

State of U. P.

Vs

Gopi and Others

Criminal Appeal No. 176 of 1973

(Syed M. Fazal Ali, O. Chinnappa Reddy JJ)

02.03.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against a judgment of the Allahabad High Court dated October 13, 1972 acquitting the respondents of the charge under Section 302/34 and Section 201 IPC. We have gone through the judgment of the Sessions Judge and that of the High Court. The High Court has given cogent reasons for disbelieving the prosecution case and has entertained a good deal of suspicion on the honesty of the police investigation in the present case. In view of the tainted investigation the High Court has scrutinized the evidence with very great care and found that all the eye-witnesses were interested excepting PWs 4 and 6 and some of the eye-witnesses were completely under the control of the police and it was therefore unsafe to convict the accused.

2. Appearing in support of the appeal, Mr. Uniyal submitted that so far as PW 4 Babu Ram and PW 6 Shiv Ram Singh, are concerned, they were independent witnesses and bore no animus against the respondents. There was thus no reason why their evidence should not be accepted. The High Court has, however, found that the occasion for the presence of these witnesses was that they were attracted to the scene of occurrence by the alarm raised by PW Nanhay Singh. Nanhay Singh however has been disbelieved by the High Court firstly on the ground that it was improbable for him to accompany the deceased who was going to the village merely for the purpose of hiring labour. It was the definite case of the prosecution that Nanhay Singh and the deceased had gone on their respective bicycles and yet in spite of the fact that the investigating officer reached place of occurrence he found only one bicycle which was taken by the deceased and there was no trace of a second bicycle. Apart from this it was stated in the F.I.R. and also in the evidence that PWs 4 and 6 were attracted to the spot by the alarm raised by Nanhay Singh after the deceased was attacked. The High Court thought that if Nanhay Singh's presence at the spot was doubtful there could be no occasion at all for PWs 4 and 6 to visit the place of occurrence and witness the assault on the deceased. There may be something to be said for this view of the High Court and, if we were sitting as a Court of appeal, we may have taken a different view and may have accepted the statements of PWs 4 and 6. But that is no reason to set aside the judgment of the High Court for after consideration of the various aspects of the case it cannot be said that the view taken by the High Court was not reasonably possible. Once this is so, this Court in special leave would not interfere with the order of acquittal. For these reasons, therefore, the appeal is dismissed.

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