

Uma Shankar

Vs

State of U. P.

Criminal Appeal No. 168 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

22.03.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against the judgment of the Allahabad High Court (Lucknow Bench) by which the appellant has been convicted under Section 307/34 and sentenced to imprisonment for life as also under Section 307/34 and sentenced to five years R.I. A detailed narrative of the prosecution story has been given in the judgment of the High Court and the Sessions Judge and it is not necessary for us to repeat it all over again.

2. Appearing for the appellant Mr. Goswami has raised a short point before us. He submitted that the evidence clearly shows that there was animus between the complainant and the appellant and the appellant was falsely implicated due to enmity. It appears that in the F.I.R. it was categorically stated that Uma Shankar along with Ram Lakhan and Deena Nath armed with Kanta reached the place of occurrence and all of them said that the deceased should be killed. Yet this allegation has been given a complete go-by in the evidence of PW 1 who has attributed the overt act of incitement to Uma Shankar alone and not to the others. PW 1 clearly admitted in his evidence that there was enmity between the parties and in that connection the witness deposed as follows :

The case under Section 307 was decided on April 19, 1969 and we were acquitted. In that 307 IPC case accused persons named Uma Shankar and Paikarma present in Court and Satti Din and Lal Behari were prosecution witnesses. Against all these four witnesses a case regarding giving of false evidence was started. These accused person were inimical to my nephew Padum Prasad and myself.

It was argued by Mr. Goswami and in the background of this enmity, it appears, that Uma Shankar has been falsely implicated. there is no reason by the prosecution for the vital change of the act attributed to Uma Shankar when the case was put forward in the Court, as compared to the one which was mentioned at the first instance in the FIR. No other act of participation in the crime has been attributed to the appellant Uma Shankar at all. There appears to be a very reasonable possibility of the appellant having been implicated due to enmity and given the assignment of incitement to seek personal vendetta. In the circumstances, therefore, we feel that the appellant is entitled to the benefit of the doubt. For these reasons, therefore, the appeal is allowed, the conviction and sentence passed on the appellant is set aside and he is acquitted of the charges framed against him. The appellant, now, shall be discharged from his bail bonds.

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