

Devendra Singh, Navin Dutt and Others

Vs

State of U. P

Criminal Appeals Nos. 77 and 135 of 1970

(K. S. Hegde, A. N. Grover JJ)

05.05.1971

JUDGMENT

GROVER, J. -

1. These appeals are by special leave from a judgment of the Allahabad High Court. Devendra Singh appellant in Cr. A. 77/70 was tried with by the Additional Sessions Judge, Aligarh, under Sections 302 and 324, read with Section 34, Indian Penal Code. He was convicted and sentenced to death under Section 302. He was also convicted under Section 324, read with Section 34 of the Indian penal code and sentenced to rigorous imprisonment for 6 months. Navin Dutt and Pravin Dutt who are brothers and who are appellants in Cr. A. 135/70 were tried for offences under the aforesaid Sections and were convicted and sentenced to imprisonment for life and said Sections and were convicted and sentenced to imprisonment for life and rigorous imprisonment for 6 months respectively. Similarly Shiv Kumar appellant in the same appeal was tried and sentenced to imprisonment for life and to rigorous imprisonment for one year for offences under Sections 302 and 324, read with Section 34. In each case the sentences of imprisonment were ordered to run concurrently. The High Court confirmed the sentence of death awarded to Devendra Singh. It also confirmed the convictions of the other appellants under Sections 302 and 324, read with Section 34. The appeals of the other appellants were also dismissed. The version as given by Virendra Singh P.W. 1 in the first information report of the occurrence which took place in March 27, 1968 at Aligarh may be succinctly noticed. Accordingly to him he left his room for a walk at about 7 p.m. in the evening. When he reached near the coal depot of K. D. Gautam in Vishnupuri, Navin Dutt son of K. D. Gautam called him from behind and admonished him against misbehaviour. On enquiry as to what was meant by misbehaviour Navin started abusing him. On this there was some exchange of hot words. Navin caught hold of him by his neck and started beating him. Navin's brother Pravin also came there. He was given a beating by the two brothers and a third person who was with them. In the meantime Devendra Singh brother-in-law of Aidal Singh, Surendra Bhardhwaj and Shiv Kumar Sharma arrived there. Krishnapal Singh Tyagi recognised him and made an attempt to save him. Thereafter Virendra Singh went to Manmohan Suman and told him the details relating to the incident near the coal depot. Virendra Singh brought Manmohan Suman to the coal depot for having a settlement of the unfortunate dispute which had arisen. Thereafter Suman and Virendra Singh went to the station for having a cup of tea. After having tea they went to the room of Santosh Kumar who was busy talking to Daya Shanker Sharma, Babu Ram Yadav and Netra Pal Singh who were present in his room. Santosh Kumar said that he had gone with some friends to Virendra Singh's room and he had an altercation with the mother and the sister Usha of Navin and Pravin who were also present there. At about 10 p.m. Virendra Singh accompanied by Santosh Kumar, Baburam Yadav and Daya Shanker Sharma came in front of the coal depot. All the four appellants came there and said "Salas should be beaten." The words in Hindi are "maro salon ko." Upon this Devendra

Singh caught hold of Santosh Kumar by his neck and then fired a pistol shot at his abdomen. Shiv Kumar assaulted Daya Shanker with a knife which caused an abrasion near the elbow and tore his bushshirt. Santosh Kumar died as a result of injuries received from the pistol shot.

2. When Virendra Singh appeared as P.W. 1 he gave some more details which furnished the reason for the quarrel between the appellants on the one hand and Virendra Singh, Santosh Kumar and their companions on the other on the fateful evening. The real reason was that some days prior to the incident Usha who was also a student of the Dharam Samaj College was going back home from the college. Some boys were standing at the gate also with Virendra Singh who called her "Usha Delux". She apparently complained about it to Navin and Pravin who were her brothers and it was for the reason that Navin admonished Virendra Singh on the evening of the occurrence and asked him to stop doing "badtamizi." It is unnecessary to mention the additional matters except two. One was that Santosh Kumar had told him about the row which he had on the same evening with Usha and her mother in the presence of Navin and Pravin. Virendra Singh had been told that both the women had called him and his companions "goondas." The other is that before the shot was fired by Devendra Singh, Navin pointing out towards the complainant party said to Devendra Singh "kill the salas" (Salon ko mardo).

3. Learned Counsel for Devendra Singh has made an attempt to find fault with the medical evidence. It has been pointed out that according to Dr. G. D. Agarwal P.W. 4 the area which was blackened and scorched was not given. The doctor had clearly stated that Santosh Kumar deceased had gunshot wound with inverted margins on the upper and middle part of abdomen above the navel. The wound was directed slightly upwards, backwards, horizontal, piercing the stomach wall and coming out on back part. In cross-examination he could not say definitely as to the distance from which firearm might have been used but it was probable that it had been used while it was touching the body. The criticism on behalf of the appellant is that the area which was blackened and scorched was not given in a precise manner by the doctor. The doctor, however, explained it by saying, "I have not mentioned the area of blackening around the injuries which may mean that there might not have been any area of it and scorching and blackening might have been in the wound alone". We do not consider that there is any force or substance in the suggestion that according to the medical evidence the pistol was not fired close proximity to the abdomen.

4. Now the evidence which has been given by Virendra Singh P.W. 1, Manmohan Suman P.W. 2 and Daya Shanker P.W. 3 who are eye-witnesses clearly establishes that Santosh Kumar was shot in the region of the abdomen at point blank range by appellant Devendra Singh. That evidence has been believed by the Courts below and we do not find any such infirmity in their testimony which may persuade us to discard it altogether. The only question is whether he should have been awarded the extreme penalty of law in the entire circumstances which have been disclosed. The version given by Virendra Singh P.W. 1 that Santosh Kumar come with him and two others also came because Santosh Kumar wanted to take milk does not carry conviction. Santosh Kumar only a little earlier had an exchange of hot words with the mother and sister of Navin and Pravin. He could have easily apprehended that the party of the accused would be in an angry mood and that he should avoid going that side. Nevertheless he persisted in going with Virendra Singh and there were two other companions with him, namely, Manmohan Suman P.W. 2 and Daya Shanker P.W. 3. These four persons who were all young boys do not appear to have gone towards the coal depot on as innocent a mission as Santosh Kumar's desire to have milk. It seems to us that all the true facts of the incident which led to the shooting of Santosh Kumar have not been fully brought to light by the prosecution. It is quite possible that some such incident happened again which led to Devendra Singh taking out the pistol and shooting Santosh Kumar. In such a situation the sentence of death ought not to have

been imposed on Devendra Singh. We confirm his conviction under Section 302, Indian Penal Code, but impose a life sentence of death. His conviction and sentence under Section 324, read with Section 34 cannot be sustained. He is acquitted of that charge.

5. As regards Shiv Kumar appellant he has been rightly convicted under Section 324, Indian Penal Code, but his conviction under Section 302 must be set aside. The prosecution has failed to establish the circumstances in which Section 34 of the Indian Penal Code would become applicable. Although in Court Virendra Singh P.W. 1 and the other witnesses tried to make out a case of common intention on the part of all the appellants to kill Santosh Kumar but the first information report leaves no room for doubt that all that they intended was to give him a beating. It was Devendra Singh who took it into his head to shoot Santosh Kumar. Shiv Kumar, however, did inflict injuries with the knife but he could not be attributed the common intention of shooting the deceased. He is, therefore, acquitted of the charge under Section 302. As regards appellant Pravin Dutt he neither said nor did anything which would show the common intention of committing the offence under Section 302 or Section 324. It has already been mentioned that according to the first information report it was only Navin who said that the "salas" should be beaten. Pravin is, therefore, acquitted of both the charges.

6. As regards Navin all that he said was that a beating should be given. He did not share the common intention of either Devendra Singh who shot Santosh Kumar or of Shiv Kumar who inflicted the knife injury on Daya shanker P.W. 3. He could only be sentenced for an offence under Section 323, read with section 107 and 144 of the Indian Penal Code. But we do not consider that the sentence which already been imposed on him under a different Section is excessive and we maintain the same.

7. The appeals are consequently allowed to the extent and the manner indicated above.

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