

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1506 OF 2019

SANTOSH & ANR.

Appellants

VERSUS

STATE OF UTTAR PRADESH

Respondent

J U D G M E N T

1. This appeal under Section 2(A) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 is directed against the judgment and order dated 08.03.2019 passed by the High Court of Judicature at Allahabad in Government Appeal No.448 of 2004.

2. The basic factual aspects of the matter as set out by the High Court in its judgment are extracted hereinbelow for facility:

"3. On the complaint (Ex-Ka-1) of Shalendra Kumar Tripathi (PW-1), FIR (Ex-Ka-15) of Case Crime No. 160 of 1998 was registered under Section 147, 148, 149, 307, 302 IPC at P.S. Shahpur, district Gorakhpur, on 23.03.1998 at 21:30 hours, by Head Moharrir Tulsi Ram (PW-8), against Uma, Bhola, Santosh, Gopal, Shalesh and some unknown accused. It has been stated in the FIR that today on 23.03.1998, the informant along with his brother-in-law Sri Vivek Kumar Pandey was returning towards his quarter, from Dharamshala, after purchasing vegetables. As soon as they reached at Bauliya colony, Durga Temple, they heard loud noise and it appeared that the quarrel was going on. At that time, Asgar came and informed them that Uma, Bhola, Santosh, Gopal, Shalesh, along with his other friends were abusing and assaulting the ladies and children of his family. He asked them to go and pacify them. In the meantime Ramesh Yadav, Ramesh Tiwari, Chunna Pal also came

there from northern side, on scooter and motorcycle. They all proceeded towards the quarter of Asgar along with him at about 8:30 PM. In the meantime, Uma (Magahia dom), Bhola (dom), Santosh son of Bhola, Shalesh son of Gopal armed with gupti and pistol, Gopal and his other friends armed with hockey and danda, challenged them hurling abuses and exhorted to assault them and none of them would be escaped as they were helpers of Asgar. The accused chased them and opened fire upon his brother-in-law, Ramesh Yadav and Asgar. After receiving firearm injury, his brother-in-law tried to hide in a quarter in western side, where aforesaid persons reached and committed his murder, causing gunshot injury. Ramesh Yadav also received gunshot injury. Asgar also received injury. Hearing hue and cries, various persons came on spot and intervened in the matter, as a result of which, they could save their life. On the spot, dead body and motorcycle TVS Suzuki UP 51-1603 of his brother-in-law, scooter and Bullet motorcycle were lying. After lodging the report legal action be taken.

4. After registration of FIR, SHO Kapil Muni Singh (PW-7) started investigation. He copied the check FIR and G.D. entry in case diary. He recorded statement of Shalendra Kumar Tripathi the informant. He made spot inspection and prepared site-plan (Ex-Ka-10), on pointing out of informant. He received blood stained and plane floor from the place where dead body of Vivek Kumar Pandey was lying and prepared its recovery memo (Ex-Ka-11). He took into possession the motorcycles TVS Suzuki UP 51-1603, Bullet URX 7247 and scooter UMH 2242 and prepared its recovery memo. He recorded statements of the witnesses of recovery memos and Ramesh Tiwari. He visited Emergency Ward of District Hospital, Gorakhpur and tried to record statements of injured Asgar and Ramesh Yadav but they were not in position to give statement. On the basis of statements of the witnesses, he added Section 452, 504, 506 IPC in the case. On 24.03.1998, he recorded statement of Santosh Upadhyay and the injured Asgar and Ramesh Yadav. On 25.03.1998, he arrested Uma, Bhola and Ravi Shankar and recorded their statements. They confessed their guilt and became ready for recovery of the weapons used in commission of crime. On the pointing out of Uma Shankar, one pistol of 12 bore with one empty cartridge fasten in its barrel, on the pointing out of Bhola, one gupti and on the pointing out of Ravi Shankar one hockey were recovered. He got prepared recovery memo (Ex-Ka-12) of the weapons through SI R.K. Gautam. He sent the clothes of the deceased, blood stained and plane floor, pistol, empty cartridge and gupti for chemical examination through letter (Ex-Ka-13). He obtained injury reports of Asgar and Ramesh Yadav and copied it in case diary on 26.03.1998. He recorded statements of witnesses of the Inquest. He

recorded statement of Chunna Pal on 10.05.1998. He submitted charge sheet (Ex-Ka-14) against the accused, on which cognizance was taken.

5. On the basis of recovery memo (Ex-Ka-12) of the weapons, FIR (Ex-Ka-17) of Case Crime Nos. 162 and 163 of 1998 were registered under Section 3/4/25 of Arms Act, 1959 on 25.03.1998 at 19:50 hours at P.S. Shahpur, district Gorakhpur, against Uma @ Uma Shankar and Bhola, by Head Moharrir Tulsi Ram. SI Anil Kumar Singh (PW-9) investigated the matter. He prepared site-plan (Ex-Ka-18) of place of recovery. He recorded statements of the witnesses and on completion of investigation, he submitted charge sheets (Ex-Ka-19 and Ka-20), on which cognizance was taken.

6. Asgar Ali and Ramesh Yadav went to District Hospital Gorakhpur. In hospital, Dr. S.S. Parvez (PW-6) examined injuries of Ramesh Yadav on 23.03.1998 at 9:45 PM and prepared Injury Report (Ex-Ka-8). He examined Asgar on 23.03.1998 at 10:10 PM and prepared Injury Report (Ex-Ka-9)."

3. The injuries suffered by Ramesh Yadav and Asgar were noticed by Dr. S.S. Parvez (PW-6) and the injuries were as under:

"Ramesh Yadav-

- (1) Incised wound 3cm x 0.5cm x scalp deep, vertical on the middle part of the left eye brow, bleeding present.
- (2) Lacerated wound 3cm x 0.5cm x scalp deep, on the outer aspect of left eyebrow, bleeding present.
- (3) Lacerated wound 1.5cm x 0.5cm x cartilage deep, on the middle of the nose, bleeding present, KUO (kept under observation), Advised X-Ray of Nose.
- (4) Lacerated wound 1.5cm x 0.5cm x muscle deep, 2cm below the left eye, bleeding present.
- (5) Contused Trans swelling on the left side of face and forehead, in the area of 10cm x 7cm, KUO, Advised X-Ray of face.
- (6) Abrasion 5cm x 2cm on the left side back, lateral aspect.
- (7) Incised wound 1cm x 0.5cm x depth, KUO, on the left side back, middle part.

- (8) Incised wound 1cm x 0.5cm x depth, KUO, on the right side back, middle part. Both are KUO, advised X-Ray of the chest.
- (9) Incised wound 1cm x 0.3 cm on the left side of abdomen, depth KUO, Injury KUO, advised X-Ray.
- (10) Incised wound 0.5cm x 0.3cm x depth KUO, on the left side of chest, Injury KUO, advised X-Ray.
- (11) Incised wound 0.5cm x 0.3cm x depth KUO, on the right side of chest, Injury KUO, advised X-Ray.

Asgar Ali -

- (1) Lacerated wound 1cm x 0.4cm x scalp deep on his back of head, right side, blood oozing, 11cm above and back of right ear, KUO (kept under observation), Advised X-Ray of skull.
- (2) Trans. swelling, tender, 5cm x 4cm on the left wrist joint, KUO, advised X-Ray of the left wrist with hand.
- (3) Abrasion 3cm x 1.5cm, just above the right knee joint.
- (4) Abrasion 5cm x 0.25cm on the middle part of he back, upper part."

4. The autopsy on the body of the deceased was conducted by Dr. Shyam Lal Barnwal (PW-4) on 24.03.1998 at 4.00 p.m., who found the following ante-mortem injuries on the body of the deceased:

- “(i) Multiple lacerated wound, in an area of 14cm x 12cm, on the right side of abdomen, varying in size, 1.5cm to 2cm in length and 0.5cm in width and muscle deep.
- (ii) Firearm wounds of entry, 1.5cm x 1.5cm x abdomen cavity deep, on right side abdomen, upper part, blackening present, margin inverted, underlying peritoneum, liver lacerated and one metallic cog shot recovered from abdomen cavity.
- (iii) Multiple incised wound in an area of 12cm x 8cm, on the left side of chest, varying in size 1.5cm to 2cm in length and 0.5cm in width, muscle deep.

- (iv) Incised wound 3cm x 0.5cm x muscle deep on the right forearm, upper part.

In the internal examination, peritoneum was lacerated. Abdomen cavity contained 2 liter blood. Stomach contained 3 ounce watery fluid. Small Intestine was empty and large intestine contained gases and fecal matter. Liver was lacerated. Urinary Bladder was empty. According to opinion of the Doctor, death was caused due to shock and hemorrhage, as a result of ante-mortem injuries."

5. After completion of investigation, six accused persons, namely, Gopal, Bholu, Uma, Ravishankar, Santosh and Sailesh were tried for having committed the offences punishable under Sections 147, 148, 149, 323, 307, 302, 504, 506 IPC in the Court of the Additional Sessions Judge, Court No.3, Gorakhpur in Sessions Trial No.571 of 1998.

6. Apart from examining the informant Shailendra Kumar Tripathi as PW-1, the prosecution mainly relied upon the evidence of the injured witnesses.

7. PW-2 Asgar in his testimony narrated that he and Ramesh Yadav as well as the deceased were surrounded and blows by hockey sticks were showered upon them whereafter the deceased Vivek had taken shelter in someone's house to save his life. The accused persons gave him a chase and gunshot was fired at Vivek in the house where he had taken shelter. As regards the assault on the witness himself, he gave sufficient particulars in his examination-in-chief. Nothing substantial was extracted in the cross-examination.

8. PW-3 Ramesh Yadav gave details about the way the incident had developed and stated as under:

"Shailesh, Santosh and Uma fired gunshots with an intent to kill us. All of them chased us. We ran to save us. Vivek, Asgar and I were cornered. I sustained gunshot injury on my back. After cornering us, they started assaulting with gupti, latho and sticks.

When Vivek ran towards west to save his life, the accused chased him. He hid himself by entering the house of Mr. Sharma. The accused pushed the door and shot him. After committing his murder the accused while coming out were uttering: "Saala bahut paisa mangta tha, ab nahin mangega. Uska kaam tamam kar diya (He has been repeatedly asking for money, now he will not ask for same. We have killed him)".

When the accused cornered, fired gunshot and started assaulting. Vivek sustained gunshot injury as also the injuries caused by gupti, lathi and stick. Asgar and I sustained several injuries."

The examination further indicated that the witness was required to be hospitalized for a week.

9. The Trial Court by its judgment and order dated 19.08.2003 found that the case of the prosecution as against the accused was not proved. The Trial Court thus acquitted the accused of all the charges levelled against them.

10. Being aggrieved, the State preferred Government Appeal No.448 of 2004 in the High Court. The High Court found the presence of PW1 Shailendra at the place of occurrence to be doubtful but found the evidence of the injured eye-witnesses i.e. PW2 Asgar and PW3 Ramesh Yadav to be credit worthy. It was observed:

"According to medical evidence, the deceased Vivek Kumar Pandey received one gunshot injury while Asgar Ali and Ramesh Yadav, the remaining injured did not receive any gunshot injury. Showing pistol in the hands of Uma and Shailesh and their participation in the incident appears to be exaggeration. Many unnamed accused assaulted with lathi as such participation of Ravi Shankar and Gopal are also doubtful and appears to be exaggeration. Uma, Ravi Shankar, Gopal and Shailesh are entitled for benefit of

doubts. However, participation of Bhola, armed with *gupti* and Santosh armed with pistol and some unnamed accused armed with *lathi* and causing injuries to Vivek Kumar Pandey (the dec

11. Accepting the appeal insofar as accused Santosh and Bhola were concerned, the High Court reversed the order of acquittal and convicted said two accused of the offences punishable under Sections 302, 324 read with 34 IPC and awarded them sentence of life imprisonment under the first count and imprisonment for three years on the second count. The acquittal of rest of the accused persons was affirmed by the High Court.

12. The convicted accused being aggrieved have preferred this criminal appeal.

13. We have heard Mr. Aldanish Rein, learned Advocate for the appellants, and, Mr. Vinod Diwakar, learned Additional Advocate General for the State.

14. The prosecution has mainly relied upon the eye-witnesses account unfolded through the testimonies of PW-2 and PW-3. The injuries suffered by these two witnesses and the fact that those injuries were noticed by the concerned Doctors soon after the incident, sufficiently prove the presence of the witnesses at the time of the occurrence. Their testimonies are quite cogent and consistent with the medical evidence on record. Though the High Court was sitting in appeal against acquittal, in the facts and circumstances on record, the interference at the hands of the High Court was quite justified. We, therefore, see no reason to take a

different view in the matter.

15. Affirming the view taken by the High Court, we dismiss this appeal. The appellants shall serve out the sentence awarded to them.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi,
February 22, 2022.