

A.F.R.

*Neutral Citation No. -2024:AHC-LKO:49826*

*Reserved on 16.07.2024*

*Delivered on 24.07.2024*

**Court No. - 16**

**Case :-** CRIMINAL APPEAL No. - 1626 of 2024

**Appellant :-** Amit Bajpai

**Respondent :-** State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

**Counsel for Appellant :-** Nadeem Murtaza, Harsh Vardhan Kediya, Vaibhav Pandey, Wali Nawaz Khan

**Counsel for Respondent :-** G.A., Arvind Kumar Verma

**Hon'ble Shamim Ahmed, J.**

1. Heard Sri Nadeem Murtaza alongwith Sri Wali Nawaz Khan, learned counsel for the appellant, Sri Ashok Kumar Singh, learned A.G.A.-I for the State Opposite Party No.1 and Sri Arvind Kumar Verma, learned counsel for the opposite party no.2 and 4 as well as perused the entire record.

2. This Criminal Appeal under Section 14-A (2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 18.04.2024 passed by learned Special Judge, S.C./S.T. Act, Lucknow in Bail Application No.2573 of 2024, Case Crime No.173 of 2024, under Sections 302, 324, 504, 506, 307 I.P.C. and Section 3(2)(V) of S.C./S.T. Act, Police Station P.G.I., District Lucknow East (Commissionerate Lucknow), whereby the bail application of the appellant has been rejected.

3. Learned counsel for the appellant submits that as per the prosecution case the allegations so levelled by the informant are that allegedly on 25.03.2024 her husband (Baldev Singh) returned to his flat from Sector 16 after celebrating Holi with his family. Her husband parked his car and wished the appellant/accused (Amit Bajpai) 'Happy Holi'. In reply the appellant, who was in a drunken state, started abusing. When her husband objected to the abusive language, the appellant attacked him with a knife. It is further alleged that when the brother of the informant, namely Yash (the deceased), tried to save Baldev Singh, the appellant abused him with casteist slurs, threatened him with dire consequences and stabbed him multiple times on his chest and

stomach. It has been further alleged that the appellant also abused another resident of the same apartment, namely Arvind Kumar, when he tried to save Baldev and Yash.

4. Learned counsel for the appellant submits that it is significant to mention that approximately two hours prior to the registration of the instant FIR i.e. Case Crime No.173 of 2024, under Sections 302, 324, 504, 506, 307 I.P.C. and Section 3(2)(V) of S.C./S.T. Act, Police Station P.G.I., District Lucknow East (Commissionerate Lucknow), the appellant had lodged an FIR No. 172/2024 on 25.03.2024, under Sections 308, 323, 325, 504, 506 IPC, at Police Station P.G.I., District Lucknow, against the aforesaid persons, namely Arvind Kumar, Yash, and Baldev Singh Chauhan, bringing the true story to light, wherein he was attacked by the said persons.

5. He further submits that the correct facts, which have been narrated by the appellant in FIR No. 172/2024 on 25.03.2024, under Sections 308, 323, 325, 504, 506 IPC, at Police Station P.G.I., District Lucknow are that at around 4:00 PM, when the appellant was returning to his apartment after parking his vehicle, Baldev Singh Chauhan and his brother-in-law Yash along with Arvind, attacked the appellant with rod and balli. The appellant suffered grave head injuries. All the three persons threatened to kill the appellant and they again attacked when the appellant ran towards the lift to save his life. The appellant was saved by the people of the society and he was admitted in Apex Trauma Centre where the medical examination of the appellant revealed that he has sustained fracture in his head.

6. He further submits that the medical examination of Yash Chauhan was conducted on 25.03.2024 at Apex Trauma Centre wherein it has been stated that an unknown drunk person attacked with a sharp object at around 4:30 PM. The copy of the MLC dated 25.03.2024 is annexed herewith as Annexure no. 3 to the affidavit filed alongwith this appeal.

7. He further submits that during the course of investigation, the statement of the informant was recorded under Section 161 Cr.P.C. on 26.03.2024, wherein, in addition to reiterating the version of the FIR, she stated that her brother is in very critical situation and he is being treated on ventilator.

8. He further submits that during the course of investigation, the statement of the appellant was also recorded under section 161 Cr.P.C on 26.03.2024,

wherein, he has stated that on 25.03.2024, on the day of Holi, he returned from temple and while parking his vehicle at Shiv Green Apartment he was attacked by Baldev Singh Chauhan, his brother-in-law Yash and Arvind with rod and balli due to which he suffered grave head injuries. It is further stated that all the three persons threatened to kill him and they again attacked when the appellant ran towards the lift to save his life. The appellant was saved by the people of the society.

9. He further submits that the statement of Baldev Singh Chauhan was recorded under Section 161 Cr.P.C on 26.03.2024, wherein, in addition to reiterating the version of the FIR and supporting the statement of his wife i.e. opposite party no.2, he has stated that the medical treatment of his brother-in-law is going on at Trauma Centre and he has been discharged by the doctor.

10. He further submits that the appellant was arrested at 12:35 PM on 26.03.2024 and his wife, the deponent, was duly informed. He further submits that it is also significant to bring on record that the keychain with the knife allegedly used by the appellant was recovered from the right pocket and the broken tip of the knife was recovered from the other pocket of the appellant. He further submits that Baldev Singh and Arvind Kumar were also searched and the rod and balli used by them to attack the appellant were collected and seized.

11. He further submits that the injury report of Baldev Singh Chauhan (husband of the opposite party no. 2) was prepared on 26.03.2024 at 3:25 PM in relation and perusal of the same shows that he had sustained two stitched wounds. He further submits that the injury report of the appellant was also prepared on 26.03.2024 at 3:45 PM which shows that the appellant had sustained serious injuries, including a stitched wound.

12. He further submits that the statement of alleged eye-witness Yaar Mohammad was recorded under section 161 Cr.P.C on 27.03.2024, wherein, he has stated that he is the guard at Shiv Green Apartment, Sector 14 and on 25.03.2024 at 10:23 PM when he was doing night- shift, the appellant was highly drunk and got involved in a fight with Baldev Singh Chauhan, Yash Chauhan and Arvind Kumar in relation with parking of vehicle. Both the parties got injured and were admitted at Trauma Centre. He further submits that it is pertinent to note that it has been stated by Yaar Mohammad that Arvind Kumar works in police department and previously served as inspector-in-charge.

13. He further submits that during the course of investigation, the statement of alleged eye-witness Ratnakar Upadhyay was also recorded under section 161 Cr.P.C on 27.03.2024, wherein, he has stated that he resides in Shiv Green Apartment sector 14 and on 25.03.2024 at around 10:23 PM he was going out for some work on his vehicle when he saw the appellant, who was in a highly drunken state, involved in a fight with Baldev Singh Chauhan, Yash Chauhan and Arvind Kumar in relation with parking of vehicle. He further stated that when he tried to settle the matter, the appellant attacked on his car with knife, however, the mirrors were closed and he was saved. He further added that both the parties got injured in the fight and he later left in his vehicle.

14. He further submits that one of the injured persons, namely Yash Chauhan, passed away on 03.04.2024 at Trauma Centre P.G.I., where after the post mortem examination was conducted on the same date and a perusal of the same shows that the cause of death has been shown to be septicemia due to ante mortem injuries.

15. He further submits that it would be relevant to note that the deceased passed away after 8 days of the alleged incident and thereafter, Section 302 IPC was also added to the array of offences alleged in the instant case.

16. He further submits that the statement of alleged eye-witness Gaurav Sethi was recorded under section 161 Cr.P.C on 03.04.2024, wherein, he has stated Arvind Kumar and Baldev are his friends and on 25.03.2024 at 4:00 PM, on account of Holi he along with Sarvan Kumar Mishra went to Shiv Apartment Vindravan Colony where he saw the appellant in drunken state involved in an abusive fight with respect to vehicle parking. He further stated that the appellant attacked Yash Chauhan with a knife and when Baldev, Amit and others tried to save Yash, the appellant attacked them as well. Additionally, he stated that all the three persons in self- defence had beaten the appellant with rod, lathi and danda.

17. He further submits that the statement of alleged eye-witness Sarvan Kumar Mishra was recorded under section 161 Cr.P.C on 03.04.2024, wherein, he has reiterated and supported the aforesaid statement of Gaurav Sethi.

18. He further submits that Arvind Kumar, being employed in police department and being an ex-inspector-in-charge of the area, is abusing his position to incriminate the innocent appellant by bringing false eye-witnesses and showing false recovery of murder weapon on record as the recovery of the alleged knife used in the incident, being planted, and the confession being given before the police officer have no value in the eyes of law.

19. He further submits that a bare perusal of the aforesaid statements would reveal that absolutely vague and absurd allegations have been made regarding the incident which raises serious doubts upon the credibility of the same as well as casts a shadow upon the prosecution case. As such, the said statements fail to inspire any confidence.

20. He further submits that significantly the opposite party no.3 Arvind Kumar is a police officer posted as Sub-Inspector at Police Line, Lucknow and he has been suspended by the Police Commissionerate, Lucknow for his key involvement in the incident. A Press Note dated 26.03.2023 was also released by the Police Commissionerate, Lucknow disclosing the suspension of Arvind Kumar, which also shows that the appellant was attacked first by the three persons.

21. He further submits that it is also clear from the CCTV footage (snapshots of which are annexed as Annexure No. 16 to the affidavit filed in support of this appeal) that three persons are attacking and assaulting the appellant with rods and balli. He further submits that it can also be seen that the appellant is trying to save himself in the best possible way and the scrutiny of the CCTV footage by the investigating officer himself shows that the appellant was assaulted first.

22. He further submits that the appellant in order to save himself from the sudden attack, used whatever he could find on him at the time, i.e. the small knife in his keychain to protect himself, however, there was no intention or motive on the part of the appellant to murder any person and he acted only to save his own life. In support of his argument, learned counsel for the appellant has relied upon a judgment rendered by Hon'ble the Supreme Court of India in the case of **Sukumaran Vs. State Represented by Inspector of Police, (2019) 15 SCC 117**, wherein in para 31 of the judgment, Hon'ble the Apex Court was pleased to observe as under:-

*"31. Section 97 IPC provides that a right of private defence extends not only to the defence of one's own body against any offence affecting the human body but also to defend the body of any other person. The right also embraces the protection of property, whether one's own or another person's, against certain specified offences, namely, theft, robbery, mischief and criminal trespass. The limitations on this right and its scope are set out in the sections which follow. For one thing, the right does not arise if there is time to have recourse to the protection of the public authorities, and for another, it does not extend to the infliction of more harm than is necessary for the purpose of defence. Another limitation is that when death is caused, the person exercising the right must be under reasonable apprehension of death, or grievous hurt, to himself or to those whom he is protecting; and in the case of property, the danger to it must be of the kinds specified in Section 103. The scope of the right is further explained in Sections 102 and 105 IPC. (See observations of Vivian Bose, J. in Amjad Khan v. State.)"*

23. He further submits that the appellant in the instant case was suddenly attacked with rods and balli by three persons which created a reasonable apprehension of death and grievous hurt in his mind. Thus, his actions in defending himself were not disproportionate to the attack he was facing. He further submits that no prudent person would believe that the appellant, being alone in the fight, could stand against three persons and could have assaulted three persons, single-handedly, who were armed with deadly weapons.

24. He further submits that it is notable that the appellant suffered six grievous injuries during the assault by the opposite parties. The medical examination of the appellant reveals multiple abrasion, contusion swelling and stitched wound injury on the right side of the head.

25. He further submits that even the statements of so-called eye-witnesses, namely Yaar Mohammad and Ratnakar Upadhyay, place the time of the alleged incident at 10:23 PM i.e. a difference of about 6 hours from 04:30 PM, which is the time of the alleged incident as per the allegations levelled in the FIR by the informant herself and which is also what the prosecution story has been throughout. The said difference, coupled with the fact that the statements of Ratnakar Upadhyay and Yaar Mohammad are identical to one another and clearly tutored, render the same wholly unreliable.

26. He further submits that significantly around 14 residents of the society where the alleged incident took place, gave a written complaint to the Police Commissioner, Lucknow, highlighting the frequent and continued misbehaviour of Baldev Singh Chauhan and abuse of the position of police

officer by Arvind Kumar. He further submits that it has also been highlighted in the complaint that Baldev Singh Chauhan and Arvind Kumar brutally assaulted the appellant and also tried to take his life which also lends support to the fact that the appellant was not the instigator of the alleged incident.

27. He further submits that it is evident that the appellant had no intention to commit the alleged offence as he merely acted in private defence with the help of what he had on his person to defend himself at the time as he acted in the spur of the moment which shows that he never planned to commit the alleged murder or had any intention to take life of anyone. Thus, there is no evidence that would show mens rea on the part of the appellant, which is a necessary ingredient for an offence punishable under Section 302 IPC. As such, even if the prosecution version is accepted uncontroverted, the present case cannot travel beyond the ambit of Section 304 IPC.

28. He further submits that other than the instant case, the appellant has a criminal history of one case i.e. Case Crime No. 18 of 2021, under Sections 147, 308, 336, 427, 452, 323, 504, 506, 325 IPC and Sections 3(1)(r) and 3(1)(s) of the SC/ST Act, 1989, registered at Police Station Naka Hindola, District Lucknow, in which the appellant was granted bail by this Hon'ble Court vide order dated 20.07.2021 passed in Criminal Appeal No. 631 of 2021, a copy of the bail order is annexed as Annexure No. 18 to the affidavit filed alongwith this appeal.

29. Several other submissions in order to demonstrate the falsity of the allegations made against the appellant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been assured on behalf of the appellant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It has also been pointed out that the accused is in jail since 26.03.2024 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

30. On the other hand, learned counsel for the opposite party no.2 and 4 vehemently opposed the arguments as advanced by learned counsel for the appellant and submits that the appellant has committed a heinous offence and prima facie offence is made out against the appellant, as such, he is not entitled to be enlarged on bail. He further submits that the photographs of the

C.C.T.V. footage and materials, available on record, clearly reveal that the appellant had attacked upon the deceased as well as the opposite parties no.3 and 4 with intention to commit their murder. The injury report and post mortem report of the deceased reveal that the appellant had caused several injuries to the deceased by knife, which itself shows that the appellant had attacked upon the deceased and injured persons with an intention to commit their murder.

31. He further submits that the independent eye witnesses namely Yaar Mohammad and Ratnakar Upadhyaya, both have fully supported the prosecution story in their statements, clearly stating that the appellant has committed the crime in question and the Ratnakar Upadhyaya has also stated in his statement that when he tried to intervene the matter then the appellant also attacked upon him to cause injuries by knife. He further submits that the independent eye witnesses namely Gaurav Sethi and Sarvan Kumar Mishra, both have also fully supported the prosecution story in their statements, clearly stating that the appellant has committed the crime in question.

32. Learned A.G.A.-I for the State has also made an agreement with the arguments as advanced by learned counsel for the opposite party nos.2 and 4.

33. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also in the absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that the appellant has lodged an F.I.R. just two hours before the instant F.I.R. against the opposite parties, which itself indicates that it is a counter blast case; the opposite party no.3 Arvind Kumar is a police officer posted as Sub-Inspector at Police Line, Lucknow and he has been suspended by the Police Commissionerate, Lucknow for his key involvement in the incident; it is also clear from the CCTV footage that three persons are attacking and assaulting the appellant with rods and balli and the appellant in order to save himself from the sudden attack, used whatever he could find on him at the time, i.e. the small knife in his keychain to protect himself, however, there was no intention or motive on the part of the appellant to murder any person and he acted only to save his own life; the appellant in the instant case was suddenly attacked with rods and balli by three persons which created a reasonable apprehension of death and grievous hurt in his mind, thus, his actions in defending himself were not disproportionate to the attack he was facing; the appellant suffered six grievous injuries during the assault



by the opposite parties and medical examination of the appellant reveals multiple abrasion, conture swelling and stitched wound injury on the right side of the head; the statements of so-called eye-witnesses, namely Yaar Mohammad and Ratnakar Upadhyay, place the time of the alleged incident at 10:23 PM i.e. a difference of about 6 hours from 04:30 PM, which is the time of the alleged incident as per the allegations levelled in the FIR by the informant herself and which is also what the prosecution story has been throughout and the said difference, coupled with the fact that the statements of Ratnakar Upadhyay and Yaar Mohammad are identical to one another and clearly tutored, render the same wholly unreliable; significantly around 14 residents of the society where the alleged incident took place, gave a written complaint to the Police Commissioner, Lucknow, highlighting the frequent and continued misbehaviour of Baldev Singh Chauhan and abuse of the position of police officer by Arvind Kumar; it has also been highlighted in the complaint that Baldev Singh Chauhan and Arvind Kumar brutally assaulted the appellant and also tried to take his life which also lends support to the fact that the appellant was not the instigator of the alleged incident; there is no evidence that would show mens rea on the part of the appellant, which is a necessary ingredient for an offence punishable under Section 302 IPC., as such, even if the prosecution version is accepted uncontroverted, the present case cannot travel beyond the ambit of Section 304 IPC and further considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of **Dataram Singh vs. State of UP and another**, reported in **(2018) 3 SCC 22** and **Sukumaran (Supra)**, this Court is of the view that the learned trial court has failed to appreciate the material available on record. The order passed by the trial court is liable to be set aside.

34. Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 18.04.2024 passed by learned Special Judge, S.C./S.T. Act, Lucknow in Bail Application No.2573 of 2024, Case Crime No.173 of 2024, under Sections 302, 324, 504, 506, 307 I.P.C. and Section 3(2)(V) of S.C./S.T. Act, Police Station P.G.I., District Lucknow East (Commissionerate Lucknow), whereby the bail application of the appellant has been rejected is hereby **set aside** and **reversed**.

35. Let the appellant, **Amit Bajpai** be released on bail in the Case Crime No.173 of 2024, under Sections 302, 324, 504, 506, 307 I.P.C. and Section 3(2)(V) of S.C./S.T. Act, Police Station P.G.I., District Lucknow East (Commissionerate Lucknow) with the following conditions:-

(i) The appellant shall furnish a personal bond with two sureties each of like amount to the satisfaction of the court concerned.

(ii) The appellant shall appear and strictly comply following terms of bond executed under section 437 sub section 3 of Chapter- 33 of Cr.P.C.:-

(a) The appellant shall attend in accordance with the conditions of the bond executed under this Chapter.

(b) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(iii) The appellant shall cooperate with investigation /trial.

(iv) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vi) In case, the appellant misuses the liberty of bail during trial, in order to secure his presence, proclamation under section 82 Cr.P.C. is issued and the appellant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(vii) The appellant shall remain present, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the appellant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

36. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the prayer for bail and must not be construed to have any reflection on the ultimate merit of the case.

37. The trial court is also directed to expedite the trial of the aforesaid case by following the provisions of Section 309 Cr.P.C., strictly without granting any unnecessary adjournments to the parties, in case there is no other legal impediment.

**(Justice Shamim Ahmed)**

**Order Date :- 24.07.2024**

Saurabh