

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 319 OF 2008

Subhash Chandra & Ors.

.... Appellants

Versus

State of U.P.

.... Respondent

With

CRIMINAL APPEAL NO. 1086 OF 2009
(Arising out of SLP (Crl.) No. 7304 of 2008)

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. Leave granted.
2. These appeals, which are being disposed of by this Judgment were filed by the appellants herein against the Judgment and Order dated 13th July, 2007 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 883 of 1991.
3. The appellants herein being aggrieved by the Judgment and Order dated 25th April, 1991 passed by First Additional District and Sessions Judge, Jaunpur had approached the High Court. The First Additional District and Sessions Judge, Jaunpur in S.T. No. 125 of 1985 convicted the appellants under sections 302 read with section

149 of the Indian Penal Code (in short "the IPC") and sentenced them to undergo imprisonment for life, under section 324 read with section 149 IPC and sentenced to undergo one and a half year rigorous imprisonment (R.I.); and under section 323 read with section 149 IPC, to undergo one year's R.I. The appellants Thakur Din, Sarju, Subhash Chandra, Sri Ram, Kedar Yadav, Hari alias Hari Ram Yadav and Ramesh Chandra have been further convicted under section 147 IPC and sentenced to undergo one year's R.I. and appellants Babu Ram and Sabhu alias Sahab din have been further convicted under Section 148 IPC and sentenced to undergo R.I. for one and a half years. It was ordered that all the sentences would run concurrently.

4. The aforesaid Sessions Case arose out of an occurrence, which took place on 22.08.1984 at about 9 p.m. in the field situated at the outskirts of village Junedpur. The said place is said to be located at a distance of about 3 miles from the Police Station, Sarpatha in the Jaunpur District. The First Information Report of the incident was recorded on the basis of a written report submitted by Jai Narain Yadav, son of Sahab Din alias Dahpel Yadav, resident of village –Junedpur, which comes under the Sarpatha Police Station, Jaunpur. The said FIR was lodged on 23.08.1984 at 2.30 a.m. In the said First Information Report, the informant alleged

that on 22.08.1984 the informant, his father Sahbu alias Dehpel, his 'Chacha' Phool Chand and Shiv Shankar Tiwari from his village went to the field for irrigating the wheat crop. The father of the complainant was watering the field and the complainant, his 'Chacha' Phool Chand and Shiv Shankar Tiwari were sitting on the 'mendh' of the field and were examining the flow of the water in the field. At about 9 p.m., the accused persons, Sahbu @ Sahabdeen son of Jagdev, Subhash Chandra son of Jagdev, Baburam, Kedar, Ramesh Chandra and Hari son of Sahabdeen, Thakurdeen son of Jagdev, Subhash Chandra, Sarju, Shriram son of Thakurdeen, Baldev son of Alagu, Shiv Kumar, Ram Kumar son of Shubh Karan armed with lathi and ballam came there. The complainant and Shiv Shankar, sitting on the mendh, switched on their torch. Thereafter, the accused gave a 'lalkara' and started assaulting the persons sitting on the Mendh and started saying that today these persons should be killed in order to solve their problem. The father of the complainant, who was watering the field, switched on his torch and ran away. Persons near the field also arrived there. Shiv Shankar Tiwari, the complainant and Phool Chand Tiwari sustained injuries. The accused – Sahabdeen and Baburam were armed with ballam and the rest of the persons were armed with lathis.

5. On the basis of the written report received, a criminal case was registered under sections 147, 148, 149, 307 and 323 IPC against the accused persons on 23.08.1984. The injured were taken for medical treatment to the Primary Health Center, Suetha Kalan by the police, where, on 23.08.1984 at night, they were medically examined. However, Phool Chand Tiwari immediately died at the Primary Health Center itself. On receipt of the aforesaid report, the criminal case, which was registered earlier under Section 307 IPC was converted to a case under Section 302 IPC. The investigating officer thereafter started investigation into the matter and took the accused – Sarjoo Yadav into custody. He also conducted inquest on the dead body. The doctor was requested to conduct post-mortem examination upon which he conducted such examination and found as many as 18 anti-mortem injuries on the body of the deceased. So far as two other injured persons are concerned, their medical reports were also prepared. The doctor opined that the death of the deceased was caused due to shock and haemorrhage as a result of anti mortem injuries specifically injury nos. 6, 15 and 18.

6. The investigating officer after recording the statements of the witnesses and collecting the evidence completed his investigation and submitted the charge sheet.

7. The trial court framed charges against the accused to which the accused persons pleaded not guilty. Consequently, witnesses were examined on behalf of the prosecution.

8. The accused persons were examined under Section 313 of the Criminal Procedure Code and all of them in the course of recording of their statements denied having participated in the crime and stated that they have been falsely implicated in the case. Sarjoo Yadav – accused alleged that he was also injured during the scuffle, which took place on 22.08.1984 and he produced the medical examination report which was given by the medical officer of the Primary Health Center where he found the following injuries on his body:

1. Lacerated wound 5 cm x .4cm, skin deep, bluish red in colour with zig zag margin, 11.5 cm above the tragus of right ear.
2. Contusion 7cm x .5 cm on right shoulder lateral aspect, bleeding per right ear.

9. The aforesaid injuries were simple in nature and caused by blunt object about 12 hours in duration. The trial court concluded the trial and after hearing both parties passed an order of conviction against the appellants holding them guilty of the charges framed against them. The trial court passed an order of sentence as stated hereinbefore.

10. Being aggrieved by the aforesaid Judgment and Order of conviction and sentence, the appellants filed appeal before the High Court of Allahabad. The High Court by the impugned Judgment and Order dated 13.07.2007 affirmed the order of conviction passed against the accused persons by the trial court.

11. Mr. S.C. Maheshwari and Mr. R.K. Shukla, learned senior counsel, appearing for the appellants placed several issues before us. They submitted that there are major contradictions between the statements made in the First Information Report and the statements of the witnesses, particularly, with regard to nature of the incident. They also highlighted such contradictions in the statements of witnesses' vis-à-vis, injury report and submitted that the aforesaid contradictions are being very vital and major and no order of conviction could have been passed against accused – appellants on the basis of such contradictory statements. It was also submitted by them that all the injuries were caused by blunt weapon in the course of brawl and that there was no intention to cause death, and therefore, conviction under Section 302 IPC was excessive. It was also submitted that there was no motive of any of the accused persons to commit the crime, which is also clear on a reading and analysis of the evidence of PWs 1 and 2, and therefore, there is total non-application of mind in passing the order of

conviction against the accused/appellants. They also submitted that the injuries received by PWs 1 and 2 are only superficial injuries, which are almost similar to one received by one of the accused persons, and therefore, no conviction under Section 302 IPC was called for.

12. In order to appreciate the contentions of the counsel appearing for the appellants we have scrutinized the evidence on record. The occurrence took place on 22.08.1984 at about 9 p.m. The place of occurrence is admittedly the agricultural land of the complainant party. During the course of the aforesaid incident Phool Chand Tiwari received grievous injuries whereas PWs 1 and 2 also injured when the accused persons, who were armed with ballam and lathis, attacked them. The Police Station is located at a distance of about 3 miles from the place of occurrence, and therefore, a report of the incident at about 2.30 a.m. must be held to be prompt and without delay. After recording the First Information Report on the basis of the statement of the informant all the injured persons were sent to the Primary Health Center wherein a doctor examined them and following injuries were found in their bodies:

13. On the body of injured Jainarain, PW 1, following injuries was found:

1. 4 cm swelling just above the right elbow.
14. On the body of injured Shiv Shankar Tiwari, PW 2, following injuries were found:
1. Lacerated wound 3.5 cm x 5 cm x skin deep, red colour, on the head, near the right ear – 1 cm away.
 2. Abrasion 1.3 cm x 0.5 cm on the right shoulder.
 3. Contusion 5 x 4 cm on the left elbow.
 4. Contusion 2 x 2 cm on the left sacroiliac joint c/o pain in left knee.
15. On the body of accused – Sarakpp Yadav, son of Thakur Deen Yadav, following injuries were found:
1. Lacerated wound 5cm x .4cm x skin deep bluish red in colour with zig zag margin 11.5 cm above the tragus of right ear.
 2. Contusion 7 x .5cm on right shoulder lateral aspect bleeding per right ear.
16. Immediately thereafter Phool Chand Tiwari died and his post mortem examination was conducted on 24.08.1984 by Dr. R.K. Singh, Senior Medical Officer, Sri Keshav Prasad Gupta Hospital, Varanasi. In the aforesaid post mortem examination on the body of deceased Phool Chand Tiwari, following injuries were found:
1. Lacerated wound 8 cm x .5 cm x scalp and bone of skull on the top of the left side of the head, 11 cm above the (illegible).

2. Lacerated wound 1.5 cm x .5 cm x scalp on the top of the posterior aspect of the head, 12 cm above and backward from the right ear.
3. Lacerated wound on the top of the head towards posterior aspect of skull in between injury No. 1 and 2, .4 cm x .5cm x scalp 2 cm behind the injury No. 1.
4. Lacerated wound 1 cm x .5 cm x scalp on the right side of the forehead 1.5cm above the right eyebrow.
5. Lacerated wound 3 cm x .5 cm x scalp on the left side of the forehead just above the left eyebrow.
6. Traumatic swelling with contusion 18 cm x 8 cm on the front aspect of the chest, left side and front aspect of the left shoulder joint and left arm front aspect. There is fracture of the upper 1/3 of the humerus of the left arm and depressed fracture of 2nd, 3rd and 4th ribs on the left side of the chest left lung is lacerated and torn in the middle portion.
7. Abraded contusion 15cm x 7cm along with the posterior aspect of the left arm 6cm below the injury No. 6.
8. Incised wound 3cm x 0.5cm x skin on the dorsum of the left hand near the root of the index finger of the left hand.
9. Stab wound 1cm x 0.25cm x skin on the dorsum of the left hand near the root of the index finger on the left hand.
10. Stab wound 1cm x 0.25 x skin on the dorsum of the left hand, near the root of the middle finger of the left hand.
11. Contusion 18cm x 6cm along the outer aspect of the left thigh 2 cm above the knee joint.
12. Incised wound 1.5cm x 0.25cm x skin from the above downwards on the front of the left leg 12cm above the ankle joint.
13. Traumatic swelling 1 cm x 5 cm along the front aspect of the left leg 15cm below the left knee.

14. Incised wound from above downwards 1cm x 0.5cm on the outer aspect of the right forearm 7cm right elbow joint.
15. Contusion 15cm x 2.5cm on the front of the right side of the chest, 9cm below the right sterno calvicular joint. There is fracture of 3rd rib in the right side of the chest and right lung is lacerated.
16. Contused area 15cm x 7cm on the front of the right arm on right shoulder joint.
17. Contused area with multiple contusions on the upper part of the back. Both across both shoulder blades in area 18cm x 10cm.
18. Contused area with multiple contusions on both side of the back in lower part 25cm x 12cm, 9cm below the injury No. 17 liver and right kidney is lacerated corresponding to this ante mortem injury.

17. During the trial, the prosecution examined six witnesses including PWs 1 and 2, who were the injured witnesses. The post mortem examination report and the injury reports were also proved in the trial. A comparative reading of the aforesaid injury reports and the post mortem examination report along with the statements of the witnesses and the statements made in the First Information Report would indicate that the deceased received grievous injuries both with blunt and sharp edged weapons. There are stab wounds, incised wounds along with lacerated wounds, which suggest that not only blunt weapon was used but sharp edged weapon was also used. In fact, the injury report submitted by the doctor of the Primary Health Center had also stated that sharp weapon like ballam was also used. When we looked into the evidence of the

doctor who had conducted the post mortem examination and given a report, it is revealed that his evidence is also of similar nature. He had stated that the death of the victim was caused due to shock and haemorrhage as a result of ante mortem injuries, specially injury nos. 6, 15 and 18. It is, therefore, established that in the First Information Report the nature in which the incident had occurred and the nature of the injuries received by the deceased and the injured were correctly recorded. The deceased has suffered multiple injuries.

18. So far as injuries received by accused – Sarjoo is concerned, it has come in the statement of the deceased recorded by the investigating officer that he had snatched the lathi from Sarjoo and wielded the same in defence and in the process, Sarjoo sustained injuries. Similar statement was also made by PW1, which clearly proves and establishes that the deceased –Phool Chand Tiwari had resisted the accused and tried to snatch his lathi, which probably had caused such minor injury to Sarjoo. That fact also proves and establishes that none of the complainant party carried any weapon with them. They had not even carried a lathi with them otherwise there would have been more injuries. We do not find any vital and major contradictions in between the statements in the First Information Report and the statements recorded during the trial of

PWs 1 and 2. The statements of the aforesaid witnesses are also sufficiently corroborated with the medical evidence on record.

The contradictions, which have been sought to be pointed out, are found to be only minor in nature and it is no way affect the substratum of the prosecution case. The very fact that the accused were having blunt and sharp edged weapons at the time of scuffle shows the intention of the accused persons to commit the offence so as to prevent the complainant party from watering their field. The had gone to the place of occurrence fully prepared and properly armed with the intention of causing death and bodily injuries to the deceased as also to the other injured persons.

19. It was also argued that the First Information Report filed against all the family members of "Jagdev". That may be correct but it is also true that the family members of "Jagdev", mentioned in the First Information Report, went to the agricultural field of the complainant party being properly armed and that they first prevented them from watering in the agricultural field and then clashed with them, and therefore, they have been named in the First Information Report, which was lodged immediately after the incident.

20. The statements in the First Information Report is by and large are corroborated with the evidence of the witnesses, and therefore,

there cannot be any doubt against the accused persons that they have committed the offence. It was next submitted by the counsel appearing for the appellants that Hari Ram Yadav was a minor on the date of occurrence. This fact was raised for the first time before the High Court, which looked into the matter and upon making an inquiry found that he was a major on the date of occurrence. In that view of the matter, the aforesaid submission is also without any substance.

21. We find no merit in these appeals and the same are dismissed accordingly.

.....J.
(S.B. Sinha)

.....J.
(Dr. Mukundakam Sharma)

New Delhi;
May 15, 2009