

Subedar and anr. Vs. State of U.P.

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Court : Allahabad

Decided On : Oct-29-2002

Reported in : 2003CriLJ1090

Judge : M.C. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 109 and 324

Appeal No. : Criminal Appeal No. 472 of 1981

Appellant : Subedar and anr.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : P.N. Lal, Adv.

Judgement :

M.C. Jain, J.

1. The appeal has been filed by Salamatullah and his son Subedar against judgment dated 5-2-1981 passed by Sri B.K. Sharma, the then IV Additional Sessions Judge, Sharanpur in S.T. No. 107 of 1980. Subedar has been convicted under Section 324, I.P.C. and sentenced to 2 1/2 years rigorous imprisonment. Salamatullah has been convicted under Section 324 read with Section 109, I.P.C.

and sentence to same period of rigorous imprisonment.

2. The facts may be narrated in nutshell. The occurrence took place on 27-7-1978 at about 2 p.m. in Village Idaratpur Chack Bakenia Police Station Nigohi, District Sharanpur where the parties reside. Jwar and chilli crops were there in the fields of the complainant Devi Giri PW 2 and the cattle of the appellants entered into his fields, grazed and devastated the crop. The complainant remonstrated to the appellants who were standing in the lane. They got annoyed and two sides traded abuses. The appellant Salamatullah asked his son Subedar to bring gun from inside the house. Subedar abided and brought the gun. He opened shot on the complainant who took shelter behind the northern wall of his Chhappar and escaped unhurt. However, the shot hit Dilbari who was going to the well to fetch water. The occurrence was witnessed by Devi Giri, Ram Bilas and Hori Lal who were standing near the well. The complainant with village Pradhan, Dilbari injured and her father Ismail went to the Police Station and lodged the FIR at 1645 hours. After registering a case, the investigation followed.

3. Dilbari was sent to P.H.C. Nigohi where she was medically examined by Dr. Rajnish the same day at 5.15 p.m. the following injuries were found on her person.

1. A circular gunshot wound of entry of size 0.2 cm x 0.2 cm x 1.3 cm deep on right side of chest, 9.5 cm below the right nipple, the edges are inverted. No tattooing.

2. A circular gunshot wound to entry of size 0.2 cm x 0.2 cm x skin deep on the left side of groin 6 cm below the left anterior iliac crest. Edges are inverted. No tattooing.

4. The injuries were simple and fresh.

5. The defence was of denial.

6. The prosecution examined Dr. Rajnish PW 1, Devi Giri PW 2, Ram Bilas PW 3 and Hori Lal, S.I..P.W. 4 (I.O.). The injured Dilbari was examined as C.W. 1. The two witnesses were examined in defence also. The Court below found the appellants to have committed minor offence under Section 324, I.P.C. instead of

Section 307, I.P.C. and convicted, the actual shooter, Subedar under Section 324, I.P.C. and his father Salamatullah under Section 324, I.P.C. read with Section 109, I.P.C. as the person who abetted the commission of the said crime. Aggrieved, the appellants have preferred this appeal.

7. At the hearing of the appeal none turned up from the side of the appellants, though they are represented on record by Shri P.N. Lal, Advocate, I have heard learned A.G.A. from the side of the State in opposition of the appeal and have also gone through the evidence on record.

8. It is to be noted as proved by the medical examination report of the injured Dilbari that she had suffered gun shot injuries which were fresh and they could have been sustained at the time of incident as testimony by Dr. Rajnish Kumar PW 1.

9. It is found that the complainant Devi Giri PW 2, who was target for shooting and escaped because of having taken shelter behind his Chhappar. narrated the entire prosecution story including the devastation of his crops by the cattle of the appellants as also the exhortation part of the appellant Salamatullah in consequence of which his son Subedar brought the gun and opened the fire, hitting an unconcerned person Dilbari C.W. 1 who was going towards well for fetching water. His version has been supported by another eye witness Ram Bilas PW 3 named as such in the F.I.R. He appears to be an independent witness with no animus against appellants, which could have tempted him to depose falsely against them. The injured Dilbari C.W. 1 herself also supported the prosecution case about the occurrence that she had been hit by the shot fired by Subedar appellant. She also testified the presence of Salamatullah at the spot. About altercation part also between the two sides, the prosecution case gets support from her testimony. The fields of the complainant, the crop of which had been grazed and devastated by the cattle of the appellants were to the east of the house.

10. The F.I.R. was prompt with no time gap for concoction or deliberation. The lodging of the F.I.R. within the shortest time of the incident furnishes valuable corroboration to the prosecution evidence that was adduced at the trial.

11. From the trend of the suggestion made to Devi Giri PW 2 in his cross-examination, the defence seemingly was that altercation took place and Devi Giri fired from country made pistol on Subedar which struck Dilbari as Subedar had concealed himself. But it is significant to note that no F.I.R. was lodged from the side of the appellant Subedar which he would have ordinarily done, if it were actually so. The plea of alibi raised by appellant Salamatullah in his statement under Section 313, Cr.P.C. that he had gone to his daughter's place in village Khewli with his gun was rightly rejected by the Court below as it was simply a bald statement without any tangible proof.

12. On appraisal of the evidence on record, I find myself in agreement with finding of the trial Court holding the two appellants to be guilty and convicting them for the offences as stated in the earlier part of the judgment. Only one shot had been fired which had hit other than the target. The injuries sustained by the injured were simple and taking into consideration the totality of the facts and circumstances, the intention to kill could not be inferred. The trial Court rightly convicted the appellants for lesser offence under Section 324, I.P.C. (Salamatullah as an abettor with aid of Section 109, I.P.C.).

13. So far as the sentence part is concerned, it should be taken note of that nearly 24 years have rolled by since the incident took place. The ends of justice would be met by converting the sentences of the appellants to fine only. Imposition of sentence of payment of fine of Rs. 5,000/- by each of them would meet the ends of justice.

14. In the result, the appeal is dismissed so far as conviction of the appellants as recorded by the trial Court is concerned. However, their sentences are modified in this way :

(i) The appellant Subedar who has been convicted under Section 324, I.P.C. shall pay a fine of Rs. 5,000/- or shall suffer six months' rigorous imprisonment in default of the same.

(ii) The appellant Salamatullah who has been convicted under Section 324, I.P.C. read with Section 109, I.P.C. shall pay the fine of Rs. 5,000/- or shall suffer six

months' rigorous imprisonment in default of the same.

15. The office is directed to send copy of the judgment along with record of the lower Court for compliance of this order and execution of sentence awarded to the appellants and to intimate this Court within two months.

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