



2026:AHC:169093

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2448 of 1987

Bishambher And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Ganga Bhushan Mishra, S.A.N. Shah
Counsel for Respondent(s)	:	A.G.A.

Court No. - 75

HON'BLE DR. GAUTAM CHOWDHARY, J.

1. There were three accused in this appeal, namely, Bishambhar, Atar Singh and Sadhu. For the two accused, Atar Singh and Sadhu this appeal has already been abated vide 23.08.2022. Now the present appeal survives only against the appellant, Bishambhar, which is being heard and decided.

2. Heard Shri Ganga Bhushan Mishra, learned counsel for the appellant, Shri Jayram Pandey, learned A.G.A. for the State and perused the material brought on record including the lower court records.

3. This appeal has been preferred against the judgment and order of conviction dated 16.09.1987 passed by learned Special Judge, Dacoity Affected Area, Etah in Special Sessions Trial No. 822 of 1983 (State Vs. Bishambhar and others), arising out of Case Crime No. 90 of 1982, under Sections 399, 422 I.P.C. and Section 25 of Arms Act, Police Station G.R.P., District Kasganj, convicting and sentencing the surviving appellant, Bishambhar, under Sections 399/ 402 to undergo rigorous imprisonment of three years and under Section 25 of Arms Act to undergo rigorous imprisonment of one year, directing that all the punishment run concurrently.

4. Learned counsel for the appellant has contended that he is not disputing the conviction of the accused-appellant and the findings of fact rendered by the Trial Court and he has confined his argument regarding sentence only. It was submitted that the incident took place in the year 1982 and since then a period of 44 years has been passed. Referring to the facts of the matter, it was submitted that substantial part of sentence, awarded by the court below, has already been undergone by the accused-appellant and

thus, the sentence may be reduced to the period already undergone.

5. Learned A.G.A. has argued that the conviction of accused-appellant is based on evidence and there is no illegality or perversity in the impugned judgment and order.

6. I have considered rival submissions and perused the record.

7. Perusal of record shows that it is a case of planing of dacoity and firing upon the police party. After adducing of evidence by the prosecution, the learned trial Court has convicted the accused-appellant, as stated above.

8. So far the question of sentence is concerned, it may be observed that while fixing the punishment for any particular crime, the court should take into consideration the nature of offence, the circumstances in which it was committed, the degree of deliberation shown by the offender. It is the duty of court to award proper sentence having regard to the nature of offence and the manner in which it was executed or committed. The courts must not only keep in view the rights of victim of the crime but also the society at large while considering the imposition of appropriate punishment. In *Deo Narain Mandal Vs. State of UP (2004) 7 SCC 257* it was observed that sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the court should bear in mind the principle of proportionately. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically.

9. In *Shyam Narain vs State (NCT of delhi), (2013) 7 SCC 77*, it was pointed out that sentencing for any offence has a social goal. Sentence is to be imposed with regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is that the society may not suffer again by such crime. The principle of proportionality between the crime committed and the penalty imposed are to be kept in mind. The impact on

the society as a whole has to be seen. Similar view has been expressed in *Sumer Singh vs Surajbhan Singh*, (2014) 7 SCC 323 , *State of Punjab vs Bawa Singh*, (2015) 3 SCC 441, and *Raj Bala vs State of Haryana*, (2016) 1 SCC 463.

10. Hon'ble Apex Court in the matter of *State of Madhya Pradesh vs. Shyamlal & Ors.* reported 2025 Live Law (SC) 333 has observed in paragraphs nos. 10, 13 and 14 as under:-

“10. As stated earlier, the conviction of the respondents accused has been brought down from Section 302 to second part of Section 304 of the IPC. The High Court has noted that the incident was of 1st November 1989. The Trial Court convicted the respondents-accused on 25th April 1994. The appeal against conviction remained pending for twenty-one years. It is pointed out that the respondents were on bail during the trial and the appeal. That is one circumstance taken into consideration by the High Court. The other circumstance considered is that when the High Court dealt with the appeal, the incident was twenty-eight years old. Four accused were approximately seventy years of age, and one was nearly eighty years of age, and that is the reason why the respondents have been let off on the sentence undergone by the High court, and a fine was imposed. While imposing the fine, the High Court relied upon a decision of this Court in the case of *Fatta & Ors. v. State of U. P.* **1979 SCC(Crl) 629** The judgment, which consists of only two paragraphs, reads thus:-

"In this appeal by special leave, the learned counsel for the appellant has pressed the appeal only on the question of the applicability of Section 302 read with Section 149 IPC to the appellants other than Ramakant Rai. It was urged that according to findings of the Court below, the occurrence took place in the disputed field which was claimed by both the parties. According to the prosecution case, the field in question was in the possession of the deceased Janardan and P.W.1 and they had sown Arhar crop

and had come to harvest the same. At that time the the accused in a body arrived at the scene variously armed, with a view to dispossess the prosecution party by force. There was exchange of brickbats and ultimately one of the accused Ram Sewak, who was armed with a gun, fired a shot which hit the right eye of Janardan as a result of which he fell down and died instantaneously. The appellant Ramakant Rai is said to have provided a cartridge to Ram Sewak before he fired the gun. In these circumstances, therefore, the conclusion is inescapable that Ram Sewak and Ramakant Rai had undoubtedly the common intention to cause murder of the deceased. As regards others, on the materials, we are satisfied that the occurrence took place over the possession of land claimed by both the parties. Apart from Ramakant Rai and Ram Sevak no other person of the Assembly took part in the assault on the deceased. Although some of the appellants were armed with pharsa and spear and one of the appellants with a pistol, but none of these weapons were used. In the circumstances of the present case, there can be no doubt that the appellants had gone armed in order to dispossess the prosecution party and cause such injury as may be necessary for achieving that object. But the evidence does not show that all the appellants shared the common object of committing the murder of Janardan. It is true that the mere fact that no overt act has been attributed to the members of the unlawful assembly, is not sufficient to disprove the charge under Section 149 IPC. But this question depends on the facts of each case. In the instant case, we are satisfied that at the most the appellants other than Ram Sewak and Ramakant Rai had merely the intention to cause an offence under Section 325 IPC and were, therefore, guilty of offence under Section 325/149 as also of rioting. The other question that has

to be determined is as to what sentence should be awarded to the appellants. The appellants have served only 3 to 4 months and have been on bail throughout. It would not be conducive in the interest of justice to send them back to jail after a lapse of 10 years. On the other hand, if the family of the deceased is heavily compensated, that will serve the socio-economic purpose which the modern trend of the policy of sentencing required. For these reasons, therefore, we alter the conviction of the appellants except Ramakant Rai from one under Section 302/149 to Section 325/149 and reduce the sentence to the period already served. In lieu of sentence remitted, we impose a fine of Rs. 5000 on each of the appellants in default to two years' R.I. The entire fine, if realised, shall be paid to PW 1, the widow of Janardan. The sentence under Section 147 is also reduced to the period already undergone.

2. As regards Ramakant Rai, there is evidence of the eye witnesses that he was the person who supplied cartridge to Ram Sewak in order to shoot Janardan. In these circumstances, Ramakant Rai is convicted under Section 302/34 and his sentence of life imprisonment is upheld under this section. With this modification, the appeal is dismissed. Fine to be paid in six months after the fine is paid, the appellants shall be discharged from bail bonds.

(emphasis added)”

13. We are conscious of the fact that there is no appeal preferred by the accused. But the fact remains that the medical evidence creates a serious doubt as to whether injuries allegedly inflicted by the respondents caused the death of Laxman. Therefore, there is a serious doubt whether even Section 304 of the IPC could have been applied, as the medical opinion does not support the theory of homicidal death of the deceased. That

is why it is not possible to interfere with the judgment of the High Court directing that the respondents-accused should be let off for the offence under Section 304, read with Section 149 of the IPC, on the sentence that has been undergone. As noted earlier, when the High Court decided the appeal in 2017, the incident was already twenty-eight years old. When we are deciding this appeal of the year 2024 (arising out of a special leave petition of the year of 2018), the incident is almost thirty-six years old.

14. When the judgment of the High Court was delivered, at least five accused were above seventy years of age, and one of them was of the age of about eighty years. A substantial amount of Rs.16,000/- each has been imposed by the High Court by way of fine. Therefore, it will not be appropriate to interfere with the impugned judgment of the High Court."

11. After hearing the learned counsel for the appellant, learned A.G.A. and after perusing the judgment and order impugned as well as the averments contained in the present appeal this Court bearing in mind that in the instant case the incident took place on 20.07.1982, thus, after incident a long period of about 44 years has been passed. The appellant is now aged about 79 years old, who is on bail during the pendency of appeal, therefore, this Court thinks appropriate to alter the sentence of the appellant and his sentence is reduced to the period already undergone by him.

12. A copy of this order along with record of trial Court be transmitted to the court concerned forthwith.

13. With the aforesaid directions, present appeal is **partly allowed**.

(Dr. Gautam Chowdhary,J.)

August 11, 2026

Mustaqeem.