

Amir Hussain

Vs

State of U. P

Criminal Appeal No. 269 of 1973

(H. R. Khanna, M. H. Beg JJ)

31.03.1975

JUDGMENT

KHANNA, J. –

1. Four persons, Ibrahim (55), Pradhan of village Noorpur, his son Shaukat (28), brother Mehendi Hasan (40) and Bashir (60), who was Uppradhan of that village were murdered in the course of an occurrence on the night between March 22 and 23, 1971 in village Noorpur at a distance of three miles from the police station Barhapur in district Bijnor. Amir Hussain (31) appellant and 12 others were tried in the court of Sessions Judge, Bareilly-Bijnor in connection with that occurrence for various offences under Sections 147, 148 and 302, read with 149, Indian Penal Code. The trial Judge acquitted 10 of the accused and convicted the appellant and two others Karimuddin and Mohd. Ibrahim under Section 302, read with Section 34, Indian Penal Code and sentenced each one of them to death. On appeal and reference the Allahabad High Court acquitted Karimuddin and Mohd. Ibrahim by giving them the benefit of doubt. Conviction and sentence of the appellant were maintained. The appellant has come up in appeal to this Court by special leave.

2. The prosecution case is that the appellant who is a Gujar abducted Zaitoon, wife of one Mubarak, a Sagra Muslim, about 18 months before the present occurrence and took her to village Keekar Khajuri, at a distance of about 40 miles from Noorpur. Six months after the abduction, the appellant brought Zaitoon back to village Noorpur. The appellant has then asked by Ibrahim Pradhan deceased to send Zaitoon back to her husband but the deceased declined to do so. The appellant thereafter again went to Keekar Khajuri. About three or four months before the present occurrence the appellant again came with Zaitoon to Noorpur and stated that no one could stop him from bringing Zaitoon to that village and that in case anyone did so he would be exterminated. A report about that threat was lodged by Mohd. Ibrahim at the police station on December 3, 1970. After holding out that threat the appellant again went back to Keekar Khajuri.

3. On the night between March 22 and 23, 1971, Ibrahim, his brother Mehendi Hasan and son Shaukat were sleeping in the verandah of their house in village Noorpur on three separate cots. The 13 accused accompanied by one Hasinu and an unknown person then came there. Amir Hussain appellant and Karimuddin were each armed with a Tabal (a kind of axe), two of the accused were armed with pistols, while one accused has a single-barrel gun. The rest of the culprits were armed with lathis. It is stated that the appellant gave a Tabal blow to Ibrahim Pradhan, while Karimuddin gave a blow with Table to Mehendi Hasan. The accused armed with pistols and gun fired at Ibrahim Pradhan, Shaukat and Mehendi Hasan. Bashir Uppradhan whose house was nearby also arrived there, but he too was shot at and injured. On hearing due and cry Khalil (PW 1), Abdul Ghani (PW 2), Abdul Ghafoor Chowkidar (PW 4) and Mohammad Umar (PW 5) arrived there and witnessed

the occurrence. At the time of the occurrence a lighted lantern was hanging from a peg in the verandah of Ibrahim. Abdul Ghafoor Chowkidar also set fire to a nearby Chhappar as a result of which there was much light and the eyewitnesses had no difficulty in fixing the identity of the assailants. The culprits after causing the injuries to the four deceased persons went away. All the four injured persons died soon after the occurrence. Khalil (PW 1) then went to police station Barhapur and lodged report Ka-1 at 5 a.m.

4. Post mortem examination on the dead bodies was performed by Dr. S. Saran on March 24, 1971. The accused were thereafter arrested and were sent up for trial.

5. At the trial the appellant and the other accused denied the prosecution allegations against them and stated that they had been falsely involved in this case.

6. The trial Court as stated above acquitted 10 of the accused, while the High Court further acquitted two of the accused and maintained only the conviction of the appellant.

7. In appeal before us Mr. B. P. Singh on behalf of the appellant has assailed the conviction of the appellant and has argued that in the face of the acquittal of the other accused, the conviction of the appellant cannot be sustained. The above contention has been controverted by Mr. Rana on behalf of the State.

8. It cannot be disputed that Ibrahim, Shaukat, Mehandi Hasan and Bashir died as a result of injuries inflicted upon them. Dr. S. Saran who performed post mortem examination on the dead bodies found ante-mortem gunshot wounds on all the four dead bodies. Ibrahim and Mehandi Hasan had also each an incised wound. The incised wound in the case of Ibrahim was on the outer lateral surface of the middle third of the right arm, while that in case of Mehandi Hasan was on the right side of scalp. According to the prosecution case, the injuries to the four deceased persons were caused in the circumstances mentioned above. In order to substantiate the above allegation, the prosecution examined Khalil (PW 1), Abdul Ghani (PW 2), Abdul Ghafoor (PW 4) and Mohammad Umar (PW 5) as eyewitnesses of the occurrence. In respect of the evidence of these witnesses, the High Court expressed the view that they were present and were in a position to witness the major part of the occurrence. After hearing the learned Counsel for the appellant and after having been taken through the material part of the record, we find no cogent ground to take a different view. It is apparent from the evidence of the eyewitnesses that the appellant who was armed with Tabal gave a blow with it on the arm of Ibrahim Pradhan. The evidence adduced by the prosecution regarding the part played by the appellant has been accepted by the trial Court and the High Court. Nothing cogent has been brought to our notice to justify interference with that finding.

9. Much stress has been laid on behalf of the appellant upon the fact that despite the evidence of the above mentioned four eyewitnesses, the High Court has acquitted Karimuddin and Mohd. Ibrahim accused. It is, in our view, not necessary to express an opinion on the point as to whether those two accused were rightly acquitted or not. All that we can say is that the benefit of doubt which resulted in the acquittal of the other two accused would not vitiate the conviction of the appellant in case the evidence adduced against him is found to be satisfactory and convincing. The material on record establishes that the appellant had a motive to join in the assault on Ibrahim Pradhan. The appellant held out a threat and report about it was lodged by Ibrahim deceased at the police station about 3 1/2 months prior to the present occurrence. The evidence about the motive lends assurance to the evidence of the eyewitnesses regarding the complicity of the appellant.

10. We would, therefore, maintain the conviction of the appellant.

11. As regards the sentence, it may be stated that the only injury which is attributed to the deceased is an incised wound on the right arm of Ibrahim. The incised wound which was found on the scalp of Mehandi Hasan was ascribed by the eyewitnesses to Karimuddin who has been acquitted. In view of the fact that a comparatively minor injury was attributed to the appellant and he is being vicariously held liable for the fatal injuries caused by the other culprits, we consider it to be a fit case in which we might substitute the lesser sentence for the extreme penalty of death. We accordingly maintain the conviction of the appellant but reduce his sentence to that of imprisonment for life.

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