

Satbir

Vs

State of Uttar Pradesh

Criminal Appeal No. 44 of 1980

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

21.01.1980

JUDGMENT

1. Leave granted.

2. After hearing both sides we are of opinion that the appellant's conviction cannot be sustained. There are several circumstances which throw a doubt with regard to the appellant being the author of the gunshot injury received by the injured, Sansar Singh. Firstly, the first information report was lodged after a delay of three days, although it is admitted, that the injured person was conscious throughout even after the receipt of the injury. Secondly, the gunshot injury was on the back of the victim and in his deposition he did not say that immediately after the receipt of the injury he had turned back and seen his assailant. Of course, the courts below have imagined this explanation, which the injured himself had not chosen to put forth. The third circumstance which enhances the suspicion about the identity of the assailant, is that the victim's statement was recorded by the police under the Code of Criminal Procedure 17 days after the occurrence, and five days after his discharge from the hospital. No explanation of these delays is coming forth. The fourth circumstance is that an attempt was made by the prosecution to rope in the other two brothers of the appellant, also who have been acquitted by the High Court. Fifthly, the conviction rests mainly on the uncorroborated testimony of the injured. His father (PW 1) who had lodged the report came after the incident and was not an eyewitness of the incident. PWs 3 and 4 who were cited as eyewitnesses in the FIR, did not support the prosecution case at the trial. Sixthly, there was past enmity between PW 1 and his son (PW 2) on one side, and the appellant and his brothers on the other. The occurrence took place after dusk at about 7.30 p.m.

3. In view of the circumstances mentioned above, we are of the opinion that the charge had not been brought home to the appellant beyond reasonable doubt. The appeal is accordingly allowed, the conviction of the appellant is set aside and he is acquitted. His bail bond is discharged.

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