

State of U.P.

Vs

Suresh Chand Shukla and Others

Criminal Appeals Nos. 760-763 of 1979

(S.R. Pandian, K. Jayachandra Reddy JJ)

11.12.1990

ORDER

1. This is an appeal by State. The four respondents were convicted under Section 302 read with Section 304, I.P.C. by the trial Court. It is alleged that Ramesh Chander, the second respondent herein, who is armed with the firearm shot dead the deceased persons. He set up a plea of self-defence. The trial Court, however, convicted all the appellants and sentenced three of them to undergo imprisonment for life but Ramesh Chandra, however, was sentenced to death. The High Court which heard the appeals filed by the accused as well as the confirmation of the case acquitted three of the respondents. So far as the accused Ramesh Chandra is concerned the High Court took the view that he has exceeded the right of self-defence and accordingly convicted him under Section 304, Part 1, I.P.C. and sentenced him to undergo imprisonment for life. In this appeal the State has questioned the judgment of the High Court on the ground that all the four respondents ought to have been convicted under Section 302 read with Section 34 of I.P.C. The prosecution case is as follows:

The respondent Suresh Chandra is the Pradhan of village Maagdapur and has a licensed pistol. The second respondent Ramesh Chandra is his brother and had a licensed rifle. Shyam Sunder, father of the third respondent also had a licensed gun. There were dispute in respect of an auction for the fishery rights between the first respondent and the deceased. Three days before the incident the deceased and his two sons and P.W. 1 went to respondent No. 2 with their money a bid amount. There was exchange of harsh words between them. On 3-10-76 the deceased and his three sons including P.W. 1 went to the market for purchasing some foodgrains. They spread their phar near that of P. W. 4. About 4.00 P. W. when PWs.1 and 2 were also there all the four appellants came there armed with weapons. The first respondent abused the deceased and he grappled with him. At this juncture, on the exhortation of the other respondents Ramesh Chandra shot the three deceased persons. This was witnessed by P.W. 3 and P.W. 4. The report was given and the Investigating Officer reached the spot and sent the dead bodies for Postmortem. Medical evidence shows that these three persons shot dead and they died because of the injuries caused by firearm.

2. As mentioned above the trial Court accepted the prosecution case and convicted them. The High Court acquitted the three of the respondents mainly on the ground that they did not play any role and that Section 34 cannot be applied in their case. Now coming to the case of Ramesh Chandra, the High Court has accepted the right of private defence set up by him. In any event he was convicted

under Section 304, Part 1 and was awarded life sentence. We have gone through the Judgment of the High Court as well as the appellate Court and the evidence placed before us. In the facts and circumstances of the case it is difficult to conclude that all the other three respondents also shared the common intention with Ramesh Chandra. The consistent case of prosecution is that it is only Ramesh Chandra who shot dead all the three persons but since the plea set up by him is acceptable the benefit of the same was given to him. In any event as pointed out above the sentence is concerned there is no difference. The learned counsel for the appellants could not persuade us to interfere in the case of the three other respondents. This is an appeal against an acquittal and we see no good ground to interfere with the judgment of the " High Court. The appeal is accordingly dismissed.

Appeal dismissed.

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