

Ram Kumar

Vs

State of U.P.

Criminal Appeal No.361 of 1977

S. R. PANDIAN AND M. FATHIMA BEEVI, JJ.

12.12.1991

JUDGEMENT

FATHIMA BEEVI, J.:-

1. The appeal under S. 2(a) of the Supreme Court - (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, is directed against the judgment and order dated 5-10-1976 of the High Court of Judicature, Lucknow Bench, Lucknow, in Criminal Appeal No. 554 of 1972. By the impugned judgment, the High Court set aside the order of acquittal and convicted the appellant under S. 302, IPC and sentenced him to undergo imprisonment for life.

2. The brief facts of the case are as under :-

The police guard consisting of 5 constables, Mr. Suraj Man, Mr. Badari Singh, Mohd. Razi, Mr. Ram Kumar and Mr. Piarey Lal, were posted to guard the bridge. They lived in a tent close to that bridge. Each member had been supplied with a 303 rifle and 50 cartridges. The constables remained on sentry duty on the bridge for two hours each by rotation.

3. Ram Kumar, the appellant, is Kahar by caste. Badari Singh, the deceased, belonging to the upper class used to taunt the accused and say that ever since the low caste people were admitted that the force had become dirty. The accused resented this.

4. On 13th March, 1971, Ram Kumar was on sentry duty between 4.00 p.m. to 6.00 p.m. Mohammed Razi was to resume duty on 6.00 p.m. A little before 6.00 p.m., Mohd. Razi was putting his uniform inside the tent and was getting ready for his sentry duty. Badari Singh, the deceased, was sitting on a cot inside the tent. Suraj Man, P.W. 5, and Piarey Lal, constable, had gone to bazar to purchase ration for the guards. While Mohd. Razi was busy with his uniform, he heard a sound of gun fire. He saw constable Badari Singh collapsed on the cot. Ram Kumar was standing outside the tent with his rifle. Mohd. Razi shouted and advanced towards Ram Kumar. He made unsuccessful chase of Ram Kumar and returned when he was threatened. Badari Singh was injured. After shortwhile, Suraj Man and Piarey Lal returned to the tent. Mohd. Razi then proceeded to the Police station 7 or 8 kms. away and lodged the first information report. The crime was duly registered against Ram Kumar and was finally charged for offences under Ss. 302 and 409, I.P.C. and 20 (29) of the Police Act. The trial Court acquitted him of the charges under Ss. 302 and 409, I.P.C. but convicted him for the offence under S. 29 of the Police Act and sentenced him to undergo simple imprisonment for two months. On appeal by the State, the High Court set aside the order of acquittal and convicted Ram Kumar as aforesaid.

5. The prosecution sought to establish the charge of murder against the appellant on circumstantial evidence. The High Court found the circumstances relied on by the prosecution conclusively established and sufficient to warrant the conviction. The circumstances accepted and acted upon by the High Court have been enumerated in the judgment.

6. The High Court has thus found that the appellant had sufficient motive. He had made preparations. He was armed with the rifle and immediately after the occurrence he was seen by P.W. 1 with rifle pointed towards the victim. The appellant escaped with the rifle when the crime was detected. He absented himself from the camp without permission for about 10 days and the circumstances point to his involvement and the explanation offered by him for his absence was false. The High Court was also of the view that the testimony of Mohd. Razi is truthful that he had consistent version and the circumstances corroborated his evidence. The High Court concluded that there is apparently no conflict between the oral evidence and the medical evidence and the circumstances irresistibly lead to the only conclusion that it was the appellant and none else who was responsible for the fatal injury sustained by Mohd. Razi. The High Court considered the reasoning of, the learned Sessions Judge for discarding the prosecution case and dislodged the finding arrived at on valid grounds. The two reasons that weighed with the trial Court for rejecting the evidence of Mohd. Razi had been found to be flimsy.

7. The learned counsel appearing for the appellant contended before us that the High Court was not justified in interfering with the order of acquittal when the view taken by the trial Court on an appreciation of evidence was reasonable/ plausible. It was maintained that the testimony of P.W. 1, the key witness, in the case had been meticulously analysed by the Sessions Judge and discarded for valid reasons and that the High Court should have been slow in upsetting the conclusion arrived at by the trial Court even if a different view was possible. The learned counsel also pointed out that the appeal before this Court being one against the conviction, it is open to this Court to re-examine the evidence and arrive at a different conclusion. According to the learned counsel when the evidence is examined, it is clear that the prosecution has not succeeded in establishing the case against the appellant beyond reasonable doubt and that the appellant is, therefore, entitled to be acquitted.

8. We have been taken through the entire evidence in the case and we have carefully considered the arguments advanced on either side keeping in mind the fact that the powers of this Court in an appeal arising from the judgment of conviction is wider and that it is open to us to reappraise the evidence and arrive at our own conclusion. Even so we have considered whether the High Court was justified in the appeal against the acquittal for compelling reasons to interfere with the acquittal. We have no doubt in our mind that the order of acquittal in the light of evidence in the case was wholly unreasonable and unsustainable and that the High Court has rightly set aside the same and convicted the appellant. We are of the view that the various circumstances proved in the case point to the guilt of the accused-appellant conclusively. We have already referred to the various circumstances that have emerged on the evidence in the case and accepted and acted upon by the High Court. The reasoning adopted by the trial Court for rejecting these circumstances is far from convincing.

9. The occurrence had happened in the tent when the constables were on sentry duty. Mohd. Razi, one of the constable is the only witness to the occurrence. While he was getting ready to put on his uniform to take up the duty, he heard the gun a shot and turning to that side he saw the victim as well as the appellant. The natural version without any exaggeration has a ring of truth. The appellant immediately left the place carrying with him a rifle and cartridges and did not turn up for the next few days. Mohd. Razi waited in the tent by the side of victim till P.W. 5 and Piarey Lal returned

from the market. Only then, he proceeded to the police station to lodge the report. Badari Singh was seriously injured but was alive when P.W. 1 proceeded to the police station. The circumstances under which complaint was lodged, the narration of events and the conduct of the appellant considered together clearly reveal the truthfulness of the evidence of P.W. 1 and the falsity of the explanation given by the appellant. As rightly pointed out by the High Court the discrepancy in the evidence of P.W. 1 on peripheral matters are not at all material. There could be variation regarding the postures of the victim, the position of the appellant and even the place where the witness was at the time the occurrence happened, but the broad fact that the victim was inside the tent that P.W. 1 was getting ready for taking up the duty and the appellant was on duty armed with the rifle as spoken to by P.W. 1 are convincing. We also do not find anything in the medical evidence to doubt the veracity of the statement of P.W. 1 that he heard the gun shot and noticed the victim immediately. P.W. 1 could not be sure as to the exact postures of victim when the shot hit him, as he had been alerted only by the sound and he could focus his attention only thereafter. The fact that the Badari Singh had gun shot injuries that the wound of entry and wound of exit were on the chest only corroborate evidence of P.W. 1 and leave no room for doubt that Badari Singh was shot at by the appellant who was seen immediately with the weapon in his hand by other person in the vicinity.

10. The appellant's learned counsel commented on the non-examination of the persons who were in the field and who according to P.W. 1 rushed to the scene and joined in the chase of the appellant. We do not think that the non-examination of the person who could not give any material evidence is fatal. It was then pointed out that the duty register is not forthcoming, no cartridges has been recovered from the scene, the rifle has not been examined by the expert and that the best evidence has not been tendered by the prosecution, that an adverse inference has to be drawn and in view of that lacunae the prosecution evidence should have been rejected. We do not find any force in the arguments. The witness has explained why duty register has not been produced. The scene of occurrence is in a remote area near the bridge and close to a jungle. Inspector visited the place on the next day. He could not trace the cartridges but the use of fire arms is proved beyond doubt. He could notice hole in the tent, blood on the darsi. There is no suspicious circumstance to doubt the correctness of the prosecution version. Having gone through the entire evidence, we are satisfied that the prosecution case is true and the charge of murder against the appellant has been proved to the hilt by the circumstances established in the case. The High Court has rightly set aside the order of acquittal and we have only to confirm the conviction.

11. For the foregoing reasons, we dismiss the appeal. The appellant is on bail, the bail bond is cancelled. The appellant is directed to surrender to custody to undergo the unexpired portion of sentence if any.                      Appeal dismissed

</html