

SUPREME COURT OF INDIA

Nawab Singh

Vs.

State of U.P.

Crl.A.No.41 of 1953

(Mehr Chand Mahajan, B. K. Mukherjea and B. Jagannadhadas, JJ.)

28.09.1953

JUDGEMENT

B.K. MUKHERJEA, J.:

1. This appeal, which has come before us on special leave, is directed against a judgment of a Division Bench of the Allahabad High Court, dated 19th September 1951, passed in Criminal Appeal No. 333 of 1951 by which the learned Judges affirmed, with slight modification, the judgment and order of the Additional Sessions Judge, Budaun made in Sessions Trial No. 142 of 1950 and upheld the conviction of the appellant under sections 302 and 364 of the Indian Penal Code and the sentences of death and transportation for life passed thereunder.

2. The facts of the case lie within a short compass. The prosecution story is that Lalman and Thanni, the two murdered persons, were brothers and belonged to a well-to-do family of traders who were residents of village Kurha Shahpur in the district of Budaun and had a sugar manufactory at the place. Lalman's son is named Itwari. On the day of occurrence, which is 11th of December 1949, at about 5 p.m. in the after noon, while the work was going on in the sugar manufactory which is located in a thatched hut, and Itwari, Thanni and several other persons were present, four people coming from the Northern side arrived on the spot led by the appellant Nawab Singh. They were dressed partly in military uniform. Nawab Singh had a pistol in his hand and of his three companions, one was armed with a pistol, the second with a gun, while the third carried a lathi.

Itwari slipped away from the place as soon as these persons came. Immediately on arrival Nawab Singh, enquired as to where Itwari was. The persons present expressed their ignorance about him and then, it is said, Thanni cried out that Nawab Singh and his gang have come Nawab Singh forthwith took aim at Thanni with his pistol and shot him dead. The report of the gun fire attracted Lalman to the spot and Nawab asked two of his companions, who were posted at the door of Lalman's house, to catch hold of Lalman. This was done and after the hands of Lalman were tied behind his back with his turban, he was moved away from the place and taken to an easterly direction.

Two more gun fires were heard and later on Lalman's body was discovered from a place situated in the East. After the completion of the police investigation, proceedings were started against Nawab Singh, and two of his companions, namely, Rishipal Singh and Chhabram Singh and all the three were committed to the Court of Session and tried by the Additional Sessions Judge, Budaun. The Additional Sessions Judge convicted Nawab Singh under sections 302, 302/149 364/149 and also

section 148 of the Indian Penal Code. He was sentenced to death for murdering Thanni and to transportation for life for kidnapping Lalman with intent to commit murder and for murdering him eventually. There was a further sentence of 3 years' rigorous imprisonment imposed upon him on the charge under section 148, Indian Penal Code.

The other two accused were given the benefit of doubt and were acquitted. Thereupon Nawab Singh took an appeal to the High Court of Allahabad and the Sessions Judge also sent up the case to the High Court for confirmation of the death sentence. The High Court dismissed the appeal and affirmed the judgment of the Additional Sessions Judge with this modification that the conviction and sentence under section 148, Indian Penal Code were set aside. It is against this judgment that the present appeal has come to this court.

3. The only point, which has been canvassed seriously before us by Mr. Umrigar who appeared in support of the appeal, is that the story put forward by the prosecution, namely, that Thanni was killed by a pistol shot fired by Nawab Singh is materially contradicted by the medical report and the evidence of some of the prosecution witnesses. It is pointed out that the medical report shows that there were a number of gun shot wounds in the body of the victim and in Ex. P-6 it is clearly stated that an empty 12 bore cartridge was recovered from where the body of the victim lay. It is argued that in these circumstances the prosecution story, that Thanni was killed by a pistol shot fired by Nawab Singh cannot possibly stand and in cases like this where death is due to injuries or wounds caused by a lethal weapon, it is incumbent upon the prosecution to prove by expert evidence, if necessary, that it was likely or at least possible for the injuries to have been caused with a weapon with which they were alleged to have been caused.

This point, it may be noted, was not raised before the High Court either during the hearing of the appeal or even at the time when the appellant applied for leave to appeal to this court. It seems to us that the point is without substance and the apparent discrepancy upon which the learned counsel lays stress appears on close examination to be wholly illusory. The prosecution story undoubtedly is that Nawab Singh carried a pistol with which he fired at Thanni. The pistol, however, was a country made one and P. W. 6 expressly states that 12 bore cartridges could be fired in such pistols.

This story was accepted by the Additional Sessions Judge and there is nothing improbable, therefore, in the recovery of a 12 bore exploded cartridge being found near the body of the victim, or in the presence of multiple injuries in his body. It is not the case of the prosecution that only one shot was fired by Nawab Singh. It may be further mentioned that the expression "gun fire" was used in the ordinary and colloquial sense by the prosecution witnesses and the evidence clearly indicates that they did not mean that the shot was fired from a gun and not a pistol. The contention of the learned counsel must, therefore, fail.

4. Mr. Umrigar finally argued that as a good deal of time had elapsed since the death sentence was imposed upon the accused, the capital sentence should be commuted to one for transportation for life. It is true that in proper cases an inordinate delay in the execution of the death sentence may be regarded as a ground for commuting it, but we desire to point out that this is no rule of law and is a matter primarily for consideration of the local government. If the court has to exercise a discretion in such matter, the other facts of each case would have to be taken into consideration. In the case before us, we find that the murder was a cruel and a deliberate one and there was no extenuating circumstances whatsoever which would justify us in ordering a commutation of the death sentence. The result is that the appeal is dismissed.

Appeal dismissed.

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