

Gyanendra Kumar

Vs

The State of U. P.

Criminal Appeal No. 29 of 1969

(P. Jagmohan Reddy, D.G. Palekar JJ)

25.11.1971

JUDGMENT

PALEKAR, J. -

1. In this appeal by special leave the appellant, Gyanendra Kumar who is about 22 years old has been convicted by the Civil and Sessions Judge, Etah for offences under Sections 302, 307, 224, I.P.C. and Section 25 of the Indian Arms Act. On conviction he has been sentenced to imprisonment for life and to several other terms of imprisonment. All the sentences are made to run concurrently. In appeal, the High Court at Allahabad confirmed the conviction and sentence and hence this appeal by special leave.

2. The person who lost his life was one Munshi Lal, the maternal uncle of the appellant. The incident took place in Ganjdunwara town on August 30, 1964. There is a school in that town known as the Hindi - Muria School, which was run by the Dharmada Committee of the local grain-merchants. The appellant's father Raja Ram and uncle Mehtab Rai are influential grain merchants of the town and were members of the Dharmada Committee. The deceased Munshi Lal was a teacher in that School. The president of the Dharmada Committee received a letter in which it was suggested that the School may either be closed or the salaries of the teachers be reduced. Hence a meeting of the Dharmada Committee was called on August 29, 1964. The meeting, however, was adjourned to 2.30 p.m. on August 30, 1964. A large number of people attended the meeting of the Dharmada Committee. There were members of the Committee and also non-members. The appellant, a non-member, was also present at the meeting.

3. As soon as the meeting commenced one Bankey Lal Kabra, PW 9 pressed for the consideration of the letter which suggested that the School be either closed or the salaries of the teachers be reduced. The appellant's father Raja Ram and uncle Mehtab Rai took exception to Bankey Lal Kabra taking part in the proceedings on the ground that he had ceased to be a grain merchant and was not entitled to address the meeting as a member, This annoyed Bankey Lal Kabra who made some derogatory remarks against Raja Ram and Mehtab Rai. The appellant got very much excited on hearing what was said against his father and uncle and said that Bankey Lal Kabra was creating trouble and it was necessary to look to him. So he left the meeting, went to his house which was about a furlong away and returned with a loaded double-barrelled gun. By that time the meeting had ended in disorder and the people were dispersing on the road in front of the house where the meeting was taking place. Bankey Lal Kabra accompanied by some others was moving away from the place when the appellant came with the gun and addressing those who were accompanying Bankey Lal Kabra said "Move away. I shall shoot this Sala Kabra with my gun." Saying this, he fired one shot in the direction of Bankey Lal Kabra. He missed his aim. Bankey Lal Kabra then started running to save

himself towards the house of one Laxmi Narain. In the meantime the deceased Munshi Lal rushed towards his nephew, the appellant, in order to prevent him from using the gun. The appellant, however, pushed him back and fired at Bankey Lal Kabra. Unfortunately Munshi Lal came between the gun and Bankey Lal Kabra and was shot in the back. Munshi Lal fell down.

4. The gun was breach loader. The appellant attempted to reload the gun after the two spent cartridges were thrown out by the ejector and fell on the ground. As he put his hand in his hand pant pocket to take out fresh cartridges, the appellant was overpowered by the friends and associates of Bankey Lal Kabra namely Sita Ram, PW 1, Chandra Shekhar, PW 6 and others. Bankey Lal Kabra also joined them. They caught the appellant and were marching him to the police station when Mehtab Rai, Raja Ram and six of their associates came and rescued him from his captors. In the melee, Bankey Lal held the appellant fast by his shirt and a piece of shirt came in his hand as the appellant freed himself by force. The appellant with his gun was taken away by his relations. It was past 3.00 p.m. by now. The captors picked up the two empty cartridges which had fallen on the ground and then wrote a complaint. With this complaint they proceeded to the police station and at 3.30 p.m. lodged the complaint. The two empty cartridges and the piece of shirt were handed over to the Officer-in-Charge. A search was take of the house for the shirt of the appellant and the same, Ext. 21, was attached under a Seizure Memo. On comparison, the piece was found to be a part of the shirt attached.

5. In the evening the Superintendent of Police arrived in town and he called for the gun. The gun was produced by Mehtab Rai. On examination of the gun it was found that it had been freshly greased and the barrels had been cleaned. The gun and the two empty cartridges were sent to the Scientific Section of the U.P. Government where Inspector Rameshwar Prasad Rastogi, PW 3 found, after firing two live cartridges from the gun that the two empty cartridges which had been sent to him must have been fired from this gun. Munshi Lal died of the gun-shot wound and on a post-mortem examination of his body it was found that he had a gun-shot injury which was chest cavity deep with margins blackened. A charge-sheet was filed against the appellant and his rescuers. The learned Sessions Judge acquitted the rescuers but convicted the appellant as aforesaid.

6. The defence of the appellant was one of alibi. He said that he had gone away to Bareilly on the evening of August 29, 1964 and that he was not present at all at the time of the occurrence. He further stated that he had been falsely involved because his father and uncle were influential men and the prosecution witnesses were jealous of them.

7. Both the Courts held that he prosecution case had been substantially proved. The eye-witnesses of the occurrence were Bankey Lal PW 9, Sita Ram, Pw 1, Chandra Shekhar, PW 6 and Krishan Gopal PW 7. Besides, there was the evidence of the two empty cartridges, which, in the opinion of the Export Inspector Rastogi, had been fired from the gun recovered from Mehtab Rai. There was also the piece of the shirt of the appellant. Objection was taken to the evidence of the eye-witnesses on the ground that they were associates of each other and partisan witnesses. After due consideration of this objection, both Courts held that the appellant had fired two shots from the gun at Bankey Lal. The first missed its aim and the second hit the unfortunate Munshi Lal when it was really intended for Bankey Lal. These are findings of fact and this Court would not normally interfere with the High Court's findings of fact. We may say at once that no good grounds are made before us for reviewing the findings.

8. Mr. Kohli appearing for the appellant, however, submitted that on the basis of some of the findings of the High Court and the admitted circumstances of the case it was very probable that the

deceased Munshi Lal might have been hit by a shot discharged accidentally in a scuffle. Admittedly Munshi Lal had rushed to the appellant to prevent him from firing the second shot. It is submitted that at this stage there might have been a scuffle between the two and in the scuffle the gun was accidentally discharged and Munshi Lal fell to the shot. In this connection Mr. Kohli particularly invited our attention to the following observations of the High Court.

"It is not very clear how Munshi Lal came in between the barrel of the gun and Bankey Lal.

In our opinion, there is no substance in this submission. The observations of the High Court must be read in their context. The High Court does not say that there was any scuffle and the appellant. There is no evidence, to show that Munshi Lal was trying to catch hold of the gun. The evidence, on the other hand, was that Munshi Lal was pushed aside, and, according to the High Court, it was quite likely that when he was pushed aside, he steadied himself and assumed a standing position just when the appellant fired a second time at Bankey Lal. The fact is that Munshi Lal received the wound in the chest, though from a very short range, which only goes to show that the appellant was firing at chest height. Moreover, there is absolutely no basis made in the evidence to show that there was a scuffle. The case of the appellant was that he was not present at the time of the occurrence. No suggestion also about the alleged scuffle or the gun accidentally discharging itself was made when the eye-witnesses were cross-examined. The point was not even raised before the learned Sessions Judge. A feeble attempt, however, seems to have been made before the High Court but the submission was rejected by the High Court, and in our opinion, rightly.

9. It was next contended that the offence, if any, was one under Section 304, Part-I and not under Section 302 read with Section 302, IPC. It was argued that the appellant was of an irritable temperament and that he must have fired the shots under grave and sudden provocation. It may be that the appellant had an irritable temper but there was no question of any grave provocation much less a sudden provocation. After all, during the course of the meeting, all that Bankey Lal had said was that Mehtab Rai and Raja Ram were monopolising all seats of authority and they were dishonest. The appellant being a near relation may certainly resent such derogatory words addressed to his father and uncle. But they can hardly be said to be grave provocation having regard to the station in life Mehtab Rai and Raja Ram occupied, on the one hand, and Bankey Lal, on the other. It is true that what is grave provocation in one set of society may not be grave provocation in another. But the words uttered by Bankey Lal to the effect that they were dishonest cannot be regarded as grave provocation under the circumstances. In any case the provocation was far from being sudden. The appellant goes to his house which is about a furlong away and fetches the gun. There was sufficient time for him to cool down. His action was deliberate. He asked those who were near Bankey Lal to move away because he wanted to shoot Bankey Lal. One shot missed its aim. Munshi Lal came up to prevent him from firing another shot. The appellant pushed him and then fired the second shot. All this cannot be attributed to any grave and sudden provocation. The offence, therefore, is not under Section 304, Part I.

10. In the result the appeal fails and is dismissed.

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