

Asgar Hussain

Vs

The State of U. P.

Criminal Appeal No. 129 of 1973

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

25.09.1973

JUDGMENT

KHANNA J. -

1. Eight accused Asgar Hussain, Talib, Ilyas, Israil Mashooq, Akhtar, Jarrar and Afsar were convicted by the civil and Session Judge Moradabad, for an offence under Section 302 read with section 149 Indian Penal Code and other minor offences. Asgar Hussain and Israil were sentenced to death, while the remaining six accused were sentenced to undergo imprisonment for life. Sentences of imprisonment for minor offences were also imposed upon the eight accused. On appeal and reference, the Allahabad High Court acquitted Mashooq, Akhtar, Jarrar and Afsar. The conviction of the remaining four accused was altered to that under section 302 read with section 34 of Indian Penal Code. Their conviction for minor offences too was maintained. The high Court affirmed the death sentence of Asgar Hussain while that of Israil was converted into one for imprisonment for life. Sentence for imprisonment for life imposed upon Talib and Ilyas was maintained. Asgar Hussain, Talib Ilyas and Israil then applied to this Court for special leave to appeal against the judgment of the High Court. The application of Talib Ilyas and Israil was dismissed. Leave was granted to Asgar Hussain but it was limited only to the question of sentences.

2. The prosecution case is that there was a dispute between Asgar Hussain and other accused on one side and Nawab Jan and Bankey deceased on the other hand with regard to the management of two mosques situated in village Saifpur Chittu in district Moradabad. On December 11, 1971 it is stated, Asgar Hussain and other accused asked Nawab Jan and Bankey to change the imam of one of the mosques. Nawab Jan and Bankey deceased decline to accede to this demand of Asgar Hussain and Talib. It appears that temper got frayed at that timely. Asgar Hussain and Talib then left after holding out a threat to Nawab Jan and Bankey. About 1 1/2 years thereafter at 2 p.m., the eight accused are alleged to have arrived at one of the mosques. Nawab Jan and Bankey along with others were present there. Asgar Hussain at that time was armed with his licensed double barrel gun, while Israil had a single barrel unlicensed gun. Apart from Afsar who had a at the remaining five accused too had fire arms. On the instigation of Mashooq, Akhtar, Jarrar and Afsar the other four accused fired at Nawab Jan and Bankey. Nawab Jan and Bankey were killed at the spot. Report about the occurrence was thereafter lodged at the police station. During the investigation of the case the investigating officer found four cartridges lying at the spot. Two of those cartridges were found by the ballistic expert to have been fired from the gun of Asgar Hussain, while the remaining two were found to have been fired from the single barrel gun of Israil.

3. As mentioned earlier, the only question with which we are concerned is whether the sentence of death awarded to Asgar Hussain should be maintained or whether it should be converted into one

for imprisonment for life. In this respect, we find that the High Court has converted the death sentence of Israil into one for imprisonment for life. The part played by Asgar Hussain was not materially different from that played by Israil and if it Israil could escape the extreme penalty, we find no particular reason as to who there should be differentiation in the matter of sentence so far as the Asgar Hussain appellant is concerned. The fact that Asgar Hussain as a village pardhan and is the leader of the party of the accused would not, in our opinion, justify differentiation in the matter of sentence. We would accordingly accept the appeal of Asgar Hussain to the extent of converting his sentence of death into one for imprisonment for life.

</html