

Prem Datta Gautam

Vs

State of U. P.

Criminal Appeal No. 239 of 1971

(H. R.Khanna, A. Alagiriswami JJ)

23.08.1973

JUDGMENT

ALAGIRISWAMI, J. –

1. The appellant and 11 others were prosecuted and tried before the II Temporary Additional Sessions Judge, Aligarh, under various sections of the Penal Code in respect of an incident which took place at 6 p.m. on 22nd March, 1968 in village Naunidh, 4 miles from Police Station Gonda, District Aligarh. The first information report was lodged by Bishambar Singh, Gram Pradhan of village Pachawari at 7.40 p.m. and he was later examined as P.W. 1. In that incident one Raj Pal son of Goberdhan received bullet injuries as a result of which he died later. Ombir Singh (P.W. 10), Sri Chand (P.W. 2), Bishamber Singh (P.W. 1), Jaswant Singh and Rajpal Singh had also received various injuries. Admittedly there was a good deal of enmity between the party of the complainant and the party of the accused. The learned Sessions Judge convicted all the 12 accused to various terms of imprisonment. The allegation against the appellant was that he fired a shot with a single barrel gun, and two other accused had country made pistols which they also fired and the death of Raj Pal was due to those injuries. The ballistic expert who examined the gun belonging to the appellant, which was a licensed one, found that it was not in a working condition but all the same gave evidence that the spent cartridge which was recovered from the place of occurrence was not fired from the gun of the appellant. Quite obviously this evidence could not be accepted. At the most he could have been in a position to say that he could not say whether the cartridge had been fired from the gun belonging to the appellant. Be that as it may, on appeal the High Court of Allahabad considered that it was not safe to rely upon the evidence of the witnesses who were injured during the incident. But there was the evidence of Mohabbey Ali, constable, who reached the place immediately after the incident and gave evidence that he saw twelve people running away of whom he could recognise four including the appellant, and there was another person who had a gandasa whom he could not recognise. According to the evidence of the other witnesses it was the accused Register who was armed with a pharsa. Accepting that evidence and the evidence of Mohabbey Ali the High Court upheld the conviction of the four (sic) the latter recognised as well as Register but acquitted the other seven. Four of them preferred special leave petitions to this Court and they have all been dismissed. We have now to consider only the case of the appellant.

2. That the death of Raj Pal occurred due to gun shot wounds was clearly established by the medical evidence and even leaving out of account the evidence of other witnesses, the evidence of Mohabbey Ali established that the appellant was armed with a single barrel gun. Two points were urged on his behalf before this Court : One that admittedly there was a good deal of enmity between him and P.W. 1, Bishambar Singh, and that there was no reason why he should shoot at the deceased Raj pal instead of shooting at Bishambar Singh. But it is established by evidence in the case that

there was bitter enmity between the party of the complainants and the party of the accused and if the appellant close in the first instance to shoot at one of them rather than another that cannot be said to throw any doubt on the truth of the prosecution case. Possibly, before he could do anything more the approach of the police constables might have made the appellant and other take to their heels. The other point urged, which is the only matter in respect of which the case of the appellant can be said to differ from that of the other accused whose conviction was upheld by the High Court, is that there was enmity between the police officials of Police Station Gonda and the appellant and therefore constable Mohabbey Ali was falsely deposing against him. It is true that the appellant seems to have sent a number of petitions against the police officials but that was all after the incident. He is said to have given an item of news in a newspaper complaining against the police and it is said that that was responsible for the police officers being inimical towards him as the Circle Officer held an enquiry against the police as a result of appellant's complaint. We are not impressed with this argument. That the constable Mohabbey Ali's evidence trustworthy is seen from the fact that though he said P.W. 1, Bishambar Singh, gave him the names of all the 12 accused, he gave evidence that he could recognise only 4 of them including the appellants and he could see that another man was carrying a pharsa. There is nothing which prevented him from implicating all the 12 accused if he really wanted to give false evidence. While the appellant might have complained against the police officers there is no particular reason why a mere constable should get angry and develop an inimical attitude towards the appellant so as to implicate him in a murder case. Even in the cross examination of the constable it was not suggested that he had any personal enmity against the appellant. The only suggestion was that he was deposing falsely.

3. We are, therefore, satisfied that the judgment of the High Court upholding the conviction of the appellant does not suffer from any infirmity. This appeal is, therefore, dismissed.

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