

Vijai Bahadur

Vs

The State of U. P.

Criminal Appeal No. 216 of 1971

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

06.12.1972

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal by special leave against the judgment of the High Court of Allahabad confirming the conviction of the appellant and sentence of death passed on him by the learned Additional Sessions Judge of Etawah under Sections 302 and 307, I.P.C. The appellant and his brother Radhey Shyam had been tried together, Radhey Shyam under Section 302 and 307, read with Section 34 of the I.P.C. Radhey Shyam's appeal was allowed and he was acquitted.
2. On September 22, 1969, the appellant shot to death one Hazuri Singh, a resident of his village Purwa Kamal Singh. It appears that a few days earlier the appellant had dragged a boy, Collector Singh, to a field for the purpose of committing sodomy on him. He escaped and on coming to hear of it his uncles, Gyan Singh and Suraj Singh, attacked the appellant the next day and caused him simple injuries. The appellant complained against these two persons and two others. On September 21, 1969, the appellant along with his brother went to the house of the grandfather of Collector Singh and started abusing Gyan Singh and others in front of the house of Hazuri Singh. When Hazuri Singh asked the appellant and his brother not to indulge in abuses in front of his house, the appellant told him that he would deal with him later. The next morning when Hazuri Singh had gone to the house of Sita Ram Pradhan (P.W. 2) to tell him about what had happened the previous day, Ranjit Singh, brother of Sita Ram and another person were sitting there. At that time the appellant came there with a gun, while his brother had a lathi. The appellant's brother, Radhey Shyam, challenged Hazuri Singh and the appellant fired at Hazuri Singh, who fell down and died. The appellant then re-loaded his gun and fired again, this time at Ranjit Singh. And thereafter both of them ran away.
3. The appellant's case was one of complete denial. He claimed that he had deposited his gun with an arms dealer in Etawah even on the 21st and the whole case against him had been engineered by his enemies. We have carefully gone through the evidence and the judgment of the learned Session Judge as well as the High Court, and are of the opinion that there is no substance in the appellant's case. It was argued before us that the F.I.R. did not mention about Collector Singh. But the beating itself is mentioned there. The fact that the appellant was beaten by Gyan Singh, Suraj Singh and others is clear from the report which the appellant himself made to the police. It is not surprising that the close relatives of Collector Singh did not like to mention about the unsavory episode regarding Collector Singh and the fact that this incident was not mentioned or that Collector Singh has not been examined does not in any way detract from the prosecution case regarding the motive for the offence. The motive has been spoken to by the brother of the deceased, Lakhan Singh (P.W.

1), Gyan Singh (P.W. 5) and Ajudhi (P.W. 6).

4. As far as the actual incident itself was concerned, there is the evidence of Lakhani Singh, who was present at the scene of occurrence. The evidence of Sita Ram Pradhan (P.W. 2) and his brother, Ranjit Singh (P.W. 3), who was himself injured in the incident cannot be easily brushed aside. The occurrence took place in front of P.W. 2's house and the empty cartridge and pellets had been recovered near the scene of occurrence. Though it is true that there were litigations between P.Ws. 2 and 3 on the one hand and the appellant on the other, the facts speak more eloquently here than any witness could speak. In any case there is no reason why any of the witnesses should leave out the real assailants and falsely implicate an innocent person. One could at least understand one's attempt to implicate his enemies in addition to the real culprit. But that is not the case here. The evidence of the ballistic expert establishes beyond doubt that the cartridge which caused Hazuri Singh's death was fired from the appellant's gun.

5. Some criticism was made about the recovery of the gun and the cartridge and the evidence of the ballistic expert, which was wholly without substance and which we do not feel called upon to refer to. The appellant's claim that he had deposited his gun with the arms dealer even on the 21st was clearly disproved by the evidence of the dealer as well as his records. The appellant seems to have gone and deposited the gun with the arms dealer after having committed the crime. He says that he deposited the gun because he came to know that the Sub-Inspector had made a report for withdrawing the licence for his gun, but does not explain how he came to know about Sub-Inspector's report. The learned advocate for the appellant tried to build up an impossible story that the Sub-Inspector himself had fired a cartridge from the appellant's gun after he had recovered it from the arms dealer. There is no reason why a Sub-Inspector should have done so.

6. The learned advocate for the appellant also took us through the medical evidence. We see nothing in it to support the appellant's case in any way. We are satisfied that the offence committed by the appellant has been amply established. There are no extenuating circumstances and the sentence of death passed on the appellant by the learned Sessions Judge and confirmed by the learned Judge of the High Court is the appropriate one in the circumstances of this case.

7. The appeal is dismissed.

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