

**Kamla Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Feb-23-2012

**Judge :** Vinod Prasad

**Appeal No. :** Criminal Appeal No. 978 of 1981

**Appellant :** Kamla

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

**Judgement :**

This appeal has been preferred by the sole appellant Kamla against his conviction u/s 307 I.P.C. and imposed sentence of two years R.I. therefor recorded by IIInd Additional Session's Judge, Azamgarh, vide impugned judgement and order dated 6.3.1981, passed in S.T. No.502 of 1976, State vs. Sugriv and others, relating to P.S. Doharighat, district Azamgarh.

Stated briefly, prosecution allegations against the appellant, as was scribed by the informant Prem Singh(P.W.1), in his written report, Ext. Ka.1, were that on the festive day of Holi,27.3.75 at 9p.m., song and dance party of Phool Chand Harijan of village Mahula was putting up it's show at the door of Khurmilli, a collateral of the informant Prem Singh(PW1), which was adjacent to the informant's house in village Bankatia. Two mikes, facing different directions, east and south, towards village populations, were attached with it and hence sound decibel of those loudspeakers were much more. Same day, same time,in the same village,

another dance party of Ram Dahil of village Baridand, was also performing hundred paces away, at the door of village Pradhan Babu Lal. Only one mike was fixed with it facing towards down town village, and hence it's sound decibel was much less. Rankled by the said arrangement, persons belonging to Pradhan faction took it abash and, under leadership of Sugriv, s/o Babu Lal , village Pradhan, Kamla, Parmeshwar, Purshottam, Rambhuj, Basant, Ram Briksha, Shivraj, Dineshwar, Nagina, Panna Lal, Meghu, Kedar, Shivbachan, Barakhu, Sugriv, Mahatam, Bahadur and Lal Chand raided the door of Khurmulli, where song and dance party was performing. Accused Kamla was armed with a country-made pistol, Purshottam was armed with a ballam and rest of the accused were armed with clubs (lathies). No sooner this unlawful assembly arrived at the door of Khurmulli, they forcibly attempted to twist loudspeakers direction towards horizon, so that it's sound be not audible in the village, because of which a verbal tirade ensued between rival factions during which informant was threatened with his life. This brawl was soon followed by an instigation by Kamla, who thereafter shot at the informant, but informant sprinted and silhouetting himself behind a wall and saved his life. Fired pellets ricocheted from the ceiling and caused injuries to Prithvi, Harish Chandra and Ram Adhar, who were enjoying song and dance party at the door of Khurmulli. Gun fire created stampede. Nagina accused assaulted Khurmulli with lathi, whereas Mahatam assaulted Mukti Nath. Gayasuddin, loudspeaker person had also sustained injury in the incident. Swami Nath, Ram Nayan and many other villagers had witnessed this incident in the lights of three gas petro-maxes, which were burning at Khurmulli's door and it facilitated accused identification. Kamla tried to reload his country-made pistol, but informant caught hold of it and cartridge was dropped on the ground. Gathered spectators, who were enjoying the dance party, dispersed hither and thither, deserting incident scene. While fleeing from the spot, accused took away all the petro-maxes, two big carpets, a blanket, two bed covers, a harmonium and some curtains etc. Informant, after accused had retreated from the spot, went to a congress party worker, Ram Samujh Yadav, at Kakhbhar market, at 9.30/10 p.m., to lodge a protest and get his FIR registered with his help, but, meanwhile, all the eighteen miscreants also arrived there, armed with their respective weapons, and there also accused Kamla shot at Ram Samujh thrice, but providentially, he escaped unhurt

and ran away from the spot. Gun fires sound attracted Puddan, Kedar and Suryabhan Yadav,(village chowkidar), and many others, armed with torches and lathis, towards the spot, who apprehended accused Bahadur at the spot. Rest of the seventeen accused fled away from the spot, but while sprinting away, they carried transistor of Ram Samujh. Thereafter, informant accompanied with Ram Samujh, came to police station Doharighat and lodged his scribed FIR, Ext, Ka 1, same day at 11.00 P.M. vide chik FIR Ext. Ka.2.

Head Moharrir prepared chick F.I.R., Ext. Ka.2 and G.D. Entry Ext. Ka.3. S.O. Banshidhar Gupta, of P.S. Daharighat, commenced investigation into the crime on 28.3.1975, recorded statements of various witnesses and thereafter recorded statements of, accused Bahadur, Meghu, Shivbachan, Lal Chand and Barakhu, who all were arrested meanwhile. Thereafter P.W.5(I.O.) interrogated and penned down statements of Harishchandra, Muktinath and Khurmulli and subsequent thereto conducted spot inspection and sketched site plan map Ext. Ka.4. From the incident seen, I.O. had collected two empty cartridges and one live cartridge and had sealed them. Concluding investigation, on 24.4.1975, he had charge sheeted accused vide Ext. Ka.7.

Charge sheeting of the accused resulted their summoning and their case was committed to the Session's Court for trial, where it was registered as S.T. No.502 of 1976, State vs. Sugriv and others. Learned Trial Judge charged all the accused with offences under sections 147, 148, 307/149, 323/149 I.P.C. on 18.6.1979. Appellant accused Kamla was separately charged under section 307 I.P.C. Since all accused denied those charges and claim to be tried, to establish their guilt, trial procedure was under taken, during course of which, informant Prem Singh(P.W.1), Mukti Nath(P.W.2), Ram Adhar(P.W.3), Ram Samujh(P.W.4 ) and formal witness Banshidhar Gupta(P.W.5 ) were examined by the prosecution besides tendering documentary evidences.

Accused, in their statements u/s 313 Cr.P.C., denied incriminating circumstances appearing against them and pleaded defence of their false implication.

Learned trial judge, vide impugned judgement and order dated 6.3.1981 concluded, that prosecution had not been able to establish it's case against all the

accused, except the appellant, and therefore, acquitted rest seventeen accused from their respective charges u/s 147, 148, 307/149, 323/149 and 379 I.P.C. He, however, convicted only the appellant, u/s 307 I.P.C. and sentenced him to two years R.I., which conviction is under challenge in the instant appeal.

At the time when the appeal was called out for hearing, nobody appeared on behalf of the appellant to argue it and, therefore, Shri Sudist was appointed as amicus curiae.

I have heard learned amicus curiae and learned A.G.A., Sri Patanjali Misra for the State and I have perused the entire material existing on record including oral and documentary evidences tendered by the prosecution.

It is contended by learned amicus curiae that the appellant has been falsely implicated and since all other seventeen accused have been acquitted for all the charges, no reliance can be placed on the testimonies of prosecution witnesses in respect of the appellant only, who also deserved to be acquitted. It is further contended that nobody sustained any injuries in the incident and, therefore, prosecution story of resorting to firing by the appellant is a spurious allegation only to nail-in the appellant. It is next submitted that no offence under section 307 I.P.C. is disclosed against the appellant and, at the worst, he can be convicted only under section 324/511 I.P.C. It is, therefore, submitted that the appeal be allowed and conviction of the appellant be set aside and he be acquitted of the charge u/s 307 IPC.

Learned A.G.A., refuting the arguments by learned amicus curiae submitted that perusal of the record indicates that the case of the prosecution against the appellant is consistent without any inconsistency, that he had resorted to repeated firings at two persons, on two occasions, at two different times and places and therefore he has been rightly convicted. Learned A.G.A., therefore, submitted that the appeal lacks merits and be dismissed.

I have considered the arguments raised by both sides and I have analysed the documentary and oral evidences. Prosecution case against the appellant, from its inception, is clear and consistent that he was armed with a country made pistol

and had resorted to firing at the informant (PW1) and Ram Samujh, a congress party worker. This specific allegation was scribed by (P.W.1) in his written F.I.R. Ext. Ka.1 and was never given up at any time, not even during trial. All the facts witnesses adhered to the said allegation and, inspite of best efforts, defence had failed to dislodge them on the said aspect. Each of the prosecution witnesses, of fact, have corroborated and lend credence to each other in respect of firing made by the appellant at the informant and at Ram Samujh Yadav. Since defence has not been able to budge prosecution witnesses, there remains no doubt that appellant did resort to firing at (PW1) and Ram Samujh and hence prosecution case is consistent and creditworthy. The contention of learned amicus curiae that, since rest of the accused have been acquitted and therefore appellant be also acquitted does not carry much weight, as the case of the appellant is entirely different from other accused against whom, there was no convincing and credible evidences and only general and omnibus allegations were made. Merely, because other accused were acquitted, is no ground to acquit the appellant. His case stands apart from rest of the acquitted accused. There was no reason for the prosecution witnesses to narrate a false story, without any motive, against him. There was no enmity between the appellant and them prior to the present incident and hence there was absence of any reason to fabricate a fib story against him. Defence has also not been able to furnish any plausible reason for false implication. In such a view, it cannot be appreciated at all that without any reason, prosecution witnesses will maliciously accuse appellant as being the shooter in the incident. Participation of the appellant in the incident, therefore, stands proved. Further it is to be reminded that falsus in uno falsus in omnibus does not apply to our jurisprudential system. Consistent version without any incongruity narrated by independent, un-inimical witnesses, who had no axe to grind against the appellant, carries much weight, than a bald suggestion by the accused, without any basis, of his being falsely implicated.

Turning towards the crime committed by the appellant, from the evidence on record, it transpires that he had fired in the air and the pellets after being ricocheted from the ceiling, had caused simple injuries to three persons Harish Chandra, Ram Adhar and Prithivi. This version by (P.W.1) was never expatiated and /or amended or embellished by other prosecution witnesses. At the house of

Ram Samujh also appellant had not caused any injury to anybody. It is not clear from prosecution version as whether, there also appellant fired in air to disperse crowd or desist them from going to the police station or he had intended to murder Ram Samujh. There is dearth of convincing evidence on the record on the above aspect of the matter. In such a view, it cannot be concluded, with any degree of certainty, that the appellant had an intention to commit murder of anybody. What is culled out from entire facts and circumstances is that, he only wanted to cause hurt for dispersing crowd collected at the door of the informant and at the house of Ram Samujh. In such a view, prosecution has not been able to establish beyond all reasonable doubt that the appellant had requisite intention to commit murder of any body. Consequently, conviction of the appellant under section 307 I.P.C. cannot be sustained. He can only be held guilty under section 324 I.P.C. of causing hurt by his conscious reckless act to three persons.

Turning towards the sentence, since the incident had occurred more than thirty five years ago and appellant, as on date is about 60 years, and he had no criminal background and he must have settled in life by now and that there was no complaint against him during pendency of this appeal in this court of indulging into any criminal activity, that, to send him to penitentiary, at this belated stage, will not be in the interest of justice. In my humble opinion, period of imprisonment already undergone by the appellant, with fine of Rs.10,000/- and in default thereof to undergo six months simple imprisonment, for offence under section 324 I.P.C. will meet the ends of justice.

The appeal is allowed in part. Conviction of the appellant under section 307 I.P.C. and imposed sentence of two years R.I., are hereby set aside and instead appellant is convicted u/s 324 IPC, for which offence his sentence is also mollified to the period of imprisonment already undergone by him with fine of Rs.10,000/-. In default of payment of fine appellant shall serve six months simple imprisonment. Appellant is permitted to deposit the fine within a period of one month from the date notice of realisation is served upon him. His personal bond and sureties shall be discharged only after he has deposited the fine or has been arrested to serve out default sentence.

The appeal is partly allowed as above.

Let copy of the judgement be certified to the trial court for it's intimation.

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