sections 324 and 325 I. P. C.

15. After close scrutiny of the entire evidence on record led by the prosecution and considering the submissions made on behalf of the parties, I find that the learned Judge rightly concluded that the appellant committed offences punishable under Section 324 and 325 of the Penal Code and he was rightly convicted and sentenced by the Court below,

16. Admittedly, civil litigation between the parties was going on regarding Sehan land. P. W. 1 Gaori Shanker had filed the suit against Sarju Singh, father of the appellant. Therefore, the parties were having strained relations and the appellant had a motive to commit the crime. It is well settled that enmity is a double edged weapon and it cuts both ways. Therefore, the Courts are required in such cases to scrutinize the evidence with great care and caution.

17. In the instant case, the prosecution produced six witnesses in all, including three formal witnesses. Besides the injured two eye witnesses, including elder brother of the injured, who was sleeping in the same Osara was also examined. P. W. 2 Vipin Behari, the injured, fully supported the prosecution story and testified in clear words on the impugned night at about 11-00 p.m., he was attacked upon by the accused, who gave a blow on his head with a Gandasha. After receiving first blow, he woke up and saw the accused with a Gandasha in his hand. He raised alarm. P. W.1 Gaori Shanker, who was sleeping at a few steps from the injured in the same Osara woke up and flashed his torch. Gaori Shanker also raised hue and cry and Jagarnath Singh, Rameshwar Prasad and Dina Nath Singh arrived there. According to Vipin Behari, the witnesses were flashing their torches and it was moon lit night. In cross-examination, the injured disclosed that he tried to cover up his face with Rajai with a view to avoid injury on his neck. He sustained injury on his thumb. He stated in unambiguous words that after he woke up, he was given three blows. The injured totally denied the suggestion of the defence

that he sustained injuries at some unknown place and F. I. R. was lodged next day after consultation with Rameshwar Prasad, Jagarnath Singh and others.

18. P. W. 1 Gaori Shanker fully corroborated the testimony of his brother Vipin Behari and gave out that he woke up on hearing the alarm raised by his brother and flashed his torch and saw the accused giving blows to Vipin Behari. He too raised hue and cry which attracted Jagarnath Singh, Rameshwar Prasad and others. According to him, accused gave two blows to his brother after he woke up. He and others took the injured to hospital at Sahatwar and the doctor examined the injuries, Gaori Shanker further disclosed that he got a report prepared by Dina Nath Singh in the hospital itself and reached the police station on the same night. In cross-examination, Gaori Shanker totally denied that report was lodged by him next day. Both the brothers were cross-examined extensively on behalf of the accused but in my view they stood successful in the test of cross-examination. There is nothing in the cross-examination of the two brothers to show that they have not spoken the truth and they falsely implicated the appellant on account of animosity between two families.

19. P. W. 3 Jagarnath Singh claimed to have arrived the scene of the incident flashing his torch and saw the accused assaulting Vipin Behari. I am, however, not prepared to place reliance on his testimony. The accused must have been in hurry. He caused four injuries in all which must not have taken more than 2-3 minutes. It was, therefore, not possible for the witness to reach the place of occurrence, who had gone to watch his plot in the night.

20. I further find from the testimony of the injured and witnesses that there was sufficient light of torches in which the assailant could be identified. It was moon lit night. Further, the assailant being a co-villager was well known to the injured and the witnesses. Therefore, there was no question of committing any mistake in recognizing the assailant.

21. As stated above, the injured got his injuries examined at a Government Hospital at 1-00 a.m. i.e. within two hours of the incident. Similarly F. I. R. was lodged at police station Sahatwar at 1-30 a.m. Therefore, in view of the promptness in reporting the incident to the local police and in medical examination

also there was no time at the disposal of the injured or members of his family for any consolation and as such there was no question of falsely implicating the appellant in the case. It has been held by the Apex Court in several decisions that the injured/members of the family of the deceased would be the last person to falsely implicate innocent person instead of real assailant. In the present case, there is only one assailant and, therefore, there was no question of falsely implicating any accused.

22. P. W. 6 Dr. A.N. Singh found two incised wounds on the left side of the cheek and on the left side of the forehead. According to him, the injuries No. 1 and 2 were simple and were caused by some sharp cutting weapon. Therefore, learned Judge rightly concluded that the offence punishable under Section 324 I. P. C. was committed by the accused.

23. P. W. 5 Dr. A. Haleem Radiologist found crack of the terminal end of terminal phalanx of left thumb. In other words, the injury No. 4 was found to be grievous. Therefore, the appellant was rightly held guilty for committing an offence punishable under Section 325 I. P. C. So far as the sentence is concerned, the learned trial Court took a lenient view and sentenced him to undergo rigorous imprisonment for a period of one year under each count. I, therefore, I see no valid reason to reduce the sentence,

24. In view of the foregoing discussion, I conclude that the learned Judge committed no illegality in appraisal of the evidence on record and he rightly found the appellant guilty for committing offences punishable under Section 324 and 325 I. P. C.

25. The appeal, therefore, fails and is hereby dismissed. The conviction and sentence, recorded against the appellant under Sections 324 and 325 I. P. C., are maintained. Both the sentences shall run concurrently.

26. The appellant is on bail. His bail bonds are cancelled. He shall be taken into custody forthwith to serve out the sentence awarded to him.

27. Let a copy of this judgment be sent to the Court concerned for information and necessary compliance of the order. Compliance report be submitted to this Court within one and half months.

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