

Nanhey

Vs

State of Uttar Pradesh

Criminal Appeal No. 1 of 1972

(P.N. Bhagwati, A.C. Gupta JJ)

14.12.1976

JUDGMENT

GUPTA, J. –

1. On the night between August 19 and 20, 1967, a dacoity is said to have been committed in the house of one Bahar Husain in village Mian Ganj, near police station Shahabad in district Rampur. This first information report is stated to have been lodged by Bahar Husain (PW 1) at 5 a.m. on August 20, 1967. The report contains a detailed description of the articles alleged to have been looted. Three persons, Nanhey, Kalloo alias Kallan and Mohammed Yameen were tried in connection with the crime and were convicted by the Additional Sessions Judge, Rampur, under Section 395 of the Indian Penal Code and each sentenced to rigorous imprisonment for seven years. Another person named Chhajju was convicted under Section 411 of the Indian Penal Code and sentenced to rigorous imprisonment for one year. The Allahabad High Court on appeal acquitted all the accused except Nanhey. Nanhey has preferred the present appeal with special leave obtained from this Court.

2. The reasons which weighed with the High Court in acquitting the accused persons other than Nanhey are these. Bahar Husain (PW 1) on cross-examination failed to give any details of the articles said to have been looted though the first information report lodged by him, as already stated, contains minute description of all these things. Further, before the committing magistrate he had stated that the first information report was prepared at 11 a.m. but the prosecution case is that it was lodged at 5 a.m. The High Court therefore agreed with the defence contention that the first information report was prepared with the help of the police much later than its stated hour. The High Court also observed that in the circumstances the prosecution case appears to have been "concocted". Nanhey and Mohammed Yameen are alleged to have been arrested sometime after 5 a.m. on the morning of August 20. Evidence was led to prove that some of the looted articles mentioned in the F.I.R. were recovered from Nanhey and Mohammed Yameen and that a single barrel gun was also recovered from the possession of Nanhey. The High Court disbelieved the evidence of recovery of the looted articles from Nanhey and Mohammed Yameen and held that the prosecution had "failed to prove that the articles were really looted during the dacoity". The High Court did not also find it possible to accept that the prosecution witnesses had been able to recognise Nanhey, Mohammed Yameen and Kalloo Among the dacoits.

3. Having recorded the findings summarized above, the High Court thought that the case of Nanhey stood on a different footing. The reason why an exception was made in the case of Nanhey appears to be as follows. One of the alleged eyewitnesses stated that Nanhey was seen standing on the roof of Bahar Husain's house firing from a gun. Bahar Husain found two empty cartridges on the roof of

his house and deposited them in the police station. According to the ballistic expert, one of these cartridges was fired from the gun stated to have been recovered from Nanhey; about the other, the expert was unable to express any definite opinion. From this the High Court presumed that "Nanhey was amongst the dacoits and it was he who had used the gun".

4. We think that the findings against Nanhey is quite inconsistent with the findings upon which the High Court had acquitted all the other accused. Assuming that one of the cartridges found on the roof of Bahar Husain's house had been fired from the gun produced in evidence, it is still to be proved that the gun belonged to Nanhey. The gun is alleged to have been recovered from Nanhey along with some of the looted articles. The High Court disbelieved the testimony of the witnesses who spoke about the recovery of the looted articles from Nanhey. The story of the recovery of the gun from Nanhey's possession also rests upon the testimony of these very witnesses. There is no warrant for supposing that though one part of their evidence may be false, the part relating to the recovery of the gun from Nanhey is true, nor has the High Court taken that view. It is also somewhat surprising why the ballistic expert failed to be definite about one of the two cartridges as to whether it had been fired from that gun, if this cartridge also was found along with the other on the roof of Bahar Husain's house. It is not suggested that Nanhey had more than one gun with him. The High Court as already stated, had found the prosecution case concocted and the story that the three accused including Nanhey had been recognised among the dacoits doubtful. The conviction of Nanhey is inconsistent with these findings. In our opinion there is nothing on record on which an exception can be made in the case of Nanhey. That being so we allow his appeal, set aside the appellant's conviction and acquit him.

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