

HARI SHANKAR SHUKLA

A

v.

STATE OF U.P.

(Criminal Appeal No. 1159 of 2007)

APRIL 05, 2017

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[R. F. NARIMAN AND PRAFULLA C. PANT, JJ.]

Penal Code, 1860 – s.304 Part I, ss.307, 323 – Acquittal by trial court – High Court convicted accused no.3 u/s.304 Part-I, u/s.307 for attempt to murder and 10 years rigorous imprisonment – Prosecution case that scuffle led to pistol shot – Medical evidence confirmed that there was scuffle – All eye witnesses including two injured eyewitnesses clearly stated that it was appellant who opened fire and this bullet hit the deceased causing his death – Evidence of prosecution witnesses was consistent – Conviction upheld but sentence reduced to 6 years.

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Partly allowing the appeals, the Court

HELD: DW-1 gave medical evidence as to the extent of injuries that were caused to the appellant himself. Five injuries are spoken about, the first two being serious injuries, though described as simple in nature. The first is lacerated wounds deep in the scalp on the right side of the forehead. The second is an incised wound, skin deep, on the left side of the forehead. The other three injuries are contusion on the back of lip at left shoulder joints, contusion on the front of middle at left arm and abrasion on the front of middle of right leg. All these injuries show that there was indeed a scuffle. In fact, the statement under Section 313 of the Criminal Procedure Code made by the accused, in answer to the last question – “Do you want to say something?” was that he sustained injuries. This is a case where the conviction deserves to be upheld, but the sentence needs to be reduced to six years and fine amounting to Rs.7,000/-. [Paras 11, 12][344-C-E]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1159 of 2007.

From the Judgment and Order dated 01.03.2007 of the High Court

H

A of Allahabad in Government Appeal No. 360 of 1996

WITH

Criminal Appeal No. 655 of 2017.

B Amrendra Sharan, Sr. Adv., Rakesh Mishra (For Shekhar Kumar),
Amit Yadav, Nilakanta Nayak, Shishir Deshpande, Advs. for the
Appellant.

M. R. Shamshad, Vivek Vishnoi, Aditya Samaddar, Zaki Ahmad
Khan, Advs. for the Respondent.

The Judgment of the Court was delivered by

C **R. F. NARIMAN, J.** 1. Permission to file the special leave petition
in Criminal Miscellaneous Petition No. 932 of 2008 is granted.

2. Delay condoned.

3. Leave granted.

D 4. The present cases arise out of a death that was caused on 11th
July, 1992. The father and mother of the deceased, both injured eye-
witnesses and the accused persons were residents of village Mamkhor.
It appears that there was a dispute between the parties regarding land.
It was alleged that the accused persons, three in number, had made an
E encroachment on a part of Sehan land of the injured eye-witnesses and
had placed cattle troughs there. At about 6.00 a.m., it was alleged that
the accused persons were heaping earth on the southern side of the cattle
troughs and were collecting bricks. The daughter of PW-4, one Kumari
Bindu, informed her father about the encroachment being made by the
F accused persons on the Sehan land. At this point, both PW-3 and PW-
4 came out of the house and questioned the accused persons as to why
they were putting soil on the land. On this, an altercation between the
two sides took place. One of the accused, Gulab Shukla, exhorted his
associates to assault PW-4. At this point, after this incident, the story
diverges. According to one version, Hari Shankar Shukla, who is accused
G No.3 and the petitioner in the special leave petition before us, gave a
phawra blow, whereas, according to another version Gulab Shukla gave
the said blow to the deceased. In any case, it appears that there was a
scuffle between the parties, at which point, accused No.3 went back to
his house and came out with a country made pistol. At this point, PW-1,
H a family member, PW-3 and PW-4 all stated that this particular accused

fired one bullet from the country made pistol, which caused the fatal death of Umesh Shukla. As stated hereinabove, PW-1, PW-3 and PW-4 were eye-witnesses, PW-3 and PW-4 being injured eye-witnesses. After going into the evidence in some detail and after finding the First Information Report, which was filed by PW-2 Chowkidar doubtful, the trial Court went into various contradictions between the three eye-witnesses and arrived at a conclusion that in any case PW-1 could not be relied upon at all. PW-3 and PW-4 were injured eye-witnesses but their version being discrepant, could not be relied upon. Finally, the trial Court concluded as follows :-

“Thus, the three witnesses have given three different versions about the starting of the alleged marpit. According to Mahendra Shukla PW-1, Gulab caught hold of Jagdish and Hari Shankar inflicted phawra blows. As against it Savitri, PW-3 has stated that Gulab inflicted Kudal blows on the head of Jagdish Narain. However, statement of both the witnesses also contradictory on the point of situation, in which phawra blow was given. Third witness Jagdish Narain, PW-4 stated that Hari Shankar and Gulab both inflicted phawra blows. Not only this, PW-1, has further stated that, all the three accused were armed with phawra and they all gave phawra blows hitting Jagdish Narain. Thus the number of Phawra the persons inflicting phawra or Kudal are different in the statement of different witnesses. This further makes the prosecution story highly doubtful.”

5. The trial Court went on to state that, after going through the entire evidence, the incident itself was doubtful, and also commented on the fact that there was some semi-digested food in the stomach of the deceased. The medical evidence shows that it was 2 to 3 hours in the stomach before the deceased was fired upon, and this showed that the incident could not have taken place at 6.00 a.m. at all. On this footing, the trial Court acquitted all the three accused before it.

6. In an appeal filed by the State, the High Court convicted the accused No.3, the SLP petitioner before us under Section 304 Part-I of the Indian Penal Code for the death of Umesh Shukla; Section 307 for the unsuccessful murder attempt on Savitri Devi PW-3, who is the appellant before us under Section 323 and sentenced the accused to 10 years rigorous imprisonment under Section 304 Part-I, three years rigorous imprisonment under Section 307 and six months rigorous imprisonment

A under Section 323 together with fine. The other two accused, with whom we are not concerned, were sentenced under Section 323 of the Indian Penal Code for six months.

7. Shri Amerendra Sharan, learned senior counsel appearing on behalf of the appellant, has argued before us that the trial Court's judgment is a well reasoned judgment of acquittal, and this being so, the High Court ought not to have interfered, as there was nothing perverse about the said judgment. According to him, the High Court made a couple of serious errors. For example, X-Ray reports, which were not exhibited before the trial Court, were relied upon in order to demonstrate that there were injuries on the injured eye-witnesses. He also stated that the various discrepancies pointed out by the trial Court were not dealt with by the High Court and the High Court, therefore, should not have interfered with this well reasoned judgment. In any event, according to learned senior counsel, even if we were to agree with the High Court, ultimately, the incident having taken place many many years ago and the appellant having served only nine months of the sentence imposed, at this point of time, even if convicted, the jail sentence should not be imposed but additional fine be imposed instead.

8. Learned counsel appearing on behalf of the State has argued in support of the High Court's judgment. According to the learned counsel, the single most important event is the shooting of the deceased Umesh Shukla by the appellant before us. On this, as correctly pointed out by the High Court, there is no discrepancy between PW-1 and PW-3 and PW-4, who are injured eye-witnesses in the matter. All three state that the appellant before us, after the scuffle, went back to his house, took out a pistol, and shot one bullet, and it is to this bullet that the deceased Umesh Shukla ultimately succumbed. He also went into the High Court judgment in some detail, and said that some of the discrepancies pointed out by the trial Court were dealt with by the High Court and that the High Court Judgment, being well considered and the fact that the appellant before us is only convicted under Sections 304 Part-1/307/323, this should not be disturbed.

9. We have also heard learned counsel appearing on behalf of the injured eye-witness PW-3, Savitri Devi, who was the mother of the victim. Shri Sharan raised a preliminary objection stating that she had not appealed against the judgment of the trial Court dated 20th October, 1995 and hence should not be heard at all. According to us, this being a

technical objection, it is only by the 2009 amendment to Section 372 of the Criminal Procedure Code that persons like PW-3 have also been granted the right to appeal. Obviously, this provision not being there in 1995, PW-3 could not, at that point of time, have filed an appeal. We have heard learned counsel for PW-3, and he has supported what the State Counsel has argued.

10. We are in broad agreement with the judgment of the High Court for the basic reason that the High Court has specifically found that all the eye-witnesses produced by the prosecution have clearly stated that it was the appellant and the appellant alone, who opened fire from the main door of his house, and it is this bullet that hit Umesh Shukla that ultimately caused his death. Here, the High Court, appears to be correct, and the very fact that all the three eye-witnesses, two of them being injured eye-witnesses, have given the same evidence, as to this vital act on the part of the appellant shows that the High court judgment cannot be reversed in appeal. We may add that the trial Court judgment does not advert to this at all, but instead adverts to other discrepancies, all of which relate to the scuffle that took place between the parties, after which the pistol was fired by the appellant, on which there is no discrepancy, as has been held above. Ultimately, the High Court holds as under :-

“The culpable homicide has been defined under section 299 IPC according to which, “whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.” The culpable homicide is punishable under Section 304 IPC. The respondent Hari Shankar Shukla was thus, responsible for culpable homicide of Umesh Shukla which did not amount to murder and in doing so, the other co-accused Gulab Shukla and Budhi Shukla had no common intention, but when all the three accused persons were doing mar peet with phawra and brick bats etc., they had common intention to cause injuries. In such circumstances, the accused Hari Shankar Shukla was guilty for the offence, punishable under Section 304 Part-I of the Indian Penal Code for the death of Umesh Shukla and making attempt to cause death of Smt. Savitri Devi by causing injuries punishable under Section 307 IPC. The other co-accused Gulab Shukla and

A Budhi Shukla had caused simple injuries to Jagdish Narain Shukla
 PW-4 in furtherance to common intention of all, therefore, Hari
 Shankar Shukla was also liable to be punished for the offence
 punishable under Section 323 read with Section 34 IPC but for
 their simplicitor role, the co-accused Gulab Shukla and Budhi
 B Shukla were guilty for the offence punishable under Section 323
 IPC Only.”

11. We are in agreement with this finding of the High Court.
 However, it needs to be added that DW-1 gave medical evidence as to
 the extent of injuries that were caused to the appellant himself. Five
 C injuries are spoken about, the first two being serious injuries, though
 described as simple in nature. The first is lacerated wounds deep in the
 scalp on the right side of the forehead. The second is an incised wound,
 skin deep, on the left side of the forehead. The other three injuries are
 contusion on the back of lip at left shoulder joints, contusion on the front
 of middle at left arm and abrasion on the front of middle of right leg. All
 D these injuries show that there was indeed a scuffle. In fact, the statement
 under Section 313 of the Criminal Procedure Code made by the accused,
 in answer to the last question – “Do you want to say something?” was
 that he sustained injuries.

12. We, therefore, find that this is a case where the conviction
 E deserves to be upheld, but the sentence needs to be reduced to six years
 and fine amounting to Rs.7,000/- (rupees seven thousand only).

13. We order accordingly.

14. The appeals are allowed to this limited extent only.

F 15. The appellant in Criminal Appeal No. 1159 of 2007 is on bail.
 His bail bonds shall stand cancelled. The appellant shall be taken into
 custody forthwith to serve out the remaining sentence.