Anwarul Haq vs The State Of Uttar Pradesh on 26 April, 2005

Equivalent citations: AIR 2005 SUPREME COURT 2382, 2005 AIR SCW 2522, 2005 ALL. L. J. 1758, (2005) 2 KER LT 840, 2005 CRILR(SC&MP) 496, 2005 (2) UJ (SC) 1001, 2005 UJ(SC) 2 1001, (2005) 30 ALLINDCAS 752 (SC), 2005 (5) SRJ 433, 2005 (4) SLT 152, 2005 (4) SCALE 442, 2005 SCC(CRI) 1629, 2005 (3) ALLCRILR 211.2, 2005 ALL MR(CRI) 2253, 2005 (10) SCC 581, (2005) 5 JT 9 (SC), 2005 (30) ALLINDCAS 752, 2005 CRILR(SC MAH GUJ) 496, 2005 CHANDLR(CIV&CRI) 707, (2005) 2 EASTCRIC 294, (2005) 31 OCR 285, (2005) 2 RAJ CRI C 437, (2005) 3 SUPREME 618, (2005) 2 ALLCRIR 1841, (2005) 4 SCALE 442, (2005) 2 CRIMES 159, (2005) 4 SCJ 516, (2005) 52 ALLCRIC 708, (2005) 2 CHANDCRIC 140, (2005) 3 ALLCRILR 211(2), 2005 (2) ANDHLT(CRI) 179 SC, 2005 (2) ALD(CRL) 57, (2005) 2 ANDHLT(CRI) 179

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

```
           CASE NO.:
Appeal (crl.)  625-626 of 2005

PETITIONER:
Anwarul Haq

RESPONDENT:
The State of Uttar Pradesh

DATE OF JUDGMENT: 26/04/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
```

J U D G M E N T (Arising out of SLP(Crl.) Nos. 4321-22 of 2004) ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a learned Single Judge of the Allahabad High Court, Lucknow Bench affirming his conviction for offence punishable under Section 324 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of one year rigorous imprisonment as imposed by the trial court. The revision application filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short the 'Code') was dismissed. Initially four persons had faced trial. Three of them were acquitted.

The prosecution version in a nutshell is as follows:-

> On 8th of July, 1990, in the evening Naseeb Alam (PW-1) was going to his house from Sadullanagar market. At about 4.30 P.M. in front of Village Parsarampur on the road, four accused persons, who were co- villagers met him. Due to old animosity, they began to utter vulgar abuses. Upon objection, accused-appellant Anwarul Haq inflicted blows by the knife carried in his hand, because of which serious injuries were caused in the right hand of PW-1. Jesulla and Idrish (PW-2) coming towards to the village from Sadullanagar reached there upon hearing his cries, rescued him. They had seen the incident. The accused persons fled away from the spot of the incident while threatening to kill. The accused Anwarulhaq fled away while leaving behind his bicycle at the spot. First information report was written by Rajkumar Srivastava, it was lodged at the police station on the basis of which the first information report was registered on the same day at 17.20 hours vide no. Ex.P/4. The memo for the bicycle was drawn vide Ex.P/2. The wounded informant was sent to the Primary Health Centre, Sadullanagar along with a written letter through the constable Chandraz Bhushan Pathak and his medical examination was done which is Ex.P/3. After the investigations, charge-sheet was filed for alleged commission of offences punishable under Sections 324, 504 and 506 IPC, on the basis of which cognizance was taken.
>
> The four accused persons faced trial for alleged commission of offences punishable under Sections 324 read with 34, 504, 506(2) IPC. Accused persons pleaded innocence and faced trial. The accused persons took the plea that they were falsely implicated because of animosity.
>
> On behalf of the prosecution side, the witnesses of the facts viz., PW-1 Naseebalam, PW-2 Mohd. Idrish, and formal witness PW-3 Dr. S.N. Pandey, PW-4 Chandrabhan Yadav were examined.
>
> Out of the four persons who were tried, three were acquitted and only the appellant was convicted. The three persons were acquitted on the ground that the evidence was not sufficient so far as they are concerned. Doctor (PW-3) who had examined the injured found the following injuries:-
>
> 1. Incised wound of 6 Cm. x 1.5 Cm. x 1 Cm. at the wrist of right hand in frontal portion.
>
> 2. Complaint at the back of the chest.

Placing reliance on the evidence of the injured, the accused was found guilty and convicted. Trial court found that the first information report was lodged immediately after the occurrence and there is nothing infirm to discard the testimony of the injured witness. Accordingly the conviction was made and sentence was awarded as aforesaid. The revision before the High Court was dismissed. An

application for review was also dismissed. Both the orders are under challenge in these appeals.

The High Court found that the plea regarding unreliability of the evidence of eye witnesses was clearly without substance and there is no infirmity in the order of the trial court. Accordingly the Revision Application was dismissed.

In support of the appeal, learned counsel for the appellant submitted that the courts below did not take note of the fact that there was animosity between the parties and therefore the evidence of the so called eye witnesses was tainted. Additionally the knife supposed to have been used was not recovered. In any event it was not established that the weapon that was used was a dangerous weapon and, therefore, Section 324 IPC has no application. Residually it was submitted that the accused is in custody for nearly ten months and the sentence should be reduced.

Learned counsel for the respondent-State on the other hand supported the judgment and stated that the findings of fact recorded by the trial court was affirmed by the High Court in revision and no interference is called for.

We find that the trial court has analysed in great detail the evidence of eye witnesses, including that of PW-1, the injured and therefore there is no scope for interference. The plea that the weapon used was not a dangerous weapon had never been urged before the trial court or the High Court. Whether weapon is a dangerous weapon or not has to be gauzed only on the factual basis. As there was no challenge on this aspect by the accused before the courts below, that plea for the first time cannot be permitted to be raised in this Court.

Section 324 provides that "Whoever except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which is deleterious to the human body to inhale, to swallow or to receive into the blood, or by means of any animal" can be convicted in terms of Section 324. The expression "an instrument, which used as a weapon of offence, is likely to cause death" should be construed with reference to the nature of the instrument and not the manner of its use. What has to be established by the prosecution is that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in this Section.

The Section prescribes a severer punishment where an offender voluntarily causes hurt by dangerous weapon or other means stated in the Section. The expression "any instrument which used as a weapon of offence is likely to cause death" when read in the light of marginal note to Section 324 means dangerous weapon which if used by the offender is likely to cause death.

Authors of IPC observed, as noted below, the desirability for such severer punishment for the following reasons:

> "...Bodily hurt may be inflicted by means the use of which generally indicates great malignity. A blow with the fist may cause as much pain, and produce as lasting an injury, as laceration with a knife, or branding with a hot iron. But it will scarcely be disputed that, in the vast majority of cases, the offender who has used a knife or a hot iron for the purpose of wreaking his hatred is a for worse and more dangerous member of a society than he has only used his fist. It appears to us that many hurts which would not, according to our classification, be designated as grievous ought yet, on account of the mode in which are inflicted, to be punished more severely than many grievous hurts."

Eye witnesses in the present case have described the knife, and merely because the knife has not been recovered during investigation same cannot be a factor to discard the evidence of PWs. 1 & 2. Wounds noticed by the Doctor (PW-3) also throw considerable light in this aspect. Doctor's opinion about the weapon, though theoretical, cannot be totally wiped out. In that view of the matter the appellant has been rightly convicted under Section 324 IPC.

Learned counsel for the appellant submitted that the appellant is in custody since 27.6.2004 and has served major part of the sentence imposed. Prayer was made, as noted above, to restrict to the period already undergone. We find no substance in this appeal. Considering the background facts as highlighted above, it would not be proper to show any leniency so far as the sentence is concerned.

The appeals fail and are dismissed.