SUPREME COURT OF INDIA

Zabar Singh

Vs.

State of U.P.

Crl.A.No.97 of 1956

(S. J. Imam and P. Govinda Menon, JJ.)

06.12.1956

JUDGEMENT

GOVINDA MENON J. –

1. Zabar Singh, the appellant, has been convicted of an offence under S. 302, read with S. 34, of the Indian Penal Code, for having participated in the murder of one Sahib Singh and sentenced to imprisonment for life. Special leave having been granted by this Court, his appeal now comes before us.

2. On the findings arrived at by the learned Judges of the High Court of Allahabad, the appellant is entitled to an acquittal, and our reasons for that conclusion maybe shortly stated as under: -

3. The appellant was tried by the learned Sessions Judge of Mainpuri, along with two others - Lalman and Poti Ram, for having murdered Sahib Singh by shooting him on the 22nd of May, 1953, at the bus-stand in Kuraoli Town Area while Sahib Singh was alighting from a motor-bus.

4. The prosecution case was that on account of factions in that area due to rivalry in politics, the enemies of Sahib Singh procured the appellant and others to commit the murder. The case was based on the testimony of six witnesses, of whom four were discredited by the High Court and partial reliance was placed on the remaining two. Of them P.W. 1 Chhotey Singh, who lodged the report with the Police, was the most important. Maiku Chowkidar (P.W. 6), who is also mentioned as a witness in this report, is another witness. Now, according to the evidence of Chhotey Singh (P.W.1), it was the appellant who fired the fatal shot, while the two others LaIman and Poti Ram had lathies in their hands. This is made clear not only in his evidence before the Court as P.W. 1, but also in the First Information Report, Exhibit P. l. There was also a dying declaration given by the deceased at the hospital, Exhibit 'Q', wherein three names are mentioned, of whom the appellant is one, the others being Uma Shanker and Chandrasen Jain. It will thus be seen that whereas in the First Information Report and the testimony of P.W. 1 the associates of the appellant are shown as Lalman and Poti Ram in Exhibit 'Q', the shooting portion is ascribed to Uma Shanker, and the appellant was solely referred as being at the bus-stand.

5. The learned Sessions Judge did not accept the genuineness of the dying declaration but preferred to base his conclusion on the testimony of the eye-witnesses. The learned Judges of the High Court were of the view that the dying declaration should be accepted as true and thereby disagreed with the Sessions Judge. Finding that there was only the testimony of Chhotey Singh against Lalman and

Poti Ram, the, latter persons were acquitted by the High Court. The learned Judges modified the conviction by the trial Court under S. 302 into one under S.302 read with S. 34, I.P.C. because in their opinion it was doubtful that he played the chief role. They were, therefore, not inclined to accept the testimony of Chhotey Singh, and Maiku Chowkidar that it was the appellant that fired the fatal shot.

6. As we understand the findings of the learned Judges of the High Court, it comes to this. The oral testimony of Chhotey Singh and Maiku (P.W. 6) has not beer accepted in toto, in that the part ascribed to the appellant has not been acted upon but because in the dying declaration the appellant is mentioned as one of the persons who was present, though it was Uma Shanker who fired the fatal shot, the High Court concluded that the appellant was a participant in the crime.

7. It is difficult for us to agree with the High Court. It was not the prosecution case that anyone other than Lalman and Poti Ram, was an associate of the appellant in the murder and the case having been found against them, we have no evidence whatever that some unidentified and unknown persons, along with the appellant, committed the offence. So far as the appellant is concerned, the High Court has come to the conclusion that he did not play the chief role, meaning thereby that he did not fire the fatal shot. The question then arises as to who it was who caused the injury as a result of which Sahib Singh died. There is no finding on that point by the High Court.

8. In an appeal by special leave, ordinarily this Court is bound by the findings of fact arrived at by the High Court and especially when such findings are in favour of the accused, it stems to us that the request by Mr. Mathur, who appears for the State, to canvass the correctness of the findings of the learned Judges of the High Court, cannot be granted. The learned Judges of the High Court were apparently not alive to the situation created by the conclusions on facts which leave us with no option but to hold that the appellant is not guilty of the offence. Had they found Lalman and Poti Ram guilty, then the conviction by the Sessions Judge could have been upheld. Had they, on the other hand, relied entirely on the evidence of Chhotey Singh and Maiku that it was the appellant, who fired the fatal shot, then also his conviction could have been sustained, but, as stated by us already, there is no finding as to who committed the murder of Sahib Singh. In order that S. 34 may be applied in a case of this kind the common intention of committing the crime must be attributed to more than one individual and if the offence is the result of a joint act of more than one person, then only each one of them can be found guilty under S. 302, read with the S. 34, I.P.C. There is no acceptable evidence whatever of a previous concert and it is not known who the other assailants were. In these circumstances and especially since, the High Court has held that the appellant did not fire the fatal shot but only played the minor role, the conviction cannot be upheld.

9. The appeal is, therefore, allowed and the appellant is acquitted.

Appeal allowed.

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