

# SUPREME COURT OF INDIA

Birpal Singh

Vs.

State of U.P

Crl.A.No.73 of 1976

(N. L. Untwalia and S. Murtaza Fazl Ali, JJ.)

22.07.1977

## JUDGEMENT

### **UNTWALIA, J.:-**

1. This is an appeal under Section 2 (a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 by four persons. After setting aside the order of acquittal recorded in their favour by the trial Court, the Allahabad High Court has convicted them under the various sections of the Penal Code.

2. There is a field bearing plot No. 271 known as Patiawala field in village Gudera in the District of Farrukhabad. In relation to this field there was a dispute between appellant Mathura Singh and Ram Lal the person killed in the occurrence in question. Appellants Birpal Singh Kunendrapal Singh and Suraj Pal Singh are sons of Mathura Singh. Mathura Singh had filed a declaratory suit on 13-6-1968 under Section 229-B of the U. P. Zamindar Abolition Act impleading Ram Lal and others as defendants in that suit. During the pendency of the said suit, however, a proceeding under Section 145 of the Code of Criminal Procedure, 1898 was eventually decided in favour of Ram Lal on 13-8-

1969. He was declared to be in possession of the plot and continued to be so thereafter. On the morning of 10-4-1970 Ram Lal and his sons went to that field to harvest the crop. The appellants wanted to obstruct them from doing so. On the intervention of certain persons, the appellants left the spot with a threat that they would kill Ram Lal and his sons and would take away the crop from the Khalyan. The harvesting was, however, completed by Ram Lal on the 10th of April and the crops were stored in the fields of P. W. Prahlad and others .

3. The prosecution case further was that on the 11th of April, 1970 Ram Lal and his sons went to the Khalyan and started the thrashing of the harvested crop. One of the sons of Ram Lal named Ram Bharosey went to Amritpur Out Post and lodged a report at about 11.00 A. M. on the 11th of April regarding the incident which occurred on the 10th April. He returned to the Khalyan after lodging the report. At about 12.30 P. M. the appellants in the company of four others - one of whom was Sheo Mangal Singh formed an unlawful assembly and came with a bullock-cart to the Khalyan of Ram Lal. Mathura Singh is said to be carrying a spear. Appellants Birpal Singh and Kunendrapal Singh as also Sheo Mangal Singh (since acquitted) were carrying guns. The story of the main occurrence is that appellant Suraj Pal Singh took the gun of Sheo Mangal Singh and aimed it at Ram Lal whereupon he raised his left arm. Thereafter, he fired a shot causing injury on the outer side of the left arm. Appellant Birpal Singh fired another shot on the chest of Ram Lal, the injury caused by which proved to be fatal. Appellant Kunendrapal Singh is said to have fired the gun which he was carrying on P. W. Ram Chander (son of Ram Lal) and P. W. Prahlad causing injuries to them. The other members of the mob are said to be carrying lathis. All the 8 persons were put on trial for having committed various offences under Section 302, Section 302/34, Section 307, S. 307/34, Section 147 and Section 148 of the Penal Code. Finding very many discrepancies and improbabilities in the prosecution case, the trial Judge doubted the whole case and acquitted all the accused. The State preferred an appeal before the High Court which was allowed against the four appellants but dismissed against the other four. Appellant Birpal Singh has been convicted under Section 302 simpliciter and sentenced to undergo imprisonment for life. Each of the three other appellants has been given life imprisonment with the aid of Section 34 for causing the death of Ram Lal. Appellant Kunendrapal Singh has been awarded a sentence of rigorous imprisonment for 5 years under Section 307. Section 34 has been applied in relation to this count in case of the other appellants. Since the acquittal of the other four was maintained by the High Court, no conviction could be recorded against any of the appellants under Sec. 147 or Sec. 148 of the Penal Code.

4. We are of the opinion that the conviction of appellant Birpal Singh only under Section 302 of the Penal Code is sustainable while that of the others under any count cannot be upheld. In relation to them, we find that the prosecution case and the evidence suffered with such infirmities that none of the other three appellants could justifiably be convicted under any count, and specially, when an order of acquittal had been recorded in their favour too by the trial Court. In the light of the well established principle of law governing the power of the High Court to interfere with an order of acquittal the High Court was not at all justified in reversing the order of the trial Court and convicting the said three appellants. We shall proceed to state the broad features of the matter in this connection.

5. Appellant Birpal Singh was carrying his licenced gun which was later seized by the police. On examining some of the empty cartridges the Ballistic Expert could give a definite opinion that his gun had been used in the occurrence. The prosecution evidence was consistent and did not suffer from any infirmity as to the guilt of this appellant. He fired his gun and caused injuries to Ram Lal on his chest resulting in his death. Conviction of Birpal Singh, therefore, under Section 302 of the Penal Code with a sentence of life imprisonment is perfectly justified.

6. Appellant Suraj Pal Singh is said to have snatched the gun of Sheo Mangal Singh (since acquitted). The latter was also a gun licensee. His gun was seized. The Ballistic Expert could not connect any of the empty cartridges as having been fired from this gun. As admitted by one of the prosecution witnesses. Sheo Mangal Singh was ill and confined to bed at the time of the occurrence. His presence, therefore, at the place of the occurrence was not only doubtful, but perhaps false, as noticed by the High Court. That being so, the prosecution story of Suraj Pal Singh having used Sheo Mangal Singh's gun became very doubtful. If the prosecution evidence was correct as to the firing of a gun shot by Suraj Pal Singh then the wound of entry ought to have been found on the inner side of the left arm of Ram Lal because he had raised his arm before the shot hit it. But it was just the reverse. The wound of entry was on the outer side of the left arm. The prosecution case, therefore, against appellant Suraj Pal Singh was very very doubtful and the High Court was not justified in convicting him.

7. Appellant Kunendrapal Singh has been convicted under Section 307 of the Penal Code for attempting to murder P.Ws. Ram Chander and Prahlad. An order of acquittal was recorded by the trial Court in this regard too. The High Court without discussing the prosecution evidence and without finding whether it was reliable in regard to this part of the occurrence has reversed the order of acquittal and recorded an order of conviction against the appellant Kunendrapal Singh. This is not at all justified. Appellant Mathura Singh, according to the prosecution story, was carrying a spear. No spear injury was found on any person on the prosecution side. The case against this appellant also was sufficiently doubtful and the High Court's interference with the order of acquittal recorded in his favour by the trial Court cannot be justified.

8. In the result we allow the appeal of appellants Kunendrapal Singh, Suraj Pal Singh and Mathura Singh and set aside their convictions and the sentences under all the counts. The order of acquittal recorded in their favour by the trial Court is maintained. The appeal of appellant Birpal Singh is dismissed but with this modification only that his conviction and sentence under Section 307/34 obviously cannot be upheld. It is accordingly set aside. His conviction and sentence of life imprisonment, however, under Section 302 of the Penal Code are maintained.

Order accordingly.