

A.F.R.

Reserved on 27.02.2025

Delivered on 02.05.2025

Neutral Citation No. - 2025:AHC:69540-DB

Court No. - 43

Case :- CRIMINAL APPEAL No. - 2781 of 1982

Appellant :- Lakhan And Others

Respondent :- State

Counsel for Appellant :- A.L.Agarwal, A.P.Singh, Lalit Kumar Misra, Man
Mohan Mishra, R.C.Kandpal

Counsel for Respondent :- A.G.A.

Hon'ble Vivek Kumar Birla, J.

Hon'ble Ms. Nand Prabha Shukla, J.

(Delivered by Hon'ble Nand Prabha Shukla, J.)

1. Heard Shri Man Mohan Mishra, learned Amicus Curiae for the surviving appellants, Ms. Mayuri Malhotra, learned State Law Officer for the State-respondents and perused the records.

2. The present Criminal Appeal under Section 374(2) of the Criminal Procedure Code was preferred by four convicts against the judgment and order of conviction dated 02.11.1982 passed by learned Additional Sessions Judge IV, Allahabad in Sessions Trial No.162 of 1980, whereby all the appellants were convicted and sentenced to undergo imprisonment for life under Section 302/34 IPC and four years rigorous imprisonment under Section 307/34 IPC. Both the sentences shall run concurrently.

3. Due to the death of appellant no.3 Kaleshwar and appellant no.4 Kallu, their appeals have been abated on 17.09.2015 and 06.04.2015 respectively. The appeal has been finally argued on behalf of the surviving appellant nos. 1 Lakhan and appellant no. 2 Deshraj.

INTRODUCTORY FACTS

4. The prosecution story in brief, is that:

On 06.08.1977 at 6:00 pm, the first informant, Rajaram lodged an FIR as Case Crime No. 134 of 1977 under Section 323/308 IPC, P.S. Sarai Aqil, District Allahabad against four appellants stating that on 05.08.1977 at around 4:00 pm, his cousin brother, Pran, was on his way to Vikrama Talab to wash his body. The villagers Lakhan, Deshraj, Kaleshwar and Kallu, armed with '*lathies*', assaulted Pran. Pran raised an alarm. Consequently, the first informant and his real brothers, Prabhu and Chandan rushed for his rescue. When they intervened, Kallu exhorted to assault them and accordingly the co-accused assaulted the first informant and his brothers. When they raised an alarm and cried, the witnesses Shukru, Gurudeen,

Bhaiyalal also reached to the spot for their rescue. His brother, Prabhu had received lathi blows on his neck, who fell unconscious. The first informant and his brothers had also received lathi blows on their head, hands and back. As the first informant was extremely scared, he did not go to the Police Station to lodge the first information report on the same date.

Rajaram the first informant, was the resident of Village Gourey, P.S. Sarai, Aqil, District Allahabad and accused Lakhan, Deshraj, Kallu and Kaleshwar were also the resident of the same village. Accused Deshraj and Kaleshwar were real brothers and Lakhan belonged to their family. Kallu was the brother-in-law of accused Deshraj. The deceased Prabhu and the injured Chandan were the real brothers of Rajaram. Pran was their cousin brother. An old enmity existed between first informant Rajaram and accused Deshraj.

After an FIR was lodged, all the injured were referred to the District Hospital Beli, Allahabad and were medically examined on 06.8.1977 by the Medical Officer on Emergency Duty at Tej Bahadur Sapru Hospital, Allahabad.

The injured Prabhu was examined by Dr. B.B. Singh on 06.08.1977 at 11:55 pm. The injuries found on the person of **Prabhu**, are as follows:

- “ 1. Lacerated wound 1” x 1/4” x skin deep on the left side, forehead.
2. Abraded contusion 1½” x 3/4” on the right side of face.
3. Contusion 2” x 1/2” on the right side of chest front middle.
4. Abrasion 3/4” x 1/4” on the right side chest front.
5. Contusion 4” x 1” on the face and upper part of the left thigh.”

The injured Pran was also examined by Dr. B.B. Singh, at almost the same time. The following injuries were found on the person of **Pran**:

- “ 1. Abraded contusion 2” x 1/2” on the right side chest-front.
2. Abrasion 1/4” x 1/4” on the bridge of nose.
3. Abraded contusion 1” x 1/2” on the left side forehead.
4. Contusion 3½” x 1½” on the left side shoulder back.
5. Abraded contusion 4” x 1” on the back of left fore-arm, upper portion.
6. Lacerated wound 1/2” x 1/4” x muscle deep on tip of left finger.”

The injured Rajaram was also examined almost at the same time, by Dr. B.B. Singh. Following injuries were found on the person of **Rajaram**:

- “1. Lacerated wound 1 ¾” x 1/2” x bone deep on the right side of the forehead.
2. Lacerated wound 1½” x 1/2” x scalp deep on the right side head, 4” above right ear.
3. Abraded contusion 1” x 1/2” on the right side thigh upper and outer portion.”

Though according to the prosecution, Chandan had sustained injuries but no injury report was placed on record.

The injured Prabhu (real brother of the first informant) died in the Hospital on 07.08.1977 at 10:05 pm. His Post Mortem was conducted by Dr.V.B. Sahai on 09.08.1977 at 2:00 pm. Following ante-mortem injuries were found on the dead body of **Prabhu**:

- “1. Lacerated wound 1” long placed transversely on the lateral angle of left eye-brow 1/4” x bone deep.
2. Abrasion 1½” x 3/4” on the ride side of face.
3. Contusion 2” x 1/2” on the right side of chest in the mid-clavicular line at the level of 5th rib.
4. Abraded contusion on the Posteo-lateral side of left neck.
5. Contusion obliquely downwards and medially 4” long 1” wide, on left thigh in the middle.”

On internal examination, there was haemorrhage under the skull more on left temporal region. Fracture of skull, left parietal and temporal had irregular fracture lines, massive extra-dural haemorrhage and a big clot present on the left temporal region. Brain liquefied. In the chest, there was no fracture of ribs but there was some haemorrhage in the underline tissue on the site of external injury of chest. In Doctors’ opinion, the cause of death was as a result of injury of head and brain.

After the receipt of the post mortem report, the accused were prosecuted under section 304 IPC read with section 323 IPC.

During the course of the investigation, statement of the witnesses were recorded, site plan was prepared and incriminating material was collected and charge sheet was submitted on 12.09.1977. The case was committed to the Court of Sessions on 17.08.1980 and charges were framed against all the four accused persons on 18.11.1980 under section 302 read with 34 IPC for the murder of Prabhu and charge under Section 307 read with 34 IPC for the injures caused to Pran and Rajaram.

PROSECUTION EVIDENCE

5. The accused persons pleaded not guilty to the charges and the trial proceeded. The prosecution in order to prove its case, had examined seven witnesses and produced relevant Exhibits/Documentary Evidence.

1.	P.W.-1 Rajaram	First Informant/Injured Witness-Proved FIR (Exhibit Ka-1)
2.	P.W.-2 Pran	Brother of the first informant/Injured Witness
3.	P.W.-3 Dr.V.B. Sahai	Conducted the post mortem-proved the same (Exhibit Ka-2)
4.	P.W.-4 R.P. Mishra	Investigating Officer-proved the site plan (Exhibit Ka-3) and Charge Sheet (Exhibit Ka-4)
5.	P.W.-5 Ram Krishna Dubey	Constable Moharir-Scribe of the FIR (Exhibit Ka-1) and proved G.D. Entry-Report No.24 at hours on 06.08.1977 (Exhibit Ka-5). He had also converted the case under section 308 IPC to section 304 IPC on 10.08.1977, i.e. G.D. at Report No. 28 Time 20:35 hours (Exhibit Ka-6).
6.	P.W.-6 Dr. B.B. Singh	Proved the injury report of Prabhu (deceased), Pran and Rajaram, i.e. (Exhibits Ka-7, Ka-8 and Ka-9).
7.	P.W.-7 Dr.R.R. Verma	Proved the Panchayatnama (Exhibit Ka-10), Challan Nash (Exhibit Ka-11), Photo Nash (Exhibit Ka-12), Report to the Chief Medical Officer for the post mortem (Exhibit Ka-13).

In support of their version, following documents were relied by the prosecution and its contents were proved, *viz*

Exh. No.	Details	Proved By
Ka-1	FIR	P.W.1 and P.W.5
Ka-2	Post Mortem Report	P.W.3
Ka-3	Site Plan	P.W.4
Ka-4	Charge Sheet	P.W.4
Ka-5	G.D. Report No. 24 Time 16 hours on 06.08.1977	P.W.5
Ka-6	G.D. Report No. 28 Time 20-34 hours 10.08.1977	P.W.5
Ka-7	Injury Report of Injured Prabhu	P.W.6
Ka-8	Injury Report of Injured Pran	P.W.6
Ka-9	Injury Report of Injured Rajaram	P.W.6
Ka-10	Inquest Report	P.W.7
Ka-11	Challan Nash	P.W.7
Ka-12	Photo Nash	P.W.7
Ka-13	Report to the Chief Medical Office for the Post Mortem	P.W.7

P.W.1 Rajaram, was the first informant and an injured eye-witness. He deposed in his examination-in-chief that he knew all the four appellants Lakhan, Deshraj, Kallu and Kaleshwar, Deshraj and Kaleshwar were real brothers and Lakhan was the cousin brother of Deshraj. Kallu was the brother-in-law of Deshraj. The first informant were four brothers, himself, Chandan, Prabhu and Nukhai. Pran was his cousin brother. His real brother Prabhu was killed on the fateful day. There was family feud for food and drink. He had family enmity with the accused persons. On the date of incident at around 4:00 pm, his cousin brother Pran was on his way to the Vikrama Talab to wash his body. In the meantime, all the four accused who stood near their door ways, armed with lathies assaulted Pran when he reached at their door steps. Pran raised an alarm, then the first informant Prabhu and Chandan reached the spot. Kallu exhorted that they should also be assaulted. All the accused assaulted the first informant and his brothers with their lathies. The villagers Sukuru, Gurdeen and Bhaiyalal also reached the spot and witnessed the incident. The first informant Prabhu, Pran and Chandan, all four had received injuries. Prabhu had received serious injuries on his neck and was unable to speak. The said witness further deposed that he lodged the FIR on the next date of the incident and proved the contents of the FIR as Exhibit Ka-1. He could not lodge the FIR in time as he was too scared with the accused persons. After lodging the FIR, they went to Beli Hospital for the medical examination. Due to the injuries caused, Prabhu died on the third day at the Beli Hospital.

In his cross-examination, the first informant deposed that though they had cordial family relations with the appellants but subsequently, their relations soured. Apart from the family tussle, there was no other enmity. Kallu stayed away from his village but on the date of the incident, he was present in his village as the sister of Kallu was married to Deshraj. Before the

incident, no other incident of mar-peet took place between the parties. Even this incident took place suddenly. On the date of incident, he, Chandan and Prabhu had gone for their job and returned back to their homes at around 4:00 pm. In his cross-examination, this witness clarifies that at the time of the incident, Pran was returning from the Vikrama Talab after washing his body. He categorically denied that at the time of the incident, Pran was on his way to Vikrama Talab to wash his body. It was wrongly mentioned in the FIR. The incident took place in front of the door steps of the accused persons under the *Kaitha* tree. When the incident took place he was busy having food in his house. Even Chandan was at his home. He had returned home about 15 minutes back. When he heard the noise, he came out and saw that the accused were assaulting Pran with their lathies. He, Chandan, Pran and Prabhu all were unarmed.

Pran was given 4 to 6 lathi blows. After Pran, the accused assaulted Prabhu for more than 25 times. Chandan was also given about 25 blows but he had received only two lathi blows of Kallu and Deshraj, due to which he fell down. Kaleshwar and Lakhan did not assault him. Further the said witness deposed that he did not see any injuries on the body of the appellants. If they had received any injuries, he was not aware as to how they were caused. He further clarified that neither he nor his brothers carried any weapon nor assaulted the appellants. Due to the fear from the accused, he went to the Police Station on the next day at around 2:00 pm which is at the distance of about 6 miles from his village. Chandan had received injuries and was medically examined. He denied having assaulted accused and in order to save themselves, they had lodged a false FIR.

P.W.2- Pran, is also an injured eye-witness and the cousin brother of the first informant. In his examination-in-chief, he deposed that on the date of incident at around 4:00 pm, he was returning back from the Vikrama Talab, after washing his body. When he reached near the Kaitha tree, at the door steps of Deshraj, he met Deshraj, Kallu, Kaleshwar and Lakhan, armed with lathies. When he reached near the Kaitha tree, all the accused started assaulting him. Then he raised an alarm. Hearing the noise, Prabhu, Chandan and Rajaram reached the spot. The accused assaulted Prabhu, who fell down and received severe injuries on his neck. Raja Ram and Chandan were also assaulted. Due to the injuries, he became unconscious and was medically examined at Beli Hospital.

During cross-examination, he deposed that on the date of incident, at around 4:00 pm, he was returning back after working in his fields. He went straight to Vikrama Talab washed his body and was returning back when the incident took place. When he was at the distance of about 10-15 pace, he saw the accused armed with lathies. He could not make out as to why the accused were standing. The first lathi blow was given on his back, due to which he fell down and remained unconscious. While he was lying down, he was given several lathi blows, he shouted and raised an alarm. In his cross-examination further deposed that after returning from his fields, he was unarmed and was not even carrying the *Khurpi*. Prabhu first reached to rescue him, thereafter Chandan. The accused assaulted Prabhu and whosoever came was assaulted. Chandan, Prabhu and Rajaram were unarmed. He was

not aware as to any injuries were caused to the appellants or as to how it was caused. It was incorrect to say that he and his brothers came at the door steps of Deshraj and assaulted them. Chandan had also received injuries and was medically examined at the Hospital. He denied causing injuries to the accused and in order to save themselves, they had lodged a false FIR.

P.W.-3 Dr. V.B. Sahai, had conducted the post mortem of the deceased Prabhu who was brought by Constable C.P. 1046 Altaf Hussain. The deceased was aged about 35 years and died on 08.08.1977 at around 10:05 pm in the Hospital. Following injuries were found on the dead body of **Prabhu**:

- “1. Lacerated wound 1” long placed transversely on the lateral angle of left eye brow 1/4” x bone-deep.
2. Abrasion 1½” x 3/4” on right side of hip.
3. Contusion 3” x 1/2” on right side of chest in mid-clavicular line at the level of 5th Rib.
4. Abraded contusion on the post lateral side of left neck.
5. Contusion obliquely downwards and medially 4” long, 1” wide on left thigh in the middle.”

The said witness had proved the post mortem report as Exhibit Ka-2 which was in his own handwriting. He deposed that the injuries could have been caused with lathi and was sufficient in ordinary course of nature to cause death. In his cross-examination, he deposed that it is difficult to say that in case, blood would have been arranged, then the patient could have survived.

P.W.-4 R.P. Mishra, the Investigating Officer deposed that in his presence the FIR was registered and investigation was entrusted to him. He recorded the statement of the witnesses and made a spot inspection and site plan, which he proved as Exhibit Ka-3. On 10.08.1977, he converted the case from 308/323 IPC to section 304/23 IPC. On 25.08.1977, he recorded the statement of the accused and submitted the charge sheet on 12.09.1977 which he proved it as Exhibit Ka-4.

In his cross-examination, he deposed that site plan was prepared at the pointing of the witnesses and Rajaram was also present. Injured was sent for Medico Legal Examination on 06.08.1977. In the site plan, he had not shown the distance between the house of Prabhu and Deshraj. While recording the statement of the accused at the Police Station, he did not see any injuries on the body of the accused.

P.W.-5 Ram Krishna Dubey, Constable Moharir deposed that the Chik Report was his Tehrir and signed by him which was dictated by first informant Raja Ram and was read out to him and had proved it as Exhibit Ka-1. He also proved the G.D. Entry as G.D. Rapat No. 24 at 16 hours dated 06.08.1977 and proved it as Exhibit Ka-5. He also deposed that after the receipt of the post mortem report of the deceased Prabhu, the case was converted by him into section 304 IPC and proved it as G.D. Entry No.24 at 20-35 hours dated 10.08.1977.

In his cross-examination, he deposed that he had sent Rajaram and other injured to the Hospital for their medical examination with their Majrubi Chitthi. From the Sarai Aqil Hospital, the injured was referred the District Hospital Beli. Chandan did not accompany Rajaram to the Hospital.

The said witness was re-examined and deposed that on 06.08.1977, Chandan came and Majrubi Chitthi was given to him but was not aware that any Medico Legal Report of Chandan was given at the Police Station or not.

P.W.-6 Dr. B.B. Singh, had medically examined the first informant and all the injured. He deposed that on 06.08.1977 he was posted as Medical Officer, T.B. Sapru Hospital and examined the injuries of **Prabhu** at 11:55 pm and found following injuries on his body:

- “ 1. Lacerated wound 1” x 1/4” x skin deep on the left side, forehead.
2. Abraded contusion 1½” x 3/4” on the right side of face.
3. Contusion 2” x 1/2” on the right side of chest front middle.
4. Abrasion 3/4” x 1/4” on the right side chest front.
5. Contusion 4” x 1” on the face and upper part of the left thigh.”

The condition of the patient was bad and was unconscious and was admitted in the Hospital. His injuries were not kept under observation and X-ray was advised. Injuries nos.2 to 5 were simple and had been caused by some blunt object. Duration was about 1½ day and proved it as Exhibit Ka-7.

On the same date, he examined the injury of **Pran** at 11:50 pm and following injuries were found on his body:

- “1. Abraded contusion 2” x 1/2” on the right side chest-front,
2. Abrasion 1/4” x 1/4” on the bridge of nose.
3. Abraded contusion 1” x 1/2” on the left side forehead.
4. Contusion 3” x 1½”, on the left side shoulder back.
5. Abraded contusion 4” x 1”, on the back of left fore-arm, upper portion.
6. Lacerated wound 1/2” x 1/4” muscle deep on tip of left finger.”

All the injuries were simple, caused by blunt weapon, except injury no. 2, which had been caused by friction by some hard object. Duration was 1½ day and proved it as Exhibit Ka-8.

On the same day, he examined the first informant **Rajaram** at 11:55 pm and found following injuries on his body:

- “ 1. Lacerated wound 1” x 1/2” bone deep on the right side of the forehead.
2. Lacerated wound 1 ½” x 1/2” x scalp deep on the right side head, 4” above right ear.
3. Abraded contusion 1” x 1/2” on the right side thigh upper and out portion.”

All the injuries were simple caused by blunt weapon such as lathi. Duration was 1½ day and proved it as Exhibit Ka-9. He further deposed that all the three injured had received injuries on 05.08.1977 at around 4:00 pm. In his cross-examination, he deposed that 1½ day means 36 hours. Duration may differ 4-6 hours on either side.

P.W.-7 R.R. Verma, deposed that he was posted as Second Officer at P.S. Cantt and after the receipt of information regarding the death of Prabhu from T.B. Sapru Hospital, he reached the Hospital and prepared the Inquest Report which was in his handwriting and signature and proved it as Exhibit Ka-10. He even proved Challan Nash Exhibit Ka-11, Photo Nash Exhibit Ka-12, Report CMO vide Post Mortem, Exhibit -13 which he sealed and forwarded to Constable 1046 Altaf Ali and 538 Om Prakash.

EXAMINATION OF ACCUSED UNDER SECTION 313 CR.P.C.

6. The accused appellants in their statement recorded under Section 313 Cr.P.C. had admitted that they assaulted the deceased in exercise of their right of private defence. They stated that they were sitting in front of their house, enjoying Hukka, then Pran and his brothers came at their door steps armed with lathies and assaulted Deshraj. In order to save Deshraj, other accused/appellants intervened and assaulted the first informant and his brothers in exercise of their right of private defence wherein Pran and Prabhu had received injuries. They also got their injuries examined.

DEFENCE WITNESSES

7. In support of their defence, the accused appellants produced and examined Dr. S.P. Sharma, Surgeon, Moti Lal Nehra, Hospital Allahabad as D.W.1, who deposed that on 10.08.1977, he was posted at Moti Lal Nehru Hospital, Allahabad as Doctor on Emergency Duty. On the said date, at around 7:15 pm, he examined the injuries of Deshraj, Kallu, Lakhan, Kaleshwar. Following injuries were found on the body of **Deshraj**:

- “1. Lacerated wound 3” x 1/4” scalp deep on the frontal bone 3½” above the root of nose. Pus was found in the wound.
2. Lacerated wound 1½” x 1/4” x scalp deep on the right parietal bone 3” above the right ear. Pus was present.
3. Lacerated wound 2½” x 1/4” x scalp deep on the left parietal bone 4” above the left ear. Pus was present.
4. Lacerated wound 1½” x 1/4” x muscle deep on the right lower leg medial aspect 2½” above the medial malleolus.
5. Traumatic swelling was also present around the ankle. Pus was present.
6. Contusion 3” x 1” black in colour with traumatic swelling on the right lower fore-arm.
7. Abraded contusion 1½” x 1/8” on the right shoulder at its top. Scab had been formed.
8. Lacerated wound 1½” x 1/4” on the left little finger with traumatic swelling, around the wound.”

He further stated that traumatic swelling was also present around the ankle. Pus was present. Injuries were five days old. Injury nos. 4, 5 and 7 were kept under observation subject to X-ray. Rest were simple injuries and have been caused by blunt weapon.

On the same day, he examined **Kallu** at around 7:30 pm and found following injuries on his body:

- “ 1. Lacerated wound 1½” x 1/4” x scalp deep on the front of head 4” above the root of nose in the mid-line. Pus was present.
2. Abrasion 1½” x 1/4” scab had been formed, 12” below and lateral to the left elbow-joint.”

He proved the injuries as Exhibit Kha-2, which was in his own handwriting and signature.

On the same day, he examined the injuries of **Lakhan** at 7:45 pm, he examined Lakhan and found following injuries on his body:

- “1. Scabbed abrasion 2” x 1/8” on the right middle fore-arm in its lateral aspect 4” below the elbow-joint.
- 2. Scabbed abrasion 1” x 1/2” on the lateral aspect of left thigh, 4” below the anterior superior iliac spine.”

The said injuries were proved as Exhibit Kha-3, which was prepared in his own handwriting and signature.

At around 7:50 pm, he examined the injuries of **Kaleshwar** and found following injuries on his body:

- “1. Lacerated wound 1½” x 1/8” x scalp deep on the top of head, 5” above the left ear. Pus was present with scabs on both ends of the wound.
- 2. Scabbed abrasion 2” x 1/2” just below the membrum sterim in the front of chest.”

The injuries were five days old, simple in nature and caused by blunt weapon which was proved as Exhibit Kha-4 and was prepared in his own handwriting and signature.

All the injuries were caused on 05.08.1977 at around 5-6:00 pm. In his cross-examination, he deposed that the injured did not bring any Majrubi Chitthi nor had any report. He could not remember whether after Medico Legal Examination, he had intimated the Police Station. Though X-ray was advised to Deshraj but is unaware whether X-ray was done or not. There is least chance of sustaining injury nos.1, 2 and 3 to Deshraj after falling down. He mentioned the duration of five days after looking to the condition of the injuries and not on the statement of injured. There was no swelling on injury nos. 1, 2 and 3 of Deshraj but no swelling in injury no. 4. It is incorrect to say that the injured did not receive any injury and were fabricated.

SUBMISSION ON BEHALF OF THE PROSECUTION

8. Learned Additional Government Advocate appearing on behalf of the State submitted that the prosecution has proved its case beyond reasonable doubt. The date, time, place and manner of incident has been proved by the prosecution witnesses. P.W.-1 Rajaram and P.W.-2 Pran who are the injured eye-witnesses of the occurrence, who in their testimonies, have deposed that the deceased Prabhu was severely assaulted by the appellants with lathies blows, who subsequently, died on 09.08.1977. There are injures eye-witnesses who have supported the prosecution case and the incident is also corroborated with the Medico Legal Reports. The prosecution has also explained the delay in lodging of the FIR. P.W.-3 Dr. V.B. Sahai had proved the post mortem report of the deceased Prabhu (Exhibit Ka-2) which was in his handwriting and deposed in his examination-in-chief that the ante mortem injuries could have been caused by lathi, which was sufficient in the ordinary course of nature to cause death. P.W.-4 Sri R.P. Mishra, who was the Investigating

Officer, had proved the site plan (Exhibit Ka-3) and the charge sheet (Exhibit Ka-4). P.W.-5 Ram Kishan Dubey, Constable Moharrir was the Scribe of the first information report and proved its G.D. Entry dated 06.08.1977 and 10.08.1977 regarding conversion of the case from section 308 IPC to section 304 IPC. P.W.-6 Dr. B.B. Singh had proved the injury report of Prabhu, Pran and Rajaram as Exhibits Ka-7, Ka-8 and Ka-9 respectively. P.W.-7 R.R. Verma had proved the Panchayatnama (Exhibit Ka-10), Challan Nash (Exhibit Ka-11), Photo Nash (Exhibit Ka-12) and Report of the C.M.O. (Exhibit Ka-13).

SUBMISSION ON BEHALF OF THE DEFENCE

9. In their defence, learned counsel for the surviving appellants submitted that the prosecution has failed to establish the genesis of the occurrence, therefore, the appellants are entitled to benefit of doubt and should be acquitted. The trial Court has grossly erred in convicting the appellants. It was further submitted that though the accused had caused injuries but it was caused in exercise of their right of private defence. No specific role was attributed to the appellants. All the accused appellants had also received injuries in the same incident, which were not at all explained by the prosecution.

Firstly, it has been asserted that the genesis of the incident has not been proved. Secondly, it has been submitted that as the incident took place in front of the house of the accused persons, therefore, it not only supports the stand of the accused regarding the exercise of right of private defence but also creates a doubt in the prosecution case because P.W.1 in his testimony had deposed that the house of the accused was on the way while his cousin brother Pran was returning from the Vikrama Talab. Thirdly, the severe injuries caused to the accused has not been explained by the prosecution. This cast doubt in prosecution case especially when there are only two witnesses of fact who are also interested witnesses. Fourthly, there are no independent witnesses to corroborate the incident. Fifthly, the statement of the Investigating Officer corroborates the aggression by the informant party. PW-1 claims that Chandan was injured and was taken to hospital, however the scribe has contradicted his claim. This highlights the exaggerated version of the first informant. There is a delay of about 24 hours in lodging of the FIR. Lastly, the injuries of the accused persons cannot be ignored as the same are severe injuries and all the accused were examined by the Government Doctor D.W.1, who was on Emergency Duty in a Government Hospital, Moti Lal Nehru Hospital, Allahabad who opined that all the injuries caused were five days old, simple in nature and caused by blunt object.

ANALYSIS AND FINDINGS

10. Upon hearing learned counsel for the parties and the submissions raised, it transpires that family feud existed between the parties. Though, several persons were injured and Prabhu was done to death but as the prosecution had not proved the genesis of the occurrence, which makes the prosecution case doubtful.

P.W.-1 and P.W.-2 in their testimony deposed that an old family feud of food and drink existed and there was no other dispute between the parties.

When P.W.-2, cousin brother of the first informant Pran was returning from the Vikrama Talab after washing his body and reached in front of the house of Deshraj, near Kaitha tree, he met all the four accused, armed with lathies, who started assaulting him. The said witness could not disclose any reason behind the alleged incident and what was the actual motive behind it. The prosecution witnesses in their cross examination had deposed that they did not see any injuries on the body of accused Deshraj, Kallu, Lakhan and Kaleshwar and did not give any explanation as to how the accused had sustained injuries.

As far as exercise of right of private defence is concerned, it is the admitted case of the prosecution that when Pran, the cousin brother of the first informant, was returning from the Vikrama Talab and reached in front of the house of Deshraj, then the incident took place. The appellants accused were sitting in front of their house and were enjoying Hukka. The place of incident was in front of the house of the accused. They got apprehensive and in order to save themselves, they attacked Pran with their lathies in exercise of their right of private defence.

From the perusal of record, it also transpires that the FIR was lodged after a delay of one day, which the prosecution had explained in their FIR that as they were too scared from the accused, therefore, they did not go to the Police Station to lodge the FIR on the same date.

It has also been noticed that though the accused had received injuries on their body but no cross FIR was lodged by them. They got themselves medically examined after five days of the incident. It also transpires that all the injured were medically examined by Government Doctor, Dr. S.P. Sharma, who was produced as D.W.-1 and proved the injury reports of Deshraj, Kallu, Lakhan and Kaleshwar. Thus, the said injuries reports were neither fabricated nor a forged one. The Doctor in his examination-in-chief deposed that the injured did not bring any Majrubi Chitthi nor any written report. He could not recollect whether after examining the injured, he had informed the Police Station or not. Though X-ray was advised to Deshraj but was unaware whether X-ray was done or not. The injury nos.1, 2 and 3 of Deshraj cannot be sustained by falling down. He had mentioned the duration of the injuries of five days after looking to the condition of the injuries. He categorically denied that the injuries were fabricated or a forged one.

The prosecution has not produced any independent witness and examined only two witnesses of fact, Rajaram P.W.-1 and Pran P.W.-2, who were close relatives and were interested witnesses, which also doubts the prosecution story. Though according to the prosecution version, Chandan had also received injuries and was taken to the Hospital but no injury report was produced to corroborate the same. The injuries caused to the accused persons cannot be ignored as the same were serious injuries and even were testified by the Government Doctor, D.W.-1, who was an Emergency Duty on a Government Hospital, namely, Moti Lal Nehru Hospital, Allahabad.

After considering the material placed on record and the submissions advanced, it gives an impression that, even if, the allegations against the

appellants are accepted as true, they are yet entitled for acquittal, on a plea of right of private defence. It is the admitted case of the prosecution that Pran was returning from Vikrama Talab after washing his body and when he reached in front of the house of the appellants, the incident took place. Therefore, it was the prosecution who was aggressor. As the appellants saw Deshraj being assaulted, they in exercise of their right of private defence assaulted Pran and all others who intervened. Though, Trial Court had noticed the defence but failed to discuss the same. Neither the defence witnesses nor the defence Exhibits and the injuries sustained have been commented by the Trial Court. The prosecution witnesses, in their testimony, have not revealed anything about the injuries sustained by the defence nor have disclosed the genesis of the occurrence. Though they had deposed about the incident but remained silent throughout on these aspects. The defence has proved its injuries which were caused in the same incident. Thus, the prosecution has suppressed the genesis and origin of the occurrence and failed to explain the injuries on the person of the accused, therefore, an adverse inference can be drawn against the prosecution for not offering any explanation much less a plausible one. The prosecution has not brought on record the true version of the incident, therefore, it is to be itself squarely, blamed for the failure of the case.

The Hon'ble Supreme Court in **State of Rajasthan vs. Madho and others, AIR 1991 SC 1065**, had observed that:

“If the prosecution witnesses shy away from the reality and do not explain the injuries caused to the respondents herein, it casts a doubt on the genesis of the prosecution case since the evidence shows that these injuries were sustained in the course of the same incident. It gives the impression that the witnesses are suppressing some part of the incident.”

Referring to the observations of the Hon'ble Apex Court in **Lakshmi Singh and others vs. State of Bihar, (1976) 4 SCC 349**, wherein it has been held that:

“12. It seems to us that in a murder case, the non-explanation of the injuries, sustained by the accused at about the time of the occurrence or in the course of altercation, is a very important circumstance from which the Court can draw the following inferences:

- “(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;*
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore, their evidence is unreliable;*
- (3) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case.”*

Recently, the Honb'le Supreme Court by reiterating the observations as referred above in **Nand Lal and others vs. State of Chhatisgarh, (2023)2 SCR 276**, had held as under:

“ Omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes improbability with that of the prosecution more particularly when some of the witnesses have lied by stating that they did not see any injuries on the person of the accused ”

It has been further held that in case of proven previous enmity, a possibility of false implication cannot be ruled out. It has been asserted that as far as delay in registration of the FIR is concerned, the immediate lodging of the FIR removes suspicion with regard to over implication of number of persons, particularly, when the case involved a fight between two groups. When the parties are at loggerheads, the immediate lodging of the FIR, provides credence to the prosecution case.

Thus non-explanation of injuries, on the persons of the accused, creates a doubt, as to whether, the prosecution has brought on record, the real genesis of the incident. Such non-explanation, however, is a factor which is to be taken into account in judging the veracity of the prosecution witnesses, and the Court has to scrutinize the evidence with care. Each case presents its own features. In some case, the failure of the prosecution to account for the injuries of its story, while in others it may have little or no adverse effect on the prosecution case. It may also, in a given case, strengthen, the plea of private proposition of law of universal application that as soon as it is found that the accused had received injuries in the same transaction in which the complainant party was assaulted, the plea of private defence would stand prima facie established and the burden would shift to the prosecution to prove that those injuries were caused to the accused in self defence by the complainant party.

CONCLUSION

11. Thus, it can be concluded that the Trial Court has not given due consideration to the lacuna or infirmity appearing in the prosecution case and relied upon the testimony of P.W.-1 and P.W.-2 without carefully scrutinizing their testimony in correct perspective. The failure of the prosecution to explain the genesis and origin of the occurrence has the effect of prosecution failing to bring on record the correct version of the event. The improbability of the prosecution regarding the genesis and events and the manner in which the incident were unfolded, created a doubt on the prosecution case, which has not been examined by the Court below. The defence has clearly probabilized its version, which cannot be over looked. The findings of the Trial Court that prosecution had established its case beyond reasonable doubt, therefore, cannot be sustained. The accused appellants are clearly entitled to benefit of doubt in the matter.

12. For the forgoing reasons and discussion held above, the present appeal succeeds and is **allowed**.

13. The Judgment and Order of conviction dated 02.11.1982 passed by learned Additional Sessions Judge IV, Allahabad in Sessions Trial No.162 of 1980, is hereby set-aside.

14. The appellant no.1 Lakhan and the appellant no.2 Deshraj shall be set free, if they are in jail and in the event, they are on bail, their bail bonds shall stand discharged subject to compliance of Section 437-A of Cr.P.C. provided that they are not wanted in any other case.

15. Copy of this order be sent by the Registrar (Compliance) to the Chief Judicial Magistrate, Prayagraj for necessary action.

16. Learned Amicus Curiae shall be paid his remuneration/fees as per Rules.

Order Date :- 02.05.2025

Monika