

Atmaduddin

Vs

The State of U. P.

Criminal Appeal No. 259 of 1971

(C. A. Vaidialingam, I. D. Dua, A. Alagiriswami JJ)

13.11.1972

JUDGMENT

VAIDIALINGAM J. -

1. This appeal by special leave is against the judgment and order, dated October 19, 1970, of the Allahabad High Court in Criminal Appeal No. 642 of 1972 confirming the conviction of the appellant for an offence under Section 302 read with Section 34, I.P.C. as well as the sentence of death imposed on him for that offence by the First Temporary Civil and Sessions Judge, Allahabad. By the same judgment the High Court has also confirmed the conviction of the appellant for an offence under Section 352 read with Section 34, I.P.C. as also the sentence of three months' rigorous imprisonment on the appellant for the said offence.
2. An other accused, Abrar Ahmad, was also convicted along with the appellant of the offence under Section 302 read with Section 34 but he was sentenced to undergo imprisonment for life. The said Abrar Ahmad was also convicted and sentenced for an offence under Section 352 read with Section 34, I.P.C. His conviction and sentence for both the offences were also confirmed by the High Court. We are informed that after the judgment of the High Court the said Abrar Ahmad died. That explains the reason why he is not before us.
3. According to the prosecution both the accused belong to village Hatwa to which the deceased Mohd. Ilyas also belonged. There appears to have been two warring factions in the said village, one led by Ansar Ahmad and the other by Mohi Uddin. The deceased Ilyas belonged to the party of Ansar Ahmad and the accused to the party of Mohi Uddin. It is in the evidence that Ansar Ahmad was murdered on November 23, 1968. The brother-in-law of Ansar Ahmad lodged a report involving the appellant as well as Abrar Ahmad and certain others belonging to the party of Mohi Uddin. After the death of Ansar Ahmad, the deceased, Mohd. Ilyas, is stated to have become the leader of his group and he in company with his father-in-law, one Mohd. Yunus, assisted the police in prosecuting the case against the accused and their companions concerning the murder of Ansar Ahmad. It is also in evidence that Mohd. Ilyas had appeared as a witness against the father of Abrar Ahmad in certain proceedings under Section 107/117 of the Criminal Procedure Code a few years back.
4. On February 14, 1969 at about 3.00 p.m., it is the case of the prosecution that one Afsar Ahmad stated to be the nephew of the appellant before us, was murdered near the village Hatwa and a report about the said murder was lodged at police station, Puramufti, on the same day at about 3.45 p.m. The brother-in-law and the father-in-law, Mohd. Yunus, of the deceased had been implicated in the said report.

5. It is the further case of the prosecution that on the same day i.e., February 14, 1969, at about 4.00 p.m. the appellant and the other accused, Abrar Ahmad, armed with guns shot Mohd. Ilyas, who was then working in his watermelon fields at Mubarakpur Kachhar. The accused is stated to have shouted that as a member of their party had been killed they will do away with Mohd. Ilyas by way of revenge. Mohd. Ilyas on receiving injuries due to the gun shots fired by the two accused dropped down dead. The first information report was given by P.W. 2, the son of the deceased, who had witnessed the incident as he was working with his father in the fields. The doctor who conducted the post-mortem on the body of the Mohd. Ilyas, has noted several injuries. According to the doctor the injuries in the abdomen of the deceased were sufficient in the ordinary course of nature to cause death.

6. Both the accused pleaded not guilty to the charges levelled against them. Their further plea was that they had been implicated due to party actions and enmity.

7. The prosecution relied on the evidence of P.Ws. 2, 7, 8 and 9 as eye-witnesses to the occurrence. The learned Sessions Judge as well as the High Court have accepted their evidence as true notwithstanding the circumstances that there was deep rivalry between the two groups in the said village and notwithstanding the further fact that the members of one group may be interested in implicating the other in any offence.

8. The appellant was sentenced to death in view of the fact that it was he who shot the deceased in the abdomen and that injury proved fatal. The other accused was awarded the lesser punishment of imprisonment for life as the shot fired by him had caused only an injury in the ear.

9. Mr. Nuruddin Ahmad, the learned counsel for the appellant, has very strongly attacked the reasons given by the learned Sessions Judge and the High Court for holding that the prosecution witnesses were independent and trust-worthy. He drew our attention to the fact that there has been considerable delay in P.W. 2 giving the first information report as well as in the body being sent to the hospital for post-mortem. These circumstances, according to him, will show that the witnesses who are inimical to the appellant had sufficient time to consider the persons who have to be implicated in respect of the death of Mohd. Ilyas. The counsel took us through the material portion of the evidence furnished by these witnesses as well as the reasons given by the High Court and the learned Sessions Judge.

10. We are not inclined to accept the contentions of Mr. Nuruddin Ahmad that there has been any delay in the matter of either furnishing the first information report by P.W. 2 or in the police forwarding the body for post-mortem. It has been brought out in evidence which has been accepted both by the Trial Judge and the High Court that in connection with the report lodged in respect of the murder of Afsar Ahmad earlier in the day, the investigating officer attached to Puramufti, within whose jurisdiction the offence had been committed, had come to the village Hatwa for investigation. P.W. 2 and other witnesses on finding that Mohd. Ilyas was dead, carried the body to his house across the river Ganges and reached the house at about 6.00 p.m. After reaching the house P.W. 2 prepared the report to be given to the police. But at that time the investigating officer of Puramufti on knowing about the second incident, namely, the death of Mohd. Ilyas had come to the house of the deceased. When P.W. 2 committed within the jurisdiction of the police station Nawabganj. Therefore he instructed P.W. 2 to take the report and give it in the first instance to the police station at Nawabganj. He also deputed a constable to accompany P.W. 2. The report was accordingly lodged at police station Puramufti at about 6.30 p.m. The said report was immediately despatched to the police station at Nawabganj. But as the constable, who had to take the report, could not get any

conveyance that night from Allahabad where he had reached by truck, he had to wait till the following morning to go to Nawabganj. Accordingly on the morning of February 15, 1969, at about 10.00 a.m. the papers were lodged at Nawabganj police station. The police officer thereafter immediately took up the investigation. From the facts mentioned above it will be seen that there has been no delay in the first information report being furnished by P.W. 2. In the first instance, immediately after reaching his house with the body of his father, he had given the report to the police officer of Puramufti and under his instructions it was sent to the police station and was recorded at 6.30 p.m. In view of the fact that it had to be properly lodged at another police station, namely, at Nawabganj, there has been some inevitable delay. But the point to be noted is that P.W. 2's version of the incident as well as the names of the persons who had witnessed the same was in the hands of the police on the same day by 6.30 p.m.

11. Mr. Nuruddin Ahmad next contended that the police officer, Puramufti, had evinced too such anxiety in conducting the inquest even though according to him the investigation had to be done by the police of Nawabganj. We have already referred to the circumstances under which the police officer from Puramufti had come to the village. As admittedly Mohd. Ilyas was already dead and as necessarily some time will elapse before the Nawabganj police officer could start investigation, there is nothing unusual in the police officer of Puramufti, who was already on the spot, conducting the inquest proceedings.

12. Mr. Nuruddin Ahmad next referred to the fact that there has been considerable delay by the police in examining some of the witnesses who had figured in the case. Even here the position appears to be that after the report was lodged at police station, Nawabganj, at 10.10 a.m. on February 15, 1969, P.W. 16 took up investigation and visited the scene of occurrence. He prepared the site plan and also collected the un-discharged cartridges and pellets lying about the place as well as the earth stained with blood. On that day he examined some witnesses but he went on leave from the next day. There has been some delay in the superintendent of police directing investigation to be taken up by another officer. Actually the further investigation was taken over by P.W. 15 from February 23, 1969, and that is how some witnesses happened to be interrogated after that date. If as a matter of fact the witnesses had been examined only after a very long time by the police, that certainly is a circumstance that will have to be taken into account to consider whether the evidence given by them before the court can be relied on. But all these circumstances have been taken into account by both the learned Sessions Judge and the High Court. They have also considered the evidence of these witnesses very carefully in view of the faction in the village coupled with the circumstances that the witnesses were of a particular group.

13. Mr. Nuruddin Ahmad next stressed the circumstance that the evidence of the prosecution witnesses that Budha and Bachcha were chased for about two miles by the appellant and that they ultimately escaped unhurt is a cock and bull story. Though Budha has not come to the witness box, Bachcha has given evidence as P.W. 8. Budha in fact is the father of this witness. He has deposed that he and his father were working in the adjoining watermelon fields and they saw the occurrence. They were chased by the two accused and they ran for their lives. It is his further evidence that he and his father escaped because they hid themselves in a bush. The investigating officer has stated that he found foot-prints for a long distance. The evidence of Bachcha, P.W. 8, has been accepted by both the courts. It was also pointed out that if P.W. 2 had been with his father, as he claims to be, he would not have escaped injury at the hands of the accused. Here again the evidence of P.W. 2 is that when he found the two accused approaching his father he cautioned the deceased; who could not escape. But on the other hand, the witness has stated that he immediately hid himself in a bush and thus escaped being attacked by the accused. There is nothing improbable in the version given by

P.W. 2. P.W. 2 has given in the first information report the details regarding the occurrence as well as the witnesses who had seen the occurrence. There is nothing improbable in P.W. 2 having been with his father working in the watermelon fields.

14. There is a lot of discussion in the judgments of the two courts regarding the existence of watermelon fields in the area concerned. The evidence regarding that aspect has very elaborately been considered by the learned Sessions Judge and the High Court and we agree with the conclusions arrived at by them.

15. From the above discussion it follows that the appellant along with the other accused, Abrar Ahmad, had the common intention of causing the death of Mohd. Ilyas when they fired the shots at him. Therefore the conviction of the appellant under Section 302 read with Section 34, I.P.C., for causing the death of Mohd. Ilyas is correct.

16. On the finding of the learned Sessions Judge which has been accepted by the High Court that it was the appellant whose shot caused the fatal injuries on the deceased, it cannot be said that the courts have not exercised their discretion properly in awarding the death sentence.

17. The conviction of the appellant for an offence under section 352 read with Section 34, I.P.C., as well as the sentence of three month's rigorous imprisonment has not been canvassed before us.

18. In the end we confirm the conviction of the appellant of the offences he was found guilty as well as the sentence imposed for those offences. The appeal is dismissed.

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